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

Present:

Mr. Justice Bhishmadev Chakrabortty
and
Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No. 102 of 2019

The State ...petitioner
-Versus-
Md. Saidur Rahman alias Md. Sayedur Rahman alias Milton
...condemned-prisoner

and

Jail Appeal No. 266 of 2019

Md. Saidur Rahman alias Md. Sayedur Rahman alias Milton ...convict-appellant
-Versus-
The State ...respondent

Mr. Syed Ejaz Kabir with Mr. Mohammad Imam Hossain (Tarek), Deputy Attorney Generals with Ms. Mahbuba Tasnim Akhi, Mr. Ashraful Alam and Md. Abdul Motaleb, Assistant Attorney Generals ...for the State

Mr. S.M. Shafiqul Islam, Advocate
...appointed as a State Defence Lawyer

Judgment on: 15.09.2026

K.M. Rasheduzzaman Raja, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman Tribunal No. 7, Dhaka, herein after 'the Tribunal', awarded death sentence to condemned-prisoner Md. Saidur Rahman alias Md. Sayedur Rahman alias Milton under section 11(Ka)

of the Nari-o-Shishu Nirjatan Daman Ain, 2000, herein after 'the Ain, 2000', with a fine of Taka 50,000/- (fifty thousand), in default, to suffer 03 months imprisonment by the judgment and order dated 29.08.2019 passed in Nari-o-Shishu Case No. 211 of 2018 arising out of Badda P.S. Case No. 10(9)05 corresponding to GR No. 368 of 2005 and thereafter made this reference under section 374 of the Code of Criminal Procedure, herein after 'the Code', for confirmation of the sentence. The condemned-prisoner although did not file any criminal appeal but filed Jail Appeal No. 266 of 2019 against the said sentence. Both the matters shall be disposed of by this judgment.

The prosecution case, in brief, is that condemned-prisoner Md. Sayedur Rahman alias Milton married Sharmin Sultana Hiya (the deceased). The condemned-prisoner demanded dowry of Taka 5,00,000/- (five lac) and P.W. 1 Md. Shahadat Hossain Sarker (Mukul), paternal uncle of the deceased, paid dowry of Taka 2,00,000/- (two lac). In spite of that condemned-prisoner Md. Sayedur Rahman used to torture his wife victim Hiya for the remaining amount of dowry Taka

3,00,000/- (three lac). P.W. 1 Md. Shahadat Hossain Sarker (Mukul) assured the condemned-prisoner to give him fridge, television (T.V.) etc. By this time Sharmin Sultana Hiya became pregnant. Condemned-prisoner Md. Sayedur Rahman sold out the gold ornaments of 20 ounce which Sharmin Sultana got in her marriage. Md. Sayedur Rahman was trying to get a job but failed. Accused Md. Sayedur Rahman on 05.09.2005 at around 01.45 p.m. throttled his wife Sharmin Sultana Hiya to death by hand for the remaining amount of dowry Taka 3,00,000/- (three lac). Receiving such information, P.W. 1 Md. Shahadat Hossain Sarker (Mukul) with others arrived at the house of the condemned-prisoner Md. Sayedur Rahman and entering into their house found the deadbody of Sharmin Sultana Hiya lying. Deceased Sharmin Sultana Hiya was of 4 months pregnant. Police arrived at the occurrence house and held inquest over the deadbody. Police prepared an inquest report in their presence with his signatures. The people present there informed him that accused Md. Sayedur Rahman killed his wife Sharmin Sultana Hiya for the dowry. On such occurrence he lodged FIR going to Badda Police Station.

Receiving the FIR mentioned above, Badda Police Station Case No. 10 dated 05.09.2005 was registered. P.W. 3 SI Md. Majharul Haque of Badda Police Station investigated the case and submitted charge sheet against the accused condemned-prisoner Md. Sayedur Rahman alias Milton under section 11(Ka) of the Ain, 2000.

Learned Magistrate accepted the charge sheet and transmitted the case record to the learned Judge of the Tribunal. Learned Judge of Tribunal No. 7, Dhaka took cognizance of the offence and registered Nari-o-Shishu Case No. 211 of 2018. The Tribunal framed charged against accused Md. Sayedur Rahman under section 11(Ka) of the Ain, 2000 and explained and read over the charge to the accused to which the accused replied that he killed his wife. After such admission of the killing by the condemned-prisoner, learned Judge although did not record his statement under section 265E of the Code but fixed the case for recording evidence and appointed a state defence lawyer to defend him.

Accordingly, the prosecution adduced 12 witnesses to prove the charge brought against the accused. Thereafter the

accused was examined under section 342 of the Code whereupon he claimed his innocence and expressed his desire not to adduce any counter evidence.

On consideration of the evidence on record and hearing the both sides, learned Judge of the Tribunal awarded death sentence to condemned-prisoner Md. Sayedur Rahman by the impugned judgment and order and made this reference.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General, appearing for the State took us across the entire evidence of the case and submits that the prosecution has adduced sufficient evidence to prove the charge brought against the accused. The condemned-prisoner Md. Sayedur Rahman demanded dowry to the family of the deceased and thereafter killed the deceased for a part of the dowry. The condemned-prisoner has admitted his guilt by making confession under section 164 of the Code and writing down a note on the occurrence. Condemned-prisoner after killing his wife went straight to the police station and admitting the offence brought police to the place of occurrence and showed the dead body. Even hearing the charge, the condemned-prisoner Md. Sayedur Rahman has admitted the

charge by stating that he killed his wife. Although the Magistrate did not appear before the Tribunal even after issuance of process against him on several occasions but the confession can be admitted into evidence under section 80 of the Evidence Act. Finally Mr. Kabir submits that the reference should be accepted. He relied on the principles laid down in the case of Aminul Islam Bulbul Vs. State, 21 BLC (AD) 232.

Mr. S.M. Shafiqul Islam, learned Advocate appearing for the condemned-prisoner as a state defence lawyer has opposed the reference submitting that on perusal of the confession of the condemned-prisoner no demand of dowry on behalf of the condemned-prisoner to the family of the deceased is found. This is not a case under section 11(Ka) of the Ain, 2000. The accused was instigated by the conduct of his wife and, therefore, on sudden provocation he killed his wife in his house. Such killing is not a murder under section 299 of the Penal Code. Rather it should be an offence of culpable homicide not amounting to murder which is punishable under section 304 of the Penal Code. Learned Judge of the Tribunal has failed to appreciate the evidence of the prosecution as well

as the confession of the condemned-prisoner properly and thus, arrived at an erroneous decision of awarding death sentence to the condemned-prisoner by the impugned judgment and order. As such, the reference is liable to be rejected. Mr. S.M. Shafiqul Islam has relied on the principles laid down in the cases of Khan Abdul Hafiz and another Vs. The State, BCR 1987 (AD) 214 and the case of Nalu Vs. State, 17 BLC (AD) 204 in support of his submissions.

Let us examine the propriety of the passing of death sentence against the condemned-prisoner by the impugned judgment and order. There is no specific defence case on behalf of the condemned-prisoner. Rather, he is found to have admitted the charge. Yet, the prosecution has examined 12 witnesses to prove the charge brought against the condemned prisoner independently. Let us examine the some and substance of the evidence of the prosecution.

P.W. 1 Md. Shahadat Hossain Sarker (Mukul), the informant, has deposed that late Ashraf Uddin Sarker, father of deceased Sharmin, was his elder brother and after his death deceased Sharmin was rared under his supervision. One year

ago victim Sharmin Sultana Hiya was married off to accused Md. Sayedur Rahman. Since after the marriage the accused started torturing his wife Sharmin demanding dowry. As she had lost her father deceased Sharmin disclosed the demand of the accused and his torture to him. Hearing such torture he paid the accused Taka 2,00,000/- (two lac). But accused continued the torture on Sharmin for the rest amount of dowry Taka 3,00,000/- (three lac). Hearing such demand of dowry he promised the accused to give fridge, T.V. etc. By this time Sharmin became pregnant and the accused sold out the gold ornaments of his wife. The accused had no job. On 05.09.2005 at around 01.45 p.m. accused Md. Sayedur Rahman killed his wife Sharmin by strangulation with his hands for the rest amount of dowry Taka 3,00,000/- (three lac). Hearing such incident he along with witnesses P.W. 4 Md. Mojibar Rahman, P.W. 5 Faruk Ahmed, P.W. 9 Md. Manik Sarker and others went to the residence of the accused at Badda and found the dead body of Sharmin lying on bed in the bedroom of the accused. Police and the other neighbours appeared and in their presence police held inquest over the dead body and prepared

an inquest report with his signature. He has marked the inquest report and his signature thereon as exhibits. On such occurrence he lodged FIR with Badda police station. He has marked the FIR and his signature thereon as exhibits. In cross-examination he has stated that he is a contractor by profession. The deceased's father died $1\frac{1}{2}$ years before her marriage. Father of the accused was a higher government official and his mother was the Principal Officer of Uttara Bank. One of his brothers was in government service and they had a four storied building. The accused used to live in the 1st floor of the house with the deceased. The accused demanded dowry to him in presence of the mother of the deceased. However, he could not remember the date of demand of dowry. He has stated that his niece would like music but she was not reckless in her life style. He denied that the victim was always busy with the hearing of music or she was maintaining anti-Islamic attitude.

P.W. 2 Abdul Matin has deposed that he used to live in the ground floor of the house of occurrence at Adarsha Nagar, Badda. The occurrence took place on 05.09.2005. He did not witness the occurrence. At 2.00-$2\frac{1}{2}$ p.m. he was eating rice and

at that time someone knocked his door. Opening the door he found police. Police led him into the 1st floor of the occurrence house. Going there he found accused Md. Sayedur Rahman, son of the landlord, sitting in the sofa with 7/8 police personnel. He found a dead body of a lady in the house of the accused. He left the house for his duty keeping the police in the room of the accused. In cross-examination he has stated he used to pay the rent of the house to the mother of the accused. He did not know whether the dead body was of the wife of the accused. However, police informed him that the dead body was of the wife of the accused.

P.W. 3 SI Md. Majharul Haque has deposed that he was posted in Badda police station on 05.09.2005. Accused Md. Sayedur Rahman arrived at Badda police station at 15.40 p.m. and disclosed that he killed his wife Sharmin Sultana Hiya by throttling. Making GD Entry No. 255 dated 05.09.2005 on such information he along with SI Mahfuzul Karim and other forces went to the place of occurrence with accused Md. Sayedur Rahman and at his showing they found the dead body of his wife and holding inquest thereoover he sent the same to morgue

for holding autopsy. He seized a note written by the accused from the place of occurrence. P.W. 1 Shahadat Hossain, paternal uncle of the deceased, arrived at the police station on the same day and lodged the FIR. Receiving the FIR OC of the police station registered the case and appointed him as the Investigation Officer (I.O.). Being appointed I.O. of the case he visited the place of occurrence, prepared sketch map with index, seized the alamots preparing two seizure lists. Thereafter he seized the part of the wearing cloth of the deceased on 06.09.2005. He seized a sonny cassette player on 07.09.2005. Thus he prepared four seizure lists. He arrested accused Nos. 1-5 and produced them before the Court. He got the confessional statement of accused Md. Sayedur Rahman recorded by the Magistrate. He recorded statements of the witnesses under section 161 of the Code, received the autopsy report and subsequently, submitted charge sheet under section 11(Ka) of the Ain, 2000 against the accused Md. Sayedur Rahman. He has marked the seizure lists, inquest report, sketch map with index and his signatures thereon as exhibits. In cross-examination he has stated that he interrogated the neighbours of

the occurrence house. He inquired into the demand of dowry. He has denied that he deposed falsely or submitted false charge sheet against the accused without investigating the case properly.

P.W. 4 Md. Mojibar Rahman has deposed that deceased Sharmin Sultana Hiya was his neighbour. At the time of occurrence he was in his village home. He returned to Dhaka after 4/5 days of the occurrence and came to know that accused Milton killed his wife Hiya. He also learned that accused Milton going to police station admitted the killing of his wife.

P.W. 5 Faruk Ahmed has deposed that accused Milton was his neighbour. The occurrence took place at 2.00 p.m. to 2.30 p.m. on 05.09.2005. Hearing the occurrence he went to the house of accused Milton in the afternoon and going there he found the dead body of the wife of accused Milton lying on their bed. Police took his signature on the inquest report. Police seized several articles including a hand note from the place of occurrence and prepared seizure list with his signature. From the people he learned that accused Milton killed his wife having

an altercation over demand of dowry and, thereafter, going to police station, he brought police in their house.

P.W. 6 Md. Bazlur Rashid has deposed that he stopped seeing police on the way to his shop at around 01.00 p.m. on 05.09.2005. He also found a gathering of people in front of the house of the accused. Police led him into the house and showed a dead body of a lady. P.W. 5 Faruk Ahmed was with him. At the instance of police they put their signatures on inquest report which he marked as exhibit.

P.W. 7 Md. Masud Sarker has deposed that the occurrence took place on 05.09.2005. Receiving information at 04.30 p.m. that accused Md. Sayedur Rahman alias Milton killed his wife Sharmin at 01.15-01.30 p.m. he along with the informant and others went there. The accused started torturing the victim since after 1-2 months of their marriage. The informant gave the accused dowry of Taka 2,00,000/- (two lac). The informant told him about giving of such money. But the accused killed his wife within 6 months of their marriage. Going to the house of the accused he found the dead body of Sharmin lying on their bed. Police held inquest over the dead

body and sent the same to hospital for holding autopsy. In cross-examination he stated that he did not see the killing of the victim. The accused did not demand dowry in his presence but the informant told him about such demand. He has denied that since Sharmin did not pay heed to objection of her husband on hearing music, the accused killed her being instigated by his conduct.

P.W. 8 Md. Majibur Rahman Sarker and P.W. 9 Md. Manik Sarker alias Md. Mafidul Islam (Manik) were tendered but the defence declined to put them under the cross-examination.

P.W. 10 Dr. Md. Ataur Rahman stated that he was posted to the Forensic Medicine Department at Dhaka Medical College Hospital on 06.09.2005. The dead body of victim Sharmin Sultana Hiya was produced before him for holding post mortem. He held post mortem on the dead body and found the following injuries:

1. 2 abrasion in the right lower forarm ¼" × ¼" of each one above another.

2. One abrassion in the right side of the neck measuring ½"×".

3. 4 abrasion in the left side of the upper neck measurement varying from ½"×$\frac{1}{3}$" to $\frac{1}{3}$"×$\frac{1}{3}$".

4. One braise in the chain measurring 1½"×1".

On dissection of the neck extravagated clotted blood was found in the front and right side of the upper neck. Sternocleidomastoid ruptured muscle was in the left side of the neck. Extravagated clotted blood is found in the pharynx, and in the larynx, Hyoid bone, larynx, trachea were intact but muscle was congested. All other internal organs were congested and healthy. Uterus was enlarge measuring 8"×7" contain a male child which was 8" long.

In his opinion the death was due to asphyxia resulting from throttling (Manual Strangulation) which was ante mortem and homicidal in nature and the deceased was about 4½ months pregnant.

He has marked the post mortem report as exhibit-7 and his signature thereon exhibit-7/1.

In cross-examination he has stated that he alone held post mortem on the dead body and gave opinion that the victim was strangulated to death. In suicidal hanging such injury as mentioned in the report will not be found. He denied that the deceased committed suicide by hanging.

P.W. 11 Nasima Ashraf, mother of the deceased Sharmin Sultana Hiya, has deposed that she married off her daughter Sharmin Sultana Hiya to accused Md. Sayedur Rahman alias Milton on 05.03.2005. Since after their marriage the accused started demanding dowry. They paid dowry of Taka 2,00,000/- (two lac) to the accused. Without being satisfied the deceased demanded more. Her daughter informed him over phone that the accused tortured her demanding dowry. At 01.45 p.m. on 05.09.2005 accused Md. Sayedur Rahman alias Milton killed her daughter by throttling in their house. Hearing the occurrence she reached the house of the accused at 06.00 p.m. and found her daughter lying dead on the bed. The accused going to police station admitted that he killed his wife and subsequently, he gave confession under section 164 of the Code. Her daughter was pregnant at the time of the killing. In

cross-examination she has stated that her daughter used to live with her husband in the occurrence house at holding No. C-11, Middle Badda. Her daughter Sharmin went to visit her two days before the occurrence but the accused brought her back. When the accused went to bring her wife he demanded money to her. The accused demanded dowry at the time of marriage and after the marriage. She has denied that she deposed falsely.

P.W. 12 Afzal Hossain Sarker (Nadim) has deposed that the victim was his elder sister and the accused was his brother-in-law. They got married in the year of 2005 but since their marriage the accused was demanding dowry and he used to assault his sister for dowry. They paid dowry of Taka 2,00,000/- (two lac). He learned that the accused killed his wife Sharmin in his residence at 01.45 p.m. Hearing such occurrence he went there and found the dead body of his sister. Police seized alamot in his presence and prepared a seizure list with his signature. He has marked the seizure list with his signature as exhibits. The accused Md. Sayedur Rahman killed his wife by throttling for dowry which he confessed under section 164 of the Code. In cross-examination he stated that he did business

at Joydebpur. His sister used to live at Badda after her marriage. He has denied that the accused did not demand dowry to them.

Apart from the above mentioned evidence of the witnesses of the prosecution, accused Md. Sayedur Rahman alias Milton has given a confession under section 164 of the Code to the Magistrate. On perusal of the above evidence along with other materials on record it appears that admittedly accused Md. Sayedur Rahman alias Milton married deceased Sharmin Sulatana Hiya before 6 months of the occurrence. The deceased was four months pregnant at the time of killing. Admittedly, the deceased was killed in the house of her husband condemned-prisoner Md. Sayedur Rahman.

P.W. 1 Md. Shahadat Hossain Sarker (Mukul), P.W. 5 Faruk Ahmed, P.W. 7 Md. Masud Sarker, P.W. 11 Nasima Ashraf and P.W. 12 Afzal Hossain Sarker (Nadim) have deposed supporting each other that since after the marriage condemned-prisoner Md. Sayedur Rahman started demanding dowry of Taka 5,00,000/- (five lac) to the family of deceased Sharmin Sultana Hiya. Following his demand the family of the

deceased paid dowry of Taka 2,00,000/- (two lac) and P.W. 1 Md. Shahadat Hossain Sarker (Mukul) promised to give him fridge and T.V. Although P.W. 1 has supported solvency of the family of the condemned-prisoner Md. Sayedur Rahman but it has come out from the evidence that the condemned-prisoner had no job. In this circumstance, we find nothing to doubt that the condemned-prisoner demanded dowry to the family of the deceased and he used to commit torture on the deceased on demand of dowry.

In his confession the condemned-prisoner stated, among others, that—

> ".....গতকাল সকাল অনুঃ ৭.৩০/৮.০০ টার মধ্যে ঘুম থেকে উঠে। নাস্ত্মা হিসাবে রম্নট তৈরী করে খেয়েছিল এবং ক্যাসেট পেস্নয়ারে গান শুনছিল এবং বেশ উত্তেজিত হয়ে রম্নমে বসে ছিল। সকাল ১২.০০ টার সময় আমি রাতের তরকারী দিয়ে ভাতসহ নাস্ত্মা খাই। আমি আমার স্ত্রীকে স্বাভাবিক হওয়ার জন্য অনুরোধ করলে সে আমাকে বিভিন্ন ধরনের অশালীন আচরণ করে। একপর্যায়ে আমি দরজা বন্ধ করে নিজেকে নিয়ন্ত্রণ করতে ব্যর্থ হই। প্রচন্ড রাগে ও ক্ষোভে আমি এক পর্যায়ে আমাদের ২ তলা বাসার শয়ন কক্ষের খাটে যেখানে সে বসেছিল। আমি আমার স্ত্রী শারমীন সুলতানা হিয়ার গলা ২ হাতে চেপে ধরে শ্বাসরোধ করে তাকে হত্যা করি। ঐ সময় ক্যাসেট পেস্নয়ারে গান

বাজছিল। আমার স্ত্রীর মৃত্যু নিশ্চিত হবার পরে আমি একটি চিরকুটে তাকে কেন হত্যা করেছি সে বিষয়ে উলেস্নখ করেছিলাম। আমি যখন আমার স্ত্রীকে গলাটিপে হত্যা করি তখন আমার মা সহ আমার ছোট ২ ভাই বাসায় ছিলনা। তারা নিজ নিজ কর্মস্থলে ছিল। বাসায় আমার ছোট দুই ভাইয়ের বৌ নিপা ও লিপু ও গৃহীরিচারিক ছিল তবে তারা অন্য রম্নমে ছিল। হত্যার তারিখ ৫/৯/২০০৫ এবং হত্যার সময় অনুঃ ১.৪৫ হতে ২.০০ টা মর্মে চিরকুটে উলেস্নখ করেছি। আমার স্ত্রী শারমীন সুলতানা হিয়া অনুঃ ৪-৪½ মাসের অন্তঃসত্ত্বা ছিল। আমার স্ত্রীকে হত্যার পরে আমি গোসল করে বাড্ডা থানায় গিয়ে থানায় কর্মরত সেকেন্ড অফিসার মাহফুজ এর কাছে আত্মসমর্পণ করে আমার স্ত্রীকে গলাটিপে হত্যা করার কথা খুলে বলি।.....”

It appears from the confession mentioned above that it is an inculpatory confession made under section 164 to the Magistrate just after commission of the offence. Apart from this confession the condemned-prisoner Md. Sayedur Rahman himself went to the police station and admitted that he killed his wife. Although such admission to police is not generally acceptable under section 25 of the Evidence Act but following his confession police arrived at their house with the accused and at the showing of accused Md. Sayedur Rahman alias Milton the dead body was identified and police held inquest

thereon. Therefore, according to section 27 of the Evidence Act, his confession of killing his wife by throttling made to the police also can be taken into consideration because the part of his confession has been subsequently proved.

So, we find here two confessions, one to police and another to Magistrate. The note admittedly written by the convict-prisoner is also a confession; because he has written in the note how he killed his wife. The note has been seized and marked as Ext. -1. In the note the condemned prisoner wrote that—

> "মহান প্রভুর ইচ্ছায় নিবেদিত"
>
> আমি মোঃ সাইদুর রহমান, পিতা মোঃ তাইবুর রহমান এই মর্মে স্বীকৃতি দিচ্ছি যে, আমি আমার বিবাহিতা স্ত্রী পারভীন সুলতানা (হিয়া) কে মহান প্রভুর আদেশে হত্যা করিলাম, কেননা সে আমার ধর্মীয় জীবন ও স্বাভাবিক জীবনের সকল প্রকার কার্যকলাপে অস্বাভাবিক রূপে বাঁধা প্রদান করছিলো, যা আমার জন্য মেনে নেয়া সম্ভব হচ্ছিল না।

Condemned-prisoner Md. Sayedur Rahman neither retracted his confession nor put any defence against the confession. The accused has filed a retraction application but there disclosed no ground for retraction excepting an assertion

that the confession was not voluntary and, therefore, it cannot be treated as an application of retraction at all. Because, he was not taken into police remand before giving such confession. He did not claim that police subjected him to torture for giving confession. Although the recoding Magistrate did not appear before the Tribunal to prove the confession but on perusal of the confession it appears that the confession was recorded in a prescribed from after filling up all the columns properly. The confession has been corroborated by the recovery of the dead body with the injury marks compatible to the cause of death as the accused disclosed to police. So, the confession can unerringly be treated as voluntary and true. We find substance in the submissions of the learned Deputy Attorney General and hold that the confession of the accused can be admitted into evidence under section 80 of the Evidence Act.

On the other hand, there is another admission on behalf of condemned-prisoner Md. Sayedur Rahman and that is the above mentioned note written by the condemned-prisoner himself after the killing. So, there are three confessions which clearly indicate that the accused deliberately killed his wife and

the cause of such killing was his failure of getting dowry from the family of the deceased.

Mr. S.M. Shafiqul Islam, learned Advocate appearing for the condemned-prisoner wanted to convince us that the condemned-prisoner had no intention to kill his wife. He was instigated by the deceased as she used to hear music ignoring his objection and she was in angry mood at the time of hearing of music. Since the accused condemned-prisoner could not control himself, therefore, he killed his wife following her sudden provocation. Therefore, learned Advocate submits, it was not a premeditated killing.

But we have already found that this is the case under section 11(Ka) of the Ain, 2000 and the prosecution has successfully proved the demand of dowry by the condemned-prisoner. Therefore, we have no scope to consider the killing of the instant case as a murder under sections 299, 300 of the Penal Code. For the sake of argument if we consider it a murder case and visit the provision of section 300 of the Penal Code, yet we find no instigation or sudden provocation on part of the deceased. Because hearing of music was a freedom of choice of

the victim and that can never be interpreted as an instigation or provocation.

Moreover, had the condemned-prisoner been provoked or instigated by the conduct or habit of the victim of hearing music, he could at least show some sorts of sign of his objection or annoyance either by stopping the cassette player or doing any sort of harm to the musical instrument. But he did nothing; rather he took a time, according to his confession, to get him cool down. He did not instantly react to the hearing of music by his wife. Rather he closed the door and confined himself in a room and then allegedly tried to control him and thereafter killed his wife.

So, there is no ingredient of sudden provocation or instigation on part of the victim. Since the condemned-prisoner palpably did nothing instantly to stop the music or refrain his wife, his act does not come within the purview of any of the exceptions of section 300 of the Penal Code. On the other hand, there are clear evidence of demanding dowry by the condemned prisoner to the family of the deceased. Therefore, we hold that this is a case under section 11(Ka) of the Ain, 2000 and since

both the demand of dowry and killing for dowry has been proved, we hold that the learned judge of the Tribunal committed no error in awarding death sentence to the condemned-prisoner by the impugned judgment and order. It is not a simple killing of a wife on her failure to pay dowry but a killing of her child in the womb also and, therefore, we find merit in the reference.

In the result, the reference is accepted and the jail appeal is dismissed. The death sentence awarded by the impugned judgment and order upon the condemned prisoner Md. Sayedur Rahman alias Milton is hereby confirmed and upheld.

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

Bhishmadev Chakrabortty, J:

I agree