

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No.20 of 2019

The State petitioner

-Versus-

Akash alias Mithu condemned-prisoner
with

Criminal Appeal No.4531 of 2019

And

Jail Appeal No.56 of 2019

Akash alias Mithu appellant

-Versus-

The Staterespondent

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

(In the reference and the appeals)

Mr. SM Kafil Uddin, Advocate

.....for the condemned-prisoner-appellant

(in Crl. Appeal 4531 of 2019)

Judgment on 21.06.2026

Bhishmadev Chakrabortty, J:

Since the reference, the appeal and the jail appeal have
arisen out of the judgment and order of conviction and
sentence of death passed by the learned Judge of Nari-o-

Shishu Nirjatan Daman Tribunal, Chuadanga (the Tribunal) in Nari-o-Shishu Case 180 of 2016, these have been heard together and are being disposed of by this judgment.

Learned Judge of the Tribunal on trial found the condemned-prisoner guilty of offence under section 11(Ka) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain, 2000) in Nari-o-Shishu Case 180 of 2016 and sentenced him thereunder to death with a fine of Taka 50,000/- and sent this reference to this Court under section 374 of the Code of Criminal Procedure (the Code) for its confirmation. At the same time the condemned-prisoner has preferred the aforequoted criminal appeal and jail appeal and as such those have been posted in the list for hearing and disposal analogously.

The prosecution case, in brief, is that PW1, informant and father of the deceased Tahmina Khatun (the victim) lodged the First Information Report (FIR) with Chuadanga police station at about 20:30 hours on 15.07.2016 alleging, *inter alia*, that his daughter victim Tahmina was given in marriage with accused Akash alias Mithu 7-8 months ago. After marriage they came to learn that accused Mithu married

three times earlier. After marriage accused Mithu started claiming dowry of Taka 50,000/- from his daughter. His daughter refused to pay the amount and consequently the accused started torturing her mentally and physically. His daughter having been unable to bear the torture of her husband came to their house on 13.07.2016 and told it to them. The accused went to their house at about 5:00 pm on 14.07.2016. All of them have their dinner at about 9:00 pm and went on bed to their respective rooms. PW2, the wife of informant at about 11:00 pm heard groaning/moaning sound from victim's room. She stood by the side of the door and asked them what happened inside but did not get any reply. The accused then came out from the door of victim's room pushed PW2 and fled away. She recognized him in the electric light. She made hue and cry and chased the accused. At her outcry, he, his son Mintu and daughter-in-law wokeup. His wife returned and thereafter all of them entered into the victim's room and found the victim slaughtered. The neighbours Md. Tahajuddin, Asadul (PW9) and Bulbuli (PW3) rushed to the occurrence house and saw the incident. They informed the occurrence to the people of Tiorbila village where accused used to reside in.

The men of that illage apprehended the accused and handed him over to nearby police camp. Police of Chuadanga police station subsequently came to the place of occurrence and after complying all legal formalities sent the deadbody to the morgue for holding autopsy. He went to the police station with PWs 2, 6 and one Tahaj Uddin and lodged the FIR. Since he was busy with the autopsy of the dead body and its burial, therefore, the FIR was belated. On the basis of the aforesaid information Chuadanga police station Case 37 dated 14.07.2016 corresponding to GR 308 under section 11(Ka) of the Ain, 2000 against sole accused was started.

PW3 Md. Masud Parvez, a Sub-Inspector (SI) of police investigated the case. In course of investigation he sent an inquiry slip to Alamdanga police station to verify the address and character of the accused and accordingly he got a report therefrom. He also seized some alamots from the occurrence room. He examined the witnesses and recorded their statements under section 161 of the Code. He collected the autopsy report and finally finding allegation against the accused *prima face* to be true submitted a charge sheet against

him on 26.09.2016 under the selfsame section of the Ain, 2000.

The record of the case was then transmitted to the Tribunal. Learned Judge of the Tribunal took cognizance of offence against sole accused under section 11(Ka) of the Ain, 2000. Finally, the Tribunal framed charge against the accused on 19.04.2017 under selfsame section of the Ain, 2000. The charge so framed was read over to the accused, to which he pleaded not guilty and claimed to be tried.

In trial, the prosecution examined 13 witnesses and they were cross-examined by the defence. The defence case as it transpires from the trend of cross-examining the prosecution witnesses is of innocence, that he was not in the occurrence house in that night and that the victim had contact with his previous husband Laltu and for that reason he was killed.

On conclusion of examination of the prosecution witnesses, learned Judge of the Tribunal examined the accused under section 342 of the Code, in which he reiterated his innocence and prayed for justice.

However, the Tribunal found the accused husband guilty of offence under section 11(Ka) of the Ain and sentenced him thereunder to death with fine. Being aggrieved by condemned-prisoner filed Criminal Appeal 4531 of 2019 and Jail Appeal 56 of 2019.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General takes us through the evidence of witnesses and other materials on record and submits that this is a wife killing case and the victim before her death was with the condemned-prisoner husband under the same roof. PWs 1, 2 and 4 in their evidence categorically stated that at night the condemned-prisoner was in the occurrence house and room with the victim. PWs 3, 5, 6, 7 and 9, the neighbours immediately after taking place the occurrence rushed to the house and saw victim's deadbody in the room where she was with her husband before death. PW 2 told them that condemned-prisoner committed the offence and fled away. The evidence of PW 2 as to the presence of the condemned-prisoner in the occurrence room was not shaken by the defence in cross-examination. Since the prosecution by evidence proved the presence of the condemned-prisoner in the occurrence house and room, the burden was atomically

shifted to him to prove that how the victim had met with the death. In this case, although the defence cross-examined the prosecution witnesses at length but no definite case was made out. The minimum requirements which is to be proved by the prosecution in a wife killing case is that the accused was in the occurrence room, has been proved by the prosecution in this case. He then refers to the cases of Mamun alias Mamun Ar Rashid (Md) vs. the State, 74 DLR (AD) 36 and Raju Ahmed alias Raja Mia vs. the state, 21 ADC 661 and submits that the long line of decisions of our Apex Court in a wife killing case is that the husband is to explain how his wife met her death, although normally an accused has no obligation to account the death for which he is put on trial. He then refers to the case of Yusuf Sk. alias Sk. Abu Yusuf vs. Appellate Tribunal and another, 29 DLR (AD) 221 and Abdul Quddus vs. the State, 43 DLR (AD) 234 and submits that even some sorts of omission and discrepancy are found in the evidence of PWs 1, 2 and 4 but if the evidence of PW 2 who was the eyewitness to the occurrence is considered alone, the conviction may be based on her evidence as per the provisions of section 134 of the Evidence Act. He then submits that there is no enmity

between the informant and the accused and as such there could be no reason to implicate him in the case falsely. In the suggestions put to the witnesses by the defence it is found that they have triggered one Laltu Miah, the previous husband of the victim that he might have committed the offence but failed to establish it. In view of the above position of fact and law, the Tribunal correctly found the condemned-prisoner guilty under section 11(Ka) of the Ain, 2000 and sentenced him thereunder to death. The reference, therefore, would be accepted and appeals be dismissed.

Mr. SM Kafil Uddin, learned Advocate for the condemned-prisoner-appellant takes us through the evidence of witnesses and submits mainly on 3 (three) folds. In the first fold of argument he submits that the condemned-prisoner by putting suggestions to all the prosecution witnesses including PWs 1, 2 and 4 has made out a definite case of *alibi* that he was not in the occurrence house at the material time. He then refers to a part of the FIR and submits that there it has been stated that the villagers of Tiorbila apprehended the condemned-prisoner and handed over to police of nearby police camp which proves that at the occurrence night he was

in his own house situated at Tiorbila. Therefore, the condemned-prisoner sufficiently explained that he was not at the occurrence house on 14.07.2016 and as such the provisions of section 106 of the Evidence Act shall not apply in this case. He secondly submits that although in the FIR and in the evidence and of PW1 the prosecution brought allegation against the condemned-prisoner that he demanded dowry from the victim amounting to Taka 50,000/- and for that reason he killed her but failed to prove it by specifying time, place and in whose presence the demand was made. He refers to the case of State vs. Md. Younus Sarder, 21 BLC 408 and submits that in this case there is no evidence that the condemned-prisoner demanded dowry to the victim at the time of occurrence and killed her for it. The alleged demand does not come within the meaning of dowry defined under section 2(Yea) of the Ain, 2000. If the prosecution fails to prove demand of dowry, the conviction and sentence under section 11(Ka) of the Ain cannot be sustained. Mr. Kafil Uddin finally submits that practically there is no eyewitness to the occurrence. The case is solely based on circumstantial evidence. In such a case, the chain of circumstance should be complete and unbroken. If

any missing link is found in the chain, the accused shall get its benefit. Here the chain of circumstance *i.e.*, the accused's presence in the informant's house in the afternoon of 14.07.2016, thereafter, his staying inside the occurrence room and finally his fleeing away after committing the offence and staying at his own house situated at village Tiorbila and his arrest therefrom is not found completely linked. He then submits that none of the neighbours stated that the condemned-prisoner came to the informant's house in the afternoon on 14.07.2016. He refers to the case of Nuru Miah and another vs. State, 49 DLR 97 and relied on the *ratio* laid therein that evidence adduced by the prosecution being of a circumstantial in nature and there being a missing link in the chain, the prosecution thus failed to prove the guilt of the appellant beyond reasonable doubt.

He then submits that apart from the above facts the prosecution did not seize the knife alleged to have been used in the killing. He refers to the evidence of PW12 and PW13, and submits that PW12 in evidence stated that the victim was slaughtered by using heavy weapon while PW13 stated that it was caused by chopping. The aforesaid contradiction as to the

use of weapon makes the prosecution case of using knife in the killing unbelievable. He finally refers to the case of State vs. Md. Abul Kashem Kha, 23 BLC 540 and relying on its principle submits that if the murder of the deceased is found not proved for nonpayment of dowry but killing is proved in that case his conviction may be altered under section 302 of the Penal Code and his sentence of death may be commuted to imprisonment for life. However, he finally submits that since the prosecution failed to prove the charge against the appellant beyond any shadow of doubt, the appellant is entitled to its benefit. Therefore, the reference would be rejected and the appeal be allowed and the condemned-prisoner would be acquitted of the charge levelled against him.

To dispose the reference as well the appeal and jail appeal, let us have a cursor on the evidence of prosecution witnesses.

PW1 Md. Sabad Ali, father of victim Tahmina and husband of PW2 Jahanara stated supporting the facts and allegation brought against the accused in the FIR. He stated that the occurrence took place 1½ years ago. The place of occurrence was his dwelling house. His daughter was given in

marriage with accused Akash 7/8 months ago. After marriage they came to learn that the accused earlier married for 3 times. The accused for dowry of Taka 50,000/- drove the victim away from his house to the house of informant on Wednesday. In Thursday after saying *asar* prayer the accused husband came to their house. They took dinner at about 9:00 pm and thereafter the victim and accused went to sleep in a separate room. His wife heard a groaning sound at about 11:00 pm from the room. She went in front of the room and asked them what happened inside but she got no reply. Accused Akash then had come out of the door of victim's room, pushed her (PW2) and fled away. She recognized the accused through electric light. She chased the accused but he ran away. At her hue and cry the informant, his son Mintu and Mintu's wife Momtaj wokeup from sleep. All of them entered into victim's room and found her slaughtered. At their outcry witnesses Tahaj Uddin, Asadul (PW9) and Bulbuli (PW3) rushed to the occurrence house and saw the incident. He informed the said fact to the men of Tiorbila village. The villagers apprehended the accused and handed him over to nereby police camp. Subsequently, police of Chuadanga police station came to

their house and after complying with all the legal formalities sent the deadbody to the morgue for holding autopsy. After holding autopsy and completing religious rituals, he lodged the FIR. He proved the FIR exhibit-1 and identified their signature thereon. In cross-examination for defence he stated that accused was the second husband of his daughter. The victim's first husband was Laltu. The house of Laltu was situated on the other side of the field. His wife wokeup from sleep first, thereafter, he wokeup. The electric light was on. At the time of fleeing away he followed her wife. His son and daughter-in-law also followed them. He denied the defence suggestion that at the date of occurrence the accused was not in their house. He further denied that the victim had a contact with her first husband Laltu. He further denied that accused was not involved with the alleged offence and they have planted the case only to give him a good lesson.

PW2 Jahanara, mother of the victim and wife of PW 1 informant, stated that the occurrence took place in their house at about 11:00 pm in the month of Shraban about 2 years ago. Her daughter and the accused son-in-law were in the same room. She was in a room adjacent to the room. She heard

groaning sound from the room of victim. She peeped into the room and found accused Akash coming out with a bloodstained knife. She found the victim slaughtered. The neighbours rushed to the occurrence house and saw the victim in slaughtered condition. Her husband lodged the FIR. In cross-examination for defence she denied the suggestion that she did not tell police that accused fled away with bloodstained knife. Her daughter spent for 14 years with her previous husband Laltu. The victim had a son there. She came out first and thereafter, her husband, son and daughter-in-law came forward. She alone chased the victim. She denied the defence suggestion that her daughter did not reside in the house of accused Akash. Her daughter came to their house on the previous day of occurrence. She was standing by the side of the door of victim's room. She at first chased the accused and thereafter entered into the room. She thought that her daughter ought to have been kidnapped. She entered into the room and found her daughter on the cot in slaughtered condition. She denied the defence suggestion that her daughter had contact with ex-husband Laltu and for that reason she was killed. She denied that accused Akash was not in their house

on that night. She further denied that they brought the case on false allegation only to teach the accused a good lesson.

PW 3 Bulbuli, a neighbour of the informant stated that the victim was killed in the house of informant at about 11:00 pm 2 years ago. She (PW3) was in her house situated beside the occurrence house. At the material time victim and accused husband Akash were sleeping in the room. He heard hue and cry of PW 2, rushed to the occurrence house and found PW2 chasing the accused. They also followed her. They came back and found the victim lying in the room receiving cut injury on her throat. The other villagers came forward also. In cross-examination for defence she stated that usually they went to sleep keeping the switch of the lights on. She could not recognize accused Akash. Laltu was victim's first husband. The victim used to reside in the house of Akash and sometimes visited their village. Victim had a good relation with the accused. At first the informant and his wife wokeup from sleep and thereafter other witnesses rushed to the place of occurrence house. The house of Laltu was situated other side of the field. He had a son who used to reside with him. She denied the defence suggestion that the victim had contact

with Laltu. She denied that the accused was not in the occurrence house at that night. She further denied that the accused was not involved with the alleged offence and he has been implicated in this case falsely.

PW4 Momtaz, daughter-in-law of PWs 1 and 2, in evidence stated that the occurrence took place at about 11:00 pm 2 years ago while the victim was killed at her (PW4) in-law's house. There was disagreement between the victim and accused because the latter demanded dowry. On the previous day of occurrence, the victim left the accused's house and came to the occurrence house. Accused came to their house on the day of occurrence. Hearing hue and cry she wokeup from sleep at about 11:00 pm. Her mother-in-law (PW2) told her that accused pushed her and fled away. They entered into the occurrence room and found the victim with injury on her throat and blood was coming out therefrom. Accused killed the victim due to her failure to meet up the demand of dowry. In cross-examination she stated that there were 3 rooms in the house. The light of the room was on. She heard hue and cry of her mother-in-law and followed her. The IO examined him on the day of occurrence. The house of victim's first husband

Laltu was situated at Nabin Nagar. She denied the defence suggestion that the victim had a relation with Laltu. Due to nonpayment of dowry accused drove the victim away from his house just previous day of the occurrence. She further denied that they planted the case against the accused only to teach him a good lesson.

PW5 Aliar Hossain alias Aliar, a neighbour of the informant stated that the occurrence took place at about 11:00 pm 2 years ago. The victim was killed in the house of informant. Hearing hue and cry he rushed to the place of occurrence and found the deadbody on a cot in slaughtered condition. He heard from PW2 that her son-in-law killed the victim for dowry. He was a witness to the seizure of cloths seized from the house. In cross-examination for accused he stated that he did not see the accused in the place of occurrence. Previously the victim was given in marriage with another and after her divorce she was married off to accused Akash. He denied the defence suggestion that he did not hear anything from victim's mother. He further denied of deposing in the case falsely.

PW6 Md. Samsul Alam, ex-member of the local Union Parishad deposed in the same line of PW 5. He stated that in the time and day of occurrence he heard hue and cry and rushed to the occurrence house. He found the deadbody of victim in slaughtered condition. He heard from PW2 that their son-in-law Akash slaughtered the victim. He informed the said fact to police camp. He was a witness to the seizure. He proved the seizure exhibit-2 and 2Ka and identified his signatures thereon. In cross-examination for defence he stated that at the time of occurrence he was at home. Usually he used to return home at 8/10 p.m. He rushed to the place of occurrence after 20 minutes of taking place the occurrence. Police made a seizure in the next morning. On receipt of his telephone call police came to the occurrence house at night. He denied the defence suggestion that he collusively prepared the bloodstained cloth and handed those over to police. He further denied that he did not hear about the occurrence from PW2. He denied of deposing falsely.

PW7 Ali Hossain, a neighbour of the informant stated that the occurrence took place in the house of informant at about 11:00 pm 2 years ago. His house was situated just

beside the informant's house. He heard hue and cry and rushed to the occurrence house and found the victim lying on the ground who was slaughtered. He heard from the mother of victim that the accused slaughtered her on demand of dowry. In cross-examination by defence he stated that he used to go to bed about 8/9 pm. He heard hue and cry and rushed to the occurrence house. He did not see taking place of the occurrence. He stated that before marriage with accused Akash victim was married off to one Laltu where she had a son. He denied the defence suggestion that Laltu and victim sometimes met together. He further denied of hearing anything from PW2 or that she did not tell him the name of accused Akash.

PW 8 Anwar, a neighbour of the informant was tendered by the prosecution and the defence declined to cross-examine him.

PW9 Md. Asadul Hoque, another neighbour of the informant stated in the same line of PWs 6 and 7. He stated that his house was situated beside the house of informant. He heard hue and cry and rushed to the occurrence house and found victim in slaughtered condition. He heard from victim's

mother that accused Akash killed the victim on demand of dowry. PW 2 also told him that while she was about to enter into room of victim, she saw accused Akash fleeing away. In cross-examination by defence he stated that the victim was earlier given in marriage with Laltu and there she had a son. At the time of occurrence she was sleeping. She heard hue and cry and rushed to the occurrence house but did not see anything directly. But he heard about the occurrence from the inmates of the house. The son of and Laltu resided in his own house. He did not hear that for that reason Laltu and victim used to meet sometimes. He denied the defence suggestion that the victim's mother did not tell him anything about accused Akash. He further denied that the case was false one where he deposed falsely being a neighbour of the informant.

PW10 Rehana, a constable of police who came to the place of occurrence house with PW13 (IO) stated that she found the victim lying on a cot of the house in slaughtered condition. She examined the deadbody and told it to PW13 who prepared the report. He proved the inquest exhibit-3 and identified her signature therein. They came to learn that victim's husband slaughtered her on demanded of dowry. In

cross-examination by defence she stated that they received the news and went to the occurrence house and saw the deadbody lying on the cot. They heard that the accused killed the victim on demand of dowry. She denied the defence suggestion that she did not hear anything and deposing falsely.

PW11 Md. Abdul Hai, a Sub Inspector (SI) of Police of Alamdanga police station who on the basis of the inquiry slip ascertained the address of the accused and submitted a report. He proved the report exhibit-4 and identified his signature hereon. He was not cross-examined by the defence.

PW12 Md. Moshir Rahman, who was posted as a Medical Officer of Chuadanga Sadar Hospital at the material time, stated that PW13 brought the deadbody of the victim to them for holding autopsy. He held autopsy of the corpse and found 6" X 4" X 3" cut injury on the left side of the throat. They opined that the death was due to hemorrhage and shock caused by above mentioned injuries which was *ante mortem* and homicidal in nature. He proved the autopsy report exhibit-5 and identified his signature thereon. In cross-examination by the defence he denied the suggestion that he did not submit the

report correctly. He further denied of submitting a perfunctory report without examining the deceased.

PW13 Md. Masud Parvez, an SI of police and IO in evidence stated that he received the news of occurrence and at the instruction of Officer-in-Charge of the police station went there. He found the deadbody, held inquest and prepared a report. He sent the deadbody to the morgue for holding autopsy. Subsequently, he was entrusted with the investigation of the case. He visited the place of occurrence, prepared index, sketch map exhibits-6 and 7 and seized alamots through exhibits-2 and 2Ka. He also proved the inquest exhibit-3. He arrested the accused and forwarded him to the learned Magistrate. He examined the witnesses and recorded their statements under section 161 of the Code. He collected the autopsy report. In the investigation, he found that previously the accused had married for thrice. He further found that the accused used to torture the victim for dowry and drove her away from his house on 13.07.2016. He (accused) went to the victim's house on 14.01.2016 and slaughtered her on demand of dowry. He found *prima face* offence against the accused and submitted a charge sheet under section 11(Ka) of the Ain.

In cross-examination by defence he stated that he recorded statements of 8 witnesses under section 161 of the Code. He denied the defence suggestion that he did not visit the place of occurrence and examined the neighbours. He further denied of submitting a perfunctory report.

We have considered the submissions of the learned Deputy Attorney General and the learned Advocate for the appellant, gone through the oral evidence of witnesses, other materials on record and *ratio* of the cases cited by the parties.

To bring home the charge against the condemned-prisoner under section 11(Ka) of the Ain, 2000, the prosecution examined in all 13 witnesses. Out of them PW1 Md. Sabad Ali and PW2 Jahanara are the parents of victim and PW4 Mamtaj is the daughter-in-law of PWs1 and 2. The above 3(three) witnesses are the inmates of the house of occurrence. Other witnesses PWs 3, 5, 6, 7 and 9 are the neighbours who at the hue and cry of PW2 rushed to the house of occurrence immediately after the incident took place and found the slaughtered deadbody of the victim in a room of PW1's house. PWs 10, 11 and 13 are police personnel and PW 12 is a doctor who held autopsy and they are formal witnesses.

In evidence it is found that none of the witnesses had seen the actual occurrence that the condemned-prisoner dealt any blow on victim's throat with knife and slaughtered her. As per the version of PW1 informant Md. Sabad Ali, he heard about the occurrence from PW2 Jahanara and then lodged the FIR.

The condemned-prisoner was tried and convicted under section 11(Ka) of the Ain, 2000. To pass conviction and award sentence under the aforesaid section of the Ain the demand of dowry to the victim and killing by the husband for its nonpayment are to be proved. We have assessed the evidence of PWs 1, 2 and 4 who were the inmates of the house and evidence of neighbours PWs 3, 5, 6, 7 and 9. On scanning their evidence it is found that in the FIR the informant although brought allegation that the condemned-prisoner demanded dowry of Taka 50,000/- since after his marriage and started torturing the victim for it and it was further alleged that on 13.07.2016 the condemned-prisoner drove the victim away from his house for its non fulfillment and she came to the occurrence house and the next day the condemned-prisoner also came to the house, but in evidence of the witnesses we do

not find that immediately before or after the condemned-prisoner came to house of the informant, he demanded dowry to the victim. The time, date and place of demand of dowry and killing of victim for its nonpayment has not been proved by the evidence of witnesses. Therefore, we find that the prosecution failed to prove the charge against the condemned-prisoner under section 11(Ka) of the Ain, 2000.

But it has been proved in the evidence of prosecution witnesses that the victim was slaughtered to death in a room of informant's house. The evidence of PWs 1, 2 and 4 that they entered in to the room of the victim where she stayed at night with her husband and found her slaughtered body on the cot are corroborative. PW12 Dr. Md. Moshir Rahman in evidence stated that he got cut 6" x 4" x 3" injury on the throat of victim caused by heavy weapon and the cause of death was due to the aforesaid injury which was *ante mortem* and homicidal in nature. PW12 proved exhibit-5, the autopsy report. The oral evidence of PW12 is corroborative with documentary evidence exhibit-5. This is out of out a brutal murder. In such a case, if allegation of demanding dowry and killing for that reason is found not proved but the prosecution

can prove that the condemned-prisoner committed the offence of murder the reason best known to him; the conviction and sentence passed under Ain, 2000 can be converted to relevant section(s) of the Penal Code and appropriate sentence provided therein may be passed.

We have to look into whether in the case in hand the prosecution has been able to prove that the condemned-prisoner committed the offence. The prosecution alleged in the FIR that the victim came to their house on 13.07.2016. It was further alleged that the condemned-prisoner came to the house of occurrence on the next day and stayed at night in a room with the victim. The aforesaid fact has been proved in evidence by PW1 and corroborated by PWs 2, 3 and 4. PW1 stated in evidence, “বৃহস্পতিবার দিন আছরের সময় আমার জামাই এসে খাওয়া দাওয়া করে রাত ৯.০০ টার সময় মেয়ে জামাই একত্রে শুয়ে পড়ে। রাত ১১ টার সময় ঘরঘর শব্দ শুনি” PW2 stated, “অনুঃ দুই বৎসর পূর্বে শ্রাবন মাসে রাত্র ১১ টায় আমাদের বাড়ীতে ঘটনা ঘটে। আমার মেয়ে ও জামাই আকাশ এক রুমে ছিল।” PW3, a neighbour stated, “অনুমান ২ বৎসর পূর্বে আষাড় মাসে রাত ১১ টার সময় সবদ এর বাড়িতে তার কন্যা খুন হয়। ঘটনাস্থলের পাশে আমার ঘরে ছিলাম। তহমিনা ও তাহার স্বামী আকাশ ঘটনাকালে ঘরে ঘুমাইয়াছিল।” PW4 stated, “অনুমান ২ বৎসর পূর্বে শ্রাবণ মাসে রাত ১১ টার দিকে আমার নন্দ

তাহামীনা আমার শৃঙ্গর বাড়ীতে খুন হয়। ঘটনার দিন আকাশ আমাদের বাড়ীতে আসে। রাত ১১ টার দিকে চেচামেচী শুনিয়া জাগিয়া উঠি।” The aforesaid witnesses were cross-examined by defence but nothing came out adverse as to the presence of the condemned-prisoner in the occurrence room up to 11:00 pm on 14.07.2016.

The aforesaid witnesses proved by corroborative evidence that the condemned-prisoner came to the informant's house in the day of occurrence and he was with his wife in the occurrence room under the same roof. Their evidence is found corroborative as to the time, place and manner of occurrence. The other witnesses PWs 5, 6, 7 and 9, the neighbours (although they are hearsay witnesses) corroborated the evidence of aforesaid witnesses as to the time, place and manner of occurrence. All of them saw the slaughtered deadbody of the victim in the room of the house of occurrence.

Mr. Kafil Uddin, leaned Advocate for the condemned-prisoner submits that all the prosecution witnesses have been suggested that the condemned-prisoner was not at the occurrence room at the time of occurrence. By showing the place of arrest of the condemned-prisoner Tiorbila village he

submits that the appellant was at his own house at the material time and as such principles of *alibi* shall apply here. His submission do not support the principle of *alibi*. In Merriam Webster Dictionary the *alibi* has been defined- “*A defence of having been at the time of commission of an act elsewhere than at the place of commission... the fact or state of having been elsewhere at the time.*” In Osborn’s Concise Law Dictionary *alibi* has been defined- “*A defence where an accused alleges that at the time when the offence with which he is charged was committed, he was elsewhere. Notice of intention to raise alibi must be given.*” [Reliance placed on *R vs. Leuris (1969) 2 QB*”]. Although the defence by cross-examining the prosecution witnesses put a suggestion that the condemned-prisoner was not in the house or room of occurrence at the material time which was denied by the witnesses but he did not make out any case by putting suggestions or examining witnesses that where he was at the material time. Therefore, the principle of *alibi* as has been argued by the learned Advocate for the condemned-prisoner bears no substance. The inmates of the house PWs 1, 2 and 4 in evidenc proved that the victim was with the condemned-

prisoner in the occurrence room of the house. PW2 heard a growing sound from the room and asked them what happened but she did not get any response. She found the condemned-prisoner coming out from the room with a bloodstained knife who pushed her and fled away. PW2 further proved that she chased the condemned-prisoner but failed to apprehend him and PWs 1, 3 and 4 also followed her. The chain of circumstances *i.e.*, the victim came to the informant's house on 13.07.2006 and at about 5:00 pm on the next day the condemned-prisoner also came there; that after taking meal the couple went on sleep in the same room; PW2 heard a groaning sound from inside; she stood by the side of the door of that room; the condemned-prisoner came out from the house with a knife and fled away; that all of the witnesses including the neighbours rushed to the house and found the slaughtered deadbody of the victim in a room of the house and that people of condemned-prisoner's own village apprehended him and handed him over to the police camp are found unbroken and complete as to the commission of crime by the condemned-prisoner.

In a wife killing case, the initial onus is upon the prosecution to prove that the accused husband was in the room or house with his wife where she met the death. In this case PWs 1, 2 and 4 in evidence proved that the victim and condemned-prisoner were in the same room after taking dinner. The aforesaid evidence of 3 inmates have been corroborated by the evidence of PWs 3, 5, 6, 7 and 8 who are the neighbours of the informant. Immediately after taking place the occurrence they rushed to the house of occurrence and found the deadbody in a room and all of them heard from PW2 that the condemned-prisoner killed the victim and fled away. The submission of the learned Advocate for the appellant that 'the doctor PW12 in his evidence stated that the injury was caused by heavy weapon and PW13 stated that the injury was caused by inflecting blows proves that the weapon used in the killing as alleged was not a knife or not definite' is in no way helps him to get rid of the charge of murder brought against him. Undoubtedly, the injury was caused by sharp cutting weapon which is found in the nature of injury. Although the IO did not take any step to recover and seize the alleged knife or weapon used in slaughtering the victim, which

was his fault, but it does not in any way effect the merit of this case.

By suggesting the prosecution witnesses the defence has been able to bring out that Laltu was the previous husband of the victim and divorce took place between them and they had a son aged about 12 years who used to reside with Laltu. The defence by it tried to make out a case of relation between the victim and Laltu resulting victim's killing. Indirectly the prosecution tried to point the finger at Laltu of committing the murder. But for the sake of argument, if it is taken into account that there was a contact between them after their divorce, it no way prescribes that for that reason Laltu murdered the victim. There is no evidence against Laltu that he had illicit relation with the victim.

We have gone through the *ratio* of the cases cited by the learned Advocate for the appellant but find that the principles laid in those cases are not applicable in the case in hand. The facts and circumstances of those cases upon which *ratio* have been laid are distinguishable with the present one. But we find that the condemned-prisoner was arrested on 15.07.2016 and was produced before the Magistrate. He was never been

enlarged on bail. He has been in jail since 15.07.2016 for near about 10 years. Moreover, he has been in the condemned cell from the date of delivery of this judgment, *i.e.*, for more than 7 years without any fault of his own. It is the fault of the State that it did not prepare the paper books and make the case ready for hearing. From the previous records of the condemned-prisoner as well as the report submitted by PW11 exhibit-4, we find that he is not a hardened criminal. According to the *ratio* laid in the case of Nalu vs. the State, 17 BLC (AD) 204 and Nazrul Islam vs. State, 66 DLR (AD) 199 we are of the view that sentence of death of the condemned-prisoner may be committed to imprisonment for life.

Consequently, the death reference is rejected. The criminal appeal is dismissed. The judgment and order of conviction passed by the Tribunal under section 11(Ka) of the Nari-o-Shishu Nirjatan Ain, 2000 against the condemned-prisoner is hereby converted to one under section 302 of the Penal Code and his sentence of death is commuted to imprisonment for life with a fine of Taka 10,000/-, failing to pay the fine he shall suffer imprisonment for 03(three) months more. The jail appeal is accordingly disposed of.

The condemned-prisoner is to be shifted from condemned-cell to the cell meant for the prisoners alike.

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

K.M. Rasheduzzaman Raja, J.

I agree.

Sumon-B.O.