

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No.30 of 2019

The State petitioner

-Versus-

Md. Moshir Rahman condemned-prisoner
with

Criminal Appeal No.12596 of 2019

(Arising out of Jail Appeal No.83 of 2019)

Md. Moshir Rahman appellant

-Versus-

The Staterespondent

Mr. Syed Ejaz Kabir, Deputy Attorney General
with Mr. Ashraf Alam, Ms. Rohani Siddiqua
and Mr. Al Amin Siddiqui, Assistant Attorney
Generals for the State

(petitioner in the reference and respondent the appeal)

Mr. ABM Bayezid, Senior Advocate with Mr.
Md. Masum Billah, Advocate

.....for the informant to assist the State

(with the leave of the Court)

Mr. SM Shahjahan, Senior Advocate with Mr.
Md. Ehsan Habib, Mr. Omar Faruk Talukder
and Ms. Monira Parvin, Advocates.

..... for the appellant

(condemned-prisoner)

Judgment on 28.06.2026

Bhishmadev Chakrabortty, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman

Tribunal 9 and Shishu Adalat, Dhaka (the Tribunal) on trial

found the condemned-prisoner Md. Moshir Rahman Sukhan

guilty of offence under section 11(Ka) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain, 2000) and sentenced him thereunder to death with fine of Taka 10,000/- in Nari-o-Shishu Petition Case No.643 of 2018 and made 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 filed a Criminal Appeal 12596 of 2019 against the same judgment and order of conviction and sentence, and as such these have been heard together and are being disposed of by this judgment.

PW1 Abdullah Hel Rafi, a brother of Sonia Sultana (the victim) lodged the First Information Report (FIR) with Uttara West police station against 8 accused named therein alleging, *inter alia*, that the victim was given in marriage with accused 1 husband on 17.09.2008. After marriage, the accused took Taka 5 lac and 10 lac in 2009 and 2012 respectively as loan for his business purpose. The accused husband did well in the business but while the informant wanted the loan amount returned, accused 1 refused to do so on the plea that he had taken it as dowry. At their wedlock the victim gave birth two male child namely Jamiur Rahman

alias Nihal (aged about 9 years) and Samiur Rahman alias Nishwas alias Sami (aged about 6 years). In the meantime accused 1 entered into an extra marital relationship with accused 2 Manira. He and his 2 sons roamed away in different places with Marina. He then demanded Taka 25 lac to the victim as dowry. The victim told it to the informant who expressed his inability to pay the amount. Accused 1 with the help of other accused started torturing the victim for dowry threatening to marry Marina, if victim failed to fulfill the demand. The informant went to the house of accused 1 on 19.06.2015 while the victim told him that accused Moshiur tried to kill her in the bathtub for the demanded amount. They went to the house of accused 1 at about 8:00 pm on 25.07.2015, talked to the victim and found her physically well. They told her that after return of her another brother Abdullah Hel Rafi (DIG of police) from abroad they will take her into their house. But accused 1 made a phone call to witness 5 at about 8:20 am on the next morning and told that victim Sonia had become seriously ill and requested them to go to their house. They rushed there and found her lying on the bed. Her tongue was bitten with teeth, eyes were closed

and neck was tilted on right side. At the assistance of PW5 they called in a doctor namely Kamnur Nahar Usha from nearby medical hospital who after examining the victim opined that she died before 3/4 hours. The informant came to learn from witness 5 that the elder son (PW6) of the victim told that in the morning he called the victim but she did not rise up. Before going to the school he found victim's body cold and neck tilted. He also came to learn from the child that accused 1 and victim went to sleep in the same room at night on 25.07.2015 and the children were in a separate room. He (informant) found the accused in puzzled condition. Husband Sukhon wanted to bury the dead body in Azimpur graveyard but the witnesses raised objection and it was taken to Gazipur at victim's family graveyard and buried therein. They went to the house of accused 1 on 29.07.2015 and collected a book namely 'Nil Kasto' and on 04.08.2015 some slips, a diary and mobile phone set of the victim. On examining those documents they found that all the accused in connivance with each other killed the victim on demand of dowry. They observed the conduct of the accused, slips and diary of the victim, the statement of the victim before her death and illicit

relation of accused husband with Marina and discussed among the family members consequently the FIR was delayed. The aforesaid FIR was registered as Uttara Paschim Police Station Case 12 dated 08.08.2015 corresponding to GR 225 under sections 11(Ka) and 30 of the Ain, 2000 against 8 accused including the husband, condemned-prisoner.

During investigation, in presence of PWs 1, 8, 9, 11 (Magistrate 1st Class) and PW13 part Investigating Officer (IO), the dead body of victim was exhumed from the graveyard on 24.08.2015 as per the order of the Court. The body was then sent to the morgue for holding autopsy. PW13, the first IO recorded the statements of witnesses under section 161 of the Code, collected the autopsy report and finally PW14 submitted a charge sheet on 20.12.2015 against 6 accuseds under the selfsame sections of the Ain, 2000.

The record of the case was then transmitted to the Tribunal for holding trial. Learned Judge of the Tribunal took cognizance of offence against all the accused under the selfsame sections of the Ain. Eventually the Tribunal framed

charges against 5 accused on 22.05.2016 under the selfsame sections of the Ain. The charges so framed, were read over to the accused to which they pleaded not guilty and claimed to be tried. But thereafter other 4 accuseds except accused 1 after obtaining bail filed two criminal appeals before this Court and the proceeding, so far it was related to them were stayed and spilted trial was started against only accused 1 named in the FIR, the condemned-prisoner herein, under section 11(Ka) of the Ain, 2000.

To bring home the charge against the accused, the prosecution examined in all 14 witnesses out of 19 cited in the charge sheet. The witnesses 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 the victim met natural death due to the ailment of diseases by which she had been suffering before death and the informant party implicated him in the case falsely only to grab his business.

On conclusion of examining of the prosecution witnesses, learned Judge of the Tribunal examined the accused under section 342 of the Code where he reiterated

his innocence and prayed for justice. In response to the question of the learned Judge, the accused filed a written statement explaining how the victim met death, how the informant party implicated him in the case and led false evidence against him. However, finally learned Judge of the Tribunal found the condemned-prisoner guilty of offence under section 11(Ka) of the Ain and sentenced him to thereunder death with fine of Taka 10,000/-.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General taking us through the evidence and other materials on record submits that the prosecution by circumstantial and medical evidence successfully proved that the condemned-prisoner killed the victim in a preplanned way. He refers to the evidence of PWs 1-5 and submits that all of them in the morning on 26.07.2015 rushed to the house of the condemned-prisoner and found the victim lying on a cot whose tongue was bitten with teeth which is the primary sign of killing by throttling and strangulation. The informant and other relatives of the victim did not suspect the condemned-prisoner as killer but subsequently they came to learn about his illicit relation with accused Marina and recovered some

alamots from the condemned-prisoner's house of its proof including a diary and book. Although the FIR was lodged after 13 days of taking place the occurrence but there is no hard and fast rule in lodging an FIR quickly. It may be delayed for various reasons which has been explained here. In this context he refers to the case of Afzal Hossain Biswas and others vs. Mst. Khodeja Bibi and another, 16 BLT (AD) 187 and relied on the principle laid therein. He then refers '*saponification*' and '*adipocere*' found by the doctor in the dead body. Modi a renowned forensic specialist in his Text Book of Medical Jurisprudence and Toxicology, 24th edition described "Adipocere (Saponification), a condition of dead body under which the progress of putrefaction in the body is checked and is replaced by the formation of adipocere, which is a waxy looking substance having a greavy feel and a pure white or faint yellowish colour. It cuts soft and melts as a flame or burns with a feebly luminous flame, giving gravity is less than water". The finding of the post mortem examination report that the whole body was saponified is correct because nobody who went to the graveyard to disinter the dead body find any bad smell from victim's body. Mr.

Kabir then submits that due to adipocere, a dead body do not become totally decomposed and for that reason any external or internal injury can be detected by a doctor during autopsy. PW12 as a member of the Board held autopsy and found the victim's tongue bitten by teeth and on dissection bruises in the right side of trachea and finally opined that the death was due to asphyxia as a result of throttling strangulation which was *ante mortem* and homicidal in nature. Since the death is found homicidal in nature and the victim died in the house of the condemned-prisoner, therefore, he has to explain how the victim met with the death. The explanation given by the condemned-prisoner husband by way of cross-examination of the prosecution witnesses as well as in the statements submitted before the Court in reply to his examination under section 342 of the Code has been proved false by the evidence of doctor. He then refers to the case of State vs. Md. Mostafa Sarder, 27 BLC 377 and relied on the *ratio* laid therein that a postmortem report is an expert opinion and if it is found corroborative to the injuries on the person of the deceased and supported by the evidence of doctor, it may be considered alone for basing conviction in the absence of any

ocular evidence. Here, since the prosecution has been able to prove the charge against the condemned-prisoner by evidence both oral and documentary, the reference would be accepted and appeal be dismissed.

Mr. ABM Bayezid, learned Senior Advocate appearing for the informant with the leave of the Court to assist the State adds that it was the duty of the accused-husband to explain the death of victim but although at the time of his examination under section 342 of the Code, he made a statement at length but nowhere he stated the time of victim's death. The prosecution, particularly by the evidence of PW6, son of the victim proved that the condemned-prisoner killed the victim in a preplanned way. The postmortem examination report and the condition of the dead body *i.e.*, presence of saponification in victim's body and the injuries found on dissection are conclusive proof that the victim was killed. Since the victim was under the custody of the accused-husband, none but he was her killer. The trial Judge correctly apprise the evidence of witnesses, found him guilty and sentenced him to death. There is nothing to interfere with the impugned judgment and order of conviction and sentence.

Mr. SM Shahjahan, learned Senior Advocate for the condemned-prisoner-appellant submits that the occurrence took place in the morning on 26.07.2015 but the FIR was lodged on 08.08.2015 which is belated by 13 days. The explanation as to the above long delay is not found satisfactory. He then refers to the evidence of PWs 1-5 and submits that they rushed to the occurrence house in the morning on 26.07.2015 and found the dead body of the victim on a cot. They took the body to their paternal house situated at Gazipur. The brothers of the victim namely Abdullah Hel Rafi (PW1) and Abdullah Hel Shafi (PW3) accompanied the dead body to Gazipur. PW5, Ismat Ara, a sister of the victim also gave funeral bath to the victim's body but none of them found any mark of injury on victim's body or suspected about her death that it was unnatural or the condemned-prisoner throttled or strangled her to death. But after 13 days of occurrence they brought out a case that the condemned-prisoner killed the victim on demand of dowry and for his illicit relation with Manira which is nothing but subsequent embellishment for collateral purpose. In the evidence of witnesses it has come out that the victim

did not disclose to any of the witnesses and relatives before 25.07.2015 that the condemned-prisoner had illicit relation which is unbelievable. Mr. Shahjahan then refers to the postmortem examination report of the victim exhibit-6 and evidence of PW12, doctor who held autopsy on the dead body and submits that the report is found inconsistent and self-contradictory. In oral evidence PW12 did not support the report exhibit-6 issued by him. In column 2 of the report he found no external injury which is contradictory to column 3 of finding bruises in the right side of trachea. On discussion doctor found whole body decomposed and as such there could be no reason of finding external bruises on the right side of trachea. The doctor opined that the cause of death was for *asphyxia* as a result of throttling strangulation but he did not find trachea congested which is mostly found because of creating pressure on throat from outside. He takes us through Modi's Medical Jurisprudence and Toxicology and submits that as per Modi-'throttling' means the act of compressing or squeezing a person's throat or neck with the hands, thereby obstructing breathing. In medico-legal terminology, 'throttling' is a form of manual strangulation applied to the

neck with the hands, resulting in obstruction of the airway and blood vessels'. In most of the cases the injuries for throttling is to be found on the neck or throat of the deceased. On the other hand-'strangulation' refers to the compression of the neck causing obstruction of blood flow and airflow, which may lead to unconsciousness or death'. In the case in hand no symptom of strangulation or throttling is found. Moreover, the doctor PW 12 in fact did not support his report exhibit-6 in evidence. In evidence PW12 stated that trachea generally decomposes within 7/14 days but in the instant case the dead body of the victim was exhumed after 28 days of its burial. Therefore, there could be no reason of finding any bruises on trachea. He then refers to the statements of the condemned-prisoner submitted in reply to his examination under section 342 of the Code and submits that there he explained victim's death as natural caused by disease she suffered from. In cross-examination of the prosecution witnesses it has come out that the victim met death due to his ailment from different disease she had been suffering from before. Such death is supported by the documents submitted by him in the Court with his statement. Although the

statement made by him do not come within the mining of the evidence under section 3 of the Evidence Act but the Court is to address his explanation as to the cause of death. The Tribunal outright rejected the statements made by the condemned-prisoner holding that these are not evidence which the learned Judge cannot do as per law. In this context he refers to the case of Shah Alam and others vs. the State, 42 DLR (AD) 31 and relied on the *ratio* laid therein. Mr. Shahjahan finally submits that the prosecution hopelessly failed to bring home the charge against the condemned-prisoner under section 11(Ka) of the Ain, but the learned Judge of the Tribunal without apprising the evidence of witnesses as required by the law found him guilty of offence charged with and sentenced him to death which is required to be interfered with by this Court. The reference, therefore, would be rejected and the appeal be allowed.

We have considered the submissions of the learned Deputy Attorney General and Mr. SM Shahjahan, learned Senior Advocate for the appellant, gone through the oral evidence of witnesses and other materials on record.

To dispose of the reference and the appeal let us have a bird's eye view on the oral evidence of the prosecution witnesses.

PW1 Md. Abdullah Hel Rafi, informant and brother of deceased Sonia, in evidence supported the prosecution case as stated in the FIR in toto as to the finding of the dead body of the victim in the house of the accused in the morning on 26.07.2015; that they took her to their village home at Gazipur, gave her the funeral bath and buried her there on that day; that they subsequently found some slips and a book and then suspected the death of victim; that they lodged the FIR on 09.08.2015 and after exhuming the dead body on 24.08.2015 and holding of post mortem examination *et cetera et cetera*. In cross-examination by the defence he stated that he has 5 brothers and 4 sisters. His elder brother was Dr. Abdullah Hel Kafi who at the material time was a doctor of Monno Medical Collage Hospital situated at Manikgonj. His 3rd brother Abdullah Hel Baki who at the material time was a DIG of police. His fourth brother Abdullah Hel Shafi resided at Gazipur. Accused Moshiur Rahman was the only son of his parents. They married off to

his sister to accused 1 after taking information about his family. He had a Buying House named 'APP Sourcing' and accused Sukhan was a partner of that firm. Before the marriage accused Sukhan purchased a private car for his business. He made payment in respect of a plot measuring 5 kathas in Tajmahal Abashan Prakaalpa situated at Gazipur. He signed in an agreement on 26.04.2010 for the said plot. He did not pay the price of the plot to accused Sukhan as per the agreement. They received information about the illness of her sister at about 8:30 am on 26.07.2015 and all of them including his brother Abdullah Hel Kafi (PW3), sister Ismat Ara (PW5), sister Rabeya Akhter (PW2), Shahina Sultana (PW4) and brother Abdullah Hel Kafi rushed there. All of them including his doctor brother saw the dead body of victim. He, his younger brother and accused Sukhan took the dead body to Gazipur. In Gazipur everybody saw the dead body. His sister Ismat Ara (PW5), Achhia and maternal aunt Mariam gave funeral bath to the body. He denied the defence suggestion that his sister was ill from before and was provided treatment in different times with different doctors. The 2(two) sons of the victim are now living with his sisters

Rabeya and Ismat Ara. They did not know before 25.07.2015 about illicit relation of the accused with Marina. He did not know whether the victim put signature in the book name 'Neel kasto'. He stated that victim Sonia was buried in high land.

PW 2 Rabaya Akhter, a sister of the victim stated in the similar line of PW1 as to the fact of illicit relation of the accused husband with Marina, the demand of dowry, condition of the dead body, burial of it and filing of the case subsequently. In cross-examination by the defence she stated that her victim sister did never make any complain to her against accused Sukhan before 25.07.2015. They took information about accused Sukhan and finding his character well they married off her sister to him. She has a brother named Kafi who is a doctor and he (doctor) saw the dead body of victim after her death. All funeral acts including funeral bath of the dead body was done in their house situated at Gazipur and at that time accused Moshir was present there. She admitted that up to the burial of the dead body they did not suspect about unnatural death of the victim. Abdullah Hel Rafi (DIG of police) returned this

Country on 07.08.2015. She denied the defence suggestions that after his (Rafi's) return in this Country they by abusing power showed victim's natural death as unnatural and filed the murder case against the accused and others only to teach them a good lesson.

PW3 Md. Abdullah Hil Shafi, another brother of the victim, stated in the same line of PWs 1 and 2 as to the illicit relation of the condemned-prisoner with Marina, demand of dowry, the killing of victim, other circumstantial facts, recovery of a book, diary and slips from the house of the accused alleged to have been written by the victim. In cross-examination by the defence he stated that he saw the dead body of victim in Uttara. He was present at the burial of the victim. The body of the victim was washed (Ghusl Al-Mayyit) after taking it to Gazipur and his relatives took part in it. The persons washed the dead body of victim did not suspect about her unnatural death. He himself buried the dead body. Accused Sukhon was the owner of a flat but he denied that accused Sukhon had 3 flats. He denied all other material defence suggestions put to him.

PW 4 Shahina Sultana, a sister of the victim stated in the similar line of PWs 1-3 supporting the fact as stated in the FIR. In cross-examination by the defence she stated that her brother who was a doctor went to the house of the accused on the date of victim's death and saw the dead body. She also went there and saw the dead body of victim. They buried the victim in their paternal house. Their relatives gave funeral bath to the victim. Her doctor brother accompanied the dead body to Gazipur and was present there till the body was buried. She denied the defence suggestion that the victim was in the ICU of Lubna Hospital from 12.07.2015 to 14.07.2015. She failed to remember the date of payment of Taka 5 lac and 10 lac to the accused. She denied of withdrawing Taka 4,45,500/- from accused's account on different dates. She could not remember whether the accused took loan to purchase a car and repaid the amount. She denied all other material suggestions including the suggestion that he deposited at the instruction of the DIG of police.

PW5 Ismot Ara, another sister of the deceased stated in the similar line of PWs 1-4 regarding conduct of the

accused, demand of dowry, about illicit relation with Marina, condition of the dead body and lodging of the FIR. In cross-examination by the defence she stated that she used to reside at Gazipur and visited the house of victim after her marriage. Victim Sonia also used to visit her (PW5) house. Accused Sukhon had a car before his marriage. She denied the defence suggestion that before victim's death she was ill for long time and took treatment in the hospital. She admitted that after victim's death she and her doctor brother saw the face of the dead body. They accompanied the dead body up to Gazipur. She and her relatives washed the victim's dead body and she was buried therein at the instruction of her brothers and sisters. She denied all other material suggestions put to her including the suggestion that her sister had been suffering from long time and took treatment in hospital.

PW6 Jamiur Rahman Nihal, elder son of the victim and accused, stated that before her mother's death he visited different places with his father and Marina aunt. His father used to keep him busy with playing games and remained busy with the aunt. He told everything to his mother after returning home. There was a quarrel between his parents for

the aunt. Once his father was admitted to a hospital. He and his mother went to the hospital and found Marina aunt talking with his father and for that reason an altercation took place between the aunt and his mother. On the previous day of his mother's death his maternal uncles and aunts came to their house at night. They talked with his parents in the drawing room and thereafter left the house. At night his father arranged for their sleeping in a bed room and his parents stayed in a separate room. But usually he and his younger brother slept with his mother and his father slept in a different room. In the occurrence morning their father took them to the school but usually his mother took them there. On his query about his mother his father refrained him from disturbing her. He went to the room and found the hair of her mother mossy/ruffling and forehead cold. Their driver brought them from school at about 10:00 am. He found that some men were crying in their flat and then realized that his mother had died. His mother was taken to Gazipur and buried therein. He returned Dhaka and told all these facts to his maternal aunt. In cross-examination by the accused himself, he stated that the hand of the accused had burnt at

the time of frying egg. His mother used to suffer from headache. She tied her hair and head and did quantum. His mother never went for walk. His maternal aunts used to visit their house. Today his maternal uncle Abdullah Hel Rafi (PW1) and aunt Rabeya (PW2) brought him to the Court. Before the death of his mother he was a student in a school of Dhaka. But after her death now he is under the custody of his maternal aunt and a student of another school. He denied the defence suggestion that before death his mother was admitted to Lubna Hospital. He stated that before standing in the dock he was with his maternal uncle. He used to go to school with his father's car when his mother was alive. He denied the defence suggestion of deposing falsely as tutored by his maternal aunts and uncles.

PW7 Noor Mohammad, a constable of police who took the dead body to the morgue of Shaheed Tajuddin Ahmad Medical College Hospital on 24.08.2015, proved the challan exhibit-3 and identified his signature thereon.

PW8 Mst. Rekha Begum, an ASI of police stated that about 12:00 hours at noon on 24.08.2015 the dead body of victim Sonia was exhumed in presence of Magistrate

Snigdha Talukdar. Police held inquest on the dead body and prepared a report exhibit-4 in her presence. He defence declined to cross-examine her. PW9 Md. Saiful Islam Shahin, is a cousin of the deceased and witness to the inquest. He proved the inquest exhibit-4 and identified his signature therein.

PW10 Md. Ali Hossen Khan is the recording officer of the FIR. He stated that he was Officer-in-Charge of Uttara west police station on 08.08.2015. He received the *ejahar* from the informant and registered it after filling the columns of the form as required by the law. He proved the FIR exhibit-7 and identified his signature thereon. In cross-examination by defence he stated that the occurrence took place in the night following on 25.07.2015 to 26.07.2015 and the FIR was lodged at about 20:15 hours on 08.08.2015. He stated that the FIR was computer composed.

PW11 Snigdha Talukdar, an Executive Magistrate 1st Class posted to Gazipur at the material time, was present at the time of exhuming the dead body of the victim from the graveyard on 24.08.2015. She stated that she went to the graveyard with a car and some police officers of DMP and

Gazipur were present there. Informant Abdullah Hel Rafi identified the graveyard. Dome Azizul Hoque and Mostaki exhumed the dead body which was covered with white cloth. In the graveyard there was no water. The tongue of the dead body was bitten with teeth. The condition of the body was identifiable but different parts of it were wet. In her presence the inquest was held. In cross-examination by the defence she stated that the victim's graveyard was dry. No doctor of Shaheed Tajuddin Ahmed Medical College Hospital was present at the time of disinterring the body. She could not remember the number of the teeth by which the tongue was found bitten.

PW12 Md. Abdus Salam Sarker, a doctor of Tajuddin Medical College Hospital at the material time who held autopsy of the dead body, stated that the Board was consisting of 3 members. He examined the dead body and found the tongue bitten by teeth. He found the condition of dead body saponified. He did not find any external injury but inside he found bruise in the right side of trachea and opined that the death was due to asphyxia as a result of throttling strangulation which was *ante mortem* and homicidal in

nature. He proved the autopsy report exhibit-6 and identified his signature thereon. In cross-examination by the defence he stated that in the report they did not state the date of death of the victim. The mark of finger could not be found on the throat in all cases. Internal sings of pressure could not be found if the place is not pressed externally. He denied the suggestions that in such case there always be a sign of pressing. He denied that victim's elder brother was a senior doctor and at his wanting and instruction he has been deposing against principle of medical jurisprudence. He denied that for saponification of dead body the presence of water is a must and in dry place it is not possible. The tongue may come out between teeth due to decomposition of dead body. At serial 1 of column 2 of the report, he found the skull, spinal cord and bones decomposed. He found other parts of the body decomposed. He did not write the measurement of bruises. Usually the length of bruises is to be noted in the report including age of injury but he did not do so. In autopsy he found trachea and esophagus decomposed. In strangulation *lungi*, *sharee*, *gamchha* and *orna* are generally used and in case of throttling finger or palm and

elbow are generally used. He did not state in the report what form of throttling was done in this case. He stated that throttling and strangulation are different. He did not write in the report whether the death was caused by throttling or by strangulation. None of three doctors who held autopsy were present at the time of disinterring the dead body from the graveyard. The law prescribes that a doctor shall remain present at the time of disinterring a dead body from graveyard. Throttling is not possible by a single finger. Generally, trachea decomposes within 7/14 days. He has no degree of DFM, MCPS, MD which were required for holding autopsy. He denied the defence suggestion that at the instruction of the elder brother of the victim who was a doctor and another one who was a police officer, he prepared the false report. He denied that to make a false case he submitted the report, although the organs of the victim were totally decomposed. He further denied that the he did not find any bruise on the trachea of the body.

PW 13 Md. Jahangir Alam, IO in part stated that he visited the place of occurrence, prepared sketch map with index exhibit-9 and 10. He made a seizer and prepared a list,

recorded statements of witnesses Abdullah Hel Safi, Shahina Sultana and Hosne Ara under section 161 of the Code. He took steps for disinterring the dead body from the graveyard taking permission from the concerned Court. In presence of Magistrate PW11 and identified by the informant, he exhumed the dead body on 23.08.2015. He held inquest and prepared a report. He found the hair of the victim intact with skin, the found tongue bitten by teeth, nose and ears damped. He found no external injury on the dead body. He did not find water in the burial place. In cross-examination by the defence he stated that the occurrence took place in the morning on 26.07.2015 and the case was registered on 08.08.2015. He received the case docket on 09.08.2015. He visited the occurrence flat at the 4th floor of the building on 09.08.2015. He did not know how many flats were there in the building but it was a 5 storied building. There were 2 units in each floor. In the sketch map he did not show the occurrence room. The alamots were with the informant party from 26.07.2015 to 09.08.2015. He did not record statements of witnesses Sumiya and Dr. Kamrun Nahar under section 161 of the Code. He did not collect the death certificate of

victim issued by Dr. Kamrun Nahar. He asked the informant what Dr. Kamrun Nahar told as to the cause of victim's death but the informant told that now Dr. Kamrun Nahar is not in service in the hospital. The informant did not tell him anything about Dr. Kamrun Nahar. He did not know whether Rabeya and Shahina (PWs 2 and 4) took away 35 bhoris of gold ornaments from the house of accused Sukhon or in the year 2012 accused Sukhon gave loan of Taka 32 lac to the informant. He did not know whether the informant lodged the case against the accused for dispute over a plot measuring 5 kathas situated within Gazipur City Corporation. He denied the defence suggestion that without investigating the case properly he submitted a biased report only at the instruction of DIG Baki. He found the date of birth of Marina 13.10.1988 whereas Sukhon passed SSC examination in 1990. The informant did not place any report to him as to the victim's illness. He did not know if doctor Nahar, Dr. Kafi and the family members of victim Sonia had found any injury on her person, they surely would have taken shelter of law. He denied that victim Sonia was in the hospital from 12-14 July due to complicity of serum, calcium and magnesium

and according to prescription of doctor she took syrup. He did not seize the original diary alleged to have been collected by the informant.

PW14 Md. Mainul Islam, a Sub-Inspector (SI) of police CID, Raman Zone is the second IO. He took the accused on remand for two times. He seized a laptop and 2 mobile phone sets of the accused and prepared a list exhibit-5. He produced the material exhibit-Ka, Kha, Ga and Uma. He proved seizure list dated 20.09.2015. He visited the place of occurrence and found the sketch map and index prepared by the previous IO correct. He recorded the statements of some witnesses under section 161 of the Code. He found the offence under sections 11(Ka) and 30 of the Ain, 2000 against 5 accused *prima facie* to be true and submitted a charge sheet against them on 20.12.2015. In cross-examination by the defence he stated that in the inquest report the demand of dowry and illicit relation of the accused with Marina was not stated. The previous IO (PW13) did not mention the place of seizure through exhibit-5. In the investigation he did not find that accused had any illicit relation with Marina. In the sketch map, he did not show the

occurrence room but in the index it has been shown. He did not examine the cousin of victim Achhia and her maternal aunt Mariam Begum who washed the victim's dead body before its burial. He further stated that all the brothers and sisters of the victim went to the place of occurrence house on 26.07.2015 and they buried the dead body with satisfaction that the death was natural. He did not examine Abdullah Hel Kafi and cited him as witness in the charge sheet. In the same way he did not examine Dr. Kamrunnahar under section 161 of the Code and cite her as witness. The elder brother of the victim was then a DIG of police who was not cited as witness. The writer of the book 'Neel kasto' was Safika Rahman Shamim. The name of accused Moshir Rahman is absent in the book. Nothing is found in the said book that the accused demanded dowry to the victim. He did not send the dairy to the expert to ascertain the hand writing of Sonia in it. He further denied that he submitted the charge sheet at the instruction and direction of DIG Abdullah Hel Baki. He further denied that Sonia had been suffering from various diseases and she died due to illness. He denied all other material suggestions put to him.

These are all evidence of the prosecution witnesses.

It appears that to bring home the charge against the condemned-prisoner under section 11(Ka) of the Ain, 2000, the prosecution examined in all 14 witnesses; of them PWs 1-6 and 9 are the public witnesses and PWs 7, 8, 10, 11, 12, 13 and 14 are formal witnesses. PWs 1-5 are the brothers and sisters of the victim and PW6 is the son of the victim and condemned-prisoner. PW7, a police constable sent the dead body to the morgue for holding autopsy; PW8 is an ASI of police in whose presence the inquest was held and report was prepared and PW10 is the recording officer of the FIR. PW11 is a Magistrate in whose presence the deadbody was exhumed and sent for postmortem examination. PW12 is a doctor who was a member of the Board of holding autopsy of the dead body. PW13 is the Investigating Officer in part, who investigated the major part of the case and PW14 is an inspector of the police who finally submitted the charge sheet.

On appraisal and assessment of evidence both oral and documentary it appears that the prosecution case is based on the circumstantial evidence led by witnesses 1-6, the medical

evidence, *i.e.*, autopsy report exhibit-6 and evidence of PW12, the doctor who held autopsy. It has come out from the evidence of witnesses, PWs 1-5 that all of them on receipt of the news of illness of Sonia through a call over telephone of the condemned-prisoner rushed to the place of occurrence house in the morning on 26.07.2015. Abdullah Hel Kafi a brother of Sonia who was an MBBS doctor also went to the condemned-prisoner's house and saw the dead body of the victim lying on the cot. It has also come out in the evidence of PWs 1-5, who are brothers and sisters of the victim, that they took the dead body of victim to their paternal house at Gazipur. Dr. Abdullah Hel Kafi, his brothers and sisters and the convict accompanied the dead body to Gazipur. It has also come out in the cross-examination of witnesses that the relatives of the informant including PW5 Ismot Ara (a sister of the victim) gave funeral bath of the dead body but they did not find any mark of injury on victim's body or suspected the death as unnatural. It came to their mind after 13 days while the brother of the informant party DIG of police (Baki) returned from abroad and then the informant lodged the FIR on 08.08.2015. The fact of demand of dowry by the

condemned-prisoner and his relation with one Marina has been brought in the FIR after 13 days of the date of occurrence. There they alleged that the victim for first time disclosed the fact of demand of dowry and illicit relation of the condemned-prisoner with Marina on 25.07.2015. Such disclosure of fact as has been alleged is unusual and against the nature of women of our country. It is very natural that if condemned-prisoner had any illicit relation with accused Marina from before, the victim certainly would have disclosed it to her relatives at least PWs 2, 4 and 5 who were her sisters.

The informant suspected the death of their sister as unnatural after 13 days. The informant stated in the FIR and PWs 1-5 deposed that they saw some signs of unnatural death in victim's body in the occurrence morning. It is unbelievable and against the principle of Forensic Medicine and Medical Jurisprudence that if a person is strangled or throttled to death no external injury on the person of the victim could be found. It has come out in the evidence that PWs 1-5 and their brother doctor Abdullah Hel Kafi was present all along with the dead body; that he was in the

occurrence house in the morning and accompanied the dead body to Gazipur. But being a doctor he did not suspect the death as unnatural and mysteriously he was not cited as witness in the case. In the funeral bath (Ghusal Al-Mayyit) of the dead body of the victim PW5 took part, but she did not bring any allegation or find any injury on the body (throat) of the victim. The informant's cousin Achhia Khatun and aunt Mariam washed the dead body but they were not cited as witness. It has come out in the evidence of PW2, sister of the victim, that Abdullah Hel Baki was a DIG of police at the material time. He was abroad and returned this Country on 07.08.2015 and thereafter the FIR was lodged on 08.08.2015 implicating not only condemned-prisoner but his 3 full sisters and mother and a distant relation as accused without bringing any allegation against them in the FIR who did not at all reside in Dhaka City at the material time. But we find in the record that unfortunately the above relatives of the condemned-prisoner suffered in jail for several months. In dealing with the cases under the Ain, 2000 or the Ain, 1995 by the learned Judges of the Tribunals is against judicial temperament of a learned Judge who is in fact a Sessions

Judge. The judges must not be reluctant in dealing with the bail matters of the cases under special laws without looking into the allegation brought against a particular accused and merit of the case.

Admittedly the victim died in the house of her husband, the condemned-prisoner at the dead hours of night on 25.07.2015 or in the morning on 26.07.2015. In such a case the onus lies upon the husband to explain how his wife met with the death while she was with him. In this case the defence by cross-examining the prosecution witnesses brought out a specific case that the victim was seriously ill from before. Previously she was admitted to hospital and was there for several days. She was suffering from deficiency of sodium, potassium and magnesium which may cause electrolyte imbalance resulting her death. It appears in the statement made in the FIR that Sonia told them, “তাহাকে মশিউর শুধু ডাবের পানি ও ওর স্যালাইন আর যেন কি খাওয়াতেন আমার শরীর যেন কেমন লাগে।” The green coconut water supplements deficiency of sodium, potassium and magnesium and save a patient from electrolyte imbalance. The documents submitted by the condemned-prisoner with his statement submitted during his

examination under section 342 of the Code supports the defence case. The series of documents submitted in support of illness of the victim proves the defence case of her natural death attacked by disease. Moreover, PW6, son of victim as well as the condemned-prisoner was a child of 10 years at the time of examining as witness. Learned Judge of the Tribunal ought to have tested his (PW6) intelligence and maturity to depose in the Court as to the admissibility of his evidence under section 118 of the Evidence Act which he did not. But the truth has come out in his cross-examination by the condemned-prisoner himself. PW6 stated in cross-examination, “সত্য যে, আমার আম্মুর মাথা ব্যাথা হইত। সত্য যে, আমার মা চুল ও মাথা বাধত। আমার আম্মু কোয়ান্টাম করত। আমার আম্মু হাটতে যেতো না।” He further stated, “আমার বাবার হাত পুড়ে যায় ডিম ভাজতে গিয়ে”- which proves that he (condemned-prisoner) had to work in house for the illness of his wife. The statement made in the FIR about victim’s illness, evidence of PW6 as aforequoted, the statements made by the condemned-prisoner under section 342 of the Code and the documents submitted by him, if considered all together, we can safely hold that the

condemned-prisoner has explained sufficiently the death of victim as natural for his ailment.

On going through the evidence of witnesses particularly cross-examination by the defence on PWs 1-5 and 6 it has come out that the condemned-prisoner was a solvent person. He had a car before her marriage and subsequently he purchased cars and he had flats and joint business with PW1. Therefore, the allegation of demand of dowry without mentioning any specific date and time does not stand. To convict a person under section 11(Ka) of the Ain, 2000 the demand of dowry and killing for its non fulfillment is to be proved which is totally absent in this case. Therefore, the conviction and sentence under section 11(Ka) of the Ain cannot be sustained. However, if it is found in evidence that the husband killed the victim in that case the conviction under section 11(Ka) of the Ain may be converted to under section 302 of the Penal Code and sentence may be sustained or altered. [reliance placed on State vs. Nurul Amin Baitha, 75 DLR (AD) 187]

We have to examine here cautiously whether the prosecution has been able to prove the case that the victim

was killed. It is admitted fact that the victim died in the night following 25.07.2015 which is in the morning on 26.07.2015. The informant (PW1) and his brothers and sisters (PWs 2-5) including the condemned-prisoner took her body and buried it in her family graveyard situated at Gazipur on 26.07.2015. They lodged the FIR on 08.08.2015. The dead body of the victim was exhumed on 24.08.2015 *i.e.*, after 28 days of its burial. In the inquest, first IO PW13 as well as other witnesses including PW11 who is a Magistrate and in whose presence the dead body was exhumed did not find any external injury on the person of the deceased. In the autopsy, the Board headed by PW12 found at serial 2 of column 1(i) The whole body is saponified, (ii) No external injuries found, (iii) Tongue bite present. But at serial 3 of column 3 in the report they stated 'bruises on the right side of trachea'. On deep dissection the doctors found bruises in the subcutaneous tissue and muscle and both side of upper part of throat muscle and right side of trachea. They finally opined that the death was due to asphyxia as a result of throttling strangulation which was *ante mortem* and *homicidal* in nature. The autopsy report exhibit-6 as stated above is

inconsistent as to injury found as per serial 2 of column 1 with serial 3 of column 3 and also with dissection and opinion. The doctor in the report wrote all the organs decomposed including skull and spinal cord but mysteriously found bruises in the right side of trachea externally in a column and on dissection found bruises in the subcutaneous tissue and muscle of both side of upper part of throat muscle and right side of trachea which cannot be as per medical jurisprudence. If the whole organs of the body was decomposed, it was almost impossible to find bruises in the right side of trachea. Moreover, doctor PW12 stated in evidence that trachea decomposes within 7/14 days and did not find the trachea pressed.

At serial 2 of column 1 it has been stated that whole body is '*saponified*'. According to Modi's Medical Jurisprudence (24th edition) as has been argued by the learned Deputy Attorney General, "the formation of *adipocere* (Saponification) in a dead body delays the progress of putrefaction." But external condition among many, which helps develop adipocere, when the body is buried in damp or clay soils. It may occur within 3 to 15 days after death in

bodies drowned in the water, if the soil is found damp or contained moisture. Yes it is true that if a dead body is saponified resisting petrification of the body in that case the injury on the dead body, if any, can be detected. We have gone through cross-examination of PW12, the doctor. In evidence he stated, “সত্য যে, রিপোর্টের ৪নং কলামের ৩নং ক্রমিকে মুখ শ্বাসনালী ও অনুনালী decomposed বলি।” So the doctor found trachea and esophagus decomposed. If he found trachea and esophagus decomposed in that case his opinion as to finding the body saponified, the cause of death and signs found on dissection is totally inconsistent and motivated and cannot be relied upon. He stated that strangulation is generally caused by *lungi*, *sharee*, *gamchha* and *orna* and throttling generally causes by finger palm etc. He admitted that throttling and strangulation are different. As per Medical Jurisprudence of PS Modi to form ‘*Adipocere*’ or ‘*Saponification*’ in a dead body, the presence of water is essential. The deadbody have to be submerged in water or presence of water in the graveyard is a must, but from the evidence of PW1 we find that “সত্য সুনিয়াকে যেখানে কবরস্থ করা হয় তাহা উঁচু জায়গা।” PW11 the Magistrate in the similar line stated, “মৃত্যুর লাশ কবরে পানিগুণ্য

অবস্থায় ছিল।” PW13 stated, “মৃত্যুর সারা শরীর স্যাঁতস্যাঁতে হওয়ায় বাহিরে কোন আঘাত দেখি নাই। ঘটনাস্থলে পানি দেখা যায় নাই।” From the aforesaid evidence of the witnesses that the dead body was buried in a dry place and at the time of disinterring it there was no water inside the graveyard, we find that practically the doctor did not find any sign of ‘*adipocere*’ on the body of the victim. It has come out in the evidence of witnesses that one of the brother of the victim named Abdullah Hel Kafi (not examined) was a senior doctor. A suggestion was put to each of the witnesses including PW12, doctor that he being biased by doctor Kafi submitted the autopsy report to make out a believable case of murder. On going through autopsy report exhibit-6 as well as the evidence of PW12 and the provisions of Medical Jurisprudence of Modi, Raju and Jhala, Parikh, Mallick and Apurba Nandy, we find that the autopsy report is untrue and has been prepared only to make out a believable case against the convict at the influence of Dr. Kafi and DIG Rafi, the brothers of the deceased. The autopsy report is not a gospel truth or sacrosanct. It may be tested by us and on test we find it as untrue and against the

principle of Medical Jurisprudence. Hence, it is thrown out of consideration.

It has come out in the evidence of PW1 that he had a partnership business with the condemned-prisoner. PW1 stated in evidence, “সত্য যে, এ, পি, পি সোসিং নামে একটি রাইং হাউস ছিল। তার অংশীদার আমি, হৃদয় ও আসামী সুখন ছিলাম। সত্য নয় যে, আমি গাজীপুর চৌরাস্তায় “তাজমহল” আবাসন প্রকল্পের মালিক হই। সত্য যে, উক্ত তাজমহল প্রকল্পে আমি টাকা দিয়াছিলাম ও পরে তাতে আমি যাই। সত্য যে, চুক্তিপত্রে আমার সই আছে। তার তারিখ ২৬.০৪.২০১০। সত্য যে, উক্ত চুক্তিপত্রের শর্ত মতে আমি প্লটএর দাম সুখনকে না দেওয়া ও টাকাও ফেরৎ না দেওয়া।” It was also suggested to the witnesses that after victim’s death PWs 2 and 4 went to the condemned-prisoner’s house and took away 35 bhoris of gold ornaments of the victim. A suggestion was put to that effect to all the witness that the condemned-prisoner has been falsely implicated in this case after the death of her wife to grab has business with the informant. It would be easier for PW1 to grab the whole business in the absence of the condemned-prisoner.

The length of the FIR, statement made therein, statements of witnesses 1-5 which are parrot like version proves that this case has been planted and filed by creating a

story after long days of victim's death. The FIR has been registered on 08.08.2015 (after 13 days of taking place the occurrence) at the instruction of high police official DIG Abdullah Hel Baki, a brother of victim and informant for collateral purpose. The evidence of witness PWs 1-5 are found concocted, embellished and afterthought. The prosecution mysteriously withheld Dr. Kamrun Nahar Akhi who at the instance of informant party came to the occurrence house of the condemned-prisoner in the morning and declared the victim dead. Even the certificate she issued as to cause of death was not seized and produced in the Court for fear that the truth shall come out. The brother of the victim doctor Kafi was neither examined as witness nor she was cited as witness in the charge sheet. This fact definitely goes in favour of the condemned-prisoner that if they were examined on oath, the truth ought to have come out. The condemned-prisoner will get benefit of section 114(g) of the Evidence Act. The prosecution also failed to prove the elicited relation between the condemned-prisoner and one Manira because PW14 during investigation did not find any existence of illicit relation between them.

In this case we find the high-handedness of a police officer (DIG of police Abdullah Hel Baki) and influence of a doctor (Dr. Abdullah Hel Kafi) in procuring a biased autopsy report. It requires to take action against them as per law because their acts have taken away so many years from the life of the condemned-prisoner, who appears was a young promising businessman. The condemned-prisoner has served in jail for more than eleven years without doing any crime. The learned Judge of the Tribunal also dealt with the case considering it as special case under the Ain, 2000 which is unwanted from a learned Judge.

In view of the discussion made hereinabove, we find that the prosecution hopelessly failed to prove the charge under section 11(Ka) of the Ain, 2000 or under section 302 of the Penal Code against the condemned-prisoner. The condemned-prisoner is entitled to get acquittal in the present case not as a matter of grace but as of right. The learned Judge of the Tribunal traveled beyond the law and assessed the evidence of witnesses in a different way which is against the settled proposition of law and cannot be accepted. The findings and decision of the learned Judge about the

statement of the accused submitted at the time of examination under section 342 of the Code as well as on the principles of medical jurisprudence is not supported by law. Therefore, we find nothing to accept the reference, but we find merit in the appeal.

Therefore, this reference is rejected. The appeal is allowed. The judgment and order of conviction and sentence passed by the learned Judge of the Tribunal convicting the condemned-prisoner under section 11(Ka) of the Ain, 2000 sentencing him thereunder to death with fine is hereby set aside. The condemned-prisoner is acquitted of the charge levelled against him.

The concerned authority is directed to release the condemned-prisoner Md. Moshir Rahman Sukhan, son of late Hafizur Rahman, House 20, 5th Floor, Road 04, Sector-13, Police Station-Uttara Paschim, District-Dhaka from jail forthwith, if not wanted in any other cases.

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

K.M. Rasheduzzaman Raja, J.

I agree.