

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

Present:

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

Death Reference No. 32 of 2019

The State ...petitioner

-Versus-

Md. Nuruzzaman

...condemned-prisoner

with

Criminal Appeal No. 4006 of 2019

Md. Reaz

...convict-appellant

-Versus-

The State

...respondent

with

Criminal Appeal No. 4007 of 2019

Md. Nuruzzaman

...convict-appellant

-Versus-

The State

...respondent

with

Criminal Appeal No. 4008 of 2019

Mst. Arob Jan

...convict-appellant

-Versus-

The State

...respondent

and

Jail Appeal No. 95 of 2019

Md. Nuruzzaman

...convict-appellant

-Versus-

The State

...respondent

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-Amin Siddiqui, Assistant Attorney Generals

...for the State

(In the reference and respondents in the appeals)

Mr. Mirza Salah Uddin Ahmed with

Mr. Mirza Zia Uddin Ahmed with

Mr. Md. Shaharun Howlader and

Mr. Muhammad Saifur Rahman, Advocates

...for the convict-appellants

(In all the appeals)

Heard on: 28.06.2026 and 29.06.2026

Judgment on 30.06.2026

K.M. Rasheduzzaman Raja, J:

This reference under section 29 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, hereinafter ‘the Ain, 2000’ read

with section 374 of the Code of Criminal Procedure, hereinafter ‘the Code’, has been sent by the learned Judge of Nari-o-Shishu Nirjatan Tribunal, Barguna, hereinafter ‘the Tribunal’ for confirmation of the death sentence awarded upon condemned prisoner Md. Nuruzzaman under sections 11(Ka) of the Ain, 2000. This reference and the Criminal Appeal No. 4006 of 2019, Criminal Appeal No. 4007 of 2019, Criminal Appeal No. 4008 of 2019 and Jail Appeal No. 95 of 2019 arose out of the same judgment and order of conviction and sentence dated 09.04.2019 passed by the learned Judge of the Tribunal, Barguna in Nari-o-Shishu Nirjatan Case No. 276 of 2010 arising out of Patharghata P.S. Case No. 01 dated 05.09.2010. Therefore, hearing all the matters together we are going to dispose of the those by this judgment.

The prosecution case, in short, is that P.W. 1 Md. Rustom Ali married off his daughter deceased Nadira Akter to condemned prisoner Md. Nuruzzaman. D.W. 2 Nazrul Islam Babul informed him at 2.00 p.m. on 19.08.2010 that his daughter is in serious condition and urged him go there. He with his brother-in-law went to the house of the accused persons and

found his daughter lying dead on a *Chowki* of the house. He found finger marks on the throat of his daughter. The accused persons used to torture his daughter demanding dowry of tk. 2,00,000/- and on such demand of the accused persons *salish* took place. Yet the accused persons did not stop the persecution on his daughter and consequently, killed her by throttling on her failure to pay dowry. On such occurrence he lodged a petition of complaint before the Tribunal.

The Tribunal sent the petition of complaint to Pathorghata P.S. directing the officer-in-charge to take necessary action whereupon police started Pathorghate P.S. Case No. 01 dated 05.09.2010 under sections 11(Ka) and 30 of the Ain, 2000 against the accused persons.

Being assigned with the charge of investigation P.W. 17 Lokman Hossain visited the place of occurrence, recorded statements of the witnesses under section 161 of the Code, seized alamots preparing several seizure lists, collected post mortem examination report and finally submitted a charge sheet against the accused persons under sections 11(Ka) and 30 of the Ain with section 201 of the Penal Code.

Learned Magistrate then sent the case record to the Tribunal whereupon the learned Judge of the Tribunal took cognizance of the offences and started Nari-o-Shishu Nirjatan Case No. 276 of 2010. The learned Judge of the Tribunal framed charge against the accused persons under sections 11(Ka) and 30 of the Ain with section 201 of the Penal Code and explained and read over the same to the accused persons to which they pleaded not guilty and demanded the trial.

The prosecution adduced 17 witnesses to prove the charge brought against the accused persons. The learned Judge examination the accused persons under section 342 of the Code whereupon they again claimed their innocence and expressed their desire to adduce counter evidence and accordingly they examined D.W. 1. Md. Shah Alam.

The defence case as transpires from the trend of cross-examination of the prosecution witnesses, depositions of the defence witness and other materials on record is that of innocence and that the accused persons never demanded any dowry to the deceased. The deceased had a previous relation with her cousin Sajol. Upon discloser of such relation the victim

out of shame committed suicide by hanging. The informant purposefully coloured the incidence of suicide of his daughter as a killing and obtaining a bias post-mortem report influencing the examining doctor has filed the case to harass the accused persons.

Learned Judge of the Tribunal on consideration of the materials on record and submissions of the learned Advocates of the both sides found the accused persons guilty and, therefore, convicted accused Md. Nuruzzaman under sections 11(Ka) of the Ain and sentenced him to death penalty with a fine of Taka 1,00,000/-. The learned Judge also found him guilty under section 201 of the Penal Code and sentenced him to suffer rigorous imprisonment for 5 years with a fine of Taka 1,00,000/-. The learned Judge further found each of accused Md. Reaz and Mst. Arab Jan guilty under section 201 of the Penal Code and sentenced them to suffer rigorous imprisonment for 5 years with a fine of Taka 5,000/- by the impugned judgment and order and referred the case to this Division for approval of the death sentence awarded upon the condemned prisoner Md. Nuruzzaman.

Being aggrieved by and dissatisfied with the aforesaid conviction and sentence condemned prisoner Md. Nuruzzaman filed Criminal Appeal No. 4007 of 2019 and Jail Appeal No. 95 of 2019. The other convicts Md. Reaz and Mst. Arobian filed Criminal Appeal No. 4006 of 2019 and Criminal Appeal No. 4008 of 2019.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General appearing for the state has taken us through the materials on record and submits that the prosecution has adduced 17 witnesses including independent and disinterested witnesses of the locality to connect the responsibility of the accused persons with the occurrence. Other than the direct evidence, there are strong circumstantial evidence to connect the responsibility of the accused persons with commission of the offences. The prosecution witnesses have proved the demand of dowry by the accused persons to the deceased and holding of *salish* thereupon. All of the witnesses have consistently deposed saying that going to the place of occurrence they found none of the accused persons present at their house. They found the deceased lying in the house of the accused persons having

throttling marks on her throat. Mr. Kabir further submits that the post-mortem report supports the commission of throttling as signs of it was found on the throat of the deceased. Since the demand of dowry has been proved and responsibility of the accused persons has been properly connected with the commission of offences by direct and circumstantial evidence, therefore, the Judge of the Tribunal has rightly awarded sentence upon the accused persons by the impugned judgment and order. As such, the reference should be accepted. Mr. Kabir has referred to the cases of Ilias Hussain (Md) Vs. State, 54 DLR (AD) (2002) 78; State Vs. Md Abul Kalam Azad and others, 8 BLC (2003) 464; State Vs. Abul Bashir, 19 BLC (2014) 130 and Abul Kalam @ Abul (Md) Vs. State, 26 BLC (2021) 36 in support of his submissions and relied on the ratio laid therein.

Mr. Mirza Salah Uddin Ahmed, learned Advocate appearing for the condemned prisoner and the other appellants have opposed the reference submitting that the demand of dowry has not been proved by sufficient evidence. None of the prosecution witnesses found the condemned prisoner Md.

Nuruzzaman present in their house at the time of occurrence. There is no eye witness to the occurrence who saw the alleged throttling by the accused persons. P.W. 11 Gazi Md. Tipu, P.W. 12 Md. Kamal Hossain and P.W. 13 Maleka Yasmin have supported the commission of suicide by the deceased in their respective depositions. The Tribunal illegally convicted and sentenced the accused persons by the impugned judgment and order. Mr. Mirza Salah Uddin has referred the cases of Akther Hossain @ Babul Akther and another, 44 DLR 83; Muslim Uddin and others Vs. The State, 7 BLD (AD) 1; Mohammad Siddiqur Rahman and others, 7 BLD (AD) 93 and relied on the principles laid in those cases.

We have heard the both sides and perused the materials on record. Let us examine the sustainability of the sentences awarded by the learned Judge of the Tribunal upon the accused persons including the condemned prisoner by the impugned judgment and order and the submissions of the both sides as advanced.

P.W.1 Md. Rustom Ali, the informant, has deposed that he married off his daughter Nadira to accused Md. Nuruzzaman

who was living in their house. Receiving information from the uncle of the deceased at 2.00 p.m. on 19.08.2010 he went to the house of the accused persons with his brother-in-law and found his daughter lying dead on a *Chowki* in the house of the accused having finger marks around her neck. The accused persons used to torture his daughter occasionally demanding dowry for which *salish* took place. The accused persons killed his daughter by throttling on her failure to satisfy their demand of dowry for Taka 2,00,000/-. Accused Abdul Hamid, father of condemned prisoner Md. Nuruzzaman, filed a false UD case in Pathorghata P.S. Police appeared at the place of occurrence and held inquest over the dead body and sent the same for holding autopsy. Thereafter, he lodged the petition of complaint in the Tribunal.

In cross-examination he has stated that police held inquest on the dead body in his presence and he signed in the inquest report. During holding of inquest no sign of torture was found on the dead body other than the injury around the neck of the deceased. He also lodged FIR to the police station but they deterred him on the plea of absence of post mortem report. He, however, did not witness any accused person torturing his

daughter. He has denied that the accused persons never demanded dowry to him or his daughter attempted twice to commit suicide by taking poison or his daughter had earlier relation with Sajol or his daughter committed suicide on discloser of her relation with Sajol.

P.W. 2 Md. Nazrul Islam Babul, the brother-in-law of the informant, has deposed that accused Md. Nuruzzaman over telephone informed him at 2.00 p.m. on 19.08.2010 about sickness of his wife Nadira. He quickly informed his brother-in-law, the informant, about the sickness of his daughter. Thereafter he along with the informant went to the house of accused Md. Nuruzzaman and found deceased Nadira lying on a *Khat* in the 1st floor of the house of the accused. Examining the deceased, they found a big round injury mark around the neck of the deceased. The family members of accused Md. Nuruzzaman informed them that Nadira committed suicide. The accused persons demanded dowry of Taka 2,00,000/- to the deceased and on her failure to satisfy their demand, they have killed her.

In cross-examination he has stated that police appeared at the place of occurrence in the evening and held inquest over the dead body in his presence and prepared a report with his signature. They wanted to file a case to the police station but police told them that they would record the case after receipt of the post mortem report. He has denied that the deceased had illegal relation with Sajol or she committed suicide after disclosure of such relation.

P.W. 3 Md. Zakir Hossain Sikder, the Upazila Vice Chairman, Pathorghata has deposed that 2/3 months earlier victim Nadira lodged complain to him about demand of dowry by the family members of her husband. He along with others went to the house of the father-in-law of the deceased and hearing both sides tried to mediate the dispute. Deceased Nadira complained about demand of dowry for Taka 2,00,000/- against her husband and mother-in-law and torturing on her for dowry. On the date of occurrence he heard from the bazar that a woman died and later came to know that the husband and other members of his family have killed Nadira.

In cross-examination he has stated that he did not give copy of the complain of Nadira to police. Nadira disclosed to him that her mother-in-law used to persecute on her and, therefore, he thought that the accused person might have killed Nadira. He went to the house of the accused with five persons to hold *salish* but the accused persons did not furnish any *acholnama* (agreement of compliance). He does not know whether Nadira took poison twice to commit suicide.

P.W. 4 Sabina Yasmin, a sister of the informant, has deposed that hearing the shouting in the house of accused Md. Nuruzzaman, she went there at 2.00 p.m. on 19.08.2010 and found the dead body of Nadira lying having mark of injury around her throat. Thereafter police appeared and she showed the dead body to police by turning both sides. She has signed in the inquest report. In cross-examination she has stated that she resides at 8-10 miles away from the place of occurrence. But she went to visit the residence of her father on the date of occurrence and reached at the place of occurrence at 2.30 p.m. She found no sign of assault on the body of deceased Nadira.

She has denied that she did not go to the place of occurrence or found no finger mark around the neck of the deceased.

P.W. 5 Farida Parvin has deposed that hearing commotion on 19.08.2010 she went to the house of the accused persons with the informant and found the dead body of Nadira having finger mark around her neck. The accused persons killed her on her failure to satisfy their demand of dowry for Taka 2,00,000/-. In cross-examination she has stated that the informant is his brother-in-law. She went to the house of the accused at 2.30 p.m. She has denied that the deceased committed suicide for disclosure of her illicit relation with Sajol.

P.W. 6 A Razzak has deposed that accused Md. Nuruzzaman killed his wife Nadira Begum by throttling for dowry and going to their house he found Nadira lying dead on a *Khat* having mark of finger around her neck. In cross-examination he has stated that he knew Sajol, cousin of the victim. He has denied that deceased Nadira had illicit relation with Sajol and she committed suicide after disclosure of such relation.

P.W. 7 Fatema Begum has deposed that hearing crying at the house of the informant, she went there and came to know from the wife of the informant that the accused persons killed her daughter for dowry. Going to the house of accused Md. Nuruzzaman, they found deceased Nadira lying dead having throttling injury around her neck. In cross-examination she has stated that she is the wife of the cousin of the informant. She has denied that the accused persons never demanded dowry to the deceased or they did not kill her or that Nadira committed suicide after disclosure of her illicit relation with her cousin Sajol.

P.W. 8 Tajenur Sefali has deposed that she went to the house of the accused persons on the date of occurrence. She found nail and finger mark around the neck of deceased Nadira. The accused persons killed Nadira by throttling on her failure to give dowry of Taka 2,00,000/-. In cross-examination she has stated that the accused persons did not demand dowry in her presence. She came to know from Nadira that the accused persons demanded dowry to her. She has stated that she is the grandmother of deceased Nadira. She has denied that Nadira

committed suicide after disclosure of her illicit relation with Sajol.

P.W. 9 Md. Selim Azad has deposed that he received a phone call at around 2.00 p.m. on 19.08.2010 when he was sitting in his shop after Zuhar prayer. Going to the house of the accused Md. Nuruzzaman, he found Nadira lying dead having finger mark around her neck. Accused persons killed her by throttling for dowry of Taka 2,00,000/-. Police appeared and held inquest over the dead body and prepared a report with his signature. In cross-examination he has stated that he is the son-in-law of the informant. He went to the place of occurrence at around 3.00 to 3.30 p.m. before appearance of police. He went to police station upon found mark of throttling around the neck of Nadira. He has admitted that the accused are wealthier than the informant.

P.W. 10 Sona Miah has deposed that they held a *salish* among accused Md. Nuruzzaman and his wife Nadira for demanding dowry but they failed to reach compromise. On 19.08.2010 he heard that the accused persons killed Nadira by throttling for dowry. Going to the place of occurrence, he found

the dead body of Nadira with finger mark around her neck. In cross-examination he has stated that he cannot remember the date of *salish*.

P.W. 11 Gazi Md. Tipu has deposed that both the informant and the accused are his neighbours. The deceased got married with accused Md. Nuruzzaman 2 years ago and since after the marriage, they were unhappy in family life. He along with Upzilla Vice Chairman Zakir Hossain and Kamal settled their conflict. He received information at 2.00 p.m. on 19.08.2010 at *Bot tola* Bus Station that Nadira died. Receiving the information he went to the house of the father-in-law of deceased Nadira and ascending to the 1st floor of the house of the accused persons he found the deceased lying on a *Khat*. Police seized *urna* of the deceased in his presence and prepared list with his signature. Going to place of occurrence, he came to know from the people on query that the deceased committed suicide by hanging and some of them disclosed that the deceased was killed.

In cross-examination he has stated that the accused is the daughter of his cousin. He has admitted that deceased Nadira

attempted on several occasions to take poison but they have settled the conflict arising out of such occurrence. He has stated that Nadira had ego problem.

P.W. 12 Md. Kamal Hossain has deposed that he along with others used to settle family dispute between the deceased and her husband Md. Nuruzzaman. He came to know from the local people at 2.00 p.m. on 19.08.2010 that the wife of accused Nuruzzaman died. Receiving this information he went to the place of occurrence. In cross-examination he has denied that Nadira was mentally sick but she was pale and thin in figure. He has admitted that the deceased attempted to take poison earlier and in a *salish* they found the vial of poison. After *salish* the father of the deceased took her to his house. He has admitted that the people were talking at the place of occurrence that the deceased committed suicide by hanging with *urna*.

P.W. 13 Maleka Yeasmin, the local U.P. member, has deposed that she came to know at 2.00 to 2.30 p.m. on 19.08.2010 from a neighbour of the accused persons that wife of accused Md. Nuruzzaman committed suicide by hanging. On such information she went to the house of the accused at around

2.45 p.m. and found deceased Nadira lying on the *Khat* in the 1st floor of the house of the accused. She was present there till evening. Police appeared and held inquest over the dead body and seized *alamots* preparing a seizure list and obtained her signature on the both inquest report and seizure list. She has marked the seized *urna* as material Exhibit-I.

In cross-examination she has stated that Nadira ingested poison earlier at the house of her father. Nadira had mental problem and, therefore, she visited the doctor at Barisal on several occasions. She did not find accused Md. Nuruzzaman present at the time of occurrence but he appeared at the place of occurrence in her presence later. She knew that Nadira had an illicit relation with a boy and all of the people present at the place of occurrence were talking about the suicide committed by deceased Nadira by hanging with *urna*.

P.W. 14 Khadija Akhter Hasi has deposed that the informant is the husband of her aunt and informed him over telephone that the accused persons killed Nadira. Hearing such information she went to the house of the accused persons and found the dead body of Nadira lying in the 1st floor of the house

of the accused persons. All of the accused persons fled except a girl named Fatema. On query she came to know that accused Mst. Arobjan and Md. Nuruzzaman killed Nadira by assaulting her. She found injury mark around the neck of the deceased. In cross-examination she has denied that she did not see the occurrence or she did not hear that the accused persons tortured and killed Nadira demanding dowry.

P.W. 15 Jahangir Hossain deposed that he is a cousin of the informant. He came to know from the shop owners of the bazar on 19.08.2010 that the accused persons killed Nadira. Going to the house of the accused persons he found the dead body of Nadira lying in the 1st floor of their house. His mother and sister-in-law found an injury mark on the throat of the deceased. He also found mark on the throat of the deceased. He came to know that the accused persons killed Nadira for dowry.

P.W. 16 Dr. Md. Abdus Salam held autopsy on the dead body as a member of the three members medical board on 20.08.2010 and found the following injuries—

(1) abrasion of the both sides of the throat.

(2) abraded skin semicircular at the right side below the right mandible.

On deep dissection: No parchmentation present. Ecchymosed under the above mentioned injury both sides of the throat.

In his opinion death was due to asphyxia as a result of throttling which was antemortem and homicidal in nature.

In cross-examination he has denied that he did not examine the dead body properly and submitted an opposite report in spite of having found evidence of committing suicide by hanging.

P.W. 17 S.I. Md. Lokman Hossain, I.O. of the case has deposed that accused Abdul Hamid Dorji filed a UD case bearing No. 5 dated 19.08.2010. Being assigned with the charge of enquiry he went to the place of occurrence and held inquest over the dead body, prepared a report and sent the dead body to Sadar Hospital for holding autopsy. During enquiry of the UD case, it was disclosed that the occurrence was of killing and, therefore, suspecting involvement of accused Reaz and Joynal he arrested them under section 54 of the Code and produced

before the Court. By this time, Rustom Ali, father of the deceased, filed a petition of complaint before the Tribunal which was sent to the police station whereupon this case was started and receiving the charge of investigation he visited the place of occurrence, prepared a sketch map with index, seized the Alamot, prepared seizure list, recorded statements of the witnesses under section 161 of the Code and submitted charge sheet against the accused persons.

In cross-examination he has stated that he recorded statements of 16 witnesses, visited the place of occurrence for 8 occasions. He did not enquire about Sajol. He has denied that he found no disinterested witness or the deceased did not die being assaulted by the accused persons or the deceased committed suicide by hanging or he submitted false charge sheet.

On perusal of the above evidence of the witnesses of the prosecution and other connected materials on record, it appears that none of the witnesses witnessed the occurrence of death of the deceased. All of them appeared at the place of occurrence after hearing about the death of the victim and found the deceased lying inside the house of the accused persons. P.W. 2

Md. Nazrul Islam Babul, a brother-in-law of the informant, P.W. 5 Farida Parvin, sister-in-law of the informant, P.W. 6 Abdur Razzaq, P.W. 7 Fatema Begum, another sister-in-law of the informant, P.W. 8 Tajenur Shefali, grandmother of the deceased, P.W. 9 Md. Selim Azad, son-in-law of the informant, P.W. 10 Sona Mia, a *salish* (arbitrator) of the informant, P.W.14 Khadija Akter Hasi, a niece of the informant, and P.W. 15, a cousin of the informant, have deposed that going to the place of occurrence they came to know that the accused killed victim Nadira by throttling on her failure to satisfy the demand of dowry. But none of them specifically said from whom they came to know about such information. They, including P.W. 1 Rustom Ali, the informant himself, have stated that they found finger mark around the neck of the deceased. Whereas, P.W. 1 Rustom Ali did not mention such injury in his petition of complaint filed before the Tribunal.

Out of the aforesaid witnesses only P.W. 10 Sona Mia and P.W.3 Md. Zakir Hossain Sikder, the Upazila Vice Chairman, have deposed that they took part in *salsish* of demanding dowry to the deceased by her husband accuses Md.

Nuruzzaman. But they could not either mention any date of *salish* or produce any document in favour of holding such *salish*. None appeared before the Court to say that in his presence the accused demanded dowry to the deceased. Although P.W. 17 S.I. Md. Lokman Hossain has mentioned about *salish* in the inquest report but it appears from the evidence of P.W.11 Gazi Md. Tipu, a brother in law of the informant, and P.W. 12 Md. Kamal Hossain that the *salish* was related to taking of poison by the deceased, not for demand of dowry. On the other hand, P.W. 9 Md. Selim Azad, son-in-law of the informant, has stated that accused Md. Nuruzzaman is wealthier than his father-in-law. It is difficult to believe that being a solvent man accused Md. Nuruzzaman demanded dowry to his wife. Therefore, demand of dowry to the deceased by the accused does not seem to be believable.

On the other hand, admittedly Abdul Hamid Dorji, father of the condemned prisoner Md. Nuruzzaman filed a UD case just after the occurrence to the Pathorghata PS. Accused Abdul Hamid Dorji has disclosed in the UD case that deceased Nadira went to take her bath in their pond at 14.30 hours on

19.08.2010. Keeping her wearing clothes on the bank of the pond she returned to the house and committed suicide by hanging from the ceiling fan. Upon found her wearing clothes lying on the bank of the pond, they started looking for her and entering to the house he found the dead body of Nadira hanging from the ceiling fan. Upon found the body hanging by *urna* he held up the dead body and his wife accused Arobjan untied the knot of *urna*.

From the above discussions it appears that there are two versions as to the death of deceased. The prosecution case is that the accused killed the deceased by throttling and the defence case is that the deceased committed suicide by hanging from the ceiling fan with her *urna*. Now, let us determine, in fact, how Nadiara, wife of the condemned prisoner Md. Nuruzzaman, died in their house.

The UD case filed by accused Abdul Hamid Dorji, father-in-law of the deceased, is the firsthand information about the death of the deceased. P.W. 17 S.I. Md. Lokman Hossain appeared at the place of occurrence to enquire the UD case, held inquest on the dead body and prepared a report with the

signatures of the witnesses. It appears in the inquest report, Ext.-3, that P.W. 17 S.I. Md. Lokman Hossain found no injury mark on the dead body of Nadira except an abrasion mark on the right side of her neck. He has mentioned in the report that he came to know on queries from the people that the deceased committed suicide by hanging from the ceiling fan with her *urna* out of temper and sulk as her mother-in-law gave her to eat cold rice. This is the subsequent information about the death of the deceased after filing of the UD case but supportive to the firsthand information of the UD case. Though inquest report is not substantial evidence but since the maker of this report has been examined by the both sides and the witnesses have supported the holding of inquest in their presence, therefore, the contents of this report can be verified or it can be used to verify the other evidences produced before the Tribunal.

On perusal of the inquest report it appears that P.W. 17 S.I. Md. Lokman Hossain held inquest at 20.30 hours i.e. after evening of the date of occurrence looking through all sides of the dead body with the help of P.W. 4 Sabina Yeasmin, an aunt of the deceased, Emili Bgum, neighbour of the accused, and

P.W. 13 Maleka Yeasmin, the local U.P. member. P.W. 1 Rustom Ali, the informant, has stated that he is a witness to the inquest. P.W. 4 Sabina Yeasmin has stated that she did not find any other assault injury on the body of the deceased. Which injury has been mentioned by P.W. 17 S.I. Md. Lokman Hossain as abrasion mark on the right side of the neck of the deceased, P.W. 4 Sabina Yeasmin along with some other prosecution witnesses has mentioned the same injury as the finger mark and the injury of throttling.

In the post mortem report, Ext.-4, no finger mark has been mentioned. Although it has been stated in Ext.-4 that the abrasion was found on the both sides of the throat and the abraded skin was semicircular at the right side below the mandible but that does not appear to be consistent with the throttling mark by finger. In case of throttling, sign of mere abrasion is not sufficient. More deep external injury should have been present around the neck of the deceased. P.W. 16 Dr. Md. Abdus Salam, the examining doctor of the dead body, has only mentioned that he found froth and mild congestion in esophagus and trachea, that is also the sign of hanging. Whereas, if

throttling by hand i.e. finger or palm would have happened, internal and external deep injury with finger mark in the esophagus and trachea region should have existed. Although parchmentationization was not found present on deep dissection but relying on only that ground it is difficult to consider the death of the victim to be a throttling; because, the medical study holds that the absence of parchmentationization in a hanging to be rare but not impossible.

In a research paper under the title of “Autopsy-Based Indicators of Suicidal Hanging- A Study of Ligature Marks, Salivary Signs, and Parchmentationization” published in the renowned page ORCID <http://orcid.org> a study has been shown to be conducted on 177 confirmed suicidal hanging cases at the Dhaka Medical College Hospital and found 97.2% parchmentationization, 24.3% tongue bite, 16.4% salivary dribbling, 68.9% facial congestion, 81.9% cyanosis, 22.0% tongue protrusion, 15.3% petechae, and 5.1% rare hyoid bone of fracture. It was concluded that suicidal hanging was characterized by a single oblique ligature mark with near universal parchmentationization. In the instant case, except the

absence of parchmentation other symptoms such as oblique ligature mark and salivary dribbling i.e. froth, as mentioned in column No. 3, have been found. Now let us examine the nature of the only mark of injury found on both side of the neck and abraded skin semicircular at the right side below the right mandibles of the deceased. The mark on the neck of the deceased as mentioned in the inquest report is not a deep injury supposed to be caused by throttling i.e. by pressure of fingers or palm of the hand. P.W. 11 Gazi Md. Tipu, a brother in law of the informant, and P.W. 12 Md. Kamal Hossain have deposed that they came to know that the deceased committed suicide by hanging.

P.W. 17 S.I. Md. Lokman Hossain seized the *urna*, a chair, the means to commit suicide by hanging, and photograph of the deceased at the time of investigation. But unfortunately the seized chair and photograph were not marked as material exhibits during the trial. However, since admittedly these articles have been seized by the I.O. and P.W. 17 S.I. Md. Lukman Hossain, the I.O., has supported this seizure in his evidence, therefore, we can peruse the photograph to understand

the nature of injury of the deceased. It appears in the photograph that there was an oblique ligature mark high up to the neck of the deceased which can no way be translated to be an injury of throttling by finger or any other means. So, if we consider this photograph of the deceased along with the other materials on record and injuries mentioned in the post mortem report, it becomes difficult to disbelieve that the deceased committed suicide by hanging. The opinion passed by the doctor as to the cause of victim's death by throttling is found inconsistent with the injury they found on the dead body. An expert's (doctor) opinion is not a gospel truth or sacrosanct. It can be rejected if it appears not consistent with the injuries found and against principles of forensic medicine.

Now, let us see what the other witnesses have said regarding the death of the deceased. P.W. 11 Gazi Md. Tipu who is also a relation of the informant has categorically admitted in his cross-examination that the deceased attempted on several occasions to commit suicide by taking poison. He has also admitted that the deceased had mental problem. P.W. 17 S.I. Md. Lukman Hossain, the I.O., has seized 4 amulets found

with the dead body and recovery of those amulets (তবিজ) also corroborates P.W. 11 as to mental sickness of the deceased. P.W. 12 Md. Kamal Hossain has also corroborated evidence of P.W. 11 Gazi Md. Tipu stating that the deceased attempted earlier to take poison and in a *salish* vial of poison was also produced. P.W. 13 Maleka Yeasmin has stated that the deceased used to visit doctor at Barisal for her mental treatment.

Both P.Ws. 11 and 12 have stated that they found the people talking about suicide of the deceased at the place of occurrence and they themselves came to know on queries that the deceased committed suicide by hanging. P.W. 13 Maleka Yeasmin has categorically stated that going to the place of occurrence she came to know from the neighbours of the accused persons that wife of accused Md. Nuruzzaman committed suicide by hanging. She is a witness to both inquest and seizure and in her presence police seized the amulets, chair, *urna* and photograph. She has also stated in cross-examination that the deceased earlier ingested poison in the house of her father. Their evidences appear to be supportive to the defence case i.e. the deceased committed suicide by hanging.

In the case of Shamsul Huq Vs. State 38 DLR (AD) 75 their Lordships have opined that—

“The defence case need not be approved by examining witnesses; if some indication in their favour is available from cross-examination of the prosecution witnesses then this may be sufficient for their acquittal.”

On perusal of the above evidence of witnesses and materials on record, it appears that although prosecutions have examined witnesses as to the mark of injury on the throat and produced other material evidence but those are not sufficient to prove that the accused persons killed the deceased in any way on her failure to pay dowry. Rather, the defence case as to commission of suicide by the deceased is found to have got support from the evidences of the prosecution witnesses and other circumstantial evidence.

So, it can be safely concluded that the deceased committed suicide at the house of the accused persons. Therefore, we hold that the condemned prisoner is under no more obligation to explain, how his wife died at his house.

Such being the case, we hold that the learned Judge of the Tribunal has awarded sentence upon the accused persons misreading the evidence on record and, therefore, reached in such an erroneous decisions regarding conviction and sentence of the accused persons.

In the result, we hold that the reference is liable to be rejected and accordingly, it is rejected. The appeals filed by the condemned prisoner and other two convicts are allowed and the Jail Appeal is accordingly disposed of.

Let the condemned prisoner be set at liberty if not wanted in connection with any other case. The other convict-appellants and their sureties are discharged from respective bail bonds.

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

Bhishmadev Chakraborty, J:

I agree