

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No.51 of 2019

The Statepetitioner

-Versus-

Md. Azad Mandal alias Azad Saheb

.....condemned-prisoner

with

Criminal Appeal No.5282 of 2019

And

Jail Appeal No.109 of 2019

Md. Azad Mandal alias Azad Saheb

.....appellant

-Versus-

The State

.....respondent

Mr. Mohammad Imam Hossain (Tarek), Deputy
Attorney General with Ms. Mahbuba Tasnim
Akhi, Mr. Mustafizur Rahman Mukul and Mr.
Al Amin Siddiqui, Assistant Attorney Generals

..... for the State

(In the reference and the appeals)

Mr. Zulfikar Motin with Mr. Khandaker Jahirul
Haque, Advocates

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

Judgment on 08.07.2026

Bhishmadev Chakrabortty, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman
Tribunal, Kushtia (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 184 of 2016 and sentenced him thereunder to death with fine of Taka 1,00,000/- and made this reference to this Division under section 29 of the Ain, 2000 read with section 374 of the Code of Criminal Procedure (the Code) for its acceptance. The condemned-prisoner subsequently filed the aforequoted criminal appeal and jail appeal. Therefore, these have been heard together and are being disposed of by this judgment.

Facts of the prosecution case, in brief, are that informant, father of deceased Tuli Khatun (the victim) lodged an UD case with Mirpur police station within the district of Kushtia stating that he married off his daughter, the victim with Azad Mandal 6 months ago. At the time of marriage, he gave gold ornaments to the victim weighing 2 bhoris. He also gave 20,000 pieces of bricks to the accused husband for constructing a house. Despite that the husband and his parents used to torture the victim for dowry. The father of accused Azad at about 4:30 am on 18.05.2016 informed him (informant) that the victim at about 3:00 am to 4:00 am on that day committed suicide by hanging on a

mango tree with rope about 10 cubits away from the house. On receipt of the said information, he rushed to the occurrence house and find the dead body of his daughter in the courtyard of the house sitting on a chair. He told the said fact to his wife and relatives. They also came to the house and found the dead body of victim at the yard. They suspected about the death of victim and prayed for taking legal action. On the basis of the UD case the dead body was sent to the hospital for holding postmortem examination. In the postmortem examination the doctor found the death homicidal. The informant then lodged a First Information Report (FIR) at about 21:35 hours on 15.06.2016 with Mirpur police station against 4 accused including the condemned-prisoner, his parents and another one stating more or less similar facts as stated in the UD case. He further stated therein that at the time of marriage he gave 20,000 pieces of bricks to the accused husband valued at Taka 1,40,000/-and they constructed a house with those. But all the accused persons in connivance with each other further claimed dowry of Taka 2 lac from the victim. The victim did not pay the amount and consequently the accused husband

and his parents assaulted the victim at their house on the date and time and throttled her to death. In order to screen the offence they suspended victim's dead body on the mango tree with rope. He received the news of victim's death, rushed to the occurrence house with PWs 3 and 4 and other relatives and found the dead body lying in the courtyard of the house. They firstly believed the story told by the accused persons to them and filed an UD case. Police appeared in the house of occurrence held inquest of the dead body and sent it to the morgue for holding autopsy. He received the autopsy report and definitely came to learn that the accused persons in a preplanned way throttled the victim to death. In the aforesaid premises, the lodgment of the FIR was bleated. The FIR was registered as Mirpur Police Station Case 07 dated 15.06.2016 corresponding to GR 76 under sections 11 (Ka) and 30 of the Ain, 2000 against 4 (four) accused including the condemned-prisoner.

PW11 Md. Rashedul Alam, a Sub-Inspector (SI) of police ultimately submitted a final report in the DU case on 17.06.2016. PW13 Md. Akteruzzaman, an Inspector of police investigated the regular case. During investigation he

prepared sketch map, index, collected autopsy report, inquest report, recorded the statements of the witnesses under section 161 of the Code, collected evidence for prosecution and submitted a charge sheet against 3 accused including the condemned-prisoner on 16.10.2016 under sections 11(Ka) and 30 of the Ain. The record of the case was then transmitted to the Tribunal for holding trial.

Learned Judge of the Tribunal took cognizance of offence against 3 accused on 28.11.2016 under the selfsame sections of the Ain. Eventually, the Tribunal framed charge against the accused husband under section 11(Ka) of the Ain and other 2 co-accused under sections 11(Ka) and 30 of the Ain. The charges so framed were read over to the accused persons, to which they pleaded not guilty and claimed to be tried.

During trial, the prosecution examined in all 13 witnesses out of 16 cited in the charge sheet; of them PW1 Md. Ali Hossain, informant and father of victim stated that he married off the victim to accused Azad Mandal 1(one) year prior to the date of occurrence. At the time of marriage, he gave 20,000 prices of bricks to the accused to erect a

house. He also gave gold ornaments to his victim daughter. Accused Azad claimed Taka 2 lac to his daughter as dowry to start a shop. On refusal to pay the amount they started torturing her. Accused husband and his parents at about 3:00-4:00 am on 18.05.2016 tortured the victim, killed her and suspended the body on a mango tree. In the morning he received the information and rushed to the house of occurrence and found the dead body of the victim under the tree. He suspected that they throttled the victim to death and suspended the dead body on the tree and subsequently brought down the same therefrom. Thereafter, he lodged the FIR. He proved the FIR exhibit-1 and identified his signature thereon. In cross-examination by the defence he stated that he found the dead body under the mango tree. He found rope tying on her throat. He did not know who brought down the dead body from the tree but he came to learn that Milon, a cousin of accused Azad, brought down the body. Police came to the place of occurrence, held inquest and prepared a report and at that time an UD case was started. He denied the suggestion of the defence that he stated in the UD case that his daughter committed suicide by hanging with rope. He

failed to remember the date of demand of dowry by the accused but he (accused) claimed dowry in his (informant's) house. He could not remember the names of the persons in whose presence the accused demanded dowry. He lodged the case after receiving the autopsy report. He did not know whether IO examined Milon under section 161 of the Code. He denied the defence suggestion that his daughter committed suicide and that the accused husband never demanded dowry. He did never stay in the house of the accused in anytime because there was only one house there and the parents of the accused husband resided there.

PW2 Md. Shafiqul Islam Milon, brother of PW1 in evidence stated that the victim died in the house of her husband in the morning on 18.05.2016. In the morning they went to the occurrence house and found the dead body of victim. Police came and held inquest of the dead body in his presence. He proved the inquest exhibit-2. They gifted a lot of things to the accused son-in-law at the time of marriage. Accused Azad used to demand dowry to the victim and other accused provoked him in doing so. The accused persons throttled the victim to death on demand of dowry and

suspended the dead body with a mango tree and spread rumor that the victim committed suicide. The autopsy report proves that she was throttled to death. In cross-examination by the defence he stated that Nurul Islam Munshi informed him that the victim was done to death for dowry. They went to the victim's house and saw her dead body under the mango tree which was 10 cubits away from the house. He informed it to police but they did not receive any GD or case. Police came to the house at about 3:00 pm. The informant went to the police station in the evening. He denied the defence suggestion that the victim committed suicide or the accused did not claim any dowry to the victim. The accused persons did not assault and kill the victim in his presence. Victim Tuli told him that accused husband used to demand dowry from her and tortured her for its nonpayment. He denied the defence suggestion that they have planted the case showing a case of suicidal hanging as a murder case. He denied all other material suggestions put to him.

PW3 Shahida Khatun, mother of the victim stated in the similar line of PWs 1 and 2. She further stated that accused persons demanded dowry of Taka 2 lac from her

daughter and for its nonpayment they killed her by throttling 2 years ago and suspended the dead body on the mango tree with rope. She went to the occurrence house and found the dead body of the victim. In cross-examination for defence she stated that they received the news at about 4:00 am, went to the occurrence house and found the victim's dead body under a mango tree. Her husband (PW1) was not in the house of the occurrence at night. While police went to the place of occurrence house she was there. They lodged the case on receipt of the autopsy report. She denied the defence suggestion that in the occurrence night her husband was in the house of the accused. She denied all other material suggestions put to her.

PW4 Azizul Hoque alias Azizul stated in the same line of PWs 1-3 as to the marriage of the victim and gift paid by the informant at the time solemnizing the marriage. He further stated that 2 years ago the accused persons throttled the victim to death and suspended dead body on a mango tree with rope and published that the victim committed suicide. He received the information over a call through mobile phone and went to the place of occurrence and found the

dead body of victim. In the autopsy report it has come out that the victim was throttled to death. In cross-examination by the defence he stated that they went to the house of the accused at about 5:00 am and found the dead body in the verandah of the accused. He could not say who took the dead body to the verandah. He did not witness throttling the victim to death and suspending her body on the tree. He denied the defence suggestion that nobody told him that the victim was killed and thereafter her body was suspended. He denied all other material suggestions put to him.

PW5 Md. Sahabul Islam alias Sahabul, a neighbour of the accused and a *matubbor* in the area stated that his house was situated after 2 houses of the accused. After performing the *fazr* prayer Milon, a cousin of accused Azad, went to the tube well for ablution/wudu and found the victim hanging on a mango tree with a rope. He made hue and cry. The informant was in the house of the accused at that time. Hearing alarm he (PW5) rushed to the occurrence house and found victim's dead body lying in the verandah. He was a witness of the inquest exhibit-2. At this stage, he was declared hostile by the prosecution and cross-examined in

which he denied the fact that his house was situated within 15 yards of the accused's house. Before the marriage, accused Azad had a *cutcha* house/shanty. His father-in-law built a semi-pucca house for him. He denied the suggestion put by the prosecution that accused used to demand dowry from the victim. He further denied that at the occurrence night the accused throttled the victim to death or that he did not see the victim hanging on the mango tree or the victim's father was in accused's house in the occurrence night. He denied of deposing falsely only to save the accused persons. He stated that did not witness the occurrence of death of the victim. In cross-examination by the defence, he stated that he was the *matubbor* of the village. Hearing alarm he rushed to the occurrence house. He did not find the dead body hanging. He heard that Milon, accused and informant brought down the dead body from the tree. Nobody told him that the body of the victim was suspended after committing murder. He talked to the accused after taking place the occurrence. He took tea with the informant before the day of occurrence. The demand of dowry by the accused is baseless.

PW6 Md. Abul Kalam Azad, a member of the local Union Parishad, stated that in the month of May 2016 the victim died in the house of the accused. He found the dead body in the accused's house. Somebody told that the accused had tortured the victim resulting in her death and somebody told that she had committed suicide. Police came, held inquest and took his signature on exhibit-2. The neighbours informed him that the accused persons killed the victim for dowry. He came to learn about the killing on receipt of the autopsy report. In cross-examination by the defence, he stated that after saying *fazr* prayer, he went to the accused's house and saw victim's body in their verandah. He could not say who brought the dead body there. He did not hear that the victim committed suicide by hanging on the mango tree. He further denied that men came there told him that the victim committed suicide. He denied of deposing falsely at the instruction of the informant.

PW7 Md. Tarik Ali alias Tarik, a neighbour of the accused stated that the victim died in the house of the accused. In the morning he went to the accused's house and saw the dead body of victim. He heard that the victim

committed suicide. At this stage, the prosecution declared him hostile and cross-examined to which he stated that police seized the rope in his presence and took his signature. He proved the seizure exhibit-3. His house was situated 2 or 3 houses away from the occurrence house. Accused Azad was his classmate. He denied the suggestions of the prosecution that in the place of occurrence he heard that the accused persons assaulted the victim resulting in her death. He further denied that he deposed only to save accused Azad. In cross-examination by the defence he stated that he found the dead body on a mat in the verandah. He did not find rope twisted around the neck of victim. He did not know how victim was killed. He found father of the victim in the place of occurrence. He took tea with the father of the victim on the previous day of occurrence. He (PW1) told him PW(7) that he will stay in the accused's house at night. The men came to the occurrence house told him that the victim committed suicide.

PW8 Hahsem Ali, relative of accused Azad stated that he heard 2-3 years ago that Sadek Ali's daughter-in-law committed suicide. He went to the occurrence house and

found the dead body of victim. He could not remember the name of the victim. At this stage, the prosecution declared him hostile and cross-examined to which he stated that he had no personal knowledge about victim's death. He denied the suggestions of the prosecution that the accused persons killed the victim or he did not hear that the victim committed suicide. He denied that as they were men from same society and he deposed falsely to save the accused. In cross-examination by the defence he stated that at about 7:00 am he went to the house of the accused and found both the parties crying. The accused persons never demanded dowry to victim. He went to the place of occurrence and heard that the victim committed suicide.

PW9 Md. Babul alias Bablu, was a witness to the inquest. In his presence police held inquest, prepared a report and he put his signature on exhibit-2. In cross-examination by the defence he stated that he put his signature in the report after its preparation. He heard that the victim committed suicide.

PW10 Md. Ashraful Hassan Anjan, a Medical Officer who was posted to Kushtia Sadar Hospital at the material

time, stated that at about 12:30 hours on 19.05.2016 he held the autopsy on dead body in presence of Dr. Nazma Khatun and Dr. Taposh Kumar Sarker and found the following injuries-

1. One circular bruising found in front of the neck which extended up to the back of the neck at level of cricoid cartilage measuring $\frac{1}{2}$ cm. 1 in diameter.
2. Bruise over both arms.
3. Bruise over the left forehead, size 1 cm. in diameter.

Findings-Lung trachea was congested.

Opinion-The cause of death was due to asphyxia as a result of strangulation which was ante mortem and homicidal in nature.

He proved the autopsy report exhibit-4 and identified his signature therein as well as the signatures of other 2 members of the board. In cross-examination by the defence he stated that he found one injury on the throat of the victim and one injury in each arm and one on the left side of forehead. The injury on the throat was the cause of death due to asphyxia. If a person is suspended after his death there would be two injuries. At time of holding autopsy they had

considered the inquest report. They did not find any sign of hanging on the throat of the victim. He denied that the inquest report is contradictory to the autopsy report. He further denied that the victim committed suicide.

PW. 11 Md. Rashedul Alam, an SI of police posted to Mirpur police station at the material time, stated that as an SI he with his force went to the occurrence house at about 17:45 hours on 18.05.2016. He held inquest of the dead body on the basis of UD case and prepared a report exhibit-2. In cross-examination by the defence he stated that he found ligature mark on the throat of victim. He did not find any injury on the head and arms of the victim. Primarily he thought that the victim committed suicide.

PW12 Mujibur Rahman alias Mojibur Rahman, an SI of police who accompanied PW11 to the occurrence house was a witness to the seizure of the wearing apparel of the victim. He proved the seizure exhibit-5 and identified his signature thereon. He also identified the *alamots* material exhibits-I and II. The defence declined to cross-examine him.

PW13 Md. Aktaruzzaman was a Police Inspector who was posted to Mirpur police station within the Kushtia District at the material time and the Investigating Officer (IO) of the case. He stated that he visited the place of occurrence, prepared sketch map and index, recorded the statements of witnesses under section 161 of the Code, examined the record of UD case, collected the inquest report and autopsy report, arrested the accused, took him on remand and interrogated him. In the investigation he found the offence against the accused *prima facie* to be true and submitted a charge sheet on 16.10.2016 against the accused. He proved the sketch map and index exhibit-6 series. In cross-examination by the defence he stated that in the inquest it has been stated that the victim committed suicide. He found the mango tree at the western side of the occurrence house. He did not see any ligature mark. He did not see the victim but he examined the autopsy report. The house of the informant was situated 4-5 kilometer away from the house of occurrence. The victim was married off to accused Azad 2 years ago. He failed to remember whether the occurrence took place in the month of *Ramadan*. The relatives of the

victim came to see the dead body after 4-5 hours of her death. He denied the defence suggestion that the men of the accused's house went on sleep after taking *sahari* and then the victim committed suicide by hanging.

After conclusion of examination of the prosecution witnesses, the learned Judge of the Tribunal examined the accused persons under 342 of the Code to which they reiterated their innocence and prayed for justice.

However, the learned Judge of the Tribunal in evidence found the condemned-prisoner guilty of offence under section 11(Ka) of the Ain, 2000 and sentenced him thereunder to death with fine of Taka 1,00,000/- but acquitted other 2 co-accused from the charges levelled against them.

Mr. Mohammad Imam Hossain, learned Deputy Attorney General takes us through the materials on record and submits that admittedly the victim died in the house of her husband, the condemned-prisoner at about 3:00-4:00 am on 18.05.2016. The defence did not claim that the condemned-prisoner was not in the occurrence house in the

occurrence night. By cross-examining the prosecution witnesses the defence tried to establish that the victim committed suicide by hanging on the branch of a mango tree with rope which was about 10-15 cubits away from the house. The defence tried to establish that one Milon, cousin of the condemned-prisoner, brought down the suspended dead body from the mango tree but failed to prove it. As per the evidence of witnesses everybody who rushed to the place of occurrence house immediately after receiving the news of death of the victim found the dead body in the verandah of the accused's house and as per other version in the yard. In the inquest exhibit-2, PW11 SI of police found injury-'deep' crescenting mark under the skin of throat. In the *postmortem* examination report exhibit-4, PW10 Dr. Ashraful Hasan Anjan found one circular bruising mark in front of the neck extended up to the back of neck at the level of cricoid cartilage measuring $\frac{1}{2}$ cm. in diameter. During holding autopsy the doctor further found bruising over both the arms and one circular bruising over left side of forehead, measuring 1 cm. in diameter. Mr. Hossain pointed an image downloaded from internet to show the position of cricoid

cartilage of human body and submits that its position is under the thyroid cartilage, larynxes and hyoid bone. In case of suicidal hanging the ligature mark would be above thyroid cartilage and mark would be upward direction but here the ligature mark is found round around the neck at the level of cricoid cartilage. The above ligature mark is clear proof of strangulation. The other injuries on victim's body proves that before strangulating her to death she was assaulted. He then refers to the cases of Syed Nurul Azim Babar vs. State, 14 BLC (AD) 161 and Sheikh Muksed Ali vs. The State, 10 MLR (AD) 27 and relying on the principle laid therein submits that in this case explanation of husband that the victim committed suicide has been proved false in the evidence of expert, PW10 doctor and the *post mortem* report exhibit-4. If inquest exhibit-2 is found contradictory to the autopsy report exhibit-4, the autopsy shall prevail. Injury number 1 found on victim's throat is homicidal in nature and the doctor passed opinion that the death was due to asphyxia as a result of strangulation which was ante mortem. In view of the above position of fact and law the Tribunal rightly held that condemned-prisoner is the killer of victim Tuli and

sentenced him to death which may not be interfered with by this Court. The reference, therefore, would be accepted and the appeal be dismissed.

Mr. Zulfikar Motin, learned Advocate for the appellant on the other hand submits that the judgment and order of conviction and sentence passed by the learned Judge of the Tribunal is not sustainable in law. He takes us through the evidence of witnesses, the UD case and other materials on record and submits that in the UD case the informant did not bring any specific allegation against the condemned-prisoner or his parents of demanding dowry to the victim. The death of her daughter was stated in the UD case as suicidal. But subsequently on receipt of the autopsy report they have planted the case against the condemned-prisoner that he demanded dowry to the victim and killed her for its nonpayment. He takes us through the evidence of PWs 5, 7 and 8 and submits that the evidence of aforesaid witnesses proves that the informant was in the house of condemned-prisoner on the night of occurrence. If the condemned-prisoner assaulted the victim and thereafter killed her by strangulation, he would have knowledge about the cause of

victim's death and lodged the FIR at the earliest opportunity but he did not do so. It is almost impossible for the accused to kill the victim at the time and date of occurrence in their house in presence of the informant. Moreover, the aforesaid witnesses proved that the victim committed suicide by hanging and Milon brought down the dead body of victim from mango tree. He then submits that the prosecution failed to prove the minimum requirements on their part that the condemned-prisoner was in the occurrence house on the fateful night. The defence has been able to make out a definite case by cross-examining almost all the prosecution witnesses in the similar line that the victim committed suicide by hanging. Apart from that PW11 who held inquest on the corpse found only one external injury on the throat of the victim and it has been stated there that he came to learn from the neighbours and men came there that the victim committed suicide by hanging. Mr. Motin then refers to the cases of the State vs. Md. Akinur Rahman alias Akibul, 19 BLT 406; Abdul Mannan alias Mona Miah vs. State, 58 DLR 91 and Abu Taher vs. the State, 10 MLR 282 and relied on the *ratio* laid therein as to the minimum requirement of the

prosecution in a case where allegation against husband has been brought of killing his wife. He then refers to the case of State vs. Monu Miah and others, 54 DLR (AD) 60 and Shahid Mia and another vs. State and another, 60 DLR 371 and relied on the principles laid therein that the condemned-prisoner was not examined under section 342 of the Code properly by bringing into his knowledge all the incriminating evidence available on the record against him and the appellant would get its benefit because he has been seriously prejudiced for it. In the last fold of argument Mr. Motin refers to the case of Nazrul Islam (Md) vs. the State, 66 DLR (AD) 199 and submits that in spite of the aforesaid position of evidence, if this Court finds the condemned-prisoner guilty of the offence of murder in that case his sentence of death may be commuted to imprisonment for life considering his period of custody and that he remained in the condemned cell for more than 7 years.

We have considered the submissions of the learned Deputy Attorney General, the learned Advocate for the appellant, gone through the evidence both oral and documentary and *ratio* of the cases cited by the parties.

To prove the charge of wife killing for demand of dowry, the prosecution in all examined 13 witnesses out of 16 cited in the charge sheet. Out of them PW 5 Md. Shahabul Islam, PW 7 Md. Tarik Ali alias Tarik and PW 8 Hasem Ali were declared hostile by the prosecution and cross-examined by both the parties. PWs 1-9 are public witnesses and PWs 10-13 are formal witnesses. PW10 Dr. Md. Ashraful Hasan Anjan, is a doctor who held postmortem examination of the deceased and submitted the report exhibit-4. PW11 Md. Rashadul Alam an SI of police held inquest on the dead body and prepared a report exhibit-2. PW 12 Mojibur Rahman alias Mojibur Rahman another SI of police was a witness to the seizure and PW 13 Md. Akteruzzaman a Police Inspector was the IO.

It is admitted fact that the victim faced unnatural death in the house of the condemned-prisoner. In the UD case although the information stated nothing about the demand of dowry but he suspected the death of the victim stating that “এই মৃত্যু সংক্রান্তে আমার এবং আমার পরিবারের লোকজনের যথেষ্ট সন্দেহ রহিয়াছে।” Police held inquest and send the dead body to the morgue for holding autopsy and finally the autopsy was

done. In the autopsy, the doctor found 3 injuries on the person of the victim which were (i) on the throat of the victim described as-one circular bruising mark in front of the neck extended up to the back of neck at level of cricoid cartilage measuring $\frac{1}{2}$ cm. in diameter; (ii) bruising over both arm and (iii) a circular bruising over left side of forehead measuring 1 cm. in diameter. The reason of death of the victim as it appears in exhibit-4 corroborated by PW10, the doctor was due and asphyxia as a result of strangulation which was *ante mortem* and homicidal in nature. As per the opinion of the doctor, the victim was strangled to death. The defence case as it appears in the cross-examination of the prosecution witnesses, is that the victim committed suicide by hanging. But the ligature mark on victim's throat is found round around the neck which is mostly common in the cases of strangulation. Although police found in the inquest the mark in the throat as crescentic but if any conflict is found between inquest report and autopsy report, the opinion passed by the doctor in the necropsy report supported by oral evidence of the doctor shall prevail. The *ratio* of the cases as referred to by the learned Deputy

Attorney General reported in 14 BLC (AD) 161 and 10 MLR (AD) 27 is found befitting here. Because the opinion passed by an expert is admissible in evidence under section 45 of the Evidence Act. But the opinion passed by a doctor is not a gospel truth or sacrosanct, it can be examined by the Court with other evidence and materials on record. Here, the ligature mark on victim's throat is found round around the neck at the cricoid cartilage area which is below the thyroid cartilage as well as hyoid bone and epiglottis. If the victim hanged herself from the branch of tree to commit suicide either by rope or by any other materials, the ligature mark would be above thyroid cartilage region and near to the hyoid bone. It would be upward direction because the whole body remained suspended on the rope or other articles used in hanging. But here, as per medical jurisprudence nothing is found to suspect that this is a case of hanging. Modi's medical jurisprudence (27 edition page 586) shows the differences found in dead body between hanging and strangulation. There at serial number 6, we find symptom of ligature mark which supports this case is of strangulation as opined by the doctor. The other three injuries found on the

body of the victim i.e., two bruises in two arms and another bruise on the forehead of the victim proves that before strangulated her to death she was physically assaulted.

It is further found that after the death of victim on 18.05.2016, her relatives and neighbours rushed to the occurrence house but nobody saw the condemned-prisoner present there. She remained absconding and police arrested him on 20.07.2016 which proves his guilty mind. The cases as referred to by Mr. Motin in support of his argument as to the requirement of the prosecution to prove the presence of the condemned-prisoner in the occurrence house at the time of occurrence and he was not examined by the learned Judge as per the provisions of section 342 of the Code shall not apply in this case considering the facts and circumstances upon which the *ratio* have been laid. The evidence of hostile witnesses PWs 5, 7 and 8 is no way helps the defence because none of them had seen the victim hanging on the mango tree. This is a case of pure strangulation nothing else.

But we find that the prosecution failed to prove by evidence that the condemned-prisoner demanded dowry from the victim and killed her for its nonpayment. In the UD case,

the informant did not bring any specific allegation of demanding dowry but subsequently he claimed it in the FIR as well as in his evidence which appears afterthought and embellishment. If the charge under section 11(Ka) of the Ain, 2000 is not proved, the conviction and sentence passed under it cannot be maintained. But in this case, we find that the prosecution has been able to prove that the condemned-prisoner assaulted the victim and thereafter strangled her to death. The circumstances as well as the medical evidence unequivocally proves that the condemned-prisoner murdered the victim. Therefore, the conviction under section 11(Ka) is to be converted into section 302 of the Penal Code and he be sentenced thereunder as permitted by law. [reliance placed on *The State vs. Nurul Amin Baitha*, 75 DLR (AD) 187].

We find that the condemned-prisoner was in jail during trial for 1 ½ year and after delivery of the impugned judgment he is in death cell for 7 years and 2 months. His previous conduct and previous record do not show that he is a hardened criminal. In view of the above position, we can safely relay on the *ratio* laid the cases of *Nalu vs. the State*, 17 BLC (AD) 204 and *Nazrul Islam vs. the State*, 66 DLR

(AD) 199 to commute his sentence of death to imprisonment for life.

In the result, 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 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 3(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.