

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. 50 of 2019

The State ...petitioner
-Versus-
Chunnu Mural and others
...condemned-prisoners

with

Criminal Appeal No. 5243 of 2019

Selim Chowkider ...convict-appellant
-Versus-
The State ...respondent

with

Criminal Miscellaneous No. 14480 of 2020

Chunnu Mural and 2 others ...convict-applicants
-Versus-
The State ...respondent

with

Jail Appeal No. 129 of 2019

Swapna Begum ...convict-appellant
-Versus-
The State ...respondent

with

Jail Appeal No. 130 of 2019

Selim Chowkider ...convict-appellant
-Versus-
The State ...respondent

with
Jail Appeal No. 131 of 2019

Chunnu Mural ...convict-appellant
-Versus-
The State ...respondent

and
Jail Appeal No. 132 of 2019

Nuru Mural ...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. S.M. Shahjahan, Senior Advocate with
Mrs. Jahanara Sarker and
Mrs. Nargish Akter, Advocates

...for the condemned prisoners
(appellants and petitioners in the miscellaneous case)

Heard on: 01.07.2026 and 05.07.2026

Judgment on 06.07.2026

K.M. Rasheduzzaman Raja, J:

This reference under section 374 of the Code of Criminal
Procedure, hereinafter ‘the Code’, is for confirmation of death

sentence awarded upon condemned prisoners Chunnu Mural, Nuru Mural, Selim Chowkider and Swapna Begum by the learned Judge, Nari-o-Shishu Nirjatan Daman Tribunal, Shariatpur, hereinafter 'the Tribunal' by the judgment and order dated 07.05.2019 passed in Nari-o-Shishu Nirjatan Case No. 73 of 2018 corresponding to G.R. No. 137 of 2017 arising out of Jajira P.S. Case No. 13 dated 14.09.2017. The condemned-prisoner Md. Selim Chowkider has filed Criminal Appeal No. 5243 of 2019 and with convicts Nuru Mural, Chunnu Mural and Swapna Begum filed Criminal Miscellaneous Case No. 14480 of 2020 and the convicts also filed Jail Appeal Nos. 129 of 2019, 130 of 2019, 131 of 2019 and 132 of 2019. Since all the matters arose out of the same judgment and order therefore, hearing all the matters together we are going to dispose of the same by this judgment.

The prosecution case, in short, is that 13 years old deceased Rima Akter, daughter of P.W. 1 Elias Chokdar, had habit of chewing betel leaf and used to visit the house of condemned prisoner neighbour Swapna Begum, 2nd wife of condemned prisoner Chunnu Mural, to have betel leaf. Rima

Akter while passing the house of condemned prisoner Nuru Mural occasionally witnessed anti-social activities of Nuru Mural and his cohorts in his house. Therefore, they became angry with deceased Rima Akter. P.W. 1 Elias Chokdar upon found his daughter Rima Akter absent at 7.00 p.m. on 11.09.2017 started looking for her in the houses of his relatives but found her nowhere. Subsequently, the dead body of Rima Akter with decomposing stink was found at 4.30 p.m. on 13.09.2017 in the *Viti* (vacant homestead) of Khukan Hawlader at Nawdoba Mujib Hawladerkandi village. A *gamcha* was found fastening around the neck of Rima Akter and stab injuries were also found on her chest and abdominal area causing evisceration. Upon found the decomposing state of the dead body P.W. 1 Md. Elias Chokdar, the informant, doubted that his daughter was killed within the period of 7.00 p.m. on 11.09.2017 to 5.00 a.m. on 12.09.2017. On such occurrence P.W. 1 Md. Elias Chokdar lodged FIR with Jajira Police Station, Shariatpur. Upon such FIR Jajira Police Station Case No. 13 dated 14.09.2017 was registered.

Police submitted a charge-sheet against the accused persons along with a supplementary charge sheet under sections 9(3) and 30 of the Nari o Shishu Nirjatan Daman Ain, 2000, herein after 'the Ain', read with sections 302, 201 and 34 of the Penal Code. Learned Magistrate receiving the charge-sheets sent the case record to the Nari-o-Shishu Nirjatan Daman Tribunal, Shariatpur for holding trial.

Learned Judge of the Tribunal took cognizance of the offence and started Nari-o-Shishu Case No. 73 of 2018. Learned Judge of the Tribunal framed charges against the condemned prisoners under sections 9(3) and 30 of the Ain read with sections 302, 201 and 34 of the Penal Code and explained and read over the same before the accused persons to which they pleaded not guilty and demanded the trial.

The prosecution adduced 14 witnesses to bring home the charge brought against the accused persons and after recording of the evidences of the witnesses of the prosecution the learned Judge of the Tribunal examined the accused persons under section 342 of the Code whereupon they again claimed their

innocence and expressed their desire not to adduce any counter evidence.

The defence case as transpires from the trend of cross-examination of the prosecution witnesses (P.Ws.) is nothing but mere innocence. No specific defence case has been curved out by the condemned prisoners at the trial.

On consideration of the depositions of the witnesses of the prosecution and the relevant submissions of the both sides learned Judge of the Tribunal awarded death sentence upon the condemned prisoners by the impugned judgment and order and referred the same to this Division for confirmation of the sentence.

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 14 witnesses before the Tribunal to prove the case. There are also confessional statements of condemned prisoners Chunnu Mural, Nuru Mural and Swapna Begum recorded under section 164 of the Code by the Magistrate. The learned recording Magistrate P.W. 12 Sheikh Md. Mujahid-ul-Islam has also appeared before

the court and deposed in support of recording of the confessional statements of the accused persons. Although the prosecution witnesses did not depose up to expectation due to fear of the cohorts of the accused persons but since the confessional statements of the three accused persons were voluntary and true and those are corroborative to each other, therefore, the Judge of the Tribunal relied on those confessions along with other circumstantial evidence in awarding conviction and sentence upon the condemned prisoners. The condemned prisoners were duly examined under section 342 of the Code after recording of evidence of the witnesses of the prosecution. The evidence on record and the confessions of the condemned prisoners support that the accused persons abetted each other to commit rape on the deceased resulting in her subsequent death. Since the prosecution has succeeded in proving the charge brought against the condemned prisoners by evidence, both direct and circumstantial, therefore, the reference should be accepted, the appeals filed by the condemned prisoners should be dismissed and the Rule issued in the miscellaneous case should be discharged. Mr. Kabir has relied on the principles laid

down in the cases of Shukur Ali (Md) and another Vs. State, 74 DLR (AD) 11; State and another Vs. Abdul Kader @ Mobile Kader and others, 67 DLR (AD) 6; Abul Kashem & another Vs. The State, 42 DLR 378; State Vs. Md Zakir Hossain, 23 BLC (AD) 150; Abdul Hakim @ Henju and others Vs. State, 8 BLC 362; Abdul Mannan Bhuiyan Vs. The State, 7 ADC 427 and The State Vs. Md Moinul Haque and others, 21 BLD (HCD) 465

On the other hand, Mr. S.M. Shahjahan, learned Senior Advocate, opposes the reference and supports the appeals and Rules issued in the miscellaneous case submitting that the accused were not FIR named. There is no eyewitness of the occurrence. The confessional statements of the accused persons were not recorded by the learned Magistrate following the provisions of law. Confessions of the accused persons are not evidence under section 3 of the Evidence Act. Confessions of Selim Chowkider and Swapna Begum are exculpatory and, therefore, relying on those confessions they cannot be treated as abettors under section 30 of the Ain. The condemned prisoners have retracted their confessions within the shortest possible

time. Such confession can no way be the basis of conviction and sentence. The Investigating Officer (I.O.) committed error in recording statements of the accused persons under section 161 of the Code making their confessions not reliable. Since, no sign of rape was found on the body of the deceased according to autopsy report, therefore, the confessions of the accused persons cannot be treated to be true. P.W. 13 Md. Shah Alam Khan, the I.O., has stated that he was present in the Court at the time of recording of confessions of the condemned prisoners and, therefore, those were not voluntary. Mr. Shahjahan relied on the *ratios* of the cases of Abdul Malik & ors. Vs. State, 36 DLR 275; Md. Rezaul Karim alias Rezaul Aalm Rikshawa Vs. The State, 23 BLD (HCD) 255; The State Vs. Md. Ali Kibria @ Shahjahan, 43 DLR 512; Lutfun Nahar Begum Vs. The State, 27 DLR (AD) 29 and The State Vs. Mukhtar Ali and another, 10 DLR 155.

Let us examine the some and substances of the evidence of the witnesses of the prosecution and submissions of the learned Advocates of the both sides to determine the

sustainability of the conviction and sentence awarded by the learned Judge of the Tribunal upon the condemned prisoners.

P.W. 1 Elias Chokdar, the informant, has deposed that victim Rima was his daughter. Upon found his daughter missing 14 months ago he started looking for her. From the rumour he came to know that a dead body was lying on the *Viti* of Hawlader and going there he found decomposed dead body of his daughter and became fainted. The local people recovered him and on the next day he lodged FIR with Police Station without mentioning anyone as the accused persons. Police visited the place of occurrence, seized *alamot* preparing a seizure list with his signaturer. He has marked the seizure list and the seized *alamot* as exhibits.

In cross-examination he has stated that his daughter Rima Akter was unmarried. The FIR was not read over to him. He signed the FIR being instructed. He knows accused Nuru, Swapna and Chunnu but they are not involved with the occurrence and he has no allegation against them. His daughter used to live uncontrolled life a little bit and still now he does not

know who killed his daughter and how. He has further stated that he has no objection if the accused persons are acquitted.

P.W. 2 Nargis Akter, mother of deceased Rima Akter, has deposed in the same way as her husband P.W. 1 has deposed. In cross-examination she has stated that her daughter had uncontrolled life style and they tried to make her understand. Her husband knows nothing about the occurrence of the case. She has stated that the accused persons are not involved with the killing of her daughter and she has no objection if they get acquittal.

P.W. 3 Sikander Sheikh has deposed that one year ago he heard that Rima Akter was killed and her dead body was left in the *Viti* of Hawlader. He does not know who killed the deceased. In cross-examination he has stated that Chunnu, Nuru, Swapna and Selim are good people of the locality and there is no evidence regarding involvement of the accused persons with this killing.

P.W. 4 Md. Tayem Bepary has deposed that the occurrence took place 14 months ago and Rima Akter was the victim. He came to know in the afternoon that a dead body was

found and he went to see the dead body. He does not know who killed the deceased. In cross-examination he has stated that the deceased was at the age of marriage and she used to live an uncontrolled life. He along with the parents of the deceased used to advice her to live modest life. There is no connection of missing or subsequent killing of the deceased with the accused persons. The accused persons are not involved with the occurrence.

P.W. 5 Md. Isahak Chokdar has deposed that upon found the dead body of Rima Akter 12/13 months ago he informed the police. He does not know who killed the deceased. In cross-examination he has stated that several people appeared near the dead body but none of them suspected the accused persons, the condemned prisoners. The accused persons are good people of the locality. He never heard their involvement with the killing of the deceased.

P.W. 6 Shukur Dhali has deposed that he knows nothing about this case. Rima Akter was missing and subsequently he came to know that her dead body was found in the field of Hawlader. In cross-examination he has stated that Rima had an

unruly life and did not live with modesty. She did not care anyone. He did not hear anything about involvement of the accused persons with the killing of the deceased. The accused persons have no bad record in the locality. The accused persons had no relation with deceased Rima.

P.W. 7 Shahin Fakir has deposed that hearing the dead body of Rima lying in the *Viti* of Hawlader he went there. Police appeared and held inquest over the dead body and prepared report with his signature. He has marked the inquest report and his signature thereon as exhibits. In cross-examination he has stated that the accused persons were good people but the deceased Rima was unruly. He never heard about involvement of the accused persons with the killing of deceased Rima.

P.W. 8 Saleha was tendered but the defence declined to put her under cross-examination.

P.W. 9 Md. Suruj Miah alias Suruj Khalifa has deposed that he knows nothing about the occurrence. The defence declined to put him under cross-examination.

P.W. 10 Md. Mojibar Mollah has deposed that he knows the accused persons and came to know that the dead body of Rima was lying in the *Viti* of Hawlader and going there he saw the dead body. In cross-examination he has stated that Rima used to live a little bit unruly life. The accused persons are very good people and they are not involved with the occurrence.

P.W. 11 Dr. Sheikh Md. Ehsanul Islam has deposed that he held autopsy on the dead body of Rima Akter on 13.09.2017. The dead body was decomposed partly. He kept the opinion pending for viscera report and prepared final report on 22.01.2018 upon receiving the viscera report opining that cause of death of the deceased was due to hemorrhage and shock as a result of cumulative effect of mentioned injuries which was antemortem and homicidal in nature. He has marked the post mortem report and his signatures thereon as exhibits. In cross-examination he has stated that there is no evidence about committing rape on the deceased or making any attempt of rape on her. He found three injuries on the dead body but could not determine the cause of death initially. No poison was found in

the viscera of the dead body. He has opined that the victim died as a result of cumulative effect of the said three injuries.

P.W. 12 Sheikh Md. Mujahid-ul-Islam, the Additional Chief Judicial Magistrate, Shariatpur has deposed that he recorded statements of witness Jotysna Begum on 18.09.2017, confessions of accused Nuru Mural on 17.09.2017, accused Selim Chowkider on 16.09.2017 and accused Swapna Begum on 18.09.2017 under section 164 of the Code giving them sufficient time for deliberation. He put relevant questions as mentioned in column 6 of the form to the accused persons and he has recorded their voluntary confessions. He has marked the confessional statements and his signatures thereon as exhibits.

In cross-examination he has stated that the accused persons voluntarily confessed before him. He read over their statements to them. But he did not give a note to that defect. He has however denied that the confessional statements were not made voluntarily. He found no injury mark on the body of the accused persons. He signed in the last page of the additional papers of the confessions although he did not sign in the first page. He did not give notes regarding reading over the

statements to the accused persons. He recorded the confessional statements of the accused persons inside his *khas kamra* (personal chamber) keeping the door closed. He has denied that police officer was standing on the door of his chamber when the statements of the accused persons were recorded.

P.W. 13 P.S.I. Md. Shah Alam Khan, the 1st I.O., has deposed that the Officer-in-Charge entrusted him with the charge of investigation of the case on 14.09.2017. Receiving the charge of investigation, he visited the place of occurrence, prepared sketch-map with index, held inquest over the dead body and prepared a report in presence of the witnesses, sent the dead body for holding autopsy, collected the autopsy report, arrested accused Nuru Mural who along with his sister-in-law Swapna gave confessional statements. He arrested accused Selim who also gave confessional statements. He got statements of witness Jotysna recorded under section 164 of the Code. He handed over the charge of investigation after his order of transfer. He has marked the sketch-map with index, inquest report and his signatures thereon as exhibits. In cross-examination he has stated that he did not find any *alamot* of

rape on the body of deceased Rima. He did not get any information that deceased Rima used to live unrestrained life or mix with other male persons. He recorded statements of the accused persons under section 161 of the Code and, thereafter, forwarded them to the Magistrate for recording their statements under section 164 of the Code. When the learned Magistrate recorded statements of the accused he was present in court. He has denied that upon found no evidence against the accused persons he extracted confessional statements from the accused persons putting them under fear or submitted a charge-sheet against them being influenced by the informant.

P.W. 14 Md. Nasir Uddin Sheikh, the 2nd I.O., has deposed that he received the charge of investigation on 25.12.2017. After investigation he submitted charge-sheet against the accused persons. In cross-examination he has stated that condemned prisoner Chunnu Mural did not give any confessional statement. There was no evidence in the inquest report that the deceased was raped. He did not try to match the DNA of the accused persons with that of the victim. He did not arrange any other medical examination to determine the

commission of rape on the deceased. He has denied that without having any material evidence he has submitted false charge-sheet against the accused persons being influenced by the previous I.O.

On perusal of the above depositions of the witnesses of the prosecution it appears that all of them have deposed supporting that the dead body of the deceased was found in the *Viti* of Hawlader. Although the prosecution witnesses did not see who killed the deceased i.e. no eyewitness but condemned prisoners Nuru Mural, Selim Chowkider and Swapna Begum made confessional statements before Magistrate P.W. 12 Sheikh Md. Mujahid-ul Islam.

It appears in the FIR form that there none was named as accused. But in it's content it has been asserted, among others, that the local wayward stalkers including accused Nuru Mural used to hang out in the house of accused Swapna Begum, 2nd wife of accused Chunnu Mural. Accused Swapna Begum used to call victim Rima to have betel leaf at her house. Accused Nuru Mural became angry on Rima as she witnessed their anti-social activities. Victim Rima was missing since 7.00 p.m. on

11-09-2017 and her decomposed dead body was recovered from the *viti* of Hawlader at around 4.30 p.m. on 13-09-2017. The informant doubted that the victim was killed between 7.00 p.m. on 11-09-2017 to 5.00 a.m on 12-05-2017.

Although the accused are not FIR named but they are under suspect of the informant and the investigation ended in submission of charge-sheet against them. If the informant suspects someone to be involved with the occurrence describing his ground of suspicion in the FIR, then mere non-mentioning of his name in the column of the FIR cannot be treated to be less significant than mentioning his name in the FIR. Culpability of an accused not named in FIR, can be established upon found evidence against him in investigation. Therefore, it cannot be a ground of innocence of any charge-sheeted accused if his name is not found in the FIR form as an accused.

The prosecution witnesses appear to have deviated from the prosecution case as described in the FIR lodged by P.W. 1 Elias Chokdar, father of the deceased. Curiously, the P.Ws., including father and mother of the deceased, are found to have indemnified the accused persons and maligned the victim

herself by casting aspersions on her character. The informant P.W. 1 Elias Chokdar and P.W. 2 Nargis Akter have stated that the accused persons were of good character and their daughter used to live unruly or wayward life. This aspersion on the character of the deceased cast by her parents cannot be their natural depositions. Till their depositions given before the Court after almost 1½ years of the occurrence, they never mentioned about the character either of their daughter or the accused persons at any stage of the investigation especially, when they were interrogated by the I.O.

It is apparent in the statements of witnesses recorded under section 161 of the Code that none of the witnesses disclosed about the good character of the accused persons or bad character of the deceased. Such character assassination of a deceased by the witnesses reasonably indicates that they did not depose naturally in the Court. Rather, it can be sufficiently presumed that they have been gained over or biased in favour of the accused persons either for any material gains or out of fear. The witnesses who did not see the happening of the occurrence cannot exempt the accused persons from the culpability of their

offence just by saying that the accused did not commit the offence or they are not involved with the occurrence. Since the prosecution witnesses did not see who committed the offence, they also cannot say who did not commit it. Such embellished evidence of the P.Ws. being contradictory to their statements made under section 161 of the Code neither can implicate the accused nor can exempt them from the allegations brought against them in this case. Now, only the confessional statements and other circumstantial evidence are remaining there to decide whether the condemned prisoners have committed this heinous offence i.e. killing of the victim after committing rape on her.

In the instant case condemned prisoner Chunnu Mural did not make any confession but he has been made kingpin by the confession makers co-accused in committing the offence. Let us examine the confessional statements of the condemned prisoners Nuru Mural, Selim Chowkider and Swapna Begum and the other circumstantial evidence to understand the innocence or guilt of the condemned prisoners.

Condemned prisoner Nuru Mural was arrested at 17.10 hours on 16-09-2017, taken to Jajira P.S. at 18.10 hours on

16.09.2017 and sent to P.W. 12 Sheikh Md. Mujahi-ul-Islam, for recording his confession on 17.09.2017. It appears in the form of recording the confessional statement that the learned Magistrate P.W. 12 Sheikh Md. Mujahi-ul-Islam put the stipulated questions to him and, thereafter, he started recording his confession where he has stated, among others, that-

“আমি চুন্নু ও রিমা পাশান হাওলাদারের বাড়ির পেছন দিয়ে হাওলাদারের ভিটায় যাওয়ার চেষ্টা করি। হাওলাদারের ভিটা তার দিয়ে ঘেরা। আমি তার উচু করে ধরি। চুন্নু রিমারে তারের ভিতর উচু করে তুলে ভিটার মাঝ খানে নিয়ে যায়। আমিও সাথে সাথে যাই। মেয়েটা তখন কাপতে ছিল। আমারে চুন্নু বলে যে পায়জামা টানদে। আমি পায়জানা টান দিয়ে আমি কেবল করা গুরুত্ব করেছি। তখন চুন্নু লাথি দিয়ে আমারে সরায় দেয় বলে রাস্তায় যেয়ে দাড়া কেউ আসতেছে কিনা দেখ। আমি কিছুড়ান দাড়ানোর পর চুন্নু আমারে ডাক দেয়। আমারে একটা চাকু দিয়ে বলে যে পাড় (ছুরি ঢুকানো) দে। না হলে বিপদে পড়বি। আমি ছুরিটা রিমার পেটে একটু ঢুকাই মেয়েটার দিকে তাকায় আমি ভয় পেয়ে যাই। এরপর ছুরিটা চুন্নু হাতে নিয়ে আমারে বলে যে, তুই রাস্তায় যেয়ে দাড়া, কেউ আসছে কি না দেখ। আমি রাস্তায় যাই। চুন্নু ওই দিকে ওরে মেরে ভিটার পেছন দিক দিয়ে চলে যায়। ছুরিটা চুন্নুর কাছে ছিল।”

Condemned prisoner Selim Chowkider was arrest at 17.10 hours on 24-09-2017, taken to Jajira P.S. at 11.20 hours on 25-09-2017 and produced before P.W. 12 Sheikh Md. Mujahid-ul Islam for recording his confession on 25-09-2017. On perusal of the form of recording confession it appears that the learned Magistrate put the stipulated questions to the accused person and, thereafter, started recording his confession as well. Selim Chowkider has stated, among others, that-

“গত ১১/০৯/২০১৭ তারিখ সোমবার আসরের নামাজের সময় চুন্মোড়ল আমারে ডাক দিয়ে বলে যে, আমি যেন তার সাথে যাই। এরপর আমি তার সাথে চুন্মুর দ্বিতীয় স্ত্রী স্বপ্নার বাড়িতে যাই। যেয়ে দেখি বড় ঘরটায় মধ্যে চৌকিতে ডান পাশে একটা পম্পাস্টিকের চেয়ারে রিমা বসা। স্বপ্না পাশে বসা। দুই জন পান খাচ্ছে। চুন্মু যেয়ে দুই জনের মাঝে বসেছে। রিমার সাথে শয়তানী করে। রিমার গলা জড়ায়ে ধরে বলে যে সে রিমারে বিয়ে করবে। মোট কথা কাছে ফাজলামি করতে থাকে। আমি চৌকির বাম পাশের কোণায় বসা। ১০/১৫ মিনিট শয়তানী করে স্বপ্নাকে চুন্মু বলে যে বিয়ে বাড়িতে ঘুরে আসতে। স্বপ্না বিয়ে বাড়ির দিকে রওনা দে। আমি স্বপ্নার সাথে যেতে চাইলে চুন্মু নিষেধ করে। আমি বারান্দায় যেয়ে দাড়াই। চুন্মু বলে দাড়াতে। সে বলে যে, সে রিমার ঘরে যাবে। আর আমি যেন তা

বাইরে হতে পাহারা দেই। সে আমাকে হুমকি দেয়। এরপর রিমারে নিয়ে চুল্লি ঘরের দরজা আটকায়। আমি দুই ঘরের মধ্যে দাড়াই ছিলাম। আমি দেখতে থাকি কেউ আসছে নাকি। প্রায় ঘন্টা খানিকের উপরে চুল্লি রিমার সাথে খরাপ কাজ করতে থাকে। আমি রিমার আওয়াজ পাই (আলস্নাহরে বাচাও রে)। আমি জানালা দিয়ে দেখি যে ঘরের ফ্যান ছাড়া। টৌকির কোনাকুনি করে রিমা শুয়া। চাদর কিছু ছিল যা পায়জামা এক পায়ে লাগানো। এরপর প্রায় মাগরিবের সময় স্বপ্না আসে। আমি পেয়ারা গাছের গোড়ায়। স্বপ্না এসে ঘরে ঢুকে। চুল্লি ঘর হতে বের হয়। আমি চলে যাইতে চাই। সে আমাকে বলে যে আমি যদি কাউরে বলি তবে সে আমারে মেরে ফেলবে।”

Condemned prisoner Swapna Begum was arrested at 16.35 hours on 17-09-2017, taken to Jajira P.S. at 17.30 on 17.09.2017 and she was sent to P.W. 12 Sheikh Md. Mujahid-ul Islam for recording her confession on 18.09.2017. It appears in the form of recording the confessional statement that the relevant questions were put to her and thereafter P.W. 12 started recording her statement. She has stated in her confession, among others, that-

“ঘটনার দিন (১১/০৯/১৭) তারিখ এ সকাল ৮টা হতে সাড়ে ৮টার মধ্যে চুল্লি মোড়ল (সর্ব শেষ নম্বর ৩০) আমার নম্বরে (শেষ নম্বর- ৭৫)

ফোন দিয়ে বলে রিমা (victim) কে দুপুরে খাবার খাওয়ার পরে আমার বাসায় পান খাওয়ার জন্য ডাকতে বলে। আমি রাজি হই। সাড়ে ৯ টার দিকে আমি হাটতে হাটতে রিমাদের বাড়ি যাই। রিমা ও রিমার মা বাড়িতে ছিল। আমি বাড়িতে যেয়ে রিমারে বলি যে রিমা আমার বাড়িতে যাইস। এরপর দুপুরে খাবার খাওয়ার পরে একটু (rest) নেই। এর কিছুড়ান পরে। রিমা এসে পান চায়। এরপর রিমা ঘরে বসে পান খেতে থাকে। তার আধা ঘন্টা পরে চুন্স মোড়ল আমারে phone দেয়। বলে, রিমা আসছে নাকি। আমি বলি, হ্যা এসেছে বলে নামাজটা পড়ে আসি। এর কিছু পরে সে নামাজ পড়ে। আমার ঘরে আসে। তখন চুন্সর সাথে আসে ভ্যান চালক সেলিম। চুন্স আমারে বলে যে, তুই জব্বারের বিয়ে বাড়িতে যাইস। আমি বলি যে রিমাতো ঘরে। তখন চুন্স আমারে ধমক দেয়। আমি জব্বারের বাড়িতে চলে যাই। আমি বুঝতে পারি যে চুন্স ও সেলিম রিমারে ধর্ষণ করে। আমি মাগরিবের সময় আসি। আমি দরজা খুলতে বলি। চুন্স দরজা খুলে দেয়। দেখি রিমা শোয়া, আর সেলিম পাশে বসা। এরপর দেখি রিমা একটু অসুস্থ। আমি চুন্স মোড়ল সেলিম রিমারে ধরে পাশের রান্না ঘরে নিয়ে যাই। রিমা অসুস্থ ভাব বুঝতে পারি। এরপর চুন্স মোড়ল ও সেলিম আমার ঘর হতে বের হয়ে যায়। রিমার মা তার একটু পরে এসে আমার কাছে রিমার কথা জিজ্ঞাসা করে যে রিমা কোথায়। আমি বলি যে রিমা আমার কাছে আসে চলে গেছে। এরপর এশার নামাজের

পরে চুন্ম মোড়ল, নুরম মোড়লকে সাথে করে নিয়ে আসে। আমি ঘরের মধ্যে ছিলাম। দেখি চুন্ম আর নুরম রিমার দুই হাত কাধের উপরে নিয়ে রান্না ঘর হতে বের হয়ে বাশের ঝাড় এর পাশ দিয়ে মজ্জবের পাশ দিয়ে নিয়ে যাইতে দেখি। আমি প্রচণ্ড ভয় পাই। এরপর আমি জব্বারের বিয়ে বাড়িতে যাই। তার ঘন্টা খানিক পরে চুন্ম phone দেয়। জিজ্ঞাসা করে আমি কোথায়। বলি জব্বারের বাড়ি। এরপর জব্বারের বাড়িতে চুন্ম আসে। আমি জিজ্ঞাসা করলে সে বলে যেন চুপ থাকি। এরপর চুন্ম আসে আমাকে দিয়ে আমার বাড়ি পাঠিয়ে দিল।”

All the confessing condemned prisoners have consistently stated that accused Nuru Mural and Chunnu Mural were involved with the offence of commission of rape on the victim followed by her killing. Out of them condemned prisoner Nuru Mural has stated that he committed rape on the victim at the *viti* of Hawlader where the dead body was found and he inflicted initial stab blow on the abdomen of the deceased at the instance of Chunnu Mural to subvert the imminent danger and condemned prisoner Chunnu Mural inflicted the subsequent stab blows on the victim. Convict Swapna Begum has described the sequence of involvement of Chunnu Mural with the

commission of rape followed by subsequently killing of the victim. She has also given a terrible picture of the character of the condemned prisoner Chunnu Mural, her 2nd husband, quite opposite to the accounts given by the P.Ws.

Although Swapna Begum has suspected the involvement of convict Selim Chowkider in committing rape on the victim but Selim Chowkider did not implicate himself with the commission of offences either of rape or of killing in his confession and he has corroborated convict Nuru Mural as to committing rape on the victim by accused Chunnu Mural. We find no evidence on record in favour of such suspicion of Swapna Begum. The description of the occurrence as the condemned prisoner Nuru Mural has given appears to be natural. The confessions of the condemned prisoners Selim Chowkider and Swapna Begum although appear to be exculpatory but they have supported the involvement of accused Nuru Mural and Chunnu Mural with this heinous offence. Yet, let us determine the status of condemned prisoner Selim Chowkider and Swapna Begum on the basis of their respective confessions.

In the case of State Vs. Zakir Hossain 23 BLC (AD) 150 their Lordships have ruled,

“Only if it can be seen from his action that the confessing accused was at the scene reluctantly or under duress, and he distanced or dissociated himself from the occurrence by, for example, running away from the scene, then the confession may be termed exculpatory.”

It appears in the principle laid down in the case of State Vs. Md. Zakir Hossain (*supra*) that the situation under which condemned prisoner Selim Chowkider was standing guard during the occurrence has saved him from being a maker of inculpatory confession and therefore, neither his confession can be termed inculpatory nor he can be treated as an abettor of the offence on the basis of such confession.

On the other hand, condemned prisoner Swapna Begum was not at home when such heinous offence was taking place at her house. Only by inviting the deceased to her house for having betel leaf without sensing the diabolic design of her husband Chunnu Mural, she cannot throw herself in the arena of

abetment. So, we find no substantial evidence to treat convict Selim Chowkider and Swapna Begum as the abettors of committing offences under section 11(Ka) of the Ain, 2000.

Now, let us determine whether the Magistrate properly recorded the confessions of the condemned prisoners or any of his unjust action made the confessions unreliable. Although P.W. 12 Sheikh Md. Mujahid-ul-Islam has stated in cross-examination that he did not certify the voluntariness and truth of the confessions and he did not give notes about reading over the statements before the accused after recording their confessions but on perusal of the forms whereupon the confessions have been recorded it appears that the learned Magistrate has put the other prescribed questions to them before recording their confessions.

None of the condemned prisoners were taken in police remand before producing them for recording their confessions. They were found to be produced before the Magistrate within 24 hours since their arrest. It is not unusual that while interrogating the accused if the I.O. finds any confession or admission in the statement of the accused then he send the

accused to the Magistrate for recording his confessions. So, mere recording of statements of the accused by the I.O. under section 161 of the Code similar to the confession does not reduce the value of the confession recorded by the Magistrate under section 164 of the Code making it unreliable.

P.W. 13 P.S.I. Md. Shah Alam Khan has stated that he was in Court after sending the accused persons for recording their confessions. But he did not state that he was in the chamber of the Magistrate where the confessions were being recorded. P.W. 12 Sheikh Md. Mujahid-ul-Islam has denied that I.O. was standing on the door of his chamber when he was recording the confessions of the accused.

The I.O. may be remaining in any part of the precinct of the Court after producing the accused before the Magistrate for recording his confession. If the I.O. or any other police officer are not found within the sight of the accused while giving confession or after recording his confession if the accused is not handed over to police again then mere presence of I.O. in the Court premises at the time of recording confession of the

accused does not mean that the accused gives confession out of fear or under duress.

It is admitted that neither in the post-mortem report nor in the inquest report, it has been directly stated that the I.O. or examining doctor found any sign of rape on the deceased but it has been mentioned in the inquest report, Ext.-11, that some red colour liquid were coming out from the vulva of the deceased. Mr. Shahjahan submits that such liquid substance can be produced for menstruation or, he has candidly submitted, it may be a result of some sort of injury. But in a decomposed body the menstrual liquids will not likely to come out. Moreover, menstrual construction as Mr. Shajahan has given is not entertainable on the ground that in such state of a girl the perpetrators are not likely to be engaged.

Although there are some negligence on part of the I.O. in determining the fact of commission of rape such as; obtaining DNA report, but since the confessions support that condemned prisoners Chunnu Mural and Nuru Mural committed rape on the victim, therefore, it can reasonably be presumed that emission of reddish liquid from the vulva of the deceased is nothing but

the result of causing injury thereto which may be caused for committing rape. No other cause for or motive of killing the victim, a minor girl, is found in the case and the defence also did not make out any specific case of their innocence.

In post-report, Ext.-4, it has been mentioned that no sperm was found in the vaginal swab of the deceased. But it is not clear whether the sperm should be present in a half-decomposed body. However, multiple injuries were found on the dead body of the deceased and P.W.11 Dr. Sheikh Md. Ehsanul Islam has opined that the cause of death was due to hemorrhage and shock as a result of cumulative effect of mentioned injuries which was antemortem and homicidal in nature. In the case of The State Vs. Md. Moinul Haque and others 21 BLD 465 this Division held,

“In order to constitute rape mere penetration in the membranous passage for channel leading from uterus to the vulva is sufficient and presence of spermatozoa or even injuries or marks of violence or tearing of hymen is not at all necessary to prove rape.”

In the instant case, the condemned prisoner Selim Chowkider and Swapna Begum have corroborated the commission of rape on the deceased by condemned prisoners Nuru Mural and Chunnu Mural in their confessions. Nuru Mural himself has given the inculpatory confession. It is not found to be believable that those confessions were extracted from them by putting under duress or fear as the makers of the confessions were not taken in police remand and they were produced before the Magistrate within the stipulated period. Therefore, the mere absence of sperm in a decomposed body cannot absolve condemned prisoners Nuru Mural and Chunnu Mural of the offence for which they have been charged in this case.

Although the condemned prisoners retracted their confessions almost after 3 months of recording of the confessions but the language of retractions are found to be almost similar which lead us to hold that those were not their spontaneous retractions. In retractions it has been mentioned that the accused persons were arrested before the date of their arrest. But there is no substantial evidence in support of such date of arrest. Moreover, the facts disclosed in confessions got

support in investigation. As such, we are unable to entertain the retractions of the accused persons.

Now, the question appears; whether in presence of all the above mentioned positive elements in treating the confessions of the condemned prisoners to be voluntary and true should it be discarded terming to be unreliable only on the ground that the recording Magistrate did not certify the same to be voluntary and true? Let us look for the answer.

It has been mentioned in section 364(2) of the Code that after recording of confession in his presence the Magistrate shall certify under his own hand that the record contains a full and true account of the statements made by the accused. This certification is apparently mandatory. But it has not been mentioned in anywhere of section 364 of the Code that for any lapses on part of the recording Magistrate in certifying the statements to be full and true, should be discarded. Such lapses, however, prove the utmost negligence and inefficiency of the recording Magistrate definitely making him liable to be punished under Service Rules for professional misconduct but it does not make the confessions unreliable. However, in this

ominous time when the wayward stalkers have been stomping around the society with their conceit after committing such a heinous offence and showing thump to legal consequence of their misdeeds and adolescent girls like the victim are becoming their prey now and then; mere non-sense negligence of a Magistrate in performing his entrusted work under section 364(2) of the Code cannot be a ground of discarding the confessions of accused if those are found to be otherwise true and voluntary.

We have already found no substances in the submissions of Mr. Shahjahan to the effect that the confessions of the condemned prisoners cannot be reliable because of presence of the I.O. in the Court or absence of sing of rape on the dead body or non certification of the confessions by the recording Magistrate. Apart from that, nature of injuries as the condemned prisoner Nuru Mural has mentioned in his confessions supports the post-mortem report. The condemned prisoners have given such confessions just after being arrested and without going under any police remand. Therefore, we hold that the confessions were true and voluntary as well. Now, let us

examine whether such confessions of the co-accused can be basis of conviction of the condemned prisoner Nuru Mural and Chonnu Mural.

In the case of Shukur Ali Vs. State 74 DLR (AD) 11 wherein their Lordships ruled hereunder—

“In the light of the facts and circumstances of the present case we are of the view that confessional statement of a co-accused can be used for the purpose of crime control against other accused persons even if there is a little bit of corroboration of the confessional statement by any sort of evidence either direct or circumstantial.”

So, it appears that the confessional statements of the co-accused can be used for conviction of the other co-accused if there exists a little bit of corroboration by direct or circumstantial evidence. Now let us examine how the confessions of the condemned prisoners have been corroborated.

We have found consistency between the confessional statements and autopsy report of the deceased in respect of the

injuries found on the dead body. Condemned prisoner Chunnu Mural was absconding since after the occurrence and he was arrested on 30.05.2018 from Kalkini under Madaripur District i.e. another district by the RAB. Such arrest took place after 9 months of the occurrence. Accused Nuru Mural was also arrested after 1 month of lodging of the FIR. Condemned prisoner Chunnu Mural could not explain as to his absence either while putting the prosecution witnesses under cross-examination or at the time of his examination under section 342 of the Code. This is a strong circumstance of connecting the responsibility of accused Chunnu Mural with the commission of rape and subsequent killing of the deceased. On the other hand, accused Nuru Mural has implicated himself in the commission of the offence in his confession. His confession has been corroborated by the inquest and post-mortem report. These are the circumstances which can be safely presumed to be corroborative to the commission of offence as disclosed in the confessions of the co-accused. Therefore, we find no infirmity of law in finding condemned prisoners Chunnu Mural and Nuru

Mural guilty under section 9(3) of the Ain relying on such confessions.

It is, however, found in the form of examination of the convict prisoners under section 342 of the Code that the confessional statements were not brought to the notice of the condemned prisoners. But they were found present before the Court during recording of evidence of the prosecution witnesses and the evidence were explained and read over before them again during their examination under section 342 of the Code whereupon they claimed their innocence. In the case of *Mezanur Rahman Vs. State* 2 BLC (AD) 27 it has been held—

“The learned Judges noticed that although the learned Sessions Judge did not mention anything about the confessional statements at the time of examination of the accused as aforesaid, they (the accused), in whose presence the evidence was recorded, in their reply stated that the confessions were obtained from them by the police by torture and inducement. They were thus aware of

their confessional statements which they had claimed to be involuntary and thus the omission on the part of the learned Sessions Judge to draw their attention to the confessional statements had neither caused any prejudice to them nor vitiated the trial.”

In the instant case the condemned prisoners were present when the Magistrate P.W.11 Shiekh Md. Mujahid-ul-Islam was examined by their Advocate. So, they were very much aware of their confessions. Therefore, the omission of the learned Judge of the Tribunal to bring the confessional statements to the notice of the condemned prisoners did not led their conviction and sentence to jeopardy. Now, let us examine whether the killing of the deceased is connected with the rape making it punishable under section 9(3) of the Ain, 2000. Section 9 of the Ain runs hereunder-

“(৩) যদি একাধিক ব্যক্তি দলবদ্ধভাবে [বা সংঘবদ্ধভাবে] কোন নারী বা শিশুকে ধর্ষণ করেন এবং ধর্ষণের ফলে উক্ত নারী বা শিশুর মৃত্যু ঘটে বা তিনি আহত হন, তাহা হইলে ঐ দলের প্রত্যেক ব্যক্তি মৃত্যুদে- বা যাবজ্জীবন সশ্রম কারাদে- দ-নীয় হইবেন এবং ইহার অতিরিক্ত [অন্যন দুই লড়া টাকা] অর্থদে-ও দ-নীয় হইবেন।”

It appears in sub-section 3 of section 9 of the Ain that the ingredients of offence punishable under sub-section 3 of section 9 of the Ain are that; the victim should be raped by more than one person and she must die resulting in commission of rape.

We have found that Nuru Mural and Chunnu Mural jointly committed rape on the deceased, 13 years old Rima Akter, and subsequently they killed her to subvert the danger. The confession makers have found that after commission of rape in the house of accused Swapna Begum, victim Rima Akter was found in a vulnerable condition. The descriptions of the confessions show that the victim was almost to die even if she was not killed by the accused persons. Condemned prisoners Nuru Mural and Chunnu Mural have killed the victim apprehending that she might survive and disclose their misdeeds. Therefore, the killing of the victim is nothing but the definite result of the rape which is punishable under section 9(3) of the Ain. We have already found that condemned prisoners Selim Chowkider and Swapna Begum cannot be treated to be abettors under section 30 of the Ain and, therefore, they should

be acquitted of the charge brought against them in the instant case.

In this circumstance we hold that the reference should be rejected, Criminal Appeal No. 5243 of 2019 filed by condemned-prisoner Selim Chowkider is allowed. The Rule issued in Criminal Miscellaneous Case No. 14480 of 2020 so far it relates to Swapna Begum is made absolute but discharged for Chunnu Mural and Nuru Mural. Condemned prisoners Nuru Mural and Chunnu Mural have been languishing in the condemned cell for more than 7 years and they were also under custody for a certain period during trial. In this circumstance, we hold that justice would be best served if their sentence is commuted to life imprisonment.

In the result, the death reference is rejected. The appeals of condemned prisoners Selim Chowkider is allowed and the Rule issued in Miscellaneous Case so far it relates to Swapna Begum is made absolute. They are acquitted of the charges brought against them. Let condemned prisoners Selim Chowkider and Swapna Begum be set at liberty if not wanted in connection with any other case. The Jail Appeal Nos. 129 of

2019, 130 of 2019, 131 of 2019 and 132 of 2019 are disposed of. The death sentence awarded upon condemned prisoners Chunnu Mural and Nuru Mural is commuted to imprisonment for life. Let condemned prisoners Chunnu Mural and Nuru Mural be shifted to general cell from the condemned cell immediately.

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

Bhishmadev Chakraborty, J:

I agree