

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

Present:

**Mr. Justice Bhishmadev Chakraborty
And**

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No. 76 of 2019

The Statepetitioner

-Versus-

Md. Liton and 4 others

.....condemned-prisoners

with

Criminal Appeal No. 8023 of 2019 And

Jail Appeal No. 183 of 2019

Md. Liton

.....convict-appellant

-Versus-

The State

.....respondent

Criminal Appeal No. 8101 of 2019 And

Jail Appeal No. 182 of 2019

Abu Sayeed @ Abu Sayeed Hossain

.....convict-appellant

-Versus-

The State

.....respondent

Criminal Appeal No. 8111 of 2019 And

Jail Appeal No. 180 of 2019

Azizur Rahman alias Polash

.....convict-appellant

-Versus-

The State

.....respondent

Criminal Appeal No. 8758 of 2019 And

Jail Appeal No. 181 of 2019

Saiful Islam alias Pitil and Shoriful Islam

.....convict-appellants

-Versus-

The State

.....respondent

And

Jail Appeal No. 191 of 2019

Shariful Islamconvict-appellant

-Versus-

The Staterespondent

Mr. Syed Ejaz Kabir with Mr. Mohammad Imam Hossain (Tarek), Deputy Attorney Generals with Ms. Mahbuba Tasnim 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. Muhammad Tajul Islam, Senior Advocate with

Mr. Syed Al Asafur Ali Reza, Advocate

.....for the informant

(With the leave of the Court to assist the State)

Mr. S.M. Shahjahan, Senior Advocate, with

Mr. Md. Mizanur Rahman Khan, Advocate

.....for the convict-appellant

(In criminal Appeal No. 8023 of 2019 and Jail Appeal No. 183 of 2019)

Mr. Md. Shaiful Islam, with

Mr. Abidul Haque, Advocates

.....for the convict-appellant

(In criminal Appeal No. 8101 of 2019 and Jail Appeal No. 182 of 2019)

Mr. Md. Hamidur Rahman, Advocate

.....for the convict-appellant

(In criminal Appeal No. 8111 of 2019 and Jail Appeal No. 180 of 2019)

Mr. Md. Sheikh Atiar Rahman, Advocate

.....for the convict-appellants

(In criminal Appeal No. 8758 of 2019 and Jail Appeal No. 181 of 2019)

Heard on: 19.07.2026, 20.07.2026, 21.07.2026 and 22.07.2026.

Judgment on: 23.07.2026.

K.M. Rasheduzzaman Raja, J:

This reference under Section 374 of the Code of Criminal Procedure, herein after ‘the Code’, is for confirmation of the

death sentence under section 9(3) of the Nari-o-Shishu Nirjatan Daman Ain, 2000, hereinafter ‘the Ain’ awarded upon the condemned prisoners by the learned Judge of the Nari-o-Shishu Nirjatan Daman Tribunal, hereinafter ‘the Tribunal’, No. 3, Khulna in Nari-o-Shishu Nirjatan Case No. 248 of 2016 corresponding to G.R. No. 91 of 2015 arising out of Labonchara Police Station Case No. 05 dated 22.09.2015 by the judgment and order dated 16.07.2019. The condemned-prisoners preferred Criminal Appeal No. 8023 of 2019, Criminal Appeal No. 8101 of 2019, Criminal Appeal No. 8111 of 2019 and Criminal Appeal No. 8758 of 2019 and the connecting jail appeals against the same judgment and order of conviction and sentence and, therefore, all these matters be disposed of by this judgment.

The prosecution case, in short, is that Parvin Sultana and her father Elyas Chowdhry used to live in the house of Nargis Sultana, elder daughter of Elyas Chowdhury, in a half building house named ‘Dhakaya House’ at Lane No. 3, Buro Moulovir Dargah, under Labonchara Police Station, Khulna. Parvin Sultana did a job in EXIM BANK as an officer. Her husband used to live in Dhaka. Nargis Sultana phoned her brother P.W.1

Md. Rezaul Alam Chowdhury Biplob at 10:00 at night on 18-09-2015 and asked him to go and look-after her house as she found the mobile phones of their father and sister switched-off. P.W. 1 also phoned them over mobile phone but got their phones switched-off. He started for the house and going there at 10.30 p.m. found gate of the house under lock from outside. He called his father and sister from outside but got no response. He then went to the house of neighbour Golam Rasul. Returning with Golam Rasul and his son Abu Sayeed he and Golam Rasul helped Abu Sayeed to enter the house by scaling over the boundary wall. Coming out of the house Abu Sayeed disclosed that the goods inside the house were found scattered but he did not see aunt and the grandfather. Then he and Golam Rasul entered the house by scaling over the wall and having a search they found the upside down strangulated bodies of his farther Elyas Chowdhury and sister Parvin Sultan in the septic tank. The body of his father was found naked and his sister had a kamiz but she had no salwar. Parvin Sultana was strangulated with her *urna*. With the help of Gulam Rasul and Abu Sayeed he brought out the dead bodies and raised alarm drawing the presence of the

local people. The people gathered outside the gate of the house and informed the Police. The members of the law enforcing agencies including Police, RAB, PIB appeared and entered the house breaking open the lock. Police held inquest over the dead bodies and prepared a report and sent the dead bodies to Khulna Medical College Hospital for holding autopsy. Receiving the dead bodies after autopsy he arranged their burrial and thereafter lodged FIR in Lobnchara Police Station (P.S.) on 19-09-2015 on the allegations of committing murder. During investigation Police arrested accused Md. Liton who admitted the commission of murder of his sister after committing rape on her. Getting such information from police he lodged another FIR to Labonchara P.S. on 22-09-2015.

Upon receiving the aforesaid FIR police registered Labonchara P.S. Case No. 05 dated 22-09-2015 under section 9(3) of the Ain, 2000 and appointed Investigating Officer (I.O.) to investigate the case. After investigation police submitted charge-sheet against the condemned prisoners under section 9(3) of the Ain. Learned Magistrate then sent the case to Tribunal No. 3, Khulna for holding trial.

Learned Judge of Tribunal No. 3 took cognizance of offence and registered the case as Nari o Shishu Nirjaton Case No. 248 of 2016. Charge was framed against the condemned prisoners under section 9(3) of the Ain and it was explained and read over to the condemned prisoners to which they pleaded not guilty and demanded the trial.

The prosecution adduced 27 witnesses to bring home the charge brought against the condemned-prisoners. Thereafter the condemned-prisoners were examined under section 342 of the Code to which they again claimed their innocence and expressed their desire to adduce counter evidence. Accordingly, the condemned-prisoner Md. Liton adduced two defence witnesses.

Upon consideration of the evidence on record and hearing the submissions of both sides learned Judge of the Tribunal awarded death sentence upon the condemned-prisoners under section 9(3) of the Ain by the impugned judgment and made reference under section 374 of Code to this Division for confirmation of the sentence.

Mr. Mohammad Imam Hossain Tarek, learned Deputy Attorney General appearing for the State submits that the

prosecution has adduced sufficient evidence to prove the guilt of the condemned prisoners. Deceased Parvin Sultana was found strangled by her *urna* and she was found naked which indicates that she was killed after being raped. The autopsy report also supports commission of rape on the victim. Condemned prisoners Abu Sayeed and Md. Liton have voluntarily confessed their participation in the occurrence with the other condemned prisoners. Learned Judge of the Tribunal rightly found the condemned prisoners guilty relying on the confessions with the other evidence. Mr. Imam Hossain has referred the cases of Md. Zahangir Alam Vs. The State 27 ALR (AD) 250 and Shukir Ali Vs. State 74 DLR (AD) 11, Abdur Rouf Mollah Vs. The State 2 LG (AD) 104 and relied on the principles laid in those cases in favour of his submissions.

On the other hand, learned Senior Advocates Mr. S.M. Shahjahan appearing for the condemned petitioner Md. Liton in Criminal Appeal No. 8023 of 2019 has opposed the reference and supported the appeal submitting that the FIR has been lodged after 4 days of the occurrence. Two cases have been lodged against the condemned prisoners on the same occurrence; one is

under section 396 of the Penal Code which was converted to one under section 302 of the Penal Code and another one under section 9(3) of the Ain i.e. the present one- which is palpably illegal. No sign of rape was found while holding inquest over the dead body of Parvin Sultana. All the organs of the deceased were found intact. Confession of condemned-prisoner Md. Liton is not voluntary and true as he was given treatments after his arrest. No confession can be corroborated by another confession of co-accused. Moreover, the photocopies of confessions given in another case have been used in this case without having any verification or attesting note which cannot be relied on. Mr. Shajahan has referred the principles laid in the cases of Emdadul Huq & Anr. Vs. State 7 BLT (HCD) 76, The State Vs. Mukhtar Ali and another 10 DLR 155, Abdul Malik & Others Vs. The State 5 BLD 67, Shah Khan Vs. The State 18 DLR 9, Mujibur Rahman Vs. State 10 BLC 183 to substantiate his submissions.

Mr. Md. Abidul Haque, learned Advocate appearing for condemned-prisoner Md. Abu Sayeed in Criminal Appeal No. 8101 of 2019 adopting the submissions as of Mr. Shahjahan has submitted that the confession of Md. Abu Sayeed is exculpatory

in committing rape upon the victim. The confessions of Md. Liton have no corroboration. Inquest report and autopsy report did not show any sign of injury on the person of the deceased. So, the conviction under section 9(3) of the Ain, 2000 and sentence awarded upon the condemned prisoners thereunder suffers from patent illegality.

Mr. Sheikh Atiar Rahman, Learned Senior Advocate appearing for condemned prisoners Saiful Islam Pitil and Shariful Islam in Criminal Appeal No. 8758 of 2019 submits that there is no evidence against the appellants except the two confessions of the condemned prisoners Md. Liton and Md. Abu Sayeed to connect the responsibility of the appellant with the offence. Both the confessions are contradictory. DNA report does not support the involvement of these condemned prisoners with commission of rape on the deceased. Mr. Rahaman has relied on the principles laid down in the cases of State and another Vs Mobile Kader 67 DLR (AD) 6, Abdus Salam Mollah Vs. The State 13 MLR (AD) 268, Majid Sheikh Vs. State 11 BLC (AD) 249, Babor Ali Molla and another Vs. State 44 DLR

(AD) 10, Lutfun Nahar Begum Vs. The State 27 DLR (AD) 29 in support of his submissions.

Mr. Md. Hamidur Rahman Khan, learned Advocate appearing for condemned-prisoner Aziaur Rahman Palash in Criminal Appeal No. 8111 of 2019 adopting the above submissions Mr. Rahman submits that none of the confessions is applicable against condemned-prisoner Azizur Rahman Palash. There is no other evidence to prove his culpability. Moreover, section 9(3) of the Ain is not applicable as the death of the deceased was not due to alleged rape committed on her. Mr. Khan has relied on the principles laid down in the case of Majid Sheikh Vs. State 11 MLR (AD) 270

Now, let us examine the sum and substance of the depositions of the prosecution witnesses to understand the propriety of the impugned judgment and order whereby the learned Judge of the Tribunal has awarded sentence upon the condemned prisoners.

P.W. 1 Md. Rezaul Alam Chowdhury Biplob, the plaintiff, has deposed that his father Elyas Chowdhury and his sister Parvin Sultana were living in the house of his elder sister Nargis

Sultana at Lane No. 3, Buro Moulovir Dargah, Labonchora, Khulna. His sister Nargis Sultana phoned him at around 10:00 p.m. on 18-05-2015 asking him to go to her house and see what happened there as none of her father and sister were responding to her phone call. He also called his father Elyas Chowdhury and sister Parvin Sultana but got no response from them. So, he started for their house and going in front of the house named 'Dhakaia House' he found the gate under lock. He called his father and sister from outside the gate but got no response. Then he got anxious and went to the house of neighbour P.W.3 Golam Rasul and returning with Golam Rasul and his son P.W. 2 Abu Sayeed he helped Abu Sayeed enter the house by scaling the wall. Coming out Abdu Sayed disclosed that the houses were found ransacked and he found Elyas Chowdhury and Parvin Sultana nowhere. Then he along with Abu Sayeed entered the house by scaling over the wall and having a search found the bodies of Elyas Chowdhury and Parvin Sultan thrown into the septic tank. They pulled out the dead bodies and raised alarm. Hearing his alarm the local people gathered outside the gate of the house and informed the Police. Subsequently Police, RAB,

PIB personnel appeared and entered the house breaking open the lock. Then the other people were allowed to enter the house. Police held inquest over the dead bodies and sent the same to Khulna Medical College Hospital for holding autopsy. Police seized alamot preparing seizure-list with his signature. Receiving the dead bodies from hospital he buried the same and thereafter lodged FIR to Labonchora P.S. at 4.00 p.m. on 19-09-2015. During investigation of the case Police apprehended accused Md. Liton who confessed that he along with others committed rape on deceased Parvin Sultana and thereafter killed her. As such he lodged another FIR on the allegation of killing his sister Parvin Sultana after committing rape on her. He has marked the FIR, inquest report, seizure-lists and his signatures thereon as Exts. In cross-examination by the defence he has stated that he mentioned the names of Nawab Ali and Aslam Mistry in his earlier FIR as suspects as he did not know about the occurrence of rape till then. But no evidence was found against them during investigation. He lodged FIR on 22-09-2015 on the allegation of committing rape on her sister. He did not witness the occurrence. Hearing the names of Md. Liton, Sayeed, Shariful, Pitil, Polash

from media and police he lodged FIR against them. Deceased Parvin Sultan did a job in Exim Bank. Heavy shower and storm were blowing since noon on the date of occurrence. Police obtained DNA report in connection with the killing. He has denied that since his brother in law used to work with supply departments of Police he developed a relation with Police and at his instance police extracted confessions of the accused putting them under torture or his sister Parvin Sultana had relation with the officials of the Exim Bank who came to her house on the date of occurrence and they killed the deceased.

P.W. 2 Md. Abu Sayeed has deposed that he was sleeping in his house at night on 18-09-2016 and the informant called him out. Going to the house of the place of occurrence they broke open the lock by a crowbar (শাবল). Having a search in the house he returned home. At around 12:00/1:00 at night Police arrived and heard him. They obtained his signature and took away the dead bodies of Parvin aunty and her father. The prosecution declared him hostile. In cross-examination of the prosecution he has stated that the main gate of the house was under lock. The informant told his mother that his father and sister were missing.

He does not know whether police broke open the lock of the gate. He does not know whether the accused were ferocious people of the locality. He has denied that he deposed in favour of the accused out of fear. The defence did not put him under cross-examination.

P.W. 3 Md. Gulam Rasul has deposed that the occurrence took place on 18-09-2015. He returned home at mid-night and knew nothing about the occurrence. He, however, has marked his signature in the inquest report as Ext. The prosecution declared him hostile. In cross-examination of the prosecution he has stated that his house stands opposite to the house of the place of occurrence. He returned home at the dead of night. He did not find the house of the place of occurrence under lock. He has denied that informant Biplob told him that his father and sister were missing or he sent his son Abu Sayeed with the informant or he also entered the house by scaling the wall and found the dead bodies of the father and sister of the informant in the septic tank. Police took his signature. The defence did not put him under cross-examination.

P.W. 4 Md. Babu Mia, husband of deceased Parvin Sultana, has deposed that deceased Parvin Sultana was his wife and she did a job in Exim Bank at Khulna and he lived in Dhaka as he did a job in a farm. His wife used to live in 'Dhakia House' at the place of occurrence. His wife faced an extortion on May, 2015 and hearing such occurrence he came Khulna and his wife disclosed the names of accused Shariaful, Pitil, Polash, Liton and Sayeed who involved with the incidence of extortion. His wife told him that those accused used to throw stone on the tin-shed roof of the house and any tease her on her way. When he visited Khulna on 27-10-2014 his wife told him that she was unable to bear the disturbance of the accused. Subsequently, the occurrence took place on 18-09-2015 Friday. He talked to his wife at 2:45 p.m. on the date of occurrence for the last time. He phoned again his wife at 7:00 p.m. but found her phone switched-off. Then he phoned his father-in-law as well which was also found switched-off. Being anxious he phoned Nargis Parvin, elder sister of his wife, who also failed to reach her father and sister and then called her brother, the informant, and asked him to look for the matter. At 10:30-11:00 p.m. Arman, son of

Nargis Sultana, informed him over phone that somebody have killed his *chota khalamoni* and *nana*. Hearing such occurrence he got fainted. His mess members contacted Nargis Parvin and her husband Selim and arranged his travel to Khulna with them. They directly went to Khulna 250 bed Hospital and found the dead bodies. In cross-examination of the defence he has stated that his wife was living in the 'Dhakaia House' for 3 years. He married her while she was living in that house. After 1 year of their marriage she was killed. He used to roam around with his wife on holidays and found the accused persons from distance but could not recognize them. His father-in-law filed a GDE after occurrence of a theft in the house 2/3 months ago. He has denied that the accused never teased the deceased or he had no good relation with his wife or to satisfy the informant he deposed falsely.

P.W. 5 Sayed Afzal Ali has deposed that the occurrence took place on 18-09-2015 and he got information at 11:00 p.m. He went to 250 bed-Hospital on the next day and found the dead bodies of his niece Parvin Sultana and brother-in-law Elyas Chowdhury. Accused Liton, Pitil, Shariful, Sayeed and Palash

used to tease his niece Parvin Sultana very occasions. They have committed rape on deceased Parvin Sultana and thereafter killed her along with her father. In cross-examination of the defence he has stated that he heard the occurrence from his nephew Biplob, informant, at around 10:30 p.m. He has denied that he did not hear that accused Liton, Pitil, Shariful, Sayeed and Palash used to tease his niece.

P.W. 6 Sayed Aslam Ali has deposed that hearing the occurrence he went to the place of occurrence at around 12:00 at night and found two dead bodies. Police appeared and took away the dead bodies to 250 bed hospital for holding autopsy. He found the dead body of Parvin Sultana strangulated with *urna* and her hands tied back side. Having obtained the autopsy report he came to know that Parvin Sultana was killed after committing rape on her. In cross-examination of the defence he has stated that he told the informant that an accused named Liton was apprehended. He has denied that his niece Parvin Sultan used to live a wayward life or she took liquor with her friends in the house of the place of occurrence or her friends killed her.

P.W. 7 S.A Mahmd Opu has deposed that the occurrence took place on 18-09-2015. Informant Biplob informed him the occurrence at around 10:30 p.m. over phone. He reached the place of occurrence at 11:00 p.m. and found the gate under lock. Thereafter Police, RAB appeared and entered the house breaking open the lock. He found the dead bodies. Police held inquest over the dead bodies. He accompanied the police to 250 bed hospital where the dead bodies were taken to hold autopsy. In cross-examination of the defence he has stated that deceased Parvin Sultana was his sister-in-law. He did not read the inquest report.

P.W. 8 Anjuman Ara Parvin has deposed that the occurrence took place on 18-09-2015 Friday. She came to know from her brother-in-law Aslam Ali at around 10:30 to 11:00 p.m. over phone that Parvin Sultana and her father Elyas Chowdhury died. He rushed to the place of occurrence and found two dead bodies lying on the ground. The dead body of Parvin Sultana was found strangulated with *urna* and no cloth was found in the lower part of her body. She along with a lady cop observed the dead body turning all sides. Police held inquest and prepared

report with her signature. She has marked his signature on the inquest report as Ext. In cross-examination of the defence she has stated that she did not observe any injury mark in the chest, belly, private part, breast or rectum of the deceased. She has denied that the deceased was not raped.

P.W. 9 S.I. Md. Rafiqul Islam has deposed that he was in mobile duty on 18-09-2015 in the Labonchora P.S. area. At around 11:00 p.m. O.C. instructed his team to reach Buro Moulavir Darga quickly. He rushed to Lane No. 3 in front of 'Dhakaia House' and found a gathering of people. The main gate was found under lock. The people disclosed that Elyas Chowdhury and his daughter Parvin Sultana were killed and thrown into the septic tank. O.C. appeared and they broke the lock at the instance of O.C. They entered the house and preserved the crime scene. At the instance of O.C. he held inquest on the dead bodies and preparing a report sent the same to Morgue of Khulna Medical College Hospital for holding autopsy. He seized alamot preparing seizure-list. He has marked the inquest report, seizure-list and his signatures thereon as Exts. He has also marked the seized article as material Ext. In cross-

examination of the defence he has stated that PBI, RAB, CID team also arrived and they entered the house together. PBI personnel entered the rooms of the house before them and recovering the condom foil handed over to him. He cannot remember whether the bed sheet, pillow cover of the rooms were recovered. He has denied that they did not enter the house breaking open the lock.

P.W. 10 Constable No. 5076 Sharifa Khatun has deposed that receiving information about the occurrence from the P.S. at 11:00 p.m. on 18-09-2015 she and Cong No. 5037 Samia Khatun went to the house of deceased Parvin Sultana and found lot of people there. O.C. appeared and broke open the lock of the gate. Entering the house they found two dead bodies beside the septic tank. They, two lady Cong, and a female relative of the deceased observed the dead body of Parvin Sultana turning all sides. They found the dead body strangulated with an *urna*. She had a kamiz but no salwar. S.I. Rafiqul Islam held inquest over the dead body and prepared a report with their signatures. Thereafter the dead body was sent for holding autopsy. In cross-examination of the defence she has stated that Sumon Al Faruk informed them the

occurrence from the Police Station. She has denied that the gate of the house was not under lock or she did not observe the dead body turning all sides.

P.W. 11 Constable No. 5361 Sumon Al Faruk has deposed that he heard the occurrence at around 11:00 p.m. from O.C. but he did not visit the place of occurrence. Cong. Sudarshan handed over the alamot to S.I. Kazi Babul Hossain in Police Station and those alamot were seized preparing a seizure-list with his signature. He has marked his signature on the seizure-list as Ext.

P.W. 12 Constable No. 6348 Sudarshan Chokraborty has deposed that he went to the place of occurrence with O.C. to render post-mortem duty on 18-09-2015 at night. They found the gate under lock. At the instance of O.C. the lock was broke open. Entering the house they found two dead bodies lying in front of the septic tank. S.I. Rafiqul Islam held inquest over the dead bodies and handed over the chalan along with other relevant papers to him. He carried the dead bodies to the morgue of Khulna Medical College Hospital. In cross-examination of defence he has denied that they did not find the gate under lock or the lock was not broken at the instance of the O.C.

P.W. 13 Seema Akter @ Eti has deposed that her brother-in-law informant Rezaul Alam Chowdhury Biplob informed her at around 10:30-11:00 p.m. that somebody killed his father and sister and threw the dead bodies in the septic tank. Hearing such occurrence she reached the place of occurrence and found the gate of the house under lock from outside and her brother-in-law was crying inside the house. Police arrived and broke open the gate. After sometimes they were allowed to enter the house. She found the dead body of Parvin Sultan strangulated by *urna* and her hands were tied behind. She had no salwar. Police held inquest over the dead body and prepared a report with her signature. In cross-examination of defence she has denied that they found the gate of the house open or police did not break open the lock of the gate.

P.W. 14 Constable No. 5537 Samira Khatun has deposed that she was instructed from Police Station to go to the place of occurrence and going there she found two dead bodies lying in the courtyard of the house. She observed the dead body of Parvin Sultana turning all sides and found it strangulated with an *urna*. The dead body had no wearing cloths except a sleeveless kamiz.

She found bruise on left side of the temple, a red mark in the middle of the back and a red round mark in a thigh of the dead body. Daroga held inquest over the dead body and prepared report and sent the dead body to hospital for holding autopsy. In cross-examination of the defence she has stated that she found many ants on the dead body but found no sign of rape. She found no sign of bleeding from the rectum or any part of the body.

P.W. 15 Constable No. 6269 Selim Shahabuddin has deposed that he went to the place of occurrence with S.I. Rafiqul Islam. After holding inquest he brought the dead bodies to 250 bed hospital. Thereafter he found accused Md. Liton brining in the Police Station at around 10:00-11:00 p.m. on 21-09-2015. Having searched his body a money bag and two cinema tickets were recovered and those were seized preparing a seizure-list with his signature. In cross-examination of the defence he has stated that the O.C. appeared at the place of occurrence after them and at his instance the gate of the house was broken open. He was at the house of the place of occurrence till 2:30 to 3:00 a.m. and none was arrested till then. He does not know wherefrom accused Pitil was apprehended. He has denied that

money bag and cinema tickets were not recovered from accused Md. Liton.

P.W.16 Siraj Bhandari, father-in-law of the informant, has deposed that he came to know from the informant on 18-09-2015 at night that his father and sister were killed and their dead bodies were thrown into the septic tank. He reached there at around 11:00 p.m. and found the gate under lock. Police appeared and entered the house breaking open the lock. After 10/15 minutes they were allowed to enter the house. Going inside the house he found dead bodies of Elyas Chowdhury and his daughter. The dead body of his daughter was found naked only having a kamiz and strangulated by *urna*. Police seized alamot and prepared seizure-list with his signature and sent the dead body to 250 bed hospital for holding autopsy. In cross-examination of the defence he has stated that he cannot say who owned the seized alamot.

P.W.17 Dr. Md. Wahid Mahmud has deposed that he held post-mortem examination on the dead body of Pavin Sultana at around 2:30 p.m. on 19-09-2015 and found the following injury-

One circular continuous ligature mark was low down of neck size 11"×1".

On dissection: The soft tissue and nerve and vassals of the neck was highly congested. High vaginal swab was preserved to pathological examination.

Opinion was kept pending till receiving the pathological report. In final report he opined that-

Considering post-mortem examination findings and histopathological examination of the high vaginal swab my opinion is the cause of death was due to asphyxia as a result of strangulation followed by rape which was ante mortem and homicidal in nature.

He has marked the post-mortem report and his signatures thereon as Exts. In cross-examination of the defence he has stated that he found liquid in the stomach but did not mention in the report what was in the stomach. He found high vaginal swab after dissection but found no injury in vagina. At the initial stage of examination he did not take the question of rape in consideration. When suspicion developed after dissection then he preserved high vaginal swab. In case of brutal rape generally

some signs are found in the body of the deceased. He found no marks of injury in the chest, belly and rectum of the deceased. No sing of rape was found in the dead body. He has denied that the deceased was not killed by strangulation or the pathological report was not correct.

P.W. 18 Ayesha Akter Mousomi, judicial Magistrate, recorded the confession of accused Md. Liton. She has deposed that GRO Mominul Islam produced accused Md. Liton before her at around 10:00 a.m. on 21-09-2015 for recording his confession. She made the accused to understand everything according to section 364 of the Code and gave him deliberation time. The accused expressed his desire to make confession voluntarily getting all the matters understood. After recording his statements she read over the same to the accused who signed the statement in her presence. She has marked the confessional statements and her signatures thereon as Exts. In cross-examination of defence she has stated that the accused disclosed to her that he was arrested from the *verandah* of their kitchen at 5:00 a.m. on 20-09-2015. She found no marks of injury on the body of the accused when he was produced before her. She also

did not find any medical prescription with *chalan* of the accused. She has denied that she did not record the confession following the provisions of law.

P.W. 19 Constable No. 960 Md. Arifuzzaman has deposed that he was working in PBI, Khulna on 18-09-2015 and went to the place of occurrence with other members of law enforcing agency hearing the occurrence of murder. He found dead bodies of a 73 year old man and a 30 years old lady. PBI and CID seized some alamots including a packet of condom, a ladder and an empty bottle of cold drinks named 'Speed'. In cross-examination of defence he has stated that he did not sign the seizure-list but found seizing the alamots. He has denied that he did not go to the place of occurrence or those alamot were not recovered therefrom.

P.W. 20 A.S.I. Md. Moniruzzaman has deposed that hearing the occurrence of murder from Additional S.P. he went to the place of occurrence with other members of the law enforcing agencies and found two dead bodies lying beside the septic tank. The dead body of Parvin Sultana was found strangulated with an *urna*. A ladder, an iron rod, *urna*, nylon

rope, condom were seized from the place of occurrence. In cross-examination of the offence he has stated that he himself did not seize the alamot.

P.W. 21 Bishwajit Kumar Mondal has deposed that he was working in PBI, Khulna on 18-09-2015. Hearing the occurrence of murder he along with other members of the law enforcing agencies reached the place of occurrence and found two dead bodies lying beside the septic tank. They encircled the place of occurrence with crime scene tape. S.I. Rabiul of Labonchora P.S. seized open condom, intact condom, empty bottle of speed along with other articles. In cross-examination of the defence he has stated he did not seize the alamot but saw the seizing.

P.W. 22 Inspector Sardar Babar Ali has deposed that he was posted in PBI, Khulna on 18-09-2015. The Additional S.P. informed him over phone at 22:40 hours that two men had been murdered in the Buro Moulovir Dargah area, and asked him to go there. He, accompanied by Inspector Aslam Bahar Bulbul, A.S.I. Biswajit, Constable Moniruzzaman and Constable Arifuzzaman reached the place of occurrence and found two dead bodies lying beside the septic tank. The dead body of the

lady was half naked. She had no salwar. Two finger prints were collected from the place of occurrence. In cross-examination of the defence he has stated that from the police station police reached the place of occurrence before them.

P.W. 23 Sayed Al Asafur Ali has deposed that he was in Dhaka on 18-09-2015 and came to know from his brother Sayed Aslam Ali that his brother-in-law Elyas Ali and niece Parvin Sultana have been killed. He reached Kulna next day and found the dead bodies going to 250 bed hospital. Police seized ladder, iron rod, rope, excreta from the place of occurrence and prepared a seizure-list with his signature. He has marked the seizure-list and his signature thereon as Ext. In cross-examination of the defence he has stated that excreta were seized from the floor in his presence. The ladder was found leaned against the wall. He has identified the ladder in the Court room.

P.W. 24 S.I. Kazi Babul Hossain, I.O. of the case, has deposed that having charge of investigation he visited the place of occurrence, seized alamot preparing seizure-list, recorded statements of the witnesses, collected autopsy report, procured the samples from the accused, Md. Liton, Saiful Islam Pitil, and

Abu Sayeed and sent for DNA examination, accused Md. Liton, Saiful Islam Pitil and Abu Sayed were shown arrested in this case. Subsequently he handed over the case docket to O.C. for his transfer order. In cross-examination of defence he has stated that he prepared one sketch-map. He visited the place of occurrence at 17:00 hours on 22-09-2015. The informant was present. After confession of the accused in another case the informant has filed this case. He did not arrest accused Liton. Accused Md. Liton has been shown arrested in this case. He has denied that the confession of accused Md. Liton has been extracted by putting him under torture. RAB arrested accused Abu Sayeed from Magura at 4:45 p.m. on 15-10-2015 and handed over to police. Accused Abu Sayeed was of sound health till he was sent to Jail. He was not in his custody for more than 24 hours. He did not send him to hospital. He has denied that accused Abu Sayeed was inhumanly tortured before giving confession. The nickname of Saiful Islam is Pitil and that of Azizur Rahman is Palash. He has denied that those were not their nicknames. For security reason two accused were kept

Sonadanga P.S. instead of Labonchara P.S. He has denied that he falsely implicated the accused with the case.

P.W. 25 Inspector Sarder Mosharraf Hossain has deposed that he was posted in Labonchara P.S. as Officer-in-Charge on 18-09-2015. Hearing about the occurrence of murder he along with the officer and force reached the place of occurrence and found the gate under lock. Breaking open the lock they entered the house. Two dead bodies were pulled out from inside the septic tank. They were father and sister of the informant. S.I. Rafiqul Islam held inquest over the dead bodies and sent for holding autopsy. The informant lodged an FIR which he registered as a murder case. He appointed S.I. Kazi Babul Hossain as I.O. of the case. During investigation accused Md. Liton was apprehended by police who made a confession disclosing that he along with accused Shariful Islam, Pitil, Palash and Sayeed killed deceased Parvin Sultan after committing rape on her. Thereafter the informant lodged this FIR which was recorded by him. Subsequently, he himself took the charge of investigation of the case on 15-12-2015. He visited the place of occurrence and found the sketch-map, index prepared by the

earlier I.O. correct. He recorded statements of some witnesses. Collecting the copy of autopsy report of the deceased submitted in the record. He submitted charge-sheet against the accused persons upon found primary evidence against them. In cross-examination of defence he has stated that he visited the place of occurrence on several occasions. He himself took the charge of investigation considering the sensitivity of the case. He received the DNA report. No sperm was found in the condom and towel. In the cork of the bottle of “SPEED” DNA of more than one persons including a woman were found. He did not take any accused in police remand for interrogation. He came to know about the nicknames of accused Azizur Rahman and Saiful Islam having local investigation. He has denied that the accused have been implicated with the case falsely.

P.W. 26 Dr. Ruma Parvin has deposed that she was posted in Khulna Medical College as a lecturer in the Microbiological Department. He received High Vaginal Swab (Hvs) of deceased Parvin Sultana on 20-09-2015 and held microscopic examination thereon and prepared a report. In the report she mentioned:

Spermatozoa found.

She has marked the report and her signature thereon as Ext. In cross-examination of defence she has stated that she herself did not collect the sample. She examined the sample which was sent to her. Spermatozoa of all men should be same. She has denied that RAB, CID, Police personnel were present in the Lab at the time of examination or she prepared report following their instruction.

P.W. 27 Md. Faruk Iqbal, a Metropolitan Magistrate of the Metropolitan Magistracy, Khulna has deposed that accused Abu Sayeed was produced before him on 16-10-2015 and he found him of sound health. He found no injury mark on his body. He gave the accused deliberation time when accused Abu Sayeed expressed his desire to confess. He composed the confessional statements of accused Abu Sayeed and read over the same to him which he signed upon found correct. He has marked the confessional statements and his signatures thereon as Exts. In cross-examination of defence he has stated that GRO Md. Mominul Islam brought the accused before him at 2:00 p.m. on 16-10-2015. After recording his confessional statements he sent the accused to Jail. The accused was arrested from Magura by

RAB on 14-10-2015. The accused was produced before him after expiry of 24 hours. He has denied that the accused was put under torture and thereafter he recorded his confessional statements.

It appears that out of the 27 witnesses P.W. 18 Ayesha Akter Mousumi and P.W. 27 Md. Faruk Iqbal are the Magistrates who recorded the statements of accused Md. Liton and Abu Sayeed respectively. P.W. 17 Dr. Md. Wahid Mahmud held autopsy on the dead body of deceased Parvin Sultana and P.W. 26 Dr. Ruma Parvin held pathological examination on the Hvs of deceased Parvin Sultana. Among the rest witnesses P.W. 2 Abu Sayeed Biswas and his father P.W. 3 Md. Gulam Rasul are the neighbours of the deceased but they have been declared hostile by the prosecution.

P.W. 1 Informant Md. Rezaul Alam Chowdhury Biplob has deposed that he initially let P.W. 2 Abu Sayeed Biswas enter the house of occurrence by scaling the boundary wall as the main gate was found under lock. Coming out from the house he disclosed that the rooms of the houses were found ransacked and his father and sister were missing. Then he entered the house with P.W. 2 Abu Sayeed Biswas and P.W. 3 Md. Gulam Rasul

and having a search found the dead bodies of his father and sister in the septic tank. With their help he pulled out the dead bodies. P.W. 2 Abu Sayeed Biswas and P.W. 3 Md. Gulam Rasul were declared hostile as they did not narrate exactly in the line of P.W. 1 Informant Md. Rezaul Alam Chowdhury Biplob in their examination-in-chief. However, P.W. 2 Abu Sayeed Biswas has admitted that the informant went to their house and disclosed to his mother that his father and sister were missing. P.W. 3 Md. Gulam Rasul has identified his signature in the inquest report and marked it as Ext. Such conduct of P.W. 2 Abu Sayeed Biswas and P.W. 3 Md. Gulam Rasul indicates that they were under fear to depose before the Court. Except P.Ws. 2 and 3 other witnesses are members of law enforcing agencies and some of them went to the place of occurrence at the earlier point of time after hearing the occurrence and found the gate of the house under lock. They entered the house breaking open the lock and the other people followed them after a while. Without making any contradiction all the witnesses have commonly deposed that they found the dead body of Elyas Chowdhury and Parvin Sultana.

They found the dead body of Parvin Sultana strangled with *urna* and she had no salwar although she had a kamiz.

It is not disputed that the occurrence took place between 3:00 p.m. to 7:30 p.m. on 18-09-2015 in the 'Dhakaia House', Lane No. 3, Buro Moulovir Dargah under P.S. Labonchara, Khulna. Both P.W. 1 Informant Md. Rezaul Alam Chowdhury and P.W. 25 Inspector Sarder Mosharraf Hossain, O.C. of Labonchara P.S., have deposed that upon found two dead bodies the informant lodged an FIR on 19-05-2015 whereupon a case was registered under section 396 of the Penal Code. When accused Md. Liton was apprehended in that case and made a confession disclosing that he along with accused Petil, Palash, Sayeed and Shariful killed the father and sister of the informant after committing rape on his sister Parvin Sultana then the informant filed another FIR on 22-09-2015 whereupon this case has been registered under section 9(3) of the Ain. P.W. 17 Dr. Md. Wahid Mahmud has also stated that initially he found no injury in the vagina of deceased Parvin Sultana. He found Hvs after dissection and then kept the opinion pending till receipt of the pathological report. Therefore, it appears to be convincing

that the informant was not aware about the commission of rape on her sister before killing her when he filed FIR on 19-09-2015. He thought it to be a case of dacoity with murder.

Now, let us examine the submissions of Mr. Shahjahan to the effect that filing of two cases on the same occurrence is palpably illegal. Mr. Sahjahan submits that section 27(3) of the Ain has given the Judge of the Tribunal power to try the other offences which are found to be involved with the offences under the Ain, 2000. The I.O. should have submitted charge-sheet including offences both Penal Code and the Ain, 2000. The I.O. has committed illegality in conducting investigation separately on the 2nd FIR which is not an FIR in the eye of law. Due to such mistake of the I.O. the condemned prisoners have been illegally convicted and sentenced twice by the learned Judge of the Tribunal for the same occurrence.

Section 27(3) of the Ain, 2000 runs hereunder—

২৭। ট্রাইব্যুনালের এখতিয়ার- (১) -----

(২) -----

(৩) যদি এই আইনের অধীন কোন অপরাধের সহিত অন্য কোন অপরাধ এমনভাবে জড়িত থাকে যে, ন্যায়বিচারের স্বার্থে উভয় অপরাধের বিচার একই সংগে বা একই মামলায়

করা প্রয়োজন, তাহা হইলে উক্ত অন্য অপরাধটির বিচার এই আইনের অধীন অপরাধের সহিত এই আইনের বিধান অনুসরণে একই সংগে বা একই ট্রাইব্যুনাতে করা যাইবে।

In the above section of the Ain, 2000 the words “একই সংগে” “একই মামলায়” “একই ট্রাইব্যুনাতে” are very important. If any other offence is found to be involved with the offence under the Ain, 2000 then, according to the above provision, both the offences can be tried in the same case (একই মামলায়) or analogously (একই সংগে) in the same Tribunal. This is the exclusive jurisdiction of the Tribunal formed under the Ain, 2000. This section has not compulsorily bound the I.O. to submit single charge-sheet for such divergent offences even after lodgment of FIR separately. On the other hand, if the investigation of other offence arising out of the same occurrence is ended in submission of separate charge-sheet, then the Tribunal retains no power to interfere with the investigation of the case of other offences which is beyond his knowledge and jurisdiction.

In the instant case, P.W. 1 Informant Md. Rezaul Alam Chowdhury Biplob has stated that he lodged a murder case at 4:00/4:00 p.m. on 19-09-2015. During investigation of the case

police arrested accused Md. Liton who gave confession disclosing the commission of rape on deceased Parvin Sultan. Till then they did not know the fact of rape. Thereafter, he lodged another FIR on 22-09-2015 on the allegation of committing rape on deceased Parvin Sultana. Mr. Sahjahan has called this FIR as the 2nd FIR. On the other hand, Mr. Tajul Islam appearing for the informant with the leave of the Court, has controverted the submissions of Mr. Shahjahan contending that this is not a 2nd FIR, rather an independent FIR for a distinct offence and, therefore, the I.O. committed no wrong in holding investigation in both the cases separately.

P.W. 25 Inspector Sarder Mosharraf Hossain was O.C. of Labonchara P.S. at the relevant time. He has admitted the registration of two cases; one for dacoity with murder and another for rape with murder. On perusal of record it appears that Labonchara P.S. Case No. 3 dated 19-09-2015 was registered under section 396 of the Penal Code and Labonchara P.S. Case No. 5 dated 22-09-2015 was registered under section 9(3) of the Ain, 2000. Admittedly, Elyas Chowdhury and his daughter Parvin Sultana were found killed on the date of occurrence in

their house. So, the killing of Elyas Chowdhury can no way be covered under section 9(3) of the Ain, 2000. Had the commission of rape on deceased Parvin Sultana not been disclosed or no rape committed on her then there would have been no illegality in registering the case under section 396 or 302 of the Penal Code. After disclosure of commission of rape on deceased Parvin Sultana before killing her, the offence committed against Parvin Sultana got separate identity which is under the exclusive domain of the Ain, 2000. The offence committed against Elyas Chowdhury and the offence committed against Parvin Sultana are completely distinct in nature although commission of dacoity in the house in the same transaction is common.

So, FIR dated 22-09-2015 cannot be termed a 2nd FIR for the same offence, but rather a fresh FIR for a distinct offence. There is no bar under any provision of law to the filing of a subsequent FIR for any distinct offence under any special law, even though it is committed in the same occurrence. Yet, the Sessions Judge, Khulna sent the Session Case arising out of Labonchara P.S. Case No. 3 dated 19-09-2015 to the Tribunal for holding trial simultaneously with the Nari-o-Shishu Nirjatan

Case as evidence of the both cases are almost common as both the cases have arisen out of the same occurrence. The learned Judge of the Tribunal is found to have converted the Sessions Case into a case under the Nari-o-Shishu Nirjatan case on a wrong premise, whereas he had ample jurisdiction to try both cases analogously under Section 27(3) of the said Ain. We find no substance in the submissions that the condemned prisoners have been sentenced twice for the offences committed in the same occurrence.

In the instant case there is no eyewitness to the occurrence. All the witnesses have saw the aftermath of the occurrence which prove that the perpetrators have killed the deceased by strangulation. Post-mortem report, Ext. 10, and final opinion, Ext. 13, have supported the nature of death as found by the ocular witnesses. Condemned-prisoner Md. Liton has given confessional statements, Ext. 9, stating that—

“.....এরপর ঐ ঘর হতে মেয়ের (মৃত/ভিকটিম) ঘরে ঢুকে। মেয়ে তখন বিছানায় বসে কাজ করছিল, লেখালেখি করছিল বোধ হয়। মেয়ের রক্তমে শরীফুল আগে ঢুকে। এরপর পলাশ, সাইদ, পিটিল, আমি ঢুকি। মেয়ে টের পেয়ে বলে তোমরা বাসার ভেতরে ঢুকছ কেন? বের হও তখন শরীফুল, পিটিল মিলে মেয়েক ওর বিছানায় শোয়ায়ে ফেলে। মেয়েটা তখন ত্রি পিস পড়া ছিল। মেয়েটা চেচামেচি গুরুত্ব করলে পলাশ গিয়ে

ওর পায়জামা খুলে ফেলে। তখন মেয়ের ২ হাত পিটিল ধরে রাখে, মেয়ের ২ পা শরীফুল ধরে রাখে। পলাশ গিয়ে সেলোয়ার খুলে ধর্ষন করে ওকে। এরপর শরীফুল ধর্ষন করে। তারপর আমি ধর্ষন করি। আমার পরে পিটিল ধর্ষন করে। আমি ধর্ষন করার সময় মেয়ের হাত শরীফুল আর পা পলাশ ধরে রাখে। পিটিল ধর্ষরে সময়েও ওরা ধরে রাখে। সবশেষে ধর্ষন করে সাইদ। আমি কনডম নিয়ে গিছিলাম। ধর্ষনের সময় আমি সেই কনডম ব্যবহার করি। সেটা দরগাহপাড়াস্থ ব্রীজের পাশে ডাক্তারের দোকান হতে ৫ টাকা দিয়ে কিনি। আমি ১ পিস কনডম কিনি। সেটাই ধর্ষনের সময় ব্যবহার করি। সেটা পরে ঐ বাসা থেকে বের হয়ে নদীতে ফেলে দিই। সাইদ মেয়েকে ধর্ষন শেষে মেয়ের ওড়না গলায় পেঁচিয়ে মেরে ফেলে। সেই সময়ও পলাশ মেয়ের পা ধরে আর শরীফুল মেয়ের হাত ধরে রাখে। চেপে ধরে রাখে। সাইদ প্রায় ১০ মিনিটের মত চেপে ধরে ছিল। মেয়ে (ছেঁড়া) বাচার জন্য চেষ্টা করছিল। হাত পা চেপে ধরার পর ও সে ছটফট করতে ছিল। এক সময় সে নেতিয়ে পড়ে। সবাই বুঝতে পারি, সে মরে গেছে। সাইদ ওকে মারার পরই বসার ঘরের সোফার পাশে অস্থিরতায় পায়খানা করে দেয়। এর পর $\frac{1}{2}$ ঘন্টা পর ঐ বাসার ট্যাংকির মধ্যে দুই জনের লাশ ঢুকায়ে রেখে ঢাকনা দিয়ে আসে।.....”

Another condemned-prisoner Abus Sayeed Hossain has stated in his confession, Ext. 14, that—

“-----তখন শরীফুল আমাকে বলে মেয়ের ঘরের ভিতর যা। আমি মেয়ের ঘরের ভিতরে যাই, গিয়ে দেখি বিবস্ত্র অবস্থায় মেয়েটিকে পিটিল, পলাশ, শরীফুল ও লিটনরা মিলে ধরে আছে এবং তারা মেয়েটির গলায় ওড়না পেঁচিয়ে মেয়েটিকে হত্যা করে। এরপর পিটিল ও লিটন মেয়েটির লাশ ঘাড়ে করে নিয়ে সেফটি ট্যাংকির মধ্যে ফেলে দেয়। আমি সবার আগে ঐ বাড়ির প্রাচীরের সাথে একটি মই লাগানো ছিল এবং আমি মই বেয়ে উঠে প্রাচীর পার হয়ে চলে আসি।”

Condemned-prisoner Md. Liton retracted his confessions after 4 years on 19-09-2019 even after his examination under

section 342 of the Code. Condemned-prisoner Abu Sayeed Hossain also retracted his confession on 30-12-2015 after more than 2 months of making confession. We have mentioned above that there is no direct evidence or eyewitness to the occurrence. The Judge of the Tribunal has relied on the confessions of the condemned prisoners Md. Liton and Abu Sayeed Hossain in awarding sentence upon the condemned prisoners. Learned Advocates for the condemned prisoners have assailed the propriety of the conviction and sentence awarded upon the condemned prisoners on the grounds that police extracted the confessions putting the accused persons under torture, the confessions were not voluntary and true, the Magistrates did not record the confessions following the provisions of law, confessions of the co-accused cannot be used for the purpose of conviction of the other accused, conviction on the retracted confessions is not safe and the photocopies of the confessional statements have been used in this case without having any authentication thereof.

P.W. 18 Ayesha Akter Mousumi recorded the confession of condemned-prisoner Md. Liton and P.W. 27 Faruk Iqbal has

recorded the confession of condemned-prisoner Abu Sayed Hossain. They are found to have followed the provisions of section 164 and 364 of the Code in recording the confessions of the said two condemned prisoners giving them sufficient time for deliberation after making them consequences of the confessions understood. They found no marks of injury on their body when they were produced before them for recording their confessions. Condemned prisoner Abu Sayeed Hossain was apprehended from Magura 14-10-2015 by RAB and handed over to Labonchara P.S., Khulna on 15-09-2015 and he was produced before the Magistrate on 16-09-2019. He was not taken in police remand for interrogation. So, no unusual delay appears to have caused in producing the condemned-prisoner Abu Sayeed Hossain before the recording Magistrate. P.W. 18 Ayesha Akter Mousumi has stated that accused Md. Liton was arrested at 5:00 a.m. on 20-09-2015 and he was produced before her by the GRO at 10:00 a.m. on 21-09-2021 for recording his confessional statements. There is no significant delay in producing accused Md. Liton before the Magistrate for recording his confessions. Both P.W. 18 Ayesha Akter Mousumi and P.W. 27 Faruk Iqbal

have found no medical prescription with chalan of the respective accused.

D.W. 1 Md. Mustain Sheikh produced the register of 2015 of the Jail Hospital, Khulna. In page No. 67 of the register, Ext. Ka, an entry is found in serial No. 580/48 dated 23-11-2015 showing that condemned-prisoner Md. Liton was admitted in Jail Hospital from 23-11-2015 to 07-12-2015 long after making of the confessions by him. A medical slip dated 21-09-2015, Ext. Kha, does not contain any injury mark supporting torture. Back pain has been mentioned in the slip, Ext. Kha, for the cause of his admission. D.W. 2 Pankaj Kumar Roy, a Brother of Khulna General Hospital, has produced First Aid register of the Hospital. In serial No. 4579/25 dated 21-09-2015 accused Md. Liton is found to have received first aid at around 1.30 p.m. from the Hospital after recording his confessions. None of the treatments the condemned-prisoner Md. Liton received supports the allegation that he was subjected to torture. In the absence of any evidence of torture on the condemned prisoners, their confessions cannot be held to be involuntary. Condemned prisoners Md. Liton and Abu Sayeed retracted their confessions

on the same allegations of subjecting them to torture which is unfounded in the above discussions. So, their retractions cannot be accepted at all.

Now let us examine whether the confessions of the condemned prisoners are true. On perusal of the both confessions and the evidence on record following facts have come out—

- i) Condemned-prisoner Md. Liton has stated in his confessions that he purchased a condom at tk. 5/- and using the same at the time of rape he threw it in the river. The foil of the condom was recovered from the place of occurrence by Police.
- ii) Although Condemned-prisoner Abu Sayeed did not implicate himself with the offence either of rape or of killing but condemned-prisoner Md. Liton has stated in his confession that Abu Sayeed committed rape on deceased Parvin Sultana last of all and killed her by stragulating with *urna*. Deceased Pavin Sultana was found strangulated with *urna* which was seized by police.

- iii) Abdu Sayeed has stated in his confession that he found naked Parvin Sultana under the clutch of accused Pitil, Polash, Shariful and Liton. Her body was thrown in the septic tank. The dead body of Parvin Sultana was pulled out from the septic tank and she had no salwar.
- iv) Accused Md. Liton has stated that out of anxiety Abu Sayeed passed excreta on the floor near sofa. P.W. 24 S.I. Kazi Babul Hossain seized excreta along with other alamot and prepared a seizure list and P.W. 23 Sayed Al Asafur Ali has stated that police seized excreta from the floor in his presence.
- v) Accused Abu Sayeed has stated that upon found a ladder leaning against the boundary wall of the house of the occurrence he exited the house using the ladder. Accused Md. Liton has stated that a ladder was in the house and they entered the house using the ladder. That ladder has been seized by P.W. 24 S.I. Kazi Babul Hossain from the place of occurrence and P.W. 23 Sayed Al Asafur Ali has

identified the ladder in the Court and marked as material Ext.

- vi) Although no external sign of rape was found on the dead body of Parvin Sultana when inquest was held thereover and P.W. 17 Dr. Md. Wahid Mahmud initially found no mark of violence on the dead body but suspicion developed in his mind when he found Hvs on deep dissection. He sent the Hvs for pathological examination and P.W. 26 Dr. Ruma Parvin found presence of spermatozoa in the sample of Hvs in microscopic test.
- vii) The accused persons went into hiding just after the occurrence.

The circumstantial evidence above constitutes a complete chain and corroborates the confessions of the condemned prisoners. Admittedly the copies of the confessional statements of the condemned prisoners Md. Liton and Abu Sayed have been used in this case. We have found that the informant filed FIR on 19-09-2-15 whereupon a case under section 396 was recorded. Accused Md. Liton being apprehended in connection of that case

has given the confessional statements disclosing the facts of committing rape on deceased Parvin Sultana. Following such confessions the informant has filed this case on 22-09-2015. It is natural that the confession should be in the record of the case filed on 19-09-2015. Since both cases arose out of the same occurrence and confessions are relevant in the both cases, it is natural that the original confessions should be kept in the case in connection of which the confession maker is apprehended and the copies thereof should be filed in the subsequent case. The submission of Mr. Shahjahan to the effect that in such a case the trial Judge should have recorded a note that he found the original confessional statements and the copy is true in comparison with the original appears to be convincing. However, since the confessions recording Magistrates themselves have deposed before the trial Court and the defence put them under cross-examination from every angle we hold nothing wrong in using the copies of the confessional statements in this case instead of originals.

Relying on the propositions enunciated in the case of Shan Khan Vs. The State 18 DLR 91 Mr. Shahjahan submits that since

there were no marks of violence in the face, breast, lower parts of the abdomen, limbs and back or any bruise; so the rape, let the gang rape be alone, cannot be presumed. Although some of the prosecution witnesses have found no external injury in the dead body similar to injuries of rape but P.W. 8 Anjuman Ara Parvin and P.W. 14 Samira Khatun found bruise mark in the left side of the temple of the deceased. Even P.W. 14 who have observed the dead body turning all side, found a round red mark in the middle of the back of deceased Parvin Sultana. She also found red bruise in the thigh of the deceased. Such marks can be the marks of violence as Mr. Shahjahan mentioned. Moreover, P.W. 6 Sayed Aslam Ali and P.W. 13 Sema Aktar alias Eti have found the hands of deceased Pervin Sultana tied behind. Therefore, she was not in a position to resist the perpetrators so as to cause any remarkable mark of violence on her body. Although the convict-prisoner Md. Liton has stated that he purchased only one piece of condom at Tk. 5/- and threw it in the river after use but the police seized an intact packet of condoms, an open condom, and condom foil from the place of occurrence. This indicates that not only condemned-prisoner Md. Liton, but the other accused as

well, might have used condoms while committing rape on the victim to conceal pathological signs of rape. We are therefore of the view that the commission of rape on the victim has been proved by sufficient evidence.

Now let us examine the substance of the submissions of the learned Advocates for the condemned prisoners that the confession of co-accused cannot be used for awarding sentence upon the other accused. In the case of *Abdus Salam Mollah Vs. The State* 13 MLR (AD) 268 it has been opined that—

Law as in section 30 of the Evidence Act, as to consideration of the confession of a co-accused in a trial when more persons along with confessing accused are being tried jointly for the same offence, is that confession so made by one of such persons affecting himself and some other who are being tried along with confessing accused persons and the confession so made is proved voluntary and true the Court may take into consideration such confession as against other accused as well as the accused who has made such confession.

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

In light of the facts and circumstances of the present case, we are of the view that the 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 that confessional statement by any sort of evidence either direct or circumstantial.

It appears from the aforesaid principles that the confession of a co-accused can be used against other non-confessing accused in a joint trial, if the confession is found to be voluntary and true and receives some corroboration from either direct or circumstantial evidence. In the discussions above, we have found that the confessional statements of condemned prisoners Md. Liton and Abu Sayeed were voluntary and true. The circumstantial evidence has also been found to be corroborative to such confessions. Such being the case, we find no substance in the submissions of the learned Advocates for the defence that the confession of a co-accused cannot be used for awarding sentence upon the other accused.

However, it appears from the evidence of the prosecution witnesses that deceased Parvin Sultana did not succumb to sexual assault i.e. rape. Rather she has been killed by strangulation after committing rape on her. Such offence of killing can be tried in the other case filed under section 396 of the Penal Code. If there was no such case then sentence for other offence could have been imposed upon the condemned prisoners together with the offence under the Ain, according to section 27(3). In the instant case it appears that the accused were known to deceased Parvin Sultana. So, it can be presumed that had the accused not committed rape on her, yet they might have killed her assuming that she could be a witness to the commission of dacoity. Since the death of the deceased is not found to be a consequence of rape committed on her therefore, the offence committed by the condemned prisoners does not come under the purview of section 9(3) of the Ain, 2000. However, all of them can be found guilty separately under section 9(1) of the Ain for committing rape on the deceased. In this circumstance, we hold that each of the condemned prisoners should be sentenced with imprisonment for life thereunder.

In the result, the reference is rejected. Appeals are allowed in modified form. The death sentences awarded upon the condemned petitioners under section 9(3) of the Ain are set aside. Each of them is sentenced to suffer imprisonment for life under section 9(1) of the Ain. Let the condemned prisoners be removed from the condemned cell and shifted to the general cell, if not required in connection with any other sentence.

The jail appeals are disposed of.

Communicate the judgment and order and transmit the lower Court records.

Bhishmadev Chakraborty, J:

I agree.