

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No.53 of 2025

The State petitioner

-Versus-

Md. Hitu Sheikh alias Etu Sheikh

..... condemned-prisoner

with

Criminal Appeal No.3737 of 2025

Md. Hitu Sheikh alias Etu Sheikh

..... appellant

-Versus-

The State

.....respondent

and

Jail Appeal No.111 of 2025

Md. Hitu Sheikh alias Etu Sheikh appellant

-Versus-

The State

.....respondent

Mr. Md. Ruhul Quddus Kazal, Attorney General
with Syed Ejaz Kabir, Mr. Mohammad Imam
Hossain (Tarek), Deputy Attorney Generals
with Ms. Hahbuba Tasnim Akhi, Mr. Ashraful
Alam, Ms. Rohani Siddika and Mr. Md. Abdul
Motaleb, Assistant Attorney Generals

..... for the State

(In the reference and the appeals)

No one appears for the appellant

Mr. Md. Hafizur Rahman Khan, Advocate

..... appointed as a State Defence Lawyer
(for the condemned-prisoner)

Judgment on 31.08.2026

Bhishmadev Chakrabortty, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman

Tribunal, Magura (the Tribunal) on trial in NTC Case 57 of

2025 found accused Md. Hitu Sheikh alias Etu Sheikh, son of late Hakim Sheikh guilty of offence under section 9(2) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain) and sentenced him thereunder to death with fine of Taka 1,00,000/- and transmitted the proceedings to this Division for confirmation of the sentence.

Against the aforesaid judgment and order of conviction and sentence, the condemned-prisoner Hitu Sheikh preferred Criminal Appeal 3797 of 2025 and Jail Appeal 111 of 2025 and as such these have been heard together and are being disposed of by this judgment. It may be noted here that Mohammad Abbas Uddin, a learned Advocate of this Court filed the aforementioned criminal appeal for Hitu Sheikh but on 2 consecutive days of hearing he did not appear. Thereafter, we called him. He appeared and reported us that the tadbirkar of the appellant had taken away the brief from him with no objection certificate and he is unable to conduct the case. He has submitted a copy of the no objection certificate he issued for our kind information. Since this is a death reference with connecting appeal, therefore, we had no other alternative but to appoint Mr.

Hafizur Rahman Khan, learned Advocate as a State Defence Lawyer to defend the condemned-prisoner.

The prosecution case, in brief, is that PW 1 Mst. Ayesha Akter alias Ayesha, mother of victim Achiya Khatun (8 years) at about 14:25 hours on 08.03.2025 lodged a first information report (FIR) with Magura police station against 4 accused including the condemned-prisoner stating that her elder daughter Hamida (PW7) was married off to accused 2 about 4 months ago. Accused 1, the condemned-prisoner used to throw bad proposals to her elder daughter Hamida. Her younger daughter Achiya Khatun went to visit the hosue of the accused on 01.03.2025. Her elder daughter PW7 made a phone call to her at about 10:00 am on 06.03.2025 and told her (informant) that the victim fell ill and was taken to the hospital. She thereafter rushed to the house of PW7 and came to learn that after having dinner at about 10:00 pm on 05.03.2025 the victim, her elder daughter PW7 and accused 2 Sajib went to sleep in the bedroom and closed the door. PW7 woke up from sleep at about 2:30 hours on 06.03.2025 but did not find the victim beside her. She found her lying on the floor of the room who disclosed of feeling burning sensation

in her private organ. PW7 thought that the victim was talking nonsense in the midst of sleep. The victim again told PW7 at about 6:00 am on 06.03.2025 of feeling burning sensation in her private organ. In response to a question of PW7, the victim told that at about 1:30 am on 06.03.2025 accused 2 opened the door of the bed room while accused 1 entered into there and gagging victim's mouth pulled her into the floor of room and committed rape upon her. The victim tried to make hue and cry while accused 1 tried to throttle her to death. PW7 tried to told the above fact to the informant over telephone but accused 2 snatched away the mobile phone from her. All the accused persons threatened PW7 from disclosing the facts to anyone else. After some time neighbour Johara (PW23) came to the house while accused 2 opened the door and she (PW23) found the victim ill. The victim became more ill and PW23 poured water on her head. Accused 4 with the assistance of the neighbours at about 10:30 am carried the victim to the 250 bedded Hospital of Magura and she was admitted to the pediatric ward therein. The informant then rushed to the hospital and found the victim lying unconscious on a bed. On examination, the

doctor found marks of injuries on her throat and signs of rape and consequently she was shifted to Gynecology ward. But the physical condition of the victim became deteriorated and she was referred to the Faridpur Medical College Hospital (FMCH) and was admitted therein. Subsequently, her condition was further deteriorated and the authority referred her to Dhaka Medical College Hospital (DMCH) where she was kept in the ICU because her condition was so critical. Accused 1 with the assistance of the other accused persons forcibly raped the victim and tried to kill her. The aforesaid FIR was registered as Magura Sadar Police Station Case 14 dated 08.03.2025 under sections 9(4)(Ka) and 30 of the Ain against 4 accused named therein.

PW27 Md. Alauddin, an Inspector of police was entrusted investigation of the case. During investigation, he seized some *alamots*, including the wearing apparel of accused 1 namely the *lungi* and shirt, the *salawars* and *kamiz* of the victim, the bed sheets and some other articles. He also collected other necessary materials for prosecution. On his prayer the condemned-prisoner was shown arrested in this case on 10.03.2025. He took the accused on remand who

made a confession to the learned Magistrate. The victim subsequently died in the CMH on 13.03.2025. He collected death certificate and autopsy report. After completion of investigation he submitted a charge sheet on 13.04.2025 against all the FIR named accused under section 9(2) of the Ain read with sections 201 and 506(2) of the Penal Code.

The record of the case was then transmitted to the Tribunal for holding trial and was registered as NTC Case 57 of 2025. Learned Judge of the Tribunal took cognizance of offence against all the accused under the selfsame sections of the Ain as well as under the relevant provisions of the Penal Code. Eventually, the learned Judge framed charge on 23.03.2025 under section 9(2) of the Ain, 2000 against Hitu Sheikh and against accused Sajib Sheikh and Ratul Sheikh under section 506(2) of the Penal Code and against accused Zaheda Begum under section 201 of the same Code. The charges so framed were read over to the accused persons then present in the dock, to which they pleaded not guilty and claimed to be tried.

In the trial, the prosecution examined 29 witnesses and they were cross-examined by the defence. The defence case,

as it transpires from the trend of cross-examining the prosecution witnesses is of simple innocence.

After conclusion of examination of the prosecution witnesses, learned Judge of the Tribunal examined the accused under Section 342 of the Code, to which they reiterated their innocence and demanded justice but did not adduce any defence witness. However, upon consideration of oral evidence of witnesses and other materials on record, the learned Judge found the condemned prisoner guilty of the offence under section 9(2) of the Ain, 2000 and sentenced him thereunder to death with fine but acquitted other 3 co-accused.

Mr. Mohammad Imam Hossain, learned Deputy Attorney General takes us through the materials on record and submits that the prosecution by the oral evidence of witnesses and documents proved the charge under section 9(2) of the Ain against the condemned-prisoner. The autopsy report shows that the victim died as a result of strangulation and she was raped. Apart from the above fact, the condemned-prisoner also made a confession which was recorded by PW25 Sabyasachi Roy, a Judicial Magistrate. In

recording the confession, PW25 complied with the formalities as were required by the law. The defence did not challenge as to the truth and voluntariness of the confession. In the confession, the condemned-prisoner gave a vivid picture as to the commission of rape upon the victim and strangulating her at the event of her making hue and cry. The confession is found true and made voluntarily which can be the sole basis of conviction against the condemned-prisoner. The Deoxyribonucleic Acid Test (DNA Test) result supports the confession of the condemned-prisoner of committing rape and strangulation. Since the prosecution has been able to prove the charge under the aforesaid section against the condemned-prisoner and the victim was a girl aged about 8 years of age and as such the Tribunal correctly sentenced the condemned-prisoner to death. The reference, therefore, would be accepted and the appeals be dismissed.

Mr. Hafizur Rahman Khan, learned Advocate appointed as a State Defence Lawyer, opposes the reference and supports the appeal. He takes us through the DNA test report and submits that from the aforesaid report it cannot be said that the condemned-prisoner committed the offence of

rape upon the victim. He submits that in exhibit-7, a bed sheet, a mixed DNA profile of victim Achiya Khatun was found with another accused Sajib Sheikh. Therefore, the presence of the DNA profile of accused Sajib Sheikh in the bed sheet seized from his room creates a serious doubt that Sajib Sheikh might have committed the rape. If any doubt creates as to the actual perpetrator of committing rape, the accused is entitled to its benefit. He also refers to the confession made by the condemned-prisoner and submits that the condemned-prisoner was arrested on 06.03.2025 under section 54 of the Code. He was subsequently shown arrested in this case on 10.03.2025 and was taken on police remand for 5 days on 12.03.2025. He made confession on 15.03.2025 *i.e.*, after 3 days' of police remand. Therefore, the confession cannot be considered as true and made voluntarily. He refers to the case of Safar Ali and others vs. The State, 36 DLR 185 and submits that there our apex Court disbelieved the truth and voluntariness of a confession which was made after 2 days' of police remand. He then refers to a series of cases of our jurisdiction of both the Divisions and submits that the victim died seven days after the alleged

occurrence. If she could have been provided with proper treatment, she might have been survived. Thus the offence comes within the meaning of section 299 of the Penal Code, i.e., culpable homicide not amounting to murder and in that case the sentence of death is found improper. Mr. Khan finally submits that since the prosecution failed to prove the charge against the condemned-prisoner under section 9(2) of the Ain, 2000 he is entitled to the acquittal. The reference, therefore, would be rejected and the appeals be allowed.

To address the submissions of the parties and dispose of the reference, let us have a bird's eye view on the prosecution witnesses.

PW1 Mst. Ayesha Akhter alias Ayesha, mother of the victim deposed more or less supporting the fact as stated in the FIR. She further stated that accused Hitu Sheikh at about 8:20 am committed the offence in the manner as stated in the FIR. She proved the FIR exhibit-1 and identified her signature therein. She also proved her signature in the inquest report exhibit-2. In cross-examination by the defence she stated that the accused persons bore bad characters. She

denied the defence suggestion that the accused did not help to commit rape upon the victim or tried to kill her.

PW2 Jolly, a neighbour of the accused stated that while she and PW11 were standing in front of their house, neighbour Johara (PW23) told them that in Hitu Sheikh's house Achiya became ill. They rushed to the house and found Achiya lying unconscious in the room of Sajib. They brought her outside the house and poured water on her head. Then they found mark on her throat. At the time of pouring water on her head her *salwar* became wet and on its changing they found blood into her private organ. Accused 4 Zaheda took her to the house of the traditional healer by the van of Rubel (PW3). Subsequently, she was shifted to MGH and therefrom to FMCH and lastly to DMCH. But in the CMH she died on 13.03.2025. They came to learn that Hitu Sheikh raped the victim. In cross-examination by the defence she stated that Hitu Shekih was characterless. She learnt about the occurrence subsequently. She denied the defence suggestion that she knew nothing or she deposed falsely.

PW3 Rubel, a van driver stated that he heard hue and cry from the house of Hitu Shekih. He went there and found

pouring water on Achiya's head but her sense was not regained. He carried the victim with his van to the house of Delwar Huzur and therefrom to Magura Sadar Hospital. He came to learn that accused Hitu Sheikh raped the victim.

PW4 Md. Ibrahim Sheikh alias Ibrahim, an uncle of the victim stated that the occurrence took place on 06.03.2025. He was in the field. PW1 made a phone call to him at about 1:00 pm and told that Achiya was in critical condition and told him to go to Faridpur taking money with him. He went to FMCH. Subsequently, the victim was shifted to DMCH and thereafter to CMH where she met death. He heard that Hitu Sheikh tried to throttle the victim death after committing rape upon her. In cross-examination by the defence he state that the accused persons were of bad character. He denied the defence suggestion that Hitu Sheikh did not commit rape upon the victim or that he deposed falsely.

PW5 Md. Hazrat Ali, a neighbour of the accused stated that Hamida and Johara told him to call Zaheda. He called on Zaheda from field. He heard that accused Hitu raped victim Achiya. In cross-examination by the defence he

stated that he heard about the occurrence. He then went to the Madrasha. He denied the defence suggestion that he did not hear anything or he deposed falsely.

PW 6 Md. Delwar Hossain, a traditional healer stated that PW 14 Kadem of the Madrasha told him at about 10:30 am on 06.03.2025 that two lady brought a girl to him through a rickshaw van. He examined the victim but found her senseless and finding the physical condition he told them to take her to the hospital. He saw bruise on the throat of the victim. Subsequently, he heard that accused Hitu raped her. In cross-examination by the defence he stated that the girl was seriously ill while she was taken to him. He knew the accused persons. He heard about the occurrence. He denied the defence suggestion that what he heard was not correct.

PW14 Jamal Mollah, a Khadem of Madrash and a disciple of PW6 stated in the similar line of PW6. He stated that he found black mark on the throat of victim. He asked whether she was hanged. He called PW6 who told to take the victim to hospital. He heard that Hitu Sheikh committed rape upon the victim. In cross-examination by the defence he stated that he knew the accused. He did not know the

character of the accused but previously the villagers gave garland of shoes on Hitu's neck and roamed him around the village.

PW7 Hamida alias Famida, elder sister of the victim stated in the same line of FIR and the evidence of PW1. She further stated that the occurrence took place on 06.03.2025 while accused Hitu Sheikh committed rape upon her sister Achiya. The victim tried to make hue and cry while he strangled her with urna and consequently she became unconscious. PWs 2 and 23 came to their house, poured water on victim's head but she did not regain her sense. She saw black mark on victim's throat and scratch mark on her breast. At the time of untying her *paijama* they found blood into her private parts. Her mother-in-law took the victim to PW6 with a rickshaw van who told him to take her to hospital. She was taken to Magura Sadar Hospital wherefrom she was shifted to FMCH and therefrom to DMCH. But lastly she was shifted to the CMH where she died. Police in her presence seized two *paijamas* and one *kamiz* of the victim under seizure exhibit-3. Police further seized a screen shot photo and an oppo mobile phone under seizures exhibits

4 and 5 respectively. She proved the seizures and *alamots* as material exhibits-I-III. In cross-examination by the defence she stated that the accused was a man of bad character. She did not witness the occurrence. She denied the defence suggestion that the accused did not commit the offence of rape upon the victim or she deposed falsely.

PW26 Anjuman Ara, a Sub-Inspector of police held inquest of the dead body of Achiya in the CMH. She proved the inquest exhibit-2 and identified her signature thereon. In cross-examination by the defence she stated that in the report the injuries on the person of the victim was mentioned but she could not remember how many injuries were there. She denied the defence suggestion of preparing a perfunctory report. PW8 Rabiul Islam Nayan and PW9 Sheikh Ramjan Ali were also the witnesses to the inquest. They stated that in their presence the inquest was held and they put their signatures in the report. In cross-examination by the defence they stated that the accused bore a bad character. They could not remember whether any doctor was present at the time of holding the inquest. They denied the defence suggestion that what they have heard was not correct.

PW10 Md. Saddam Hossain Lashkar alias Saddam, uncle of the deceased victim stated that in the morning on the day of occurrence he saw his brother and PW1 going towards Magura wherefrom they informed him that victim Achiya was raped. He learnt subsequently that the victim was taken to FMCH. In presence PW7 police made a seizure, seized 2 *paijamas* and a *kamiz* of the victim under exhibit-3. Police also seized an oppo mobile phone under seizure exhibit-5. He identified those *alamots* in the Court. In cross-examination by the defence he stated that the seizure was made in his presence. The occurrence took place in the house of the accused. He denied the defence suggestion that what he heard from others was not correct.

PW11 Jobeda Begum, a neighbour of the accused stated that on the occurrence morning she went to the house of the accused and found the victim in senseless condition. They poured water on her head. She found scratch mark on victim's chest. After opening her wet *paijama* they found her private organ bloodied. Subsequently, the victim was shifted to DMCH. The victim died in the CMH. In her presence police seized a *kantha*, *kamij* and two bed sheets under a

seizure exhibit-6. She proved the *alamots* material exhibit-IV series. In cross-examination by the defence she stated that Hitu was a man of bad character. She heard about the occurrence. In her presence the *alamots* were seized. She denied that what she heard was not correct.

PW12 Shihab Sheikh, a neighbour of the accused stated in the similar line of PW11. He was also a witness to the seizure of *alamots* under exhibit-6. He proved the seizure and identified the *alamots*. In cross-examination by the defence he stated that Hitu was characterless. He heard about the occurrence. He denied the defence suggestion of deposing falsely. PW13 Md. Saiful Sheikh alias Saiful was a witness to the seizure under exhibit-6. He proved the seizure and his signatures therein and identified the *alamots*. In cross-examination by defence he stated about bad character of accused Hitu. He heard about the occurrence. Police seized *alamots* in his presence. He denied the defence suggestion of deposing falsely.

PW15 Md. Nabin, a cleaner of Magura Hospital and PW16 a police personnel were the witnesses to the seizure of *lungi* and shirt of accused Hitu Sheikh. They stated that in

their presence the above *alamots* were seized under exhibit-7. They proved their signatures in the seizure list and identified the *alamots*. In cross-examination by the defence they stated that the *alamots* were seized in their presence. They denied the defence suggestion of deposing falsely.

PW17 Suhash Ranjan Halder, PW18 Nakiba Sultana were the doctors of Magura 250 bedded hospital and PWs 21 and 22 were the staff nurses of the same hospital. PW17 found marks on the throat of the victim and the patient senseless. She was suffering from breathing problem while PW18, a Doctor of Gyne Department found scratch marks on victim's breast and bleeding on her private organ. She issued certificate exhibit-8 and referred the victim to FMCH. In cross-examination by the defence PW17 stated that he found scratch mark on victim's throat and at that time she was senseless while PW18 stated that it was difficult for her to say that the injuries found on the body of victim may be caused except rape. PWs 21 and 22 stated that they found bruise on victim's throat and cut injury on the chest and they supplied her oxygen.

PW19 Israt Jahan, a doctor of FMCH stated that he examined the victim at about 2:50 pm. The victim was suffering from eclamsia, she was unconscious and had breathing problem. She provided her treatment constituted by a board and issued medical certificate. They referred her to DMCH. In cross-examination she stated that at the time of examination victim's mother was present there. She (PW19) herself examined the victim.

PW20 Shaharia Sultana, Assistant Registrar of the Pediatric Department of DMCH stated that she examined victim Achiya in the ICU and issued Medical Certificate exhibit-10 through a constituted Board. She proved the certificate exhibit-10 and identified her signature thereon. In cross-examination by the defence she stated that she examined the palitant at about 1:00 hours at night. The age of injuries of the victim may be within 24-48 hours. She denied the defence suggestion that they submitted a fictitious report.

PW23 Johara Khatun alias Johara, a neighbour of Hitu Sheikh stated that at about 10:00 am on 06.03.2025 she went to the house of the accused and found victim Achiya ill. She sparked water on her face. She found black mark on her

throat and cut injury on her breast. They poured water on victim's head and thereafter accused 4 took the victim to hospital. In cross-examination she stated that she did not witness anything but heard it. She told the same fact to the Magistrate. She denied the defence suggestion of deposing falsely.

PW24 Md. Ayub Ali, Office-In-Charge (OC) of Magura police station filled up the FIR form and recorded Magura Police Station Case No.14 on 08.03.2025. He proved the FIR form exhibit-11. In cross-examination he stated that at the time of recording the case the informant was not present in the police station.

PW25 Sabyasachi Roy, a Judicial Magistrate posted to the Judicial Magistracy of Magura at the material time stated that he recorded the confession of accused Hitu Shekih on 15.03.2025 in compliance with the provisions of law. The confession was read over to the accused and he put his signatures in 5 prescribed places. PW25 also put signatures in 7 prescribed places. He proved the confession exhibit-12 and identified his signatures and that of the accused thereon. He also recorded the statement of witness Johara Khatun on

19.03.2025 exhibit-13 and proved his signature thereon. In cross-examination by the defence he stated that the confessor disclosed only his involvement with the offence.

PW27 Md. Alauddin, a Police Inspector of Magura Sadar police station investigated the case. He arrested accused Hitu Sheikh on 06.03.2025 under section 54 of the Code and on his prayer he was shown arrested in this case on 10.03.2025. He prepared a rough sketch map and index exhibits-14 and 15. He seized *alamots* and sent those to the forensic department for examination. He recorded the statements of witnesses under section 161 of the Code, collected DNA test report, seized *alamots*, forwarded accused Hitu Shekih for recording his confession and finding *prima facie* case against the accused submitted a charge sheet against them on 13.04.2025. He proved the seizure of *alamots* also. In cross-examination by the defence he stated that he visited the place of occurrence for several occasions. He firstly went there on 08.03.2025. He denied the defence suggestion of submitting a biased and perfunctory report.

PWs 28 and 29, Momtaz Ara and Debika Roy, both were doctors of Forensic Department of DMCH who held

autopsy on the dead body of victim Achiya. They stated that they found the cause of death of victim was- Considering post-mortem examination findings, chemical analysis, microbiology and DNA profiling reports, death in our opinion was due to “Hypoxic Encephalopathy” as a result of ligature strangulation which was antemortem and homicidal in nature. The deceased has sign of recent and forceful sexual intercourse (vaginal and anal). They prove the report exhibit-19 and identified their signatures thereon. In cross-examination by the defence both of them stated that at the time of collection of sample they were present there. They denied the defence suggestion of submitting a perfunctory report.

We have considered the submissions of both the sides, gone through the materials on record and *ratio* of the cases cited by the learned Advocate appointed as a state defence lawyer.

Out of the 29 prosecution witnesses, PW1 Mst. Ayesha Akhter is the mother of victim, PW4 Md. Ibrahim Sheikh is the brother of PW1, PW7 Hamida is the sister of the victim, and PW10 Saddam Laskar is the brother-in-law of PW1.

PW2 Jolly PW5 Md. Hazrat, PW11 Jobada Begum and PW12 Shihab Shekih are the neighbours of the accused. PW6 Md. Delwar Hossain is a Traditional Healer (Hujur) where the victim was taken by accused 4 for taking holly water as treatment and PW14 Jamal Molla is the Assistant of PW6. PW28 Anjuman Ara is a police constable, PW8 Rabiul Islam Nayon and PW9 Ramzan Ali are the witnesses to the inquest. PW17 Suhash Ranjan Halder and PW18 Nakib Sultana are doctors of Magura 250 bedded hospital and PW21 Mst. Joli Parveen and PW22 Monami Parveen are the nurses of aforesaid hospital. PW19 Israt Jahan is a doctor of Faridpur Medical College Hospital who provided treatment to the victim. PW20 Saharia Sultana is a doctor of Dhaka Medical College Hospital who attended the victim in the ICU. PW28 Momtaz Ara and PW29 Debika Ray are the doctors of forensic medicine of Dhaka Medical College Hospital who held postmortem examination of the victim. PW25 Sabyasachi Ray is the Judicial Magistrate of Magura Magistracy who recorded the confession of the condemned-prisoner under section 164 of the Code. PW15 Md. Nobin is a cleaner of Magura Hospital and PW 16 Emdadul Hoque a

police personnel who are witnesses to the seizure of shirt and *lungi* of the condemned-prisoner. PW24 Md. Ayub Ali is a police who filled up the FIR form and recorded the case and PW27 Md. Alauddin is the Investigating Officer. Among the witnesses the doctors and police personnels are formal witnesses and the rests are public witnesses.

In this case the defence did not deny that the victim fell ill in the house of the condemned-prisoner in the morning on 06.03.2025. It was also not denied that at first the victim was taken to PW6, a traditional healer for taking holly water or oil for the victim but he advised them to take her to hospital for treatment. It is admitted fact that the victim was firstly admitted to 250 bedded hospital at Magura and PW17 Dr. Suhash Ranjan Halder provided her treatment in the outdoor of the hospital. It is found in his evidence that he found injury on victim's private organ and shifted her to the gyne department under PW18 Dr. Nakiba Sultana. PW18 examined the victim and found several scratch marks on both her breasts and also found her hymen ruptured. She also found fourchette tear present in the post-fourchette and according to physical examination findings made comment

that it may be a case of sexual assault. Further comment cannot be given due to lack of pathological, dental & radiological report. She proved the report exhibit-8. She referred the victim to Faridpur Medical College Hospital. In the FMCH, the victim was under treatment of PW19 Dr. Israt Jahan. She also found injuries of similar nature on the person of the victim as found by PW18. She issued medical certificate exhibit-9 and finding it necessary of victims ICU support referred her to Dhaka Medical College Hospital. In DMCH the victim was under PW20 Dr. Shahariar Sultana's treatment who after examination issued a certificate of injury of the victim exhibit-10 which is as under-

INJURY CERTIFICATE

Dhaka Medical College Hospital, Dhaka.

Ref:- 8594

Date:-24.03.2025

Patient Name:- Asia

Age:- 08 years

Sex:- Female Reg. No. 4913153

Date:- 06.03.2025

Father's or Guardian's Name:- Ferdous Sheikh

Address:- Nijnan duary Magura

Injury Note:- According to hospital record-

(1) A continuous strangulation mark on the front of the neck about 14 cm in length & 3 cm in width.

(2) Multiple abrasion marks were found on both breast & areola among them largest one measuring about 5 cm in length over left side.

(3) Multiple scratch marks were found on inner surface of both thigh, highest one measuring about 3 cm in length.

(4) There was a cut injury over the perineum 0.5 cm away from introitus measuring about 1X 0.5 cm at 5 O'clock position.”

In the above medical certificate issued by PW20 she opined that injury No. 1, *i.e.*, continuous strangulation mark was caused by a blunt weapon, whereas injuries 2, 3 and 4 *i.e.*, including a cut injury in the private organ of the victim were caused by a sharp cutting weapon. The patient was subsequently shifted to CMH for better treatment. But unfortunately, there she succumbed to the injuries on 13.03.2025. One of the causes mentioned in the death certificate by the CMH authority is found to be ARDS, *i.e.*, Acute Respiratory Distress Syndrome meaning lack of supply of oxygen.

The autopsy report exhibit-19, issued and proved by PWs 28 and 29, two doctors of DMCH reveals that as per postmortem examination finding, chemical analysis, microbiological and DNA profiling report death was due to ‘hypoxic encephalopathy’ as a result of ligature strangulation, which was antemortem and homicidal in nature. The deceased has sign of recent and forceful sexual intercourse (vaginal and anal). So as per the medical certificates issued by the doctors of the concerned medical

college hospitals and the autopsy report, the victim was raped and strangled which resulted her ultimate death.

Now we have to examine who committed rape upon the victim and resulted her to death by the other acts.

Police during investigation seized a series of alamots (exhibits 3, 4, 5, 6 and 7) from the house of the condemned-prisoner. The *lungi* and shirt of the condemned-prisoner, two *salwars* and a kamiz of the victim, the bed sheet and kantha. Out of 7 seized articles particularly at serials 1, 2, 3 and 4 are important for disposal of this case, especially in relation to the DNA test report. The DNA test report was issued by the competent Forensic DNA Laboratory of Bangladesh Police. The relevant part of which are quoted below-

INTERPRETATION/COMMENT

পরীক্ষায়,

- চাদর (সজিব শেখের রুম হতে) (Exhibit 7) এ বীর্যের উপস্থিতি শনাক্ত হয়। চাদরে প্রাপ্ত বীর্য হতে একজন পুরুষের ডিএনএ প্রোফাইল (Exhibit 7.C3) পাওয়া যায় যা সজিব শেখের (Exhibit 10) ডিএনএ প্রোফাইলের সাথে সম্পূর্ণরূপে মিলে যায়। চাদর (সজিব শেখের রুম হতে) (Exhibit 7) এ প্রাপ্ত বীর্যের ডিএনএ প্রোফাইলটি বাংলাদেশী জনসংখ্যা থেকে দৈবভাবে চয়নকৃত অন্য কোন একজনের ডিএনএ প্রোফাইলের সাথে মিলে যাওয়ার সম্ভাবনা প্রায় ৭৭১৬০১০ জনে ১ জন।
- চাদর (সজিব শেখের রুম হতে) (Exhibit 7) এর অপর একটি অংশে মিশ্র ডিএনএ প্রোফাইল (Exhibit 7.C2) পাওয়া যায় যেখানে মোছাঃ আছিয়া

থাতুনের (Exhibit 12) ও সজিব শেখের (Exhibit 10) ডিএনএ উপস্থিত আছে।

- লুঙ্গি (Exhibit 19) এ বীরের উপস্থিতি শনাক্ত হয়। লুঙ্গি হতে মিশ্র ডিএনএ প্রোফাইল (Exhibit 19.C1, 19.C2, 19.C4) পাওয়া যায় যার মূখ্য অংশে মোঃ হিটু শেখের (Exhibit 9) ডিএনএ উপস্থিত আছে।
- কামিজ (পুরাতন ও ছেঁড়া) (Exhibit 6) এর একটি অংশে একজন পুরুষের ডিএনএ প্রোফাইল (Exhibit 6.C1) পাওয়া যায় যা মোঃ হিটু শেখের (Exhibit 9) ডিএনএ প্রোফাইলের সাথে সম্পূর্ণরূপে মিলে যায় (কামিজ (পুরাতন ও ছেঁড়া) (Exhibit 6) এ প্রাপ্ত ডিএনএ প্রোফাইলটি বাংলাদেশী জনসংখ্যা থেকে দৈবভাবে চয়নকৃত অন্য কোন একজনের ডিএনএ প্রোফাইলের সাথে মিলে যাওয়ার সম্ভাবনা প্রায় ৮.৮৬৫x১০ জনে ১ জন।
- ভ্যাজাইনাল সোয়াব (Exhibit 15, 16) এ রক্তের উপস্থিতি শনাক্ত হয়। ভ্যাজাইনাল সোয়াব (Exhibit 1, 15, 16) হতে একজন নারীর ডিএনএ প্রোফাইল পাওয়া যায় যা মোছাঃ আছিয়া খাতুনের ডিএনএ প্রোফাইলের সাথে সম্পূর্ণরূপে মিলে যায়। ভ্যাজাইনাল সোয়াব (Exhibit 1, 15, 16) এ প্রাপ্ত ডিএনএ প্রোফাইলটি বাংলাদেশী জনসংখ্যা থেকে দৈবভাবে চয়নকৃত অন্য কোন একজনের ডিএনএ প্রোফাইলের সাথে মিলে যাওয়ার সম্ভাবনা প্রায় ৭.৬২২x১০ জনে ১ জন।
- পায়জামা (Exhibit 2, 4) হতে মিশ্র ডিএনএ প্রোফাইল পাওয়া যায় যেখানে মোছাঃ আছিয়া খাতুনের ডিএনএ উপস্থিত আছে।
- কাঁথা (Exhibit 5) হতে মিশ্র ডিএনএ প্রোফাইল পাওয়া যায় যা বিশ্লেষণের অনুপযোগী।
- চাদর (মোঃ রাতুল শেখের কম হতে) (Exhibit 8) হতে মিশ্র ডিএনএ প্রোফাইল পাওয়া যায় যার মূখ্য অংশে মোঃ রাতুল শেখের (Exhibit 11) ডিএনএ উপস্থিত আছে।
- ব্লেড (Exhibit 17) হতে মিশ্র ডিএনএ প্রোফাইল পাওয়া যায় যেখানে অজ্ঞাত নারীর ডিএনএ উপস্থিতি আছে।
- শাট (Exhibit 18) হতে মিশ্র ডিএনএ প্রোফাইল পাওয়া যায় যার মূখ্য অংশে মোঃ হিটু শেখের ডিএনএ উপস্থিতি আছে।

ভ্যাজাইনাল সোয়াব (Exhibit 1, 13, 15, 16), পায়জামা (Exhibit 2, 4), কামিজ (Exhibit 3, 6), কাঁথা (Exhibit 5), চাদর (Exhibit 8), ডায়াপার (Exhibit 14), শাট (Exhibit 18) এ বীর্যের উপস্থিতি শনাক্ত হয়নি।

পায়জামা (Exhibit 2, 4), কাঁথা (Exhibit 5), চাদর (Exhibit 8), ব্লেড (Exhibit 17) শাট (Exhibit 18), লুঙ্গি (Exhibit 19) এ রক্তের উপস্থিতি নাক্ত হয়নি।(*emphasis supplied*)

At serial one of the report, the existence of semen of Sajib in the bed sheet seized from his room was found and at serial number two *i.e.*, in another bed sheet which was also seized from the room of Sajib Sheikh, a mixed DNA profile of Sajib Sheikh and victim Achiya was found. At serial number three of the DNA test report in the *lungi* of Hitu Sheikh, which was seized duly, existence of semen of Hitu Sheikh was found. At serial number four of the report, in a *kameez* of the victim Achiya Khatun, the existence of DNA profile of the condemned-prisoner Hitu Sheikh was detected.

Upon careful consideration of the aforesaid DNA test report, there is no confusion that in the *lungi* of Hitu Sheikh existence of semen was found and it matched with the DNA profile of Hitu Sheikh. Similarly, the DNA profile of the condemned-prisoner Hitu Sheikh was detected in the *kameez* of the victim Achiya Khatun. The aforesaid report and fact proves that there was a physical contact between victim

Achiya Khatun and the condemned-prisoner Hitu Sheikh. As per condemned-prisoner's confession he pulled off the *salwar* of the victim but the *kamiz* was on her body and her *salwars* were washed and consequently in the *kamiz* of the victim, condemned-prisoner Hitu's DNA profile was found.

However, a mixed DNA profile of Achiya Khatun and Sajib Sheikh was detected in the bed sheet recovered and seized from the bed room of Sajib Sheikh. It is very usual, if several persons lay on the same bed, the presence of mixed DNA profiles of all of them would be found in the bed sheet. Admittedly, victim Achiya Khatun slept on the same cot with her elder sister PW7 and Sajib Sheikh. The existence of DNA profile of the victim and Sajib Sheikh in the bed sheet seized from the room does not prove that Sajib Sheikh committed rape upon the victim.

Apart from the aforesaid fact the condemned-prisoner made a confession which was recorded by PW25, a Judicial Magistrate. We have carefully examined the confession made by the condemned-prisoner and find that all mandatory requirements of the law for recording a confession were duly complied with. The confessor was kept under a office peon.

The learned Magistrate put the questions of column 5 to the condemned-prisoner to make him understand the consequence of making confession and thereafter recorded answers of questions put in column 6. In particular, he was asked in column 6 question 5. "আপনি দোষ স্বীকারোক্তি মূলক জবানবন্দি করিতেছেন কেন?" উত্তরঃ অনুশোচনা থেকে। In question 8 he was asked "আপনি দোষ স্বীকারোক্তিমূলক জবানবন্দি করেন বা না করেন আপনাকে আর পুলিশ হেফাজতে ফেরত নেওয়া হইবে না। আপনাকে বিচার সম্বন্ধীয় হাজতখানা অর্থাৎ কারাগারে প্রেরণ করা হইবে। আপনি বুঝিয়াছেন কি?" উত্তরঃ হ্যাঁ। The condemned-prisoner made the confession as under-

“আমি মোঃ হিটু শেখ। গত ইং ০৬/০৩/২০২৫ তারিখ সকাল ৮:২০ ঘটিকায় আমি ঘুম থেকে উঠে দেখি আমার বৌমা হামিদা রান্না ঘরের পাশে বরই গাছতলায় ফোনে কথা বলছিল। এই সময় তার ঘরের দরজা খোলা দেখে আমি ঘরের ভিতরে ঢুকি এবং দেখি যে আছিয়া খাটের উপর শূয়ে আছে। তখন আমি এক হাত দিয়ে তার মুখ চেপে ধরে অন্য হাত দিয়ে টেনে ফ্লোরের উপর নামিয়ে নিয়ে আসি। তখন আছিয়া চিংকার শুরু করলে আমি ওড়না দিয়ে তার গলা চেপে ধরে রাখি। তখন ও ভ্রান হারিয়ে ফেলে। আমি নিজেকে নিয়ন্ত্রন করতে পারিনি। তখন আমি আছিয়ার প্যান্ট খুলে ফেলি এবং আমার পরনের লুঙ্গি খুলে আছিয়ার যৌনাঙ্গে ঢুকাতে যাই। কিন্তু অনেকবার চেষ্টা করা স্বত্বেও আমি ঢুকাতে পারছিলাম না। তখন আমি তাড়াতাড়ি করে আমার রুমে ব্লেন্ড আনতে যাওয়ার চিন্তা করি এবং আছিয়ার মুখের উপর বালিশ চাপা দিয়ে তারপর আমার রুমে যাই। আমার রুম থেকে ব্লেন্ড নিয়ে এসে আছিয়ার যৌনাঙ্গে ব্লেন্ড দিয়ে কাটা শুরু করি যাতে জায়গাটা বড় হয় এবং আমি ঢুকাতে পারি। কিন্তু কাটাকাটি করা স্বত্বেও আমি ঢুকাতে পারিনি। রক্ত বের হয়ে ফ্লোরে গড়িয়ে পড়েছিল। তখন আমি ঐ অবস্থায় আছিয়ার বুকের উপর শূয়ে ধাক্কা দিতে থাকি। কিন্তু কোন অবস্থাতেই ঢুকাতে পারছিলাম না। তখন আমার মাথায় কাজ করছিল না। আমার হাতে থাকা ব্লেন্ড দিয়ে আমি তখন আছিয়ার বুকের বাম স্তন পেচিয়ে কয়েকবার আচড় কাটি। খুব বেশি রক্ত বের হয়নি। ঐ রক্ত

আমার শরীরে লেগেছিল। এইভাবে কিছুক্ষন ধাক্কা দিতে দিতে আমার বীর্য বের হওয়ার মত হলে আমি আছিমার বুকের উপর থেকে উঠে পাশে থাকা আমার লুঙ্গির উপরে বীর্য ফেলি। এরপর ঐ লুঙ্গি পরেই আমি আমার রুমে গিয়ে শুয়ে পড়ি। এর কিছুক্ষন পর আমি দেখি যে আমার বৌমা কথা শেষ করে রুমের দিকে গেছে। তখন আমি উঠে রান্না ঘরে গিয়ে ডিমের তরকারি দিয়ে ভাত খাই। তারপর খাওয়া দাওয়া শেষ করে আমি আমার বড় ছেলে রাতুলকে ঘুম থেকে ডাকি এবং বলি যে মাঠে মশুরের ভুইতে আসার জন্য। এর পর আমি মাঠে চলে যাই। গিয়ে দেখি আমার স্ত্রী জাহেদা মাঠে মশুর তুলছে। আমার ছোট ছেলে সজীব সকাল ০৮:০০ টার আগেই কাজের জন্য বাইরে গিয়েছিল। সে বাড়ীতে ছিলনা। তখন আমি ও আমার স্ত্রী মাঠে কাজ করছিলাম। বেলা ১১:০০ টার দিকে হযরত ও সিয়াম বলে দুটি ছেলে এসে বলে যে আছিয়া খুব অসুস্থ হয়ে পড়েছে। তার মাথায় সবাই পানি দিচ্ছে। তখন আমি আমার স্ত্রীকে বলি যে বাড়ী গিয়ে সে যাতে আছিয়াকে হাসপাতালে নিয়ে যায়। এর আধাঘন্টা পর আমি বাড়ীর চারদিকে দেখি সেনাবাহিনী পুলিশের গাড়ী। তখন আমি পুকুরের কাঙ্কা দিয়ে দিয়ে লুকিয়ে আমার বাড়ীর পাশের একটা ভুইতে গিয়ে বসে থাকি। সেখান থেকে ১২:০০ টার দিকে পুলিশ আমাকে ধরে নিয়ে আসে। আমি নিজের ভিতরে ছিলাম না। আমার মাথায় ঐ সময় কোন কাজ করেনি। আমি অপরাধ করে ফেলেছি। মাফচাই। এই আমার জবানবন্দী পড়ে শুনানী অন্তে সত্যতা স্বীকারে নিজ নাম স্বাক্ষর করলাম।” (*emphasis added*)

After recording confession, the learned Magistrate made a memorandum at the bottom of column 7 as required under sub-section 3 of section 164 of the Code. He also made the necessary endorsements in columns 8 and 9. The defence did not challenge as to the truth and voluntariness of the confession by cross-examining PW25, the Magistrate and PW27 IO effectively. In their cross-examination nothing has come out adverse.

In the confession, the condemned-prisoner gave a vivid picture of committing rape upon the victim. He told that he pulled down the victim from the cot and at the event of committing rape upon her while she tried to make hue and cry he throttled her with *urna* and consequently she became senseless. He pulled off the *salwar* of the victim, opened his lungi and tried to penetrate into the victim's private organ but failed due to the reason that it was not developed enough. He put a pillow on the face of victim, brought a blade and cut a part of victim's private organ to penetrate. This facts supports the injury certificate issued by DMCH exhibit-10 and autopsy report exhibit-19 that they found strangulating mark on the throat of the victim and it was one of the cause of her death and injury 4 in the private organ was of sharp cutting weapon. The condemned-prisoner further disclosed in his confession that he ejaculated the semen in his *lungi* kept beside the victim. That *lungi* was seized and sent for DNA test. On DNA examination the existence of semen of the condemned-prisoner Hitu Sheikh was found therein.

In the aforesaid position of evidence both oral and documentary, we find that none but the condemned-prisoner

committed rape upon the victim and at the event of committing rape he strangled her to resist of making any hue and cry. The victim was shifted from hospital to hospital and for the whole time she was unconscious for 7 or 8 days. For last 7 days she faced the peril of death and ultimately met the tragic death on 13.03.2025.

Section 9(2) of the Ain, 2000 provides, “যদি কোন ব্যক্তি কর্তৃক ধর্ষণ বা উক্ত ধর্ষণ পরবর্তী তাহার অন্যবিধ কার্যকলাপের ফলে ধর্ষণের শিকার নারী বা শিশুর মৃত্যু ঘটে, তাহা হইলে উক্ত ব্যক্তি মৃত্যুদন্ডে বা যাবজ্জীবন সশ্রম কারাদন্ডে দণ্ডনীয় হইবেন এবং ইহার অতিরিক্ত অন্যান্য এক লক্ষ টাকা অর্থদন্ডেও দণ্ডনীয় হইবেন;”

Practically, the victim did not die due to commission of rape but she was strangled by the condemned-prisoner and death was for the cumulative effect of those which definitely comes within the meaning of other acts as defend in the section.

The case reported in 36 DLR 185 as has been referred to by the learned State Defence Lawyer that making of confession after two days’ of police remand make the confession unbelievable is not applicable in the present case because in that particular case the accused always brought allegation to the Magistrate even to the trial Court that he

was subjected to torture and consequently he was bound to make a confession as wanted by police. Such fact is totally absent in this case. Although the condemned-prisoner was in police remand for 5 days but he made confession after 3 days. He did not challenge the truth and voluntariness of the confession. We find that the confession is true and made voluntarily. The cases as referred to by the learned Advocate for the condemned-prisoner about culpable homicide amounting to murder or culpable homicide not amounting to murder shall not apply in the present case because this is a case under section 9(2) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 and law prescribes here the punishment as to the nature of offence and its consequence.

In the FIR the time of occurrence was shown at about 1:30 am on 06.03.2025 which the informant heard from others. But FIR is not an encyclopedia, it is just to put the ball in motion. She deposed in the Court about the time of occurrence correctly which can be safely accepted. The time mentioned in the FIR does not affect the merit of this case.

Since the victim was a girl of 8 years and she met death in consequence of rape and other acts. Therefore, we

find that the condemned-prisoner deserves extreme punishment. The Tribunal correctly assessed the evidence and other materials on record and sentenced him to death. We find no reason to interfere with the judgment and order of conviction and sentence passed by the Tribunal.

In view of the discussion made hereinabove, the reference is accepted. The judgment and order of conviction and sentence of death passed by the Tribunal is hereby upheld. Accordingly, the criminal appeal is dismissed and the jail appeal is disposed of.

But in the evidence of witnesses, we find that the defence very casually cross-examined the prosecution witnesses which is very unwanted. The accused was charged with rape followed by murder which provides capital punishment. In such a case, if the accused is found unable to engage a competent Advocate to defend him, in that case the Court may on its own initiative can appoint an experienced Advocate to defend the accused.

However, the Solicitor Wing of Law Justice and Parliamentary Affairs is directed to pay Taka 20,000/- (twenty thousand) to Mr. Hafizur Rahman Khan, a State

Defence Lawyer who was appointed by us to dispose of the reference in the absence of the learned Advocate for the appellant. The concerned authority is further directed to implement guidelines given in the judgment and order passed in the case of State vs. Tohurul Islam alias Azizul Hoque and others, 66 DLR 386 regarding appointment and fixing of fees of the State Defence Lawyer within 6(six) months and inform it to the office of the Registrar General of this Court.

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

Let a copy of this judgment with a copy of the aforequoted judgment (66 DLR 386) be sent to the Ministry of Law Justice and Parliamentary Affairs Bangladesh Secretariat and Solicitor Wing of the concerned Ministry situated within this Court premises.

K.M. Rasheduzzaman Raja, J.

I agree.