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

Present:

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

Death Reference No. 125 of 2019

The State ...petitioner
-Versus-
Md. Siddique Gazi ...condemned-convict
with
Criminal Appeal No. 11902 of 2019
Md. Hashem Gazi and another
...convict-appellants
-Verses-
The State ...respondent
and
Jail Appeal No. 280 of 2019
Mst. Parul Begum ...convict-appellant
-Versus-
The State ...respondent

Mr. Syed Ejaz Kabir and Ms. Nahid Hossain (Liza), Deputy Attorney Generals with Ms. Mahbuba Tasnim Akhi, Mr. Ashraful Alam and Md. Abdul Motaleb, Assistant Attorney Generals
...for the State

Mr. Md. Hafizur Rahman Khan, Advocate
...appointed as a State Defence Lawyer

None appears for the convict-appellant in Criminal Appeal No. 11902 of 2019.

Judgment on: 09.11.2026

K.M. Rasheduzzaman Raja, J:

This reference has been made by the Judge, Nari-o-Shishu Nirjatan Daman Tribunal, Barguna under section 374

of the Code of Criminal Procedure, hereinafter 'the Code', read with section 29 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, hereinafter 'the Ain', to confirm the death sentence awarded upon the condemned convict Siddique Gazi by him in Nari-o-Shishu Case No. 357 of 2002 arising out of Betagi P.S. Case No. 05 dated 13.08.2002 corresponding to GR No. 61 of 2002 under section 11(Ka) of the Ain, 2000 by the judgment and order dated 09.10.2019. The learned Judge awarded the sentence of imprisonment for life upon the other accused Md. Khukon Gazi, Md. Liton Howlader, Md. Hashem Gazi and Mst. Parul Begum by the same judgment and order. Being aggrieved by and dissatisfied with the sentence awarded upon accused Md. Hashem Gazi and Mst. Parul Begum under sections 11(Ka) and 30 of the Ain they have preferred Criminal Appeal 11902 of 2019. We have heard all the matters together and, therefore, are going to dispose of these matters by this judgment.

The prosecution case, in brief, is that deceased Sajeda Begum alias Baby was married off to accused Siddique Gazi on 27.01.2001. But she was not formally sent to the house of

her husband Siddique Gazi which was delayed for observing some other formalities. Accused Siddique Gazi stayed in the house of the father of Baby for 3/4 days after the marriage and went to Dhaka for joining his service. However, in his absence his brother Khukon Gazi and brother-in-law accused Liton Howlader used to visit the house of Baby frequently. After 3 months of the marriage Baby was brought to the house of her husband Siddique Gazi for assisting the household work on account of building new house. Since then Baby used to frequent between the house of her father and father-in-law. Her husband accused Siddique Gazi used to visit his house having intervals of 3/4 months and staying there for 3/4 days used to live the house for Dhaka. By this time, accused Khukon Gazi and Liton Howlader used to tease Baby and gave her bad proposals for which she assaulted accused Khukon Gazi with her sandal. Since then accused Khukon Gazi and Liton Howlader started keeping grudge against Baby. Accused Khukon Gazi, Liton Howlader, Siddique Gazi, Parul and Hashem started putting pressure upon Baby for bringing dowry of Taka 10,000 (ten housand) and a colour television

from her father. Being informed about such pressure PW4 Abdul Aziz Howlader purchased a 17″ black and white Sony Television at Taka 4200/- and requested Hashem Gazi, father of Siddique Gazi, to recieve the same from his house. Accordingly, accused Hashem Gazi along with Baby visited the house of PW4 Abdul Aziz Howlader on 11.07.2002 but left his house in the afternoon leaving Baby there. On 16.07.2002 accused Khukon Gazi and Liton Howlader went to the house of PW4 Abdul Aziz Howlader at around 08:00 p.m. and wanted to take Baby and the Television with them at night. As PW4 Abdul Aziz Howlader denied to send his daughter along with the Television with them, accused Khukon Gazi and Liton Howlader got angry and picked a quarrel with him and leaved his house without having any meal. On the next day, accused Siddique Gazi went to his house from Dhaka but upon found his wife absent in the house, he asked her to come to his house on 18.07.2002. PW4 Abdul Aziz Howlader sent his daughter to the house of her father-in-law on 18.07.2002 with his son Hemayet. At around 03:00 hours at night on 20.07.2002 PW13 Moti Patwary and

PW20 Abdul Quddus informed PW4 Abdul Aziz Howlader that his daughter Sajeda Begum alias Baby died by hanging. Hearing the occurrence he along with Hashem Sikder, Sahid, Badal and others went to the house of the accused and found his daughter Baby lying dead. He found the wearing cloths of his daughter Baby hanging between the mango and guava trees. PW4 Abdul Aziz Howlader along with PW16 Abdul Jabbar Chowkider went to Betagi police station and informed the police. Police arrived at the place of occurrence and held inquest over the deadbody in presence of PW3 Mst. Lucky Akter, the local UP member. They found marks of injury in the deadbody. The deadbody was sent for holding autopsy and upon found the autopsy report PW4 Abdul Aziz Howlader lodged FIR on 13.08.2002 with Betagi police station, Barguna.

Upon the above FIR Officer-in-Charge of Betagi police station registered Betagi P.S. Case No. 05 dated 13.08.2002 under sections 10, 11(Ka) and 30 of the Ain, 2000 and appointed PW11 Dibakar Chandra Das investigating officer of the case.

Being appointed investigating officer PW11 Dibakar Chandra Das visited the place of occurrence, prepared sketch map with index. Earlier, following the filing of U.D. Case No. 06 dated 21.07.2002 he was also appointed to enquire into the occurrence. Going to the place of occurrence he found the deadbody of Sajeda Begum alias Baby and held inquest over the deadbody. He found marks of injury in the neck, throat, under the armpit and other parts of the deadbody. He sent the deadbody to morgue for determination of the real cause of death. After holding autopsy on the deadbody PW4 Abdul Aziz Howlader lodged the FIR and, thereafter, he submitted final report in the U.D. Case No. 06 dated 21.07.2002. Going to the place of occurrence he seized the alamot preparing seizure list. He recorded the statements of the witnesses, collected the autopsy report, arrested accused Parul and her husband Hashem Gazi. Upon found primary evidence against the accused persons he submitted charge sheet under sections 10, 11(Ka) and 30 of the Ain, 2000.

Learned Magistrate receiving the charge sheet transmitted the case record to the learned Judge of the

Tribunal for holding trial. Learned Judge of the Tribunal receiving the case record took cognizance of the offence and registered Nari-o-Shishu Case No. 357 of 2002 and fixed the case for hearing the charge matter. Accordingly, charge was framed against the accused persons under sections 10, 11(Ka) and 30 of the Ain which was explained and read over to accused Parul and Hashem Gazi to which they pleaded not guilty and demanded the trial. However, the charge could not be read over to accused Md. Khukon Gazi, Liton Howlader and Siddique Gazi as they were absconding.

The prosecution has examined 23 witnesses to bring home the charge brought against the accused persons. Then the present accused Parul Begum and Hashem Gazi were examined under section 342 of the Code whereupon they again claimed their innocence and expressed their desire not to adduce any counter evidence.

The defence case as transpires from the trend of the cross-examination is that of innocence and deceased Sajeda Begum alias Baby committed suicide by hanging.

Ms. Mahbuba Tasnim Akhi, learned Assistant Attorney General, appearing for the State took us through the materials on record and submitted that the prosecution adduced sufficient evidence to prove the complicity of the accused persons. The accused persons killed deceased Sajeda Begum alias Baby in connivance with each other for dowry. After the occurrence accused Siddique Gazi, Khukon Gazi and Liton Howlader have gone into absconsion only to manifest their guilty mind. Postmortem report and inquest report have supported the persecution on the deceased before killing her. After killing the deceased the accused persons publicized her death as a suicide. Learned Judge of the Tribunal evaluated the evidence on record properly and correctly found the accused persons guilty and sentenced them properly. As such, the reference should be accepted.

Mr. Md. Hafizur Rahman Khan, learned State Defence Lawyer, appearing for the absconding condemned-convict Siddique Gazi submits that there was no eyewitness to the occurrence. No independent witness has come before the Tribunal to support the demand of dowry by the accused

persons to the deceased or her family. No date has been mentioned when the alleged dowry was demanded to the deceased. Mere absconsion is not sufficient ground to convict the accused persons. As such, the learned State Defence submits, the reference should be rejected.

Although convict Mst. Parul Begum and Md. Hashem Gazi preferred Criminal Appeal No. 11902 of 2019 and obtained bail from this Division but at the time of hearing their Advocate was not found present even though he was personally informed. Mr. Mansur Habib, learned Advocate for appellants Mst. Parul Begum and Hashem Gazi, appeared at the time of hearing but subsequently did not continue his presence and make any submission for his clients.

We have already mentioned that the prosecution has examined 23 witnesses to prove the charge brought against the accused persons. Let us examine the some and substance of the evidence of the prosecution witnesses.

PW1 Constable No. 126 Md. Shah Alam has deposed that on 21.07.2002 he carried the deadbody of Baby Akter to the morgue for holding autopsy.

PW2 Dr. Subrata Ray has deposed that he was a Medical Officer in General Hospital, Barguna on 22.07.2002 and receiving the deadbody of Baby Akter he held autopsy thereon. He found the deadbody swelling from head to abdomen. He found tendered injuries in the hands, elbows, shoulder, mouth, chest and head. He found the lungs congested, heart congested, stomach congested and reproductive organs congested and he found the other parts intact. He found clotted blood around the injuries of the deadbody. The right eye of the deadbody was found extruding. All the face of the deadbody was found reddish which indicates suffocation at the time of death. The deceased died for the cause of such injuries and suffocation. The injuries were antemortem. All those injuries and suffocation were homicidal. He submitted the autopsy report and marked the report and his signature thereon as exhibits. In cross-examination he has stated that in case of hanging the suffocation may be happened. There was a tendered injury in the neck.

PW3 Mst. Lucky Akter, the local UP member, has deposed that he found the deadbody of Baby lying in front of the house of the accused Siddique Gazi covered with a *chador*. She saw the deadbody removing the *chador*. Daroga held inquest over the deadbody and prepared a report with his signature. She has marked the inquest report and her signature as exhibits. In cross-examination she has stated that she heard that Baby died by hanging. She could not remember who told her about the death of the deceased. She found the deadbody flexible and soft as the neck was found tilting. She found marks around the neck. She found the mango and guava trees before seeing the deadbody. But she cannot say whether anyone can commits suicide by hanging between those two trees.

PW4 Abdul Aziz Howlader, the informant and father of the deceased, has deposed that on the night of the occurrence he was in his house. His daughter Baby was in the house of her husband Siddique Gazi. At around 03:00 to 03:30 at night PW13 Moti Patwary and PW20 Abdul Quddus informed him that his daughter Baby committed suicide by hanging. Hearing

the occurrence he along with Jagadish, Hashem Sikder, Sahid and Badal went to the house of accused Siddique Gazi and found the deadbody of his daughter lying. He found the wearing cloths of his daughter Baby hanging in the mango and guava trees. He accompanying with PW16 Jabbar Chowkider went to Betagi police station and informed the police. Police arrived at the place of occurrence and held inquest over the deadbody in presence of the local lady member PW3 Lucky Akter. Knowing about the autopsy report he lodged FIR with the Betagi police station. He has marked the FIR and his signature thereon as exhibits. Daroga seized the *petticoat, blouse* and a printed *saree* of the deceased in his presence. He has marked the seizure list and the seized *alamot* as exhibits.

In cross-examination he has stated that his daughter Baby had a conjugal life of 1 year with her husband. His daughter was not formally sent to the house of her father-in-law. Accused Siddique Gazi brought his wife Baby to their house on the plea of raising new house. His daughter Baby visited the house of her father-in-law on 4/5 occasions. Baby went to the house of her father-in-law 4/5 days before her

death. Husband of Baby used to visit their house and sometimes he took Baby to their house. He also sent his daughter Baby to the house of her husband with his son Hemayet. He found accused Hashem and Parul in their house when they went to their house. He found them sitting beside the deadbody. He has denied that his daughter Baby committed suicide as his son Hemayet forcibly kept her in the house of her husband. He has further deposed on recall that accused Khukon Gazi, Liton Howlader, Parul, Siddique and Hashem killed his daughter Baby in their house. The accused persons killed her demanding dowry of Taka 10,000/- (ten thousand) and a colour television. He found the accused persons present in their house when he went there. He found a *salwar* and red colour *urna* hanging in the guava tree. He found the deadbody of his daughter covered with red cloth in the verandah of the house of her husband Siddique Gazi. At the time of inquest he was present and he found injuries in the deadbody and two of her teeth missing. In further cross-examination he has stated that he cannot remember the date when he visited the place of occurrence. PW13 Moti Patwary

informed him the occurrence going to their house. He has denied that his daughter committed suicide or he found no marks of injury on her deadbody.

PW5 Mst. Parul Begum, mother of the deceased, has deposed that her daughter Baby died in the house of her husband. PW13 Moti Patwary and PW20 Abdul Quddus informed them at 03:00 at night that their daughter Baby committed suicide. Hearing the occurrence they went to the house of the father-in-law of her daughter Baby and found her deadbody. They found marks of injury on the whole body of the deceased. He talked to accused Hashem and Parul who claimed that her daughter Baby committed suicide. Accused Siddique and his father Hashem and mother Parul and the other accused demanded a colour television and dowry of Taka 10,000/- to them. As they failed to meet the demand of dowry the accused persons in connivance with each other beaten her daughter Baby to death.

In cross-examination she has stated that her daughter Baby was not formally sent to the house of her father-in-law. The accused persons brought her daughter Baby to their house

on the plea of raising new house. As they wanted to continue the marriage of her daughter therefore, they did not file any GDE against the demand of dowry. Her daughter Baby prohibited them to file GDE. However, they have disclosed the demand of dowry to their neighbours. His daughter Baby was always willing to go to the house of her husband. They never sent her to the house of her husband against her will. She has denied that her daughter committed suicide as she was sent to the house of her husband against her will. Her son Hemayet took her daughter Baby to the house of her husband receiving the information that her husband Siddique Gazi was sick. She went to the house of her husband on Thursday and was killed on Saturday. They went to the house of the accused at 07:00 a.m. hearing the occurrence and found accused Hashem and Parul along with 2/4 peoples. But the others were fled. Accused Siddique used to work in Dhaka but he used to live with his parents Hashem and Parul coming home. She has denied that there was no dispute between the accused and the deceased on demand of dowry.

PW6 Abdul Jalil has deposed that he heard that the daughter-in-law of accused Hashem Gazi committed suicide. He found the deadbody. In cross-examination he has stated that he found the marks of injury in the neck of the deceased. In cross-examination he has further stated that he went to the house of the accused with police. He found the deadbody in the verandah of the deceased. The inmates of the house were saying that deceased Baby committed suicide.

PW7 Mst. Chan Bhanu has deposed that Baby was the wife of her grandson and she committed suicide. She stated in the cross-examination by state defence that accused Liton Howlader, Siddique Gazi and Khukon Gazi were not at home when Baby committed suicide.

PW8 Md. Sahidul Islam has deposed that informant PW4 Abdul Aziz is his paternal uncle. He along with PW4 Abdul Aziz went to the house of accused Siddique Gazi. PW4 Abdul Aziz told him that accused Khukon Gazi and Liton Howlader demanded dowry of Taka 10,000/- and a television to him. Since he could not give the dowry, the accused persons assaulted his daughter. Subsequently, Baby died. In cross-

examination he has stated that he does not know when Baby went to the house of her husband Siddique Gazi or Baby committed suicide for sending her to the house of her husband against her will.

PW9 Abdul Khalque has deposed that Baby died but he cannot say how she died. He witnessed the deadbody. Police held inquest over the deadbody and prepared a report with his signature. He has marked his signature in the inquest report as exhibit. In cross-examination he has stated that later he came to know that Baby committed suicide by hanging.

PW10 Md. Shahjahan Miah has deposed that at the date of occurrence he was in Dhaka. On 21.07.2002 his younger brother Abu informed him that his sister Baby was killed by the accused demanding dowry. Hearing the occurrence he went to home on 22.07.2002 and found that the deadbody was buried. He has denied that the accused did not kill his sister demanding dowry. The accused persons demanded dowry earlier but they did not file any case for such demand. His sister Baby was not formally sent to the house of the accused.

But she visited the house of the accused on 4/5 occasions. His father told him over telephone about the demand of dowry.

PW11 SI Dibakar Chandra Das, Investigating Officer of the case, has deposed that receiving the charge of investigation of the U.D. Case No. 06 dated 21.07.2002 he visited the place of occurrence and upon found the deadbody of Baby Akter he held inquest thereon and prepared a report with the signatures of the witnesses. He found marks of injury on several parts of the deadbody and sent the deadbody to morgue for determining the real cause of her death. He found liquid coming out from the nose of the deadbody. He found the neck of the deadbody broken. After receiving the report of autopsy, this case was filed and, therefore, he submitted final report in the UD case. Visiting the place of occurrence he seized the *alamot*, preparing seizure list, recorded statements of the witnesses and submitted charge sheet against the accused persons. He has marked the inquest report, sketch map with index, seizure list and the seized *alamot* as exhibits.

In cross-examination he has stated that he did not seize the television. He has stated that he found the red colour saree

of the deceased hanging in the tree. He found the deadbody hanging. He has denied that the deceased got injured going to commit suicide. He has further denied that he submitted false charge-sheet even knowing that the deceased committed suicide.

PW12 Azahar Sikder has deposed that he knows the informant and the deceased. He also knows the accused persons. He cannot remember the date of occurrence which took place 3/4 years ago at 08.00 at night. He was in Lokkhipura bazar at the time of occurrence. He received the information while staying in bazar that Baby, daughter-in-law of accused Hashem Gazi, committed suicide by hanging. Hearing such occurrence he went to the house of the accused Hashem Gazi and found the deadbody of Baby. The prosecution declared this witness hostile.

In cross-examination of the prosecution he has stated that he did not examine the deadbody to determine whether there were any marks of injury. Accused Siddique Gazi was husband of the deceased Baby. He resides contiguous to the house of the accused Siddique Gazi. The house of the

informant stands 3 miles away from their house. He did not see that accused Hashem Gazi, Parul and Siddique assaulted the deceased for dowry.

In cross-examination by the accused he has stated that although accused Siddique and deceased Baby lived in the same house along with their parents Hashem Gazi and Parul but they had separated mess. Deceased Baby was unsound to some extent and she attempted to commit suicide earlier.

PW13 Moti Patwary has deposed that he knows the informant PW4 Abdul Aziz Howlader and the accused persons. He cannot remember the date of occurrence. He was present at his house on the date of occurrence and later came to know that the wife of accused Siddique Gazi committed suicide by hanging. The prosecution declared this witness hostile.

In cross-examination of the prosecution he has stated that his house stands after two houses of the house of the accused Hashem Gazi. He found the deadbody of Baby hanging in the guava tree beside the house of the accused Siddique Gazi. He did not hear that the accused persons beat

the deceased demanding dowry of Taka 10,000/- or a colour television. In cross-examination by the defence he has stated that at the time of occurrence accused Siddique was present in his house. He has denied that accused Siddique was not present in his house at the time of occurrence or on presumption he stated that Siddique Gazi was present in his house.

PW14 Md. Faruq Howlader has deposed that he knows the informant and the accused persons. He went to the house of the accused Siddique Gazi at 10:00 p.m. on 20.07.2002 hearing the occurrence. He again visited the house of the accused at 10:00/11:00 a.m. on the next day with police and found the deadbody of the victim hanging. Police brought down the deadbody in his presence and held inquest thereover in his presence. Police prepared an inquest report with his signature. He has marked his signature on the inquest report as exhibits.

In cross-examination he has stated that accused Siddique Gazi used to live in the verandah and his parents used to live inside the house. They used to maintain separate

mess as they were in dispute. Like him, other people of the locality knows that victim committed suicide by hanging.

PW15 Mst. Rokeya Begum has deposed that she knows the informant and his daughter Baby as a neighbour. She also knows the accused persons. She cannot remember the date of occurrence. The occurrence took place 5 years ago at 08:00 p.m. She heard that accused Parul and Hashem beat Baby for dowry and Baby consequently died. In cross-examination she has stated that she told police that accused Hashem inflicted a blow by the neck of a dao on his wife Parul over her quarrel with the informal. She did not hear that they beat the deceased Baby. She heard that Baby committed suicide by hanging.

PW16 Abdul Jabbar Chowkider has deposed that he knows the informant and the accused persons. On 20.07.2002 Saturday at around 09:00/09:30 a.m. the occurrence took place. Hearing about the occurrence he went to the house of the accused at 10:00 a.m. as he is the Chowkider of the Ward of the accused Hashem Gazi. Going there he found the deadbody of Baby lying in the house of the accused Hashem Gazi. He found several peoples present in his house. Baby

committed suicide by hanging. The prosecution declared this witness hostile.

In cross-examination by the prosecution he has stated that the victim Baby was very good girl. He however has denied that the accused persons demanded dowry to the victim and on her failure to give dowry the accused persons beaten her to death. He, however, came to know it later. In cross-examination by the defence he has stated that hearing the occurrence of the death of Baby he informed the Betagi police station. Police took his signature and recorded the U.D. case. From the rumor he came to know that Baby committed suicide and the Daroga stated about the suicide in the U.D. case hearing from him. Following the U.D. case police appeared at the house of the accused persons and held inquest on the deadbody of deceased Baby.

PW17 Md. Mojibur Rahman has deposed that he knows the informant and the accused persons. In the last part of the night on 20.07.2002 informant Abdul Aziz went to his house and informed him about the occurrence of death of his daughter Baby. The informant informed that the accused

persons beaten his daughter Baby to death demanding dowry of Taka 10,000/-. Hearing from the informant Abdul Aziz he wrote the petition of complaint. He has marked the petition of complaint and his signature thereon as exhibits. In cross-examination he has stated that he lives 10/12 miles away from the place of occurrence. He never visited the place of occurrence. The informant got him woke up at 04:00/05:00 at night and with the informant he went to police station. He has no personal knowledge about the occurrence. Accused Khukon Gazi was the brother-in-law of deceased Baby and accused Liton Howlader was the brother-in-law of her husband Siddique Gazi. He has denied that he deposed falsely regarding the demand of dowry by the accused persons.

PW18 Jagadis Chandra Vuimali has deposed that informant Abdul Aziz told him that his daughter was killed by the accused persons for dowry. He then went to the house of the husband of his daughter Baby Akter and found her deadbody lying in the courtyard of the house of the accused. He found a mark in the neck of the deceased. Earlier the accused persons tortured deceased Baby for a television and

money. In cross-examination he has stated that he went to the house of the accused persons with Hamid, Khaleque member and father of the deceased. He heard about the occurrence from the people. He, however, did not ask anybody about the occurrence.

PW19 Hamed Sikder has deposed that he went to the place of occurrence on the next day of the occurrence and going there he found the deadbody of Baby lying. He saw a mark of injury in the neck of the deceased. Earlier the accused persons demanded a television and money to the father of the deceased. The accused persons killed Baby for the dowry. In cross-examination he has stated that the informant was his uncle by relation. He heard the occurrence in the morning. He has denied that the occurrence did not take place for dowry.

PW20 Abdul Quddus has deposed that he knows the informant and the accused persons. At 02:00 at night PW13 Moti Patwary went to him and asked him to accompany him. When he asked about the cause he told that the daughter of Abdul Aziz committed suicide by hanging. He went to the house of informant Abdul Aziz with PW13 Moti Patwary and

asked him to accompany with them. On the next day they went to the house of the accused Siddique Gazi and found the deadbody of Baby. He came to know that Baby committed suicide by hanging. The prosecution declared this witness hostile.

In cross-examination by the prosecution he has stated that he heard falsely that the deceased committed suicide by hanging. Accused killed deceased Baby by persecution. He came to know that the accused killed the deceased for dowry. In cross-examination by the defence he has stated that going to the place of occurrence he came to know that the deceased committed suicide by hanging.

PW21 Md. Atahar Uddin has deposed that he knows the informant and the accused persons. He came to know that the accused persons killed Baby for dowry and television. A television was purchased. Hearing the occurrence he visited the place of occurrence and found the deadbody of Baby in front of the house of the accused. He learnt that the accused persons killed Baby by beating severely. In cross-examination he has stated that he cannot remember what he told to police.

He has denied that he deposed falsely as the informant was his brother.

PW22 Rubi Akter has deposed that the occurrence took place at 10:00 p.m. on 20.07.2002. The accused persons killed her sister Sajeda Begum alias Baby for dowry of Taka 10,000/-. She went to the place of occurrence on the next day with her parents and found the deadbody lying in the verandah of the accused persons. She found marks of injury on the deadbody. She came to know that in the previous night a quarrel broke out between her sister Sajeda Begum and the accused persons. In cross-examination she has stated that she did not witness the quarrel. She found the deadbody on the next day. She has denied that accused Siddique Gazi was not present or he did not demand dowry or assault the deceased. She has further denied that deceased committed suicide.

PW23 Jyotsna Rani has deposed that the occurrence took place at around 10:00 p.m. on 20.07.2002 in the house of the accused Siddique Gazi. On the next morning she went to the place of occurrence and found the wife of Siddique Gazi dead. She found marks of injury on the deadbody. There was

dispute between the parties on dowry. The local peoples were saying that the accused persons killed the deceased for dowry. In cross-examination she has stated that her house stands 2.3 miles away from the place of occurrence. She cannot say when and how the occurrence took place. She has denied that she deposed falsely in favour of the informant as she was Godly related with the informant. She has denied that the accused committed suicide by hanging.

Hearing the both sides and upon the above mentioned evidence, learned Judge of the Tribunal found the accused persons guilty and sentenced accused Siddique Gazi to death along with a fine of Taka 20,000/- (twenty thousand) under section 11(Ka) of the Ain. Learned Judge found the accused Md. Khukon Gazi, Md. Liton Howlader, Mst. Parul Begum and Md. Hashem Gazi guilty under sections 11(Ka) and 30 of the Ain and sentenced them thereunder to suffer imprisonment for life along with a fine of Taka 10,000/- (ten thousand) on each. Thereafter, the learned Judge referred the proceeding to this Division for confirmation of the death sentence.

On perusal of the above evidence, it appears that PW4 Abdul Aziz Howlader the informant, PW5 Mst. Parul Begum, mother of the deceased, PW8 Md. Sahidul Islam, PW17 Md. Mojibur Rahman, PW18 Jagadis Chandra Vuimali, PW19 Hamed Sikder, PW21 Md. Atahar Uddin, PW22 Rubi Rani, sister of the deceased, and PW23 Jyotsna Rani have deposed that the accused persons beaten the deceased to death demanding dowry. Admittedly, Sajeda Begum alias Baby was found dead in the house of her husband accused Siddique Gazi. Relying on the unimpeachable evidence of the above mentioned witnesses we have no doubt to hold that the accused persons demanded dowry to the deceased and their family. The moot question of the case is that whether the accused persons killed Sajeda Begum alias Baby for dowry. PW16 Abdul Jabbar Chowkider has deposed that he is the Chowkider (watchman) of the Ward of the accused persons. He has stated that upon found the deadbody of Sajeda Begum alias Baby in the house of her husband, he informed the police about the occurrence and police recorded a case hearing from him. This case is U.D. Case No. 06 dated 21.07.2002. PW11

SI Dibakar Chandra Das went to the place of occurrence to enquire into the U.D. case and found the deadbody hanging. PW11 Dibakar Chandra Das sent the deadbody to morgue for holding autopsy for determining the real cause of death. PW4 Abdul Aziz Howlader, father of the deceased, has deposed that knowing about the cause of death as disclosed in the autopsy report he lodged FIR with the Betagi police station under sections 10, 11(Ka) and 30 of the Ain against the accused persons on 13.08.2002. Although the occurrence took place on 20.07.2002, the FIR was lodged on 13.08.2002 that is almost after 23 days. However, PW4 Abdul Aziz Howlader has explained that to know about the cause of death of his daughter Baby from the autopsy report he delayed in filing the case. So, the delay in filing the FIR is satisfactory and, therefore, the explanation is accepted.

Admittedly, none witnessed how Sajeda Begum alias Baby died. Although the defence case is that Sajeda Begum alias Baby committed suicide by hanging and some of the witnesses have also deposed that they learnt that the deceased committed suicide by hanging but none witnessed the

commission of suicide as well. In the inquest report, exhibit-2, it appears that PW11 SI Dibakar Chandra Das held inquest over the deadbody and found several marks of injury thereover which is unlikely to be caused in case of suicide. PW11 SI Dibakar has stated that he found the deadbody tied with cloths between the two thin mango and guava trees. The description of the two trees and the manner of tying the deceased are not palpably supportive to committing suicide by hanging by a grown-up lady. In the inquest report it has been mentioned that the Daroga found mark of soil in the leg of the deceased and mark of bed on her back which indicates that before hanging her body she was on bed and she was dragged to the trees. These do not happen usually in the case of hanging.

On the other hand, it appears from the autopsy report, exhibit-1, that the death was due to injuries mentioned in the report and asphyxia and those were antemortem and homicidal in nature. Asphyxia is the common feature of death. This cannot be taken as a proof that the deceased committed suicide; rather the injuries mentioned in the autopsy report can be treated as the cause of her death. The marks of injury found

in the scalp, arms, elbow joints, shoulder joints, scapular region of back, face, upper part of the chest and extensive extravasations of blood found in and around the injuries are sufficiently fatal to cause death of a person and, therefore, we hold that those injuries prove that the deceased was beaten to death.

Now, let us examine who may be the perpetrators of the offence of killing. We have already found that admittedly deceased Sajeda Begum alias Baby died in the house of her husband Siddique Gazi. PW4 Abdul Aziz Howlader has deposed that they found the accused persons present in their house. Although he did not specifically name the accused Siddique Gazi but he has stated that he found the parents of Siddique Gazi, accused Hashem and Parul, sitting beside the deadbody. PW5 Mst. Parul Begum has deposed that they sent Sajeda Begum alias Baby to the house of her husband with their son Hemayet hearing the news that her husband Siddique Gazi was sick. She has stated that she sent her daughter to the house of her husband on Thursday and she died there on Saturday. She has further stated that they found accused

Hashem and Parul along with 2/4 others people present but the other accused fled. PW13 Moti Patwary informed the occurrence to the informant and he went to the place of occurrence with the informant. Although he was declared hostile by the prosecution but in cross-examination he has stated that he found accused Siddique Gazi present in his house on the date of occurrence. He has vehemently denied in cross-examination that accused Siddique Gazi was not present in his house at the time of occurrence. PW22 Rubi Akter, sister of the deceased also visited the house of the accused who also vehemently denied the suggestion by the defence that at the time of occurrence accused Siddique Gazi, Khukon Gazi and Liton Howlader were not present.

It appears from the above evidence that PWs 4, 5, 13 and 22 have supported the presence of Siddique Gazi in his house at the time of occurrence where his wife Sajeda Begum alias Baby was killed. The defence case of committing suicide by the deceased is found to have no leg to stand as the marks of injury were found to be severe and the examining doctor opined that the death was due to such injuries.

Since the demand of dowry has been proved and the deceased was killed in the house of her husband Siddique Gazi when Siddique Gazi was very much present and the occurrence took place at night in the house of the husband of the deceased, accused Siddique Gazi is to explain how his wife met the death. The defence has just put suggestion to some witnesses that deceased Baby committed suicide which has not become convincing to us. Although the witnesses have proved that at the time of occurrence Siddique Gazi was present but they have further stated that after their appearance Siddique Gazi, Khukon Gazi and Liton Howlader fled. Since after the occurrence none of accused Siddique Gazi, Khukon Gazi, two brothers, and their brother-in-law Liton Howlader were found absent and they went into absconsion subsequently and till date they are found to be absconding, such absconsion of the accused persons definitely indicates their guilt. The husband of the deceased, accused Siddique Gazi, could not explain how his wife met death being present in the trial. There are specific allegations against accused Khukon Gazi, brother of the accused Siddique Gazi, and Liton Howlader that

they persecuted the deceased following her resistance against their objectionable conduct and, therefore, it can be presumed that they did not dare to defend the charge being present before the Court. So, we are unable to exempt them from the allegation of killing the deceased by beating or abetting accused Siddique Gazi on her failure to satisfy their demand of dowry as well their carnal desire which is an offence punishable under sections 11(Ka) and 30 of the Ain. Therefore, we find no infirmity in the conviction and sentence awarded by the learned Judge upon accused Siddique Gazi, Khukon Gazi and Liton Howlader under sections 11(Ka) and 30 of the Ain. However, considering the entire gamut of the evidence and other circumstances such as his occasional staying in the house, the deceased was not permanently sent to the house of the accused observing the formalities together with the other evidence i.e. teasing the deceased by accused Khukon Gazi and Liton Howlader, we hold that the imprisonment of life should be proportionate to the offence committed by accused Siddique Gazi instead of death sentence.

On the other hand, there is no specific participation in assaulting the deceased by accused Hashem Gazi and his wife Parul. None witnessed them beating the deceased; rather it appears that PW15 Mst. Rokeya Begum has stated that accused Hashem Gazi assaulted his wife accused Parul at the time of altercation among the parties. Such being the case, we are unable to connect the responsibilities of the accused appellant Hashem Gazi and his wife accused Parul Begum with the occurrence and, therefore, we hold that the learned Judge of the Tribunal committed error of law and facts in passing conviction and awarding sentence upon them under sections 11(Ka) and 30 of the Ain. Therefore, the accused Hashem Gazi and Mst. Parul Begum should be acquitted of the charge brought against them. We find merit in the appeal filed by them and inclined to hold that the appeal should be allowed.

In the result, the reference is rejected. The sentence awarded upon the condemned-convict Siddique Gazi is commuted to imprisonment for life. The Criminal Appeal No. 11902 of 2019 is allowed and Jail Appeal 280 of 2019 is

disposed of. The conviction of sentence awarded upon convict appellants Hashem Gazi and Mst. Parul Begum is hereby set aside. They are acquitted of the charge brought against them. The convict appellants and their sureties are relieved from the bail bond.

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

Bhishmadev Chakrabortty, J:

I agree

Shohel ABO