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. 150 of 2019

The State .....petitioner
-Versus-
Kawser .....condemned-convict

Mr. Syed Ejaz Kabir and Ms. Nahid Hossain, Deputy Attorney Generals with Ms. Mahbuba Taslim Akhi, Mr. Ashraful Alam and Mr. Md. Abdul Motaleb, Assistant Attorney Generals
.....for the State
Mr. Md. Hafizur Rahman Khan, Advocate
.....State defence lawyer

Heard on: 12.11.2026.
Judgment on: 15.11.2026.

K.M. Rasheduzzaman Raja, J:

This reference has been made under section 374 of the Code of Criminal Procedure, herein after 'the Code', read with section 29 of the of the Nari-o-Shishu Nirjatan Damon Ain, 2000, hereinafter 'the Ain,' by the learned Judge of the Nari-o-Shishu Nirjatan Damon Tribunal, Barishal, hereinafter the Tribunal to confirm the death sentence awarded to the

condemned-convict Kawser under section 11 (ka) of the Ain, by the judgment and order dated 20.11.2019 passed in Nari-o-Shishu Case No. 323 of 2011 arising out of Banaripara Police Station Case No. 11 dated 17.02.2011 corresponding to G.R. No. 22 of 2011.

The prosecution case, in short, is that deceased Mahmuda Akter Pakhi was married to condemned-convict Kawser who were residing as a tenant in the house of one Morshed Alam at Masrong, Banaripara, Barishal. Accused Kawser used to torture his wife Pakhi demanding dowry. The mother of deceased Pahki works as a maid servant in Dhaka. They could not satisfy the demand of dowry and, therefore, accused Kawser used to put her under mental torture. P.W.7 Moyna Begum and her husband P.W. 6 Shahin Fakir gave accused Kawser Tk. 5,000/- out of his demand of Tk. 20,000/-. Yet accused Kawser started torturing his wife Pakhi for further dowry. Accused Kawser killed his wife Pakhi at 10:00/11:00 a.m. on 17.02.2011 by strangulation on her failure to satisfy the demand of dowry. Accused Kawser took his injured wife Pakhi to Hospital but he fled from the Hospital hearing that his

wife Pakhi by this time expired. Hearing the occurrence P.W. 7 Moyna Begume went to the Hospital and found the dead body of sister Mahmuda Akter Pakhi. On such occurrence she lodged FIR with Banariparipara police station.

Upon the aforesaid FIR Banaripara Police Station Case No. 11 dated 17.02.2011 was registered and P.W.8 S.I. Md. Rustom Ali Mridha was appointed investigating officer of the case. P.W.8 S.I. Md. Rustom Ali Mridha investigated the case and submitted charge-sheet against the accused Kawser under section 11 (Ka) of the Ain.

Learned Magistrate accepted the charge-sheet and transmitted the case to the learned Judge of the Tribunal for holding trial. Learned Judge of the Tribunal took cognizance of offence and framed charge against the absconding accused Kawser under section 11 (Ka) of the Ain and appointed State defence lawyer to defend the absconding accused Kawser.

The prosecution adduced 8 witnesses to bring home the charge brought against the accused. But the accused could not be examined under section 342 of the Code as he was absconding.

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

Learned Judge of the Tribunal hearing the both sides convicted accused Kawser under section 11(Ka) of the Ain and sentenced him thereunder to death and referred the proceedings to this Division for confirmation of the sentence.

Ms. Mahbuba Taslim Akhi, learned Assistant Attorney General appearing for the State took us through the materials on record and submitted that the prosecution adduced witnesses of the locality to prove the charge brought against the condemned-convict. Admittedly, the accused Kawser and deceased Mahmuda Akter Pakhi were husband and wife and they were living in a rented house at the place of occurrence. The neighbours were produced before the Court as witnesses who have corroborated each other deposing that at the time of occurrence accused Kawser was present and he himself took deceased Mahmuda Akter Pakhi to Hospital but subsequently he fled the Hospital hearing the news of death of his wife. The post-mortem report has supported the presence of fatal injury

on the head and other parts of the body of the deceased. Therefore, the learned Judge of the Tribunal correctly found the accused Kawser guilty and convicted and sentenced him under section 11 (Ka) of the Ain. As such, learned Assistant Attorney General submits, the reference should be accepted.

On the other hand, Mr. Hafizur Rahman Khan learned State Defence Lawyer appearing for the condemned-convict Kawser has opposed the submissions of the learned Assistant Attorney General submitting that the prosecution could not prove the demand of dowry. None saw the presence of the accused. No eyewitness or any independent witness has come to corroborate the prosecution case. Even the landlord of the house of the accused did not appear before the Court as a witness. The injuries as found in the autopsy report may have been caused on several ways. Since none saw the accused Kawser assaulting his wife Mahmuda Akter Pakhi therefore, it will not be safe to convict the accused in this case. Although it is not the specific defene case, yet Mr. Khan submits that it cannot be ruled out that somebody else other than the husband of the deceased might have assaulted the deceased resulting in

her death. Mr. Khan submits that since the prosecution has failed to prove the demand of dowry and assaulting the deceased by the accused Kawser the conviction and sentence awarded to the condemned-convict Kawser by the judgment and order passed by the learned Judge of the Tribunal cannot be sustained in the eye of law. Therefore, Mr. Khan opposes the reference and prays for its rejection.

We have heard the both sides in length and perused the materials and record. We have already mentioned that the prosecution has adduced 8 witnesses to prove the charge brought against the accused Kawser. Let us examine the some and substance of the evidence of the prosecution witnesses.

P.W.1 Hemayet Uddin has deposed that he was an Office Assistant in Banaripara Hospital. At 11:20 p.m. on 17.02.2011 several people brought Pakhi to emergency department of the Hospital. Dr. Jyotish Chandra Ray examined Pakhi and declared her dead. Police arrived at the Hospital, held inquest over the dead body and prepared a report with his signature and, thereafter, sent the dead body to morgue for autopsy. He has found the dead body but he saw

no injury marks. Doctor found the injury marks on the dead body. In cross-examination he has stated that he does not know who brought the victim to Hospital. He did not witness the occurrence. The persons who brought the deceased to Hospital disclosed that she died by hanging.

P.W.2 Koruna Mistry has deposed that at 1:20 p.m. on 17.02.2011 Pakhi was brought to the emergency department of Banaripara Hospital by her husband. Doctor Jyotish Chandra Ray examining Pakhi and declared her dead. The family members of her husband told them that Pakhi committed suicide by hanging. Police held inquest over the dead body in his presence and prepared a report with his signature. He cannot remember whether he found any marks of injury on the dead body. In cross-examination he has stated that he put his signature in the inquest report being instructed. He did not see Pakhi alive. He did not see marks of injury in the dead body of Pakhi. The husband of Pakhi told that she committed suicide by hanging.

P.W. 3 Parul Begum has deposed that deceased Pakhi used to live beside the building where she resided. Pakhi

stayed in the building only for 16 days. She heard from Rayhat Bazar at 2:00/2:30 p.m. that Pakhi committed suicide by hanging. In cross-examination she has stated that at the time of occurrence she was at Rayhat Bazar and, therefore, she did not see the occurrence.

P.W.4 Md. Harun-or-Rashid has deposed that he knew P.W.7 informant Moyna Begum, deceased Pakhi and her husband accused Kawser. Accused Kawser and his wife Pakhi used to live in a rented house in their area. He used to run a grocery shop 4/5 house after the residence of the accused. At noon he heard that Pakhi committed suicide by hanging. In cross-examination he has stated he did not witness the occurrence. He cannot say from whom he heard about the commission of suicide. He did not visit the place of occurrence.

P.W.5 Doctor Md. Aktaruzzaman has deposed that he held autopsy on the dead body of Pakhi at 15:30 hours on 18.02.2011 and found the following injuries on her dead body-

1. Abrasion on rt. Submandibular region 1" in length. 2. Abrasion on rt. Submandibular region $\frac{1}{2}$" in length. 3.

Haematoma on left postertor region. 4. Haematoma on Vault or skull.

On dissection he found Antemortem Congestion and clot found corresponding to injuries described above. Soft tissue of the antese or aspect of neck were congested subdural haemorrhage present.

In his opinion the cause of death was the combined effect of asphyxia as a result of strangulation and intracranial haemorrhage resulting from head injury, which were antemortem and homicidal in nature.

He has marked the autopsy report and his signature thereon as exhibits. He has denied that no injury marks was found on the dead body or his opinion about the death was not correcet.

P.W.6 Shahin Fakir deposed that infromant P.W.7 Moyna Begum was his wife and the deceased Pakhi was his sister-in-law. The occurrene took place at 10:00 to 11:00 a.m. on 17.02.2011 in the rented house of the accused Kawser at Masrong village. Accused Kawser wanted Tk. 2,000/- to him at 10:00/11:00 a.m. before 15 days of the occurrence. He gave

him Tk. 5,000/- and wanted 2 months times for the rest amount of money. He cannot remember the date and the cause for wanting money to him by the accused. At the time of occurrence accused Kawser beat his wife Pakhi for money. Hearing about the occrrence they went to Banaripara Hospital and found the dead body of Pakhi. Pakhi died of having injuries. Police arrived at Hospital and held inquest over the dead body and prepared a report with his signature. In cross-examination he has stated that he did not witness the occurrrence. He just found the dead body going to Banaripara Hospital. The accused and his mother went to Hospital with deceased. He has denied that Pakhi committed suicide.

P.W.7 Informant Moyna Begum, sister of the deceased, deposed that accused Kawser demanded dowry of Tk. 1,00,000/- for buying machin and killed his wife Pakhi assaulting on his throat and head. She heard the occurrence from P.W.4 Haru-or-Rashid over mobile phone at 1:00 p.m. and going to Banaripara Hospital she found the dead body of her sister deceased Pakhi. She did not see the accused person present in the Hospital. Hearing that Pakhi died, the accused

fled the Hospital. Her sister was 3 months pregnant. Police held inquest over the dead body and prepared a report with her signature. She lodged FIR with police station on such occurrence. In cross-examination she stated that she did not witness the occurrence. She found the dead body going to Hospital. Her brother-in-law P.W.4 Harun informed her over mobile that accused Kawser was taking his wife Pakhi to Hospital. She found the dead body of Pakhi on the bed of Hospital with injury marks on her throat and head. She has denied that she saw no marks of injury on the dead body.

P.W.8 S.I. Md. Rustom Ali Mridha, the investigating officer, has deposed that receiving the charge of investigation he visited the place of occurrence, prepared sketch-map with index. Earlier, he held inquest over the dead body and prepared a report. He sent the dead body to Barishal Medical College Hospital for holding autopsy. He seized a Kameez and a Salwar on 18.02.2011. He tried to arrest the accused but could not arrest him. He recorded the statements of the witnesses and finally submitted charge-sheet against the accused upon found primary evidence against him. He has

marked the sketch-map with index, inquest report, seizure list and his signature thereon as exhibits. He has marked the seized Kameez and Salwar as material exhibits. In cross-examination he has denied that he did not interogate the independent witnesses of the locality. He has further denied that even though he got no evidence he submitted a self constructed charge-sheet against the accused.

On persusal of the above mentioned evidence on record it appers that none witnessed the occurrence. P.W.1 Hemayt Uddin has stated that the people of the villege of the deceased brought her to Banaripara Hospital at 1:20 p.m. on 17.02.2011. Althought he could not say who brought the deceased to hospitl but P.W.2 Koruna Mistori the Sub-Assistant Community Medical Offficer (SACMO) of the Banariapara Hospital has categorically stated that husband of the deceased Pakhi brought her to the emergency department of the Hospital at 1:20 p.m. on 17.02.2011. P.W.7 Moyna Begum herself has stated in FIR that accused Kawser took her sister Pakhi to Hospital after beatting her. P.W.7 Moyna Begum has further stated that P.W.4 Md. Harun-or-Rashid

informed her over mobile phone at 1:00 p.m. on 17.02.2011 that accused Kawser was taking his sister Pakhi to Banaripara Hospital. So, we find no doubt that accused Kawser took his injured wife to Hospital where the examining doctor declared her dead. Now the question arises who injured deceased Pakhi? Although the defence case is that Pakhi committed suicide by hanging and P.W.1 Hemayet Uddin, P.W.2 Koruna Mistry, P.W.3 Parul Begum, P.W.4 Harun-or-Rashid have stated that they heard that deceased Pakhi committed suicide by hanging but the autopsy report exhibits-2 does not bear any specific injury marks purported to be caused by hanging or strangulation. In the autopsy report the examining doctor passed the opinion that the deceased died with combined effect of strangulation and intracranial hamorege resulting from head injury but the signs of strangulation is not clear in the autopsy report. Rather it has been mentioned in the charge-sheet by P.W.8 S.I. Rustom Ali Mridha that at one stage of the quarrel between the accused Kawser and his wife Pakhi the accused pushed his wife towards the wall causing her forhead contiguous to her head bashed against the wall which caused

the 3 months pregnant Pakhi to be senseless. Although the observation of charge-sheet is not a substantive evidence but in absence of any direct evidence or eye witness, the observation of the Investigating Officer regarding the cause of the death of the deceased cannot be ignored as the investigating officer himself has been examined before the Court on oath who has supported his investigation work in his evidence.

In the above discussions, we do not find any cogent evidence in support of committing suicide by the deceased or killing her by strangulation. In the autopsy report, Exbibits-2, there are strong medical evidence to believe that the deceased died of having fatal injury on her head. Learned State defence lawyer Mr. Khan submitted that none witnessed that accused Kawser caused such injury on the head of her wife deceased Pakhi. Mr. Khan apprehends that there might be somebody else who caused such injury in absence of the husbnd of the deceased and returning home upon found his wife injured her husband accused Kawser took her to Hospital. But this submissions of Mr. Khan is not convincing to us because had

accused Kawser apprehended that somebody else might have caused such injury to his wife then definitely he did not flee the Hospital. Rather he should have showed his courage to face the investigation and trial.

Mr. Khan could not explain the cause of flight of the accused Kawser from the Hospital. Since admittedly, the deceased and her husband accused Kawser were residing in the same house and we are unable to connect any 3rd party with the occurrence, we hold that none except the condemned-convict Kawser, Husband of the deceased, is liable to causing such fatal injury on the head of the deceased ultimately resulting in her death.

Now, let us examine why accused Kawser committed such offence of assaulting his wife. P.W.7 Moyna Begum, the informant, has tried to establish that accused Kawser demanded dowry of Tk. 1,00,000/- to them. But she could not mention the date when accused kawser demand such dowry to her. Although her husband P.W.6 Shanin Fakir has stated that accused Kawser wanted Tk. 20,000/- to him out of which he gave him Tk. 5,000/- before 15 days of the occurrence but he

also could not mention the date. Even he could not say why accused Kawser wanted money to him. No other prosecution witness has deposed in favour of the demand of dowry by the accused. Therefore, we are not convinced that accused Kawser assaulted his wife Pakhi Akter demanding dowry. So, it can be safely held that in absence of demand of dowry this case does not come within the purview of section 11(Ka) of the Ain.

We have found that this is not a case under section 11 (Ka) of the Ain. But it has been proved by evidence that the accused Kawser assaulted his wife, deceased Pakhi, resulting in her ultimate death. None witnessed the fight between the husband and wife. We have already mentioned that at this stage in absence of any direct evidence we can consider the observation of the Investigating Officer made in his report wherein he has observed that there was a fight between the husband and wife who were rootless people of the society. Their house erroded in the river and they were moving here and there in absence of any permanent profession and address. In this circumstance, family dispute and fight due to poverty is

common future in the class of people where the deceased and the accused belonged.

In this circumstance, we hold that this is not a deliberate murder case. Since, the condemned-convict is found to be sensitive enough in taking his wife to hospital for her treatment, it can be presumed that he had no intention to kill her. On the spur of moment the accused Kawser might have injured his wife after losing the power of self control following a quarrel between them but he had no intention to killed the deceased. Therefore, we hold that this killing falls in exception I of section 300 of the Penal Code and, therefore, we hold that the accused condemned-convict Kawser should have been convicted and sentenced under part-II of section 304 of the Penal Code. Accordingly, the condemned-convict is found guilty under part-II of section 304 of the Penal Code and he is convicted and sentenced thereunder to suffer rigorous imprisonment for 5 years. So, conviction and sentence of the condemned-convict is converted to part-II of section 304 of the Penal Code. The reference is rejected.

The Tribunal is directed to recall the conviction warrant issued against the condemned-convict Kawser and issue fresh conviction warrant according to sentence passed in this judgment.

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

Bhishmadev Chakrabortty, J:

I agree.

BO. Kabir