Present:

Mr. Justice Zafar Ahmed
And
Ms. Justice Shathika Hossain

Death Reference No. 10 of 2019
with
Criminal Appeal No. 1271 of 2019
with
Jail Appeal No. 36 of 2019

The State

-Versus-

Sreemati Snigdha Sarkar Bhowmik @ Deepa
…condemned-prisoner

Mr. Al Amin Siddiqui, with
Mr. Mir Moniruzzaman, with
Mr. Md. Sulaiman Howlader, with
Mr. Md. Mizanur Rahman, with
Mr. Md. Aminul Islam, AAGs
.....For the State

Mr. Md. Hafizur Rahman Khan, Advocate,
…State Defence Lawyer

Heard on: 03.09.2026, 06.09.2026, 07.09.2026, 08.09.2026, 09.09.2026, 10.09.2026, 13.09.2026 and 14.09.2026
Judgment on: 15.09.2026

Zafar Ahmed, J.

1. The instant death reference under Section 374 of the Code of Criminal Procedure, 1898 (in short, the "Cr.P.C.") arises out of

the judgment and order of conviction and sentence dated 29.01.2019 passed in Sessions Case No. 949 of 2018 arising out of G.R. No. 259 of 2018, Kotwali Police Station Case No. 1 dated 01.04.2018 by the learned Sessions Judge, Rangpur convicting **Sreemati Snigdha Sarkar Bhowmik @ Deepa** (hereinafter, '**Snigdha**') under Section 302 read with Section 34 of the Penal Code and sentencing her to death for killing her husband.

2. The condemned prisoner Snigdha filed Jail Appeal No. 36 of 2019. She also filed Criminal Appeal No. 1271 of 2019. When the Death Reference, along with the criminal appeal and jail appeal, was taken up for hearing, learned Advocate Mr. Mohammad Hasan Habib, who had filed the criminal appeal, filed an application before this Court for withdrawing himself from the appeal. This Court, vide order dated 09.09.2026, allowed the application. Thereafter, Mr. Hafizur Rahman Khan was engaged as State defence lawyer for the condemned prisoner.

3. The FIR case, in short, is that Rathish Chandra Bhowmik @ Babusona (57) (hereinafter, 'Babusona') was a lawyer by profession. On Friday 30.03.2018, at around 6.20 am, he left his home situated at Alamnagar, Babupara, Rangpur. His wife, Snigdha (45) (condemned prisoner), called him on his two mobile phone numbers. Those were switched off. Evening fell, but Babusona did not return home. His mobile phones were switched off. Snigdha informed the matter to the members of his family and others. They searched for Babusona. His whereabouts could not be traced. Thereafter, Babusona's younger brother (PW1) returned to Rangpur from Dhaka and filed a General Diary (GD) with Kotwali Police Station on 31.03.2018. Police also looked for Babusona, but he could not be found. On 01.04.2018, PW1 lodged an FIR with Kotwali Police Station against unknown persons under Sections 364 and 34 of the Penal Code.

4. It is stated in the FIR that Babusona was a Special Public Prosecutor (PP) at the Judge Court of Rangpur. He had been conducting the murder cases of the Japanese national Hoshi

Kunio, Rahmat Ali (Khadem of Mazar) and other important cases as Special PP. Earlier, he deposed in the International Crimes Tribunal in the case of A. T. M. Azharul Islam. Furthermore, as a trustee of the Hindu Religious Welfare Trust, he had been playing a leading role in recovering encroached lands belonging to various monasteries and temples. He was actively involved in politics, serving as the Legal Affairs Secretary of the Bangladesh Awami League's Rangpur District unit. He participated in various social and cultural organizations. The informant party believed that due to Babusona's active involvement in those activities, unidentified individuals or groups had abducted him with the intent to kill him.

5. During the course of the investigation, the dead body of Babusona was recovered. Snigdha, Md. Kamrul Islam (45), Milon Chandra Roy (24) (clerk to Babusona), Swapan Chandra Roy, and two minors, namely Sabuj (PW26) and Rokon (PW27), were arrested. Milon died in the prison cell of Rangpur Medical College Hospital on 13.04.2018. Swapan,

Sabuj and Rokon were not sent to the trial. Snigdha and Kamrul made judicial confessions. The charge-sheet dated 13.09.2018 was submitted against Snigdha and Kamrul under Sections 302, 201 and 34 of the Penal Code for the murder of Babusona.

6. State defence lawyer was engaged for the accused persons on 09.10.2018. Charges were framed against Singdha and Kamrul on 21.10.2018 under Sections 302, 201 and 34 of the Penal Code, to which they pleaded not guilty.
7. The prosecution examined 37 witnesses. They were cross-examined. After the examination of PW15, the accused Kamrul died in jail on 10.11.2018. Singdha was examined under Section 342 of the Cr.P.C. The defence did not examine any witness.
8. The defence case is that the accused is innocent and that she did not commit any offence as alleged by the prosecution.
9. **PW1 Susanto Bhowmik** (informant) is the younger brother of the deceased Babusona. He is a journalist by profession. He deposed that Babusona and Snigdha got married 23/24 years

ago. They had two children. The eldest son was a law student, and the youngest daughter was a student of class IX. Snigdha joined Tajhat High School as a teacher about 10/11 years ago.

10. PW1 further deposed that he and Babusona used to live in the same house, but in different units. Members of both families used the same gate for movement. His relatives lived in the vicinity of his house. He went to Dhaka on the morning of 30.03.2018 by air. He called Babusona on 30.03.2018 and found his mobile phone switched off. He then called Snigdha. She told him that on 30.03.2018 at 6.20 am, Babusona had left the home with an unknown person on a motorcycle. She further said that his two mobile phones were switched off. Babusona did not return home. PW1 returned to Rangpur from Dhaka on 31.03.2018 and searched for Babusona. He filed a GD on 31.03.2018.

11. PW1 further deposed that he lodged the FIR on 01.04.2018. RAB-13 and police arrested Snigdha late at night on 04.04.2018 and took her to the RAB-13 head office. At that time, as per the confession and showing of Snigdha and in the

presence of RAB, police, and the Magistrate, the dead body of Babusona was recovered from the pit on the floor of an under-construction house of the accused Kamrul situated at Tajhat, Mollapara. PW1 was present there. An orna (scarf) was wrapped around the neck of the dead body. The tongue was protruding. Trousers, a shirt, an undervest, shoes, socks, a tie belonging to the deceased and a wrapped blanket were recovered from the pit. Following the inquest, the body was taken to Rangpur Medical College Hospital, where the post-mortem was conducted. PW1 further deposed that the under-construction house of Kamrul was situated in an isolated place adjacent to a road.

12. PW1 further deposed that Snigdha and Kamrul had an extramarital affair. In cross-examination, he stated that, to their knowledge, Babusona and Snigdha had a happy conjugal life. He did not hear of any issue regarding Snigdha's character at her workplace. He denied the defence suggestions that the dead body was not recovered as per the showing of Snigdha,

or that Snigdha had no extramarital affair with Kamrul or that she did not kill Babusona.

13. **PW2 Dr Biswajit Bhowmik** is the younger brother of Babusona. He deposed that while he was in Dhaka, on 30.03.2018 at around 2/2.30 pm Snigdha told him over the telephone that Babusona had left home at around 6.20 am and did not return home. PW2 returned to Rangpur on that day. They could not find Babusona till 03.04.2018. Late at night on 03.04.2018, RAB-police arrested Snigdha and, as per her confession and showing, the dead body of Babusona was recovered in the presence of the Magistrate from the floor of an under-construction house of Kamrul situated at Tajhat, Mollapara. The neck of the body was wrapped with an orna (scarf). The tongue was protruding. PW2 saw the dead body. It was emitting a foul odour. The knees were in a bent position. Snigdha was not present there at that time.

14. **PW3 Satyajit Bhowmik** worked in a coaching centre in Rangpur. He deposed that on 30.03.2018, Snigdha told the members of his family that at about 6.20 am on that day

Babusona had left the house with a person on a motorcycle. PW3 received this information at around 1/1.30 pm. They looked for him, but Babusona could not be found. Thereafter, RAB and police arrested Snigdha. As per her confession and showing, the dead body of Babusona was recovered from the floor of the under-construction building of Kamrul situated at Tajhat, Mollapara after digging the floor. PW2 was present there at that time. Snigdha did not confess in front of him.

15. PW3 further deposed that on 07.04.2018 at 5.30 pm, as per Kamrul's confession and showing, a paste-coloured steel almirah was recovered from the bedroom of Babusona's son. Two keys and a pillow were inside the almirah. Babusona's son was staying in Dhaka at that time. He denied the defence suggestion that the dead body of Babusona was not recovered from Kamrul's under-construction house as per the confession and showing of Snigdha.

16. **PW4** and **PW5** deposed that on 06.04.2018 police went to Kamrul's house and, as per his showing, recovered 2 keys, a Victor-8 motorcycle and other articles. The recovered keys

were keys to the almirah, which was used to carry the dead body of Babusona. They were present there. No almirah was opened in front of them with the keys.

17. **PW 6** is an almirah maker. He worked in a shop, ‘Sapla Steel’. He deposed that on 24.03.2018 at around 3.30 pm, two persons came to the shop and ordered two almirahs to be made. The price was fixed at Tk. 16,500/-. At the time of writing the receipt, he learnt the names of those persons as Kamrul Islam and Milon [clerk of Babusona]. One almirah was with shelves, while the other was a hanger style without shelves. On 29.03.2018 at around 8.30 pm, Kamrul and Milon took delivery of the almirah without shelves. Kamrul took it towards Babupara with a van. Kamrul went with the van. Milon went in another direction.

18. PW6 further deposed that on 30.03.2018 at about 10.30 am, Kamrul came to the shop with a van with three persons. He took the almirah with shelves towards Babupara. PW6 identified the almirahs in the Court. PW6 also made a witness statement before the Magistrate. He identified Kamrul in the

dock. In cross-examination, PW6 stated that an almirah without shelves is unique. Such an almirah is not usually made (তাকবিহীন আলমারী স্পেশাল অনুরূপ আলমারী সচরাচর হয় নাই). He denied the defence suggestion that Kamrul did not order to make the almirahs.

19. **PW11 Nurul Islam Mithu** is the owner of 'Sapla Steel'. His deposition is similar to that of his employee PW6. Therefore, a detailed discussion of his deposition is not necessary.

20. **PW7 Ratan Chandra Barman** was the Member Secretary of Kaunia Puja Celebration Committee. He deposed that on 30.03.2018 at around 4/4.30 pm he heard that Babusona was missing. He went to Babusona's house. Snigdha told him that early in the morning of 30.03.2018, Babusona had left the house with a person on a red-coloured motorcycle. He further deposed that the search for Babusona continued. Early in the morning of 04.04.2018, he heard that the dead body of Babusona was recovered from the floor of Kamrul's under-construction house. He went there and saw police, RAB and the Magistrate. The dead body was emitting a bad odour.

21. **PW8** is Md. Rahedul Islam. **PW15** is Bokul Mia. They deposed that on 08.04.2018, while they were sitting at PW15's garage in a bazaar, police asked them to identify the home of Abed Ali (PW20). They went to Abed's home with police and found a charger van. Police seized the van. PW8 further deposed that accused Kamrul was with the police. He identified the van. PW8 identified the van in Court. He also identified Kamrul in the dock.

22. **PW9** heard on 04.04.2018 at 7.30 am that the dead body of Babusona had been recovered from the pit of an under-construction house of Kamrul situated at Mollapara. He went there at 8.10 am. He signed the inquest report.

23. **PW10**, a friend of Babusona, heard on 30.03.2018 at around 8/9 am that Babusona was missing. On the morning of 04.04.2018, he heard that the dead body was recovered from the under-construction house of Kamrul situated at Mollapara. He went there at about 8 am. He signed the inquest report.

24. **PW12** and **PW13** deposed that on 06.04.2018 at about 1/1.30 pm, police went to the house of Siddika (Kamrul's sister).

Kamrul was with them. Thereafter, in the presence of Siddika and as per the showing of Kamrul, police seized one green-coloured steel almirah. They signed the seizure list (ext.8).

25. **PW14** and **PW17** deposed that on 05.04.2018 at about 8 am, police went to one Ismail's home. They were with the police. Thereafter, as per the showing of Sabuj (PW26) and Rokon(PW27), police recovered a spade (কোদাল) from the woodshed (লাকড়ির ঘর) at Ismail's house. PW 14 further deposed that the distance between Ismail's house and Sobuj/Rokin's house is about 22/23 yards. PWs 14 and 17 identified the spade in Court.

26. **PW16 Tauhida Khatun** was the Head Master of Tajhat High School. She testified that Babusona was the President of the Managing Committee of the said school. Snigdha and Kamrul were also teachers in that school. On 03.03.2018, during a sports event in the school where Babusona was present, Kamrul was shouting. When Babusona asked Kamrul the cause for screaming, Kamrul behaved discourteously with Babusona. Thereafter, being instructed by Babusona, PW16

issued a show cause notice to Kamrul on 04.03.2018. Kamrul replied to the notice on 12.03.2018, but the same was not satisfactory. A 3-member enquiry committee was formed. PW16 further deposed that they were not aware of any extramarital affair between Snigdha and Kamrul. In cross-examination, she stated that she was not aware whether there was any business transaction between Kamrul and Babusona. It is mentioned here that PW16 deposed on 13.11.2018. Meanwhile, Kamrul died in jail custody on 10.11.2018.

27. **PWs 18, 22, 23** and **33** were tendered by the prosecution.

28. **PW19** was the owner of a local pharmacy shop. He deposed that Kamrul was a diabetic patient. He used to regularly buy insulin at his shop for the last one year. That is how he knew Kamrul. On 28.03.2018, Kamrul purchased insulin and 10 Rivotril at his shop. PW19 further deposed that he did not sell sleeping pills without a prescription.

29. **PW20 Abed Ali** is a van driver. He deposed that on 27.03.2018, Kamrul hired his van for a job to be done in the morning of 30.03.2018 at Babupara. On the morning of Friday

30.03.2018, PW20, Akkas (PW21) and Robiul (PW22, tendered) went to Railghanti with the van and met Kamrul. He was riding a motorcycle. They followed Kamrul, went to a house, and a woman opened the door. They entered the room and loaded a green steel almirah on the van. The almirah was too heavy to lift. PWs 20-22 and Kamrul lifted the almirah and placed it on the van. Then they followed Kamrul's motorcycle and stopped the van near an under- construction house beside the Tajhat Mollapara Mosque, and unloaded the almirah. Kamrul called out the name Snigdha at the house. From there, Kamrul took them to Shapla Steel, where they loaded another almirah on the van. Kamrul then led them back to the previous location, where they unloaded the almirah. Kamrul paid them Tk. 1200/- as rent. After 15 days, police went to his home with Kamrul and seized the van. He identified two almirahs in Court. Earlier, he made statements before the Magistrate. He denied the defence suggestion that his testimony is false. He identified Snigdha in the dock.

30. **PW21 Akkas** was a mason. On Friday at 7:30 am, Abed Ali (PW20) told him that goods needed to be transported by van that day. They then went to Railghanti. A man who was already waiting there took them and the van to a house at Babupara at Station Road. Then, the motorcyclist called out, ‘Snigdha, Snigdha.’ A woman opened the door. Upon entering the house, they were asked to load an almirah onto the van. The almirah was too heavy. Then four of them loaded the almirah onto the van. They followed the motorcyclist to a house near the Tajhat Mollapara Mosque, dropped off the almirah, and then accompanied the motorcyclist to the Shapla Steel shop. From there, they picked up another almirah and took it to the same house. After unloading that almirah, the motorcyclist paid them 1,200 Taka. About 15 or 16 days later, the police came to their home and seized the van. He gave a statement before the Magistrate. PW21 identified Snigdha in the dock. He denied the defence suggestion that he deposed falsely out of fear of the police.

31. **PW24** was a carpenter. He deposed that on 06.06.2018 police showed two mobile phones to him and asked him to sign a seizure list, which he did. He identified the mobile phones in Court.

32. **PW25** was also a carpenter. He deposed that on 04.06.2018, police recovered two mobile phones from the area near the electricity pole by the wall next to the graveyard on Sultan Nagar ADC Road. A man named Kamrul Master was with the police. PW25 signed the seizure list. He identified the mobile phones in Court.

33. **PW26 Sabuj** was a student of class X at Tajhat High School. He deposed that about a month before the incident, Kamrul asked him to dig a pit in his brother's garden. Kamrul told him that he would store cow dung in it to make fertilizer, and would apply the fertilizer to the land to grow healthy plants. He and his friend Rokon (PW27) dug the pit. Kamrul gave them Tk. 200 Taka for snacks.

34. PW26 further deposed that on 26.03.2018, Kamrul told him to dig another pit inside his brother's room. Kamrul told him that

he intended to remove the soil, plaster the area with fine sand, and convert it into a coaching room. PW 27 started digging. Kamrul called Rokon to assist him. They completed the work. Kamrul then measured the pit with a measuring tape. It was 45 inches deep and approximately 7 feet long. Kamrul gave them Tk. 240 for snacks.

35. PW26 further deposed that on March 30.03.2018, Kamrul called him and told him that the pit inside the room was required to be filled in. When he went there, Kamrul asked him to give him a spade, which he did. PW26 then went to the field to play. A short while later, Kamrul called him back. He and Rokon went there and saw that the pit was already half-filled. When Rokon wanted to step into the pit, Kamrul told them to level the ground after filling it. Thereafter, they finished the filling work. There was an almirah near the pit. Kamrul asked them to deliver it to his sister Siddika's house. He gave them Tk. 300 for snacks. Later, as per their information, police recovered the spade used for the pit work

from the house of Siddika. He had made statements before the Magistrate.

36. In cross-examination, PW26 stated that police recovered three spades. The first spade belonged to a friend named Sakib. That spade had broken down. He did not know who owned the garden where the first pit was dug. The house was abandoned. The homes of Tarek and Taufiq, as well as a mosque, were located near the abandoned house. The house had no windows and only one door, which remains locked. There was no door in the room where they dug the pit. He went to the place at 8:30 am while the soil-filling work was underway and left after giving the spade to Kamrul. He returned there later at 10:30 am. PW26 further stated that he and Rokon carried the almirah on their shoulders to the house of Siddika, which was located three or four houses away. He denied the defence suggestion that he gave false testimony.

37. **PW27 Rokon** deposed that about a month before the incident, he and his friend Sabuj (PW26) dug a pit in the garden belonging to Kamrul's brother. Kamrul was his school

teacher. He said that the pit would be used to prepare organic fertilizer for trees. Upon completion of the work, Kamrul gave him Tk. 100 for snacks. He also gave money to Sabuj for snacks.

38. PW27 further deposed that on 26.03.2018 at around 10.30/11:00 am, he and Sabuj were playing in the field. After the game ended, Kamrul called Sabuj and told him to go to the area in front of the Tajhat Mollapara Mosque. He and Sabuj went to the mosque, met Kamrul and went with him to his brother's under-construction house. Kamrul instructed them to dig a pit in the floor of the room. Kamrul said the reason for digging the pit was that the base would be plastered with sand and a coaching centre would be opened there. He and Sabuj dug the pit. Kamrul measured the pit. It was 45 inches deep. He then left the place.

39. PW27 further deposed that on 30.03.2018, he went to the same field to play again. Around 10/10.30 am, Sabuj called him. They went to Kamrul's brother's house. He found the pit already half-filled. They filled the remainder. They saw an

almirah next to the room. As per Kamrul's instruction, they delivered it to the home of his sister, Siddika. PW27 made statements before the Magistrate. Subsequently, police took them to Ismail's house and recovered the spade that had been used to dig the pit.

40. In cross-examination, PW27 stated that they had filled the pit using separate soil. After the pit was filled, Kamrul levelled the surface.

41. **PW28** and **PW29** deposed that in the early morning of 04.04.2018 at 4 am, police called them from their respective homes and took them to the under-construction house of the brother of Kamrul. They saw the recovery of the dead body of Babusona from the floor of the house along with his clothes, shoes, socks, coat, tie, blanket, sack and white check shirt. They signed the seizure list.

42. **PW30** deposed that on 04.04.2018 at 8 pm, he saw 2 scarves (ওড়না) at the Kotwali police station. He heard that Babusona was killed by wrapping the scarves around his neck. He signed the seizure list.

43. **PW31** was the Executive Magistrate. He deposed that, being instructed, he remained present at Tajhat, Mollapara on 04.04.2018 at 1 am. In his presence, Babusona's dead body was recovered from the floor. The body was clad in striped pyjamas and covered in mud. There was also a piece of cloth, like a scarf (ওড়না), in the hand of the body. PW 31 signed the inquest report.

44. **PW32** is a police personnel. He deposed that he took the dead body of Babusona to the morgue on 04.04.2018 at 12 pm.

45. **PW 34 Dr. Abdul Jalil** held the post-mortem of Babusona on 04.04.2018. He deposed that he found the following injuries on the dead body of Babusona:

    a. Body contaminated with sand, mud, and other foreign particles. One broad, circular and contiguous ligature mark was situated just below the thyroid cartilage.
    b. Knot mark present in front of the neck.
    c. One ligature mark was situated on both forearms just above the wrist joint. Post-mortem injury was found over the left lateral aspect of the abdomen.

    PW34 further deposed that on detailed dissection, extravasated clotted blood was found in the neck structures

which were lacerated. Clotted blood was found in the cervical prevertebral region. Viscera were kept preserved. DNA sample was collected and handed over to the police. Opinion as to the cause of death was kept pending.

The final opinion was as follows:

> "Considering autopsy examination findings and chemical analysis report of the preserved viscera from the office of the Chief Chemical Analysis, Mohakhali, Dhaka, we are of the opinion that the cause of death was asphyxia as a result of strangulation by the broad ligature material which was antimortem and homicidal in nature, but benzodiazepine compounds enhanced the cause of death of the deceased".

In cross-examination, PW34 stated that pressing a pillow over the mouth and nose can cause death by suffocation. Another may be smothering.

46. **PW35 Arifa Yeasmin Mukta** was the Additional Chief Judicial Magistrate of Rangpur. She recorded the confessional statement of Snigdha on 05.04.2018 and that of Kamrul on 12.04.2018 (Kamrul died on 10.11.2018 during trial). She also recorded the confessional statements of Sabuj (PW26) and Rokon (PW27) on 05.04.2018 (Sabuj and Rokon were

children. They were not arraigned in the case). PW35 also recorded the witness statements of Abed Ali (PW20), Akkas (PW21), and Robiul (PW22) on 17.04.2018. The testimony of PW35 would be discussed later on.

47. **PW36** was the Judicial Magistrate at Rangpur. He recorded the witness statement of Maruf (PW6) on 12.05.2018.

48. **PW37 Md. Al Amin** was the S.I. of police. He investigated the case and submitted the charge-sheet. He deposed that during the investigation, he obtained the CDR (Call Detail Record) of Snigdha and Kamrul. An analysis of the CDR revealed that Snigdha and Kamrul talked to each other on mobile phone on numerous occasions during the day and night, which raised suspicion. On repeated interrogation, Snigdha confessed that at midnight on 29.03.2018 she had mixed 5 Rivotril (sleeping pills) with daal and 5 Rivotril with the milk which Babusona ate and thus made him unconscious. Thereafter, she and Kamrul killed Babusona.

49. PW37 further testified that she took Snigdha to the under-construction house of Kamrul at Tajhat, Mollapara and, as per

her showing, the dead body of Babusona was recovered in the presence of the Magistrate on 04.04.2018 at around 4.30 am by digging the floor. He further deposed that as per the showing and identification of Kamrul, he detained the other accused and recovered various articles.

50. In cross-examination, PW37 stated he interrogated Snigdha on 01.04.2018, arrested her on 04.04.2018 at 7.45 pm and produced her before the Magistrate on 05.04.2018 at 6.05 pm. He arrested accused Milon Mohon (since dead) on 04.04.2018.

51. PW 37 further stated in cross-examination that the deceased Babusona and his brother PW1 used to live separately in the same compound with members of their family. The iron gate on the eastern side is the main gate of the house. He did not cite the son and daughter of Babusona and the wife and daughter of PW1 as witnesses in the charge-sheet.

52. PW37 denied the defence suggestion that he did not examine the CDR of Babusona, or that Kamrul and Milon were in charge of the full responsibilities to look after the business of Babusona, or that Kamrul and Milon misappropriated a huge

amount of business money of Babusona which gave rise to a dispute between them and in consequence thereto they killed Babusona. He also denied the defence suggestion that Snigdha did not kill Babusona, or that Babusona left the house at 6/6.30 am on 30.03.2018 after receipt of a phone call, or that he did not investigate the case properly.

53. Now, we turn to the confessional statement of Snigdha. Learned AAG submits that the confession of Snigdha contains a detailed description as to the extramarital affair between herself and Kamrul, their plan to kill Babusona, how they executed the plan by bringing the almirah without shelves through the backdoor of the house and administering the sleeping pills Rivotril with the food of Babusona and her daughter on the night of 29.03.2028 by Snigdha so that they did not wake up, killing Babusona with the scarf and pressing a pillow on his face by Snigdha and Kamrul, putting the dead body and his personal clothings in the almirah in the morning of 30.03.2018, taking the almirah by the van to the under-construction house of Kamrul where a pit was already dug and

burial of the body in the pit. Learned AAG submits that the confessional statement of Snigdha is corroborated by the oral and documentary evidence as well as the medical evidence. He further submits that the confessional statement of Kamrul lends support to that of Snigdha, which is also consistent with the prosecution case. Learned AAG finally submits that the confessional statement of Snigdha is true and voluntary, which has disclosed the offence completely and accordingly, the same is admissible in evidence.

54. In determining whether the confessional statement of an accused is admissible in evidence, the Court applies two tests, namely (a) whether the confession is perfectly voluntary, and (b) if so, whether it is perfectly true (***Dogdu,*** AIR 1977 SC 1759). The principle was applied in ***Md. Humayun Kabir,*** 15 SCOB [2021] AD 76, wherein it was observed, *inter alia,* that satisfaction of the Court is a *sine qua non* for the admissibility of the confession in evidence.

55. Rule 79 of the Criminal Rules and Order (Practice and Procedures of Subordinate Courts), 2009 (in short, the CrRO)

is relevant in determining the voluntariness of a confessional statement. Rule 79(1) is quoted below:

> R. 79(1) - Confessions are to be recorded during the court hours in the Magistrate's Court or other room in a building ordinarily used as a Court house unless, the Magistrate, for reasons to be recorded by him in writing, certifies that compliance with these conditions is impracticable or that he is satisfied that the ends of justice would be liable to be defeated thereby.

56. Rule 79(7)(a) provides that the Magistrate should not proceed to record the statement of the accused unless and until he has reason, upon questioning him and observing his demeanour, to believe that the accused is ready to make a statement voluntarily. Rule 79(7)(c) further states that the questioning of an accused person to discover if the making of a confession is voluntary should not be taken as a mere formality and the Magistrate should apply his mind judicially and endeavour to base his finding upon definite premises and grounds.

57. Judicial pronouncements and the CrRO have unequivocally declared the principle that recording a confession is a solemn act. It must be done by applying a judicial mind, not in a mechanical way. Rule 78 casts a duty upon the Magistrate to

record the confession with due care and deliberation, not to view the matter as a distasteful and minor appendage or addition to his/her normal functions, but as one which is of consequence to the confessing accused, his co-accused and the Courts responsible for the administration of criminal justice. Every endeavour should be made not to record a confession perfunctorily and hastily.

58. Under Rule 3, Court hours on weekdays are between 9.30 am and 4.30 pm. In ***Rijia Khatun***, 73 DLR (2021) 343, a Division Bench of this Court referred to Rule 79(1) and observed that if no reason is assigned by the Magistrate for recording a confession beyond the Court hour, *"it would certainly make out a scope to raise a question as to why the learned Magistrate had recorded it beyond the Court hour or what necessitated him to record it at that point of time, when he could have easily recorded it on the following day, if the maker really wanted to make it. The very purpose of the rule to ensure the regularity of recording confession and the precaution and safeguard provided in the rule would reduce*

it to such trifling value as to be almost idle, if not complied with". In the reported case, no reason was assigned by the Magistrate for recording the confession beyond the Court hour at about 7.30 pm. The Magistrate in his deposition did not state the reason. It was held that the defect can only be cured under Section 533 of the Cr.P.C. if the error has not injured the accused as to her/his defence on merit. In *Rijia Khatun*, this Division took the view that the defect was in no way cured. Accordingly, the confessional statement was not relied upon.

59. In the case in hand, Snigdha was arrested on 04.04.2018 at 7.45 pm. She was produced before the Magistrate (PW35) on 05.04.2018 at 6.05 pm. She was brought before the Magistrate out of Court hours to comply with the provisions of Section 61 of the Cr.P.C. No irregularity was committed in the matter.

60. According to the confessional statement of Snigdha (ext.17), she was brought before the Court Chamber of the same Magistrate on 05.04.2018 at 10 pm to have her confession recorded. Column 3, regarding how much time was given to

her for reflection, is blank. Column 10, regarding when she was forwarded to the jail, is also blank. It appears from ext.18, which is the confessional statement of Sabuj (PW26, who was a child), that he was brought before the same Magistrate on the same day at 11.20 pm. After recording his confession, the same Magistrate also recorded the confession of Rokon (PW27, who was also a child) at 11.35 pm. The Magistrate must have completed the recording of Snigdha's confession before 11.20 pm.

61. When the same Magistrate records 3 confessions in one day consecutively, all after Court hours, it is normally not expected of him to apply a judicial mind. Normal human behavioural pattern suggests that after working long hours in the Court discharging the judicial functions, application of judicial mind may be compromised while recording a confession after the Court hours. It would be no exception if he hurries and does his job perfunctorily, which happened in the instant case. The Magistrate (PW35) in her deposition did not state the reason for recording the confession beyond the Court hours, which

she was required to do under Rule 79(1) of the CrRO. Hence, being fortified with the provisions of the CrRO and the case of *Rijia Khatun*, we hold that the confession of Snigdha was not made voluntarily. The same is kept out of consideration.

62. Co-accused Kamrul also made an inculpatory confessional statement. The same Magistrate (PW35) recorded his confession. Kamrul died on 10.11.2018 after examination of PW15. It appears from his confessional statement (ext.20) that he was arrested on 04.04.2018. He was brought before the Magistrate on 12.04.2018 at 9.30 pm to have his confession recorded. Column 3, regarding how much time was given to him for reflection, is blank. Column 10, regarding when he was forwarded to the jail, is also blank. No explanation was given either in ext.20 or in the oral testimony of PW35 as to recording his confession out of the Court hours. Therefore, his confessional statement cannot be considered as being made voluntarily. The same is discarded.

63. Learned AAG submits that the investigating officer (PW37) testified that the dead body of Babusona was recovered from

Kamrul's under-construction house as per the disclosure statement of Snigdha, which is indicative of the knowledge and participation of Snigdha in the murder. Learned AAG further submits that such disclosure statement is admissible evidence under Section 27 of the Evidence Act, 1872.

64. The words used in Section 27, "information received from a person accused of an offence in the custody of a police officer," require clarification. The term 'accused' should not be construed narrowly. It is immaterial that his name was not mentioned in the FIR (***Amin***, AIR 1958 All. 293), or that it does not predicate a formal accusation against him at the time of making the disclosure statement which is sought to be proved (***Deoman***, AIR 1960 SC 1125). In other words, it is not necessary that when a disclosure statement is made by a person he should be an accused; it is enough that he is an accused person when the same is sought to be proved in Court (***Md Dastagiri***, AIR 1960 SC 756). The word 'custody' as contemplated in Section 27 means surveillance or restriction on the movement of the person concerned, which can be

completed in the event of his arrest, and the same cannot be equated with the concept of formal arrest (***Bibhachha***, AIR 2001 SC 2274).

65. It is recalled that the FIR was lodged on 01.04.2018 under Sections 364 and 34 of the Penal Code against unknown persons. The I.O. (PW37) started interrogating Snigdha from 01.04.2018. The dead body of Babusona was recovered on 04.04.2018 at 4.30 am in the presence of, amongst others, the Executive Magistrate (PW31). The I.O. deposed that the dead body was recovered as per the showing of Snigdha, but other evidence on record suggests that Snigdha was not present there at the time of recovery of the dead body. Section 27 does not require the physical presence of the accused at the place of recovery. There is no requirement of law that the disclosure statement should be reduced in writing (***Farid Khan***, 45 DLR 171). Snigdha was arrested on 04.04.2018 at 7.45 pm. Therefore, we find substance in the argument of the learned AAG that the dead body was recovered as per the disclosure statement of Snigdha. Be that as it may, recovery by itself

cannot form the basis of conviction. The recovery and its evidentiary value have to be considered in the light of other relevant circumstances as well as the chain of events suggesting the involvement of the accused.

66. Section 106 of the Evidence Act states, "When any fact is especially within the knowledge of any person, the burden of proving that is upon him". The word 'especially' means facts that are pre-eminently or exceptionally within the knowledge of the accused (***Murlidhar***, AIR 2005 SC 2345). Section 106 is not intended to relieve the prosecution of its burden to prove the guilt of the accused beyond reasonable doubt. The section applies to cases where the prosecution has succeeded in proving facts from which a reasonable inference can be drawn regarding the existence of certain other facts, unless the accused, by virtue of special knowledge regarding such facts, failed to offer any explanation which might drive the court to draw a different inference (***Sucha Singh***, AIR 2001 SC 1436). In a wife killing case, the Apex Court observed in ***State vs. Mofazzal Hossain Pramanik***, 11 BLD (AD) 302 that in

criminal cases, Section 106 of the Evidence Act is attracted in exceptional cases where a relevant fact is pre-eminently within the knowledge of the accused. The rationale is simple. It is just and proper that the accused is to prove a fact that is especially within his knowledge because he could do so without difficulty or inconvenience, and for the prosecution it will be well-nigh impossible or highly inconvenient to throw any light on such a matter. The Apex Court further observed that it is true that the burden of proving a plea of alibi or any other plea specifically set up by an accused for absolving him from criminal liability lies on him. But his burden is somewhat lighter than that of the prosecution. An accused could be considered to have discharged his burden if he succeeds in creating a reasonable belief in the existence of circumstances that would absolve him from criminal liability, but the prosecution is to discharge its burden by establishing the guilt of the accused beyond all reasonable doubt. Again, in another sense, an accused's burden is lighter, because the Court is to consider his plea only after, and not before, the prosecution

leads evidence for sustaining a conviction or for making out a prima facie case.

67. Learned AAG submits that this is a husband-killing case. The evidence on record, as well as the facts and circumstances of the case, has established that Babusona was murdered at his home in the presence of Snigdha and thus Section 106 of the Evidence Act applies to the case. Snigdha had failed to discharge the burden of disproving the fact that Babusona was not killed in the house while she was present there or that she was not present in the house while Babusona was killed in the house.

68. In the instant case, the prosecution has proved the following facts and circumstances beyond reasonable doubt:

    a. Accused Kamrul (since dead) and Singdha were teachers in the same school. The deceased Babusona (Singdha's husband) was the Chairman of the Managing Committee of the said school. On 03.03.2018, an untoward incident occurred between Kamrul and Babusona. Kamrul was issued a show cause notice on

04.03.2018. He replied on 12.03.2018. The reply was not accepted, and a 3-member enquiry committee was formed.

b. On 24.032018, Kamrul and another accused Milon (died during investigation), who was Babusona's clerk, ordered two steel almirahs to be made, one with shelves and the other without shelves. The almirah without shelves was 73 inches long, 22 inches in width and 36 inches in depth (seizure list dated 06.04.2018, ext.8). The almirah without shelves was delivered by a van to Babupara, where Babusona's house was situated, on the night of 29.03.2018. Kamrul accompanied the van.

c. On 28.03.2018, Kamrul purchased 10 Rivotril (sleeping pills) from a local pharmacy shop.

d. On the morning of 30.03.2018, the van driver (PW20), PW21 and another went to Babusona's house at Babupara along with Kamrul. Kamrul called out, 'Snigdha, Snigdha'. She opened the door. The almirah was too heavy to lift. Four persons lifted the almirah and

loaded it onto the van. They went to Kamrul's under-construction house situated at Mollapara, Tajhat and unloaded the almirah. From there, they went to the almirah shop, loaded another almirah with shelves onto the van and delivered it to Babusona's home.

e. Earlier, Sobuj and Rokon (PWs 26 and 27), who were students of class X of the school where Kamrul and Snigdha were teachers, dug two pits, one in the garden and the other on the floor of a room of the house of Kamrul situated at Tajhat, Mollapara. The second pit on the floor was dug on 26.03.2018. It was about 7 feet long and 45 inches in depth. On the morning of 30.03.2018, Kamrul told Sobuj to give him a spade, which he did. Being asked by Kamrul, Sobuj and Rokon went to the said under-construction house and found an almirah in the room next to the pit. The pit was already half filled. They filled the pit, and Kamrul levelled it. Thereafter, they carried the almirah to the house of Kamrul's sister Siddika, which was 3/4 houses away.

The spades used for digging the pit were recovered. The almirah was also recovered from Siddika's home.

f. The dead body of Babusona was recovered at 4.30 am on 04.04.2018 from the under-construction house of Kamrul as per the disclosure statement of Snigdha. Along with the dead body, Babusona's clothes, shoes, socks, coat, tie, blanket, sack and white check shirt were also recovered. The body was clad in striped pyjamas and covered in mud. There was also a scarf (ওড়না) in the hand of the body (Executive Magistrate PW31).

g. Medical evidence proved that the cause of death was asphyxia as a result of strangulation by the broad ligature material, which was antimortem and homicidal in nature, but benzodiazepine compounds enhanced the cause of death of the deceased.

69. In a case like the present one where there is no direct evidence to prove the facts in issue, the prosecution is permitted to adduce indirect, circumstantial or presumptive evidence from which the existence of the given facts can be logically inferred.

Circumstantial evidence is not direct to the point in issue but consists of evidence of various other factors which are closely associated with the fact in issue, and taken together they form a chain of circumstances from which the inevitable conclusion can be drawn that the accused are the only perpetrators. To fasten the accused with the crime based on circumstantial evidence, the same must be so strong as to eliminate the possibility of innocence of the accused (***Balai Chandra Sarkar,*** 47 DLR 467) or it would exclude any other hypothesis than that of the guilt of the accused [***Md. Rezaul Huq,*** 16 BLD (AD) 261].

70. In ***Minhaz and anr.***, 6 MLR (AD) 2001 166, the Apex Court observed: (para 6)

> "…the statement of an accused made under section 342 of the Code of Criminal Procedure is for giving him an opportunity to explain circumstances appearing against him in the evidence adduced by the prosecution. This is entirely for the benefit of the accused and the accused only and it is also well settled that this statement cannot be used by the court against him nor the prosecution be permitted to use it to fill up any gap in the prosecution evidence".

71. The statement under Section 342 is not recorded after administering an oath to the accused. The statement is recorded to meet the requirement of the principles of natural justice, as it requires that an accused may be given an opportunity to furnish an explanation of the incriminating material which had come against him in the trial. The statement can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution [***Raj Kumar Singh***, (2013) 5 SCC 722].

72. The statement of Snigdha made under Section 342 is reproduced below:

"বিগত ৩০/০৩/২০১৮ ইং তারিখে ভোর অনুমান ৬.০০ ঘটিকার সময় আমার স্বামীর মোবাইলে একটি কল পেয়ে কাপড় পরে তড়িঘড়ি করে বাইরে চলে যায়, আমি জিজ্ঞাসা করলে বলে, 'আধা ঘন্টার মধ্যে আসব'। সময় গড়িয়ে গেলে আমি তার ফোনে কল দিলে দুইটি নম্বরই বন্ধ পাই। কামরুল মাষ্টারের সঙ্গে ব্যবসার টাকা পয়সার হিসাবকে কেন্দ্র করে কামরুল মাষ্টারের সঙ্গে আমার স্বামীর বেশ কয়েক মাস যাবৎ দ্বন্দ ও বিরোধ চলে আসছিল। যা আমার স্বামী আমাকে বলেছিল। বেশ কয়দিন থেকে আমার স্বামীকে উদ্বিগ্ন দেখাচ্ছিল। আমি প্রশ্ন করলে সে এড়িয়ে যাচ্ছিল। আমার মনে সংশয় সৃষ্টি হলে আমি আমার স্বামীর সহকারী ও দেহরক্ষী মিলন মোহন্তের নিকট ফোন করি। কিন্তু সে আমার স্বামীর খোঁজ দিতে না পারায় বাধ্য হয়ে আমি কামরুল

মাষ্টারের নিকট ফোন করি ও আমার স্বামীর খোঁজ চাই। কিন্তু সে আবোল-তাবোল বলায় আমি বাড়ির লোকজনদেরসহ আমার ননদ ডাঃ অসীমা ভৌমিক ও নিকট আত্মীয়দের বিষয়টি জানিয়ে আমার স্বামী তাদের ওখানে গেছে মর্মে খোঁজ চাই। কামরুল মাষ্টারের প্রতি আমার সন্দেহ হওয়ায় আমি ফোনে তাকে আমার স্বামীকে ফিরিয়ে দেওয়ার জন্য চাপ দিতে থাকলে ৩১/০৩/২০১৮ ইং তারিখে এক পর্যায়ে সে আমার স্বামীকে অপহরণ করাসহ তাকে হত্যা করে তাজহাটে তার বাড়ীতে পুতে রেখেছে বলে আমার নিকট প্রকাশ করে এবং ইহা কারও নিকট প্রকাশ করলে আমাকেও সে ফাসিয়ে দিবে হুমকি দেয়। তখন আমার মাথায় বাজ ভেঙ্গে পড়ে ও বাকরুদ্ধ ও কর্তব্যবিমুড় হই। অপরদিকে একটি অতি উৎসাহি মহল আমাকে ও কামরুলকে জড়িয়ে পরকিয়ার মুখরোচক কাহিনি তৈরি করে গুজব ছড়াতে থাকে এবং পত্র-পত্রিকায় এক এক পত্রিকায় এক একভাবে মনগড়া রসাত্মকভাবে প্রচার করতে থাকে। ক্রমেই পরিস্থিতি সম্পূর্ণভাবে আমার বিপক্ষে চলে গেলে আমি মানসিকভাবে বিপর্যস্ত ও ভেঙ্গে পড়ি। গত ০১/০৪/২০১৮ ইং তারিখে পুলিশ ও র‍্যাব আমার স্বামীর বাড়ীর অদূরে বাবুপাড়া রেল গেট সংলগ্ন রংপুর র‍্যাব সদর দপ্তরে নিয়ে আসে। সেখানে একেকজন অফিসার একেকভাবে আমার উপর শারীরিক ও মানসিক নির্যাতন করে। তারা আমাকে দিয়ে রবীন্দ্রসংগীত গাইতে বলে ও তা ভিডিও করে আবার কখনও পাগলের অভিনয় করতে বলে তাও ভিডিও করে। এই দুঃসময়ে আমি তাদের খেলার পুতুল ছিলাম। অবশেষে ০৫/০৪/২০১৮ ইং তারিখ রাত্রী ৮.০০ ঘটিকার সময় তারা আমাকে ম্যাজিষ্ট্রেটের কাছে নিয়ে আসে ও তাদের শিখানো বক্তব্য ম্যাজিষ্ট্রেটকে বলতে বলে। আমি যখন জবানবন্দি দেই তখন মহিলা ম্যাজিষ্ট্রেট বাদে সাদা পোশাকে আরও দুইজন ব্যক্তি কক্ষে উপস্থিত ছিল। সম্ভবতঃ তারা র‍্যাবের অফিসার ছিল। তাই বাধ্য হয়ে আমি র‍্যাবের শিখানো মতে জবানবন্দি দেই”।

73. Snigdha was all along present in the Court during the trial. She had heard the deposition of the PWs. During examination by the Court under Section 342, her attention was drawn to all

relevant incriminating materials. In the Section 342 statement, Snigdha stated, *inter alia*, that Babusona had left the house at about 6 am on 30.03.2018, but there is no evidence or circumstances on record to lend support to this statement, and therefore, her statement does not inspire confidence. She kept silent about the testimony of PWs 20 and 21 (van drivers) who categorically deposed regarding the too-heavy almirah which they picked up from Snigdha's house on the fateful morning of 30.03.2018. They also identified Snigdha in the dock.

74. It is true that there is no direct evidence that the almirah without shelves was used to carry the dead body. But, the chain of events and circumstances are of such that no other inference other than that the same was carrying the dead body can be inferred. Admittedly, Snigdha and the victim Babusona were staying in the house. Snigdha has failed to discharge the burden of disproving the fact that Babusona was not killed in the house in her presence or that she was not aware of the same or that the almirah without shelves was not used for carrying the dead body of Babusona. Accordingly, we hold that the

prosecution has successfully proved the guilt of the condemned priosoner Snigdha.

75. Indeed, the alleged motive of an extramarital affair between Snigdha and Kamrul as alleged by the prosecution was not proved. However, the circumstantial evidence is so strong and builds such a chain of events that it eliminates the possibility of innocence of Snigdha or excludes any other hypothesis than that of her guilt. Kamrul died during the trial. Considering the various aspects of the case, we are of the view that, the death penalty is too harsh and disproportionate. A sentence of imprisonment for life is the appropriate sentence which is commensurate with the gravity of the offence.

76. In the result, the death reference is rejected. The criminal appeal and jail appeal are dismissed. The conviction of the condemned prisoner **Sreemati Snigdha Sarkar Bhowmik @ Deepa** under Section 302 read with Section 34 the Penal Code is upheld, but the death sentence is commuted to one of imprisonment for life with a fine of Tk. 10,000/- (ten

thousand), in default, to suffer rigorous imprisonment for 02 (two) months more.

77. Communicate the judgment and order at once.

Shathika Hossain, J.

I agree