

Bench:

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

Death Reference No. 82 of 2019

The State petitioner
-Versus-

Md. Kamrul Islam condemned-prisoner
with
Criminal Appeal No. 8670 of 2019
and
Jail Appeal No. 212 of 2019

Md. Kamrul Islam appellant
-Versus-

The State respondent
Mr. Syed Ejaz Kabir, Deputy Attorney
General with Ms. Mahbuba Tasnim Akhi
and Mr. Ashraful Alam, Assistant Attorney
Generals for the state
(petitioner in reference and respondent in appeals)

Mr. Md. Motiar Rahman with
Ms. Samira Tarannum Rabeya and
Mr. Md. Abu Hanifa, Advocates
.... for the convict-appellant
(in the appeals)

Judgment on 14.09.2026

Bhishmadev Chakraborty, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman
Tribunal 1, Sirajganj (the Tribunal) on trial in Nari-o-Shishu
Case 28 of 2013 found accused Md. Kamrul Islam guilty of

offence under section 11(Ka) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain, 2000) and awarded sentence of death upon him and made this reference to this Division for its confirmation. At the same time the condemned-prisoner preferred Criminal Appeal 8670 of 2019 and Jail Appeal 212 of 2019. Since the reference and the appeals have arisen out of the same judgment and order of conviction and sentence, these have been heard together and the being disposed of by this judgment.

PW1 Parul Begum alias Parul lodged a first information report (FIR) at about 14.30 hours on 12.07.2012 with Sirajganj police station alleging, *inter alia*, that her sister Munni Khatun (the victim) was married off accused 1 (the condemned-prisoner). During their wedlock she gave birth to a son Md. Moon aged about 11 years and a daughter Mst. Suchana Khatun about 5 years. In passing their conjugal life accused 1 and his brothers and sisters (accused 2-10) in different times claimed dowry to the victim and tortured her physically and mentally for its nonpayment. Previously for business purpose they paid Taka 2,00,000/- to accused 1. They also paid gold ornaments to the victim sister. In spite of that, the accused

persons claimed dowry of Taka 3,00,000/- more and started creating pressure upon the victim for its payment. All the accused at about 5:00 am on 12.07.2012 beat the victim with wooden bolt and lathi for dowry. Accused 1 strangled the victim twisting with rope resulting her death. They killed the victim, left the dead body on the floor of the house and fled away. Moon, son of victim at about 6:00 am made a phone call to PW5 Mst. Parveen Begum and informed about the occurrence. Then all of them rushed to the occurrence house and found the dead body of the victim laying on the floor of the accused's bedroom. They found marks of injuries on the left side of jaw, right side of the throat, under both the neck and black spot on her back. The accused persons on demand of dowry assaulted the victim and throttled her to death. The said FIR was registered as Sirajganj Police Station Case 23 dated 12.07.2012 corresponding to GR 344 under sections 11(Ka) and 30 of the Ain.

PW11 Md. Afzal Hossain, a Sub-Inspector (SI) of police investigated the case. He seized some *alamots*, made inquest of the dead body, prepared a report and sent the dead body to the morgue for holding autopsy. After getting the

autopsy report and collecting evidence for prosecution he submitted a charge sheet on 27.11.2012 against all the accused under sections 11(Ka) and 30 of the Ain, 2000. The record of the case was then transmitted to the Tribunal for holding trial which was registered as Nari-o-Shishu Case 28 of 2013. The Tribunal took cognizance of offence under 11(Ka) of the Ain against condemned-prisoner Kamrul Islam only. Eventually, the learned Judge framed charge against him on 06.05.2013 under the selfsame section of the Ain. The charge so framed was read over to the accused then present in the dock, to which he pleaded not guilty and claimed to be tried.

During trial, prosecution examined in all 12 witnesses and they were cross-examined by the defence. On conclusion of examination of the prosecution witnesses, learned Judge of the Tribunal examined the accused under section 342 of the Code to which he reiterated his innocence and desired to examine defence witness and accordingly he examined two witnesses. In addition to that he told that he was passing family life with his two children and wife happily. He had business and had 14 bhories of gold ornaments. He did never demand dowry to the victim. However, learned Judge of the

Tribunal on consideration of evidence and other materials on record found the condemned-prisoner guilty of offence under section 11(Ka) of the Ain and sentenced him thereunder to death.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General takes us through the materials on record and submits that this is a wife killing case. The victim was found dead in condemned-prisoner's bedroom. Marks of injuries were found on her person and the doctor in autopsy report opined that the death was due to asphyxia as a result of strangulation which was antemortem and homicidal in nature. The condemned-prisoner did not explain the death of his wife except putting some scattered suggestions to some of the witnesses that she committed suicide and that he was not at home at the material time. In a case like this the onus heavily lies upon the husband to explain the death of his wife which the condemned-prisoner failed. The prosecution by corroborative evidence proved that the condemned-prisoner demanded dowry to the informant party and the killing was for its nonpayment. Since the prosecution proved the charge against the condemned-prisoner beyond any shadow of doubt, the judgment and order of

conviction and sentence is found correct and passed as per law. The reference, therefore, would be accepted and appeals be dismissed.

Ms. Samira Tarannum Rabeya, learned Advocate for the appellant submits that the condemned-prisoner spent fifteen years family life with the victim and they had two children, therefore, the demanded of dowry by him to the victim is found apparently not correct and has been brought only to bring the case within the mischief of the Ain, 2000. She refers to the evidence of witnesses and submits that none of them specifically stated as to the date of demand of dowry and names of the persons to whom the demand was made. Therefore, the conviction and sentence under section 11(Ka) of the Ain cannot be sustained. She then refers to the evidence of PW9 Mst. Suchana Khatun, daughter of the condemned-prisoner and the deceased and submits that she was in the room at the time of occurrence. She stated in evidence that there was an altercation between her father and mother and at one stage the father struck on the back of victim's head with wooden bolt and throttled her neck. But such evidence do not support the autopsy report and as such her evidence cannot be

believed. She then refers to the evidence of DW1 Md. Moon, son of the condemned-prisoner who stated that the condemned-prisoner was not at home at the occurrence night. He went to Mizapur of Bogura district to purchase rice. He found the dead body of the victim hanging with bamboo. The aforesaid evidence of the son proves that the victim committed suicide because there was an altercation between the husband and wife. The evidence of PW9 and DW1 do not corroborate the medical evidence, the autopsy report issued by PW10 doctor Md. Faridul Islam. In such a case, the condemned-prisoner has been suffering in jail for more than thirteen years. Therefore, the conviction of the condemned-prisoner may be converted under section 304(1) of the Penal Code and the period he suffered in jail may be treated as his sentence, Ms. Rabeya concludes.

We have considered the submissions of the learned Deputy Attorney General and the learned Advocate for the appellant and gone through the materials on record. To dispose of the reference as well as the appeals, let us have a blink on the prosecution witnesses.

PW1 Parul Begum alias Parul, sister of the deceased stated that victim Munni Khatun was her younger sister who was given in marriage with the condemned-prisoner fourteen years ago. They have two children. The accused persons for dowry tortured the victim. They paid Taka 2,00,000/- to the condemned-prisoner as dowry $1\frac{1}{2}$ years prior to the date of occurrence. Before some days of the occurrence accused Kamrul further demanded Taka 3,00,000/- from them as dowry. Failing to pay the amount, the accused persons beat the victim and throttled her to death at about 5:00 am on 12.07.2012. Moon, son of the deceased over a phone call told them that his mother was done to death. On receipt of the said news they reached the house of occurrence at about 6.25 am. They found the victim in the house of the accused with marks of injuries on her left side of the throat and right side of the jaw. They further found finger print on her throat, injury below the knee and mark of assault on her back. Her (informant's) husband informed the occurrence to police. Police came, held inquest on the dead body and then they lodged the FIR. She proved the inquest and FIR exhibits-1 and 2 respectively. In cross-examination by the defence, she stated

that they paid Taka 2,00,000/- to the accused as dowry but it was not written. They did not file any case for demand of dowry but a *salish* was held in presence local chairman and member. The son of the victim resides with his paternal grandfather and daughter with the maternal grandmother. She denied the defence suggestion that they saw the deceased victim in the courtyard of the house. She did not find any blood in the occurrence room but found the dead body on the floor. She further denied that the accused was not in the house from before two days of the occurrence. She denied all other material suggestions put to her.

PW2 Mohammad Ali Swapan, a neighbour of the informant stated that the occurrence took place in the house of the accused at about 5:00 am on 12.07.2012. The accused was the husband of deceased victim. They went to the occurrence house at about 6:30-6:45 am and found the dead body of the victim into the house. They found marks of injuries on two shoulders and finger print on the throat of the victim. They further found black spot on victim's back and under her right knee. They heard that the accused strangled the victim to death for dowry of Taka 3,00,000/-. In cross-examination by

the defence, he stated that he heard about the killing from the neighbours. Moon, son of the deceased resides with his paternal grandmother but the daughter with her maternal grandmother. Previously, they filed no case about demand of dowry but a *salish* was held for it. He denied the defence suggestion that the accused was not at home in the occurrence night.

PW3 Md. Abdur Rahim alias Abdur Rahim, husband of PW1 stated in the similar line of the informant. He further stated that he found marks of injuries on the left and right side of the jaw of the victim and under her both knees. He found black marks on the victim's back. In his presence police held inquest of the dead body, prepared a report and he put his signature thereon. He was also a witness to the seizure of wooden stake, an *urna* under seizure exhibit-3. In cross-examination by the defence, he stated that before the occurrence victim Munni Khatun did not file any case for demand of dowry. There was no proof in writing of holding *salish*. He directly went to the occurrence house at 6:00 am. They returned home and then went to the police station. He denied the defence suggestion that the accused did never claim

dowry to the victim or that he did never torture the victim for its nonpayment. He further denied that the accused did not kill the victim.

PW4 Md. Kutubuddin Bachchu, a maternal uncle of PW1 stated in the same line of PWs1 and 3 as to the demand of dowry by the accused and the occurrence as described. He further stated that at about 6:00 am PW5 called him and told that Moon, son of the victim informed her that accused Kamrul and other accused killed the victim. All of the witnesses rushed to the occurrence house and found the dead body of victim into the bedroom of the accused's house. They found blackish injury on the left side of her throat and right side of the jaw and further found figure print on the throat. They found black spot below victim's knee and on her back. Accused Kamrul and other accused beat the victim on demand of dowry and throttled her to death. He was a witness to the inquest. In cross-examination by the defence, he stated that the victim did not file any case previously on demand of dowry. They have no document about payment of dowry of Taka 2,00,000/- to the accused. He denied the defence suggestion

that the accused did not demand dowry to the victim and tortured her for its nonpayment.

PW5 Parveen Khatun alias Parveen, another sister of the victim stated in the similar line of PWs1, 3 and 4 about demand of dowry by the accused and for its nonpayment killing the victim at the time and place. She further stated that she found the dead body of victim in the house of accused Kamrul and further noticed marks of injuries on her left jaw and found finger print on the throat. They further found marks below the knee and on her back. She was a witness to the inquest exhibit-1. In cross-examination by the defence, she stated that on receipt of the news they directly went to the house of the accused. Her maternal uncle and brother-in-law informed police about the fact. Police came and held inquest. He denied the defence suggestion that the accused did not beat the victim or killed her on demand of dowry.

PW6 Nahid, a cousin of the informant stated in the similar line of PWs 1, 3, 4 and 5 as to the payment of dowry and further demand and finding marks of injuries on the person of the deceased. In cross-examination by the defence, he stated that he did not file any case against the accused for

demand of dowry before victim's death but a *salish* was held in the house of the accused for it. The son of accused namely Moon resides in the house of the accused and the daughter Suchana resides in the house of her maternal aunt. He denied the defence suggestion that the accused did never claim dowry to the victim or that he did not beat the victim. He further denied that the victim committed suicide or that the accused did never torture her.

PW7 Md. Al Amin alias Al Amin, a cousin of the informant stated in the similar line of PWs1, 3, 4, 5 and 6. He further stated that the accused killed the victim on demand of dowry of Taka 3,00,000/-. He found the dead body of the victim in the house of the accused with marks of injuries. He was a witness to the inquest and seizure. In cross-examination by the defence, he stated that he went to the occurrence house directly. Someone informed the fact to the police station. He denied the defence suggestion that the victim and the accused was a happy couple and that he deposed falsely.

PW8 Hazera Khatun alias Hazera, mother of PW1 and the victim stated in the similar line of PWs1, 3, 4, 5, 6 and 7. She further stated that the son of victim resides with her

paternal grandfather and the daughter lives with them. She also rushed to the occurrence house and found the dead body of the victim in the house of the accused and found marks of injuries on her person as stated by other witnesses. In cross-examination by the defence, she denied the defence suggestion that the accused and her deceased daughter was a happy couple. She denied that the accused did not torture the victim or killed her on demand of dowry.

PW9 Mst. Suchana Khatun, daughter of the victim aged about 8 years stated that the occurrence took place in a morning two years ago. There was a quarrel between her father and mother. Her mother was going towards the cot and at that moment his father with wooden stake struck on the back of her head. He (father) also pressed her throat and struck below her knee with wooden stake. Thereafter her father fled away. Her brother Moon was present at that time. They made hue and cry but her mother met with death. In cross-examination by the defence, she stated that they used to reside in the same room in two separate cots. Their parents slept in the other cot. She did not tell to the men of her maternal grandfather's house about the quarrel between her father and

mother. Her brother Moon was in the room at the time of occurrence. Her parents had good relation. She denied the defence suggestion that her father was not at home at the material time. She further denied that she deposed as tutored by her maternal grandmother.

PW10 Md. Faridul Islam, a doctor who was posted to Sirajganj Medical College Hospital at the material time held autopsy on the dead body of the victim. He stated that the autopsy was conducted by constituting a board and he was a member of the board. In the autopsy they found the following injuries (1) One 1" ligature mark was found on the upper part of neck which was transverse, circular completely encircle the whole neck. (2) One bruise $1" \times \frac{1}{2}$ Area on the left submental region. They opined-“In our opinion the cause of death was due to asphyxia as a result of strangulation which was antemortem and homicidal in nature”. He proved the autopsy report exhibit-4 and identified his signature thereon and that of the other members of the board. In cross-examination by the defence, he stated that he did not find any injury below the knee or black spot on the back of victim. They did not write that tracea was fractured. They did not find any spot or injury

in the submental region but they got it on the left side. They found stomach intact and liquid substance into it. They did not write the age of injury for want of any column in the form. The throat was intact. He denied the defence suggestion that their report was against the medical jurisprudence and faulty.

PW11 Mohammad Afjal Hossain, IO stated that he visited the place of occurrence, prepared sketch map exhibit-5, index exhibit-6. He seized some *alamots* under seizure exhibit-3. He also held inquest and prepared a report exhibit-1. He proved the chalan exhibit-7. He proved seizing of the wearing apparel of the victim under seizure exhibit-8. He described the injuries he found on the person of the victim and finding *prima facie* case against the accused submitted a charge sheet under section 11(Ka) of the Ain. In cross-examination by the defence, he stated that he made a seizure and prepared a list and held inquest of the dead body on the basis of a GDE. No one of the house of accused was present at the time of holding inquest as they were absconding. He failed to arrest anyone of the accused before submission of the charge sheet. He recorded the statements of two children but did not take any steps to record their statement under section

164 of the Code. He recorded the statements of Moon and Suchana on 17.10.2012 because before that day they were not mentally fit. He denied the defence suggestion that at the time and place the accused did not torture the victim or that he was not at home at the material time or that the victim committed suicide.

PW12 Alauddin, a constable of police who was posted to Sirajganj Sadar police station at the material time carried the dead body to the morgue after holding autopsy. He proved the chalan exhibit-7.

DW1 Md. Moon alias Moon Sheikh, son of the victim and the accused stated that he, his mother and his sister used to sleep in the same room. His father neither tortured her mother nor demanded dowry from her. His father was a businessman of rice. On the day of occurrence his father went to Mirzapur to purchase rice. He went there two days before the day of occurrence. His father did not assault his mother on the day of occurrence. In cross-examination by the prosecution, he stated that at the material time he was a student of class six. When police appeared in the occurrence house he was not at home. They used to reside in the same room with his parents and

sister. He woke up from sleep at about 4:00 am and found her mother hanging with bamboo. But he did not tell it to police. He did not tell it to police in the occurrence day that his father was not at home. He denied the suggestion put by the prosecution that over telephone he told his maternal aunt that his father killed his mother. At the time of his mother's death he was sleeping. He denied that he told to police that his father killed the victim for dowry of Taka 3,00,000/-. He denied that his father killed his mother but he deposed falsely only to save him.

DW2 Md. Bakul, a neighbour of the accused stated that he knew accused Kamrul Islam and victim Munni Khatun. They were happy couple. He did not hear about any assault upon the victim by the accused on demand of dowry. He went to the house after sometime of the occurrence and found many people there. But he did not find accused Kamrul there. He asked the men appeared there who told that the accused left the house two or one days ago for the purpose of his business of rice. In cross-examination by the prosecution, he stated that when he reached the occurrence house, he did not find the accused or his son there. He did not know when the accused

went out for work and returned home. He did not see how the victim met death. He denied the suggestion that he wanted to save accused Kamrul because he was his relative.

These are all oral evidence of the parties.

It transpires that out of 12 prosecution witnesses PW1 Parul Begum, PW2 Md. Abdur Rahim, PW4 Mohammad Kutub Uddin, PW5 Mst. Parveen Khatun, PW6 Nahid Ali, PW7 Mohammad Al Amin, PW8 Hazera Khatun, PW9 Mst. Suchana Khatun are the relatives of deceased Munni Khatun. PW2 Md. Swapan Ali, is a neighbour of the accused. PW10 Mohammad Faridul Islam is a doctor who held autopsy of the victim; PW11 Mohammad Afzal Hossain is the IO and PW12 Alauddin, a constable of police carried the dead body to the morgue and these 3 witnesses are formal in nature.

To bring home the charge under section 11(Ka) of the Ain, the prosecution is to prove that the condemned-prisoner demanded dowry from the informant party and the victim was killed for its nonpayment. In this case, we find that the victim was given in marriage with the condemned-prisoner 15 years ago. Therefore, it is almost unbelievable that the condemned-

prisoner demanded dowry after passing of so many years. It is fact that the couple had two issues aged about 13 years and 5 years respectively at the material time. Almost all of the prosecution witnesses are the relatives of the victim who stated that $1\frac{1}{2}$ years before the date of occurrence they paid Taka 2,00,000/- to the condemned-prisoner as dowry. They also stated that a *salish* was held for demand of dowry. The prosecution alleged that the condemned-prisoner further demanded dowry of Taka 3,00,000/- and for its nonpayment he strangled the victim to death. We do not find in the evidence of the prosecution witnesses to whom the subsequent amount of dowry of Taka 3,00,000/- was demanded. Moreover, the demand of dowry as the prosecution witnesses wanted to establish do not come within the meaning of dowry as defined in section 2(Yeo) of the Ain, 2000 wherein Youtuk has been defined as under:

২(এ৩) “যৌতুক” অর্থ-

(অ) কোন বিবাহের বর বা বরের পিতা বা মাতা বা প্রত্যক্ষভাবে বিবাহের সহিত জড়িত বর পক্ষের অন্য কোন ব্যক্তি কর্তৃক উক্ত বিবাহের সময় বা তৎপূর্বে বা বৈবাহিক সম্পর্ক বিদ্যমান থাকাকালে, বিবাহ স্থির থাকার শর্তে, বিবাহের পণ হিসাবে বিবাহের কনে পক্ষের নিকট দাবিকৃত অর্থ, সামগ্রী বা অন্যবিধ সম্পদ; অথবা

(আ) কোন বিবাহের কনে পক্ষ কর্তৃক বিবাহের বর বা বরের পিতা বা মাতা বা প্রত্যক্ষভাবে বিবাহের সহিত জড়িত বর পক্ষের অন্য কোন ব্যক্তিকে উক্ত বিবাহের সময় বা তৎপূর্বে বা বৈবাহিক সম্পর্ক বিদ্যমান থাকাকালে, বিবাহ স্থির থাকার শর্তে, বিবাহের পণ হিসাবে প্রদত্ত বা প্রদানে সম্মত অর্থ, সামগ্রী বা অন্যবিধ সম্পদ;

As per the definition of Youtuk as quoted above, to maintain the marital relation between the husband and wife the demand is to be made. It may be money or other valuable articles including property. In the absence of proof of demand of dowry by the condemned-prisoner to the victim or her family members, the conviction and sentence under section 11(Ka) of the Ain cannot be sustained.

But the fact remains that the victim died in the house of her husband, the condemned-prisoner. All the prosecution witnesses in evidence in a voice stated that on the time and day of occurrence they went to the house of the condemned-prisoner and found the dead body of the victim in the condemned-prisoner's bedroom. The condemned-prisoner was found absent in the house. The witnesses found marks of injuries on the person of the victim including injuries on her throat and under the jaw. The autopsy report in toto do not match the evidence of witnesses including the evidence of

PW9, daughter of the victim who was in the bedroom at the time of occurrence. But the doctors held autopsy on the dead body of the victim found (i) One inch width ligature mark on the upper part of the neck which was transverse, circular, completely encircle the whole neck. (ii) One bruise $1 \times \frac{1}{2}$ x area of the left submental region; and passed opinion that the death was due to asphyxia as a result of strangulation which was antemortem and homicidal in nature. The autopsy report exhibit-4 is found corroborative to the evidence of doctor Md. Faridul Islam PW10. In cross-examination by the defence nothing has come out adverse that the death was not homicidal in nature or it was suicidal. Therefore, the prosecution has been able to prove that the death was homicidal in nature and due to asphyxia resulting from strangulation.

Since the victim wife was found dead in the house of the condemned-prisoner, it was his duty, being the husband of the deceased, to explain her unnatural death. Here it is found that after the death of his wife, he remained absconding. Police arrested him on 28.03.2013, i.e., after eight months of the day of occurrence. The defence tried to make out a case by suggesting some of the prosecution witnesses that the victim

was ill tempered and she committed suicide. They tried to prove it by the evidence of DW1 that he found the victim hanging with a bamboo. But such defence case has been proved false by the medical evidence of PW10 and autopsy report exhibit-4. The another defence that the condemned-prisoner was not at home at the time and day of occurrence because earlier he went to Bogura for business purpose. This sort of *alibi* is to be proved by the defence who takes such plea which is found absent in the present case. We disbelieve the evidence of PW9 Suchana, daughter of the victim who came to depose from the custody of her maternal grandmother. In the similar way we cannot rely on the evidence of DW1 Moon, the son who came to depose from the custody of his paternal grandfather. On assessing their evidence as a whole, we find that PW9 deposed as tutored by the informant party and DW1 in the similar way by the men of paternal grandfather to save his father.

Since the prosecution has been able to prove that the victim was killed in the house of her husband and the husband condemned-prisoner failed to explain the death of his wife and the case he tried to make out has been proved false by the

medical evidence, therefore, we can safely hold that the victim was murdered and none but the condemned-prisoner was the killer. Moreover, his conduct is found incompatible with his innocence. He fled away and was arrested by police after 8 months of the occurrence. His conviction under section 11(Ka) of the Ain is, therefore, converted to one under section 302 of the Penal Code for committing the murder, whatever may be the reason. [State vs. Nurul Amin Baitha, 75 DLR (AD) 187]. At the same time we find that condemned-prisoner was arrested on 28.03.2013 and since then he has been languishing in the jail. He has been in the death cell from the date of delivery of the judgment on 23.07.2019, i.e., for more than seven years. The above period of custody and that he is in death cell for more than seven years is found a mitigating circumstance to commute his sentence of death to imprisonment for life.

Therefore, the reference is rejected. Criminal Appeal 8670 of 2019 is also dismissed. But the sentence of death awarded to the condemned-prisoner is commuted to imprisonment for life. The Jail Appeal is accordingly disposed

of. The condemned-prisoner shall get the aid of section 35A of the Code of Criminal Procedure.

The condemned-prisoner is to be shifted from condemned-cell to the cell meant for the prisoners alike.

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

K.M. Rasheduzzaman Raja, J.

I agree

Rajib