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. 92 of 2019
The State .....petitioner
-Versus-
Md. Abdul Alim Sumon and another
.....condemned-prisoners
with
Criminal Appeal No. 8987 of 2019 and
Jail Appeal No. 234 of 2019
Shamim Al Mamun .....convict-appellant
-Versus-
The State .....respondent
with
Criminal Appeal No. 10146 of 2019 and
Jail Appeal No. 233 of 2019
Md. Abdul Alim Sumon .....convict-appellant
-Versus-
The State .....respondent

Mr. Syed Ejaz Kabir with Mr. Mohammad Imam Hossain (Tarek), Deputy Attorney Generals with Ms. Mahbuba Taslim Akhi, Mr. Ashraful Alam, Mr. Mr. Md. Abdul Motaleb, Assistant Attorney Generals .....for the State
(In the reference and respondents in the appeals)

Mr. S.M. Shahjahan, Senior Advocate with
Mr. Md. Jahangir Alam, Advocate
.....for the convict-appellant
(In Criminal Appeal No. 10146 of 2019 and Jail Appeal No. 233 of 2019)

Mr. K.M.A. Al-Fahad-Bin-Sagir, Advocate
.....for the convict-appellant
(In Criminal Appeal No. 8987 of 2019 and Jail Appeal No. 234 of 2019)

Heard on: 07.09.2026, 08.09.2026 and 09.09.2026
Judgment on: 13.09.2026.

K.M. Rasheduzzaman Raja, J:

Learned Judge, Nari-o-Shishu Nirjatan Daman Tribunal, hereinafter 'the Tribunal,' Tangail awarded death sentence upon the condemned-prisoners Md. Abdul Alim Sumon and Shamim Al Mamun under sections 11(ka) and 30 of the Nari-o-Shishu Nirjatan Daman Ain, 2000, hereinafter 'the Ain' read with section 201 of the Penal Code in Nari-o-Shishu Case No. 355 of 2012 arising out of Tangail Model Police Station Case No. 12(5) 2012 corresponding to G.R. No. 367 of 2012 and made this reference under section 374 of the Code of Criminal Procedure, hereinafter 'the Code' to this Division for confirmation of the sentence. Condemned-prisoner Md. Abdul Alim Sumon preferred Criminal Appeal No. 10146 of 2019 and condemned-prisoner Shamim Al Mamun preferred Criminal Appeal No. 8987 of 2019 against their sentence. They preferred Jail Appeals as well. Since all the matters arose out of the same judgment, we have to dispose of all the matters by this judgment.

The prosecution case, in short, is that deceased Sumi Akter was married to accused Abdul Alim Sumon on 06.05.2011. Accused Abdul Alim Sumon demanded dowry of tk. 5,00,000/- to the family of Sumi Akter. P.W. 1 Sheuly Begum, mother of the deceased, paid tk. 3,00,000/- in the form of ornaments, furniture and cash to her son-in-law accused Sumon and wanted a time for 1 year for payment of the rest amount of the dowry. Accused Sumon used to torture Sumi for the remaining amount of dowry tk. 2,00,000/-Therefore, P.W. 1 Sheuly Begum kept Sumi in her house for the time being. Accused Abdul Alim Sumon made a phone call to Sumi at 11:00 p.m. on 17.04.2012 and informed her that he would visit Jamuna Bridge with her on the next Friday. Sumi left the house at 9:00 a.m. on 20.04.2012 for meeting her husband Sumon to visit Jamuna Bridge and informed her mother P.W. 1 Sheuly Begum at around 10:00/10:30 a.m. that he had met her husband. But P.W. 1 Sheuly Begum subsequently found the mobile phone of Sumi switched-off at around 12:00 p.m. Then she made a call to accused Sumon who did not receive the call for the first time. Then he received the call and told her that she

would get back her daughter had she paid the remaining amount of dowry tk. 2,00,000/-. She informed the occurrence to her relatives and the other neighbours. Having searched for Sumi they did not find her. Then she informed the occurrence to police going to the police station with her neighbours. P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam informed her that while going to work they found accused Sumon and Sahmim Al Mamun at Nagor Jalpai, Tangail going towards Dhaka ridding on a motorcycle with Sumi. P.W. 1 Sheuly Begum informed such information to the police whereupon police called for Sumon to the police station on 08.05.2012. Under interrogation accused Abdul Ali Sumon and Shamim Al Mamun told police that they killed Sumi and concealed her dead body under the water hyacinth of a ditch near the embankment at Asulia. Following such confession P.W. 1 Sheuly Begum along with Gias, Akbar, P.W. 4 Alamgir, P.W. 5 Shajahan and P.W. 9 Rabbani went there with police on 09.05.2012 and at the showing of the accused the dead body of Sumi was recovered. P.W. 1 Sheuly Begum identified the dead body of her daughter Sumi seeing her wearing cloths and sandal. On such occurrence

P.W. 1 Sheuly Begum lodged FIR with Tangail Model Police Station. Upon such FIR Tangail Model P.S. Case No. 12 dated 09.05.2012 under section 11(Ka) and 30 of the Ain, 2000 was started.

Being appointed Investigating Officer P.W. 10 Inspector Md. Nasiruddin Talukder investigated the case and submitted a charge-sheet against the accused persons under sections 11(Ka) and 30 of the Ain, 2000 read with section 201 of the Penal Code.

Learned Magistrate accepted the charge-sheet and transmitted the case record to the Tribunal, Tangail for holding trial. Learned Judge of the Tribunal took cognizance of the offence registering as Nari o Shishu Case No. 355 of 2012. Charge was framed by the learned Judge of the Tribunal against the accused persons under sections 11(Ka) and 30 of the Ain, 2000 read with section 201 of the Penal Code and it was read over before the accused to which they pleaded not guilty and demanded trial.

To bring home the charge brought against the accused persons the prosecution examined 11 witnesses. Then the

accused were examined under section 342 of the Code whereupon they again claimed their innocence and expressed their desire not to adduce any defence witness.

The defence case as transpires from the trend of the cross examination of the prosecution witnesses is that of innocence and the accused have been falsely implicated with the case. Deceased Sumi had an illicit relation with her cousin Firoz with whom she eloped. Thereafter Firoz killed her.

Learned Judge of the Tribunal convicted accused Abdul Alim Sumon and Shamim Al Mamun under sections 11(Ka) and 30 of the Ain, 2000 and section 201 of the Penal Code but awarded death sentenced upon them with a fine of tk. 1,00,000/- under sections 11(Ka) and 30 of the Ain, 2000 without sentencing them under section 201 of the Penal Code and referred the case to this Division for confirmation of the death sentence.

Mr. Mohammad Imam Hossain Tarek, learned Deputy Attorney General appearing for the state took us through the materials on record and submits that the prosecution has adduced sufficient evidence to connect the responsibilities of

the condemned-prisoners with the commission of offence of the case. Condemned prisoner Md. Abdul Alim Sumon has given confessional statements which are voluntary and true. According to his confession his laptop was recovered from the possession of his friend condemned-prisoner Shamim Al Mamum. P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam have found condemned-prisoners Md. Abdul Alim Sumon and Shamim Al Mamum carrying deceased Sumi with them in a motorcycle for the last time. Thereafter the dead body of Sumi was recovered at their showing. The condemned-prisoners could not establish the defence case either by adducing any evidence or putting the P.Ws. under cross examination. Condemned prisoner Md. Abdul Alim Sumon did not retract his confession. Such being the case, the death reference should be accepted. Mr. Tarek referred the ratio of the cases of Mostafa Vs. State 1 BLC 81 and Khalil Mia Vs State 4 BLC (AD) 223, Mezanur Rahman and others Vs. the State 16 BLD (AD) 293 and Khurshed and another Vs. the State 73 DLR (AD) 83.

On the other hand, Mr. S.M. Shahjahan, the learned Senior Advocate appearing for the condemned prisoner Md.

Abdul Alim Sumon in Criminal Appeal No. 10146 of 2019 opposed the reference submitting that the FIR was filed after unexplained delay of 19 days. The confession of the condemned prisoner Md. Abdul Alim Sumon was not reliable as he was in illegal police detention before producing him to the Magistrate for recording his confession. Moreover, his confession was not brought into his notice while he was examined under section 342 of the Code which is a gross violation of law. No independent witness corroborated the confession of the condemned-prisoner Sumon.

Learned Advocate Mr. K.M.A. Fahad bin Sagir appearing for the condemned prisoner Shamim Al Mamun in Criminal Appeal No. 8987 of 2019 also opposed the reference submitting that no laptop of the condemned-prisoner Sumon was recovered from the co-accused Shamim Al Mamum. P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam did not see Shamim Al Mamum with the victim at the place of occurrence. Confession of Md. Abdul Alim Sumon cannot be the basis of conviction of the co-accused Shamim Al Mamun. Mr Sagir has relied on the principles laid down in the cases of Mojibar Vs.

The State 20 BLD 273, Pulin Mahajan Vs. The State 16 MLR (AD) 386, Anarul @ Anarul Huq Vs. The State 67 DLR (AD) 172, Zahirul Islam @ Dipu Vs. The State 20 BLC (AD) 129, Mazharul alias Bhulan Vs. State 209, Abdul Latif alias Badu Vs. The State 44 DLR 492 and Abdul Jabbar Vs. The State 16 BLd 552.

We have already found that the prosecution has adduced 11 witnesses to prove the case. Let us examine the sum and substances of the evidence of the prosecution witnesses.

P.W. 1 Sheuli Begum, the informant, deposed that her daughter deceased Sumi Akter was married to accused Md. Abdul Alim Sumon on 06.05.2011. Accused Abdul Alim Sumon used to torture her daughter Sumi demanding dowry of tk. 5,00,000/-. She paid tk. 3,00,000/- and requested him for 1 year time for payment of the rest amount of the dowry. She kept Sumi in her house for the time being. Accused Abdul Alim Sumon made a call to Sumi at 11:00 p.m. on 17.04.2012 and informed her that he would take her to visit Jamuna Bridge on the next Friday. Sumi left the house at 9:00 a.m. on 20.04.2012 for meeting her husband Sumon and to visit the Jamuna Bridge

and informed her at around 10:00/10:30 a.m. that she had met her husband. But subsequently she got the mobile phone of Sumi off at around 12:00 p.m. Then she made a call to accused Sumon who did not receive the call for the first time. Then he received the call and told her that she would get back her daughter had she paid the remaining amount of dowry tk. 2,00,000/-. She informed the incident to her relatives and the other neighbours. Having searched for Sumi they did not get her whereabouts. Then she informed the occurrence to Police going to the police station with her neighbours. P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam informed her that they found accused Sumon and Sahmim Al Mamun going towards Dhaka ridding on a motorcycle with Sumi. She conveyed such information to Police whereupon the authority of the police station called for Sumon on 08.05.2012. Under interrogation accused Abdul Ali Sumon and Shamim Al Mamun told the Police that they killed Sumi and concealed her dead body under the water hyacinth of a ditch near the embankment at Asulia. Following such confession she along with Gias, Akbar, P.W. 4 Alamgir, P.W. 5 Shajahan and P.W. 9

Rabbani went there with Police and at the showing of the accused the dead body of Sumi was recovered. She identified the dead body of her daughter Sumi seeing her wearing cloths and sandal. Police held inquest over the dead body and prepared a report; then sent the same to Dhaka Medical College Hospital for holding autopsy. On such occurrence PW. 1 Sheuly Begum lodged FIR with Tangail Model Police Station. She has marked the FIR and her signature thereon as Exts.

In cross-examination she stated that she did not file any G.D. entry for the missing of her daughter. The accused used to torture her daughter Sumi but she filed no case for such torture. P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam were not her relatives. They were her neighbours. Accused Sumon did a job in Police force and she informed the occurrence to his office. She did not file any case against the accused Sumon for demanding dowry. She informed his demand of dowry to none. She knew Firoz and he was her nephew. She denied that the accused Sumon demanded no dowry to her or the recovered dead body, the cloths were not of her daughter Sumi or she died elsewhere in the other way.

P.W. 2 Hafezuddin deposed that he was waiting at Nagar Jalpai at around 10:30 a.m. on 20.04.2012 for the Tiles loaded van and found the accused persons taking deceased Sumi with them and going toward Dhaka riding on a motorcycle. While returning home by the side of the house of Sumi he heard crying and going there he came to know that her husband demanded dowry of tk. 2,00,000/- to her mother and on failure of giving dowry her mother would not be allowed to meet her. Then he informed the mother of Sumi about his seeing of Sumi with the accused going towards Dhaka riding on a motorcycle. P.W. 3 Md. Shafiqul Islam was also standing with him on the same side of the road and he also saw Sumi going with the accused. Thereafter the dead body of Sumi was recovered from a ditch near the embankment at the showing of the accused persons. In cross-examination he has stated that he and Shafiqul Islam found the accused persons and the victim going together. Firoz was cousin of the deceased Sumi. He went to police station on 09.05.2012 and he was there from 8:00 p.m. to 11:00 p.m. Sumi was found wearing black urna and black salwar-kameez while going with the accused ridding on a motorcycle.

P.W. 3 Md. Shafiqul Islam deposed in the same line of P.W. 2 Hafezuddin. In cross-examination he stated that P.W. 7 Giasuddin was their trainer of work. He and PW. 2 Hafezuddin worked under him. He and P.W. 2 Hafezuddin went to work together on the date of occurrence. He found Sumi sitting on the motorcycle with her legs on the one side and the accused persons with their legs on both sides of the motorcycle.

P.W. 4 Md. Alamgir Hossain deposed that being agreed with the proposal of her husband to visit the Jamuna Bridge his niece deceased Sumi left their house at around 9:00 a.m. on 20.04.2012 but without taking her to Jamuna Bridge the accused persons took her toward Dhaka. P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam saw them going toward Dhaka riding on a motorcycle. At around 12:00 at noon he got information that Sumi's whereabouts was unknown. Upon receiving such information he along with his cousin P.W. 7 Giasuddin went to the house of Sumi and found the father and uncle of her husband accused Sumon present there. As they intended to go to the office of accused Sumon his father restrained them from doing so, stating that Sumon would be

coming home on leave. At around 4:00 p.m. the father of Sumon informed them that the phone of Sumon was found off; probably he had been kidnapped. Thereafter, they started searching for Sumi. Having not found her they filed a G.D. entry to the police station on 23.04.2012. After filing of the G.D. entry, Police brought Sumon in police station sending a message and under interrogation Sumon disclosed that he killed Sumi with the assistance of his accomplice Shamim Al Mamun by strangulating with her urna. At their showing the dead body of Sumi was recovered on 09.05.2012 from under water hyacinths of a ditch at sector 9, Mirpur. Police held inquest over the dead body in his presence and prepared a report with his signature. Police also seized the wearing cloths and other articles of the deceased and prepared a seizure-list with his signature. Then the dead body was sent for holding autopsy and after the end of autopsy the dead body was handed over to him on 09.05.2012. Police seized a laptop and two sets of mobile phone from the house of accused Shamim Al Mamun at 8:00 p.m. on the same day and prepared a seizure-list with his signature. One of the seized mobiles belonged to Sumi and

another belonged to Shamim. A motor cycle was also seized on the same day in his presence preparing a seizure-list.

In cross-examination he stated that the informant was the wife of his cousin. He learnt about the phone call of accused Sumon from the informant. He did not tell the I.O. that deceased Sumi eloped with her cousin Firoz. He along with Alam and P.W. 5 Shahjahan went to Dhaka with Police and then the dead body was recovered at the showing of the accused persons. He has denied that the accused did not take Sumi with them or Firoz took Sumi with him and thereafter killed her.

P.W. 5 Shahjahan Pramanik deposed corroborating P.W. 4 in the same line regarding the diappearance of Sumi, visiting their house, seeing the father and uncle of the accused Sumon in their house, subsequent recovery of the dead body at the showing of the accused, holding inquest over the dead body, seizing a sandal of Sumi and mobile phone of accused Sumon and preparation of seizure-list with his signature. He has denied that Firoz killed deceased Sumi.

P.W. 6 Ruksana Akter Rekha, a cousin of deceased Sumi, deposed that Sumon, husband of deceased Sumi, called his wife

Sumi on 20.04.2012 and took her out under the pretext of a visit but killed her by strangulation with her urne taking to Asulia. The accused killed her wife for the remaining amount of dowry tk. 2,00,000/- despite having received tk. 3,00,000/-. She denied that she deposed falsely.

P.W. 7 Md. Giasuddin, a paternal uncle of the deceased, deposed that accused Sumon called her wife Sumi on 20.04.2012 and asked her to attend him to visit the Jumuna Bridge. Sumi reached the Bus Stand and met her husband Sumon. From the Bust Stand accused Sumon and his friend Shamim took her to Asulia ridding on a motorcycle instead of going to Jamuna Bridge. His helpers P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam saw them going by ridding on a motorcycle. Later the father of Sumon arrived at their house and disclosed that Sumi was not with his son Sumon; his son Sumon might have been a prey to forced disappearance on his way. They searched for Sumi but did not find her. On 09.05.2012 the dead body of Sumi was recovered at the showing of the accused. Police seized the sandal of the left leg of Sumi and mobile phone of Sumon from that place and

prepared a seizure-list with his signature. The accused killed Sumi for dowry of tk. 2,00,000/-. In cross-examination he stated that they filed no case against the accused for demanding dowry.

P.W. 8 Md. Khalid Hasan Khan, a judicial Magistrate, deposed that accused Md. Abdul Alim Sumon was produced before him for recording his confession. He recorded the confession of Sumon following the provisions of law and read over the same to him. The accused signed the same in his presence. He marked the confession of Sumon and his signatures thereon as Exts. In cross examination he stated that he kept the accused in his chamber and gave him 3 hours reflection time before recording his confession.

P.W. 9 Md. Golam Rabbani deposed that he was a constable of police and was posted in the Court of District Judge, Tangail. Deceased Sumi was his niece and she was married to accused Sumon. His sister in law, mother of the deceased, informed him over phone that accused Md. Abdul Alim Sumon took Sumi with him on 20.04.2012 under the pretext of a visit to Jamuna Bridge but since then Sumi was

missing. He went home on 27.04.2012 having 15 days leave and searched for Sumi but did not find her. Following a G.D. filed by the mother of Sumi, Police informed his cousin Akbar Ali in the morning on 09.05.2012 that they got information about Sumi. Then he along with Akbar Ali, P.W. 1 Sheuli Begum, P.W. 4 Md. Alamgir Hossain, and P.W. 7 Giasuddin went to the Police Station. From the Police Station they were asked to go to Dhaka. P.W. 10 S.I. Nasiruddin Taluker led them to Turag Police Station. Taking more police force from Turag police station they went to Road No. 16 in the old Shulahati area. Police recovered the dead body of Sumi from under the water hyacinth of a ditch at the showing of the accused. Police held inquest over the dead body and sent the same to Dhaka for holding autopsy. Police seized the sandal of Sumi and mobile phone of Sumon from the place wherefrom the dead body was recovered and prepared a seizure-list with his signature. At the time of marriage it was settled that tk. 5,00,000/- would be given to accused Sumon as dowry and tk. 3,00,000/- was paid accordingly. The accused killed Sumi for the remaining amount of dowry. In cross examination he stated that he could not say

the number of the seized mobile phone. He witnessed the occurrence of recovery of the dead body and the alamot.

P.W. 10 S.I. Nasiruddin Taluker, Investigating Officer, deposed that he received the charge of investigation of the case on 20.04.2012. Receiving the charge of investigation he visited the place of occurrence, prepared sketch map with index, recorded statements of the witnesses, recovered the dead body of the deceased, seized the alamot and submitted charge-sheet against the accused persons under section 11(Ka)/30 of the Ain, 2000 read with section 201 of the Penal Code. In cross-examination he stated that he did not seize the ownership documents of the seized mobile, laptop and motorcycle. The accused was not kept more than 2/3 hours in police station after their arrest. Accused Sumon was not taken in police remand before his confession. He denied that being influenced by the informant he mentioned that the accused owned those articles.

P.W. 11 Dr. Quamrul Hasan Sarder deposed that he held autopsy on the decomposed dead body of Sumi. As the dead body was decomposed he could not detect any injury mark on it. He has marked the autopsy report and viscera report as Exts.

Apart from the above evidence, condemned prisoner Md. Abdul Alim Sumon made a confession under section 164 of the Code. On perusal of the above evidence of the witnesses of the prosecution it appears that P.W. 1 Sheuli Begum, the informant, P.W. 4 Md. Alamgir Hossain, P.W. 5 Shahjahan Pramanik, P.W. 7 Giasuddin, P.W. 9 Md. Golam Rabbani are the mother and paternal uncles of deceased Sumi. P.W. 6 Ruksana Akter Rekha is a cousin of the deceased. They live in the same cluster of houses. All of them have unerringly deposed that condemned prisoner Md. Abdul Alim Sumon, a constable of police, married the deceased Sumi on the condition of giving him a dowry of tk. 5,00,000/-. The aforesaid witnesses of the prosecution have deposed that tk. 3,00,000/- was paid out of the dowry of tk. 5,00,000/- but the condemned prisoner Md. Abdul Alim Sumon killed his wife Sumi for the remaining amount of dowry tk. 2,00,000/-. P.W. 1 Sheuli Begum, mother of the deceased, deposed that following family feud on the payment of the remaining amount of dowry her daughter Sumi was kept in her house for the time being. The aforesaid witnesses have deposed that the condemned prisoner Sumon called his wife deceased

Sumi over mobile phone and asked her to accompany him on 20.04.2012 to visit Jamuna Bridge. Accordingly, Sumi left the house of her mother at around 9:00 a.m. on 20.04.2012 and reached the Tangail Bus Stand at around 10:30 a.m. and therefrom she informed her mother that she met her husband Sumon. But P.W. 1 Sheuli Begum found the mobile phone of Sumi off at around 12.00 p.m. Thereafter she found accused Sumon in his mobile and asked about their whereabouts. Accused Sumon told her that she would get Sumi on payment of the remaining amount of dowry tk. 2,00,000/-.

Although P.W. 1 Sheuli Begum has deposed that she did not file any G.D entry for the missing of her daughter but she has stated that she informed police verbally about the occurrence on 20.04.2012. On the other hand, P.W. 4 Md. Alamgir Hossain, P.W. 5 Shahjahan Pramanik have deposed that as they did not get the whereabouts of Sumi they filed a G.D. entry on 23.04.2012. P.W. 9 Md. Golam Rabbani has deposed that the mother of Sumi filed a G.D. entry upon found Sumi nowhere. So, it appears that there is confusion about the filing or the date of filing of the G.D. entry on the occurrence of

the missing of the deceased. P.W. 10 S.I. Nasiruddin Taluker did not mention either in his depositions or in his investigation report about the G.D. entry dated 23.04.2012. However, he has stated that he took the charge of investigation on 20.04.2012 i.e. on the date of occurrence which supports the verbal information of P.W. 1 Sheuly Begum to the police station after hearing the accused Sumon over mobile phone about the State of her daugther. Because, the formal FIR was filed on 09.05.2012 but the Police cannot enquire or investigate any occurrence without having at least a formal information in any form. However, according to P.W. 9 Md. Golam Rabbani police informed his cousin Akbar Ali about the getting of information about deceased Sumi and following such information all of P.W. 1 Sheuli Begum, the informant, P.W. 4 Md. Alamgir Hossain, P.W. 5 Shahjahan Pramanik, P.W. 7 Giasuddin, P.W. 9 Md. Golam Rabbani went to the police station on 09.05.2012.

Admittedly, deceased Sumi was the wife of the condemned prisoner Md. Abdul Alim Sumon and the aforesaid witnesses have stated that Sumi left the house receiving the phone call from her husband. Now the question appears, why

P.W. 1 Sheuli Begum, mother of the deceased, shall inform police as to the missing of her daughter who left her house with her husband? Here lies the answer as to the question; whether the condemned-prisoner Sumon demanded dowry or not. There remains no other reason to inform police about the missing of her daughter by P.W. 1 Sheuli Begum other than her getting alarming reply from the husband of the deceased, the condemned-prisoner Sumon, that she would not get Sumi if the remaining amount of dowry tk. 2,00,000/- is not paid. Yet, let us examine the defence case to the effect that Sumi eloped with her cousin Firoz who killed her taking elsewhere, before reaching such a conclusion.

The defence put suggestion to both P.W. 4 Md. Alamgir Hossain and P.W. 5 Shahjahan Pramanik that Firoz took Sumi with him and thereafter killed her. In his confession condemned prisoner Abdul Alim Sumon has stated that he came to know from P.W. 6 Rukhsana Akter Rekha and his friend circle that Sumi had an illicit relation with her cousin Firoz and she maintained such relation even after the marriage when she used to visit their house. But when the defence got P.W. 6 Rukhsana

Akter Rekha in their hand at the time of cross-examination no such suggestion was put to her. Nothing was asked to her on this important point. Apart from that, the defence did not make it clear; what the condemned-prisoner Sumon did after getting such information of eloping of his wife with Firoz? Until recovery of the dead body of his wife on 09.05.2012 condemned-prisoner Sumon did nothing to find out her wife. Such inaction of the condemned-prisoner Sumon not only destroyed his defence but also supported the allegation of the prosecution that he took his wife Sumi with him on the date of occurrence under the pretext of showing her the Jumuna Bridge. Under this circumstance, we can safely conclude that after bringing Sumi out of their house, her husband accompanied her and told the mother of Sumi P.W. 1 Sheuli Begum that she would not get her daughter if the remaining amount of dowry was not paid.

The company of the condemned prisoners, Md. Abdul Alim Sumon and Shamim Al Mamun, with the deceased Sumi was corroborated by P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam. These witnesses, who are tiles-fitters, deposed

that while they were waiting at Nagar Jalpai at around 10:30 a.m. on 20.04.2012 for a van they saw the accused persons taking the deceased Sumi with them on a motorcycle toward Dhaka. These witnesses gave a clear description of the deceased Sumi traveling with the condemned prisoners. They stated that Sumi was wearing a black urna and a black salwar-kameez while riding on the motorcycle, and was carrying a vanity bag. Sumi was sitting on the motorcycle with both legs on one side, while the accused persons sat with their legs on both sides of the motorcycle. Condemned prisoner Abdul Alim Sumon has stated in his confession that he killed Sumi by strangulation with her urna. The balck urna and black kameez were found when the dead body was recovered. It appears from the inquest report, Ext. 5, that Police found the said black urna around the neck of the deceased and balck salwar-kameez with the dead body while holding inquest.

Mr. Sagir, learned Advocate for the condemned prisoner Shamim Al Mamun, submitted that P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam stated to the I.O. that they found accused Abdul Alim Sumon along with an unknown person on

the motorcycle but during their depositions they mentioned the name of the condemned prisoner Shamim Al Mamun as the companion of Abdul Alim Sumon which was nothing but a subsequent embellishment. Moreover, none found Shamim Al Mamum with Abdul Alim Sumon at the place where Sumi was allegedly killed. If the defence wants to get benefit of contradiction of the statements made under section 161 of the Code or subsequent embellishment then such contradiction should be brought to the notice of the witness specifically while putting him under cross examination. But the defence did not put any of the P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam under cross-examination on such point. Apart from that, the mobile phone of the deceased Sumi was recovered from the possession of the condemned-prisoner Shamim Al Mamun from their house and accordingly, police seized the same in presence of her uncles P.W. 4 Md. Alamgir Hossain and P.W. 5 Shahjahan Pramanik. Out of them P.W. 4 Md. Alamgir Hossain stated that police seized a laptop and two sets of mobile phone from the house of the accused Shamim Al Mamun at 8:00 p.m. on the same day i.e. 09.05.2012 and prepared a seizure-list with

his signature. One of the seized mobiles belonged to the deceased Sumi and another belonged to Shamim. Now, the question remains, how the mobile phone of the deceased could be found under possession of the condemned prisoner Shamim Al Mamun had he not been with condemned prisoner Abdul Alim Sumon at the place where deceased Sumi was killed? On the other hand, the mobile phone of the condemned-prisoner Abdul Alim Sumon was seized with the other wearing articles of the deceased from the place of recovery of the dead body. Such being the case, it can be safely presumed that both the condemned prisoners Abdul Alim Sumon and Shamim Al Mamun were accompanying the deceased, Sumi, while travelling by riding on a motorcycle as P.W. 2 Hafezuddin and P.W. 3 Md. Shafiqul Islam witnessed.

The condemned prisoner Md. Abdul Alim Sumon has given a confession to the Magistrate P.W. 8 Md. Khalid Hasan Khan stating that having learnt about the illicit relation of Sumi with his cousin Firoz he decided to kill her. He sought the help of his friend Shamim who agreed to help him on the condition

of giving him his motorcycle and laptop. He accepted Shamim's condition. He stated in his confession further that—

"------অতঃপর গত ২০/০৪/২০১২ ইং তারিখে অনুমান সকাল ৯.০০/৯.৩০ টার দিকে সুমিকে ফোন দিয়ে বলি যে, তাকে যমুনা ব্রীজ দেখাতে নিয়ে যাব। টাঙ্গাইল নতুন বাসস্ট্যান্ডে আসতে বলি। শামীমকেও আসতে বলি। তারপর সুমি ও শামীম আসলে মটরসাইকেল যোগে ৩ জনে আমার কর্মস্থল শ্রীপুর পুলিশ লাইনে যাই। আমি পুলিশ লাইনে দুপুরের খাওয়া দাওয়া করি। সুমি ও শামীমকে হোটেলে খেয়ে নিতে বলি। সুমি ও শামীমকে বেরি বাধে রেখে আমি মিরপুরে আমার ভাই কায়সারের সাথে দেখা করতে যাই। এছাড়া আর. আই স্যারের সাথে দেখা করি। দুপুর ২.০০ টার দিকে বেরীবাধে ফেরত আসি। বিকাল ৪.০০ টার দিকে বেরীবাধস্থ বালুর মাঠে বেড়াতে যাই। তখন মানুষজন ছিল। আমরা একত্রে ঘুরে বেড়াচ্ছিলাম। সন্ধ্যার পর কোন মানুষ ছিলনা। তখন আমি ও শামীম দুজনে মিলে সুমির গলায় ওড়না পেঁচিয়ে তাকে হত্যা করি। তারপর সুমির লাশ কচুরিপানার ডোবার মধ্যে ফেলে দিয়ে আমি ও শামীম চলে আসি। ---"

It appears from Ext. 7 that it was an inculpatory confession. Condemned prisoner Md. Abdul Alim Sumon made this confession on 10.05.2012 after 12:30 p.m. The inquest report, Ext. 5, shows that the dead body of deceased Sumi was recovered at 11:55 a.m. on 09.05.2012 at the showing of her husband condemned-prisoner Md. Abdul Alim Sumon. So, the

confession is found to have been made after the recovery of the dead body of the deceased. Condemned prisoner Abdul Alim Sumon was not taken into police remand for interrogation before recording his confession. He did not retract the confession as well. Moreover, the mobile phone of Sumon was recovered from the place wherefrom the dead body of Sumi was recovered. P.W. 8 Md. Khalid Hasan Khan stated that he recorded the confession of Abdul Alim Sumon following all the legal formalities. Therefore, there is no doubt that the confession was voluntary and true. Such a well corroborated confession can safely form the basis of a conviction.

Mr. Shahjahan, learned Senior Advocate, opposed the acceptability of the aforesaid confession on the grounds; firstly, the condemned prisoner, Md. Abdul Alim Sumon, was produced before the Magistrate for recording his confession after keeping him under unexplained and illegal custody of police and secondly, since the learned Judge of the Tribunal did not bring the confession to the notice of the condemned prisoner while examining him under section 342 of the Code, that was a gross illegality and no conviction can stand

thereupon. According to Mr. Shahjajan condemned prisoner Sumon was kept in police custody at least from 08.05.2012 without showing him arrest and then produced before the learned Magistrate on 10.05.2012 for recording his confession; which is after more than the stipulated 24 hours as provided in section 61 of the Code. On perusal of the confession, Ext. 7, it appears that the condemned-prisoner Md. Abdul Alim Sumon disclosed to the learned Magistrate that he was arrested at 11:00 a.m. on 09.05.2012 and he was taken to Turag police station at 1:00 p.m. and therefrom he was sent to the learned Magistrate at 12:30 p.m. on 10.05.2012. Although P.W. 1 Sheuli Begum, the informant, stated that the police authority called accused Sumon to P.S. on 08.05.2012 but that does not mean that he was arrested on 08.05.2012. Because, the FIR, Ext. 1, is found to have been lodged at 10:15 a.m. on 09.05.2012. Without filing a case how the accused can be arrested? Police called the condemned prisoner to P.S. on 08.05.2012 apparently for interrogation about the occurrence as he was in police service. Such being the case, we are unable to hold that the condemned-prisoner Sumon was in police custody since 08.05.2012. He is

found to be overstayed in police custody for around 1 hour which is not so significant to discard his confession, as no allegation of subjecting him to torture by police has been brought at any stage of the trial.

On other hand, Mr. Hossain, learned Deputy Attorney General relying on the principle laid down in the case of Mezanur Rahman & ors Vs. The State 16 BLD (AD) 293 controverted the submissions of Mr. Shahjahan submitting that the condemned prisoner Md. Abdul Alim did not retract his confession at any stage of the trial. He brought no allegation of torture against the police while producing before the Magistrate for recording his confession. Therefore, mere omission of the learned Judge of the Tribunal to draw attention of the confession of the condemned-prisoner while examining him under section 342 of the Code caused no fatal defect. The Appellate Division has ruled in the case of Mezanur Rahman (supra) that –

> The High Court Division noticed that none of confessing accused had retracted his confession either application from Jail or directly filing such application in the Court

> at any time. It was only suggested to the Magistrate and the Investigating Officer that the confessions were obtained by torture made by the Police which was denied. The accused repeated the same allegation during their examination under section 342 Cr.P.C. The learned Judges observed that there was absolutely no material on record to prove the said allegation of Police torture on inducement and as such no reliance can be placed on such unsubstantiated allegation at a later stage in the trial.

Moreover, apart from making confession before the Magistrate under section 164 of the Code, condemned prisoner Abdul Alim Sumon also confessed to police during interrogation that he killed his wife Sumi and kept the dead body hiding in a ditch under the water hyacinth near the embankment under Asulia P.S. Such confession should not be proved against him as there is a bar under section 25 of the Evidence Act. But it is provided in section 27 of the Evidence Act that when any discovery is made in consequence of such confession that part can be proved against him. In the instant case, in consequence of confession of the condemned-prisoner

Abdul Alim Sumon police recovered the dead body from the place he showed. So, for the sake of argument if we keep the confession, Ext. 7, aside; yet, the condemned-prisoner, Sumon, can be found guilty on the basis of his confession to police as that has been brought into his notice. Although, the evidence of the recording Magistrate P.W. 8 Md. Khalid Hasan Khan or the fact of his giving confession has not been brought to the notice of the condemned-prisoner Abdul Alim Sumon but the contents of the confession has been brought to his notice in reference to the evidence of the other witnesses while examining him under section 342 of the Code. So, relying on the proposition of law enunciated in the case of Mezanur Rahman (supra) and taking the above circumstances in view, we hold that the condemned-prisoner Md. Abdul Alim Sumon was not prejudiced for omission of the learned Judge of the Tribunal in bringing his confession under section 164 of the Code to his notice while examining him under section 342 of the Code.

Now let us examine the submissions of Mr. Shahjahan as to 19 days delay in filing of the FIR. It appears in the FIR, Ext. 1, that the occurrence took place on 20.04.2012 but the FIR was

lodged to Tangail Model P.S. on 09.05.2012 i.e. after 19 days of the occurrence. P.W. 1 Sheuly Begum has deposed that she informed the occurrence to police on the date of occurrence verbally. P.W. 10 S.I. Nasiruddin has also stated that he was making inquiry on the occurrence since 20.04.2012. Although the other P.Ws. have deposed that a G.D. entry was made to the police station by the informant but that has not been proved. Admittedly, accused Md. Abdul Alim Sumon is an in-service police constable. Therefore, considering the official status of the accused either the informant P.W. 1 Sheuly Begum might have made a verbal allegation to his authority against him or the police might have rejected the G.D entry for the sake of a primary enquiry. Taking those probabilities in view, we hold that 19 days delay in the filing of a formal FIR on the occurrence is not a fatal defect as it made no embellishment in any part of the occurrence.

Mr. Sagir, learned Advocate for the condemned-prisoner Shamim Al Mamum submits that confession of an accused cannot be a valid basis for conviction of the co-accused without any corroboration. In his confession condemned prisoner Abdul

Alim Sumon stated that his friend Shmim was agreed to assist him in the killing of his wife Sumi on the conditions of giving him his motorcycle and laptop. But he did not mention the mode of assistance of his friend Shamim Al Mamun. Even, the motorcycle of the condemned-prisoner Sumon was not recovered from the possession of his friend Shamim. On the other hand, Mr. Hossain, the learned Deputy Attorney General, submits that Shamim was arrested by police after the confession of Sumon made to the police and at their showing the dead body was recovered. The promised laptop of Suman along with the mobile phone of the deceased was also recovered from the possession of the co-accused condemned prisoner Shamim. It appears in the seizure-list, Ext. 3, that a black colour laptop was recovered from the possession of the condemned-prisoner Shamim. But unlike the mobile phone of the deceased none identified the owner of the laptop. However, the latest position of our Apex Court on the applicability of the confession of an accused against the co-accused is that such confession can be used against the co-accused if it receives a little bit corroboration either of direct or circumstantial evidence. We

have already found that the confession made by the condemned-prisoner Abdul Alim Sumon is voluntary and true as well as well corroborated. Moreover, after the recovery of the mobile phone of the deceased Sumi from the possession of the co-accused condemned-prisoner Shamim Al Mamun, the confession of Md. Abdul Alim Sumon has also received corroboration in terms of participation of Shamim Al Mamun in the killing of Sumi. Therefore, we find no difficulty to use the same against the co-accused condemned prisoner Shamim Al Mamun to prove his guilt.

It appears from the above discussions that the condemned prisoner, Md. Abdul Alim Sumon, a police Constable, married the deceased, Sumi Akther, and received tk. 3,00,000/- out of dowry of tk. 5,00,000/-. As she was putting pressure upon his wife Sumi for the remaining amount of the dowry tk. 2,00,000/- her mother sought for a time and kept her daughter in her house. From the house of the mother of Sumi condemned prisoner called her out under the pretext to show her the Jamuna Bridge. But without going to Jamuna Bridge her husband condemned-prisoner Abdul Alim Sumon and his friend

condemned prisoner Shamim Al Mamum took her to a vacant filed near the embankment at Asulia and killed her in a suitable time; thereafter concealed her dead body in a ditch under the water hyacinth which was recovered at his showing. Such a brutal killing of an innocent girl of around 19 years old by her husband condemned prisoner Md. Abdul Alim Sumon for the failure of her family to satisfy the demand of dowry of tk. 2,00,000/- is unable to draw any mercy or leniency from any sensible heart. So, we hold that the learned Judge of the Tribunal committed no error in awarding death sentence upon the condemned-prisoner Md. Abdul Alim Sumon by the impugned judgment. However, we find the death sentence awarded upon the co-accused condemned-prisoner Shamim Al Mamun to be disproportionate as the gravity of his assistance to the offence is not found to be determinable. Moreover, he is found to be languishing behind the bar since 2012 including 7 years confinement in the condemned cell. In the case of Khalil Mia vs. The State 7 BLT (AD) 245 the Appellate Division ruled that—

> "In a case where there is no direct evidence of the crime and the conviction is based solely on circumstantial evidence and the confession of the accused it is not prudent to visit the accused with the ultimate punishment when the confessional statement on which the conviction is based does not render the condemned-prisoner to be exclusively responsible for the act of murder."

Relying on the principle enunciated in the above mentioned case we hold that justice would be best serve if the sentence of the co-accused condemned prisoner Shamim Al Mamun is commuted to imprisonment for life from the death sentence.

In the result, the reference is accepted, so far it relates to the condemned prisoner Md. Abdul Alim Sumon and rejected so far it relates to the co-accused condemned prisoner Shamim Al Mamun. The death sentence of the condemned-prisoner Shamim Al Mamum is hereby commuted to the imprisonment for life. His custody period shall be deducted from the period of his sentence. The Jail authority is directed to shift the

condemned-prisoner Shamim Al Mamun to the general cell from the condemned cell. Thus the Criminal Appeal No. 8987 of 2019 filed by the condemned-prisoner Shamim Al Mamum is dismissed with modification. The Criminal Appeal No. 10146 of 2019 filed by condemned-prisoner Md. Abdul Alim Sumon is dismissed. The Jail Appeals are hereby disposed of.

Communicate the judgment and order and transmit the lower Court records.

Bhishmadev Chakrabortty, J:

I agree.

BO. Kabir