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. 103 of 2019**
The State .....petitioner
-Versus-
Ebarat Sheikh .....condemned-prisoner
with
Criminal Appeal No. 9886 of 2019
And
Jail Appeal No. 276 of 2019
Ebarat Sheikh .....convict-appellant
-Versus-
The State
.....respondent
Mr. Syed Ejaz Kabir with Ms. Nahid Hossain, Deputy Attorney Generals with Ms. Mahbuba Taslim Akhi, Mr. Ashraful Alam, Mr. Md. Abdul Motaleb, Assistant Attorney Generals
.....for the State
Mr. Sheikh Atiar Rahman, Senior Advocate with
Mr. Masbaur Rahman, Advocate
.....for the appellant

**Heard on: 26.10.2026 and 27.10.2026**
**Judgment on 28.10.2026.**

**K.M. Rasheduzzaman Raja, J:**

This reference has been made under section 374 of the Code of Criminal Procedure, herein after 'the Code', by the learned Judge of the Nari-o-Shishu Nirjatan Damon Tribunal No.

1, Bagerhat for confirmation of death sentence awarded upon the condemned-prisoner Ebarat Sheikh by the judgment and order dated 01.09.2019 passed in Nari-o-Shishu Case No. 131 of 2003 arising out of Bagerhat Police Station Case No. 12 dated 09.12.2002 corresponding to G.R. No. 320 of 2002 under section 11 (ka) of the Nari-o-Shishu Nirjatan Damon Ain, 2000 (herein after) the Ain. The condemned-prisoner Ebarat Sheikh filed Criminal Appeal No. 9886 of 2019 and also Jail Appeal No. 276 of 2019 being aggrieved by the judgment and order of conviction and sentence awarded upon him by the Tribunal. All the matters were heard together and, therefore, we are to dispose of those matters by this judgment.

The prosecution case, in short, is that P.W.1 Rustom Ali Sheikh married off his daughter Selima Khatun to condemned-prisoner Ebarat Sheikh 3 years ago. Ebarat Sheikh had another wife and before his marriage with Selima Khatun he divorced his previous wife. After the marriage accused Ebarat Sheikh started persecuting Selima Khatun for dowry. P.W.1 Rustom Ali Sheikh came to know on 09.12.2002 from rumour that accused Ebarat Sheikh had beaten his daughter to death. Going to the house of

the accused Ebarat Sheikh, P.W.1 Rusom Ali found his daughter lying dead in his house and Ebarat Sheikh fled. Neighbour P.W.2 Sultan Akand informed P.W.1 Rustom Ali that accused Ebarat Sheikh killed his wife Selima Khatun at the night of 08.12.2002 beating her on several times. Accused Ebarat Sheikh at around 12.00 at night called out P.W.2 Sultan Akand and told him that his wife Selima Khatun had taken poison. Hearing such information P.W.2 Sultan Akand went to the house of accused Ebarat Sheikh and found his daughter Selima Khatun lying death. He found marks of injury in the forehead, face, neck and chest of the deceased. P.W.1 Rustom Ali Sheikh believing that accused Ebarat Sheikh killed his wife Selima Khatun filed FIR to Bagerhat police station.

Receiving the FIR police started Bagerhat Police Station Case No. 12 dated 09.02.2002 and appointed P.W.8 S.I Ahad Ali as Investigating Officer. Being appointed Investigating Officer S.I. Ahad Ali visited the place of occurrence prepared sketch-map with index, gathered material evidence and filed charge-sheet against accused Ebarat Sheikh under section 11 (ka) of the Ain. Learned Magistrate received the charge-sheet and

transmitted the case to the learned Judge of the Tribunal for holding trial. Receiving the charge-sheet learned Judge of the Tribunal took cognizance of the offence, registered Nari-o-Shishu Case No. 131 of 2003 and fixed the case for hearing the charge matter on 26.04.2003. Accordingly, the charge was framed against the accused Ebarat Sheikh under section 11(ka) of the Ain. The charge could not be readout before the condemned-prisoner Ebarat Sheikh as he was absconding.

The prosecution examined 8 witnesses to prove the charge brought against the condemned-prisoner. After recording of evidence the accused, who by this time surrendered before the Tribunal, was examined under section 342 of the Code whereupon he claimed his innocence and expressed his desire to adduce counter evidence and, accordingly, the condemned-prisoner adduced 4 defence witnesses.

The defence case as transpires from the trend of cross-examination and the D.Ws. is that of innocence and the deceased committed suicide having poison. Hearing the both sides and the perusing the evidence produced by the prosecution and the defence, the learned Judge of the Tribunal found the condemned-

prisoner Ebarat Sheikh guilty under section 11 (ka) of the Ain and convicted and sentenced him thereunder to death and made this reference.

Mr. Syed Ejaz Kabir, learned Deputy Attorney General led as through the materials on record and submitted that admittedly, Selima Khatun died in the house of his husband condemned-prisoner Ebarat Sheikh at 12.00 a.m. on 08.12.2002. Since the wife of the accused Ebarat Sheikh was found dead in his house, he was to explain how his wife met the death. Being absconded from his house just after the occurrence the condemned-prisoner Ebarat Sheikh has manifested his guilty mind. All the prosecution witnesses have supported the prosecution case stating that condemned-prisoner Ebarat Sheikh killed his wife Selima Khatun for dowry on the fateful night. The learned Judge of the Tribunal perused the material evidence including the evidence of the defence witnesses and rightly found the condemned-prisoner guilty. So, the reference should be accepted.

On the other hand, Mr. Sheikh Atiar Rahman, learned Senior Advocate, along with learned Advocate Mr. Masbaur Rahman appearing for the condemned-prisoner opposed the

reference submitting that the prosecution failed to prove the demand of dowry by the condemned-prisoner. The learned Judge of the Tribunal also failed to mention the amount of dowry in the charge along with the date and time of the demand of dowry by the condemned-prisoner. Even P.W.1 Rustom Ali Sheikh, the informant as well as father of the deceased, also failed to mention any date of demanding dowry to him. Only P.W.2 Sultan Akand has stated about the demand of dowry but failed to give any details of the demand. Rather the defence case of suicide by taking poison got support even in the post-mortem report as the examining doctor found foul smell in the viscera of the deceased which confirmed that the deceased took poison and died thereby. Mr. Rahman further submits that this is not the case of section 11 (ka) of the Ain, rather it may fall within the ambit of section 306 of the Penal Code. Alternatively, even if the case is brought within the purview of section 302 of the Penal Code, yet the maximum punishment cannot be imposed upon the condemned-prisoner as he had no specific intention to kill his wife. Mr. Rahman has relied on the ratio of the case of

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We have heard the both sides in length and perused the material evidence on record. The evidence as produced by the prosecution are there under-

P.W.1 Rustom Ali Sheikh, the informant as well as father of the deceased Selima Khatun, has deposed that the occurrence took place in the house of the accused on 08.12.2002. P.W.2 Sultan Akand informed him at 1.00 a.m. on 08.12.2002 that in the house of the accused his daughter Selima Khatun was in trouble as her husband Ebarat Sheikh was assaulting her. Subsequently, P.W.2 Sultan Akand informed him that his daughter died. Getting such information he went to the house to the accused Ebarat Sheikh and found his daughter death. Upon found the dead body of his daughter he became senseless. His relatives took him back to his house in the senseless condition. Going to the house of the accused on the next morning he found police there. Police carried the dead body to hospital. Accused Ebarat Sheikh killed his daughter and, therefore, he lodged FIR to the police station. He marked the FIR and his signature

thereon as exhibits. In cross-examination he has stated that he did not know whether his daughter died having poison. The people of the police station wrote the FIR and took his signature thereon. He cannot remember whether the FIR was read over before him. He has denied that accused Ebarat Sheikh did not killed his daughter. He has further stated that occasionally the accused picked up quarrel with his daughter but their overall conjugal life was happy. He did not hear whether accused Ebarat Sheikh caused the death of his daughter.

P.W.2 Sultan Akand has deposed that the occurrence took place at 1.00 a.m. on 08.12.2002 in the house of the accused Ebarat Sheikh who is his brother-in-law by relation. Deceased Selima Khatun was his sister-in-law who was married off to accused Ebarat Sheikh. Accused Ebarat Sheikh used to assault Selima Khatun because of his earlier wife. He used to assault the deceased for dowry. He was at home on the date of occurrence and heard the shouting in the house of the accused which stood twelve cubits away from his house. The victim was calling him to go there hurriedly saying that she was being killed. Going there he found the door of the accused closed. As accused Ebarat

Sheikh did not open the door he kicked the door open. He found the victim lying on the floor senseless. After 20/25 minutes the victim got sense. Accused Ebarat Sheikh again started beating the victim at 2.00 a.m. demanding dowry. On the date of occurrence the accused Ebarat Sheikh subsequently, told him that Selima Khatun died. Going to the house of the accused he found the dead body of Selima with marks of assault. Next day police carried away the dead body for holding autopsy. On the next day of the occurrence father of the deceased lodged FIR. In cross-examination he has stated that the accused demanded dowry to the deceased in his presence but he cannot mention the date. The accused demanded dowry to the deceased in his house. He found the accused beating the deceased at 12.00 a.m. on the date of occurrence. Accused assaulted his wife with hand and branch of mango tree. He found injury marks on the dead body in the morning. He could not notice the injury mark in the night as the dead body was covered by cloth. He cannot say whether the police seized the stick by which the accused beat his wife. He has denied that the accused was kept confined in his house at night on the date of occurrence or following the enmity with the

accused on their boundary trees he deposed falsely implicating the accused with the case although knowing that the deceased died having poison.

P.W.3 Torikul Islam has deposed that he knew the informant, the deceased and the accused. The wife of the accused died but he cannot say when she died. At the date of occurrence he was not at home. The occurrence took place 3 years ago. Coming home, he learned that the wife of the accused Ebarat Sheikh died. He heard that the victim died having poison. He knew nothing more. The prosecution has declared this witness hostile and in cross-examination of the prosecution he has denied that accused Ebarat Sheikh killed his wife between 8.00 p.m. to 12.00 a.m. on 08.12.2002 by beating with a clamp of doors for dowry. He has denied that the accused publicized the death of his wife as a suicide after pouring poison on her mouth. In cross-examination of the defence he has stated that he never heard that accused Ebarat Sheikh killed his wife. He also did not hear that accused Ebarat Sheikh demanded dowry to the victim after their marriage.

P.W.4 Jahangir Alam has deposed that he knew the informant victim Selima Khatun and accused Ebarat Sheikh. He cannot remember the date of occurrence. The occurrence took place almost 3 years ago. He got information on the next day of the occurrence that the victim died. Going to the house of the accused he found the dead body of Selima Khatun. He is the step brother of the deceased. Police held inquest over the dead body in his presence and prepared a report with his signature. Thereafter the dead body was sent to Bagerhat Sador Hospital for holding autopsy. He came to know that the victim died having poison and he also found a vial of poison on the table. He knew nothing more. The prosecution declared this witness hostile also. In cross-examination of the prosecution he has stated that the name of his step mother was Rehana Begum and his mother observed the dead body turning all sides in presence of other people. He has denied that he never found vial of poison on the table. He has denied that he stated to the Investigating Officer that the accused killed his sister by beating with a clamp of doors for dowry. In cross-examination of the defence he has stated that accused Ebarat Sheikh never demanded dowry to them after the

marriage. He never heard that the accused beat his sister for dowry. He found no injury marks in the dead body of his sister as he did not observe the dead body closely.

P.W.5 Renu Begum, mother of the deceased, has deposed that she cannot remember the date of occurrence. On the date of occurrence the people of the house of the accused informed them that her daughter died. Hearing such information he went to the house of the accused Ebarat Sheikh in the morning and found his daughter Selima lying dead on the *Khat* of the accused in his house. Police appeared and she identified the dead body of his daughter in presence of the police. Thereafter, police carried the dead boy to hospital. She was brought back to their house by her brother and his wife. In cross-examination of the defence she has stated that police interrogated her but she cannot remember what she said to police. To the query of the Court she replied that going to the place of occurrence she heard somebody saying that the accused killed her daughter by beating and somebody were telling that her daughter died having poision.

P.W.6 Anis was tendered but the defence declined to put him under cross-examination.

P.W.7 Dr. Md. Nazrul Islam has deposed that he was posted in Bagerhat Sador Hospital as Residential Medical Officer (RMO) on 10.12.2002. Receiving the dead body of Selima Khatun at 1.00 p.m. on 10.12.2002 he along with the members of the board held autopsy on the dead body and found the following injuries—

Multiple heamatoma throughout the scalp and skull. Anti mortem cloted blood throughout the brain. Anti mortem cloted blood on right forearm. Anti mortem cloted blood on middle and left side of the forehead. Antimortem cloted blood below chin and right side of the chest wall and right thigh. Foul smell comes out from stomach contents. Stomach and its contents, part of liver and one kidney were preserved for analysis report. He sent the viscera to Mohakhali for examination and in the viscera report no poison was found present. Thereafter, he finally opined that the death was due to hamorrhage and shock resulting from mentioned injuries on P.M. report which was antimortal and homicidal in nature. He has marked the post mortem report and his signature thereon as exhibits. In cross-examination of the defence he has stated that the name of the husband of deceased

Selima Khatun was not mentioned. The name of her father was not mentioned also. No poison was found in stomach. However, they found foul smell present. They could not ascertain the nature of the foul smell and, therefore, sent the viscera for chemical examination. He has dined that the foul smell was of poison or he found no external or internal injury on the dead body or they furnished a false report.

P.W.8 S.I. Md. Ahad Ali being appointed I.O. of the case visited the place of occurrence, prepared sketch map with index, held inquest over the dead body, prepared a report, sent the dead body to hospital for holding autopsy, seized the wearing blouse, bangles, petticoat of the deceased preparing a seizure list, obtained the post-mortem report, recorded statements of the witnesses and handed over the case docket to the officer in-charge of the police station on 26.01.2003 for the order of his transfer. He has marked the inquest report, sketch map with index, challan of the dead body, and the seized alamot as exhibits. In cross-examination of the defence he has stated that he found stain of blood in the seized cloths. He seized the alamot at the time of preparing of the inquest report. He found the dead

body in the courtyard of the house of the accused. The victim died in the house of the accused but he cannot say who brought out the dead body from the house of the accused. He has denied that he did not investigate the case properly or submitted self constructed charge-sheet.

On the other hand, D.W. 1 Emdadul Haq has deposed that he resides besides the house of the accused. He knew the deceased. The occurrence took place at around 10:00 to 10:30 p.m. in the house of the accused Ebarat. He was at his house at the time of occurrence. Hearing shouting he rushed to the place of occurrence and on his arrival the accused opened the door of his house. Upon entering the accused's house, he saw the wife of the accused rolling on the ground. She stated that she had swallowed poison and that her throat was burning. He got bad smell in her mouth. The people of the neighborhood arrived. The victim had died before calling a doctor. Accused Ebarat was working in his betel leaf orchard at that time. Accused Ebarat was a good man and he never heard that the accused had beaten his wife. In cross examination he has stated that he found no injury mark in the body of the deceased. He found Alal, Hekmat

and others at the place of occurrence. He has denied that he deposed falsely to save the accused.

D.W. 2 Kawsar Seikh has deposed that the occurrence took place at around 11:00 p.m. to 11:30 p.m. in the year of 2002. He used to work in the betel leaf orchard of Emdad who asked him to accompany him hearing shouting from the house of the accused Ebarat. He accompanied Emdad. Mother of Ebrat opened the door. They found the wife of Ebarat thrashing her head. On their query, the mother of Ebarat told them the victim had swallowed poison to die. Ebart appeared after their arrival and he was guarding his betel leaf orchard. The orchrad of Ebarat locates within his house. He new Sultan, brother-in-law of Ebrat, who had land dispute with Ebrat. In cross examination he has stated that Sultan was not direct brother in law of Ebarat.

D.W. 3 Hekmot Ali Mir has deposed that the occurrence took place at around 11:00 p.m. to 11:30 p.m. on 08.12.2002. His house is contiguous to that of Ebarat. Hearing shouting, he went to the house of the accused and found the door open. He found the mother of Ebarat, his wife Selima, Kawsar and Emdad in the house. Wife of Ebarat was rolling over the ground shouting that

her throat had been burning because she had drank poison. Ebarat was not present. He appeared after their arrival. Then Ebarat went to call a doctor but Selima had died before brining doctor. Ebarat had good relation with his wife. They never heard that Ebrat beat his wife for dowry.

D.W. 4 Alal Seikh has deposed that hearing shouting in the house of Ebarat he and his wife went there and found the wife of Ebart bashing her head against the leg of the *khat*. She was telling by pressing her throat that she had taken poison and she would not survive. Ebart was in the orchard of betal leaf. He informed Ebart sending Safayet. Ebarat was sent for calling a doctor but he found no doctor. The women were feeding the victim egg and tamarind. The victim died on her hand. The victim had mental problem. Ebarat had land dispute with his neighbour Sultan.

On perusal of the above evidence of the witnesses it appears that out of the 8 witnesses of the prosecution, P.W.7 Dr. Md. Nazrul Islam and P.W.8 S.I. Ahad Ali are the formal witnesses, P.W.6 Anis was tendered. Out of the remaining 5 witnesses, P.W.1 Rustom Ali Sheikh and P.W.5 Renu Begum are father and

mother of the deceased. But they did not mention specifically about the demand of dowry to them by the condemned-prisoner Ebarat Sheikh. It appears in the charge form that the learned Judge of the Tribunal also failed to mention any specific amount of dowry demanded by the condemned-prisoner on any specific date. P.W.3 Torikul Islam a co-villager of the condemned-prisoner and P.W.4 Jahangir Alam, the step brother of the deceased, also did not hear anything about the demand of dowry by the condemned-prisoner to the deceased or her family. Out of them P.W.4 Jahangir Alam has categorically stated in the cross-examination of the defence that the condemned-prisoner never demanded any dowry to them. The D.Ws. have firmly denied that the accused demanded dowry to the deceased at any time. So, we find not a iota of evidence in support of demanding dowry by the condemned-prisoner Ebarat Sheikh to the deceased or to any member of her family. Therefore, we find substance in the submissions of Mr. Atiar Rahma, learned senior Advocate for the condemned-prisoner, that this is not a case under section 11 (ka) of the Ain as the demand of dowry has not been specifically proved by the prosecution. However, it is admitted that the

deceased was wife of the condemned-prisoner and she died in his house at the night of the date of occurrence. On perusal of the post-mortem report, Exhibit-2, it appears that there were several injuries including multiple hamatoma throughout the scalp and scull of the deceased. Although, no stick or any weapon like that has been seized by the I.O. while investigating the case, but the injury as mentioned in the post-mortem report sufficiently prove that the deceased was beaten to death. Although the defence alleged that the deceased died of having poison and P.W.7 Dr. Md. Nazrul Islam has also stated that they found foul smell in the contents of the stomach of the deceased while holding autopsy but in the chemical test no presence of poison was found in viscera. Their Lordsips have opined in the case of Buddhadeb Saha and others Vs. the State of West Bengal 2023 INSC 1084 that -

> "It is quite possible that a person may die from the effects of a poison, and yet none may be found in the body after death, if the whole of the poison has disappeared from the lungs by evaporation, or has been removed from the stomach and intestines by vomiting and purging, and after absorption has been detoxified, conjugated and eliminated from the system

> by the kidneys and other channels. Certain vegetable poisons may not be detected in the viscera, as they have no reliable tests, while some organic poisons, especially the alkaloids and glucosides, may be oxidation during life or by putrefaction after death, be split up into other substances which have no characteristic reactions sufficient for their identification."

But in the case mentioned above it was found that there was nothing on record to show that the viscera sample was not preserved properly during the 5 months before sending the viscera for chemical examination. The present case is distinguishable from the facts of the case mentioned above as the sample of the viscera of the deceased is found to be preserved in protected condition and that was collected just after the death while holding autopsy and the chemical examination was done within almost 2 months. Since the viscera of this case were found to be well preserved and in protected condition, we also find nothing to hold that the presence of poison might have been removed or evaporated due to its unprotected condition. Such being the case, we find the ratio mentioned above to be of no help to the defence.

In view of the above discussions, we hold that the deceased died within the custody of the condemned-prisoner and the condemned-prisoner being husband of the deceased without taking any step purported by to be taken by a responsible husband, he was found to be working in his orchard of betel leaf and thereafter absconded just after the occurrence. Although the D.Ws. wanted to say that the accused Ebarat was guarding his betel leaf orchard at the time of occurrence but those were not consistent with such assertions. Some of them said Ebarat opened the door, some said he arrived after their appearance. Somebody said that Ebarat was sent for calling a doctor and some did not name who went to call the doctor. The fact is that no doctor came. The P.Ws. did not find Ebarat present going to his house. However, P.W.2 categorically stated that Ebarat had beaten his wife on several occasions on the date of occurrence resulting in her death. Although the defence witnesses could not consistently depose that Ebarat went to call a doctor to save the life of his wife but the D.Ws. have given an indication about the cause of bad smell as P.W. 7 Dr. Nazrul Islam has mentioned in the autopsy report, Ext. 2, deposing that the women were found

feeding the victim with egg and tamarind. In absence of any unshaken proof of having poison by the victim we are unable to hold that she might have committed suicide. Rather, we convincingly believe that she was killed by beating. Since, the deceased was killed, there was somebody who killed her. We find none within the proximately of the occurrence other then the condemned-prisoner, the husband of the deceased, to be connected with the responsibility of killing the deceased. The intention or motive in killing the deceased is not material at all at this stage because being husband of the deceased and living with her in the same house the condemned-prisoner failed to give any manner of explanation to the death of the deceased. This is a wife killing case; although it does not come within the ambit of section 11 (ka) of the Ain because of absence of demand of dowry but it has sufficient ingredients of section 302 of the Penal Code for which the condemned-prisoner should be punished. Therefore, the sentence under section 11(Ka) of the Ain should be converted to a sentence under section 302 of the Penal Code and it is converted thereto accordingly. However, on consideration of the materials on record including the evidence

of the ocular witnesses and suffering of the condemned-prisoner behind the bar for 11 years including 7 years in the condemned cell without any of his fault, we hold that justice would be met out if the death sentence is commuted to the imprisonment for life.

In the result, the reference is rejected. The death sentence awarded by the Judge of the Tribunal is commuted to imprisonment for life. The appeal is dismissed with modification of sentence. Thus the Jail Appeal is disposed of. The concerned authorities are directed to remove the condemned-prisoner from the death cell to general cell immediately.

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

**Bhishmadev Chakrabortty, J:**

I agree.

BO. Kabir