Bench:
Mr. Justice Bhishmadev Chakrabortty
And
Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No109 of 2019

The State .....petitioner
-Versus-
Md. Saju Biswas .....condemned-prisoner
with
Criminal Appeal No.10228of 2019
And
Jail Appeal No.272 of 2019

Md. Saju Biswas .....appellant
-Versus-
TheState .....respondent

Mr. Syed Ejaz Kabir and Ms. Nahid Hossain, Deputy Attorney Generals with Ms. Mahbuba Tasnim Akhi, Mr. Ashraful Alam and Md. Abdul Motaleb, Assistant Attorney Generals

..... for the State
(In the reference and the appeals)

Mr. Md. Mizanur Rahman Khan with Mr. Md. Azgarul Islam, Advocates
.....for the condemned-prisoner-appellant
(In Crl. Appeal 10228of 2019)

Judgment on 27.10.2026

Bhishmadev Chakrabortty, J:

Since the reference, the appeal and the jail appeal have arisen out of the judgment and order of conviction and sentence of death passed by the learned Judge of Nari-o-

Shishu Nirjatan Daman Tribunal, Pabna (the Tribunal) in Nari-o-Shishu Case 86 of 2008, these have been heard together and are being disposed of by this judgment.

Learned Judge of the Tribunal on trial in the aforesaid case found the condemned-prisoner Md. Saju Biswas guilty of offence under section 11(Ka) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain, 2000) and sentenced him thereunder to death with a fine of Taka 1,00,000/- and sent the proceedings to this Court for its confirmation. At the same time the condemned-prisoner has preferred the aforequoted criminal appeal and jail appeal and as such those have been posted in the list for hearing and disposal analogously.

The prosecution case, in brief, is that PW1 Md. Mantu Pramanik at about 9:00 hours on 22.05.2008 lodged a First Information Report (FIR) with Ishwardi police station alleging, *inter alia,* that his daughter namely Labani was married off to accused Md. Saju Biswas 5 years ago. At the time of solemnizing marriage, the informant gave him Taka 20,000/- and gold ornaments as dowry. After expiry of 1½ years of the marriage, the accused started demanding dowry to his daughter Labani (the victim) and for it he sent her to his

(informant's) house. While she returned to the house of the accused without dowry, the accused started torturing her physically and mentally. The couple had a female child aged about 1½ years. Before 2 months of the occurrence, informant's younger son Abdus Salam (PW4) brought her daughter to their house hearing the news of physical torture upon her. The victim started residing in the informant's house since then. The accused went to the house of the informant to bring the victim back but they did not handover her to him considering his character and also victim's security because she disclosed to PWs 2, 3, 8 and 9 the fact of torturing her by the accused. The accused went to the house of the informant on 19.05.2008 and bring back the victim with him admitting his guilt and giving undertaking that he will not torture her in further. But the accused at about 10:00 pm on 21.05.2008 indiscriminately gave blows to the victim with *ramdao* causing injuries on her nose, left side of the throat, right knee, on her back and different parts of the body resulting her death. The child of the victim who was in her lap was also seriously received cut injury from that incident. Tuhin Biswas PW7, a neighbour and his mother Ranu Khatun tried to resist the

accused but the accused chopped PW7 with *ramdao*. The accused on demand of dowry and in consequence of its non-payment killed the victim in a brutal manner who was pregnant of 3 months at that time. He heard the said news from witness Tuhin and others, went there and finding the victim dead in injured condition lodged the FIR. The said FIR was registered as Ishwardi Police Station Case 24 dated 22.05.2008 corresponding to GR 146 of 2008 under section 11(Ka) of the Ain against sole accused.

PW17 Mst. Rokshana Khatun, an Inspector of police investigated the case. During investigation, he collected prosecution materials, forwarded the accused to the Magistrate for recording his confession under section 164 of the Code of Criminal Procedure (the Code) and finally submitted a charge sheet on 08.07.2008 against sole accused under the selfsame section of the Ain.

The record of the case was then transmitted to the Tribunal for holding trial. The Tribunal at first took cognizance of offence against the accused under the aforesaid section and thereafter framed charge against the accused on 13.01.2009 under section 11(Ka) of the Ain. The charge so

framed was read over to the accused, to which he pleaded not guilty and claimed to be tried.

During trial, the prosecution in all examined 17 witnesses; of them PWs 10, 11, 12 and 13 were declared hostile by the prosecution and were cross-examined by both the parties. The other witnesses were cross-examined by the defence. The defence case as it transpires from the trend of cross-examining the prosecution witnesses is of innocence and that during commission of dacoity in the house of the accused, the dacoits committed the murder. The accused was not at home at the material time.

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 prayed for justice but did not examine any defence witness.

However, learned Judge of the Tribunal on assessing the evidence of witnesses and other materials on record found the condemned-prisoner guilty of offence as stated hereinbefore and sentenced him thereunder to death with fine.

Being aggrieved by condemned-prisoner filed Criminal Appeal 10228 of 2019 and Jail Appeal 272 of 2019.

Ms. Nahid Hossain, learned Deputy Attorney General takes us through the evidence of witnesses and other materials on record and submits that victim Labani, wife of the condemned-prisoner was brutally killed by him on demand of dowry. PWs 1, 2, 3, 4 and 6 in a voice stated about the condemned-prisoner's demand of dowry and killing the victim for its nonpayment. Since the victim died in the house of her husband, it was his duty to explain her death. In this case, several sharp cutting injures were found on the person of the victim. The defence tried to make out a case by suggesting the prosecution witnesses including the evidence of hostile witnesses PWs 10, 11, 12 and 13 that the dacoits during commission of dacoity killed the victim but it is not a believable story considering the facts and circumstances and evidence on record. Since the victim died in the house of her husband and his explanation as to the death of his wife is not found satisfactory and as such he is to be held responsible for the death. She further submits that PWs 10, 11, 12 and 13, the hostile witnesses were examined after release of the

condemned-prisoner on bail. They were gained over by the condemned-prisoner and consequently deposed against the prosecution. Apart from the aforesaid fact, the condemned-prisoner made confession exhibit-8 recorded by PW15 Md. Golam Faruk, a Judicial Magistrate under section 164 of the Code. The confession is found inculpatory and the statements made therein are found consistent with the autopsy report. Although, some irregularities are found in recording the confession but those in no way affects the truth and voluntariness of the confession. In this regard, she refers to the case of Ratan Kha alias Rattan and others vs. the State, 40 DLR 186 and relied on the *ratio* laid therein. Ms. Hossain finally submits that the Tribunal correctly assessed the evidence and other materials on record and considering the brutality of the offence awarded death penalty upon the condemned-prisoner which may not be interfered with by this Court.

Mr. Md. Mizanur Rahman Khan with Mr. Md. Azgarul Islam, learned Advocates for the condemned-prisoner in Criminal Appeal 10228 of 2019 submits that as per the definition of Yutuk defined in section 2(Yeo) of the Ain, 2000

the prosecution failed to prove the demand of dowry and killing the victim for its nonpayment. In the FIR as well as in the evidence of witnesses none stated about the date of demand and amount so demanded. Although PW7 claimed himself as eyewitness to the occurrence but in his evidence it is found that he did not see the condemned-prisoner dealing *ramdao* blows on the victim. He then refers to the evidence of PWs 10, 11, 12 and 13 and submits that the above 4 prosecution witnesses in evidence stated that a dacoity was committed in the house of the victim and the dacoits dealt *ramdao* blows on the victim and consequently she died. A similar suggestion was put to the other prosecution witnesses including PWs 1-5 and 7. The defence suggested that the condemned-prisoner was not at home at the material time. Therefore, the explanation as to the death of the victim given by the condemned-prisoner may safely be accepted. He then refers to the confession made by the condemned-prisoner exhibit-8 and submits that the condemned-prisoner was produced before PW 15, the Magistrate at about 3:30 pm on 23.05.2008. His confession was recorded giving him reflection for 3 hours time and after its recording he was sent to Pabna

central jail at 4:30 hours which was impossible. He was not given enough time for reflection. In recording the confession the provisions of section 164 of the Code was violated. This sort of confession cannot be treated as true and made voluntarily and as such cannot not be used against its maker to pass conviction. On this point he refers to the case of Alauddin alias Md. Alauddin and others vs. State, 12 BLC 137, State vs. Raja Abdul Majid and others, 1 BLC 144 and Bashar and others vs. State, 60 DLR 347 and relied on the principle laid therein. Mr. Rahman then submits that the Tribunal most illegally relied on the statements of 5 witnesses recorded under section 22 of the Ain and sentenced the condemned-prisoner to death but the provisions of the aforesaid section of the Ain provides that the statement of witnesses so recorded cannot be the sole basis of conviction without further corroboration. In this regard he refers to the case of State vs. Kajal Ahmed Jalali (absconding), 59 DLR 345 and Alauddin alias Md. Alauddin and others vs. State, 12 BLC 136. He finally refers to the case of Abdul Kader vs. State, 60 DLR 457 and submits that a conviction cannot be passed relying on the evidence of hearsay witnesses which has been done in the present case.

Since the prosecution failed to prove the charge against the condemned-prisoner under section 11(Ka) of the Ain even the allegation of killing the condemned-prisoner, the judgment and order of conviction and sentence, therefore, would be set aside and the appellant be acquitted of the charge levelled against him.

To address the submissions of the learned Deputy Attorney General and the learned Advocate for the appellant and to dispose the reference as well the criminal appeal and jail appeal, let us have a cursor on the evidence of prosecution witnesses.

PW1 Md. Mantu Pramanik, father of the victim stated that the occurrence took place in the house of accused Saju Biswas at about 10:00 pm on 21.05.2008. The accused used to torture the victim for dowry of Taka 20,000/-. She (victim) was in their house and the accused came there and took away the victim with him with undertaking that he would not torture the victim in future. But he on demand of Taka 20,000/- as dowry chopped the victim with *ramdao* at about 10:00 pm on 21.05.2008 resulting her death. He heard the said fact from his nephew Manna and on the next morning went to Ishwardi

police station. There he saw the dead body of his victim daughter and then lodged the FIR. He proved the FIR exhibit-1 and identified his signature thereon. In cross-examination by the defence, he stated that accused Saju used to do agriculture work and also in a terrace of rice mill. He (informant) used to work as a rod binder at Natore. He failed to remember the date when he went to Natore. He was not at home while her daughter left his house to the house of the accused. He put his thumb impression in the *ejahar* which was written by a man of police station. At the time of occurrence he was not present in the house of the accused. He did not go to the house of the accused after returning from Natore. He denied the defence suggestion that accused Saju was not at home at night on 21.05.2008 or that he was in the rice mill. He further denied that the terrorists attacked her daughter and at its consequence she died. He denied all other material suggestions put to him including the suggestion that the accused did not deal *ramdao* blows on the person of the victim.

PW2 Alaya Khatun, mother of the victim and wife of PW1 stated that the occurrence took place in the house of the accused at about 10:00 pm on 21.05.2008. The accused used

to torture the victim on demand of dowry. She received the news over mobile phone call that for dowry the accused chopped the victim with *ramdao*. The dead body was taken to the police station and after holding postmortem examination, it was brought to their house. She found in total 8 injuries on victim's body. She also found mark of sharp cutting injuries on the head and back of victim's daughter. The victim was 4 months' pregnant at the material time. In cross-examination by the defence, she stated that accused Saju was an operator of rice mill. She denied the defence suggestion that the accused used to stay in the rice mill at night. They did not lodge any GDE against the accused earlier for torturing the victim on demand of dowry. She further denied that the dacoits chopped the victim resulting her death.

PW 3 Md. Abdus Selim alias Selim Ali, a brother of the victim stated in the similar line of PWs 1 and 2. He further stated that accused Saju used to torture the victim on demand of dowry and killed her chopping with *ramdao* on the time and day for its nonpayment. He found 5 sharp cutting injuries on the person of the victim. The victim's child also received blows of *ramdao*. A cousin of the accused went to resist him

from doing so but he also received injures from the accused. His nephew told the fact to them over mobile phone call. They rushed to the occurrence house at about 11:00 pm and found the dead body covered with cloth. Police came and took away the dead body with them. On the next day the doctors held autopsy of the dead body and thereafter they buried it to the graveyard. In cross-examination by the defence, he stated that accused worked in the thrashing floor and was also a rice mill operator. Generally, the machine of a rice mill runs at night. He denied the defence suggestion that at the time and on the day of occurrence accused Saju was not at home and that the dacoits killed the victim.

PW4 Abdus Salam alias Md. Salam, another brother of the victim stated in the similar line of PWs 1, 2 and 3. He further stated that the accused at about 10:00 pm on 21.05.2008 chopped the victim to death with *ramdao*. Earlier he brought the victim into their house but the accused took away her with him admitting his guilt with undertaking that he will not do so in further but at about 10:00 pm on 21.05.2008 he dealt blows on the knee and back of the victim with *ramdao*. The neighbours of the accused told the fact to his

cousin Nazma. Thereafter they rushed to the occurrence house and found victim's dead body in the courtyard of the house but they found nobody of accused's house present there. In cross-examination by the defence, he stated in the same line as to the work of the accused but he denied that the accused was not at home at the material time and that his sister died by the attack of miscreants.

PW5 Md. Abdul Rab, a constable of police carried the dead body of the victim to the morgue for holding autopsy. He was a witness to the seizure of bloodstained sharee, blouse and petticoat. He stated that after holding autopsy they handed over the dead body to the guardian of the deceased. In cross-examination by the defence, he stated that they heard that the victim's husband chopped her with *ramdao* resulting her death. He did not know whether the dacoits killed the victim.

PW6 Ranu, mother of PW7 and a neighbour of the accused stated that the occurrence took place at about 10:00 pm on 21.05.2008. The accused tortured the victim for dowry. The victim grew angry and consequently the accused chopped him with *ramdao*. She found 8-10 injuries on the person of the victim. Suchana, victim's daughter then was into her lap. Her

son (PW7) went to save victim Labani but accused dealt blows on his hand with *ramdao*. She made hue and cry seeing the condition of his son while her elder son appeared there and took witness Tuhin to Ishwardi Sadar Hospital for treatment. Victim Labani died in the spot. They informed the said fact to Nazma and then the sister, brother and uncle of the victim appeared in the occurrence house. They informed police about the occurrence, who came and held inquest on the dead body. She told police that accused Saju killed the victim chopping with *ramdao*. She proved the inquest exhibit-2 and identified his signature thereon. She also made statement to the Magistrate which was recorded under section 22 of the Ain. She proved the statement exhibit-3. In cross-examination by the defence, she stated that she alone went to the house of the accused at about 10:00 pm. Accused Saju assaulted the victim on 21.05.2008 for dowry. Witness Tuhin went to the occurrence house earlier. She did not witness the occurrence of assaulting or chopping the victim. But she found her son Tuhin lying in injured condition. She denied the defence suggestion that she did not witness the aforesaid fact and that Saju used to work in the rice mill but he did not go there on

the day of occurrence. She did not find any member of Saju's house when she went to the occurrence house. She denied all other material suggestions put to her.

PW7 Md. Tuhin Biswas, a neighbour and a relative of the accused stated that he heard hue and cry from the house of the accused at about 10:00 pm on 21.05.2008 and rushed there. He found accused Saju moving to and fro with *ramdao* and he tried to caught hold of him. There was a tussle/scuffle between them and consequently he (PW7) received injury on his left arm by *hasua*. His cousin Rabeka came forward and rescued him in bloodied condition and took him to the hospital. The Magistrate recorded his statement under section 22 of the Ain. He proved the statement exhibit-4. He was a witness to the seizure of bloodstained earth and *ramdao*. He proved the aforesaid seizure under exhibits-12 and 13 respectively. He identified bloodstained mud and *ramdao* as material exhibits-I and II. In cross-examination by the defence, he reaffirmed that at the time of occurrence he received injuries and was attended by a doctor of the hospital. He also received certificate of injuries from the doctor. He could not remember whether he handed over the medical

certificate to the IO. He denied the defence suggestion that he did not receive any injury at the material time or he did not go to the house of the accused. He made statement to a Magistrate but could not remember its date. He was in the hospital for 2 days. The IO did not show him the bloodstained mud and *ramdao*.

PW8 Md. Azizul Hoque, an uncle of the deceased deposed in the similar line of PWs 1-5. He saw 8 injuries on the body of the victim. In cross-examination by the defence, he denied the defence suggestion that the accused was not at home at the occurrence night or that he was on duty in the rice mill. He further denied that dacoits killed the victim.

PW9 Md. Abdur Rahman, a neighbour of the informant stated in the similar line of PW8. He further stated that he heard that witness Tuhin went to save the victim and consequently he received blows of *ramdao*. In cross-examination by the defence, he denied the defence suggestion of deposing falsely.

PW10 Md. Sohel Rana stated that the occurrence took place in the house of accused Saju at about 10-11 pm 7-8 years ago but he could not remember the date. He heard

outcry, went to the place of occurrence house and heard that the dacoits attacked the accused's house. In the attack witnesses Tuhin and daughter of the victim (Suchana) also received injuries. They took both of them to the hospital. On the next day, he heard that the dacoits killed the victim. At this stage he was declared hostile by the prosecution and cross-examined, to which he stated that in the house of the accused he found witness Tuhin injured. He denied the suggestion of the prosecution that he found the accused chopping victim Labani with *ramdao* or that he knew that accused Saju chopped Suchana and witnesses Tuhin as well. He further denied that being biased by the accused and at his fear he has suppressed the fact. He denied that no dacoity was committed in the house of the accused. He made statement to the Magistrate on 01.06.2008. He proved the statement exhibit-5 and identified his signature thereon. In cross-examination by the defence, he stated that when he went to the place of occurrence but did not find the accused there.

PW11 Abul Kashem, a neighbour of the victim in evidence failed to remember the date of occurrence. He stated that 5-7 years ago he came from Khulna and heard that the

wife of accused Saju died but he did not know how she met death. At this stage he was also declared hostile by the prosecution and cross-examined, to which he denied the suggestion that on hearing hue and cry he went to the house of accused and found Labani dead there. He denied that he heard that accused Saju chopped the victim with *ramdao*. He further denied that he knew that witness Tuhin and Suchana were also chopped by the accused. He denied that being biased by the accused and at his fear he deposed by suppressing the fact.

PW12 Nasima stated that the occurrence took place in the house of accused Saju at about 10:00/10:30 pm 7/8 years ago. She could not remember the date of occurrence. She heard hue and cry in the occurrence house and found Suchana and Tuhin lying in injured condition. She did not hear who caused injuries to them. She found the dead body of Labani in the house of the accused. She heard that the dacoits killed the victim. At this stage she was declared hostile by the prosecution and cross-examined, to which she denied the suggestion that she saw accused Saju chopping his wife Labani with *ramdao*. She made statement to the Magistrate. She proved the statement exhibit-6. She stated that she told the

Magistrate about the occurrence. She denied that she did not hear about committing dacoity or she deposed at the fear of the accused by suppressing the fact. In cross-examination by the defence she stated that she made statement to the Magistrate as tutored by the IO. She did not see the accused in the occurrence house at the material time.

PW13 Fahima alias Faima in evidence stated in the similar line of PW12. She further stated that she found the dead body of Labani lying in the courtyard of the accused's house. She further found Tuhin and Suchana in injured condition. Nasima took Tuhin and Suchana to the hospital for treatment. At this stage she was declared hostile and cross-examined by the prosecution, to which she denied the suggestion that she did not hear that the dacoits appeared in the house of the accused. She further denied that she did not see accused Saju chopping victim with *ramdao* or that Tuhin and Suchana were also chopped by the accused. She further denied of suppressing the fact at the fear of the accused. She made statement to the Magistrate exhibit-7. In cross-examination by the defence she stated that she made statement

to the Magistrate as tutored by the IO. She did not find the accused in the place of occurrence.

PW14 Mohammad Iftekher Bin Aziz, an Additional Chief Judicial Magistrate who was posted to Judicial Magistracy of Pabna at the material time, recorded the statements of witnesses Sohel Rana, Nasima Khatun, Fahima Khatun, Ranu Khatun and Tuhim Biswas under section 22 of the Ain, 2000. He proved the statements exhibits-3-7 respectively. In cross-examination by the defence, he stated that the IO produced the witnesses before him. He did not mention the time of producing the witnesses before him and recording their statements. He denied the defence suggestion that the statements were not made voluntarily.

PW15 Md. Golam Faruk, a Senior Judicial Magistrate of Pabna Judicial Magistracy at the material time recorded confession of accused Saju Biswas under section 164 of the Code. He stated that in recording the confession he complied with the legal formalities as were required by the law. The statement was true and made voluntarily. He proved the confession exhibit-8, his signatures and that of the accused put therein. He made a certificate as to the truth and voluntariness

of the confession. In cross-examination by the defence, he stated that police brought the accused to him at about 12:05 hours and he started recording the statement at about 3:30 pm. He denied the defence suggestion that he did not allow enough time to the accused for reflection. He further denied that the accused was compelled to make statement at the torture of police. He denied that he did not record the statements as per law.

PW16 Md. Harun-Or-Rashid, a doctor who was posted to Pabna General Hospital at the material time held autopsy of the deceased. He stated that in the autopsy they found the following injuries –

(i) One incised injury on the face measuring 6" X 1" X 1 extending from below the right eye including nose up to below the it ear.

(ii) One incised injury on the side of neck measuring 2" X 1" X 1" extending from middle of thyroid cartilege up to the middle of it side of neck. Injury to under lying muscle and vessels.

(iii) One incised injury on right sub-scapular region 2 X 1"X up to the chest cavity.

(iv) One incised injury just above the right knee joint 3 X 1"X bony depth.

(v) Two incised injury, one on the back of right ear I"X 1/2" X skin another one on the back of chest in vertibral line 11/2" X 1"X bony depth.

On desection-antemortem blood and blood clots found in and around the injured tissue. Both maxilla, nasal bones, left mandible, right 5th rib, right femur were found injured. Right lung, larynx and oesophagus were found injured. Muscles and vessels of left side of neck were found injured.

They passed opinion that the death was due to haemorrhage and shock due to combined effect of above mentioned injuries which was antemortem and homicidal in nature.

He proved the autopsy report exhibit-9 and identified his signature thereon. In cross-examination by the defence, he denied the suggestion that the injuries might be caused by accident. The injuries were incised in nature and caused by sharp weapon but he did not mention the nature of the weapon used. He denied the defence suggestion that the victim received injuries on accident and in consequence thereof she died.

PW17 Mst. Rokshana Khatun, an Inspector of police posted to Ishwardi police station at the material time stated that after receiving the case docket, she held inquest of the

deceased victim exhibit-2, she prepared sketch map and index exhibits-10 and 11. She seized bloodstained mud under exhibit-12 and a *ramdao* under exhibit-13. He arrested the accused and forwarded him to the learned Magistrate to record his confession under section 164 of the Code. He visited the place of occurrence, recorded the statement of the witnesses under section 161 of the Code and produced some witnesses to the Magistrate to record their statement under section 22 of the Ain, 2000. She collected postmortem examination report and ultimately submitted a charge sheet under section 11(Ka) of the Ain, 2000 against sole accused. She identified the seized *ramdao* and bloodstained earth as material exhibits-I and II. In cross-examination by the defence she stated that she forwarded the accused to the learned Magistrate for recording his statement. The accused made statement voluntarily. She denied the defence suggestion that the victim committed suicide but she submitted a charge sheet against the accused. She further denied that the confession was not made voluntarily and it was obtained on duress and coercion. She further denied that she submitted a biased charge sheet.

These are all evidence of prosecution witnesses.

We have considered the submissions of the learned Deputy Attorney General and the learned Advocate for the appellant, perused the evidence and other materials on record and gone through the *ratio* of the cases cited by the parties.

To bring home the charge under section 11(Ka) of the Ain, the prosecution in all examined 17 witnesses; of them PWs 1-4, 5 and 8 are the relatives of victim Labani; PWs 6 and 7 are the relatives of the accused and is his neighbour. PW5 a constable of police, PW 14 a Judicial Magistrate, PW15 another Judicial Magistrate, PW16 a doctor and 17 IO are the formal witnesses. Among the witnesses 10, 11, 12 and 13 were declared hostile and cross-examined by both prosecution and defence.

It has been proved by the evidence of witnesses that the occurrence took place at about 10:00 pm on 21.05.2008 in the house of condemned-prisoner Md. Saju Biswas. The evidence of prosecution witnesses is found corroborative in this regard. It has been alleged by the prosecution that on demand of dowry the condemned-prisoner in the time, place and day of occurrence chopped the victim with *ramdao* resulting her death instantaneously. The *ramdao* and bloodstained mud

were seized under seizure exhibits-12 and 13. Those were produced in the Court and marked as material exhibits-I and II.

Admittedly, the victim was the wife of the condemned-prisoner and the occurrence took place in his house and the witnesses stated in evidence that they found the dead body of victim in the courtyard of the condemned-prisoner's house. It was the duty of the husband under section 105 of the Evidence Act to explain the death of the victim. The defence by cross-examining the prosecution witnesses tried to make out a case that the condemned-prisoner was not at home at the material time; that he was working in the rice mill and that some miscreants or dacoits killed the victim at the time of committing dacoity. But on appraisal of the evidence of witnesses as a whole including the evidence of hostile witnesses PWs 10, 11, 12 and 13, we do not find that the defence has been able to establish a believable case that any dacoity was committed in the house of the accused or that the dacoits killed the victim. No evidence has come out that anything was looted away from the occurrence house. Mere putting suggestions to some of the prosecution witnesses and

statement made by PWs 10-13, the hostile witnesses that they heard that the dacoits committed the murder is not enough to hold that the miscreants or the dacoits killed the victim at the time of committing dacoity. Rather the evidence of PW7, Md. Tuhin Biswas a neighbour and relative of the accused who was an injured witness and his mother PW6 Renu is enough to hold that the condemned prisoner committed the offence of chopping the victim with *ramdao*. Their evidence also proves that the accused was at home at the material time.

It has been well proved by the evidence of PW16 Dr. Harun-Or-Rashid and autopsy report exhibit-9 that the victim was indiscriminately chopped by sharp cutting weapon. As many as 5 injuries were found on the different parts of victim's body. PW16 supported the autopsy report exhibit-9 and passed opinion that the death was due to haemorrhage and shock due to combined effect of the above mentioned injuries which was *antemortem* and homicidal in nature.

Apart from that the above evidence, the condemned-prisoner made a confession exhibit-8 which is quoted below-

"আমি কৃষি কাজ করি। ২০.০৫.২০০৮ ইং তারিখে আমার স্ত্রীকে শ্বশুর বাড়ি থেকে আনি ও ঐ দিন কোন সমস্যা হয়নি। ২১.৫.২০০৮ ইং তারিখে ভাত রান্না

হতে দেরী দেখে রাত ১০.০০ টার দিকে রাম দা দিয়ে আমার স্ত্রীকে কুপিয়ে ঘরের উঠানে হত্যা করার উদ্দেশ্যে আঘাত করি। তখন আমি রাগের মাথায় ছিলাম। আমার চাচাতো ভাই ঠেকাতে আসলে তাকেও মারি তার হাতে লাগে। আমার বড় ভাইকেও মারি। আমার আঘাতের ২ ঘন্টা পর আমার স্ত্রী মারা যায়। এই আমার বক্তব্য।"

If the evidence of the prosecution witnesses including the evidence doctor PW16 is considered together with the confession made by the condemned-prisoner that he chopped the victim with *ramdao* at the time and day of the occurrence, it can be safely held that the victim was done to death at the chopping of convict's *ramdao*.

The learned Advocate for the appellant raised serious objection as to the truth and voluntariness of the confession made by the condemned-prisoner and submits that it cannot be used against him to pass conviction. He has submitted that the condemned-prisoner was produced before the learned Magistrate at about 3:30 pm on 23.05.2008 and giving him 3:00 hours' time for reflection, the learned Magistrate recorded the confession and forwarded him to the jail at 4:30 pm. In the above position he was not allowed enough time for reflection and the police officer was within his eye sight. He has cited a series of cases in support of his submission and

relied on the principles of those cases. We have carefully gone through the confession made by the condemned-prisoner recorded under section 164 of the Code. It appears that in column-1 of the form it has been written that the accused was produced before him at 3:30 pm on 23.05.2008 and after recording of confession he was forwarded to the jail at 4:30 pm. There is no legal requirement of law to allow an accused 3 hours' time for reflection before recording his confession. In this context reliance may be placed in the cases of Ratan Kha alias Rattan and others vs. The State, 40 DLR 186, State vs. Jatindra Kumar Sutradhar, 20 DLR 526 and Haripada Debnath and another vs. The State, 573 wherein it has been held that there is no statutory obligation that the confessing accused shall be given 3 hours' time for reflection before recording his confession.

Apart from the aforesaid position of law, it is found from the evidence of PW15 Md. Golam Faruque, a Senior Judicial Magistrate who recorded confession exhibit-8 of condemned-prisoner under section 164 of the Code that at about 12:05 hours on 23.05.2008 police brought the accused before him for recording his confession and thereafter at 3:30

pm he started its recording. Therefore, the evidence on oath by PW15 (which has come out in the cross-examination by the defence) can safely be relied on that the condemned-prisoner was allowed more than 3 hours time for reflection before recording his confession. The length of the confession made by the condemned-prisoner is very brief, 4-5 lines only. Therefore, after recording the confession the condemned-prisoner might easily be forwarded to the jail at about 4:30 pm. We, therefore, find no legal infirmity in recording the confession.

The evidence of prosecution witnesses about demand of dowry by the condemned-prisoner and keeping the victim in the house of the informant before few days of the occurrence and taking away the victim by the convict from the house of her parents (PWs 1 and 2) on 19.05.2008 has been well proved by the evidence of witnesses. The demand of dowry by the accused to the victim has been proved by the evidence of PW1 which has been corroborated by the evidence of PWs 2, 3, 4 and 6 on material point. PW1 in his evidence stated the claimed amount of dowry. We do not find it necessary that in every cases the amount of dowry and time and place of

demand are to be mentioned. If the evidence of the witnesses is considered together, the gist comes out therefrom that the condemned-prisoner demanded dowry and subsequent killing was for its nonpayment. So this case definitely comes with the meaning of section 11(Ka) of the Ain, 2000.

Now the question comes whether we can commute the sentence of death of the condemned-prisoner under the amended provisions of the Ain, 2025. We have gone through the nature of injuries on the person of the deceased caused by the condemned-prisoner. There were 5 injuries on the person of the victim caused by *ramdao,* which proves that the condemned-prisoner indiscriminately chopped the victim. Moreover, at the material time the victim was 3 months pregnant. In fact this is a double murder.

Considering the brutality and gruesomeness of the offence as well, and the conduct of the condemned-prisoner that after obtaining bail from the Court he absconded and PWs 10, 11, 12 and 13 were examined and declared hostile meaning that they were biased by the condemned-prisoner in any manner, we find the sentence of death passed by the Tribunal is justified. Although, the Tribunal mainly relied on

the statements of the witnesses recorded under section 22 of the Ain in awarding the conviction and sentence which was not as per the provisions of law but the ultimate decision taken by the Tribunal awarding death sentence is found correct. The *ratio* of the cases as referred to by the learned Advocate for the appellant is not applicable in the present case considering the facts of those cases upon which the *ratio* has been laid.

Under the facts and circumstances, this reference is accepted and the appeal is dismissed. The sentence of death passed by the Tribunal is hereby confirmed. The jail appeal is accordingly disposed of.

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

K.M. Rasheduzzaman Raja, J.

I agree.

*Sumon-B.O.*