

Bench:

Mr. Justice Bhishmadev Chakrabortty

And

Mr. Justice K.M. Rasheduzzaman Raja

Death Reference No.43 of 2019

The State .....petitioner

-Versus-

Md. Suruz Ali .....condemned-prisoner  
with

Criminal Appeal No.5809 of 2019

And

Jail Appeal No.133 of 2022

Md. Suruz Ali .....appellant

-Versus-

The State .....respondent

Mr. Mohammad Imam Hossain (Tarek), Deputy  
Attorney General with Ms. Mahbuba Tasnim  
Akhi, Mr. Ashraful Alam and Mr. Abdul  
Motaleb, Assistant Attorney Generals

..... for the State

(Petitioner in reference and respondents in the appeals)

Mr. S.M. Shahjahan, Senior Advocate with Ms.  
Hosnara Shimul, Advocate

..... for the condemned-prisoner

(Appellant in the appeals)

Judgment on 08.09.2026

Bhishmadev Chakrabortty, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman  
Tribunal, Jhenaidah (the Tribunal) on trial in Nari-o-Shishu  
Nirjatan Daman Case 103 of 2004 found the condemned-

prisoner 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 fine and made this reference to this Division for its confirmation.

Against the aforesaid judgment and order of conviction and sentence, the condemned-prisoner filed Jail Appeal 124 of 2019 and at the same time regular Criminal Appeal 5809 of 2019. Since the reference and the appeals have arisen out of the same judgment and order of conviction and sentence, these have been heard together and are being disposed of by this judgment.

The prosecution case, in brief, is that PW1 Md. Idrish Ali, brother of the deceased Champa Khatun (the victim) lodged a first information report (FIR) at about 14:15 hours on 21.03.2004 with Harinakundu police station against 4 accused alleging, *inter alia*, that 15 years ago the victim was married off to accused-1. At the time of solemnizing the marriage the accused persons demanded dowry of Taka 50,000/- from the informant. They arranged Taka 30,000/- and paid it to accused 1. During their wedlock, her sister gave birth to a male child namely Shehab aged about 1 year.

At the ill advise of other accused, accused 1 started torturing the victim physically and mentally for remaining amount of dowry of Taka 20,000/- and drove her away to the informant's house 4 months ago. A *salish* in presence of local chairman was held 3 months ago and they paid balance amount of Taka 20,000/- to the accused. The accused then took away the victim with them. But the greedy accused persons again claimed dowry of Taka 20,000/- from the victim and started torturing her physically and mentally. They came to learn from others on 13.12.2003 that the accused persons assaulted the victim, killed her and left the dead body under jackfruit tree behind their house. Hearing the said news, the informant and his relatives rushed to the house and found the dead body under the jackfruit tree. He found mark of injuries on the left side of the victim's nose and blackish injury on the left side of the throat. Police came, held inquest of the dead body and sent the body to the morgue of hospital for holding autopsy. After holding autopsy, they received the dead body and buried it. In the aforesaid reason, the lodgment of the FIR was belated. The accused persons in collusion with each other killed his sister

for dowry and kept the dead body in the place of occurrence. The aforesaid FIR was registered as Horinakundu Police Station Case 05 dated 21.03.2004 corresponding to GR 37 under sections 11(Ka) and 30 of the Ain, 2000 against 5 accused named therein.

PW7 Dherandra Nath Shaha was entrusted investigation of the case. During investigation, he arrested the condemned-prisoner on 06.05.2004, seized *alamots*, visited the place of occurrence, prepared sketch map with index collected inquest report and autopsy report. He recorded the statements of witnesses under section 161 of the Code and then submitted a charge sheet under sections 11(Ka) and 30 of the Ain on 19.05.2004 against 4 accused.

The record of the case was then transmitted to the Tribunal, Jhenaidah and it was registered as Nari-o-Shishu Case 103 of 2004. The learned Judge accepted the police report, took cognizance of offence against 4 accused under the selfsame sections of the Ain. Eventually, learned Judge of the Tribunal framed charge against the condemned-prisoner under section 11(Ka) of the Ain and under sections 11(Ka) and 30 of the Ain against other 3 co-accused. The

charge so framed were read over to the accused then present in the dock, to which they claimed to be innocent and prayed for trial.

In the trial, the prosecution examined 8 witnesses and they are cross-examined by the defence. The defence case as it transpires from the trend of cross-examining the prosecution witnesses are that the victim committed suicide by taking poison at the event of making altercation with her husband and that the victim committed suicide by hanging and that the condemned-prisoner was not at home at the time of occurrence.

On conclusion of examination of the prosecution witnesses, learned Judge of the Tribunal examined the accused under section 342 of the Code, to which they reiterated their innocence and claimed justice and desired to examine defence witness. Accordingly, they examined DW1 Md. Nurul Aziz.

However, the learned Judge of the Tribunal considering the evidence and other materials on record found the condemned-prisoner guilty of offence under section 11(Ka) of the Ain and sentenced him thereunder to death

with fine but acquitted other 3 co-accused from the charges against them.

Mr. Mohammad Imam Hossain, learned Deputy Attorney General takes us through the materials on record and submits that this is a wife killing case. The victim wife was found dead in the backyard of the condemned-prisoner's house. It was his duty to explain the death but the explanation he has given by suggesting the prosecution witnesses that the victim committed suicide by taking poison or committed suicide by hanging have been proved false by the medical evidence, *i.e.*, postmortem examination report exhibits-8 and 9. Since the victim was found dead in the house of the condemned-prisoner and the death is found homicidal by smothering, the husband is to be held responsible for the death. He refers to the case Abdul Haque (Md) vs. State, 73 DLR (AD) 240 and submits that by way of cross-examination on few witnesses as well as by examining DW1, the defence tried to make out a case that at the time of occurrence the condemned-prisoner was not at home. Such plea of *alibi* is to be proved by the husband specifically by adducing evidence. The burden to prove the plea of *alibi* lies

on the accused and it cannot be proved by preponderance of probabilities. DW1 did not lead evidence that the condemned-prisoner was not in his house at the time of occurrence but he was elsewhere. In the premises above, the conviction and sentence passed by the Tribunal under section 11(Ka) is found well justified. The reference, therefore, would be accepted and the appeals be dismissed.

Mr. S.M. Shahjahan learned Senior Advocate appearing with Ms. Hosneara Shimul submits that the prosecution failed to prove that the condemned-prisoner demanded any dowry to the victim or to his family members. In the UD case which was filed by the informant himself, he did not state anything about demand of dowry. There, it has been stated that he came to learn that the victim died by taking poison. The prosecution witnesses failed to prove the demand of dowry by corroborative evidence. Since the demand of dowry has not been proved, the conviction and sentence under section 11(Ka) of the Ain cannot be sustained. He then refers to the case of State vs. Nurul Amin Baitha and another, 75 DLR (AD) 187 and submits that if the charge of 11(Ka) is not proved but the murder or killing is

proved in that case the conviction and sentence passed by the Tribunal may be converted under the relevant provisions of the Penal Code. He then refers to the case of Shafiullah alias Kala Mia vs. State, 1985 DLD 129 and submits that, if the offence of killing is taken as true it does not show that the condemned-prisoner committed the offence in a brutal and unusual manner. He then refers to the exception 4 of section 300 of the Penal Code and submits that in the attending facts of the case, it comes within the mining of culpable homicide not amounting to murder and conviction and sentence passed may be converted into section 304 Part-II the Penal Code and he may be sentenced thereunder as per culpability of the offence. He, therefore, finally prays for rejecting the reference and allowing the appeal in the modified form.

To address the submissions of the learned Deputy Attorney General and the learned Senior Advocate for the appellant, let us have a blink on the evidence of the witnesses.

PW1 Md. Idrish Ali alias Idrish Ali, brother of victim Champa Khatun stated in the similar line as stated in the FIR. He further stated that at the time of marriage the condemned-

prisoner claimed Taka 50,000/- as dowry out of which Taka 30,000/- was paid at the time of marriage ceremony. Subsequently, accused started torturing the victim for remaining amount of dowry of Taka 20,000/- and consequently the informant party in presence of local chairman paid Taka 20,000/- to them after taking signature on stamp paper. But unfortunately, the accused persons claimed Taka 20,000/- more as dowry. On refusal to pay the amount, the accused at about 10:00 pm on 15<sup>th</sup> Paush, 1410 BS assaulted and killed the victim and left the dead body under the jackfruit tree at the southern side of their house. They heard the said news, rushed to the occurrence house, saw the dead body and found mark of injuries on the left side of the nose of the victim and further found black spot on the right side of her throat. They informed police about the occurrence. Police came, held inquest, prepared a report and sent the dead body to the morgue of hospital for holding autopsy. After holding autopsy, they buried the dead body. Thereafter, they lodged the FIR. Police made a seizure and seized a *shari* and *blouse* of the victim under a seizure exhibit-1. He proved the seizure and identified the *alamots* as

material exhibits. In cross-examination by the defence, he stated that he received news on 15<sup>th</sup> Paush, 1410 BS. He further stated that he filed a case regarding the death of his sister but did not file any UD case. He denied the defence suggestion that in the UD case he stated that his sister committed suicide by taking poison for family dispute. He informed to the police station about the facts and the OC went to their house and held inquest on the dead body. His father and brother-in-law paid Taka 30,000/- to accused Suruj at the time of his marriage. He failed to say the exact date of payment of balance amount of dowry of Taka 20,000/-. His nephew Shehab Uddin is now residing with his father aged about 5 years. He denied the defence suggestion that subsequently the accused did not demand Taka 20,000/- as dowry from his sister and killed her for its nonpayment. He further denied that his sister did not commit suicide by taking poison. He denied that at the ill advice of the interested quarters he filed the case to take huge amount of money from them. He further denied that his victim sister was an ill-tempered lady or that he did not find mark of

injuries on her body or that the accused did not kill his sister by throttling.

PW 2 Moazzem Hossain alias Moazzem, father of the victim stated in the similar line of PW1. He further stated that he paid Taka 30,000/- himself to accused Suruj Ali. Accused 1, at the advice of other accused, drove her daughter away from his house 4 months ago for remaining amount of dowry of Taka 20,000/-. After one month there was a *salish* in presence of local chairman and he paid Taka 20,000/- to the accused taking signature on stamp paper. They took the victim away with them but subsequently they again demanded dowry of Taka 20,000/- and for its nonpayment they killed the victim. Before victim's death, he went to the father-in-law's house of the victim while she told him that the accused persons claimed dowry. Accused Suruj Ali directly claimed Taka 20,000/- as dowry from him. He refused to pay the amount stating reason that he sold his land to meet up the previous demand. He found the dead body of his daughter under the jackfruit tree at the southern side of the house. He found other men there. He found marks of injuries on the left side of victim's neck and black mark on

the right side of the throat. Accused Suruj and his family members fled away finding him in the house. They went to the police station, police came and held inquest on the dead body and prepared a report. In cross-examination he stated that his victim daughter used to reside in a separate house with the husband. He failed to remember the date of demand of dowry before solemnizing the marriage but it may be 3/4 days before the marriage. He paid Taka 20,000/- to the local chairman as remaining dowry of the accused. Witnesses were present at that time but he could not remember the names of them. He put signatures at the top of the stamp paper and the others also put their signatures. He did not get any chance to inform the chairman about subsequent demand of Taka 20,000/- because the demand was made 2 days before the victim's death. Accused Suruj Ali directly demanded Taka 20,000/- as dowry from him and he refused to pay it which was not told the IO. He denied the defence suggestion that his daughter committed suicide by taking poison facing a quarrel with her husband. He further denied that the accused persons did not kill the victim on demand of dowry.

PW3 Md. Abdul Wahab, a cousin of the victim stated that at the time of solemnizing marriage they paid Taka 30,000/- to accused Suruj Ali. Subsequently, the accused demanded Taka 20,000/- more but the father of the victim refused to pay it expressing his inability. They received the news from the house of the accused after 2 days that the victim was killed. They went to the house of the accused and found the dead body of the victim but did not find the accused in the house. In cross-examination he affirmed that previously he told about the payment of Taka 20,000/- as dowry. Accused Suruj used to reside in a separate house with the victim. He denied the defence suggestion that victim Champa Khatun was a lady of ill character and she committed suicide by hanging.

PW4 Md. Ayub Hossain alias Md. Ayub Ali, a cousin of the victim stated in the similar line of PW3. He further stated of holding a *salish* for payment dowry where he was present and accordingly Taka 20,000/- was paid through the chairman of the locality by taking signature on stamp paper. After few months of the said occurrence he heard that the victim died in the house of her husband. They went to the

house of the accused but the accused fled away. He found mark of injuries on the left side of victim's nose and further found black spot on the right side of the throat. In cross-examination he stated that in the marriage ceremony there was talk of payment of dowry. Moazzem Hossain was a farmer, who had 10/20 *bighas* of land. His father was a witness to the marriage. He denied the defence suggestion of not paying of Taka 30,000/- as dowry. He failed to remember the date of payment of Taka 20,000/- to accused Suruj Ali. A *salish* was held in the Union Parishad office and both the parties put signature on the stamp paper. He denied the defence suggestion that the accused did not pay Taka 30,000/- in the *mojlish* of marriage or no *salish* was held in presence of the local chairman about payment of Taka 20,000/-. He further denied that victim Champa Khatun did not die by taking poison.

PW5 Md. Abul Mondal, was tendered by the prosecution and the defence declined to cross-examine him.

PW6 Shaheb Ali alias Shahed stated that he knew nothing about the occurrence. At this stage he was declared hostile by the prosecution and accordingly cross-examined,

to which he denied the suggestion that the victim was killed on demand of dowry. In cross-examination by the defence he stated that relation between victim Champa and accused Suruj Ali was nice. He knew nothing about demand of dowry and assault upon the victim for its nonpayment.

PW7 Birendra Nath Shaha, Investigating Officer (IO) stated that during investigation he visited the place of occurrence prepared sketch map and index, recorded statements of witnesses under section 161 of the Code, arrested the accused and forwarded them to the Court. He also investigated the UD case. He held inquest of the deceased and prepared a report exhibit-4. He seized *alamots* exhibit-5. He proved the index and sketch map exhibits-6 and 7 and finding *prim face* case against the accused submitted a charge sheet against them. In cross-examination by the defence he stated that there was an UD case prior to the lodgment of FIR. In both the cases Idrish Ali was the informant who was the full brother of victim Champa. In the UD case the informant did not state the name of the accused rather he suspected about the death. The dead body was found in the verandah of accused Suruj Ali's house. The

house of accused Suruj was separate from the other accused. But it was not shown in the sketch map. He did not seize the wearing apparel of the victim at the time of holding inquest. He did not send wearing apparel to the chemical examiner. At time of inquest, he found mark of injuries on the left side of victim's nose and further found black mark on the right side of the throat but he did not mention the width and length of the injuries. He did not find any injury on the dead body of the victim. A regular case was filed on 21.03.2004 and there was 5 accused named in the said FIR and it has been stated in the FIR that the victim was throttled to death. He found black spot on the right side of her throat. He denied the defence suggestion that he did not find that the victim throttled to death. He did not find accused Suruj Ali in the place of occurrence. He denied the defence suggestion that accused Suruj Ali was not at home from 2 days ago. He denied that victim Champa committed suicide. He further denied that he submitted a perfunctory charge sheet.

PW8 Dulal Kumar Chakraborty, a doctor who was posted to Jhenaidah Sadar Hospital at the material time held autopsy of the dead body. He stated that constable Md.

Shafiqul Islam identified the dead body of Champa Khatun and he held autopsy by constituting a board and found the following injuries-

1. Small abrasion over the bridge of the nose and left alaenesae.
2. Abrasion over the right side of the neck.

On dissection: Congestion found under the injury no 1&2.

নাকে আঘাত এর রক্ত জমাট পেয়েছি।

Stomach & its contents, portion of liver & one kidney preserved for chemical analysis.

Definite opinion of death kept pending till receipt of the report of chemical analysis of preserved viscera.

Thereafter on 26.03.2004 he received the viscera report. In the viscera report no poison was found and finally they opined that the death was due to asphyxia resulting from smothering which was antemortem and homicidal in nature. He proved the autopsy report exhibit-8 and viscera report exhibit-9. In cross-examination he stated that he could not say whether victim Champa Khatun intake poison and was admitted to the hospital. He found an inquest report with the forwarding of the dead body. He dissected the dead body as per UD case which was mentioned at the top of the report. He found 2 injuries on the person of the victim, one was on the nose and the other on the throat. He did not mention the

size of injuries. All of the injuries were simple in nature. He dissected the injuries but did not pass any separate opinion as to the cause of injury. After receiving the report of viscera they passed final opinion on 14.03.2004. If a person is throttled to death there may be mark of injury both the side on the throat. The victim was not throttled to death. It is not unusual as to the death for the injuries found on the person of the victim. He denied the defence suggestion that the victim did not die in the result of the aforesaid injuries. He denied that in smothering such injuries could not be found. He denied that the autopsy report was not correct and he passed opinion subsequently. In reply to the question put by the Tribunal he replied that asphyxia can be caused by throttling or pressing the nose and smothering may be caused by hand or by soft substance pressing the same on the nose and mouth and there may be small injuries. Here, smothering was caused for blocking of nose and mouth.

DW1 Md. Nurul Aziz stated that at about 7:00 am on 29.12.2003 he was working in front of his house while he heard that the wife of accused Suruj died. He heard it from others and went to the occurrence house. He found victim's

body lying in the verandah but he did not find Suruj there. He asked the father of accused Suruj named Barkat Ali about the cause of death while he told that the neighbours informed him about lying of the dead body in the house of Suruj. He asked him whereabouts of Suruj while he replied that he had been working in a betel leaf orchard situated in another district. In cross-examination by the prosecution he stated his house was situated after 3 houses of accused Suruj. He could not say the reason of death of the victim. He could not remember when he met Suruj before 29.12.2003. He did not know actually what accused Suruj do. He did not know where accused Suruj worked. He did not see accused Suruj to work in a betel leaf orchard. As per the information supplied by the father of accused Suruj, he worked in Magura district. He did not know whether accused Suruj killed his wife on demand of dowry.

These are all evidence of witnesses of the parties.

We have considered the submissions of the learned Deputy Attorney General and the learned Senior Advocate for the condemned-prisoner.

To bring home the charge against the condemned-prisoner, the prosecution in all examined 8 witnesses; of them PW1 Md. Idrish alias Idrish Ali is the brother of the victim, PW2 Moazzm Hossain alias Moazzm is the father of the victim, PW 3 Abdu Wahab is the cousin of the victim, PW4 Md. Ayub Hossain alias Md. Ayub Ali is another cousin of the victim, PW5 Md. Abul Mondal was tendered by the prosecution and defence declined to cross-examine to him, PW6 Shaheb Ali is declared hostile, PW7 Dherandra Nath Shaha is a Investigating Office (IO), PW8 Dulal Kumar Chakraborty is a doctor who held autopsy of the dead body and furnished a report and DW1 Md. Nurul Aziz is a neighbour of the condemned-prisoner.

The case of the prosecution is that the victim was killed by her husband, the condemned-prisoner in his house by smothering. On the other hand the defence claimed that the victim was an ill tempered women and he committed suicide by taking poison or committed suicide by hanging. It is not denied by the defence that the victim was found dead in the house of the condemned-prisoner. Her dead body was found in the verandah of the condemned-prisoner's house

under a jackfruit tree situated at the southern side of the house. It has come out in the evidence of the prosecution witnesses that the house is more or less isolated. In such a case, where the dead body of the victim was found in the house of her husband, the burden heavily lies upon the condemned-prisoner husband to explain the death of his wife. In this case, the condemned-prisoner suggested most of the prosecution witnesses that the victim committed suicide by taking poison after making quarrel with her husband which was denied. On PW3 the defence put a different suggestion that the victim committed suicide by hanging. We have gone through the inquest report, as well as the autopsy report exhibit-4, 8 and 9 respectively. In the inquest PW7, the IO found marks of injury on the left side of the victim's nose and further found blackish mark at the right side of the throat but he did not find any symptom of taking poison or of committing suicide by hanging. In the autopsy report the doctor found small abrasion over the bridge of the nose and left alannae and abrasion on the right side of the neck and both the lungs, esophagus, trachea congested and kept the matter for passing final opinion up to the receipt of viscera

report. After obtaining report that no poison was found in the viscera they passed opinion- that the death was due to asphyxia resulting from smothering which was antemortem and homicidal in nature. So as per inquest and postmortem examination report, the cause of death of the victim was asphyxia resulting from smothering and it was antemortem and homicidal in nature. The opinion passed by the doctor and evidence led by PW8 Dr. Dulal Kumar Chakraborty supporting it being an expert opinion is admissible in the evidence and can safely be relied upon. So we can hold that the death of the victim was for smothering and homicidal. The defence plea or explanation by the husband as to the cause of death of victim that she committed suicide by taking poison or committed suicide by hanging has been proved false by medical evidence.

The defence took another plea by putting suggestion upon PW7 only that the condemned-prisoner was not at home at the occurrence night. In support of it he examined DW1 but his evidence in no way helps him to hold that he was not at home in the night of occurrence. Even DW1 did not know where condemned-prisoner Suruj Ali works. This

defence that condemned-prisoner was elsewhere is a plea of *alibi* which is to be taken as per law by the accused specifically. It cannot be proved by preponderance of probabilities. The condemned-prisoner did not tell that where he was at the time of his wife's death.

According to the evidence of prosecution witnesses both oral and documentary and the conduct of the condemned-prisoner that he fled away soon after committing the offence and was arrested on 06.05.2004, *i.e.*, long after the occurrence unerringly proves his guilt.

Now we have to examine the submission of the learned Advocate for the condemned-prisoner that whether the prosecution has been able to prove that the victim was killed for nonpayment of dowry as has been claimed. It has come out in the evidence of PWs 1, 2, 3 and 4 that at the *mojlsh* of marriage Taka 30,000/- was paid to the condemned-prisoner as dowry out of Taka 50,000/-. Subsequently, the condemned-prisoner and his family members claimed the balance amount of Taka 20,000/- and a *salish* was held for it and the amount was paid to him in cash in presence of local chairman by taking signatures on stamp

paper. So the claim of dowry of Taka 50,000/- at the time of solemnizing the marriage is found past and closed and ended in the *salish*. But the prosecution claimed that the condemned-prisoner further claimed Taka 20,000/- as dowry from them. All the prosecution witnesses, including PWs 1-4 lead evidence supporting such claim which was not shaken in cross-examination. Specifically PW2, father of deceased victim in evidence stated, “মেয়ে মরার ২ দিন আগে আমার মেয়ে আমাকে খবর দিয়ে নিয়ে গিয়েছিল এবং বলেছিল যে, তাহারা পুনরায় ২০,০০০/- দাবী করিতেছে। ঐ দিন আমি যাওয়ার পর মেয়ে যৌতুক দাবীর কথা বলে এবং আসামী সুরুজ আলী আমার কাছে সরাসরি আরও ২০,০০০/- যৌতুক দাবী করে। আমি বলি যে, একবার জমি বিক্রি করে টাকা দিয়াছি, এখন দিতে পারবো না, পরে দেখা যাবে বলে আমি বাড়ীতে ফিরিয়া আসি।” This positive assertion was not shaken in cross-examination. Therefore, we hold that the prosecution proved the charge under section 11(Ka) Ain against the condemned-prisoner beyond reasonable doubt. The prosecution proved that the condemned-prisoner killed the victim by smothering for non-fulfillment of demand of dowry of Taka 20,000/-. Therefore, the principle of the cases as referred to by the learned Advocate for the condemned-prisoner shall not apply in the case in hand.

We find that the condemned-prisoner was arrested on 06.05.2004 and was granted bail on 21.01.2007, *i.e.*, after 2 years and 8 months. He has been in condemned-cell from 25.04.2019, *i.e.*, for more than 7 years 4 months and was in jail for 2 years and 8 months during trial. The aforesaid fact of his remaining in jail and in the condemned-cell appears to us is a mitigating circumstance to commute his sentence of death because the condemned-prisoner is not a hardened criminal and the killing was not in a cruel and unusual manner [reliance placed on *Nalu vs. the State*, 17 BLC (AD) 204]. As per the provisions of section 11(Ka) of the Ain, 2000 as it was, the only sentence of death was prescribed for committing murder on demand of dowry but the provisions of law has been amended on 25<sup>th</sup> March, 2025 and section 11(Ka) was replaced as under-

“মৃত্যু ঘটানোর জন্য মৃত্যুদণ্ড বা যাবজ্জীবন সশ্রম কারাদণ্ডে দণ্ডনীয় হইবে এবং উক্ত দণ্ডের অতিরিক্ত অর্থ দণ্ডে দণ্ডনীয় হইবে।”

Since the reference and the appeals are pending before this Court and it is a continuation of the original trial, the amended provision of law shall apply in the present case.

Considering the period of custody of the condemned-prisoner and that he remained in the death-cell for more than 7 years, we are inclined to commute his sentence of death to imprisonment for life with fine prescribed by the Tribunal.

In view of the discussion made hereinabove, the reference is rejected. The criminal appeal is dismissed but the sentence of death awarded upon the condemned-prisoner is commuted to imprisonment for life with fine. The condemned-prisoner will get the aid of section 35A of the Code of Criminal Procedure in calculating his sentence. The jail appeal is accordingly disposed of.

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

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

K.M. Rasheduzzaman Raja, J.

I agree.