

Present:

Mr. Justice S.M. Emdadul Hoque
and
Mr. Justice Bishmadev Chakrabortty

Death Reference No.20 of 2015.

The State

..... Petitioner

-Versus-

Uzzal Kumar Sutrodhar (absconding).

.....Condemned-convict.

Mr. Md. Mozammel Hoque (Rana), D.A.G with

Mr. Raja Kamrul Islam, A.A.G.

Mr. Kazi Bashir Ahmed, A.A.G.

Mr. Md. Ruhul Amin, A.A.G.

Ms. Sabina Perven, A.A.G. and

Mr. Zahid Ahammad, A.A.G.

.....for the State.

Mr. Rafiqul Islam (Sohel), Advocate

.....for the State Defence Lawyer.

Heard on: 08.10.2020, 11.10.2020 & 10.10.2020 and
Judgment on: 22.10.2020.

S.M. Emdadul Hoque, J:

This death reference under Section 374 of the Code of Criminal Procedure has been made by the learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Kishoreganj for confirmation of sentence of death of condemned-convict Uzzal

Kumar Sutrodhar son of Suraj Kanti Sutrodhar (absconding) convicted under Section 11 (ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000, and sentenced to death and also sentenced to pay a fine of Tk. 50,000/- which should be paid to the parents of the victim and if the amounts of fine could not be recovered from the States of the condemned-convict the same may be recovered from the heirs of the condemned-convict who enjoy the benefit from the same and obtained the property of the condemned-convict in Nari-O-Shishu Case No. 66 of 2003 arising out of Karimgonj Police Station Case No. 9(7)02 corresponding to G.R. No. 328(2)02. The Tribunal acquitted another co-accused namely Gita Rani Sutrodhar the mother of the condemned-convict.

The prosecution case as made out by the P.W.1 the informant, is that, the victim Moni Rani Modok was his sister and the occurrence took place at about 11:00 PM on 10.07.2002. The marriage of victim Moni Rani Modok with the condemned-convict had been solemnized under Hindu scripture before four years of the occurrence and two sons were born during their wedlock. The further case is that the

quarrel was happened occasionally between victim and condemned-convict and also with the parents of the condemned-convict for dowry and they paid money in several occasions. On the date of occurrence he was informed by one unknown person over Mobile phone that the dead body of her sister was laying in the Karimgonj Hospital and accordingly they rushed to the said Hospital and saw the dead body and found several injuries on the person of the victim and dead body was sent to the morgue.

Further case as per Ejaher is that before filing this case a UD Case being No. 5 dated 11.07.2002 was started which was filed by the Upazilla Health and Family Planning Officer, Karimgonj and the Sub-Inspector Md. Salimuzzaman of Karimgonj Police Station was entrusted to investigate the said matter, who conducted the inquest of the deceased, prepared the inquest report and sent the corpse to the Morgue for autopsy and after completing all the formalities found that which is not a suicidal case but a case of Murder and the death was due to asphyxia as a result of strangulation and accordingly submitted final report and started this case as

Karimgonj Police Station Case No. 9(7)02 dated 21.07.2002 under section 11 (ka)/30 of the Nari-O-Shishu Nirjatan Daman Ain.

The case was investigated by a Sub-Inspector namely Md. Salimuzzaman of Karimgonj Police Station who visited the place of occurrence, examined the witnesses and recorded their statements under section 161 of the Code of Criminal Procedure, prepared the sketch map along with index, seized some Alamats, and also considering the post mortem report which was held under U.D. Case NO. 5 of 2002 found prima-facie case against the condemned-convict and his mother namely, Gita Rani Sutrodhar, thereafter, submitted charge-sheet being No.158 dated 16.11.2002 against them under section 11 (ka)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000, read with section 201 of the Panel Code.

The case record came to the file of the learned Nari-O-Shishu Nirjatan Daman Tribunal, Kishoreganj and renumbered as Nari-O-Shishu Case No. 66 of 2003. The Tribunal took cognizance and thereafter framed charge against the accused-

persons under Section 11 (ka)/30 of the Nari-O-Shishu Nirjatan Daman Ain, 2000 which was read over to the accused who was on the dock who pleaded not guilty and claimed to be tried but could not be read over to the condemned-convict (since absconding).

At the trial the prosecution examined as many as 14 witnesses as P.Ws among 16 charge sheeted witnesses. But the defence examined none.

After conclusion of the trial the accused who was on the dock was examined under Section 342 of the Code of Criminal procedure which she claimed her innocence again.

The convict (since absconding) did not face the trial. But he was represented by the State Defence Lawyer.

The defence case as could be gathered from the trend of cross examination of the prosecution witnesses is total denial of the prosecution case and that the condemned-convict is not at all involved in the alleged offence and victim committed suicide by hanging herself nearby a tree of the house of convict

and this is purely a suicidal case and he was not present in his house and he was at his work place, Dhaka.

The trial court after consideration of the evidence on record found condemned-convict Uzzal Kumar Sutrodhar (absconding) guilty of the charge leveled against him and convicting and sentencing him accordingly by its judgment and order dated 04.03.2015 and sent the matter before this court under Section 374 of the Code of Criminal Procedure for confirmation of the sentence of death.

Ms. Sabina Perven, the learned Assistant Attorney General, takes us through the main material facts of the case such as Ejahar, charge-sheet, charge, deposition of the witnesses, inquest report, the postmortem report, the seizure-list, the examination of the co-accused under Section 342 and the impugned judgment of the trial Court.

Mr. Md. Mozammel Hoque, the learned Deputy Attorney General submits that the prosecution succeed to prove the charge leveled against the condemned-convict beyond all reasonable doubt and the Tribunal rightly passed

the impugned judgment. He further submits that this is a wife killing case and from the Ejahar to deposition of the witnesses the prosecution specifically mentioned that the convict Uzzal Kumar Sutrodhar with the help of his mother the another accused killed his sister Moni Rani Modok at the house of the convict for dowry and no denial about the same. He further submits that P.W.1 was informed the matter from an unknown person over Mobile phone on the following morning that the dead body of his sister was lying in the Karimganj Hospital and accordingly he along with the witnesses rushed to the hospital and found the dead body of his sister with neck injury and also several injuries found on the person of the deceased and it is the case of the prosecution that the condemned-convict killed his wife for dowry and prosecution succeed to prove the same. He further submits that though initially the accused sides succeed to start a suicidal case claiming that which was happened by the victim who hanged herself and accordingly a U.D. case was started but ultimately the investigation officer after obtaining the post mortem report confirmed that this is not a suicidal case but a case of murder. He further submits

that the doctor P.W.11 who held the autopsy of the corpse found injuries on the person of the victim and finally given opinion that the death was due to asphyxia as a result of strangulation and which was ante-mortem and homicidal in nature and the defence cross examined the said witness but could not find anything contrary to his evidence so, it is clearly proved that the accused killed the deceased.

He further submits that it is well settled principle that the absconsion of the accused from the date of occurrence who never faced the trial proves the guilt of the accused. In support of his argument he referred the decision of the case of Yasin Rahman @ Rahman Yasin @ Titu -versus- The State, reported in 19 BLC (AD)-8 and the case of Mobarak Hossain -versus- The State reported in 1 BLD(HCD)-286.

The learned Deputy Attorney General in referring the decision of the case of Gourango Kumar Saha- versus- The State, reported in 2 BLC (AD)-126, submits that it is the duty of the husband to explain how his wife died in the room of him. He further submits that not only the informant and their relatives but the evidence from the neighbors of the accused it

is clear that the accused was present in the house at the relevant time and since then he was absconding in such circumstances no doubt that the accused is liable for killing of his wife. He further submits that in the instant case the circumstantial evidence is so strong that the convict cannot be escaped from the charge of murder for dowry since the convict was an employee of a shop in Dhaka and from where he had stolen huge amounts of money and for which he claimed dowry from the informant so, the case of dowry is proved.

He referred the decision of the case of The State -versus- Md. Shafiqul Islam alias Rafique and another, reported in 43 DLR (AD)-92 and submits that there could be no eye witness of the occurrence, apart from inmates of the house who may refuse to tell the truth, the neighbours may not also come forward to depose, the prosecution is, therefore, necessarily to rely on circumstantial evidence and in the instant case though no eye witness but the P.W.9 and P.W.10 the neighbours of the convict supported the case that they heard sound and scream of the victim and at the relevant time the convict was

present in the house, so, it can safely be said that the convict is liable for committing murder.

He further submits that in wife killing case when a wife met with an unnatural death while in custody of the husband and also while in his house the husband is to explain under what circumstance the wife met with her death. He further submits that considering the evidence on record and the aforesaid decisions of our apex court it is clear that the prosecution succeed to prove every chain of circumstances, since the inmates of the accused support the case of the prosecution that wife was in the house of the convict on the said night and accused was also present in the house and he is all along absconding in such circumstances of the facts no further specific evidence could be brought to prove the charge and as such the Tribunal rightly found the convict guilty of the charge leveled against him. In support he cited the decision of the case of Ilias Hussain (MDd.) –versus- the State, reported in 54 DLR(AD)-78. He prayed for accepting the Reference on upholding the death sentence.

On the contrary Mr. Rafiqul Islam (Sohel), the learned State Defence Lawyer submits that the prosecution measurably failed to prove the case of dowry since none of the dis-interested witness disclosed that due to dowry accused killed the deceased. He further submits that during the wedlock of the convict and victim two children (son) were born and their conjugal life was running peacefully in such circumstances of the facts no question of dowry in the instant case and same has not been proved since the interested witnesses, the close relation of the deceased always deposed in an obligatory nature which should be closely scrutinized. He further submits that in the F.I.R. it has been stated that deceased went to the house of her father on 15.06.2002 and the prosecution case is that the defence side sent a letter through one Montu requesting her to return back since one of the brother who was an army personnel came to the house and desire to see her sister-in-law but said Montu has not been examined, even the said letter has also not been exhibited, so, it is clear that the deceased was in the house of her father at the relevant time.

He further submits that the delay of lodging the F.I.R. has not been properly explained and lodging the Ejahar after a long day of the occurrence there is a probability of falsely implication of the accused in the instant case.

But on perusal of the facts we found that immediately after the occurrence the Upazilla Health and Family Planning Officer initiated a U.D. Case being No. 5 of 2002 on 11.07.2002 and it was investigated by present I.O. and who after obtaining the post mortem report and examining all the witnesses found that this is not a suicidal case but purely it is a case of murder even he found several injuries on the person of the deceased, furthermore, this matter has also been stated in the F.I.R. wherein the reason of delay in filing the F.I.R. has sufficiently been explained. So, it is our view that the delay in lodging the F.I.R. has been properly explained.

Mr. Rafiqul Islam Sohel further submits that none of the witness disclosed that the convict claimed dowry except the P.W.1 and P.W.2 who were the full brothers of the victim and the P.W. 5 and P.W.6 are the parents of the victim and in our society usually the close relation of the victim always deposed

in an obligatory nature so, their evidence should be discarded. He further submits that the witnesses all are the hearsay witness and none disclosed that the accused killed his wife, even it is found that initially a U.D. Case was started and mother of convict was present in the Hospital with the dead body and she was also one of the witness of the inquest report but subsequently the prosecution side implicated her as accused, as such it may be presumed that the deceased committed suicide by hanging herself nearly a tree of the house of the convict. He further submits that none of the witnesses disclosed that the accused was present in his house at the relevant time so, it can be presumed that the accused had no involvement to kill his wife as such the prosecution failed to prove the charge leveled against the convict beyond all shadow of doubt.

He further submits that P.W.4 is the cousin (maternal) of the deceased but he did not disclose that due to dowry the accused killed his wife even the P.W.7 to P.W.10, P.W.12 and P.W.13 also did not disclose that due to dowry the accused killed his wife in such a case it can safely be said that the

incident was not happened due to dowry in such circumstances of the facts his alternative submission is that this court may send the case for remand to the trial court for trial afresh altering the charge into 302 of the Penal Code instead of section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000. He prayed for rejection of the death reference and setting-aside the conviction and sentence of the condemned-convict.

To consider the case let us discuss the evidence of the prosecution witnesses.

P.W.1 Uttam Kumar Modok, is the informant and brother of deceased Moni Rani Modok deposed that the occurrence took place on 10.07.2002 from 11:00 PM to any time of the said night. The marriage was solemnized between the victim and accused- Uzzal Kumar Sutrodhar before four years of the occurrence and two sons were born during their wedlock. He deposed that in several time quarrel was happened between the victim and the accused as well as with the parents of the accused and they claimed dowry and times

they paid some amounts of money in different times and on the date of occurrence at morning he received a Mobile call from an unknown person that the dead body of his sister was laying in the Karimganj hospital and accordingly along with the witnesses he went to the hospital and found several injuries on the person of the victim and subsequently he lodged the Ejahar. He proved the Ejahar and his signature therein as Exhibit-1 and 1/1 respectively. He identified the accused Gita Rani Sutradhor on the dock.

The absconding accused had been represented by the State defence lawyer.

In cross examination of the of the State Defence Lawyer this witness stated that he heard the news on 11.07.2002 at 7:00 or 7:30 AM and went to the house of the accused with some witnesses but could not found anyone in the said house. He further stated that doctor informed him that the victim died at night at about 11:00 PM and he did not find any injury in the neck. He denied the defence suggestions that he had no knowledge whether Uzzal Kumar Sutrodhar was arrested

under section 54 of the Code of Criminal Procedure. He denied the suggestions that accused did not beat his sister or kill her and also denied the suggestions that victim committed suicide and she hanged herself. He denied the suggestions that on suspicion he implicated the accused in the instant case and the accused Uzzal Kumar Sutrodhar is not liable to kill his sister.

P.W.2 Chandon Kumar Modok another brother of the victim deposed that the date of occurrence on 10.07.2002 and at about 5:00 A.M. he was informed that the dead body of his sister was laying in the Karimgang Hospital and accordingly he along with some witnesses went to the Hospital at about 8:30-8:45 AM and saw the dead body and dead body was sent to Kishoregonj hospital at about 12:00 PM and he found a spot on the jaw, the right hand of the victim was broken and found pressurized injury of the neck and also found several injuries on the person of the deceased. He is also a witness of the inquest report and his signature present in column 4 of the inquest report. He proved the said inquest report and his signature therein as Exhibit 2 and 2/1 respectively. He deposed that his elder brother lodged the Ejahar.

In cross examination of the State defence lawyer he stated that his elder brother went Karimganj hospital before him. He stated that it is based on conjecture that Uzzal Kumar Sutrodhar injured his sister. He denied the suggestion that accused did not kill his sister. He stated that before this incident no case was filed for violent behavior to victim by the accused.

P.W.3 Abdus Salam, one of the neighbor of the informant deposed that the date of occurrence on 11.07.2002 and the case was filed on 17.07.2002 and hearing the dead news he went to Karimganj Hospital and saw the dead body and found injury in the neck and it was informed that accused Uzzal Kumar Sutrodhar killed the victim for dowry.

In cross-examination of the accused (absconding) he stated that he saw deceased Moni Rani Modok while she was alive and he is the neighbour of the informant and the father of the victim brought him at Karimganj Hospital and saw two pressed injury nearby ear. He also stated that he was not the witness of the incident.

P.W.4 Bhojon Chandra Modok, cousin (maternal) of the victim deposed that the incident took place on 10.07.2002 and he was informed by the informant that the condemned-convict killed his sister Moni Rani Modok and accordingly they went there and found the dead body and the people who were present there disclosed that Uzzal Kumar Sutrodhar killed the victim.

In cross-examination of the accused (absconding) this witness disclosed that informant was his cousin (maternal) and they are the neighbor. He stated that Uttom Kumar disclosed to him that his sister was killed at 10:00 PM on 10.07.2002 but none was present when he heard the matter and it is not true that informant did not disclose to him anything and he deposed falsely on the request of his brother.

P.W.5 Sunil Chandra Modok the father of the victim deposed that the occurrence took place on 10.07.2002 within 11:00 PM after evening and the accused claimed dowry of Tk. 48,000/- and father of convict also came to his house for dowry. He deposed that on 15.06.2002 victim returned back to

his house with her two children and disclosed that she was beaten by the convict for money. He deposed that mother-in-law of victim came to his house to bring the victim and his daughter went to the said house on 27.06.2002. He deposed that on 10.07.2002 the accused killed his daughter for dowry and he lost his sense on hearing the dead news. He saw the dead body of his daughter and found pressed injury on the neck and also found that her left hand was broken.

In cross-examination of the accused (absconding) he stated that one Mithu informed the matter to him. He stated that he was not informed the matter on the following day. He saw the dead body at the time of funeral and the dead body was brought to the Crematorium through wheelbarrow. He denied the defence suggestions that it is not true that the accused did not beat his daughter for dowry.

P.W.6 Gita Rani Modak, mother of the victim deposed that the occurrence took place on 10.07.2002 between 7:00 PM to 11:00 PM. She deposed that accused beat her daughter for dowry and on the date of occurrence the victim was also

beaten by the accused for dowry and for which she succumbed to her injuries. She deposed that her two sons went to the house of accused but none was present in the said house. She further deposed that the dead body was lying in the Hospital. She deposed that her son brought the dead body to the Hospital for post mortem with the help of police. She deposed that thereafter the dead body of her daughter brought to Hosenpur crematorium and she found pressed injury on the hand and neck of the victim.

In cross-examination of the accused (absconding) she stated that her husband was also present when she saw the dead body and local people also present there but she could not disclose their name. She stated that she had no knowledge how the dead body was brought to crematorium from Kishoregonj. She stated that her daughter used to live her conjugal life with the accused for 7/8 years and no case was filed for dowry within that period. This witness denied the defence suggestions that her daughter committed suicide and convict did not kill her for dowry.

P.W.7 Abdul Ali one of the neighbor of the informant deposed that the occurrence took place on 10.07.2002 and on hearing the dead news they went to Karimganj Hospital. He came to know that Moni Rani Modok was killed by the accused and he did not see anyone of the house of the accused and saw several injuries in the neck and other part of the dead body.

He was declined to cross-examine by the accused (absconding).

P.W.8 Ratan Kumar Saha, a neighbour of the informant corroborated the date and time of incident and deposed that on the following morning while he awake up from sleep came to know that the victim was admitted at Karimganj Hospital and he along with Uttam Chandan and others went to Karimganj Hospital and saw several injuries on the person of the deceased and thereafter they went to the house of the accused but did not find anyone in the said house. He deposed that again they went to the Hospital and informant disclosed that before the incident due to dowry quarrel was happened

between the victim and accused in several dates and the accused beat her and the informant paid some money. He further deposed that accused Uzzal Kumar Sutrodhar was an employee of a shop in Dhaka and he had stolen some money from the said shop and for that reason he pressurized the victim for bring the said amount of money but victim denied as such he regularly beat her and for that reason Moni Rani was killed and the informant lodged the Ejahar and funeral was held at the house of the father of the deceased.

In cross-examination of the accused (absconding) this witness stated that he did not go to the house of the accused and he did not see the accused before the occurrence. The accused did a job in Dhaka. He had no knowledge about the distance of the house of the accused from the Hospital. He stated that he had no knowledge how the dead body was brought to the Hospital from the house of the accused. The Morgue of Kishoreganj is about 10 K.M. from Karimganj Hospital. He stated that he had no knowledge whether accused Uzzal is liable for murder or not.

P.W.9 Ranjan Kumar Sutradhor, a relative as well as neighbour of accused Uzzal Kumar deposed that while he came to house heard the dead news of Moni Rani Modok and he was also informed that quarrel was happened between the victim and accused and came to know that the dead body was sent to the hospital. He deposed that he could not see the dead body due to muss gathering and on the following day on hearing the incident the inmates of the informant came to the house of the accused and thereafter dead body was sent to Kishoregonj hospital for post mortem and thereafter brought to the house of the father of the victim for funeral.

In cross examination of the accused (absconding) this witness stated that his house is adjacent to the house of accused and he met with accused at evening and accused Uzzal Kumar Sutrodhar did a job in Dhaka. He deposed that he saw the accused from 200 yards of the house of accused wherein 4/5 persons namely Nibaran, Omrito, Dulal were present. In cross examination of the defence he stated that he did not see accused Uzzal after the occurrence. He denied the

defence suggestions that he did not meet with Uzzal at the evening before the incident.

P.W. 10 Rita Rani Sutradhor, one of the neighbor of the accused and wife of P.W.9 deposed that their house is adjacent to the house of accused. She deposed that on the evening she heard sound of quarrel from the house of accused and also heard screaming and hue and cry and came to know that Moni Rani was brought to hospital and on the way to Hospital victim died and she did not see the dead body of the deceased.

In cross-examination of the accused (absconding) this witness stated that her house is adjacent to the house of the accused and she found sound of quarrel from the house of accused at about 9:00 or 9:30 PM and accused Uzzal Kumar Sutrodhar did a job in Dhaka and she saw Uzzal Kumar Sutrodhar before the incident and did not see the dead body of deceased and stated that at the time of occurrence Uzzal was present in the house. She denied the defence suggestion

that accused Uzzal was not present in his house at the relevant time.

P.W.11 Doctor Mohammad Ali, deposed that on 11.07.2002 he held the autopsy of the corpse of victim Moni Rani Modok and dead body was brought to the Morgue by Constable No. 866 namely Arun Chandra and on his identification he held the autopsy and found the following injuries: "(I) Three abrasion-one over the left sub-mendibular region of neck (1"x ½"). Two at the back of right Knee ½" x ½" etc.

(II) Multiple bruises at different part of the body-one out sub-mendibular region of Neck (right side $\frac{2}{3}$ " x ½"); One lateral aspect of right thigh ½" x ½, One back of left leg ½x ½", Two medial aspect of right arm, One medial aspect of Rt. elbow, Four medial aspect of left arm, three left fore arm. One right side of occipital region, one Lt. side of occipital region.

On desection: Echymosis and extravasated clotted blood present in and around the injuries.

And made opinion that: “the death was due to asphyxia as a result of strangulation which was ante-mortem and homicidal in nature.”

In cross-examination of the accused (absconding) this witness stated that due to two injuries the victim died and for the cause of asphyxia. He denied the defence suggestion that it is not true that he did not mention the actual cause of death and found the nature of injury as homicidal after autopsy. He stated that post mortem report was prepared by three doctors and in the report all the explanation has given. He denied that it is not true that time of death has not been mentioned and the injuries is not ante-mortem. He denied the suggestion that their report is not proper and true.

P.W.12 Abdur Razzak, one of the neighbor of the accused deposed that the date of occurrence was on 10.07.2002 and he was not present in the house on the said day. On the following day at about 8/9 AM he went to the house of the accused but could not find the dead body and he went to the Hospital along with Choikider namely Porimal but

did not find the dead body in the hospital since the dead body was sent to Kishoreganj Hospital. He deposed that the police officer seized the Shari, Petty cot and Blauz of the deceased and prepared the seizure list and he put his signature. He proved the said seizure list and his signature therein as Exhibit-4 and 4/1 respectively. He identified the seized Alamats as Exhibit No. I, II, and III.

In cross-examination of the accused (absconding) this witness stated that he was not present at the time of preparation of inquest report.

P.W.13 Shree Porimal Chandra Debnath, one of the neighbor of the accused also deposed that the occurrence took place on 10.07.2002 and on the next day while he was taking tea in a tea stole he came to know from some unknown person that the wife of Uzzal Kumar Sutrodhar committed suicide by hanged herself. He put his signature in the inquest report. The police officer seized one Shari, One Blouz and one Petty cot and he proved his signature present in the seizure list as Exhibit-4/2.

The defence declined to cross-examine him.

P.W.14 Md. Salimuzzaman, Sub-Inspector of Netrokona Model Thana, the investigating officer of this case deposed that on 10.07.2002 he was attached at Karimganj Police Station and the Officer-in-charge Mr. Gopal Chakrabortty initiated U.D. case being No. 05 of 2002 and he was entrusted to investigate the same. He prepared the inquest report and also tried to understand the actual cause of murder and sent the dead body to Morgue. He proved his signature present in the inquest report prepared on 11.07.2002 as Exhibit- 2/2. He deposed that he found saliva in the nose of the deceased and found some injuries in the right jaw, some injuries in the below of jaw both right and left side and one injury in the abdomen. He also found injuries under the left thigh. He further deposed that on examining the inquest report, post mortem report and the initial investigation of the case he found that which is not a suicidal case but a case of murder and accordingly arrested accused Shurja Kanto and Gita Rani under section 54 of the code of criminal procedure and sent them to the court on 18.07.2002 and thereafter Uttam Kumar Modok lodged the

Ejaha on 21.07.2002. He deposed that he was also entrusted to investigate the case and accordingly went to the place of occurrence, prepared the sketch map along with index. He proved the said sketch map, index and his signatures present there as Exhibit- 5 and 5/1, 6 and 6/1 respectively. He deposed that he seized some items such as a yellow color Shari, a red color blazer and a red color petty cot and prepared the seizure list. He proved his signature present in the seizure list as Exhibit-4/3. He examined the witnesses and recorded their statements under section 161 of the code of criminal procedure and after completing all the formalities found prima-facie case against the accused-persons and accordingly submitted the charge sheet.

In cross-examination of the accused (absconding) this witness stated that in his investigation he found no information about the bad character of victim Moni Rani Modok. Moni Rani died at about 11:50 PM on 10.07.2002 and he prepared the inquest report at 7:30 AM on 11.07.2002 and Karimganj Hospital authority disclosed to him that the dead body was taken in the Hospital but no information about the

time when the dead body was brought to the hospital and in the inquest report it has mentioned that the case of death is for hanging and which was disclosed by the people who were present there. He found injuries under the jaw. He stated that in his investigation he did not receive any information that the dead body was hanged in the tree. He did not examine the chairman and the local elite. He further stated that accused Uzzal Kumar Sutrodhar had stolen some money from a shop where he did job and the same has mentioned in the P,C,P,R. and accused is an absconder in the said case.

He denied the defence suggestion that the accused Uzzal was not present at his house at the time of commission of offence and it is not true that victim Moni Rani committed suicide. He also denied the defence suggestion that he submitted the false charge sheet hiding that the victim hanged herself and falsely started the case of murder.

These are all about the evidence on record as adduced by the prosecution.

We have heard the learned Deputy Attorney General, the State Defence Layer, perused the impugned judgment and order, the deposition of the prosecution witnesses and the papers and documents as available on the record.

Admittedly victim Moni Rani Modok died on 10.07.2002 after 10:00 O, clock at night. The body was brought to Karimganj Hospital and Doctor found the victim was dead. Thereafter on suspicion the doctor filed a U.D. Case being No. 05 of 2002 dated 21.07.2002 and sent the dead body to the Kishoregonj Morgue and after obtaining the post mortem report the investigation officer confirmed that which is not a suicidal case but a case of murder since doctor, P.W.11 found several injuries on the person of the victim Moni Rani Modok and opined that death was due to asphyxia as a result of strangulation which was ante-mortem and homicidal in nature.

We have already made opinion that the delay for lodging the Ejaher has sufficiently been explained.

The only question is whether the prosecution has been able to prove the charge leveled against the accused under section 11(ka) of the Nari-O-Shishu Nirjatan Daman Ain, 2000.

The prosecution claimed that the accused claimed dowry often and they also paid same amounts of money in different time. And on the date of occurrence the accused killed the victim due to dowry. In support the P.W.1 claimed that they paid some amount of dowry to the accused. The P.W.3 in his deposition also stated that: “যৌতুক এর জন্য গীতা রানী ও উজ্জল মারিয়াছে ভিকটিমকে।” P.W.5 the father of the victim and P.W.6 mother of the victim in their deposition also stated that the accused killed their daughter due to the dowry.

It also appears that from evidence of P.W.14 the investigation officer who in his report in U.D. case as well as in the charge sheet specifically mentioned that due to dowry the victim was killed by the convict. In the deposition the said witness did not disclose that due to dowry the victim was killed rather he stated that: “সুরতহাল রিপোর্ট, প্রাথমিক তদন্তে ঘটনাস্থল পরিদর্শন এবং ঘটনাস্থলের পারিপার্শ্বিকতায় অবস্থা দৃষ্টে ঘটনাটি একটি হত্যাজনিত ঘটনা বলিয়া প্রাথমিকভাবে প্রমাণিত হওয়ায় আসামি সূর্যকান্ত এবং গীতা রানীদেরকে ঘটনার সহিত জড়িত আছে সন্দেহে কার্যবিধির ৫৪ ধারায় গ্রেফতার করিয়া ১৮-০৭-২০০২ ইং তারিখ আদালতে প্রেরণ করি।” Even in cross-examination of the defence he stated that: “সুরতহাল রিপোর্টে সাক্ষীদের তথ্য মতে উল্লেখ করি ফাস নিয়ে

আত্মহত্যা করে।” But one stage he stated that: “মনি রানীকে গাছে বুলানো হয়েছে মর্মে তদন্তকালে আসে নাই।”

From the aforesaid facts of the case it is found that only the close relation of the victim such as, the informant, one of his cousin (P.W-4) and the parents of the victim (P.W-5 and 6) disclosed that due to dowry the convict killed his wife. The P.W.2 though a full brother of the victim did not mention that due to dowry the victim was killed. The other witnesses also did not disclose that due to dowry the accused killed the victim.

On close reading of the evidence of the prosecution witnesses it is found that only close relation of the victim disclosed that due to non-payment of dowry the victim was killed. But it has already been considered that other witnesses did not corroborate the said facts. In our society the close relation usually deposed in an obligatory nature. On consideration of the charge sheet it is found that the police officer after investigation of the U.D. case submitted report under section 174 of the Code of Criminal Procedure and opined that this is not a suicidal case.

The learned State Defence Lawyer Mr. Md. Rafiqueel Islam Sohel argued that the court may consider the facts since no reliable and independent witness deposed and the informant side failed to prove that they paid any shorts of amount of dowry in any specific date to the accused. So, his argument is that this court may send back the case on remand to the trial court for trial afresh altering the section under section 302 of the Penal Code instead of 11 (ka) of the Nari-O-Shishur Nirjatan Daman Ain, 2000.

It is found from the evidence on record that the accused was present in his house at the relevant time, since his inmate the P.W.9 and P.W.10 specifically stated that they heard scream/quarrel between the convict and victim before the occurrence. Furthermore, admittedly the mother of convict was present in the karimgonj hospital and she was also a witness of the inquest report, and she was in the hospital with the dead body before arrival of the informant and other witness. From the aforesaid facts it is our view that the victim died in the house of the convict and convict was present in his house at the time of commission of offence.

In the case of Gourango Kumar Saha- versus- The State, reported in 2 BLC (AD)-126, and the case of The State -versus- Md. Shafiqul Islam alias Rafique and another, reported in 43 DLR (AD)-92 and the case of Ilias Hussain (Md.) –versus- the State, reported in 54 DLR(AD)-78 and the case of Abdul Motaleb Howlader –versus- The State, reported in 21 DLR(AD)-27 and the case of The State –versus- Kalu Bepari, reported in 10 BLD (HC)-373 the principle settled that it is the duty of the husband to explain the entire situation since in the absence of any acceptable explanation as to how the wife died in the room of the husband the only irresistible and natural conclusion will be that it is the husband alone in the circumstances of the case of commission of murder of his wife should be explained.

It is also settled that in wife killing case there could be no eye witness of the occurrence, apart from inmates of the house of accused may refuse to tell the truth. The neighbours may not also come forward to depose. The prosecution is therefore, necessarily to rely on circumstantial evidence. In the instant case it is found from the evidence of P.W.9 and P.W.10

that they heard sound of quarrel between accused and victim from the house of accused at the time of commission of offence. Furthermore, the dead body was brought to Hospital from the house of accused and co-accused the mother of the convict was present there and she was also a witness of the inquest report.

From the aforesaid facts it is proved that the victim died on the house of the accused and dead body was brought to the Hospital from the house of accused. Having regards to the evidence it is our view that at the time of commission of offence the convict was present in his house wherein the victim died. In such circumstances of the facts the husband is liable to explain the circumstances how the wife met with her death. So, it may safely be said that in absence of any acceptable explanation as to how the wife died in the house of convict, the only natural calculation is that husband alone is guilty of committing murder of his wife.

In the case of Ilias Hussain (Md.) –versus- the State, reported in 54 DLR(AD)-78, wherein our Apex court held:
“When a wife met with an unnatural death while in custody of

the husband and also while in his house the husband is to explain under what circumstances the wife met with her death.”

In the instant case it is found that condemned-convict is all along absconding without facing trial which proves the guilt mind of the condemned-convict. In the case of Mobarak Hossain -versus- The State, reported in 1BLD(HCD)-1, wherein their lordship held: “Abscondence of the accused is a relevant fact unless the accused explain his conduct, abscondence may indicate guilt of the accused.” Similar view has been taken in the case of Yasin Rahman @ Rahman Yasin @ Titu –versus- The State reported in 19 BLC(AD)-8.

The alternative prayer of the learned State defence lawyer for sending back the case to the trial Court for trial afresh altering the Section in to 302 of the Penal Code instead of Section 11(ka) of Nari-O-Shishu Nirjatan Ain, 2000. Since the prosecution could not prove the case of dowry. He submits that now it is settled that if the charge of dowry has not been proved in such a case, the case should be sent to the trial Court for trial afresh under Section 302 of the Penal Code. In the

instate the convict is all along absconding without facing trial and in such a case the same may be a fruitless job.

Furthermore, our Apex court held A, Fugitive who has been running away from justice and having not challenged the verdict by preferring appeal he/she cannot take advantage of any mistake either procedural or otherwise.

In the case of The State –versus- Nrual Amin Baitha (absconding) and another, reported in 15ALR(AD)-151, wherein their lordships held: *“From the above discussions, it is clear that it would not be improper to send the case down to the appropriate court for framing charge under the appropriate provision of law and allow the accused person(s) to defend against such charge framed. But in this case, an exceptional circumstance appears which is, immediately after the commission of the offence the accused No. 1 (respondent No.1) is absconding and accused No. 2 (respondent No.2) after being arrested on 11.04.2005 and making statement under section 164 of the Criminal Procedure Code, was enlarged on bail from the lower court and since then she is also absconding and she did not appear from a single day before the court of*

law meaning both the accused persons are fugitive from justice. A fugitive, who has been running away from justice, without surrendering before the court of law in last 17 (seventeen) years and having not challenged the verdicts of either of the courts passed in absentia, by preferring appeal he/she cannot take advantage of any mistake either procedural or otherwise.”

Having considered the material facts of the case, the evidence on record and the impugned judgment and order we find that the prosecution successfully proved the charge leveled against the condemned-convict beyond all reasonable doubt and we find no reasons to interfere with the impugned judgment and order of conviction.

In the result, the death reference is accepted. The impugned judgment and order of conviction and sentence passed by the learned Judge, Nari-O-Shishu Nirjatan Daman, Tribunal, Kishoregonj in Nari-O-Shishu Case No. 66 of 2003 arising out of Karimgonj Police Station Case No. 9(7)02 corresponding to G.R. No. 328(2)02 is hereby upheld.

The learned Judge, Nari-O-Shishu Nirjatan Daman Tribunal, Kishoreganj is directed to secure the arrest of the condemned-convict Uzzal Kumar Sutrodhar (absconding) for execution of the death.

Communicate the judgment and the lower Court records at once.

Bhishmadev Chakraborty, J:

I agree.

M.R.