

Present:

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

Death Reference No.24 of 2015.

The State

..... Petitioner.

-Versus-

Md. Abu Bakar Siddique

..... Condemned-Prisoner.

with

Criminal Appeal No.2325 of 2015.

with

Jail Appeal Nos. 50, 52 and 54 of 2015.

Md. Abu Bakar Siddique and 2(two) others

.....Convict- appellants

-Versus-

The State

..... Respondent

with

Criminal Appeal No. 3560 of 2015.

with

Jail Appeal Nos.51 and 53 of 2015.

Younus Ali @ Innos Ali and another

..... Appellants

-Versus-

The State

..... Respondent

Ms. Kazi Shahanara Yeasmin, D.A.G. with
Mr. Zahid Ahammad (Hero), A.A.G. with
Mr. Kazi Bashir Ahmed, A.A.G. with
Ms. Sabina Perven, A.A.G with

Mr. Md. Shafiquzzaman (Rana), A.A.G with

..... for the State.

(In the reference and respondents of all the appeals)

Mr. Md. Zahangir Kabir, Advocate

..... For the appellant Nos. 1- 3

(In criminal appeal No.2325 of 2015 and Jail Appeal Nos. 50, 52 and 54 of 2015)

Mr. Md. Nurul Kabir, Advocate for
Ms. Zohura Khatoon, Advocate,

..... For the appellant No. 1 and 2.

(In criminal appeal No.3560 of 2015 and Jail Appeal Nos. 51 and 53 of 2015)

Heard on: 19.10.2020, 21.10.2020, 03.11.2020, 04.11.2020, 09.02.2021, 10.02.2021, 11.02.2021, 14.02.2021, 15.02.2021, 22.02.2021, 08.03.2021, 09.03.2021 and Judgment on: 18.03.2021.

S.M. Emdadul Hoque, J:

This death reference under Section 374 of the Code of Criminal Procedure has been made by the learned Additional Sessions Judge, Mymensingh for confirmation of the sentence of death imposed upon the convict-condemned-prisoner Md. Abu Bakar Siddique under Section 302/34 of the Penal Code in Sessions Case No. 90 of 2002 arising out of Muktagacha P.S. Case No. 5(2)/2000 corresponding to G.R. No. 104 (2) 2000 sentencing him to death. By the same judgment the trial court convicting the accused Yunus Ali alias Innos Ali, Hasen Ali and Idrish Ali under Section 302/34 of the Penal Code and sentencing them to suffer imprisonment for life and also to pay a fine of Tk.5,000/- each in default to suffer simple imprisonment

for 6 months more and the accused Jamiron was convicted under section 302/109 of the Penal Code and sentenced to suffer imprisonment for life and to pay a fine of Tk. 5,000/- in default to suffer simple imprisonment for 6 months more.

Thereafter, the condemned-prisoner Md. Abu Bakar Siddique, convict Idrish Ali and Jamiron jointly preferred Criminal Appeal No. 2325 of 2015 and the convict accused Younus Ali alias Innos Ali and Hasen Ali preferred Criminal Appeal No. 3560 of 2015.

The condemned prisoner Abu Bakar Siddique filed Jail Appeal No. 50 of 2015, convict-accused Idrish Ali filed Jail Appeal No. 52 of 2015, convict-accused Jamiron filed Jail Appeal No. 54 of 2015, convict-accused Hasen Ali filed Jail Appeal No. 55 of 2015 and convict-accused Younus Ali alias Innos Ali filed Jail Appeal No. 53 of 2015.

Since the aforesaid two appeals and five Jail Appeals arising out of the same judgment and heard analogously together with this death reference and disposed of by this single judgment.

At the time of hearing of the death reference it has been reported by the learned Deputy Attorney General as well as the learned Advocate of Criminal Appeal No. 2325 of 2015 Mr. Md. Zahangir Kabir that convict-accused the Appellant No. 1 Younus Ali alias Innos Ali in Criminal Appeal No. 3560 of 2015 died in the jail custody and in support the learned Deputy Attorney General filed death certificate of the deceased issued by the Mymensingh Jail authority that the convict-appellant Younus Ali died on 15.02.2021 consequently the criminal appeal No. 3560 of 2015 so far as relates to the convict-appellant Younus Ali and Jail Appeal No. 53 of 2015 were made abated provided under section 431 of the Code of Criminal Procedure by the order of this court dated 02.03.2001.

The prosecution case as made out by the P.W.1 the informant Joynul Abedin elder brother of the victim Jostna Begum in short, is that victim Jostna Begum was married to condemned-prisoner Md. Abu Bakar Siddique before 8/10 years from the date of occurrence and one daughter namely Shiltha was born during their wedlock. The condemned-prisoner Md. Abu Bakar Siddique again took

2nd wife before 2/3 years from the date of occurrence and for which they had altercation on this point often. Sometime they went to the house of condemned-prisoner Md. Abu Bakar Siddique to resolve the said dispute. The informant went to sleep after having his dinner on 19.02.2000. On the next day at about 5:00 AM accused Jamiran the mother of the condemned-prisoner Md. Abu Bakar Siddique came to his house and told him that his sister was missing. Thereafter on searching they found the bleeding death body near 400 yards from his house under the bamboo tree in the family graveyard, her hands were tied up behind her back and her eyes were fastened and contained with several sharp cutting injuries on the person of the victim. The informant suspected condemned-prisoner Md. Abu Bakar Siddique and others for killing his sister. It was informed by one of the neighbour of convict namely Vanu the P.W.2 that at last night there was a quarrel with her husband along with her mother-in-law. Thereafter, he lodged the Ejahar with the Muktagacha Police Station being Muktagacha P.S. Case No. 5(2)/2000

under section 302/201/34 of the Penal Code. Hence the case.

The case was investigated by the P.W.10 Md. Aktaruzzaman Farazi, a Sub-inspector of Muktagacha Police Station who visited the place of occurrence, conducted the inquest of a dead body and prepared the inquest report, sent the dead body to the morgue for autopsy. Thereafter he visited the place of occurrence and prepared the sketch map along with index, prepared two seizure lists, examined the witnesses and recorded their statements under section 161 of the code of criminal procedure and also produced three witnesses before the Magistrate for recording their statements under section 164 of the Code of Criminal Procedure, arrested the accused-persons and after completing all the formalities of the investigation found prima-facie case against the accused-persons and submitted the charge sheet being No. 95 dated 20.08.2000 under section 302/201/34 of the Panel Code.

The case record ultimately transmitted to the learned Sessions Judge, Mymensingh, who took cognizance and sent the record to the Additional Sessions Judge,

Mymensingh for trial, who framed charge against the accused-persons under section 302/201/34 of the Penal Code, which was read over to them to which they pleaded not guilty and claimed to be tried.

The prosecution side examined as many as 14 (fourteen) witnesses out of 18 charge sheeted witnesses and P.W.6 on recalled also examined as P.W.15. But the defence examined none.

The trial court thereafter examined the condemned-prisoner as well as the accused persons under section 342 of the code of criminal procedure, which was read over to them to which they claimed their innocence again and they also submitted a series of papers and documents claiming that for bitter enmity the prosecution witnesses falsely implicated the accused persons in the instant case.

The defence case as could be gathered from the trend of cross examination of the prosecution witnesses and the examination and the documents submitted at the time of examination under section 342 is total denial of the prosecution case. Further case is that since the alleged eyewitness and the other witnesses had bitter enmity with

the accused persons and a series of criminal cases were pending against them and they were convicted and as such have possibility of falsely implication of the accuseds in the instant case. Further case of the condemned-prisoner Md. Abu Bakar Siddique was that on the said night he was not in his house and he was in the house of his relative at Muktagacha town and hearing the incident he came to the place of occurrence and since they were inimical to the appellant he was apprehended by them and ultimately handed over him to the police.

The trial court thereafter on consideration of the evidence on record found the accused persons guilty of the charge leveled against them and convicted them as aforesaid.

The trial court made this death reference under section 374 of the code of criminal procedure for confirmation of the death sentence of the condemned-prisoner Md. Abu Bakar Siddique along with the record. The condemned-prisoner along with other accused-persons also preferred two criminal appeals and filed separate five jail appeals.

Mr. Md. Zahangir Kabir the learned Advocate appeared in Criminal Appeal No. 2325 of 2015 filed by the condemned-prisoner Md. Abu Bakar Siddique and two appellants Jamiron and Idrish Ali.

Ms. Zohura Khatoon, the learned Advocate along with Mr. Md. Nurul Kabir, Advocate appeared in Criminal Appeal No. 3560 of 2015 filed by the two appellants Hasen Ali and Younus Ali alias Innos Ali.

Mr. Md. Zahid Ahammad Hero, the learned Assistant Attorney General takes us through the Ejahar, the charge, inquest report, post mortem report, seizure list, the evidence of the witnesses and the impugned judgment and other papers and documents as available on the record.

Ms. Kazi Shahanara Yesmin, the learned Deputy Attorney General submits that the trial court after proper consideration of the evidence on record found the appellants guilty of the charge leveled against them. She submits that immediately after the occurrence the informant the P.W.1 lodged the Ejahar and thereafter the police held the inquest of the dead body and prepared inquest report and sent the dead body to the morgue and

the doctor found several sharp cutting injuries on the person of the victim and the informant suspected that the husband of victim Md. Abu Bakar Siddique with the help of others may killed the victim and one of the neighbour of accused Md. Abu Bakar Siddique the P.W.2 namely Vanu initially disclosed to him that in the last night a quarrel was happened with the husband of the victim and the mother of the accused Abu Bakar also took part to beat the victim which clearly proves that the accused-persons committed the alleged offence. The learned Deputy Attorney General further submits that in the instant case the prosecution examined three eyewitnesses who saw the incident and they categorically stated that the accused-persons brought the victim in the place of occurrence from the house of condemned-prisoner Md. Abu Bakar Siddique and killed her with sharp cutting wopen such as Ramdao and a dagger and though the defence cross-examined them but could not find anything contrary to their evidence. She further submits that though the defence try to establish that a bitter enmity between the parties has been proved but only for that reason their evidence cannot be

disbelieved since the P.W.1-3 specifically stated the facts furthermore they were produced before the Magistrate who recorded their statements under section 164 of the Code of Criminal Procedure and they disclosed the details of the occurrence. She further submits that the trial court after elaborate discussions of the evidence on record took view that the accused-persons had committed the alleged offence. She submits that the appellant Jamiron the mother of condemned-prisoner Md. Abu Bakar Siddique also took part to commit the offence and on her instigation the alleged offence had been occurred and as such though she was not present at the time of killing but charge under section 34 is applicable against said Jamiran, furthermore, she was convicted under section 109 of the Penal Code.

She further submits that so far as in wife killing case now it is settled principle that the husband is to explain the entire situation how the wife died when she was in the custody of the husband and it is also proved by the evidence of P.W.1 and P.W.5 that about 5:00 AM the convict Jamiron came to their house and informed that the victim Jostna Begum was missing which clearly proves that

victim Jostna Begum was in the custody of her husband. She submits that though the defence try to prove that the condemned-prisoner Md. Abu Bakar Siddique was not in his house on the fateful night and he was in Muktagacha town but it is proved by the evidence of the prosecution witnesses that on the fateful night the victim was in the house of her husband and the defence case should not be sustained and the husband is liable to kill his wife and the trial court rightly passed the impugned judgment. In support of her argument the learned Deputy Attorney General referred the decisions reported in 2 BLC(AD)-126 and 43 DLR(AD)-92. She prayed for acceptance of the Death Reference and dismissal of the appeals.

On the contrary Mr. Md. Zahangir Kabir, the learned Advocate appearing on behalf of the condemned-prisoner Md. Abu Bakar Siddique and the convict-appellants Jamiron and Idrish Ali of Criminal Appeal No.2325 of 2015 submits that the prosecution miserably failed to prove their case by adducing sufficient evidence. He submits that no doubt the victim was killed on the fateful night and the dead body was found in the graveyard of the informant

and the informant lodged the Ejahar at 10:45 AM and the inquest was held at 12:00 PM but in the said Ejaher and inquest report the prosecution side did not specifically mention that the condemned-prisoner Md. Abu Bakar Siddique along with the other appellants killed the victim. He further submits that the F.I.R. was lodged at 10:45 AM and the alleged eyewitness the P.W.3 Jinnat Ali was also present at the time of lodging the F.I.R. but no specific allegation has been mentioned in the said Ejaher that the accused-persons killed the victim as he deposed, furthermore, the inquest report was held at 12:00 PM but no reflection in the said inquest report that the accused persons were involved with the alleged offence, so, it can safely be said that the accused-persons have falsely been implicated in the instant case and the subsequent case is nothing but manufactured one and it is clear that the prosecution failed to prove that the accused-persons had any involvement for the alleged murder. He further submits that the F.I.R. is the foundation of the prosecution case and subsequent embellishment from the F.I.R. story it became loss the credibility of the prosecution case and if

the F.I.R. story has been embellished the whole prosecution case shall be proved false. In support of his argument the learned Advocate referred the decisions, reported in 9 BLD (HCD)-358 and 14 BLD(HCD)-33.

His next argument is that the contradiction of the evidence of prosecution witnesses with the vital material facts of the case the prosecution case should be proved false, he referred the decision reported in 14 BLD(HCD)-221.

He further submits that admittedly a bitter enmity is proved between the parties and the vital witnesses all are the partisan witnesses and they were convicted in a case filed by the condemned-prisoner as well as the convict-accused Jomiran and their conduct, credibility and the character were relevant and this should be considered before accepting their evidence as true and in the instant case the P.W.2-4 though claimed eyewitness but their evidence should be closely scrutinized and there were several contradictions found from their evidence and as such their evidence cannot be considered at all even it is unsafe to convict the accused on the basis of their

questionable evidence. In support of his argument he referred the decisions reported in 12 BLD(HCD)-90, 16 BLD(HCD)-571, 6 BLC(HCD)-632, 15 BLD (AD)-54, 44 DLR (AD)-60.

He further submits that the P.W.3 as claimed eyewitness though stated that he could recognize the accused-persons through a torchlight but which was not seized even the said witness stated that the accused-persons chased him and he run away to his house and disclosed the matter to his five brothers, whereas his house is nearby the house of the informant even none of the brother of the said P.W.3 made witness to support the alleged case which creates serious doubt about his evidence.

He further submits that the P.W.4 though not a witness of occurrence but he deposed that he saw that the victim was taken away by the accused-persons and they chased him and he run away to his house but did not disclose the said matter to anyone, even when the dead body was found he went there and disclosed to all who were present there that on last night he saw that the

victim was taken away having on a cot by the accused-persons, but the dead body was found at 5:30 AM and F.I.R. was lodged at about 10:45 AM. Whereas no such reflection in the F.I.R. furthermore, he made statement before the Magistrate on 24.04.2000 mentioning the alleged incident but the said witness was examined by the police long after the date of occurrence and even the P.W.3 and P.W.4 were examined by the police on 12.07.2000 and before their examination by the police they were produced before the Magistrate for recording their 164 statements, so, there was possibility of falsely implication and may be subsequent manufactured one due to the previous enmity. He further submits that it is the Rule of prudence that the incriminating article should be brought to the notice of the accused while examining them under section 342 of the code of criminal procedure and in the instant case the incriminating articles were not brought to them which prejudiced the accused-persons. In support of his argument the learned Advocate referred the decisions reported in 54 DLR (AD)-61, 14 BLC (HCD)-252, 67 DLR (HCD)-429, 12 BLC (HCD)-76 and 17 BLC (HCD)-170.

He further submits that the trial court convicted the accused persons without considering the material evidence on record and in the instant case no evidence for committing murder by the condemned prisoner or by other accused-persons. He has prayed for rejection of the death reference and allowing the appeals.

Mr. Md. Nurul Kabir, for Ms. Johura Khatoon the learned Advocate adopted the submission made by the learned Advocate Mr. Md. Zahanagir Kabir and submits that the accused-appellant Hasen Ali was not at all involved in the alleged occurrence but the trial court failed to appreciate the facts of the case and illegally passed the impugned judgment convicting the accused-appellant Hasen Ali. He further submits that only the P.W.2 Vanu disclosed that at the fateful night the accused was sitting on the cot of Md. Abu Bakar Siddique and subsequently she saw that said accused was standing in front of her door. He further submits that though the P.W.3 deposed that he saw the said accused along with the other accused-persons when the victim was taken away towards the graveyard and also he caught hold the leg of victim when

Md. Abu Bakar Siddique dealt Randaw blow on the person of victim but he submits that the deposition of said P.W.3 on the evidence book wholly should be discarded since he stated the said facts in his deposition to the dock but he was present at the time of recovery of the dead body and also present at the time of lodging the F.I.R. and if the said statement is to be true then he must have disclosed the said matter at the time of recovery of the death body as well as at the time of lodging the Ejahar. He further submits that accused Hasen Ali was also a witness of inquest report and he was present when the inquest was held but did not disclose the said facts to the police officer which falsify his testimony trustworthy. He further submits that if Hasen Ali had any involvement with the incident it was impossible to present at the time of holding inquest and witness of the inquest as such the evidence of P.W.2, P.W.3 and P.W.4 should not be sustained and their evidence wholly after thought and concocted story since they were accused in the case filed by Hasen Ali and also Hasen Ali was a witness of the case filed by the condemned-prisoner Md. Abu Bakar Siddique and his

mother Jomiran and in the said case they were convicted, and admittedly a prolonged enmity between the parties is proved, furthermore, none of the family member was produced for supporting their evidence that they were went out in the said night and he returned back while the accused-persons chased him, in such a facts their evidence should be discarded and left out for consideration to prove the guilt of the accused but the trial court did not properly assess their evidence and wrongly convicted the accused-persons and as such the impugned judgment should be set-aside. He has prayed for allowing the Appeal.

Before considering the merit of the case let us discussed the evidence of the prosecution witnesses.

P.W.1 Md. Jaynal Abedin the informant of the case deposed that his sister Jostna was got married to accused Abu Bakar Siddique 8 to 10 years ago and a daughter namely Shiltha was born during their wedlock. He went to sleep after having his dinner on 19.02.2000 and about 5:00 A.M at dawn Jamiron, the mother of accused Abu Bakar, came to his house and informed his mother that Jostna was missing and on hearing the said news he called his

brother Hurmuz Ali. Then they along with other people searching her and later on found her dead body on the graveyard in the North-East corner of their house. Her hands were tied up behind her back and eyes were fastened with her wearing apparel. They found several injuries caused by sharp cutting weapon on her body. He suspected that the accused Abu Bakar killed her sister Jostna and left her body in the graveyard.

He further deposed that witness Vanu a neighbor of accused told him that at the said night Abu Bakar and Jamiron beat the victim with lathi. Abu Bakar also used to beat her earlier. Abu Bakar thereafter got married thrice or fourth. He heard from different person that Abu Bakar used to beat his wife. He rescued her often from her husband. Thereafter he went to the local Thana with his elder brother and Chairman and lodge the Ejahar. He proved the said Ejahar as Exhibit-1 he also proved his thumb impression.

In cross examination of the defence this witness told that Hurmuz was his cousin. He along with his mother, brother and sister name Dulal and Rahima and local people

searched for her. He saw the dead body of his sister at about 5:00 A.M. and screamed. Then Vanu, Salam and local matbors came to the place of occurrence and saw the dead body. Vanu, Jinnot Ali and Salam said that Abu Bakar killed his sister. He did not see the killing but Vanu, Jinnot and Salam saw the occurrence. They did not tell him when Jostna was killed. Vanu, Jostna and Salam had separate houses. Chairman Fazlul Haque and Jinnot Ali went to Thana with him. He denied that accused Abu Bakar filed case against the witnesses and there was dispute in between them regarding cutting of trees. The accused Abu Bakar had three wives at present. Two of them lived with him and one wife lived in Kalakanda. He denied that Jostna used to live in their house and there was a shalish to take back Jostna in her husband's house. Jostna was the first wife of accused Abu Bakar. After 2 or 3 years of the 1st marriage Abu Bakar got 2nd marriage. After his third marriage Jostna had quarrel with Abu Bakar. Accused Idris was the full brother of accused Abu Bakar and Hasen Ali was the friend of Siddique. He denied the defence

suggestion that they had disputes over property with the accused.

He admitted that he came to know that a case was filed by Abu Bakar against witnesses Zinnat, Vanu and Salam. But denied that they were convicted in the said case, also denied that on their instigation he filed this false case. He denied that before 10/15 days of the occurrence Salam, Taleb, Kuddus and Zinnat cut a tree of Abu Bakar for which a quarrel was happened and then they told that they would teach him. He denied that witness Salam and Vanu forcefully built separate two hut in the land of Siddique but he had no knowledge that any Salish was held for that dispute. He denied the suggestion that he along with Kuddus, Vanu, Zinnat and Salam killed the victim and started this false case. He admitted that in the F.I.R. the name of the informant was not written.

In cross-examination of accused Yunus this witness stated that Graveyard was in the east-west corner and about 500/600 cubits from the house of accused Abu Bakar and there were no house surrounding the house of Abu Bakar except field and also a canal in between their house

and house of Abu Bakar. He stated that at morning they were searching the victim then he talked with Salam, Vanu, Zinnat and others Matubbar of the village. He stated that he informed the matter to the U.P. Chairman and he also went to Thana with him.

In cross-examination of accused Idrish and Hosen this witness stated that accused Idrish and Abu Bakar were siblings and Hasan was the friend of Abu Bakar. It is not true that he worked with the advice of witnesses Salam and Zinnat. He searched the victim in several filed and witnesses Salam and Zinnat were not with him. He denied the suggestion that since Idrish and Hasan had enmity between Zinnat, Vanu and Salam for social as well as for property and as such he implicated them in this case.

P.W.2 Vanu Bibi deposed that the occurrence took place on 7th Falgun, Saturday at about 10 to 11 pm (2 years) before. Jostna had a quarrel with her husband and mother-in-law Jamiron. At that time she was in her house which was adjacent to the house of accused Siddique. She went to the house of Siddique hearing sound of Jostna and saw Yunus and Hashem Ali was sitting on the Chouki.

Joistna was laying on the floor and accused Jamiron was sitting on Jostna pressing her neck. Siddique was holding a dagger and standing near to Jostna. When she tried to resist then Yunus scolded her and drove her out. Idris was holding the child of Jostna. Then she returned to her house and went to bed. Jostna and Siddique both were cousins of her. In the said night she awake up to 1:00 am. On hearing the cry of the baby she get out from her room and saw accused Hashem and Idris were standing in front of her room. Jamiron ordered them to kill her in the same way as Jostna and thereafter she did not move forward and she saw that Yunus Ali and Siddique were carrying Jostna to the north. She deposed that she made statement before the court.

In her cross examination this witness said that she had five children. The house of Jinnot and Taher Ali were four hundred yards to the south from her house. The house of the informant was hundred yards to the north from her house.

Her husband was at Narayanganj on the night of occurrence. She did not come out from her house and did

not tell anybody about the occurrence. She informed the said facts to Hurmuz, Aziz Mridha and Joynuddin on the next morning at 7.00 A.M. This witness denied that she had dispute with accused Siddique regarding her house. She also denied that she worked in the house of Jinnot Ali who provided her tin for her making house.

Accused Siddique was his co-sharer and accused Idris lived in the same house. She had one room where she and her mother lived. She did not go to sleep in the night of occurrence and heard the quarrel at about 10 to 11:00 pm. She could not remember how long it continued. She returned to her room. She went to house of the informant at Fajar time and told the matter to the informant. Siddique's second wife left the house after a quarrel before 16 days of the occurrence. There was a Shalish about the quarrel in the house of accused before 2 or 3 days from the date of occurrence. The brother and uncle of Jostna attended the Shalish. Jostna did not go to her father's house after that Shalish. Jostna did not make noise when she was taken by the accused. She was covered with Katha. She did not find the accused after Azan. She denied that

she forcibly possessed the share of Siddique and Jamiron. She did not see blood inside the house. She did not watch Jostna to be injured. She denied that on the previous day she came to the court and not true that she came with Zinnat and since no transaction was made in the previous day she did not agree to depose. She denied that she did not go to the room of Siddique on hearing quarrel and Yunous was not sitting on the cot. She stated that she went to the house of Siddique after Adhan but could not find them. She denied that it was not true that Yunus was in the house of Siddique and Yunus threatened her. She stated that she did not see blood on the floor and did not make noise in the said night. She stated that she disclosed the matter to the U.P. Chairman and Shamsheer Member. She stated that she did not see that accused-persons injured the victim and nothing happened in the room and she did not see any occurrence and deposed falsely on influence by the informant.

P.W.3 Jinnat Ali deposed that the occurrence took place on 19.02.2000 at about 12 to 1 am. While he was watering in the irri field on the east of the graveyard he

saw in the moonlit that Abu Bakar Siddique and Yunus Ali were carrying Jostna towards the vita. Hasen Ali and Idris were behind them. He with the help of a torch saw the head of Jostna was on the shoulder of Siddique and her legs were on the shoulder of Yunus Ali. They set down her on the Viti and Siddique dealt a blow by a Ramdao on her shoulder. Then he made her body turned on the opposite and dealt blow on her nose and face. Yunus Ali dealt a dagger blow on her abdominal part. Hasen Ali and Iddris Ali were holding the leg of Jostna. He asked Siddique that if he killed Jostna then the accused chased him. He went to his house and found Jamiron in front of the house of Siddique with the baby of Jostna. Jamiron was holding a dao in her right hand. Jamiron chased him. He run away his house. Jostna was the wife of Siddique. Siddique had three other wives except Jostna. Siddique tortured his wives. Siddique set fire on his second wife. Siddique often beat Jostna. He indentified the accuseds on the dock.

In his cross-examination of the accused Jamiron and Abu Bakar stated that he had five brothers and all were present in their house on the said night and he disclosed

the details to them wherein his mother was also present. He stated that on the next morning at about 6:00 AM he described the facts to the informant and others but could not say their name. He did not go to the house of the informant but in the morning he went to the place of occurrence and found the informant, his brother, mother, son, cousin and Mojibor Rahman and disclosed the incident to them. Wherein Taher Ali, Younus Ali, Abdul Khaleque Munshi and others were also present. He did not go to the Thana along with informant. It was not true that he along with Chairman and informant went to Muktagacha Thana. He stated that he along with his brothers tried to go to the house of the informant on the said night but due to fear they refrained themselves to go out from house. He showed the torch light to the police but the police did not seize the same. His house is 500 yards from the place of occurrence and the house of the informant in between the same. He had cases regarding property against Siddique and Jamiron. He was acquitted from the High Court and released after six months from Jail custody. He had an irrigation scheme of 15 acres wherein

Akhtaruzzaman, Fazar Ali, Jabbar Ali, Khaleque Munshi, Sharfaruddin, Taher Ali, Abdul Quddus had land. Jostna did not make scream when she was carried away. She did not know if Jostna was dead at that time. He stayed half an hour at the place of occurrence. He saw the occurrence from 10 to 15 fetes. He saw that the accused-persons were passing over by the A B j (pathway) of the same land where he was watering. None except only him was there at that time. There were many trees in the graveyard. When he asked the accused about the killing of Jostna they chased him. He switched off the shallow machine and ran away to his house and discussed the matter with his brothers. He, Vannu and Salam deposed before the Magistrate. He denied that out of enmity with the accused he deposed falsely.

P.W.4 Abdus Salam deposed that the occurrence took place before two years on 7 Falgun, Saturday night at about 12 to 1 am. He was a day labourer. He was returning back his home from the house of another day labourer. When he was passing over the house of the accused Siddique he saw that accused Siddique, Yunus, Idris Ali,

Hasen and Jamiron were carrying the dead body of a lady covered by Katha. Siddique was holding the head of the dead body and Yunus holding the leg of the body. He asked Idris what they were carrying. Accused Jamiron ordered them to catch him then Idris and Hasen chased him and then he run away towards his house in fear. On the next day he heard hue and cry of Jostna's mother and went to the graveyard. He saw the dead body of Jostna. Jostna got injury in her nose, shoulder and abdominal part and her colon intestine was about to come out. There were other witnesses at the place of occurrence. He shared the occurrence with the witnesses.

In cross examination of accused Jamiran and Abu Bakar this witness said that he was a day labourer for 17 years. He went to the house of Joynal Abedin in the night of occurrence. He was coming from the house of Joynal of Bondogoalia. He shared what he saw in the night of occurrence with his wife only. He went the graveyard after hearing hue and cry on the next day and saw witness Vanu, mother of victim, Zinnat Ali, Harmuj Ali, Haji Akhteruzzaman Faraji, Aziz Faraji and disclosed the matter

to the informant what was happened in the last night. He again went to the place of occurrence while police came to the said place and police examined him. He told the same to others what he saw in the last night. He denied that he did not disclose to the police that accused Yunus and Abu Bakar were carrying a corpse. It is not true that he did not see the dead body at night.

In cross-examination of accused Yunus this witness stated that on that night at about 10:PM he went to the house of Joynal and took dinner and none of the labour went with him. He went there for consulting to go to Narayanganj for drizzling. The said night had cold weather but no fog. He saw the dead body at the courtyard of accused Siddique. At the morning on hearing sound he went to the place of occurrence and disclosed the incident to them who were present there. It is not true that he did not disclose to the magistrate and police officer that he disclosed the fact to others at morning. It is not true that witness Zinnat, Harmuj, Taleb, Mokbul, Taher, Fayzuddin and Sahabuddin were his cousin-brothers and they were convicted in the case filed by accused Jamiron.

In cross-examination of Idris and Hasan he stated that accused Idrish and Siddique were resided in the same house. He denied the suggestion that Idrish and Hasen did not chase him and did not see that they were carrying a dead body and he deposed falsely.

P.W.5 Mohammad Hurmuz Ali deposed that at about 5:00 A.M. in the morning on 20.02.2000 Jamiron, mother of accused Abu Bakar, came to his house and disclosed to the mother of the informant about the missing of victim Jostna. Thereafter they along with other people making search and found her dead body lying on the graveyard the north east corner of their house. Her hands were tied up behind her back and eyes were fastened with her wearing apparel and found several injuries caused by sharp cutting weapon on the person of the deceased and the intestines came out. The local people came there and witness Zinnat told that at about 1:00 AM of the said night the accused persons killed Jostna. Thereafter they went to the police station and informant Joynal Abedin lodged the Ejahar.

In cross-examination of the defence he stated that deceased Jostna was his cousin sister and witness Zinnat was his neighbour who told that accused persons killed Jostna at that time informant Joynal was also present. He denied the defence suggestion that witness Zinnat did not disclose that the accused persons killed Jostna in the last night.

In his cross examination he admitted that he was convicted in a case filed by accused Jamiron and they had long enmity with the accused party. He denied that he deposed falsely out of that enmity and he along with other witnesses falsely implicated the accused after committing murder of Jostna. The dead body was first seen by the informant. The witness Jinnot Ali informed them that he saw the occurrence. He denied the suggestion that he as a tout moved to the court for brokery about 20/25 years and harassing the local people and since they had long enmity with the accused persons he falsely implicated them in this case.

P.W.6 Dulal deposed that victim Jostna was her sister. At the morning the mother of accused Siddique

informed them that Jostna was missing. Then they found dead body of Jostna at the area of their graveyard. Her hands were tied up and body was covered by a Katha. He saw injury in her nose and body. Then his brother Joynal Abedin informed the matter to Thana and thereafter police came to the P.O. Accused Siddique got married victim Jostna and he had married twice after this marriage. He used to beat Jostna. Her sister got a baby girl. Vanu and other witnesses said that the accused Siddique, his mother Jamiron, Hashem and two others killed Jostna.

In cross-examination of the defence he stated that he did not see the killing and denied that Vanu did not state the name of any of the accused and when she disclosed the name of accused the local U.P. Chairman and Member were also present but could not memorize the name of said Chairman. He stated that there was a small canal for drainage of water in between his house and the house of accused Siddique. He denied that they killed Jostna and filed this false case against the accused to grab the property of the accused Siddique. He denied that they

took over the possession of the property of Siddique after this case.

He said that when the mother of Siddique informed that Jostna was missing they were making search for the victim while mother of the accused was also with them. When they made hue and cry the villagers including witness Vanu came to the place of occurrence. They told what they heard from people to the Police.

This witness also deposed as P.W.15 and stated that his sister Jostna died on 20.02.2002. The police examined the dead body and prepared the inquest report and he put his thumb impression on the inquest report. He proved the inquest report as Exhibit No. 5.

In his cross-examination he said that he does not know reading and writing and could not say what was written in the report. He put his thumb impression in the year 2000 and nothing was written in his presence.

P.W.7 Jabar Ali Seikh deposed that the occurrence took place on 19.02.2000 and accused Siddique, Yunus Ali, Hasen Ali and Jamiron killed the victim Jostna. Informant Joynal Abedin and witness Zinnat told the same to him.

In cross-examination of the defence this witness stated that the informant was his nephew and victim was his niece. He did not see who killed Jostna. The house of Jinnat was 7 to 8 yards away from his house. He was examined by the police but could not remember the date. He denied the defence suggestions that the character of his niece was not so good and someone else killed her.

P.W.8 Abdul Kuddus deposed that the occurrence took place at about 12 to 1 am on 20.02.2000. He went to the house of Jostna and saw several injuries on her person. Jostna's mother and other people told him that Jostna's husband Siddique, mother-in-law, brother-in-law Idris, Yunus and Hasem killed her together.

In cross-examination of the defence he said that he was examined by the police. He denied that he did not tell the police about the murder. He was an accused in a case filed by the mother of the accused. This witness denied that he deposed falsely out of enmity for that reason. The house of the uncle of victim Jostna was in Muktagacha. He denied that Abu Bakar was in Muktagacha on the said night. He said that before this occurrence he had quarrel

with Jostna over a mongo tree. He denied that Jostna gave a dao blow to him in that occurrence and for that reason he killed Jostna and filed this false case against the accused and deposed falsely.

P.W.9 Abu Taleb deposed that the occurrence took place on Saturday night at about 12 to 1 am on 20.02.2000. He went to the house of Jostna on hearing hue and cry. He saw the dead body of Jostna at the place of occurrence with several injuries in her body. Mark of injury was in her shoulder and stomach and blood was coming out from her mouth. He heard from Jostna's mother that the accused Siddique, Idris, Yunus, Jamiron and others killed Jostna. Siddique got married thrice or fourth and killed Jostna due to family disputes.

In his cross-examination he stated that he was an accused in a case filed by Abu Bakar and Jamiron. He got hurt in the incident of that case. He denied that they killed Jostna and filed this false case against the accused with the connivance of the informant. He denied that he deposed falsely out of enmity. He denied that the accused Siddique was not at home on the date of occurrence. He stated that

Siddique was arrested in the morning from the place of occurrence. He denied that Siddique was at the house of his relative situated at Muktagacha and when he came to his father-in-law's house on hearing the incident they made him arrested by the police. This witness admitted that accused Jamiran filed a case for the murder of Jostna and they were made accused of the said case.

P.W.10 Akhtaruzzaman Faraji deposed that the occurrence took place on 20.02.2000. He heard from Vanu that Idris, Siddique, Innas, Hasem and Jamila killed Jostna and left her dead body in the graveyard of the informant. Jostna lived in her husband's house.

In his cross-examination he said that his house was quarter mile away from the house of Idris. He did not see the murder of Jostna. He heard the news from Vanu. At that time many people were present there but he could not remember their names. He could not remember if Idris was at home on the date of occurrence. He denied the defence suggestion that witness Vanu did not tell him about the murder by the accused persons and it was not

true that due to previous enmity with the accused he deposed falsely.

P.W.11 Aziz Farazi deposed that on Sunday dated 20.02.2000 at about 5:00 AM he heard that somebody was killed. He went to the north of the house of Jaynal and found the dead body of Jostna covered by a katha. Jostna lived in her husband's house after her marriage. Witness Vanu informed that Idris, Innas, Siddique and others killed the victim Jostna.

In cross-examination of the defence this witness stated that he did not see the murder of Jostna. But he heard of that from Vanu. At that time 30 to 40 persons were present there. He denied that he deposed falsely as he had enmity with the accused. He did not heard about the murder from anyone except Vanu. His house was half kilometer away from Siddique's house. He did not know whether Siddique was at home at the said night.

P.W.12 Dr. Manjurul Kadir, was attached at Mymensingh Medical College Hospital at the material time deposed that on 21.02.2000 he held the autopsy of deceased Jostna Khatun and prepared the post-mortem

report and found the following injuries on the dead body of victim Jostna aged about 32 years.

1. One sharp cutting injury deep to the mouth cavity measuring 3"X1"X Rt. Maxilla just on the right side on the upper lip.
2. One sharp cutting injury on the right shoulder measuring 4"X2"X bone chest cavity.
3. One sharp cutting injury just below the middle of the right clavicle measuring 3"X3"X bone chest cavity.
4. One sharp cutting injury just parallel to the right lower costal margin (8"X4" abdominal cavity) perforated intestine comes out.

On decesion, found Upper lobe of the right lung is perforated. Ascending and transverse colon and the mesentery is perforated and comes out from the abdominal cavity, All the viscera pail.

and Opined that: In my opinion the cause of death is due to hemorrhagenic and neurogenic shock due to profuse hemorrhages which is ante mortem at homicidal in nature.

He proved the post- mortem report marked as Exhibit-2 and his signature as Exhibit No. 2/Ka.

In cross-examination of defence this witness stated that he received the dead body at 11 am and dissected at 12 pm. There was no note of age of injury. There was little food in the stomach. He denied that he did not hold the autopsy properly and the post-mortem report was not properly made.

P.W.13 Md. Asfaruzzaman was the investigating officer and at the material time he was attached with the Muktagacha police station as Sub-Inspector of Police and entrusted to investigate the case, he visited the place of occurrence, prepared the sketch map along with separate index, seized some alamats, examined the witnesses and recorded their statements under section 161 of the Code of Criminal Procedure and also produced 3 witnesses before the Magistrate for recording their 164 statements. He arrested accused Abu Bakar Siddique. He after completing all the formalities of the investigation found prima-facie case against the accused persons and submitted the charge sheet being No. 95 dated 20.08.2004

under section 302/201 and 34 of the Penal Code. The seized materials present in the court and the accused persons are on the dock. He proved the sketch map, index and FIR form which were marked as Exhibit Nos. 3 and 4 respectively and his signatures present thereon as Exhibit Nos. 3/Ka and 4/Ka respectively. He also proved the bloodstained mud and Katha which were marked as material Exhibit Nos. I and II.

Thereafter the date of his examination was adjourned but unfortunately before the date fixed it was reported that he was died as such the defence failed to cross-examine the said witnesses.

P.W.14 Shahan Ara was tendered by the prosecution. The defence declined to cross-examine her.

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

We have heard the learned Deputy Attorney General and the learned Advocate of the appellants, perused the Ejaher, the charge sheet, the inquest report, the seizure list, the post mortem report, the 164 statement of the

witnesses, the impugned judgment and the papers and documents as available on the record.

The prosecution case is that the victim Jostna Begum the sister of the informant got married to condemned-prisoner Md. Abu Bakar Siddique long before the incident. She was killed any time at the night following the day on 19.02.2000 and her dead body was recovered at the dawn at about 5:00 A.M. on 20.02.2000. From the evidence of the witnesses it is found that condemned-prisoner Md. Abu Bakar Siddique also got married thrice after got married to Jostna Begum. The informant was not the witness of occurrence but he suspected that the husband of victim Jostna namely Abu Bakar and others killed his sister at any time of the last night and lying the dead body in their family graveyard. In the F.I.R. the informant mentioned to the effect: *ওঁহাতে আমার সন্দেহ হয় যে, আমার ভগ্নিপতি*

আবু বকর সিদ্দিক অন্যান্য আসামীদের সহযোগিতায় আমার বোনকে ধারালো অস্ত্র দ্বারা বুক, পিঠে, শরিরের বিভিন্ন স্থানে কুপাইয়া হত্যা করিয়া আমার বাড়ীর উত্তর/পূর্ব কোণে পারিবারিক করব স্থানে লাশ ফেলিয়া রাখে প্রকাশ থাকে যে, গত ১৯-০২-২০০০ ইং তারিখে রাত্রে অনুমান ১০ টায় আমার বোন জোসনা খাতুনের সহিত তার স্বামী শাশুরীর ঝগড়া হয় বলিয়া আমার ভগ্নিপতির পাশের বাড়ীর ভানু স্বামী আহম্মদ আলী আমাকে জানায় এই আমার অভিযোগ।”

The P.W.1 the informant in his deposition also narrated to the effect: “আবু বকরের বাড়ীর পিছনের বাড়ীর ভানু আমাদের বলে যে, আবু বকর এবং জমিরন লাঠি দিয়ে জোসনাকে মারিয়াছে। আবু বকর সিদ্দিক ঘটনার আগেও জোসনাকে মারধর করিত। আসীম আবু বকর সিদ্দিক আরো ৩/৪ টা বিবাহ করে। আরো লোকের কাছে আবু বকর জোসনা~~ক~~ মারধর করা শুনিয়াছি। আমরা মাঝে মাঝে গিয়া জোসনার মারধর ফিরাইতাম। পরে আমার বড় ভাই এবং চেয়ারম্যানকে নিয়া থানায় যাইয়া এজাহার করি।”

It also appears that other P.Ws also disclosed that the occurrence took place on the night following the day on 19.02.2000 and at morning on 20.02.2000 at about 5:00 am they found the dead body of victim in the graveyard adjacent to the house of the informant and no denial of the said facts by the defence side.

From the aforesaid facts it is proved that quarrel was happened often between the victim and condemned-prisoner Md. Abu Bakar Siddique and his mother. It is also found that there were four injuries mentioned in the inquest report and which was also supported by the post-mortem report and all were sharp cutting injuries. From the above facts the date of occurrence and the place of occurrence is proved.

The defence case found from cross examination of the prosecution witnesses as well as by submitting a series of documents in examination under section 342 of the Code of Criminal Procedure that due to prolonged enmity between the parties the victim may be killed by the said enemies and the accused persons were falsely implicated in this case.

It is admitted that the parties filed several criminal cases against each other and the case filed by the defence side some of the prosecution witnesses were made accused and some were convicted. Furthermore, after five months of the incident the mother of condemned-prisoner Md. Abu Bakar Siddique also filed a petition case for the murder of victim Jostna implicating some of the P.Ws but ultimately which was ended and the police filed final report.

It is found that the victim Jostna Khatun was killed at any time following the night on 19.02.2000. In the F.I.R. as well as in the deposition the informant stated the facts that one of the neighbour of condemned-prisoner Md. Abu Bakar Siddique namely Vanu the P.W.2 disclosed to the

informant that on the previous night a quarrel was happened in between the victim Jostna and condemned-prisoner Md. Abu Bakar Siddique and his mother Jamiron and the victim was beaten with a stick. P.W.1 in the F.I.R. as well as in his deposition suspected the accused Md. Abu Bakar Siddique that he with the help of others killed his sister victim Jostna Khatun. From the evidence of P.W.2 Vanu it is found that on hearing screaming she went to the house of accused Md. Abu Bakar Siddique and saw that the accused Younus Ali and Hasen Ali were sitting on the cot and Jamiron pressed the neck of victim Jostna and Abu Bakar Siddique was standing with a dagger on his hand and the child of victim was in the lap of appellant No.2 Idris brother of Md. Abu Bakar Siddique. She also deposed that at about 12:00 A.M on hearing crying of the child of victim she went out of her room and saw accused Hasen Ali and Idris were standing in front of her door and Jamiron told then to kill her and as such she went to her room and standing on the door and saw that accused Younus Ali and Md. Abu Bakar Siddique brought the victim Jostna to the north. This witness was cross examined by the defence and

in cross she stated that she disclosed the said facts at 7:00 AM. On stage in her cross examination she stated that she went to the house of informant and disclosed the said matter to the informant before recovery of the dead body. It is found that the P.W.1 said that Vanu disclosed to him that on the fateful night a quarrel was happened in between victim Jostna Khatun and the condemned-prisoner Md. Abu Bakar Siddique and his mother and victim was beaten by the accused with a stick nothing more and on his deposition the P.W.1 stated to the effect:

“আবু বকরের বাড়ীর পিছনের বাড়ীর ভানু আমাদের বলে যে, আবু বকর এবং জমিরন লাঠি দিয়ে জোসনাকে মারিয়াছে।”

P.W.3 was the alleged eyewitness and neighbour of the informant. In his deposition he stated that he was watering in his irri block at about 12:00 AM. of the said night and on moonlit he saw to the effect: *“আমি পূর্ণিমার আলোতে দেখি যে, আবু কবর সিদ্দিক, ইউনুস আলী জোসনাকে ভিটার দিকে নিয়ে যাইতেছে এবং পিছনে হাছেন আলী, ইদ্রীস আলী ছিল। তখন ৩ ব্যাটারী টর্চ মেরে দেখি সিদ্দিকের কাখে জোসনার মাথা এবং পায়ের দিক ইউনুস আলীর কাখে। জোসনাকে ভিটিতে শোয়াইয়া সিদ্দিক জোসনার ঘাড়ে রাম দাও দিয়ে কোপ দেয়। সিদ্দিক জোসনাকে উল্টাইয়া নাকে মুখে কোপ দেয়। ইউনুস আলী ডেগার দিয়া জোসনার পেটে পাড় দেয়। হাছেন আলী, ইদ্রীস আলী জোসনার পায়ের দিক ধরিয়া*

রাখে। আমি সিদ্দিককে বলি জোসনাকে কোপ দিয়ে মেয়ে ফেললি। আসামীরা আমাকে দৌড়ানি দেয়। আমি বাড়ীর দিকে দৌড়াই।”

He also deposed that he run away towards the house of Abu Bakar Siddique and saw accused Jamiron along with the child of victim was standing in the house of accused Jamiron and she also chased him. In cross examination of the defence this witness stated that on the following day at about 6:00 A.M he informed the details to the informant and also disclosed the matter to all who were present there. But could not say the name of anyone who heard the said matter. In cross examination he stated that he disclosed the said matter to the informant, the brother, the cousin, the uncle of informant Hormuz Ali and one Mozibur Rahman. But P.W.1 did not disclose or depose that said witness told him the aforesaid facts.

P.W. 5 Md. Hormuz Ali in his deposition disclosed to the effect: *“তৎপর অনেক লোকজন আসিয়াছে এবং মোকদ্দমার সাক্ষী জিন্নাত আলী বলে ১৯-০২-২০০০ তারিখ রাত অনুমান ১২ বা ১ ঘটিকায় সে দেখিয়াছে যে আসামীগন আমার বোন জোসনা খাতুনকে মারিয়া ফেলিয়াছে। তৎপর থানায় যাই এবং আমার ভাই জয়নাল আবেদীন বাদী হইয়া মামলা করে।”*

From the above it is found that P.W.3 Jinnat Ali told him the aforesaid facts when the dead body was recovered

and he also deposed that he went to police station along with the informant and lodged the Ejahar. Whereas it is found that no such facts has been mentioned in the F.I.R. that P.W.3 disclosed that condemned-prisoner Md. Abu Bakar Siddique and other convict persons killed her cousin sister.

In cross examination of the defence this P.W.5 also stated that he was an accused of a case filed by convict-appellant Jamiron and he was convicted. The defence took suggestions that due to the said enmity between the accused persons they killed the victim Jostna Khatun and initiated this false case implicating the accused persons.

In his cross examination this witness also stated that on the morning convict-appellant Jamiran informed them that the victim was missing. In cross examination of the defence this witness did not disclose that P.W.2 informed the matter to them when the corpse of the victim was recovered, he only disclosed that P.W.3 Jinnat Ali disclosed the matter to them at the morning.

P.W.7 Jabbar Ali the uncle of informant deposed that Jinnat Ali the P.W.3 disclosed the matter to them and

thereafter the police held the inquest of the dead body and dead body was sent to the morgue. From his evidence it is found that P.W.3 Jinnat Ali disclosed the matter before filing the Ejahar. The defence gave suggestion that the informant and Jinnat Ali did not inform him about the murder of victim and also he did not disclose the same to the police but he denied the said suggestions.

P.W.4 Abdus Salam a day labourer and neighbour of the condemned prisoner deposed that at about 1:00 AM of the said night he saw that: *“আমি দেখি যে ১টি মেয়ে লোকের লাশ কাথা দিয়ে পেচাইয়া আসামী সিদ্দিক, ইউনুস, ইদ্রীস আলী, হাছেন এবং জামিরন নিতেছে। লাশের মাথার দিক সিদ্দিক কাধে করিয়া নিতেছে এবং আসামী ইউনুস লাশের পায়ের দিক কাধে নিতেছে। আমি ইদ্রীসকে জিজ্ঞাসা করি যে, ওরা কি নেয়। তখন জামিরন বলে ওরে ধর। ইদ্রীস এবং হাছেন আমাকে দৌড়ানী দেয় এবং আমি ভয়ে দৌড়াইয়া আমার বাড়ীতে যাই। পরের দিন সকাল ৫:৫০ টায় জোসনার মায়ের চিৎকার শুনি এবং কবরস্থানে যাই। আমি সেখানে জোসনার লাশ দেখি। জোসনার নাকে, ঘাড়ে, পেটে জখম দেখি। জোসনার ভুড়ি বাহির হওয়ার পথে। সেখানে আরো সাক্ষী ছিল এবং আমি সাক্ষীদের কাছে রাতের ঘটনা বলি।”*

From his deposition it is found that he only saw that condemned-prisoner Md. Abu Bakar Siddique, Younus Ali, Idris Ali, Hasen Ali and Jamirom were carrying a dead body of a woman and when he asked them about the matter

then the accused-persons chased him and he run away and on the following morning at about 5:50 A.M he went to the graveyard and saw the dead body and also disclosed the facts what he saw at the night but none of the witnesses stated that this witness P.W.4 disclosed to them the said facts at the time of recovery of the dead body or thereafter. From the aforesaid discussions it is found that only P.W.2 Vanu disclosed that on the fateful night she saw that the accused-persons were in the house of Md. Abu Bakar Siddique and a quarrel was happened in between the victim and condemned-prisoner.

It is found that the statements of the P.W.3 were supported by P.W.5 and P.W.7. It has already been discussed that the P.W.5 was present at the time of lodging the F.I.R. and in cross-examination of P.W.1 the informant stated that: आवग GRvni f qvi m gg Avvi m v f qvig v dR jÿ
nK G vR v Avjx _vq hvq 0

From the aforesaid facts it is also found that Jinnat Ali the P.W.3 was also present at the time of lodging the F.I.R. whereas no such facts has been disclosed in the F.I.R.

as well as the P.W.1 in his deposition also did not state that the P.W.3 disclosed to him the said facts.

It is admitted that several criminal cases were filed by both the side against each other wherein most of the prosecution witnesses specifically P.W.3, P.W.4, P.W.5 and P.W.8 were convicted in a case filed by convict-appellant Jomiran. So, bitter enmity between the parties is proved.

The doctor who held the autopsy of corpse found the following injuries:

1. one sharp cutting injury deep to the mouth cavity measuring 3"X1"XRt. Maxilla just on the right side on the upper lip.

2. one sharp cutting injury on the right shoulder measuring 4"X2"X bone chest cavity.

3. one sharp cutting injury just below the meddle of the right clavicle measuring 3"X2"X bone chest cavity.

4. one sharp cutting injury just parallel to the right lower costal margin (8"X4"X) abdominal cavity) perforated intestine comes out.

And On decision found that: Upper lobe of right lung is perforated. Ascending and transverse colon and the mesentery is perforated and comes out from the abdominal cavity. All the viscera pail.

And opined that: In my opinion the cause of death is due to hemorrhagic and neurogenic shock due to profuse hemorrhages which is ante mortem and homicidal in nature.

From the post-mortem report it is found that there were 4 sharp cutting injuries present on the person of the victim.

The P.W.2. P.W.3 and P.W.4 were also examined by the Magistrate and who recorded the statement under section 164 of the code of criminal procedure. But the said magistrate was tendered by the prosecution and the defence did not cross examine her. It is also found that the investigation officer was also examined and proved the sketch map, the F.I.R. form and the seized material i.e. bloodstained mud and blood stained katha. But unfortunately the defence failed to cross examine this

witness due to his death before the date fixed for cross-examination.

This is the short facts of the case. In the instant case it is admitted that bitter enmity between the parties was proved. Several cases were filed by either side against each other and some were pending and the P.W.3, P.W.4, P.W.5, and P.W.8 were convicted in a case filed by the defence side.

In the long history of our criminal justice that it is required as a rule of prudence that the court should closely scrutinize the evidence of the witnesses where bitter enmity is proved, that there should be some sort of corroboration of the evidence of the interested witnesses. Furthermore, to inspire the confidence in the mind of the court as to the truth of the prosecution case the said evidence should be closely scrutinized and assessed find the actual facts of the case. This principle elaborately discussed in the case of Abdul Manan and others –versus- The State, reported in 44 DLR (AD)-60, wherein it has been held that: *“In a case where bitter enmity is admitted between the parties it is required as a rule of prudence that*

there should be some such corroboration of the evidence of the interested witness or witnesses as may inspire confidence in the mind of the court as to the truth of the prosecution case.”

It also should be considered that in criminal procedure the evidence of the interested witness should not be curtailed or discarded only for the cause of the enmity if their evidence found to be trust worthy.

In the case of Nowabul Alam and others- versus- The State, reported in 15 BLD(AD)-54, wherein Justice Mustafa Kamal (as his lordship then was) took view (in majority) that: *“The principle that is to be followed is that the evidence of persons falling in the category of interested, interrelated and partisan witnesses, must be closely and critically scrutinized. They should not be accepted on their face value. Their evidence cannot be rejected outright simply because they are interested witnesses for that will result in a failure of justice, but their evidence is liable to be scrutinized with more care and caution than is necessary in the case of disinterested and unrelated witnesses. An interested witnesses one who has a motive for falsely*

implication an accused person and that is the reason why his evidence is initially suspect. His evidence has to cross the hurdle of critical appreciation. As his evidence cannot be thrown out mechanically because of his interestedness, so his evidence cannot be accepted mechanically without a critical examination. As Hamoodur Rahman, J. (as his Lordship then was) observed in the case of Ali Ahmed Vs. State, reported in 14 DLR(SC)-81:- "Prudence, of Course, requires that the evidence of an interested witness should be scrutinized with care and conviction should not be based upon such evidence alone unless the court can place implicit reliance thereon."

We have already considered the evidence of P.W.2, P.W.3 and P.W.4 from where it is found that they were examined by the police long after the date of occurrence i.e. on 12.07.2000 before that they were brought before the Magistrate for recording their statements under section 164 of the Code of Criminal Procedure i.e. on 24.04.2000. We have considered the said evidence of those witnesses and from their evidence it inspire confidence of our mind that there were possibility of

falsely implication of the accused-persons and it is found that the evidence of P.W.4 also did not corroborate by any of the witnesses whereas claimed that he disclosed the matter to the other witnesses immediately after the recovery of the death body. Though the P.W.5 and P.W.7 stated that P.W.3 disclosed the matter to them but it has already been considered that P.W.3 Jinnat Ali was also present at the time of lodging the F.I.R. and at the time of holding the inquest but no reflection about the said facts in the F.I.R. as well as in the inquest report and in the evidence of P.W.1. Furthermore, in cross he stated that he disclosed the said mater to his 5 brothers while he run away his house but none of them were made witness to support his said facts. So, it is our considered view that the evidence of these two witnesses the P.W.3 and P.W.4 should not be considered to the extent that their testimony all are true specially the facts that they saw the commission of offence happened at the mid night on 19.02.2000 and which may not be the sole basis for conviction of the accused persons.

P.W.1 the informant testified that P.W.2 Vanu told him that on the fateful night the victim was beaten with a stick by accused Abu Bakar Siddique and his mother Jamiron. P.W.2 Vanu in her testimony did not say that she disclosed the above facts to the P.W.1. But it is our considered view that P.W.1 in the F.I.R. as well as on his deposition stated that P.W.2 Vanu disclosed to him that she heard quarrel in between the victim and the accused Md. Abu Bakar and his mother Jamiron nothing more. So, the statement that the victim was beaten by accused Abu Bakar and Jamiron on the fateful night and accused Jamiron pressing the neck of the victim has not been corroborated by any of the witnesses, even which was not supported by post-mortem report and as such the said testimony of P.W.1 should be discarded.

Even on critical analysis of the post-mortem report it is found that the above facts that pressing the neck of victim Jostna by the accused Jamiran and the facts that the victim was beaten by accused persons with a stick has not been proved since no such injury was found by the doctor, even which was also not supported by the inquest-report.

Accused-appellant Jamiran was convicted under section 302/109 of the Penal Code. Section 109 is for punishment of abatement which as under: *“Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this code for the punishment of such abetment, be punished with the punishment provided for the offence.*

Explanation- An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”

Having considered the facts it is our view that the prosecution could not succeed to prove that the murder was committed in consequence of the instigation, or in pursuance of the conspiracy or with the aid of the appellant Jamiran. Since we have already considered that the testimony of the P.W.3 and P.W.4 and the testimony of P.W.2 so far as relates to the abetment by this appellant should be discarded. And no other evidence against the appellant Jamiran that murder was happened on her

instigation or with her aid or she was a party of the conspiracy.

Having considered the facts and circumstances of the facts it is our considered view that the conviction of Jamiron under section 302/109 of the Penal Code should not be sustained.

We have already discussed that the evidence of P.W.3 and P.W.4 should be discarded in such a case the benefit goes in favour of the accused-convict-appellants Hasen Ali and Idris Ali and the findings of the trial court so far as relates to those two appellant cannot be sustained since no other evidence that they were liable for committing murder. Furthermore, the convict Hasen Ali was one of the witness of inquest and in his presence the inquest was held as such the charge leveled against those two appellants is not proved beyond all reasonable doubt.

Having considered the facts and circumstanced of the case we are of the view that the prosecution has measurably failed to prove the charge leveled against these two appellants beyond reasonable doubt.

Now the question is that whether the victim was in the house of the condemned-prisoner Md. Abu Bakar

Siddique on the fateful night. From the evidence of P.W.1 and P.W.5 it is found that on the following morning at about 5:00 A.M the convict Jamiron came to their house and disclosed them about the missing of victim Jostna. From where it is clear that at the fateful night the victim Jostna was in the house of condemned-prisoner Md. Abu Bakar Siddique. Though the defence case is that in the said night condemned-prisoner Md. Abu Bakar Siddique was not present in his house and he was in the house of one of his relative in Muktagacha town and after getting information of murder of victim he came to the place of occurrence and his enemies handed over him to the police from the said place of occurrence.

It is settled principle that the husband is to explain the entire situation about the killing of his wife. In absence of any acceptable explanation as to why the wife was died in the custody of her husband house then natural conclusion will be that it is the husband alone in the circumstance of the case is liable for commission of murder of his wife. In the case of Gourango Kumar Shaha- vurses- The State reported in 2 BLC(AD)-126, their lordships held that: *"In the absence of any acceptable explanation as to*

how the wife died in the room of husband, the only irresistible and natural conclusion will be that it is the husband alone in the circumstances of the case who is guilty of committing murder of his wife.”

This principle supported by the decisions of the case of The State –versus- Md. Shafiqul Islam alias Rafique and another, reported in 43 DLR(AD)-92, in the case of Ilias Hussain (Md.) –versus- The State, reported in 54 DLR(AD)-78 and in the case of The State –versus- Abdus Sattar and others, reported in 21 DLR(AD)-127.

From the above facts it is our view that: *the husband should explain the entire circumstances of the facts how his wife was killed when she was in his custody.*

Having considered the aforesaid facts and circumstances of the case, it is our considered view that the condemned-prisoner Md. Abu Bakar Siddique is liable for the murder of his wife and the prosecution succeed to prove the charge leveled against him beyond any shadow of doubt.

In the instant case it is found that the death body was not recovered from the house of the husband which was recovered from the graveyard of the informant nearby

their house. It is also found that immediately after the recovery of death body condemned-prisoner Md. Abu Bakar Siddique went to the place of occurrence and thereafter the police arrested him and took four days remand but could not find anything from him. It is also found that he was enlarged on bail on 07.09.2004 that is after 4 years and 6 months and he faced the trial for more than 11 years and never misused the privilege of bail. Furthermore, he is in the death cell for more than 6 years. Though as per decision enunciated reported in 54 DLR(AD)-146 that long delay for disposal of the reference is not a ground for commutation of sentence. But on perusal of the decisions reported in 12 BLC(AD)-55, and 6 BLC (AD)-402, wherein their lordships commuted the sentence considering that the convict was in the death cell for one year and 6 months, similarly in the case of Dipok Kumar Sarkar -versus- The State, reported in 8 BLD(AD)-109 our Apex court also consider the long delay in disposed of the death reference commuted the sentence. In the case of Tofazzal Hossain Shaikil –versus- Mir Mohammad Akand and others, reported in 4 BLD (AD)-157, our Apex court

commuted the sentence considering the death cell of the condemned prisoner for one year and 7 months only.

Having considered the facts and circumstances of the case it is our considered view that the death sentence of the condemned prisoner Md. Abu Bakar Siddique may be commuted for imprisonment of life under section 302 of the Penal Code.

In the result, the death reference is rejected. The appeal No. 2325 of 2015 is allowed-in-part. The condemned prisoner Md. Abu Bakar Siddique is sentenced to imprisonment for life under section 302 of the Penal Code and also to pay a fine of Tk. 10,000/- in default to suffer rigorous imprisonment for 6 months more. The conviction and sentence so far as relates to the appellants Jamiron and Idris are hereby set-aside and they are acquitted from the charge leveled against them.

The criminal Appeal No. 3560 of 2015 is allowed. The conviction and sentence so far as relates to the accused appellant Hasen Ali is hereby set-aside.

Earlier the Criminal Appeal No. 3560 of 2015, so far as relates to the convict Younus Ali alias Innos Ali has been abated for the death of the said convict.

Consequently all the Jail Appeals are hereby disposed of.

The convict-appellants Jamiron and Hasen Ali be discharged from their respective bail bond.

The convict-appellant Idrish Ali be set at liberty forthwith if not wanted in connection with any other cases.

The Jail authority is directed to replace the condemned-prisoner Md. Abu Bakar Siddique from the condemned cell to the cell meant for the prisoner alike.

Communicate the judgment and transmit the lower Court records at once.

Bhishmadev Chakrabortty, J:

I agree.

M.R.