Bench:

Mr. Justice Bhishmadev Chakrabortty
and
Mr. Justice K.M. Rasheduzzaman Raja

Death Reference 121 of 2019

The State .... petitioner
-Versus-

Md. Rashidul Islam ....condemned-convict

Mr. Syed Ejaz Kabir, Deputy Attorney General with Mr. Ashraful Alam, Ms. Mahbuba Tasnim Akhi and Mr. Md. Abdul Motaleb, Assistant Attorney Generals
.... for the state

Mr. Md. HafizurRahman Khan, Advocate
.... appointed as state defence lawyer for the condemned-convict

Judgment on 04.11.2026

Bhishmadev Chakrabortty, J:

Learned Judge of Nari-o-Shishu Nirjatan Daman Tribunal 1, Sirajganj (the Tribunal) on trial in Nari-o-Shishu Case 413 of 2011 found the condemned-convict Md. Rashedul Islam (absconding) guilty of offence under section 11(Ka) of the Nari-o-Shishu Nirjatan Daman Ain, 2000 (the Ain, 2000) and sentenced him thereunder to death with fine and transmitted the proceedings to this Division for its confirmation.

The prosecution case, in brief, is that PW1 Md. Abdus Salam lodged a first information report (FIR) with Shahajadpur police station at about 17:25 hours on 24.01.2011 alleging, *inter alia,* that his daughter Mst. Salma Khatun (the victim) was married off to accused 1 Md. Rashedul Islam two years ago. The accused persons named in the FIR demanded dowry in different times to the victim and failing to meet up the demand the accused husband used to torture the victim. He complained to the guardians to that effect but inspite of taking any action against him, they started torturing the victim physically and mentally. In the meantime her victim daughter became pregnant of 10 months. 10-12 days before the occurrence took place accused Rashedul took the victim to the informant's house and kept her therein for delivery. The accused husband used to visit their house and spent night therein. His younger daughter Shapla (PW 5), the victim and accused husband were watching television at about 6:00 pm on 23.01.2011 in their house. Accused Rashedul with the help of other accused technically called away the victim with him at about 8:00 pm and in collusion with other accused killed her by strangulating with *urna* and causing injury to other part of

the body and left the dead body into the ditch of one Tariqul Islam. Accused Rashedul at about 10:00 pm returned their house and asked Shapla whereabouts of the victim. Shapla replied that the victim was taken away by him. Shapla told the said fact to the informant and they started searching for the victim. At one stage they found the dead body of the victim at about 12:30 pm on 24.01.2011 as stated herereinbefore. Accused 2 appeared there and took the dead body to their house. The informant and other witnesses at night by the focus torch light and on the next morning found the eyes of the victim tendered, injury on the left eye, below the chin and black mark on both side of victim's throat. They found the *urna* twisted around the throat of the victim. He suspected that accused Rashedul with the help of all other accused killed the victim on demand of dowry. On the basis of the said FIR Shahajadpur Police Station Case 17 dated 24.01.2011 corresponding to GR 17 of 2011 under sections 11(Ka) and 30 of the Ain against nine accused named therein including the condemned-convict was started.

PW 12 Md. Kamruzzaman, a Sub-Inspector (SI) of police posted to Shahajadpur police station at the material time

investigated the case. During investigation, he visited the place of occurrence, prepared the sketch map with index and recorded the statements of witnesses under section 161 of the Code. He arrested the accused husband and forwarded him to the learned Magistrate for recording his confession. He seized some *alamots* and after collecting prosecution materials submitted a charge sheet against 3 accused including the condemned-convict under sections 11(Ka) and 30 of the Ain.

The record of the case was then transmitted to the Tribunal for holding trial. The Tribunal took cognizance of offence against all the 3 accused who were cited in the charge sheet under the selfsame section of the Ain. But subsequently learned Judge of the Tribunal framed charge on 27.10.2011 only against accused husband Rashedul Islam under section 11(Ka) of the Ain. The charge so framed was read over to the accused, to which he pleaded not guilty and claimed to be tried.

During trial prosecution examined in all 13 witnesses; Of them PW 1 Abdus Salam, father of the victim stated that his victim daughter was married off to the accused two years ago. The accused after the marriage used to demand dowry

from the victim and tortured her for its nonpayment. At the time of occurrence the victim was 10 months pregnant. The accused 12 days before the occurrence took place kept her in their house for delivery. The house of the accused was situated beside their house and the accused resided in the rented house. The accused used to visit their house and spent night therein. The occurrence took place between 8-12:30 hours on 23.01.2011. They found victim's dead body into a ditch near Tariqul Islam's house. The accused went to their house at about 6:00 pm and he was watching television with his daughter Shapla and victim. He called away the victim outside the house at about 8:00 pm. He returned at about 10:00 pm and asked Shapla whereabouts of the victim. In replay Shapla stated that he himself (the accused) took away the victim with him. Then they started searching the victim and found the dead body at about 12:30 hours in the place as stated hereinabove. They found marks of injury on the left eye, on the throat, on the back and found an *urna* twisted on her throat. He then lodged the FIR exhibit-1. Police held inquest exhibit-2 in his presence. The accused confessed his guilt to the learned Magistrate. In cross-examination by the defence he

stated that he did not witness the occurrence of killing the victim. They found the dead body near a ditch. He denied the defence suggestion that the accused did not kill the victim on demand of dowry.

PW 2 Md. Bachchu Miah, a brother of PW 1 stated in the similar line of PW 1. He further stated the occurrence took place between 8-12:30 hours on 23.01.2011. They found the dead body in the ditch near the house of Tariqul. The victim was watching television with the accused at about 8:00 pm. At that time the accused called away the victim to the place of occurrence and killed her by strangulating with *urna* on demand of dowry. The accused returned home and asked whereabouts of the victim and in reply to that they told that the accused himself called away the victim with him. They found both the eyes of the victim tendered, injury on the left eye, black spot under the chin and both sides of the throat. They also found *urna* twisted on the victim's throat. The victim was killed on demand of dowry. In cross-examination by the defence he stated he did not witness the occurrence of killing. He denied the defence suggestion that the accused did not kill the victim on demand of dowry.

PW 3 Monirul Islam Khan alias Monirul Khan, a son-in-law of PW 1 stated that accused Rashedul used to torture the victim for dowry and there was a *salish* for it. He saw on his way to home at about 7:30 pm that the accused and her parents were taking secretly. He heard hue and cry at about 12:30 hours and rushed to the ditch of Tariqul Islam and found the victim's dead body there lying. He found the condition of the dead body as witnessed by PWs 1 and 2. Police came, held inquest and he put his signature in the report. He proved the inquest exhibit-2. The victim was pregnant at that time. In cross-examination by the defence he stated that he did not see the accused to kill the victim. He did not know about the family life of the couple. He denied the defence suggestion that accused Rashedul did not kill the victim or did not assault her. He denied of deposing falsely.

PW 4 Marium Khatun wife of PW 1 stated that the accused used to torture her daughter on demand of dowry. The accused brought the victim to their house 10-12 days before the occurrence took place. He used to spend night in their (PW 4's) house. In respect of watching television in their house with the victim in the evening she stated in the similar line of

PWs 1 and 2. Her younger daughter Shapla told her that the accused called away the victim at about 8:30 pm but later on the accused came to their house and asked whereabouts of victim. They searched for the victim and finally found the dead body in the place of occurrence. She found injury on the person of the victim as stated by PWs 1, 2 and 3. All the accused fled away after taking the dead body into the house of the accused. Her husband lodged the FIR. The accused made a confession admitting his guilt of killing the victim on demand of dowry. In cross-examination by the defence she stated that she did not witness the occurrence. She found the dead body near the ditch. She denied the defence suggestion that the accused did not kill her daughter. She denied of deposing falsely.

PW 5 Mst. Shapla Khatun, younger daughter PWs 1 and 2 stated in the similar line of PWs 1-4. She further stated that the occurrence took place between 8-12:30 hours on 23.01.2011 near the ditch of Tariqul Islam. She and her deceased sister Salma and were watching television at about 6:00 pm in their house. Accused Rashedul then came to their house at about 8:00 pm and called away the victim with him.

But the victim did not return. She told the said fact to his parents. Thereafter they started searching for the victim. She went to the house of accused Rashedul but did not find him there. On the way she asked the parents of accused Rashedul about Salma but they did not make any response. They found the dead body of victim at the southern side of the ditch of Tariqul Islam. She found injuries on the person of the victim as witnessed by other witnesses. She stated that the accused killed the victim on demand of dowry and left the dead body in the place of occurrence. In cross-examination by the defence she stated that she did not witness the occurrence. They found the dead body in the place occurrence. She denied of deposing falsely.

PW 6 Narju Sheikh, a nephew of PW 1 stated in the similar line of PWs 1-5. He also found the injuries on the person of the victim as stated by other witnesses. He was as witness to the inquest exhibit-2. In cross-examination by the defence he stated that he was not present in the house of the victim while she and accused were watching television. He denied the defence suggestion that the victim was insane to some extent. He further denied that victim Salma fell into the

ditch and consequently she died. He denied of not making any torture by the accused on the victim. He finally denied that the accused did not make confession admitting the guilt.

PW 7 Monjuara Khatun, a sister-in-law of the informant stated that the accused used to torture the victim on demand of dowry. The victim was 10 months pregnant and for that reason the accused brought her to the house of the informant for delivery. The occurrence took place within 8:00 pm to 12:30 hours on 23.01.2011 and the dead body of the victim was found in a ditch of Tariqul Islam. They started searching for the victim at about 10:00 pm and found the dead body at about 12:30 hours in the place of occurrence. They found several injuries on the person of the victim. Police came and held inquest of the dead body. She was a witness to the inquest. The accused killed the victim on demand of dowry. In cross-examination by the defence she stated that she was not present in the house of the informant when the accused was watching television with the victim. Accused Rashedul called away the victim at about 8:00 pm. She did not witness to assault the victim. She denied the defence suggestion that the victim was

insane to some extent or that she fell into the ditch and died. She denied of deposing falsely.

PW 8 Md. Anisur Rahman, a constable of the police was a witness to the inquest. He saw the dead body and in his presence police held inquest and prepared a report and he put his signature in the report. He proved the report exhibit-2 and identified his signature thereon. In cross-examination by the defence he stated that he took the dead body to the police station. He saw the injuries on the person of the victim.

PW 9 Shahin Khandaker, a neighbour saw the dead body in the place of occurrence at night. He stated that one of the that accused took the dead body in the house of accused Rashedul. He found mark of injuries below the chin, both sides of the throat and on the left eye of the victim. He heard that accused Rashedul killed the victim on demand of dowry. In cross-examination by the defence he stated that he did not see how the victim died.

PW 10 Hasan Mahmudul Islam, a Senior Judicial Magistrate posted to judicial Magistracy of Sirajganj at the material time recorded the confession of the accused under section 164 of the Code. He stated that he complied with the

provisions of law in recording the confession. After recording he put his signatures in the prescribed places of the confession. The accused made confession voluntarily. He proved the confession exhibit-3 and identified his signatures thereon. In cross-examination by the defence, he stated that he did not state in the confession that, if the accused did not confess he would not be sent to police again. Police brought the accused to his chamber. In the confession there is nothing that the accused assaulted the victim on demand of dowry. The accused told that he was assaulted a little bit, but he did not find any mark of violence or injury on his body. He denied the defence suggestion that at the torture of police the accused made confession on fear. He further denied that he recorded the confession in presence of police.

PW 11 Mohammad Osman Gani, a doctor posted to General Hospital Sirajganj at the material time and RMO of the hospital, stated that he held the autopsy of victim Salma Khatun at about 11:15 am on 25.01.2011 by constituting a board and found the following injuries-

(1) One faint bruise size 1″ x 1″ on the upper part of the right side of the neck and four faint bruises in different

sizes on the upper part of the left side of neck situated one above another with cresentic nail marks.

(2) One abrasion on left knee joint (Anteriorly) size $\frac{1}{2}''$ x $\frac{1}{4}''$

On dissection of the neck they found clotted blood under the seat of injuries which resists on washing. Trachea and both lungs were found highly congested.

They passed opinion that the cause of death of deceased was due to asphyxia as result of throttling which was antemortem and homicidal in nature. He proved the autopsy report exhibit-4 and identified his signature and that of other members of the board. In cross-examination by the defence he stated that he did not get any other injury except the injuries mentioned in the autopsy report. Injury 1 may be caused by nail of hand. He denied the defence suggestion that the injury may be caused by rope or by the struck of hard substance. He denied that this sort of injury may be caused by twisting rope or hard cloths. The injury on the knee may be caused due to fall. He denied the defence suggestion that victim Salma committed suicide by hanging. He denied of not preparing

autopsy report as per medical jurisprudence. He stated that in the uterus he found a male fetus about 20 inch.

PW 12 Kamruzzaman, a Sub-Inspector (SI) of police who was posted to Shahjadpur police station at the material time was the IO. In evidence he stated that he visited the place of occurrence, prepared sketch map and index exhibits-5 and 6. He held inquest of the dead body and send it to the morgue for holding autopsy. He found injuries below the chin, both side of the throat, on the back of chest and below the knee of victim. The victim was pregnant of 10 months. He proved the inquest. He arrested the accused and forwarded him to the learned Magistrate for recording his confession. He recorded the statements of witnesses under section 161 of the Code. He made seizure and prepared a list of Sandals and thread of stitch under exhibit-7. He identified the *alamots* as material exhibit-1. He also seized the wearing apparel of the victim under a seizure exhibit-2. He proved articles exhibits-2, 3, 4 and 5. On conclusion of investigation he submitted a charge sheet against 3 accused under sections 11(Ka) and 30 of the Ain. In cross-examination by the defence he stated that he made inquest of the dead body on the basis of a GDE. The

Officer-in-Charge (OC) of the police station told the fact to him, made a GD Entry and sent him to the place of occurrence for taking steps. In the FIR it has been mentioned that the dead body was found into a ditch. He found the dead body in the house of the accused Rashedul. He arrested the accused at about 9:45 pm on 24.01.2011 and forwarded him to the Magistrate at about 9:30 am on 25.01.2011. During that period the accused was under their custody. He denied the defence suggestion that they extracted the confession upon torture and showing fear of putting the accused into crossfire. He denied of submitting a biased report.

The defence case as it transpires from the trend of cross-examining the prosecution witnesses are that the accused never demanded dowry from the victim; that he did not torture the victim causing her death and that the victim committed suicide.

On conclusion of recording the evidence of the prosecution witnesses, learned Judge of the Tribunal examined the accused under section 342 of the Code, to which he reiterated his innocence and demanded justice but he did not examine any defence witness. However, the learned Judge of

the Tribunal on assessment of witness found the accused guilty of offence under section 11 (Ka) of the Ain and sentenced him thereunder to death, giving rise to this reference.

Mr. Md. Ashraful Alam learned Assistant Attorney General taking us though the evidence and other materials on record submits that PWs 1, 2, 3, 4, 6, 7 and 9 in evidence proved that the condemned-convict demanded dowry to the victim. They in a voice deposed that the condemned-convict used to torture the victim on demand of dowry. Although those witnesses were cross-examined by the defence at length but nothing has come out adverse. Mr. Alam then submits that the victim was found dead in the place of occurrence, i.e., in the ditch of neighbour Tariqul Islam. The witnesses found several injuries on the person of the victim. In the inquest the witnesses found both the eyes tendered, injuries on the left eye, black marks under the chin and both side of the throat. In the inquest injures were also found on the chest and back of the victim. In the autopsy, on dissection, the doctor found a faint bruise on the upper part on the right side of the neck and four faint bruises in different sizes on the upper part of the left

side of the neck with cresentic nail marks. The doctor further found clotted blood under the injured areas and opined that the cause of death was due asphyxia as result of throttling which was antemortem and homicidal in nature. The report is exhibit-4. The doctor PW 11, led evidence supporting the report. The report proves that the victim was throttled to death and before her death she was assaulted. He then refers to text book of Medical Jurisprudence, Forensic Medicine and Toxicology written by Parikh, 9th addition and submits that when only one hand is used to throttle, there may be a single bruise in one side due to pressure of the thumb and obliquely directed multiple bruises, one below the other, on the opposite side, due to pressure of finger pads or finger tips. Their shape may be oval or round depending upon the size of the finger tips but continued bleeding into the contused area usually increases the size, merging the bruises together. The provisions of Medical Jurisprudence in case of throttling as has been written by Parikh is found present in this case. Furthermore, the confession exhibit-3 made by the condemned-convict is found consistent with the autopsy report. The prosecution by the evidence of witnesses

particularly by the evidence of PW 5 Shapla Khatun has successfully proved that the condemned-convict called away the victim from their house at about 8:00 pm and thereafter victim's dead body was found in the place of occurrence in the condition as has been deposed by the witnesses. He refers to the provisions of 106 of the evidence act and the cases of the State vs. Kamal Pasha alias pasha, 11 BLC 645 and Shafiqul Islam alias Shafi vs. the State, 34 BLD (AD) 237 and submits that since the victim lastly went with the condemned-convict and thereafter his dead body was found in the place of occurrence and the death has been found as a killing, it conclusively proves that the condemned-convict is the killer of the victim. The victim was carrying 10 months at the material time and the convicts absconded after obtaining bail form the Court. He is fugitive in the eye of law and as such he is not entitled to get any lenient view from this Court. The reference, therefore, be accepted.

Mr. Md. Hafizur Rahman Khan, learned Advocate appointed as a State Defence lawyer for the condemned-convict on the other hand submits that there is no eyewitness to the occurrence. Nobody had seen to assault the victim and

strangulated her to death. The prosecution witnesses failed to prove that the condemned-convict demanded any dowry to the victim. No specific date, time of demand and amount of money has been mentioned by the witnesses. The fact of calling away the victim by the condemned-convict at about 8:00 pm and his return in the house at 10:00 pm and asking PW 5 whereabouts of the victim is not corroborated by the evidence of PWs 1 and 5. There is glaring contradiction in the evidence of PWs 1 and 5 to that effect and as such the condemned-convict is entitled to get the benefit of doubt. The confession was extracted by police on physical torture upon the convict which has come out in the evidence of PW 10, learned Magistrate. Such type of confession which is found apparently not true and made voluntarily cannot be used to pass conviction. He then submits that the prosecution failed to prove any motive behind the murder. Even if, the confession is taken as true and made voluntarily, it has come out there that the accused committed the offence at the time of making quarrel with the victim. Therefore, this case at best may come within the meaning of section 304 part I or II of the Penal Code. Since the prosecution failed to prove the charge against

the condemned-convict under section 11(Ka) beyond any shadow of doubt, he is entitled to get the benefit of doubt. Mere absconsion by itself cannot be the proof of guilt, Mr. Khan concludes.

We have considered the submissions of the learned Assistant Attorney General and the learned Advocates appointed as a State Defence Lawyer, gone through the evidence and other materials on record, the principles of forensic medicine and *ratio* of the cases cited.

Out of 12 prosecution witnesses, PW 8 Anisur Rahman was a constable of police, PW 11 Dr. Osman Gani was a doctor who held autopsy of the dead body, PW 10 Hasan Mahmudul Islam was a Judicial Magistrate who recorded the confession of the condemned-convict and PW 12 is the IO who investigated the case and these witnesses are formal in nature. The other witnesses are the relations of the victim.

The prosecution alleged that the condemned-convict Rashedul Islam on demand of dowry called away the victim from PW 1's house at about 8:00 pm on 24.01.2011 and throttled her to death and left the dead body in the place of occurrence. Admittedly, the victim was the wife of the

condemned-convict and she was pregnant of 10 months at the material time which has come out in the oral evidence of witnesses and autopsy report exhibit-4. It has been proved by the corroborative evidence of prosecution witness that the dead body of the victim was found in the ditch of one Tariqul Islam situated near the house of the informant as well as the accused and all the public witnesses including the IO proved that there were mark of injuries on the person of the victim including some injuries on his chin, eyes and both side of her throat. The inquest report exhibits-2 is found consistent with the oral evidence of witnesses. In the autopsy report exhibit-4, the doctor found one faint bruise size 1″ x 1″ on the upper part of right side of the neck and 4 faint bruises in different sizes on the upper part of the left side of the neck situated one above another with cresentic nail marks. The cresentic nail marks found on the throat of the victim proves that the victim was throttled to death by using single hand (right hand) while the thumb was in one side (right) of the throat and other fingers were another side (left) of the throat of the victim. The Medical Jurisprudence written by Parikh as referred to by Mr. Alam, learned Assistant Attorney General supports it. The

evidence of doctor PW 11, the oral evidence of other witnesses as to the injury found on throat of the victim proves that the victim was killed by throttling.

Now we have to be examined who has committed the offence. It is found in the FIR as well as in the evidence of PWs 1, 2, 3, 4 and 5 that 7-8 days before the occurrence took place condemned-convict brought and kept the victim into the house of the informant for her delivery which is an accepted custom of the rural area of our country. The defence did not raise any objection that the victim was not in the house of her parents. The prosecution by the evidence of witnesses proved that after keeping the victim in the house of her parents the condemned-convict used to visit the house and spent night there. The evidence of PWs 1, 2, 3, 4 and 5 proves that at about 6:00 pm on the date of occurrence the condemned-convict was in his father-in-laws (PW 1's) house. PW 5 Shapla, sister-in-law of the convict, the victim and the convict were watching television. They further proved that the condemned-convict called away the victim from there at about 8:00 pm and did not return home and from then she was found missing. The inmates the house including PWs 1, 2 and 5 and

other relatives started for searching her but could not find her out till 12:30 hours. At that time they found the dead body of the victim in the ditch of a neighbour which was nearer both the houses of informant and accused. Prosecution proved that the victim went out from the house with the condemned-convict but she did not depart safely form his custody. Therefore, we can safely hold that none but the condemned-convict killed the victim after 8:00 pm and left the dead body in the place of occurrence. In this context we can rely on the *ratio* laid in the cases of 11 BLC 645 and 34 BLD (AD) 237 as referred to by the learned Assistant Attorney General.

Apart from the aforesaid fact, we find that the condemned-convict made a confession exhibit-3 to the Judicial Magistrate Hasan Mahmudul Islam PW 10. The confession is- "ঘটনার তারিখ ও সময় আমি আমার স্ত্রী মোছাঃ ছালমা খাতুনকে ডেকে মাঠের ফাঁকা জায়গায় নিয়ে যাই। তারপর তার সাথে আমার কথা কাটাকাটি হয়। তখন সে ০৯ (নয়) মাসের গর্ভবর্তী ছিল। কথাকাটাকাটির এক পর্যায়ে আমি আমার স্ত্রীর গলা টিপে ধরি। একটু পর সে পড়ে যায়। পরে যখন বুঝলাম আমার স্ত্রী মারা গিয়েছে তখন আমি তাহার লাশ বাড়ীর পশ্চিম পার্শ্বে জনৈক পিরজাদা তারেক রহমানের পুকুরের দক্ষিণ পূর্ব পার্শ্বে ঝাড়ের সন্নিকটে নীচু জায়গায় ফেলিয়া রাখি। তারপর আমি বাজারে চলে যাই। এই ঘটনার সাথে অন্য কোন ব্যক্তি জড়িত ছিল না।

আমার বাবা, মা, এমন কি অন্য কোন আত্মীয় স্বজনরা এই ঘটনার সাথে জড়িত ছিল না। আমি একাই উক্ত ঘটনা ঘটিয়াছি। আমার শ্বশুর অন্যায়ভাবে তাদের আসামী বানিয়েছে। ইহাই আমার জবানবনন্দী। ”On going through exhibit-3, we find that in recording the confession learned Magistrate complied with the provisions of law as were required under sections 164 and 364 of the Code. Although in the evidence of PW 10, the Magistrate stated that the confessor alleged that police assaulted him a little bit but considering the confession and evidence of PW 10 as a whole, we do not find anything to question the truth and voluntariness of the confession. The confession is found consistent with the autopsy report exhibit-4 which has been corroborated by the evidence of doctor PW 11 Md. Osman Gani.

Moreover, the condemned-convict obtained bail from this division on 26.10.2014 but thereafter absconded on 19.08.2018 and judgment was passed in his absence. He is a fugitive from law. A fugitive from law cannot get any mercy of law or lenient view which has been decided in numerous cases by our apex Court. Furthermore, the victim was pregnant of 10 months at the time of occurrence. In fact this is case of

double murder, so we find no reason to commute his sentence of death.

The reference is, therefore, accepted. The sentence of death awarded by the Tribunal to the condemned-convict is hereby confirmed. The law enforcing agencies are directed to secure the arrest of the condemned-convict to execute the sentence of death.

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

K.M. Rasheduzzaman Raja, J.

I agree

Rajib