

IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION

PRESENT:

Mr. Justice Syed Mahmud Hossain,

Chief Justice

Mr. Justice Muhammad Imman Ali

Mr. Justice Hasan Foez Siddique

Mr. Justice Md. Nuruzzaman

CRIMINAL APPEAL NOS.104 & 108 OF 2014 WITH J.P.NO.07 OF 2018 AND JAIL APPEAL NO.3(a) OF 2018 AND CRIMINAL PETITION FOR LEAVE TO APPEAL NO.424 OF 2014.

(From the judgment and order dated 18.02.2014 passed by the High Court Division in Death Reference No.79 of 2008 with Criminal Appeal No.5610 of 2008, 5837 of 2008 and 4164 of 2009 with J.A.Nos.788-790 of 2008.)

Md. Dawlat Fakir	:	Appellant-Petitioner. (In CrI.A.No.104/14 & J.P.No.07/18)
Iqbal Sheikh alias Md. Iqbal Sheikh	:	Appellant. (In CrI.A.No.108/14)
Iqbal Sheikh alias Md. Iqbal Sheikh & another	:	Appellant. (In J.A.No.3(a) of 2018)
Zaziron	:	Petitioner. (In CrI.P.No.424/14)

=Versus=

The State	:	Respondents. (In all the cases)
For the Appellant (In CrI.A.No.104/14)	:	Mr. Joynal Abedin, Senior Advocate instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.
For the Appellant (In CrI.A.No.108/14)	:	Mr. S.M. Shahjahan, Advocate instructed by Mr. Syed Mahbubar Rahman, Advocate-on-Record.
For the Appellant (In J.A.No.3(a)/18)	:	Mr. S.M. Aminul Haque, Advocate.
For the Petitioner (In CrI.P.No.424/14)	:	Mrs. Shirin Afroz, Advocate-on-Record on behalf of Mr. Syed Mahbubar Rahman, Advocate-on-Record.
For the Respondents (In CrI.A.No.104/2014)	:	Mr. A.M. Aminuddin, Attorney General, instructed by Mr. Md. Zahirul Islam, Advocate-on-Record.
For the Respondents (In CrI.A.No.108/2014)	:	Mr. A.M. Aminuddin, Attorney General, instructed by Mrs. Sufia Khatun, Advocate-on-Record.
For the Respondents (In CrI.A.No.3(a)/2018)	:	Mr. A.M. Aminuddin, Attorney General.
For the Respondents (In CrI.P.No.424/2014)	:	Mr. A.M. Aminuddin, Attorney General, instructed by Mr. Haridas Paul, Advocate-on-Record.

***Date of hearing and judgment* : 15.09.2021.**

J U D G M E N T

Hasan Foez Siddique, J: The Additional Sessions Judge, Narail, convicted Firoz Mollah, Iqbal Sheikh, Dawlat Fakir, Zaziron Nessa and Shirin Akter(absconding) for commission of offence punishable under Sections 302/34 of the Penal Code and sentenced accused Firoz Mollah, Iqbal Sheikh and Dawlat Fakir to death and to pay a fine of tk.5,000/-. It also sentenced accused Zaziron Nessa and Shirin Akter to suffer imprisonment for life and to pay a fine of tk.5000/-, in default, to suffer simple imprisonment for one year more in Sessions Case No.08 of 2006 arising out of Lohagara Police Station Case No.11 dated 09.08.2005 corresponding to G.R. Case No.197 of 2005.

The trial Court transmitted the case record in the High Court Division for confirmation of sentence of death as per provision of section 374 of the Code of Criminal Procedure which was registered as Death Reference No.79 of 2008. Convicts Firoz Mollah and Iqbal Sheikh preferred Criminal Appeal No.5610 of 2008; Dawlat Fakir preferred Criminal Appeal No.5837 of 2008 and Zaziron Nessa preferred Criminal Appeal No.4164 of 2009. Firoz Mollah also preferred Jail Appeal No.788 of 2008, Iqbal Sheikh preferred Jail Appeal No.789 of 2008 and Dawlat Fakir preferred Jail Appeal No.790 of 2008 in the High Court Division. The High Court Division accepted the Death Reference and dismissed all the appeals.

Then, convicts Dawlat Fakir preferred Criminal Appeal No.104 of 2014, Iqbal Sheikh preferred Criminal Appeal No.108 of 2014, Firoz Mollah filed Jail Petition No.03 of 2018, which was subsequently

converted to Jail Appeal No.3(A) of 2018, Zaziron Nessa filed Criminal Petition No.424 of 2016 and Dawlat Fakir filed Jail Petition No.07 of 2008. Iqbal Sheikh filed Jail Petition No.03 of 2014.

Victim Rupa Khanam, wife of P.W.2 Gaffar Mollah, was mercilessly killed in her dwelling hut on the night of 8th August, 2005. Gaffar was an Army personnel and, at the relevant time, he had been serving in UN Peace Mission in South Africa. At 7.00 a.m. on 09.08.2005, P.W.1 Abdul Mannan, getting information from one Kabir Munshi that the victim Rupa Khanam had been killed in her husband's house, rushed to the house of the victim and found her dead body. He heard details from Feli Begum (P.W.14) and, thereafter, lodged an F.I.R. (Ext.1) with Lohagara Police Station at about 11.15 a.m. on 09.08.2005.

The Investigating Officer, holding investigation, submitted charge sheet against the aforesaid accused persons for commission of offence punishable under Sections 449/302/34 of the Penal Code. The case was ultimately tried by the Additional Sessions Judge, Narail who framed charges against the 5 accused persons under the aforesaid provisions of law. Accused Firoz, Iqbal, Jaziron and Dawlot Fakir, present on dock, pleaded not guilty and claimed to be tried. The prosecution examined 15 witnesses out of 21 witnesses cited in the charge sheet. From the trend of cross-examination of the prosecution witnesses, it appears that the defence case was that the appellants had been falsely implicated in the case.

Out of 15 witnesses, P.W.1 is the informant of the case. At the relevant time, he had been staying in his house which is about 8/9 kilometres far from the crime spot. Getting information about the

occurrence from one Kabir Munshi, he went to the place of occurrence and heard details from Feli Begum (P.W.14) and, thereafter, lodged First Information Report (Exhibit-1). P.W.2 was the husband of the victim Rupa Khanam. At the relevant time, he had been serving in UN Peace Mission in South Africa. P.W.3, Amirun Begum, a close neighbour of the victim, hearing outcry rushed to the place of occurrence and found the victim severely injured. She asked victim Rupa Khanam about occurrence who disclosed the names of Iqbal Sheikh and Firoz Mollah. She raised alarm. Many people rushed to the place of occurrence. They tried to shift the victim to the local hospital but, on the way to hospital, the victim succumbed to injuries. P.W.4 Sanjida @ Farjana Akter, daughter of the victim, in her testimony stated that in the night of occurrence, her mother, younger brother Refat and she herself were sleeping in a room. She woke up and found some people in the room. She calling her mother said that some people had entered in their room. At that time, appellant Iqbal Sheikh, showing his knife, directed her not to make any sound. She said that appellant Iqbal Sheikh assaulted the victim. Zazirun caught the legs of the victim. She found some other persons in the room. Her younger brother, Jonaki and she herself raised alarm. Hearing outcry, her uncle and aunty rushed there. On their query, the victim disclosed the names of accused Iqbal Sheikh, Firoz Mollah, mother of Mousumi and mother of Kakoli. P.W.5, Marzina Begum in her testimony stated that in the night of occurrence she was sleeping in her dwelling hut. Hearing outcry of the son and daughter of Gaffar, she rushed to the place of occurrence and found Rupa Khanam severely injured. On her query, Rupa told that Iqbal Sheikh, Firoj Mollah, Dawlat Fakir, Shirin Akter and Zaziron had assaulted her.

P.W.6, Jonaki daughter of P.W.3 was staying with the victim in the same room. Court noted that she had capability of answering the questions properly. She mentioned the names of Firoz, Iqbal, Zaziron, Shirina Aktar and Dawlot Fakir. She stated that at the relevant time victim Rupa, Sanjida, Rifat and she herself were sleeping in the same bed. Hearing outcry, she woke up and found the victim restless. She raised alarm. Then her mother Amirun (P.W.3) and father Karimullah rushed to the place of occurrence. Her mother asked Rupa Khanam about the occurrence who replied that those 3/5 persons had assaulted her. P.W.7 Sk. Nur Alam is a seizure listed witness. P.W.9, Dr. Sanjit Kumar Saha held autopsy of the dead body of the victim and found the following injuries on her person:

- “1) One penetrating wound on the lower most part of the right chest wall 2” X 1” thoraco abdominal cavity
- 2) One swelling on the lower part of the left lateral chest wall 2” X 1” upto bone.
- 3) One penetrating wound on the inferomedial aspect of the left breast $\frac{1}{2}$ ” X $\frac{1}{2}$ ” upto bone.
- 4) One penetrating wound on the inferomedial aspect of the left breast 1” X $\frac{1}{2}$ ” upto bone.
- 5) One penetrating wound on the upper part of the left anterior abdominal wall $\frac{1}{2}$ ” X $\frac{1}{2}$ ” upto bone.
- 6) One penetrating wound on the upper part of the anterior abdominal wall (mid line) 2” X 1” cavity.
- 7) One penetrating wound on the lateral side of the left midarm 2” X 1” full thickness of the arm.

8) One incised wound on the back of the left forearm 2" X 1" upto bone.

9) One penetrating wound on the right mid thigh 2" X 1" full thickness of the thigh.

10) One incised wound on the right anterior knee 2"X 1" upto bone."

He opined that death was caused due to haemorrhage and shock resulting from above mentioned injuries which were ante-mortem and homicidal in nature.

P.W.10 Saleha Begum in her testimony stated that getting information from Feli Begum (P.W.14), she rushed to the place of occurrence and asked about the matter to the victim who replied that Firoz Mollah, Iqbal Sheikh and Zaziron had assaulted her. She collected a van for shifting the victim to the hospital. She finding accused Firoz Mollah standing near southern 'bhiti' dwelling hut asked him about the cause of assaulting the victim but he fled away. People present there, tried to shift victim Rupa to local hospital but, on the way, she succumbed to injuries. P.W.11, Kamallesh Halder investigated the case partly. P.W.12 Mafizur Rahman recorded the confessional statement of convict-appellant Dawlat Fakir. He proved the confessional statement (Exhibit-10). P.W.13 Soliendra Nath Mondal is another Magistrate who recorded the statement of witness Sanjida under Section 164 of the Code of Criminal Procedure. P.W.14, Feli Begum in her testimony stated that at the relevant time she was sleeping in their southern "bhiti" dwelling hut. Hearing outcry, she rushed to the crime spot and found Rupa seriously injured . On her query,

Rupa stated that Iqbal Sheikh, Firoz Mollah, Zaziron, Memi and Dawlat Fakir had assaulted her. She raised alarm. At that time, appellant Firoz Mollah and Dawlat Fakir ordered her not to disclose their names. P.W.15, Md. Mostafa Kamal, Sub-Inspector of Police, upon completing investigation, submitted charge sheet against the appellants and another for commission of offence punishable under section 449/302/34 of the Penal Code.

Those were, in a nutshell, evidence adduced by the prosecution.

Mr. Joynal Abedin, learned Senior Counsel appeared on behalf of the convict Dawlat Fakir in Criminal Appeal No.104 of 2014, Mr. S.M. Shahjahan, learned Advocate appeared in Criminal Appeal No.108 of 2014 for Iqbal Sheikh and Mrs. Shirin Afroze, learned Advocate-on-Record appeared for the petitioner in Criminal Petition for Leave to Appeal No.424 of 2014 for Zaziron and Mr. S. M. Aminul Islam, learned Advocate, engaged by the State, appeared for the appellant Firoz Mollah in Jail Appeal No.3(A) of 2018.

Mr. Joynal Abedin, learned Senior Counsel submits that the confessional statement of the accused appellant Dawlat Fakir was not true and the same was not voluntarily made. He further submits that there is no eye witness of the occurrence and that prosecution has failed to prove the motive of killing the victim, so the appellant Dawlat Fakir is entitled to get an order of acquittal of the charge. Mr. S.M. Shahjahan, learned Advocate appearing in Criminal Appeal No.108 of 2014 and Jail Petition No.03 of 2018 for Iqbal Sheikh, submits that the charge brought against appellant Iqbal Sheikh has not been proved beyond all shadows of doubt. He submits

that the trial Court disbelieved the testimony of P.W.4 and rest witnesses are not the eye witnesses of the occurrence so appellant Iqbal will get an order of acquittal. Mr. S.M. Aminul Islam, learned Counsel appearing for Firoz Mollah in his submission stated that the charge against convict Firoz has not been proved beyond all shadows of doubt so he should be acquitted. Mrs. Shirin Afroze, learned Advocate-on-record appearing for convict Zaziron, submits that the instant case is a planted case. Due to previous enmity between the accused persons with the victim and her husband the instant false case was filed against Zaziron, she should be acquitted.

On the other hand, Mr. A.M. Aminuddin, learned Attorney General, appearing for the State in all the appeals and petitions, submits that the P.W.4 is the eye witness of the occurrence. She disclosed the names of the convict-appellants. He further submits that the victim in her oral dying declaration disclosed the names of the appellants who were involved in the occurrence, the courts below rightly convicted the appellants relying upon dying declaration of the victim. He further submits that the confessional statement made by accused Dawlat Fakir was voluntarily made and the same was true. He, lastly, submits that the learned Courts below upon proper appreciation of the evidence on record convicted and sentenced the appellant. All the appeals and petitions should be dismissed.

In this case, the learned Courts below while awarding conviction and sentence of the appellants relied upon (1) dying declaration of the victim, (2) confessional statement of the accused Dawlat Fakir and (3) on circumstantial evidence.

It appears from the testimony of P.W.3, who is a neighbour of the victim, that she rushed to the place of occurrence hearing outcry of her daughter Jonaki and Sanjida, daughter of the victim, and asked about the occurrence to victim Rupa, who disclosed the names of Iqbal Sheikh and Firoz Mollah. P.W.4 Sanjida, daughter of the victim, at the relevant time was sleeping in the same bed, stated that her mother disclosed the names of Iqbal Sheikh, Firoz Mollah, Dawlat Fakir, mother of Mousumi and mother of Kakoli. P.W.5, Morzina Begum in her testimony stated that when she asked about the incident to victim Rupa Khanam she replied that Iqbal Sheikh, Firoz Mollah, Dawlat Fakir, Shirin and Zaziron had assaulted her. P.W.6, Jonaki Begum mentioning the names of those five accused persons in her testimony stated that her aunty, had been assaulted by them. P.W.10, Saleha Begum, mother of the victim, in her testimony stated that getting information she rushed to the victim's house and asked about the matter to her who said that Firoz Mollah, Iqbal Sheikh and Zaziron had assaulted her. At one stage, she asked about the occurrence to Firoz Mollah, finding him in the Courtyard, who fled away. P.W.14 stated that Rupa disclosed the names of Iqbal Sheikh, Firoz Mollah, Zaziron and Dawlat Fakir. That is, P.Ws.3,4,5,6,10 and 14 consistently deposed that, on their query, victim Rupa disclosed the names of the convicts-appellants and petitioners. The learned Courts below considered the evidence of those witnesses and believed their testimonies so far the same relates to the dying declaration of the victim is concerned. Since the evidence of those witnesses are consistent about the dying declaration of the victim, we do not find any reason to disbelieve the testimonies of P.Ws.3, 4, 5, 6, 10 and 14.

The learned Advocates for the appellants submit that the Courts below erred in law in placing reliance on the oral dying declaration as it does not inspire confidence. The law is well settled that the conviction can be founded solely on the basis of oral dying declaration if the same inspires full confidence. In the case of Laxman V. State of Maharashtra [(2002) 6 SCC 710] Supreme Court of India has laid down thus:

“The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on death bed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the court insist that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness.”

Word “Dying Declaration” means a statement written or verbal of relevant facts made by a person, who died after making so. It is the statement of a person who expired stating the circumstances of his/her death. This is based on the maxim “*nemo moriturus praesumitur*

mentire”, i.e., a man will not meet his maker with lie in his mouth. When a statement is made by a person as to cause of his death or as to any circumstances of transaction which resulted into his/her death, in case in which cause of his death comes in question is admissible in evidence (Vika Ram V. State of Rajasthan, AIR 2001 S.C. 1814). It is the philosophy in law that a dying declaration made by a person on the verge of his death has special sanctity as at that solemn moment, a person is most unlikely to make any untrue statement. A dying declaration, therefore, enjoys almost a sacrosanct status, as a piece of evidence, coming as it does from the mouth of the victim who died after making the same. If the Court is satisfied that the dying declaration is true and free from any embellishment such a dying declaration, by itself, can be sufficient for recording conviction even without look for any corroboration provided it has been made by the deceased while in a fit mental condition.

We do not find any reason to disbelieve the dying declaration made by the deceased to the witnesses P.Ws.3,4,5,6,10 and 14. They are the most natural witnesses to whom dying declaration was made by the victim. The doctor, who held autopsy of the deadbody of the victim in his cross-examination has said, “উল্লিখিত জখমের পর রুগী কথা বলিতে পারে।” Such evidence makes the dying declaration credible and the conviction based on the same cannot be faulted. Once the Court is satisfied that the dying declaration was true, voluntary and not influenced by any extraneous consideration, it can base its conviction without any further corroboration as rule requiring corroboration is not a rule of law but only a rule of prudence. In the case of P.V. Radhakrishna V. State of Karnataka, AIR 2003 SC, 2859 it was observed that if after careful scrutiny the Court is satisfied that it is true and

free from any effort to induce the deceased to make a false statement and if it is coherent and consistent, there shall be no legal impediment to make it basis of conviction, even if there is no corroboration.

So far the confessional statement of the accused Dawlat Fakir is concerned it appears that the confessional statement recording Magistrate upon due compliance of the provision of Sections 164 and 364 of the Code of Criminal Procedure recorded the same. In his confessional statement, Dawlat Fakir stated as follows:

“ঘটনার দিন রাত অনুমান ১১.০০ ঘটিকা হতে ১২.০০ ঘটিকায় সময় পাংখারচর গ্রামে মৃত্তা বুপা বেগমের ঘরে প্রবেশ করিল। আমি (দৌলত ফকির), ০২। ইকবাল পিং অজ্ঞাত, গ্রাম পাংখারচর, থানা লোহাগড়া। ০৩। ফিরোজ মোল্যা, পিং অজ্ঞাত, গ্রাম পাংখারচর, থানা লোহাগড়া। ৪। জজিরন, স্বামী মৃত্ত মোকাম মোল্যা, গ্রাম পাংখারচর, থানা লোহাগড়া। ০৫। শিরিন আক্তার, স্বামী আক্তার মোল্যা, গ্রাম পাংখারচর, সর্বজেলা নড়াইল। প্রথমে আসামী জজিরন পিছনের দরজা হাত দিয়ে খুলে ফেলে। আসামী ইকবাল সহ আমরা ০৫ জন ঘরে প্রবেশ করি।

আসামী ফিরোজ মোল্যা তার হাতে থাকা তোয়ালে দিয়ে মৃত্তা বুপা বেগমের মুখ বেঁধে ফেলে। আসামী শিরিনা ও জজিরন বুপা বেগমের হাত চেপে ধরে। আমি বুপা বেগমের পা চেপে ধরি। আসামী ফিরোজ প্রথমে বুপা বেগমের পেটে বড় ছোরা দিয়ে কোপ দেয়। আসামী ইকবাল বুপা বেগমের বুকে কোপায়। বুপা বেগমের গর্জন শুনে পাশে থাকা ঘুমন্ত ছেলে মেয়ে ০৩জন চিৎকার করে উঠে। তারপর আমরা সবাই পিছনের দরজা দিয়ে দৌড়ে পালায় যাই। কোপানোর সময় বুপা বেগম কোন কথা বলতে পারেনি। প্রথমে ঘটনার আগে আসামী ইকবাল এবং জজিরন একটা/একটি দৈহিক মিলন করেছিল। জজিরনের ঘরে বিকাল বেলা। সেই সময় বুপা বেগম আসামী ইকবাল ও জজিরন কে দৈহিক মিলনের সময় দেখে ফেলে। দৈহিক মিলনের শেষে বুপা বেগমের সাথে আসামী ইকবাল ও জজিরনের ঝগড়া হয়। ঝগড়ার সময় আসামী ইকবাল বুপা বেগমকে বলেছিল- ‘আমরা এই কাজ করব, তুই পারলে ঠেকা। ঠেকাতে

আসলে তুই জান নিয়ে যেতে পারবি না।’ আমি ঝগড়া শুনে ঘটনাস্থলে যাই। তারপর ঐদিন রাত অনুমান ৮.০০ ঘটিকার সময় আমার বোন শিরিনা বেগমের স্বামীর বাড়ীতে বসে আমি ইকবাল, ফিরোজ, জজিরন এবং শিরিনা বেগম ষড়যন্ত্র করি এবং বুপা বেগমকে মেরে ফেলার সিদ্ধান্ত নেই। সেখান থেকে আসামী ইকবাল আমাকে নিয়ে নদীর কিনার দিয়ে যান। এবং আসামী জজিরন ও আমার বোন শিরিনা জজিরনের বাড়ীতে যায়। সেখানে আমরা যেয়ে দেখি যে জজিরন ও শিরিনা আক্তার বসে আছে। তারপর আমি ও ইকবাল জজিরনের ঘরে বসি। ১০(দশ) মিনিট পর আসামী ফিরোজ একটা তোয়ালে দিয়ে দা মুড়িয়ে নিয়ে আসে। আসামী ইকবাল ফিরোজের নিকট হতে দা নেয় এবং আসামী ফিরোজ ইকবালের কাছ থেকে ছোরা নেয়। কিছুক্ষণ পর বৃষ্টি শুরু হয়। তারপর জজিরন বুপা বেগমের ঘরের পিছনের পাশ দিয়ে দরজা হাত দিয়ে খুলে ফেলে। তারপর আমরা ঘরে প্রবেশ করে বুপা বেগমকে হত্যা করি। পরের দিন সকাল বেলা আসামী ইকবাল ও ফিরোজ আমাকে লঞ্চে তুলে দিয়ে খুলনা পাঠায়। তারপর আমি আর বাড়ীতে আসিনি। গত রবিবার র্যাব বাহিনী আমাকে খুলনা বৈকালী সিনেমা হলের সামনের হোটেল থেকে গ্রেফতার করে।

এই আমার দোষ স্বীকারোক্তিমূলক জবানবন্দী। আমি আর কিছু বলব না।”

From the confessional statement and the evidence of P.W.12 it appears that, Md. Dawlat Fakir was given sufficient time for his reflection and the Magistrate following all legal formalities recorded the same. The Magistrate had told him that it was his own choice and volition to make or not to make the confessional statement. He made the statement on his free will. The Magistrate noted that, “আসামী দৌলত ফকির তার প্রতি জবরদস্তি বা পীড়নের অভিযোগ করেননি। আমার বিবেচনায় এই স্বীকারোক্তি স্বেচ্ছা প্রনোদিত।” He further noted, “আসামী দৌলত ফকিরকে আমি বার বার বলে দিয়ে তিনি স্বীকারোক্তি করতে বাধ্য নন এবং স্বীকারোক্তি করলে এ ভিত্তিতে তার শাস্তি হতে পারে। তবু তিনি স্বীকারোক্তি করেছেন।” We do not find any reason to disbelieve his confessional statement. The confessional statement

was voluntarily made and the same was consistent with the prosecution case. We find that the confession is free from all infirmities and conforms to the requirements of sections 164 and 364 of the Code of Criminal Procedure. So, the Courts below rightly convicted the accused Dawlat Fakir on the basis of confessional statement and other evidence on record.

In the case of State of Tamil Nadu V. Nalini and others reported in (1999) 5 SCC 253, it was observed that Section 30 of the Evidence Act discloses that when the following conditions exist, namely, (i) more persons than one are being tried jointly; (ii) the joint trial of the persons is for the same offence; (iii) a confession is made by one of such persons (who are being tried jointly for the same offence); (iv) such a confession affects the maker as well as such persons (who are being tried jointly for the same offence); and (v) such a confession is proved in Court, the Court may take into consideration such confession against the maker thereof as well as against such persons (who are being jointly tried for the same offence). On perusal of Section 30 of the Evidence Act it appears that where confession made by one of such persons affecting himself and some other of such persons is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession. The provision of Section 30 is not conclusive for the reason that only if the Court feels the confession is corroborated with other materials on record, then that can be used against the co-accused and in that situation section 30 of the Evidence Act will come into play. The word 'may' in this section is very important to interpret the presence of this term indicates that such a confession can not be said to be 'evidence' in its technical sense and thus can only support a conviction. The confession of

the co-accused is not the substantive piece of evidence and that it can only be used to confirm the conclusion drawn from other evidence in a criminal trial. The traditional dogmatic hyper technical approach has to be replaced by rational, realistic and genuine approach for administering justice in a criminal trial. In this case, the victim made dying declaration connecting the convict appellants who are, confessing accused Dawlat Fakir, Iqbal Shaikh, Firoz Mollah, Zaziron and Shirin Akter in the occurrence. P.W.4 Sanzida is the eye witness of the occurrence. She mentioned the names of the convicts. Confessional statement of convict Dawlat Fakir, who was tried jointly with other accused appellants, fully supported the dying declaration of the victim.

Considering the facts, circumstances and the evidence on record, we do not find any illegality and irregularity in the conclusion arrived at by the courts below.

It appears from the post-mortem report that the victim received as many as 10 injuries. Although the murder had been committed in a premeditated and calculated manner with extreme cruelty and brutality, it is difficult to say conclusively as to whose assault the victim died. The appellants Iqbal Sheikh, Md. Dawlat Fakir and Firoz Mollah have been languishing in death cell for more than 12 years. No absolute and unqualified rule can be laid down that in every case in which there is long delay in the execution of death sentence, the sentence must be substituted by life imprisonment. However, considering the facts and circumstances of the case, particularly, previous quarrel between the convicts Iqbal and Zaziron with the victim and that the nature of the offence, the diverse

circumstances attended upon it, its impact upon the contemporary society, we are of the view that ends of justice will be met if the sentence of death is commuted to one of imprisonment for life.

Accordingly, all the appeals and petitions are dismissed. However, the sentence of appellant Md. Dawlat Fakir, Iqbal Sheikh @ Md. Iqbal Sheikh and Firoz Mollah @ Md. Firoz Mollah is commuted from death to one of imprisonment for life and to pay fine of tk. 25,000/- each, in default, each of them to suffer rigorous imprisonment for one year more. However, all the appellants and petitioner shall get benefit of section 35A of the Code of Criminal Procedure.

C.J.

J.

J.

J.

The 15th September, 2021.

M.N.S./words-4,410/