

**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**

**Mr. Justice Obaidul Hassan**

**CRIMINAL APPEAL NOS. 29, 19 & 37 OF 2012**

(From the judgment and order dated 29.02.2012 passed by the High Court Division in Death Reference No.38 of 2006 with Criminal Appeal Nos.1772 of 2006, 1775 of 2006 and 1812 of 2006 and Jail Appeal Nos.359, 360 and 361 of 2006.)

Nur Alam Howlader alias Pachu alias Sumon  
alias Nurul Alam : Appellant  
(Crl.A.No.29/2012)

Miraj Khalifa @ Md. Miraj @ Md. Miraj  
Hossain Khalifa : Appellant  
(Crl.A.No.19/2012)

Md. Jafor Gazi : Appellant  
(Crl.A.No.37/2012)

**=Versus=**

The State : Respondent  
(In all the appeals)

For the Appellants : Mr. Fazlul Haque Khan Farid, Advocate, instructed  
by Mr. Nurul Islam Chowdhury, Advocate-on-Record.

For the Respondents : Mr. Biswajit Debnath, Deputy Attorney General  
instructed by Mr. Haridas Paul, Advocate-on-Record.

***Date of hearing and judgment*** : **21.09.2021.**

**J U D G M E N T**

**Hasan Foez Siddique, J:** Three Criminal Appeals being Criminal Appeal Nos.29, 19 and 37 of 2012 were preferred by Nurul Alam Howlader @ Masud @ Sumon @ Nurul Alam, Miraz Khalifa @ Md. Miraj @ Md. Miraz Hossain Khalifa and Md. Jafor Gazi respectively against the same judgment and order dated 29.02.2012 passed by the High Court Division in Death Reference No.38 of 2006 with Criminal Appeal Nos.1772 of 2006, 1775 of 2006 and 1812 of 2006 and Jail Appeal Nos.359, 360 and 361 of 2006. The High Court Division accepted the

Death Reference and dismissed all the appeals and Jail Appeals, thereby, upheld the judgment and order dated 30.04.2006 passed by the learned Divisional Druto Bichar Tribunal, Barisal in Druto Bichar Tribunal Case No.02 of 2006 arising out of Dashamina P.S. Case No.5 dated 23.09.2005 corresponding to G.R. Case No.55 of 2005 and W.C Case No. 251 of 2005 of Women and Children Repression Control Tribunal, Patuakhali convicting the appellants under Sections 7/9(3) of Nari-O-Shishu Nirjatan Daman Ain, 2000 and 302/34 of the Penal Code and sentencing each of them to death.

Criminal Appeal No.37 of 2012 preferred by appellant Md. Jafor stands abated on his death.

The prosecution case, in short, was that victim Tania, a student of A.R.T College, Dashmina, staying in her maternal uncle's house, had been pursuing her education. On 20.09.2005, at about 7.15 a.m., when victim Tania was going to her college, the appellants apprehended her and raped her and, thereafter, they killed her. P.W.1 Md. Nasir Uddin Khan lodged First Information Report with Dashamina Police Station against unknown miscreants (Exhibit-1).

Police, holding investigation, finding prima-facie case against the appellants, submitted charge sheet for commission of offence punishable under Section 7/9(3) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (the Ain) read with sections 363/376/302/201/34 of the Penal Code. The case was ultimately tried by the Divisional Druto Bichar Tribunal, Barisal who framed charges against the appellants under section 7/9(3) of the Ain and section 302/34 of the Penal Code. The appellants pleaded not guilty and claimed to be tried. The prosecution examined as many as 38 witnesses in

support of its case and defence examined none. From the trend of cross-examination of the prosecution witnesses it appears that the defence case was that the appellants had been implicated in this case falsely.

The Tribunal upon recording the evidence, examining the appellants under Section 342 of the Code of Criminal Procedure and hearing the parties convicted and sentenced the appellants as stated earlier. The appellants preferred appeals and jail appeals in the High Court Division and the Tribunal transmitted the case record in the High Court Division for confirmation of sentence of death. The High Court Division accepted the Death Reference and dismissed the Criminal Appeals and Jail Appeals. Thus, the appellants have preferred these appeals.

Mr. Fazlul Haque Khan Farid, learned Advocate appearing on behalf of the appellants, submits that there was no eye witnesses of the occurrence and that the appellants were convicted on the basis of the confessional statements but the confessional statements were not voluntarily made and those were not true and recorded following the provisions of Sections 164 and 364 of the Code of Criminal Procedure so the order of conviction and sentence awarded to the appellants is liable to be set aside. He submits that the police, in connivance with PW.5 Abu Jafar, had implicated the appellants in the case falsely and some incriminating materials were recovered from the custody of P.W.5, in such view of the matter, the appellants are entitled to get an order of acquittal of the charge.

Mr. Biswajit Debnath, learned Deputy Attorney General appearing for the State, submits that the confessional statements were voluntarily made and that those were consistent with the prosecution case and recorded following the provisions of Section 164 and 364 of the Code of Criminal

Procedure, learned Courts below rightly convicted and sentenced the appellants. He further submits that the confessional statements and circumstantial evidence conclusively proved the guilt of the appellants who brutally killed the victim after committing rape upon her, the Courts below rightly sentenced the appellants to death.

Out of 38 prosecution witnesses, P.W.1 informant Nasir Uddin was not an eye witness of the occurrence. He narrated the prosecution case stating that the victim Tania, staying in his house, had been pursuing her study in A.R.T College. At about 7.15 a.m. on the date of occurrence, she left house for going to her college and since then she was untraced. This witness initially thought that she went to her father's house. On 23.09.2005, victim's father went to his house and told that the victim did not go to their house. Then this witness and others started searching the victim. At one stage, P.W.11 Mariam told that an incident took place in the garden of "Boyati". A khata, a pair of sandals and an umbrella had been recovered from that garden. P.W.1 and others rushed to the house of "Boyati". P.W.5 Abu Jafar Munshi, on query, told that at about 10.00 a.m. on 20.09.2005 convict Miraj went to their house and collected mobile number of his brother. Thereafter, Miraj collected an umbrella, a khata and a ladies sandal from the place of occurrence. P.W.5 Abu Jafar directed accused Miraj to keep those articles in his custody. Abu Jafar's mother found another piece of sandal from the place of occurrence. They handed over those articles to P.W.1. On query, P.W.11 Mariam stated that those articles belonged to victim Tania. At about 4 p.m., P.W.1 came to know that police had recovered a dead body. Victim's father, mother and P.W.1 rushed to local Police Station and identified the dead body of victim Tania.

Thereafter, P.W.1 lodged an F.I.R. with local police station (Exhibit-1). In presence of P.Ws.2 and 3, the Investigating Officer held inquest of the dead body of the victim. These two witnesses put their signatures in the inquest report. P.W.4, Fahima in her testimony stated that, on 29.09.2005, mother of P.W.5 Abu Jafar asked her about the owner of that khata to which she replied that the said khata belonged to Tania.

P.W.5 Abu Jafar, in his testimony, stated that at about 10 a.m. on 20.09.2005 he was staying in his house situated near the place of occurrence. Accused Miraj met him and sought mobile phone number of his elder brother. This witness supplied the number. After getting number, Miraj entering into the jungle picked up some articles from that jungle. This witness asked Miraj as to what was he doing there. Miraj replied that he found an umbrella, a khata and a pair of ladies sandal there. Abu Jafar asked him to bring all those articles. Getting those articles, this witness kept the same in his custody. He found the name of Tania in that khata. He requested his mother to keep all those materials in her custody. After the jumma prayer on 23.09.2005, the informant and 8/9 others went to his (P.W.5) house. Mariam, P.W.11 was with them. Then this witness disclosed the aforesaid facts to them. They requested to hand over those materials from his mother to them. P.W.11, Mariam told them that Tania was the owner of all those materials. Then this witness and others went to the college and came to know that the police had recovered dead body of a girl. Thereafter, they rushed to the local police station. Father and mother of Tania identified her dead body. On the next day, police went to the house of this witness and seized an umbrella, khata and sandal produced by the mother of this witness. On 25.09.2005, police taking Miraj, went to the

house of this witness again. Miraj identified the place of occurrence. As per pointing out by Miraj, police, with the help of the people, recovered a scarf and a "fatua". Miraj told that victim was the owner of the recovered scarf and accused Nur Alam was the owner of the 'fatua'. Police prepared a seizure list of those seized goods. This witness put his signature in the seizure list (Exhibit-3). In cross-examination, this witness stated that he was a lecturer of a college. He denied defence suggestion that he, in collusion with others, had implicated the appellants in the case falsely. P.W.6, Sakhina Bibi, mother of P.W.4 Fahima, stated in her testimony that at about 8 a.m. on the date of occurrence, Fahima went to college. She accompanied Fahima. Kad Banu, mother of P.W.5 Abu Jafar, told this witness that on the date of occurrence Miraj handed over a pair of sandals, an umbrella and one khata to Abu Jafar who handed over those goods to his mother. She told that Tania was the owner of that khata. She further stated that a dead body was recovered from a canal situated to the north of Dashamina High School. She denied the defence suggestion that Kad Banu did not tell her that the recovered khata belonged to Tania. P.W.7, Khalilur Rahman Boyati in his testimony stated that his sister Kad Banu told him that a khata, an umbrella and a pair of sandals were recovered from accused Miraj who collected those materials from the place of occurrence. Scarf and 'fatua' were also recovered by the police from the canal as per pointing out by Miraj. This witness put her signature in the seizure list prepared by the police. P.W.8 Kad Banu deposed that at about 10 a.m. on 20.09.2005 accused Miraj went to their house and sought mobile number of the elder brother of Abu Jafar from him who gave that number. Thereafter, Miraj entered into a nearby jungle and picked up some goods. Abu Jafar asked

Miraj as to what was he doing there. He replied that he found a khata, a sandal and an umbrella from that place. Abu Jafar found the owner's name written in that khata. At one stage, this witness asked Fahima about the owner of that khata. She produced those materials on 24.09.2005 to the police. On 25.09.2005, police personnel and Miraj went to the place of occurrence. Miraj pointed out the place of occurrence to them. P.W.9 Hasina Begum in her testimony stated that at about 10 a.m. on 20.09.2005 Miraj went to the house of P.W.5 Abu Jafar to collect mobile number of his elder brother. Thereafter, he, entering in jungle, collected one pair of sandal, a khata and an umbrella. Abu Jafar asked him what he was doing there. This witness and others followed Miraj. Miraj left the place. On 23.09.2005, her neighbour Shah Alam, his wife and daughter Parveen went to the house of this witness. In the afternoon maternal uncle of victim Tania, Marium and others went to her house and wanted to know about those goods. P.W.5 Abu Jafar produced those goods. Police recovered dead body of Tania. She heard that accused Miraj, Jafar and Nurul Alam had committed rape upon Tania and, thereafter, killed her. P.W.10, Foez Ahmed, a local journalist, in his testimony stated that on 25.09.2005 at about 10.00 a.m. he saw police and accused Miraj in their village. Miraj admitted that they had committed rape upon victim Tania and, thereafter, killed her. Police, with the help of local people, recovered a scarf and 'fatua' from a canal. P.W.11, Mariam Begum in her testimony stated that she was a student of Dashmina A.R.T College. On the date of occurrence, Tania left her maternal uncle's house but she did not return. This witness thought that perhaps Tania went to their house. On 23.09.2005, this witness went to her college and about 11.30 a.m., father of Tania asked her about

the whereabouts of Tania. At the time of returning home, she met her friend Parveen Akter and younger sister of her another friend Asma. On query, she told that she did not get any information about Tania. Then Asma told that in the jungle of "Boyati" an offence was committed wherefrom a pair of sandal, an umbrella and a khata had been recovered. Getting such information, this witness, her maternal uncle and others rushed to the house of "Boyati". At that time, Jafar (P.W.5) and his mother told that at about 10 a.m. on 20.09.2005 Miraj went to their house for collecting mobile number of his elder brother and Jafar gave the same. Miraj thereafter went to the jungle and picked up some goods therefrom. On query of Jafar, Miraj told that he found an umbrella, sandal and khata therefrom and told that perhaps a mad man had kept those goods there. They produced those goods to this witness and others and this witness told that those goods belonged to Tania. Thereafter, they came to know that dead body of a girl had been recovered by the police from the canal. Then this witness and others went to the police station and identified the dead body of victim Tania. On 24.09.2005, police seized those goods from the house of Jafar. On 25.09.2005, police confining Miraj went to the house of "Boyati". At that time, this witness, informant and others were present there. Accused Miraj admitted that Nur Alam, Jafar and he himself had committed rape upon the victim and, thereafter, killed her. As per pointing out by Miraj, police, taking help of local people, recovered 'scarf' and 'fatua' from the canal. P.W.12 Tafayel Ahmed Khan in his testimony stated that on 26.09.2005 police recovered a scarf from canal. Victim Tania was the owner of that scarf. P.W.13, Sarwar Hossain Khan deposed that he came to know that victim Tania was missing. He also came to know that an



offence was committed in the jungle near house of Boyati from where a sandal, an umbrella and a khata were recovered. Then he went to the house of “Boyati” along with informant (P.W.1), Mariam and others. They asked Abu Jafar (P.W.5) about the matter, who told that Miraj went to their house at about 10 a.m. on 20.09.2005 and requested him to give number of mobile of his elder brother. Miraj, getting that number, went to the jungle and picked up some materials therefrom. P.W.5 asked him what he was doing there. He directed Miraj to hand over those sandal, umbrella and khata to him. He handed over those goods to Jafar who told his mother to keep the same in her custody. Thereafter, Jafar handed over those goods to this witness and others. They, taking those goods, went to college and came to know that the police had recovered a dead body from a khal situated near Dashmina High School. Thereafter, they went to local police station and saw the dead body of victim Tania. They identified the dead body. P.W.14, Mohiuddin Khan in his testimony stated that on 25.09.2005 informant, Mariam and others and he himself went to the house of “Boyati”. Police confining Miraj went there who admitted that they had killed the victim after committing rape. Police recovered a ‘scraf’ and a ‘fatua’ from the canal. P.W.15, Mojibor in his testimony stated that on 23.09.2005 after jumma prayer informant, Khokan Khan, Mintu Khan, Badal Kha and others went to his house. The informant told him that victim Tania was missing. Witness Parveen and Asma had told Marium (P.W.11) that an occurrence was committed in the house of “Boyati” on 20.09.2005. Miraj collected an umbrella, sandal and khata from the jungle situated near the house of “Boyati”. Jafar asked Miraj about the goods collected by him. This witness also asked Jafar about those goods. They went to the college

and came to know that a dead body had been recovered by the police from the canal. Then they rushed to the local police station and found the dead body of victim Tania. Informant, Mariam and this witness himself identified the dead body. P.W.16 Sapna Begum, former female member of Bashbaria Union Parishad, in her testimony, stated that at about 7.15 a.m. on 20.09.2005 she saw victim Tania and on 23.09.2005, Nasir Ahmed, maternal uncle of Tania, told this witness that Tania was missing. In the night, she came to know that the dead body of Tania had been recovered. P.W.17 Bachchu Khan stated that a pair of Sandals, an umbrella and a khata were recovered from accused Miraj and those were kept in the custody of Jafar's mother. He came to know about the occurrence from Abu Jafar. P.W.11 Mariam identified those articles stating that those goods belonged to victim Tania. He came to know that a dead body was floating in the canal situated near Dashmina High School. Police recovered that dead body. Thereafter, this witness and others went to the Police Station and identified the dead body of the victim. P.W.18 Dr. Mizanur Rahman and two other doctors held autopsy of dead body of the victim and found following injuries on her person:

“1. One abrasion on the palm of right hand 2" X 1"

2. Another abrasion on the palm of left hand  $2\frac{1}{2}$  " X  $1\frac{1}{2}$  "".

In their opinion, death of the victim was caused due to shock and haemorrhage resulting from chest wall injury and rape which were antemortem and homicidal in nature.”

P.W.19 Dr. Zeaul Karim, P.W.28 Bashiruddin Khan and P.W.29 Md. Nazir Howlader were tendered by the prosecution.

P.W.20 Asma Akter in her testimony stated that on 21.09.2005 she heard from witness Hasina (PW.9) that on previous day at about 10 AM appellant Miraj collected a khata, an umbrella and a pair of ladies sandals from adjacent jungle of the house of Boyati and kept them in the custody of Jafar. On 23.09.2005 when Asma heard from Mariam that her sister Tania had gone missing she told her about the recovery of those articles. P.W.21 K.M. Jahirul Islam @ Khokon in his testimony stated that at about 7.00 a.m. on 20.09.2005 he saw accused Miraj in a field near the house of Khalifa . He also saw accused Zafar at the western side of Chowrasta, he was going towards the east. On 23.9.2005, Mariam told this witness that victim Tania was found untraced. Mariam told him about the recovery of Sandal, umbrella and khata of victim Tania. On 20.09.2005, Mariam and this witness went to the house of "Boyati" and found khata of Tania in which the name of Tania appeared. After recovery of the deadbody, they went to the Police Station and identified the same. The informant suspected accused Miraj. On the basis of admission of Miraj, some incriminating articles were recovered from the canal. P.W.22 Parveen Akhter stated that on 23.09.2005 father of Tania went to their house for searching Tania. P.W.11 Mariam told this witness that Tania was found untraced. Asma (P.W.20) told this witness that Sandal, Khata and umbrella were recovered from beside the house of "Boyati". This witness came to know from P.W.8, mother of Jafar, that those goods were recovered and kept in her custody. P.W.23 Constable Feroz Miah stated that at about 12.00/12.30 p.m. on 23.09.2005 .S.I. Abdul Latif Khan, A.S.I. Sarowar Hossain, Sepai

Sekendar Ali and Omar Faruq and he himself went to the canal situated near Dasmina High School and recovered the dead body of the victim. Thereafter, inquest of the dead body was held. They brought the said dead body to local Police Station. Father and mother of victim identified the dead body and then the dead body was sent to Patuakhali Sadar Hospital for holding autopsy. This witness accompanied the dead body. He proved the challan (exhibit-7). P.W.24 Constable Sekendar Ali stated that Police personnel including himself recovered the dead body of the victim from a canal. He also accompanied the dead body with P.W.23 at the time of shifting the same to Patuakhali Hospital for holding autopsy. P.W.25 Badal Khan after jumma prayer on 23.09.2005 heard about the incident that took place on 20.09.2005 from Mariam. Thereafter, they went to the house of "Boiyati" and found witness Jafar who told them about the recovery of alams. P.W.26 Jahangir Alam Minto is the witness of recovery of scarf of the victim. On 26.09.2005, P.W.11 Mariam identified the said scarf. P.W.27 Jakir Hossain Khan in his testimony stated that he went to the house of "Boiyati" and found Police personnel and accused Miraj who disclosed entire facts from starting to end. P.W.30 Abdul Manan Sikder, teacher of victim Tania, stated that on 25.09.2005, police prepared seizure list upon seizing some incriminating articles. He heard that accused Miraj, Nur Alam and Jafor had raped the victim and killed her. P.W.31 Md. Mosharaf Hossain son of Moslemuddin is a witness of holding inquest of the dead body of victim. He put his signature in the inquest report. P.W.32 S.I. Md. Mosharaf Hossain son of Mohmmmed Ali Khan in his testimony stated that one Kawsar Alom informed this witness through his mobile phone that a dead body was floating in the canal situated at the north side

of Dashmina High School. They, getting such information, lodged G.D. No.665 dated 23.09.2005 and, thereafter, rushed there with other Police personnel and recovered the dead body. Thereafter, he prepared inquest of the dead body and took signatures of the witnesses in the inquest report. People present there failed to identify the victim. Accordingly, this witness brought the dead body at the Police Station. Thereafter, the relatives of the victim went to the Police Station and identified the dead body. On 23.09.2005, he visited the place of occurrence and arrested accused Miraj. He proved the inquest report (exhibit-2) and challan (exhibit-7). P.W.33, Noman Master, father of the victim in his testimony stated that on 23.09.2005 he went to the house of maternal uncle (P.W.1) of the victim where the victim was staying. He talked with P.W.1, Mariam (P.W.11) and Parveen Akhter (P.W.22) and, thereafter, started searching the victim. He went to his house at Betagi. He came to know that a dead body had been recovered. After recovery of the dead body, the same was brought at local police station. This witness, his wife and others identified the dead body of the victim at the police station. P.W.34 A.K.M. Masudur Rahman (Magistrate) recorded the confessional statement of accused Miraj Khalifa. He proved that confessional statement (exhibit-9). He also recorded the confessional statements of accused Jafor Gazi and Nur Alam on 28.05.2005 which were marked as exhibit-10 and 11 respectively.

P.W.35 Peara Khanom, mother of the victim in her testimony stated that getting information about the recovery of dead body, she rushed to the Police Station and identified the dead body of the victim. She further stated that she came to know that accused Miraj, Jafor and Nur Alam had raped the victim and, thereafter, killed her.

P.W.36 Shamsul Alam Khan is the second Investigating Officer of the case. In his testimony he stated that on 25.09.2005 he went to the house of Boyati with arrested accused Miraj. Reaching there Miraj described the incident and pointed out the place where alammats were thrown off. At the pointing of accused Miraj a scarf and a fatua were recovered from the canal. Accused Miraj and witness Mariam identified that the scarf belonged to Tania. Accused Miraj admitted that the fatua belonged to accused Nur Alam.

PW-37 Md. Abul Khayer is the paternal uncle of victim Tania. He deposed that he had gone to the morgue with the dead body and after post mortem examination received the same. He proved his signature in the copy of challan (exhibit 7/4). He also identified two photos of Tania (exhibit 16 and 17).

PW-38 Ranjit Kumar Barua was the third Investigating Officer of the case. He submitted the charge sheet against the appellants. He also submitted GD nos.665, 669, 689, 690 and 691 before the court which were marked as exhibit-18, 19, 20, 21 and 22 respectively.

These are, in a nutshell, the testimonies of the prosecution witnesses.

In this case, the learned Courts below convicted the appellants relying upon the confessional statements and circumstantial evidence.

It appears from the confessional statement of accused appellant Miraj Hossain Khalifa that he was arrested by the Police on 24.09.2005 and produced in the Court on 25.09.2005 at about 2.30 p.m. The confessional statement recording Magistrate allowed him time for his reflection. He told him that he is a Magistrate not Police, the appellant is not bound to make

confessional statement and if he makes such confessional statement the same may be used as evidence against him. The Magistrate asked the appellant that as to whether any one influenced him to make such confessional statement or not who replied negatively. That is, after due compliance with necessary formalities, the P.W.34 recorded the confessional statement of accused appellant Miraj Hossain Khalifa. The contents of the said confessional statement were as follows:

“আমি গত ২০-৯-২০০৫ তাং শবেবরাতের রাত্রে পরের দিন। আমার বাড়ির নিকটে স্কুলের সামনে দঃ পশ্চিম গছানী সঃ প্রাঃ বিদ্যালয়। লাউ গাছের ঝাকায় কাজ করছিলাম। স্কুলের সামনের রাস্তা দিয়ে পূর্ব দিক হতে পশ্চিমে কলেজের দিকে কলেজ পড়ুয়া মেয়ে ছাতি এবং জুতা খাতা হাতে কলেজের দিকে দক্ষিণে যাচ্ছিল। পিছনে ২টি ছেলে মেয়েটির পিছন পিছন হাটছিল। তাদের নাম ক) মোঃ জাফর গাজী পিং নুর হোসেন গাজী সাং- চর হোসনাবাদ (খ) নুর আলম হাওলাদার পিং খোরশেদ হাওলাদার সাং নেহালগঞ্জ, বর্তমানে গছানী শিকদার বাড়ী উভয় থানা দশমিনা। স্কুলের সম্মুখে চৌরাস্তায় বট গাছের গোড়ায় দাড়ায়ে আমাকে ডেকে বলে যে, তুই এদিকে আয়। আমি সাথে সাথে ওদের নিকট আসি। ডাকার কারণ জিজ্ঞাসা করি। বলে যে, চল কলেজে যাই। তখন মেয়েটির পিছন পিছন রওনা দেই। গছানী নিজ হাওলা বয়াতী বাড়ির পশ্চিম পার্শ্ব থাকা তাল গাছের নিকট মেয়েটি পৌছালে পিছন থেকে জাফর গাজী পিং নুর হোসেন গাজী, দৌড়ে মেয়েটিকে পিছন থেকে ডান হাত দিয়ে মুখ চেপে ধরে। এরপর নুর আলম পিতা খোরশেদ হাওলাদার মেয়েটির ডান হাত ধরে। আমি বাম হাত ধরিয়ে জোড় করে দক্ষিণে এগিয়ে পূর্ব দিকে বয়াতী বাড়ীর সম্মুখে থাকা গাছপালায় জংগলে খালের কিনারায় নিয়ে যাই।

জাফর মেয়েটিকে বলে যে, তোকে কি জন্য এনেছি বলতে পারো। তখন মেয়েটি বলে যে না। তখন ভয় দেখায়ে ছেলোয়ার খুলতে বলে। তখন মেয়েটি জীবনের ভয়ে ছেলোয়ার খোলে। তখন মেয়েটাকে জাফর মাটিতে শোয়ায়ে প্রথম আসামী জাফর গাজী ধর্ষণ করে। এর পর নুর আলম হাওলাদার ধর্ষন করে এতে মেয়েটির গুপ্ত অংগ থেকে রক্ত ক্ষরণ শুরু হয়। তখন নুর আলম এর গায়ে থাকা ফতুয়া দিয়ে গুপ্ত অংগ পরিষ্কার করা হয় এবং পরে আমি (মিরাজ ) ধর্ষণ করি। আমার কাজ শেষ হওয়ার পর জাফর গাজী ও নুরুল আলম হাং মেয়েটিকে ২ হাতে ধরে টান দিয়ে বলে যে, তোরা আমাকে জানে

মারিস না। এর পর আমি বাধা দেই। তখন জাফর আমাকে একটি ঘুষি মারে এবং ২য় টানে মেয়েটিকে খালে ভিতর পানিতে ফেলে দেয়। জাফর এবং নুর আলম মেয়েটিকে পানিতে চেপে ধরে এবং ২মিনিটের মধ্যেই মেয়েটি মৃত্যু বরণ করে। এর পর মেয়েটি মরে ভেসে উঠে। মৃত নিশ্চিত করে জাফর ও নুর আলম খাল পার হয়ে দক্ষিণ পার্শ্বে উঠে পশ্চিম দিয়ে চলে যায়। আমি বয়াতী বাড়ীর জংগল এর ভিতর দিয়ে পূর্ব পাশ দিয়ে উত্তরে আমাদের বাড়ীতে চলে যাই। তখন সময় আনুমানিক সকাল ৯ টা / ৯. ৩০ মিনিট হবে।

এর পর বাড়ী থেকে পুনরায় সকাল ১০ টার দিকে ঘটনা স্হলে আসি এবং ঘটনা স্হলে পড়ে থাকা ছাতা, জুতা এবং লেখার খাতা গোপন করার জন্য ঘটনাস্হলে আসি। ঘটনাস্হলে এসে দেখি বয়াতী বাড়ির প্রভাষক জনাব আবু জাফর হাং তার বাড়ির দুয়ারে বসে দাত মাজতেছে। তখন আমি তাকে দেখে চলাকী করে তার বাড়ির দিকে এগিয়ে গিয়ে তার নিকট থাকা আমার (মিরাজ) বড় ভাই (আসাদুল ইসলাম) এর মোবাইল নম্বর চাই এবং মোবাইল নম্বর নিয়ে আমি ঘটনাস্হলের দিকে যাই। যাওয়া কালীন ঘটনাস্হলের মেয়েটির ছাতা, খাতা ও এক পাটি জুতা আমি দেখি। তখন আমি এই ছাতা, জুতা এবং খাতা কার বলে জাফর সাহেবকে জিজ্ঞাসা করে। তখন জাফর ভাই বলে যে ঐ গুলি নিয়ে আয়। তখন তারা ছাতা, জুতা খাতা জাফর ভাইয়ে দিয়ে বাড়ীতে চলে যাই।

এর পর গত ২৩-৯-২০০৫ বিকাল ৪টায় জানতে পারি যে, মেয়েটির লাশ পুলিশ দশমিনা খাল থেকে উদ্ধার করে। আমি চুপ চাপ বাড়িতে ছিলাম। গত ২৪/৯/২০০৫ তাং ভোরে পুলিশ আমাকে গ্রেফতার করে থানাতে নিয়ে আসে এবং কোর্টে সোপর্দ করে পুনরায় থানাতে নেয়। আমি পুলিশের নিকট সকল ঘটনা জানাই। তখন পুলিশ অদ্য ২৫-৯-০৫ তাং সকাল ১১টার দিকে আমাকে গচানী নিজ হাওলা বয়াতী বাড়ির নিকট নেয়। আমি পুলিশকে ঘটনাস্হলে দেখাই ও মৃত দেহ যে দিক দিয়ে খালে ফেলিয়াছি ঐ জায়গাটি পুলিশকে দেখাই। পুলিশ ৮/১০ জন লোক খালে নামায়ে খাল হতে মেয়েটির একটি ওড়না এবং নুর আলম হাওলাদারের ফতুয়াটি উদ্ধার করে। ওরনাটি মেয়েটির এবং ফতুয়াটি নুর আলম হাং বলে সনাক্ত করি। এই আমার জবানবন্দি।”

The Magistrate (P.W.34) endorsed in the confessional statement that he allowed three hours time to appellant Miraj for his reflection. He noted that appellant Miraj had made such confessional statement voluntarily.



Similarly, the P.W.34 recorded the confessional statement of accused Abu Jafor Gazi who died during the pendency of the case. P.W.34 also recorded the confessional statement of accused Nur Alam Howlader @ Suman @ Panchu. It appears from the confessional statement that Nur Alam Howlader was arrested by the Police at 4.30 a.m. on 25.09.2005. P.W.34, following all formalities, recorded the confessional statement of this accused on 28.09.2005. The contents of the said confessional statement are as follows:

“মিরাজ গত শবে বরাতের ২দিন পূর্বে আমার দোকানে আসে। বিকালে মিরাজ বলে যে, একটি মাল খেতে হবে। আমাকে দায়িত্ব দেয় খোজ নিতে। আমি খোজ নেই এবং জানতে পারি যে, মেয়েটির নাম তানিয়া। পরে মেয়েটি যে পথে কলেজে যায় সেই পথে আটক করার সিদ্ধান্ত নেই। এর পর জাফর, মিরাজ এবং আমি পরিকল্পনা মতে আমরা খলিফা বাড়ির নিকটে বটগাছের নিকট ৩ জন একত্র হই। এবং মেয়েটি আমাদের সামনে দিয়ে এগিয়ে গেলে আমরা ৩ জন পিছু নেই এবং সামনে বয়াতী বাড়ীর নিকটে রাস্তার পার্শ্ব থাকা তাল গাছের নিকট এসে দৌড়ে জাফর মেয়েটিকে মুখ চেপে ধরে এবং মিরাজ পা চেপে ধরে এবং আমি হাত এবং মাজা জড়িয়ে ধরি। উচু করে মেয়েটিকে বয়াতী বাড়ীর সম্মুখে ফিরে খালের পার্শ্ব নিয়ে যাই। পরে মৃত্যুর ভয় দেখিয়ে মেয়েটির ছেলোয়ার খুলতে বাধ্য করি। প্রথমে জাফর ধর্ষণ করে এর পর ২য়তে আমি ধর্ষণ করি। এবং ৩য় তে মিরাজ ধর্ষণ করে। ২য় ধর্ষণ করার পর প্রচুর রক্ত স্ফরণ হয়। ধর্ষণ শেষে মেয়েটির প্রায় জ্ঞান হারায় তখন মিরাজ বলে যে, মেয়েটি বেচে গেলে আমাদের অসুবিধা হতে পারে তখন মেরে ফেলার পরিকল্পনা করি। তখন জাফর হাত ধরে খালের দিকে টেনে নেয়। তখন আমরা ২জন পা ধাক্কা দেই। এর পর জাফর মেয়েটিকে পানিতে চুবায়ে ধরে মেরে ফেলে। মৃত্যু নিশ্চিত হলে আমি ধান ক্ষেত দিয়ে এবং মিরাজ পূর্ব দিক দিয়ে চলে যায়। জাফর সব শেষে চলে আসে।”

It appears from the endorsement of P.W.34 (Magistrate) that the appellant Nur Alam was given three hours time for his reflection and according to him he has made such confessional statement voluntarily. We

have gone through the confessional statements of appellant Miraj Khalifa and Nur Alam Howlader and both the confessional statements are consistent with the prosecution case as to the time, place and manner of occurrence. Learned Advocate, appearing for the appellants, failed to show any material to establish that the confessional statements were not true and those were not recorded following the provisions of sections 164 and 364 of the Code of Criminal Procedure. Since the confessional statements of appellant Miraj Khalifa and Nur Alam Howlader were voluntarily made and the statements are consistent with the prosecution case and those were recorded following the provisions of law, we are of the view that the learned Courts below did not commit any error of law in convicting the appellants relying upon their confessional statements.

It further appears that the incriminating materials, namely, umbrella, khata and pair of sandals were recovered from the place of occurrence and P.W.5 Abu Jafar stated that appellant Miraj Khalifa met him and, thereafter, he went to the place of occurrence and collected those materials therefrom. Jafar asked the appellant Miraj about those materials and to handover those goods to him. Miraj handed over those articles to P.W.5 Jafar who kept those goods in the custody of his mother. P.W.4, 6, 7, 8, 9, 15 and 16 proved recovery of those articles. P.W.21 K.M. Zahirul Islam @ Khokon in his testimony specifically stated that he was going towards Dashmina Upazila from his house and, on the way, he found Miraj, Jafar (now deceased) near the place of occurrence. Since some incriminating materials were recovered at the pointing out by the appellant Miraj, we are of the view that those recovered incriminating materials established a

circumstance to connect the appellants in the occurrence. Moreover, it appears from the evidence of P.W.36 Shamsul Alam, S.I. of Police and the second Investigation Officer that as per admission of appellant Miraj he went to the place of occurrence. Appellant Miraj pointed out the place of occurrence and described the manner of occurrence to him and identified scarf of the victim and fotua of accused Nur Alam which were recovered from the place of occurrence as per his pointing out.

Considering the aforesaid facts and circumstances, particularly the confessional statements of the appellants Miraj Khalifa and Nur Alam Howlader, we are of the view that the learned Courts below rightly held that the prosecution had been able to prove its case beyond all shadows of doubt.

Now the question is what should be the appropriate punishment to be awarded to the appellants who had committed a crime of unthinkable brutality.

In *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 the Supreme Court of India observed:

“While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave

danger to the society at large, the court may impose the death sentence.”

In the case of *Dhananjoy Chatterjee V. State of West Bengal* [(1994) 2 SCC 220] Supreme Court of India dealt with a case of rape and murder of a young girl of about 18 years. The Court observed:

“In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.”

It was further observed in that case that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold-blooded and pre-planned brutal murder without any provocation, after committing rape on an innocent and defenceless young girl of 18 years certainly makes this case a rarest of rare cases which calls for no punishment other than capital punishment. Justice demands that courts should impose punishment fitting to the crime so that the courts reflect public abhorrence of the crime. The Courts must not only keep in the view

the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

In *Molai and Another. v. State of M.P.* [(1999) 9 SCC 581] a three-Judge Bench of the Supreme Court of India justified death sentence of two appellants. In this case a 16 year old girl who was preparing for her Tenth Standard Examination was raped and strangulated to death and thereafter her dead body was immersed in the septic tank. While deciding about the sentence the Court held as follows:

“We have very carefully considered the contentions raised on behalf of the parties. We have also gone through various decisions of this Court relied upon by the parties in the courts below as well as before us and in our opinion the present case squarely falls in the category of one of the rarest of rare cases, and if this be so, the courts below have committed no error in awarding capital punishment to each of the accused. It cannot be overlooked that Naveen, a 16 year old girl, was preparing for her 10<sup>th</sup> examination at her house and suddenly both the accused took advantage of she being alone in the house and committed a most shameful act of rape. The accused did not stop there but they strangulated her by using her undergarment and thereafter took her to the septic tank along with the cycle and caused injuries with a sharp edged weapon. The accused did not even stop there but they exhibited the criminality in their conduct by throwing the dead body into the septic tank totally disregarding the respect for a human dead body. Learned Counsel for the accused (Appellants) could not

point any mitigating circumstances from the record of the case to justify the reduction of sentence of either of the accused. In a case of this nature, in our considered view, the capital punishment to both the accused is the only proper punishment and we see no reason to take a different view than the one taken by the courts below.”

In the instant case the appellants committed rape upon a defenseless innocent college student and brutally murdered her in her way to college. The atrocity committed by them as evident from their confessional statements is extremely shocking and that reflects such mental depravity of the appellants that they deserve no other punishment than death in order to meet the society’s cry for justice.

Accordingly, we do not find anything to interfere with the instant appeals.

Thus, Criminal Appeals No.29 of 2012 and 19 of 2012 are dismissed. The judgment and order of conviction and sentence awarded by the trial Court and affirmed by the High Court Division are maintained. Criminal Appeal No.37 of 2012 stands abated.

**C.J.**

**J.**

**J.**

**J.**

**J.**