

**Present:**

**Mr. Justice Shahidul Karim**  
**and**  
**Mr. Justice Md. Mostafizur Rahman**

**Death Reference No.120 of 2017**

with  
 Criminal Appeal No.9941 of 2017  
 and  
 Jail Appeal No. 376 of 2017

The State

..... Petitioner.

-Versus-

Ramjan Ali

..... Condemned-Prisoner.

Mr. Bashir Ahmed, D.A.G with  
 Mr. Nirmal Kumar Das, A.A.G. with  
 Ms. Syeda Shobnum Mustary, A.A.G with  
 Mr. Md. Tariqul Islam (Hira), A.A.G.  
 ..... For the State.

Mr. Dipankar Debnath, Advocate

.....For the Condemned-Prisoner.

**Heard on 04-12-2023, 05-12-2023, 06-12-2023 and Judgment on 13-12-2023.**

**Shahidul Karim, J.**

This Death Reference under Section 374 of the Code of Criminal Procedure (shortly, the Code) has been submitted by the learned Additional Sessions Judge, 1<sup>st</sup> Court, Kishoregonj for confirmation of death sentence awarded to condemned-accused Ramjan Ali. Condemned-accused Ramjan Ali along with 2(two)

others were put on trial before the Court of Additional Sessions Judge, Kishoregonj to answer charge under sections 302/201/34 of the Penal Code. The learned judge of the court below found condemned-accused Ramjan Ali guilty under the aforesaid sections of law and sentenced him to death by the impugned judgment and order dated 29-08-2017 passed in Sessions Case No.218 of 2015, arising out of Bhairab Police Station Case No. 32 dated 29-10-2013, corresponding to G.R. No.780(2) of 13 and acquitted the other 2(two) accused. Thereafter, the learned Additional Sessions Judge submitted the entire proceedings of the case to this court vide his Office Memo No. 18 dated 29-08-2017 for confirmation of the sentence of death imposed upon the condemned- accused. Against the aforesaid judgment and order of conviction and sentence, the condemned-accused has preferred Jail Appeal No.376 of 2017 followed by a regular Criminal Appeal being No.9941 of 2017.

Since the death reference and the connected Criminal as well as Jail Appeal arose out of the same judgment and order of conviction and sentence, they have been heard together and are being disposed of by this single judgment.

The prosecution case sprouted from a grisly incident in which an ill-starred woman named Parvin Akhtar (19) was done to death by throttling.

The prosecution case as has been portrayed in the FIR as well as unfurled during trial, in short, is that 6/7 months prior to the incident, deceased victim Parvin Akhtar, daughter of informant Md. Hossain Ali (P.W.3) was married off to accused Ramjan Ali as per Islamic tenants. After marriage, accused Ramjan Ali started living along with his wife, victim Parvin Akhtar at a nearby house of his in-law's residence. Accused Ramjan Ali used to perpetrate torture physically and mentally to his wife victim Parvin Akhtar on different pretexts. In the morning of 25-10-2013, accused Ramjan Ali along with deceased victim Parvin Akhtar went to the house of accused Joynal, who was the father in law (উকিল বাপ) of their marriage, on a pleasure trip. In the night following 28-10-2013 at around 8.00 pm, accused Ramjan Ali and others took deceased victim Parvin Akhtar to a vacant land located on the eastern side of the dwelling hut of co-accused Joynal, and thereafter, killed her by throttling as well as by suffocation by thrashing cloth into her mouth cavity, and thereafter, concealed her dead body under the

water- hyacinth of a ditch thereof. Upon receiving the missing news of his daughter, informant Md. Hossain Ali along with others went to the residence of co-accused Joynal Miah and started searching for his daughter here and there. Eventually, at around 10.00 pm in the night, the dead body of deceased victim Parvin Akhtar was found in the P.O. ditch, wherefrom it was recovered and taken to the tenanted house of accused Ramjan Ali. Thereafter, on information, police appeared there and took away the dead body of deceased victim Parvin Akhter after holding inquest report thereof and sent it to the morgue for post-mortem examination. Following the incident, P.W.3 Md. Hossain Ali, being informant, filed the FIR which gave rise to Bhairab Police Station Case No.32 dated 29-10-2013.

After lodgment of the case, police of the relevant Police Station started investigation of the same during which condemned accused Ramjan Ali was arrested, who made confessional statement under section 164 of the Code which was duly recorded by a competent Magistrate. However, having found prima facie incriminating materials, the investigation officer, P.W.15 Inspector Md. Kamrul Hasan submitted police report against accused Ramjan Ali and 2(two) others

recommending their trial under sections 302/201/34 of the Penal Code.

At the commencement of trial, charge was framed against the accused under the aforesaid sections of law and the charge so framed was read over and explained to the accused who pleaded not guilty and claimed to be tried as per law.

In support of the charge, the prosecution had adduced as many as 16 witnesses out of 25 witnesses cited in the charge sheet, who were aptly cross-examined by the defence.

After closure of the prosecution witnesses, the accused were called upon to enter into their defence under section 342 of the Code while they repeated their innocence and also declined to adduce any evidence.

The defence case, that could be gathered from the trend of cross-examination of the prosecution witnesses, is of complete innocence and false implication. The further case of the defence is that the confessional statement of accused Ramjan Ali was not voluntary and true, rather it was extracted from him by applying 3<sup>rd</sup> degree method.

Thereafter, the learned Additional Sessions Judge, upon taking hearing from both sides and on an appraisal of the evidences and materials on record, came to the conclusion that the prosecution had been able to bring the charge to the door of accused Ramjan Ali to the core and accordingly convicted and sentenced him by the impugned judgment and order in the manner as noted at the incept.

Feeling aggrieved by and dissatisfied with the aforesaid judgment and order of conviction and sentence, condemned-accused Ramjan Ali has filed the instant Criminal as well as Jail Appeal. As we have already noticed, the learned Judge of the Court below has also transmitted the entire proceedings of the case for confirmation of the death sentence imposed upon the accused.

Mr. Bashir Ahmed, the learned Deputy Attorney General with Mr. Md. Tariqul Islam (Hira), learned Assistant Attorney General appearing on behalf of the State and in support of the death reference upon placing the FIR, charge-sheet, charge, confessional statement of the accused, evidences of the witnesses, inquest as well as post-mortem report of the deceased victim, impugned judgment and order of conviction and sentence

and other connected materials available in the paper book submits that the prosecution has been able to prove that victim Parvin Akhtar was killed by throttling by her husband accused Ramjan Ali upon adducing some clinching circumstantial evidences. He further submits that P.W. Nos. 12 and 13 found the victim in the company of the accused immediately before the occurrence and being independent and neutral witnesses their evidence inspires confidence. He next submits that as per confessional statement of the accused, his conduct is very much weird which eventually leads a prudent man to believe that it is none but the accused himself who was responsible for the killing of his wife. Since immediately before the death, the deceased victim was last seen in the company of her husband, law casts a duty upon the accused husband to explain as to how his wife met with her death as it was within his special knowledge. But the accused husband did not give any satisfactory explanation about the same. Moreover, the accused husband narrated some facts and circumstances in his confessional statement which does not stand to reason to the common course of natural events and human conduct, rather the same shows that the accused husband himself was responsible for the killing of his wife, Mr. Ahmed

further added. Lastly, the learned Deputy Attorney General submits that the learned Judge of the trial court, upon considering the entire gamut of the case and evidences on record, rightly and correctly found the accused guilty for committing murder of his wife and accordingly sentenced him to death by the impugned judgment and order which, being well founded both in law and facts, does not require any interference by this Court. In support of his submission, Mr. Bashir Ahmed has referred to the decision reported in 2023 Cril. J 609 [Md. Anowar Hossain vs. State of Assam].

On the flip-side, Mr. Dipankar Debnath, the learned Advocate appearing for convict-appellant Ramjan Ali in Criminal Appeal No. 9941 of 2017 has criticized the veracity of the impugned judgment and order submitting that there is no eye witness of the occurrence leading to the incident of murder of the deceased victim Parvin Akhtar. He next submits that some important witnesses including the investigating officer were not adduced before the court, and as such, the accused is entitled to get benefit under section 114(g) of the Evidence Act. He further submits that the confession of the accused is exculpatory in nature and as such, no reliance can be placed upon the same.



In a last ditch attempt, Mr. Debnath submits that if the conviction of the accused-husband is maintained in that event his sentence may be commuted to one of life imprisonment since the fate of the case mainly hinges upon circumstantial evidences.

Heard the learned Advocates of both the parties, perused the impugned judgment and order of conviction and sentence including the evidences and materials on record and also considered the facts and circumstances of the case explicitly.

With a view to arriving at a correct decision in the death reference and the connected criminal as well as jail appeal, we are now called upon to sift and weigh the relevant evidences on record together with the surrounding facts and circumstances of the case.

P.W.1 Dr. Md. Golam Kabir is the relevant doctor who held autopsy of the cadaver of the deceased victim Parvin Akhtar (19). In his testimony this witness avers that on 29-10-2013, he carried out post-mortem examination of the dead body of deceased victim Parvin Akhter and found the following injuries:

1. Multiple abrasions over face with discrete echymosis;

2. Swelling both lips with abrasion and laceration inner aspect of both lips;
3. Multiple abrasions and scratches on both sides of throat and neck;
4. Abrasion and echymosis back of both elbow. Laceration on both ear lobes. Abrasion on the right side of back.

On dissection: No internal injuries were detected. Nasal bone was found fractured.

According to him, the cause of death of the deceased victim was due to asphyxia and shock as a result of suffocation and throttling which was ante-mortem and homicidal in nature. P.W.1 proves the post-mortem report including his signature appearing thereon as Exhibit Nos.1 & 1/1 respectively.

The defence declined to cross-examine P.W.1.

P.W.2 Hussain Muhammad Fazlul Bari is the concerned Magistrate who recorded the confessional statement of accused Ramjan Ali. In his evidence this witness claims that on 30-10-2013, he penned down the confessional statement of accused Ramjan Ali under section 164 of the Code upon complying with

all legal formalities. This witness proves the confessional statement of the accused including his (P.W.2) signature appearing thereon as Exhibit Nos.2 & 2/1 respectively.

In reply to cross-examination P.W.2 states that the accused did not make any complain of police torture to him. It was mentioned in the confession recording form that the statement made by accused was true and a correct account of the fact. P.W.2 denied the defence suggestion that he recorded the confession of the accused without complying with all legal formalities.

P.W.3 Md. Hossain Ali is the informant as well as the father of deceased victim Parvin Akhtar. In his deposition this witness gives out that his daughter Parvin Akhtar was married off to accused Ramjan Ali 6/7 months before the occurrence. The accused used to stay with his (P.W.3) daughter at a nearby place of his residence. Before the occurrence as well as after 3(three) days of Eid, the accused misbehaved with his (P.W.3) daughter. On 25-10-2013, accused Ramjan, Joynal, Yesmin, Siraj, Sufia and Achia took his (P.W.3) daughter to the residence of Joynal, and thereafter, killed her in the night of 28-10-2013 at around 8.00 pm. The aforesaid accused took his (P.W.3) daughter to the

eastern side of the residence of accused Ramjan and killed her and thereafter, abandoned her dead body in a ditch. The mouth of the victim was tied up with cloth and her head was thrashed by brick. On information received from accused Yesmin, he (P.W.3) along with his son, Al-Amin, daughter Achia and son-in-law, Kazi Miah went to the house of accused Joynal and carried out search for his daughter. Eventually, the dead body of his daughter was recovered at 10.00 pm in the night. After recovery of the dead body of his daughter, police appeared at the spot. P.W.3 proves the FIR including his signature appearing thereon as Exhibit Nos.3 & 3/1 respectively and also identifies the accused in the dock.

At the beginning of cross-examination, P.W.3 burst into tears which was noted by the learned Judge of the trial court in his deposition sheet.

In reply to cross-examination P.W.3 says that he did not call any arbitration meeting over the matter of ill treatment by the accused to his (P.W.3) daughter. After taking permission, accused Ramjan took his (P.W.3) daughter to the residence of Joynal while his (P.W.3) daughter Parvin, Shabanu, Ramjan, Ramjan's brother Ashik were present. P.W.3 further states that

he did not witness the incident of killing of his daughter. At first, accused Joynal informed him over telephone about the missing news of his daughter, whereupon he along with others went to the house of Joynal at around 8/8.30 pm. At around 9/9.30 pm, he found the spot wherefrom his house is located at a distance of about 2/3 miles away. He (P.W.3) himself found the dead body and identified the same at first. His son Al-Amin carried the dead body on his shoulder. The residence of Joynal is located about 300 feet away from the spot. P.W.3 denied the defence suggestions that the accused did not kill her daughter or that he deposed falsely or that the accused was falsely implicated in the case.

P.W.4 Al-Amin is the elder brother of deceased victim Parvin Akhtar. In his testimony this witness claims that his sister Parvin Akhtar was married off to accused Ramjan 7 (seven) months prior to the occurrence. Accused Ramjan used to stay along with his wife at a rented house in the neighbouring area of their (P.W.4) residence. On 25-10-2013, his sister along with Ramjan went to the house of Joynal to enjoy a feast. They (P.W.4) were also invited at the house of Joynal and after enjoying feast they returned back home, but his sister Parvin

Akhtar stayed at the house of Joynal. Yesmin is the wife of Joynal who requested his (P.W.4) sister to stay in their house as there was misunderstanding between accused Ramjan and his wife. In the night following 28-10-2013 at around 8.00 pm, Joynal informed them (P.W.4) about the missing news of his sister. Joynal also gave out that the victim was killed by Jin. After receiving such news, they went there and upon carrying out search found the dead body of his sister in a ditch which was covered with water-hyacinth. On information, police appeared at the spot and took away the dead body. Police seized the wearing apparels of the deceased victim vide seizure list (Exhibit No.4) to which he put his signature. This witness proves the seized wearing apparels of the victim as Material Exhibit No.I.

In reply to cross-examination P.W.4 says that he used to work as a Tailor in Khulna wherefrom he came to his residence 6/7 months prior to the incident. After marriage of his sister, he (P.W.4) used to stay in his residence. His sister informed him about the torture perpetrated to her by her husband. 4(four) of them (P.W.4) also went to the house of Joynal on a pleasure trip. Except Parvin and Joynal, they (P.W.4) returned back in the afternoon about 4.00 pm. On that night Joynal informed over

phone about the missing news of his (P.W.4) sister. Upon receiving such news, he along with his sister, father and brother-in-law (বোন জামাই) went to the house of Joynal which is 6/7 km away from that of his (P.W.4) own. Upon receiving information from one person, they went to a ditch and found the dead body of his daughter, whereupon he jumped into the water. The dead body of his sister was then brought to the house of Joynal wherefrom police took it away. P.W.4 denied the defence suggestion that he deposed falsely.

P.W.5 Kader Miah is the brother-in-law of deceased victim Parvin Akhtar. In his evidence this witness asserts that about 7(seven) months prior to the occurrence, his sister-in-law (শালিকা) Parvin Akhtar was married off who used to stay in a rented house along with her husband in a nearby place of his (P.W.5) house. On 25-10-2013, accused Ramjan and deceased victim went to the house of Joynal on a pleasure trip, whereupon Joynal and his wife detained them in their house in a bid to affect a compromise between them. Upon receiving information on 28-10-2013, he (P.W.5) along with his father-in-law (শ্বশুর) and brother-in-law (শ্যালক) went to the house of Joynal and carried out search during which the dead body of the victim was found amidst the water-

hyacinth of a nearby ditch of the residence of Joynal. He (P.W.5) found marks of injuries on the person of the deceased victim. Police seized the wearing apparels of the deceased vide seizure list to which he put his signature (Exhibit No.4/2). P.W.5 identifies the seized alamats in the court as Material Exhibit No.I.

In reply to cross-examination P.W.5 says that in the night of 28-10-2013 at around 8/8.30 pm, he received the death news from his brother-in-law (শ্যালক), whereupon he along with others went to the spot. At first, his brother-in-law (শ্যালক) found the dead body who thereafter showed it to him. The dead body was brought to the house by the van of Ramjan wherefrom police took it away to the police station. P.W.5 denied the defence suggestion that he deposed falsely.

P.W.6 Achia was tendered by the prosecution and the defence also declined to cross-examine her.

P.W.7 Sahara Banu is the younger sister of deceased victim Parvin Akhtar. In her testimony this witness discloses that her sister was murdered on 28-10-2013 while she (P.W.7) was present at her paternal house. Upon receiving the missing news of her sister, she along with her father, brother and others went to



the house of Joynal. On search, the dead body of her sister was found amidst water-hyacinth. She found marks of injuries on the neck and other parts of the dead body.

The defence declined to cross-examine P.W.7.

In his evidence P.W.8 Hazi Afsar Uddin divulges that the dead body of the deceased victim was seen after making it ups and down. He became a witness to the inquest-report upon putting his signature (Exhibit No.5) thereto.

In reply to cross-examination P.W.8 states that he did not find any mark of injuries on the dead body.

In his evidence P.W.9 Sentu Miah says that he saw the dead body of deceased victim Parvin Akhter. Police obtained his signature (Exhibit No.5/1) in a paper.

In reply to cross-examination P.W.9 says that the report was not read over to him and he also did not go through the same.

P.W.10 Md. Akhter Hossain, P.W.11 Md. Sajib and P.W.14 Md. Sumon Mir were tendered by the prosecution and the defence also declined to cross-examine them.

In his testimony P.W.12 Zahir Khan avers that in the evening of 28-10-2013 around 7.30 pm, he was selling tea. At

the relevant time, he saw Siraj Miah, Ramjan (accused) and Parvin (deceased victim) who were going on foot towards the northern direction. Later, he came to learn the missing news of Parvin. He gave evidence about the aforesaid matter to a Magistrate. This witness identifies accused Ramjan in the dock.

In reply to cross-examination P.W.12 states that accused Ramjan was wearing a red check shirt and an almond colour pant. This witness denies the defence suggestion that he deposed falsely about the factum of seeing accused Ramjan to go in front of his shop.

In his evidence P.W.13 Md. Saju Miah asserts that in the evening of 28-03-2013 at around 7/7.30 pm, he was present in front of the shop of witness Zahir Miah (P.W.12). At the relevant time, he saw Ramjan (accused) and his wife Parvin (victim), Siraj and his wife who were going towards the northern direction. About 1(one) hour later, people were running about disclosing that victim Parvin Akhter had been killed.

This witness further states that earlier he gave statement about the incident to a Magistrate which has been marked as Exhibit No.7.

In reply to cross-examination P.W.13 states that he could not remember what colour of cloth accused Ramjan was wearing at the material time. He then says that perhaps accused Ramjan was wearing a lungi. P.W.13 denied the defence suggestion that he deposed falsely.

P.W.15 Inspector (Investigation) Md. Kamrul Hasan is the 2<sup>nd</sup> investigating officer of the case. In his deposition this witness says that during investigation, he visited the spot and consulted the sketch map along with index prepared by the earlier investigating officer and found them to be correct. However, having found prima-facie incriminating materials, he submitted police report against accused Ramjan and others under sections 302/201/34 of the Penal Code.

In reply to cross-examination P.W.15 divulges that the previous investigating officer made necessary arrangement for recording the confession of accused Ramjan of 28-10-2012. During investigation, he found oral evidence in support of the alleged illicit connection. P.W.15 denied the defence suggestions that the confession of accused Ramjan was procured by torture or that the accused are innocent.

P.W.16 S.I. Md. Mafizul Islam is the 1<sup>st</sup> Investigating Officer of the case. In his evidence this witness claims that during investigation, he held inquest (Exhibit No.5) of the dead body of deceased victim Parvin and sent it for post-mortem examination, arrested the accused and made necessary arrangements for recording his confession. He also visited the place of occurrence and prepared sketch map (Exhibit No.8) of the P.O. along with separate index (Exhibit No.9) and also seized the wearing apparels of the victim vide seizure list. Eventually, he handed over the case docket due to his transfer elsewhere.

In reply to cross-examination P.W.16 says that he did not find any cloth in the mouth cavity of the victim and he also did not seize any water-hyacinth. Accused Ramjan was arrested on 30-10-2013. P.W.16 denied the defence suggestion that he extorted confession from accused Ramjan by torture.

These are all about the evidences that had been adduced by the prosecution in a bid to bring the charge to the door of the accused.

Having waded through the evidences and materials on record, it appears that there is no dispute about the unnatural death of deceased victim Parvin Akhtar. Albeit, since the matter

involves capital punishment in the form of death penalty, we feel it necessary to have a close look at the inquest report to see for ourselves as to what injury or injuries were found on the cadaver of deceased victim Parvin Akhtar at the initial stage of the case and what the apparent cause of death.

Record reveals that P.W.16 S.I. Md. Mafizul Islam held inquest of the dead body of deceased victim Parvin Akhtar which has been marked as Exhibit No.5. The relevant portion of Exhibit No. 5 is quoted below in vernacular:

“মৃত পারভিন আক্তার (১৯) স্বামী রমজান আলী, পিতা-হোসেন আলী, সাং, সন্তুপুর, থানা-ভৈরব, জেলা-কিশোরগঞ্জ এর স্বামীর বাড়িতে উত্তর শিয়রী অবস্থায় বিভিন্ন কালারের কাথা দিয়া ঢাকা অবস্থায় পাইলাম। তাহার মাথার চুল কালো অনুমান দেড় ফুট লম্বা, চোখ দুইটি বোজা, মুখও বোজা, নাক খাড়া ও নাকে দিয়া ফেনা বাহির হইতেছে। তাহার হাত ২টি শরীরের সঙ্গে লাগা থাকিলেও বাকা অবস্থায় পাইলাম। পঁ ২টি সোজা সোজি পাওয়া গেল। মৃতার আত্মীয় হোসেনয়ারাকে দিয়া উলট পালট করাইয়া দেখা গেল। তাহার বির্যপাত হয় নাই। কিন্তু মলদ্বারে মলের চিহ্ন পাওয়া যায়। তাহার কানের ডান ও বাম লতিতে জখমের চিহ্ন পরিলক্ষিত হইল এবং তাহার থুতনিতে একটি কোপের জখম দেখা গেল এবং পিঠের ডান পার্শ্বে ১টি রক্তাক্ত চিহ্ন দেখা যায়। নাকের উপরে কালো দাগের চিহ্ন রহিয়াছে। গলায় ফুলা ফুলা চিহ্ন দেখা গেল। ”

(Emphasis added)

From the aforesaid narration, it appears that several marks of injuries were found on both ear lobes, chin and right back side of the cadaver of the deceased victim including swollen mark on the neck.

Regarding cause of death, it has been stated in the inquest report (Exhibit No.5) that,

“তদন্তকালে জানা যায়, মৃত পারভিনের বিবাহের পর হইতে তাহাদের মধ্যে দাম্পত্য জীবনে তাহারা সুখ শান্তিতে কাটাইতে পারে নাই। তাহার স্বামী রমজান আলী পরোকিয়া প্রেমের সাথে জড়িত। তাই মৃত পারভিনকে সবসময় জ্বালা যন্ত্রনা করিত মাইর পিট করিত। উক্ত পরোকিয়া প্রেমের কারণে পরিকল্পিতভাবে তাহাকে উকিল বাপের বাড়ীতে ৪ দিন পূর্বে বেড়াইতে পাঠাইয়া গত ইং ২৮/১০/১৩ তারিখ মাগরিবের নামাজের পরে স্বামী সহ অন্যান্য লোক নিয়া উকিল বাপ জয়নালের বাড়ীর সামনে চকের মধ্যে নিয়া তাহাকে হত্যা করিয়াছে, মর্মে মৃতার বাপ, ভাই ও আত্মীয় স্বজনগণের ধারণা করিতেছে।”

(Emphasis put)

Thus, it transpires that on preliminary investigation, it was revealed that accused Ramjan Ali was involved in extra-marital affairs following which the conjugal life of the deceased victim became rancorous and further that she was subjected to corporal torture by her husband, and as such, it was the hunch of the

informant party that deceased victim Parvin Akhtar was killed by her husband and some others.

P.W.1 Dr. Md. Golam Kabir is the relevant doctor who held autopsy of the dead body of deceased victim Parvin Akhtar on 29-10-2013. As per evidence of P.W.1, during autopsy, he found as many as 04(four) injuries including abrasion and scratch mark of both sides of throat and neck of the deceased victim. According to him, death of the deceased victim was caused due to asphyxia and shock and as a result of suffocation and throttling which was ante-mortem and homicidal in nature. This witness proves the post-mortem report including his signature appearing thereon as Exhibit Nos. 1 and 1/1 respectively. The defence did not challenge or discard the aforesaid testimony of P.W.1 by cross-examining him. We also don't find any earthly reason to hold a different view with that of the medico-legal evidence furnished by P.W.1 so far the cause of death of deceased victim Parvin Akhtar is concerned which also comes in agreement with that of the inquest report. In such a backdrop, we are of the opinion that the prosecution had successfully been able to prove that deceased victim Parvin Akhtar was murdered.

Now, the paramount question that calls for our determination is, who is or are responsible for the murder of deceased victim Parvin Akhtar.

It is indisputable that there is no ocular evidence of the occurrence leading to the incident of murder of deceased victim Parvin Akhtar. The fate of the case, as it appears, mainly hinges upon some circumstantial evidences including the statement of accused Ramjan Ali made under section 164 of the Code.

The statement of accused Ramjan Ali has been marked as Exhibit No.2 which is quoted below in verbatim:

“অনুমান ছয় মাস আগে পারভিন, পিং- হোসেন আলী, সাং- শম্ভুপুর দায় বাড়িকে আমি পারিবারিকভাবে বিবাহ করি। বিবাহে জয়নাল মিয়া, পিং-অজ্ঞাত, সাং- মধ্যেরচর (বয়স অনুমান ৩৫ বছর) উকিল বাপ হইছিলো। জয়নাল মিয়া আমার বাবার কাজের জন্য দরকার হইলে লেবার সাপ্লাই দিতো। বিয়ার পর আমি স্ত্রী পারভিন সহ শম্ভুর বাড়ির পার্শ্ব ভাড়া বাসায় থাকতাম।

(২৫/১০/২০১৩ ইং) শুক্রবার দুপুরে স্ত্রী পারভিন, শালী শাহার বানুকে সাথে নিয়ে উকিল বাপ জয়নাল মিয়ার বাড়ির মধ্যের চরে বেড়াইতে যাই এবং একরাত আমরা জয়নালের বাড়িতে ছিলাম। পরদিন শনিবার (২৬/১০/২০১৩) দুপুরে খেয়ে দেয়ে আমি স্ত্রী পারভিনকে জয়নালের বাড়িতে রেখে শালী শাহারবানুকে সাথে নিয়ে শম্ভুর বাড়িতে চলে আসি। শালী শাহার বানুকে শম্ভুর বাড়িতে রেখে আমি নিজ বাড়িতে চলে যাই। সোমবারে



(২৮/১০/২০১৩) দুপুরে আমার স্বস্বন্ধি আলামিন জয়নালের বাড়িতে যায় আমার শালী শাহর বানুর বিবাহ সংক্রান্ত কথাবার্তা বলার জন্য। আলামিন বিকেলে চলে আসে। সেইদিন আমি সন্ধ্যায় উকিল বাপ জয়নালকে ফোনে বলি পারভিনকে বন্দের দিকে নিয়ে আসতে- কথা বলব। পরে CNG Auto দিয়ে আমাদের বাড়ি থেকে জয়নালের বাড়ির দিকে রওয়ানা দিয়ে জয়নালের বাড়ির কাছে বাজারে কাছে গিয়ে টর্চ মাইরা দেখি জয়নাল উলংগ হয়ে আমার স্ত্রী পারভিনের সাথে খারাপ কাজ করতেছে। জয়নাল আমাকে দেখে পেশাব করার ভান করে বসে পড়ে। স্ত্রীকে তখন (মনে হয়) অচেতন অবস্থায় পড়ে থাকতে দেখি। আমি ভয় পাই এবং আমার দোষ হবে মনে কইরা বাড়িতে শব্দপুরে চলে আসি। পরে ঘণ্টা খানেক পরে জয়নাল ফোন দিয়ে জানায়, পারভিনকে পাওয়া যাইতেছে না। পরে আমি, পারভিনের বড় বোন, আমার আব্বা সিরাজ, আমার ভাই আসিক, এরশাদ, আলামিন ও অন্যান্য লোকজন সহ আমরা রাত ৯/১০ টার দিকে জয়নালের বাড়ির দিকে যাই। পরে টর্চ নিয়ে বন্দে ও আশে পাশে পারভীনকে খোঁজ করি। আলামিন পারভীনের মৃত দেহ কচুরীপানার নীচে থেকে উদ্ধার করে। উড়না দিয়ে পারভীনের দুই হাত পিছন দিকে বাঁধা ছিল। তার গায়ে জামা ছিল। পরনের পায়জামা কিছুটা নীচে টিলা অবস্থায় ছিল। তার নাকে রক্ত, মুখে রক্ত ছিল। খোতার দিকে কিছুটা কাটা ছিল। পরে রাতে লাশ নিয়ে আমরা শব্দপুরে চলে আসি। পরে পুলিশ লাশ নিয়ে যায়। জয়নাল জোর করে আমার স্ত্রীর সাথে খারাপ কাজ করে মাইরা ফালাইছে বলে মনে হয়।”

(underlining is ours).

From a bare reading of the aforesaid confessional statement, it transpires that accused Ramjan Ali did not implicate

himself directly in the killing incident of his wife. Rather, he gave out some circumstances which comes in agreement with the facts and circumstances of the case to find out the real assailant of deceased victim regarding which we will ponder over now. Since the accused did not implicate himself in the killing incident of his wife, Parvin Akhtar, the statement made by him under section 164 of the Code cannot be regarded as inculpatory in nature.

P.W.2 Husain Mohammad Fazlul Bari is the relevant Magistrate who recorded the 164 statement of accused Ramjan Ali. Upon going through the evidence of P.W.2 together with the statement of the accused (Exhibit No.5), we are of the view that the relevant Magistrate jotted down the same upon complying with all legal formalities.

We have gone through the evidences adduced by the witnesses, of whom, P.W. Nos. 12 and 13, in our view, are the 2(two) vital witnesses of the case. As per evidence of the aforesaid 2(two) witnesses, immediately before the death of deceased victim Parvin Akhtar, they saw her in the company of her husband and some others and within 1(one) hour thereafter it was revealed that Parvin Akhter had been killed. P.W. Nos. 12

and 13 have or had no axe to grind against the accused, even they are not friendly to the informant party as well. Therefore, we find a ring of truth in the evidence of the aforesaid 2(two) witnesses.

In order to appreciate the matter, we feel tempted to look at the relevant evidences of P.W. Nos. 12 and 13, though it will encumber the body of the judgment a little bit.

In his testimony, P.W.12 asserts that,

“২৮/১০/১৩ সন্ধ্যা সাড়ে ৭ টার সময় আমি চা বিক্রি করছিলাম। আসামী সিরাজ মিয়া, রমজান, পারভীন তারা হেটে উত্তর দিকে যাচ্ছিল দেখলাম। পরে শুনি পারভীন নিখুঁজ।”

In his evidence, P.W.13 Md. Saju Miah claims that,

“২৮/১০/১৩ সন্ধ্যা সাড়ে ৭ টায় আমি জহির মিয়ার দোকানের সামনে ছিলাম। দেখি ৪ জন লোক রাস্তা দিয়ে উত্তর দিকে যায়। তারা হল রমজান, সিরাজ, রমজানের স্ত্রী পারভীন ও সিরাজের স্ত্রী। ঘন্টা খানেক পর মার্ভার হয় পারভীন এই বলে দৌড়াদৌড়ি শুরু হয়।”

Materials on record further go to show that after the incident the aforesaid 2(two) prosecution witnesses also gave identical testimony before a Magistrate. Therefore, it can be

concluded that Parvin Akhtar was last seen in the company of her husband before her unnatural death.

In general an accused cannot be saddled with the responsibility of proving his innocence. But this general principle is not applicable in a case where the wife remains within the domain of her husband at the time of her death. In such case, law casts a duty upon the accused husband to explain as to how his wife met with her death since it was within his special knowledge.

In the instant case at our hand, it appears that the accused-husband did not give any satisfactory explanation about the unnatural death of his wife, rather by giving some circumstances in his 164 statement he has tried to establish that co-accused Joynal might have been the author of the killing of his wife, Parvin Akhtar. But this attempt of the accused, in our view, is nothing but a dirty ploy in order to skirt round his criminal liability in the killing incident of his wife. According to the 164 statement of accused Ramjan Ali, he along with his wife, Parvin went to the house of Joynal and after staying there for one night, he returned back home leaving Parvin in the house of Joynal. On 28-10-2013, he asked Joynal over phone to bring

Parvin to the vacant land (বন্দ) for the purpose of gossiping. Thereupon, he started off to the house of Joynal by a CNG run auto and after reaching near the house of Joynal, by the flash of torch he found Joynal in naked position who was satisfying his carnal desire with victim Parvin. Upon seeing him, Joynal sat down pretending to be urinating and his (accused) wife, Parvin was lying unconsciously. Upon seeing the aforesaid, he (accused) got frightened and came back to his own house at Shamvupur. Later, the dead body of victim Parvin was found under the water-hyacinth with her both hands pinioned together with scarf (গুড়না) behind her back. The aforesaid circumstances as disclosed by the accused in his 164 statement do not at all inspire confidence as the same also appears to be unreasonable and beyond the normal behaviour of human conduct.

From the aforesaid discussions, the incriminating circumstances appearing against the accused may be summarized as under:

- (1) that admittedly accused Ramjan Ali and deceased Parvin Akhtar are respectively husband and wife and they got married 6/7 months prior to the occurrence;

- (2) that on 25-10-2013, accused Ramjan Ali along with his deceased wife Parvin Akhtar and others went to the house of acquitted co-accused Joynal Miah;
- (3) that as per 164 statement of accused Ramjan Ali, on 26-10-2013, he returned back home along with his sister-in-law (শ্যালিকা) leaving his wife Parvin in the house of accused Joynal;
- (4) that as per evidence of P.W. Nos.12 & 13, in the evening of 28-10-2013 at around 7.00 pm, they found deceased victim Parvin Akhtar in the company of accused Ramjan Ali and others and further that 01(one) hour thereafter it was circulated in the locality that victim Parvin Akhtar was murdered;
- (5) that accused Ramjan Ali did not give any satisfactory explanation about the unnatural death of his deceased wife Parvin Akhtar;
- (6) that in his 164 statement accused Ramjan Ali has tried to make out some circumstances regarding the cause of death of his deceased wife Parvin Akhtar which does not inspire confidence since those appear to be wired as well as against the normal behaviour of human conduct; and

(7)that as per medico-legal evidence, deceased victim Parvin Akhtar was killed by suffocation and throttling which was ante-mortem and homicidal in nature.

All these incriminating circumstances, to our view, are undoubtedly inconsistent with the innocence of the accused. The chain of circumstance appears to be well-knit, complete and unbroken. In other words, there is no missing link in the chain of circumstances appearing against the accused. Such being the position, no other hypothesis except the guilt of the accused is possible.

Contention has been raised on behalf of the defence that there is no eye witness of the occurrence leading to the incident of killing of deceased victim Parvin Akhtar which entertains doubt about the veracity of the prosecution story. It is true that in the instant case the prosecution did not adduce any eye witness leading to the incident of killing of the victim woman. But, in the facts and circumstances of the instant case, that alone will not create any dent in the prosecution story inasmuch as there is no hard and fast rule that a criminal case must fail in the absence of any direct evidence. In such circumstances the prosecution had no other option but to rely on circumstantial evidences including

the attending and surrounding facts and circumstances of the case. It is often said that circumstantial evidence may be and frequently is more cogent than the evidence of eye witnesses as because it is not difficult to produce false evidence of eye witnesses, whereas it is extremely difficult to produce circumstantial evidence of a convincing nature and therefore, circumstantial evidence, if convincing, is more cogent than the evidence of eye witnesses.

In the instant case at our hand, it is found from the evidence and materials on record that the occurrence took place during the night time and immediately before the occurrence deceased victim Parvin Akhtar was seen in the company of her husband accused Ramjan Ali and others. Therefore, it was not impossible on the part of the prosecution to adduce any ocular evidence of the incident. Since immediately before the occurrence deceased victim Parvin was last seen in the company of her husband, accused Ramjan Ali, it was the legal duty of the latter to give explanation about the cause of unnatural death of his victim wife. But accused Ramjan Ali did not furnish any satisfactory explanation, rather he narrated some circumstances in his 164 statement which appears to be bizarre in nature and the



same is also against the normal behaviour of human conduct. Furnishing false explanation about the cause of death of his wife also suggests unerringly that it was none but the accused who was responsible for the killing of his wife. Therefore, the argument put forward by the learned defence Advocate is untenable in law.

It has also been contended on behalf of the defence that some important witnesses including the investigating officer were not examined in the case, and as such, the accused is entitled to get benefit under section 114(g) of the Evidence Act. This argument of the defence also cannot be countenanced as because section 134 of the Evidence Act postulates that no particular number of witnesses shall in any case be required for the proof of any fact. If believed, conviction may be based on the evidence of a single witness provided that it is full, complete and self-contained. Furthermore, it is up to the prosecution to determine as to how many witnesses it will examine to prove its case.

In the instant case at our hand, it is found that in all 16(sixteen) witnesses were produced by the prosecution to prove its case out of 25(twenty five) witnesses cited in the police

report. It is true that the prosecution did not examine the investigating officer of the case. But that will not create any dent in the prosecution case as because nothing has been found in the evidence of the prosecution witnesses wherefrom it can be seen that the accused was prejudiced in his defence for non-examination of the investigating officer. Moreover, the learned defence Advocate has also failed to show as to how and in what manner the accused has been prejudiced in his defence due to non-examination of the investigating officer. In such a backdrop, the argument put forward on this count appears to be wide of the mark.

From the aforesaid discussions and the observations made thereunder, we are of the dispassionate view that it is none but the accused husband who is responsible for the killing of his wife, Parvin Akhtar. Having devoted our anxious consideration to the evidences and materials on record, we are of the view that the learned Judge of the court below rightly and correctly found the culpability of the accused in the killing incident of his wife by the impugned judgment and order which warrants no interference by this court.

Now, we can turn our eyes to the quantum of sentence awarded to the accused.

We have already observed that in the instant case at our hand there is no direct evidence of the killing incident of deceased victim Parvin Akhtar and the fate of the case mainly rests upon the circumstantial evidences. In that view of the matter, the sentence of death awarded to the accused appears to be too harsh. Moreover, the condemned accused Ramjan Ali has been suffering the pangs and torments of death sentence for about more than 6(six) years for no fault of his own. Considering the aggravating and mitigating circumstances, we are inclined to hold that justice would be best served if the sentence of death of accused Ramjan Ali is commuted to one of life imprisonment along with fine.

Accordingly, the death reference is rejected.

Accused Ramjan Ali is found guilty under section 302 of the Penal Code and sentenced to imprisonment for life along with a fine of Tk.10,000/-, in default to suffer rigorous imprisonment for 6(six) months more.

With this modification, the impugned judgment and order is maintained.

Condemned accused Ramjan Ali will get benefit under section 35A of the Code.

The concerned jail authority is directed to sift accused Ramjan Ali from death cell to a normal prison.

Criminal Appeal No.9941 of 2017 and Jail Appeal No.376 of 2017 are dismissed.

Send down the L.C. record along with a copy of the judgment to the court concerned at once.

**Md. Mostafizur Rahman, J.**

I agree.