

Present:

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

Death Reference No.125 of 2017

with

Criminal Appeal No. 11326 of 2017

and

Jail Appeal No. 370 of 2017

The State.

..... Petitioner.

-Versus-

Md. Abul Hossain

..... 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 Appellant

**Heard on 27-02-2024, 28-
02-2024, 03-03-2024 and
Judgment on 11-03-2024.**

ShahidulKarim, J.

This Death Reference has been submitted by the learned Additional Sessions Judge, 1st Court, Kishoregonj under section 374 of the Code of Criminal Procedure (shortly, the Code) for confirmation of death sentence awarded to condemned accused, Md. Abul Hossain. Accused Md. Abul Hossain was put on trial before the Court of Additional Sessions Judge, 1st Court,

Kishoregonj to answer charge under section 302 of the Penal Code. Eventually, the learned Additional Sessions Judge found accused Md. Abul Hossain guilty under section 302 of the Penal Code and sentenced him to death vide his judgment and order dated 13-09-2017 recorded in Sessions Case No. 489 of 2011, arising out of Bhairab Police Station Case No. 03 dated 03-04-2011, corresponding to G.R. No. 203(2)2011, and thereafter, submitted the entire proceedings of the case for confirmation of death sentence imposed upon the accused vide his Office Memo No. 19 dated 13-09-2017. Against the aforesaid judgment and order of conviction and sentence, the condemned accused filed Jail Appeal No. 370 of 2017 followed by a regular Criminal Appeal being No. 11326 of 2017.

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

The prosecution case originated from a blood-curdling incident in which an infant, Sumaiya, aged about $1\frac{1}{2}$ years was brutally done to death by slaughtering with a sharp cutting blade.

The prosecution case as detailed in the FIR as well as unfurled during trial, in short, is that 3(three) years ago before the incident, informant Suraiya Begum (24) was married off to accused Md. Abul Hossain (28) as per Islamic tenants. Thereupon, the aforesaid duo led conjugal life while they were blessed with a female child named Sumaiya (2). The informant went to her in-law's house and stayed there along with her daughter. But she got her entangled with altercation with the members of her in-law's house as well as her husband following which she returned back to her parents' house 4(four) months prior to the occurrence. Thereafter, the accused often came to the paternal house of the informant with some gifts for his daughter. In the morning of 02-04-2011 at around 8.00 am, accused Md. Abul Hossain came to the paternal house of the informant and went away after staying there for about 1(one) hour. On the date of occurrence i.e. in the morning of 03-04-2011 at about 9.00 am, accused Md. Abul Hossain visited the paternal house of the informant and after entering the room thereof took his daughter Sumaiya Akhter in his lap and went to her (informant) bed-room. At the relevant time, the informant was on the courtyard of the residence. At around 9.30 pm in the morning, upon hearing

groaning sound of her daughter from her dwelling room, the informant quickly entered the same and found that her husband, accused Md. Abul Hossain was slaughtering her daughter Sumaiya after keeping her on the blanket of the cot (চৌকি). Having witnessed the same, the informant raised alarm whereupon the accused tried to flee away after coming out of the P.O. room. The informant then brought the matter to the notice of the persons present there, whereupon the local people caught hold of the accused on chase. Thereafter, the local people went to the P.O. room and saw the cut-throat dead body of victim Sumaiya. Eventually, the matter was brought to the notice of Bhairab Police Station wherefrom police appeared at the spot and arrested the accused. In the meantime, victim Sumaiya was taken to Bhairab Government Hospital wherein the duty doctors declared her death. Following the incident, P.W.2 being informant, filed the FIR with the relevant P.S. which gave rise to Bhairab Police Station Case No.03 dated 03-04-2011.

After lodgment of the case, police took up investigation of the same and having found prima facie incriminating materials submitted police report against accused Md. Abul Hossain under section 302 of the Penal Code. It is to be noted that during

investigation, accused Md. Abul Hossain admitted his guilt by making judicial confession under section 164 of the Code

At the commencement of trial, charge was framed against the accused under section 302 of the Penal Code 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 order to bring home the charge, the prosecution had adduced 15(fifteen) witnesses out of 25 (twenty five) witnesses cited in the police report, who were aptly cross-examined by the defence.

After closure of the prosecution witness, the accused was called upon to enter into his defence under section 342 of the Code while he repeated his innocence and 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 victim Sumaiya Akhter died having sustained injury from a fallen cooking tool (খুঁটি) and further that the accused was suffering from mental disorder at the material time.

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 home the charge to the door of the accused and accordingly convicted and sentenced him by the impugned judgment and order in the manner as noted at the outset.

Feeling aggrieved thereby, the condemned accused has preferred Jail Appeal No.370 of 2017 followed by a Regular Criminal Appeal being No.11326 of 2017. As we have already noticed, the learned Additional Sessions Judge has also submitted the entire proceedings of the case for confirmation of death sentence imposed upon the accused.

Mr. Bashir Ahmed, the learned Deputy Attorney General with Mr. Nirmal Kumar Das and Ms. Syeda Shobnum Mustary, the learned Assistant Attorneys General has appeared on behalf of the State and in support of the death reference having placed the FIR, charge sheet, charge, evidence of witnesses, inquest as well as post-mortem examination report, confessional statement of the accused, impugned judgment and order of conviction and sentence and other connected materials available in the paper

book submits with vehemence that the prosecution has successfully been able to establish the charge mounted against the accused by adducing some cogent, trustworthy and clinching evidences. He further submits that P.W. 2 Mst. Suraiya Begum, the mother of the unfortunate child is the only eye witness of the occurrence who saw the accused to kill her daughter by slaughtering with a blade and further that she was corroborated by other prosecution witnesses so far the factum of seeing the blood smeared accused and his arrest are concerned. Mr. Bashir Ahmed next submits that the incriminating blood-stained blade was recovered from the possession of accused Md. Abul Hossain which has been brought into evidence and marked as Material Exhibit No.I. The prosecution witnesses in a chorus voice clearly proves that the accused was apprehended immediately after the occurrence on chase while his lungi was besmeared with blood and the said blood stained lungi was given in evidence which has been marked as Material Exhibit No.II, Mr. Ahmed further added. Moreover, the accused admitted his guilt in the killing incident of his infant daughter, Sumaiya by making judicial confession which was proved by the concerned Magistrate by giving evidence in the court as P.W.1 which, on scrutiny, was

found to be true, voluntary and inculpatory in nature. He lastly submits that the learned Judge of the court below, upon considering the entire evidences and materials on record, adjudged the guilt of the accused in the killing incident of the deceased victim and accordingly convicted and sentenced him thereunder by the impugned judgment and order which requires no interference by this court. In support of his submission, the learned Deputy Attorney General has put reliance on the case reported in 73 DLR (AD) 144.

Having refuted the aforesaid submissions, Mr. Dipankar Debnath, the learned Advocate representing the condemned accused Md. Abul Hossain in Criminal Appeal No.11326 of 2017 has assailed the veracity of the impugned judgment and order on the following counts:

1. that the prosecution witnesses did not corroborate the FIR story so far the apprehension of the accused is concerned after the incident ;
2. that as per FIR story, the accused took his daughter from one room to the P.O. room, but this fact did not find place in the evidence of the prosecution witnesses;

3. that the accused was suffering from mental disorder at the time of occurrence as a result he was unaware of the consequence of his own act; and
4. that in his confession the accused disclosed that he inflicted 2/3 strokes with blade on the neck of his daughter, but during post-mortem examination, only one injury was found on the neck of the victim.

In a last ditch attempt, Mr. Dipankar Debnath submits that if the conviction of the accused is maintained in that event his sentence may be commuted from death to imprisonment for life.

Heard the learned Advocates of both sides and perused the impugned judgment and order including other connected materials available in the paper book and also considered the facts and surrounding circumstances of the case explicitly.

With a view to arriving at a correct decision in the death reference and the connected Jail as well as Criminal Appeal, let us now sift and weigh the relevant evidences together with the facts and circumstance of the case by juxtaposing the defence version of the case.

P.W.1 Muhammad Ali Ahsan is the relevant Senior Judicial Magistrate who jotted down the confession of the

accused. This witness testifies that he recorded the confessional statement of accused Abul Hossain under section 164 of the Code. He further states that the accused was given time for reflection. The confessional statement of the accused is true and voluntary. This witness proves the confessional statement including his signature appearing thereon as Exhibit Nos. 1 and 1(1) respectively.

In reply to cross-examination P.W.1 states that the accused disclosed in his confession that his wife used to maintain extra-marital relation with one Jamshed and when he used to have intercourse with his wife, he felt that his chest and throat were burning and his hands and legs were about to be broken. The accused further disclosed that he was possessed by evil spirit and for that he gave 2/3 strokes on the neck of victim Sumaiya. P.W.1 has denied the defence suggestion that the accused was frustrated and mentally depressed at the time of making confession.

P.W.2 Mst. Suraiya Begum is the informant of the case as well as the mother of deceased victim Sumaiya (2). In her testimony this witness gives out that the occurrence took place in the morning of 03-04-2011 at around 9.00 am at the residence of

her father. During her wedlock with accused Abul Hossain, they were blessed with a daughter. Prior to the incident, a quarrel occurred between her (P.W.2) and her husband including his family members. At one stage, she came back to her father's house along with her daughter. Her husband used to come to her father's house every now and then with some gifts for his daughter. Her husband came to her father's house before the date of occurrence i.e. on 02-04-2011 and stayed there for an hour. On the date of occurrence, her husband again came to her father's house at about 9.30 am and hugged his daughter while she (P.W.2) came out of the room. He (accused) then slaughtered his daughter with blade and cut her throat. She heard sound of groaning, whereupon she entered the room and saw that the accused was slaughtering her daughter with a blade after putting her over a blanket on the cot. Upon seeing her, the accused tried to flee while he was detained. The matter was then brought to the notice of the local police station, wherefrom police appeared at the spot and arrested the accused. Police also seized a sharp cutting 'sharp blade' and other alamats. Eventually, she lodged the case with Bhairab Police Station. P.W.2 proves the FIR including her signature appearing thereon as Exhibit Nos.1 & 1/1

respectively and also identifies accused Abul Hossain in the dock.

In reply to cross-examination P.W.2 states that the FIR was written by police and she put her signature thereto after going through the contents thereof. 4(four) months prior to the occurrence, she came to her paternal house and thereafter, she did not meet the accused. P.W.2 denied the defence suggestions that the accused was a mentally handicapped person or that he was falsely implicated in the case or that she came to her paternal house as because the accused was an insane.

In his testimony P.W.3 Md. Misthu Miah divulges that the occurrence took place in the morning of 03-04-2011 at around 9.30 am. The informant and the accused are respectively husband and wife. He did not witness any incident, rather he heard that accused Abul Hossain slaughtered his female child. The inquest of the dead body of the deceased was held in his presence to which he put his signature.

In reply to cross-examination P.W.3 says that the informant is his sister by village courtesy. P.W.3 denied the defence suggestions that the accused was an insane or that he did

not hear that accused Abul Hossain slaughtered his own offspring.

P.W.4 Kalachand is the father of the informant. In his deposition this witness avers that the occurrence had happened in the morning of 03-04-2011 at around 9/9.30 am and the place of occurrence is his (P.W.4) own residence. Accused Abul Hossain is his son-in-law (মেয়ের জামাই). Before the incident a quarrel took place between the accused and his (P.W.4) daughter following which his daughter came back to his house along with her infant daughter. At the time of occurrence, his grand-daughter (নাতনী) was aged about 2(two) years. The accused often visited his house while his daughter used to stay in his house. In the morning of the date of occurrence at around 8.00 am, the accused came to his house and slaughtered his grand-daughter (নাতনী), Sumaiya with a blade. Upon hearing groaning sound, his daughter entered the P.O. room and found that the accused was slaughtering his own daughter. The accused was about to flee the spot while, upon hearing clamour, the neighbouring people were coming to the spot. Thereafter, his grand-daughter was taken to Bhairab Upazila Hospital, wherein the duty doctors proclaimed her death.

Following the incident, his (P.W.4) daughter filed the case and police took away accused Abul Hossain under arrest.

In reply to cross-examination P.W.4 states that he did not see the incident of slaughtering. P.W.4 denied the defence suggestions that the accused was an insane person for a long time or that the accused did not slaughter his grand-daughter.

In his deposition P.W.5 Md. Alam discloses that the occurrence took place in the morning of 03-04-2011 at around 9/9.30 am at the paternal house of the informant. The informant and the accused are familiar to him. At the relevant time, they were playing while people came forward to catch blood smeared accused Abul Hossain following which they (P.W.5) captured him (accused). Thereupon, they came to learn that the accused slaughtered his own daughter. The victim daughter of the informant was taken to hospital, but she died. P.W.5 identifies accused Abul Hossain in the dock.

In reply to cross-examination P.W.5 says that he did not see the incident of killing of the victim. At the material time, the wife of the accused had been staying in her paternal house. The accused was caught at the rear end of village Gagirtek while

Rouf member, Jonayed and many other people were present there. Upon apprehension, the accused was taken to the house of the informant where he was fastened up. He (P.W.5) did not hear anything regarding the insanity of the accused. P.W.5 denied the defence suggestion that the accused was implicated in the case as he was an insane person.

In his testimony P.W.6 Badal Miah divulges that the occurrence came to pass in the morning of 03-04-2011 at around 9/9.30 am. The informant and the accused are respectively husband and wife. Having heard outcry after the incident, he went to the spot running and found that the people caught hold of blood-smearred accused. Thereafter, he brought the accused to the paternal house of the informant, whereupon he came to learn that the accused slaughtered his own daughter. Eventually, police took away the accused.

In reply to cross-examination P.W.6 states that he did not see the incident of slaughtering, rather he found victim Sumaiya in slaughtered position. The accused often visited the paternal house of the informant. They (P.W.6) knew nothing about the insanity of the accused. P.W.6 denied the defence suggestions

that he suppressed the truth about the insanity of the accused or that the accused did not slaughter his own daughter.

P.W.7 Osman Miah is the brother of the informant. In his evidence this witness asserts that the occurrence had happened in the morning of 03-04-2011 at around 9.30 am at the house of the informant's father. Victim Sumaiya (3) had been killed. He went to feed cattle while he found that the accused was fleeing in blood smeared position after coming out of the P.O. room. At the material time, the woman of the P.O. house raised alarm while the accused was running away from the spot. Thereupon, he along with others chased after the accused running. There was a brick field in front of them and on their (P.W.7) request the workers of the same kiln detained the accused. Thereafter, the accused was brought to the P.O. house and later he was handed over to the police. P.W.7 identifies accused Abul Hossain in the dock.

In reply to cross-examination P.W.7 says that he did not see the incident of killing of his niece (ভাগিনী). His (P.W.7) sister came to their house 10 to 15 days prior to the incident. P.W.7 denied the defence suggestion that the accused was a delirious person.

In her testimony P.W.8 Shuva Begum claims that she was acquainted with the informant as well as the accused who are respectively husband and wife. The occurrence passed off in the morning of 03-04-2011 at around 9.30 am and the place of occurrence is the paternal house of the informant. At the relevant time, the age of the informant's daughter, Sumaiya was about $1\frac{1}{2}$ years. Accused Abul Hossain slaughtered his infant daughter, Sumaiya. She had gone to through away cow-dung while she found that accused Abul Hossain besmeared with blood was coming out of the paternal house of the informant. Upon seeing the same, they (P.W.8) raised alarm while the neighbouring people caught hold of the accused. P.W.8 identifies accused Abul Hossain in the dock.

In reply to cross-examination P.W.8 says that she did not see the incident of slaughtering committed the accused. She found the accused on the western side road of the P.O. house. The accused was not insane from before. P.W.8 denied the defence suggestions that the accused was mad or that he did not commit the murder.

In his testimony P.W.9 A. Rouf member testifies that the occurrence had occurred in the morning of 03-04-2011 at around 9.30 am at the paternal house of the informant. The informant and the accused are respectively husband and wife. The informant came to her paternal house due to altercation with her husband (accused). On the date of occurrence the accused came to the paternal house of the informant. At the material time, he (P.W.9) was sleeping at the adjacent room of the P.O. room. Upon hearing alarm, he aroused and found that the accused was fleeing from the P.O. room while the local people caught hold of him. The accused Abul Hossain slaughtered his own infant daughter with a sharp cutting blade. Later, the wife of the accused filed the case. Police seized the wearing check lungi of the accused vide seizure list (Exhibit No.4) to which he put his signature (Exhibit No.4/1). P.W.9 proves the seized lungi as Material Exhibit No.I and also identifies accused Abul Hossain in the dock.

In reply to cross-examination P.W.9 says that he did not witness the accused to kill his daughter. The accused was not mentally ill. P.W.9 denied the defence suggestions that the

accused was mentally ill as such he was falsely entangled in the case or that he deposed falsely.

P.W.10 Md. Dhan Miah is the brother of the informant. In his evidence this witness avers that both the informant and the accused are known to him. The occurrence took place about 3(three) years ago at the house of the informant. Accused Abul Hossain slaughtered his infant daughter with a blade as a result she died. At the relevant time, the age of the victim child was about 2(two) years.

In reply to cross-examination P.W.10 states that he did not find any strife between the accused and his wife. He did not witness the incident of killing by his own eyes. P.W.10 denied the defence suggestions that the accused did not slaughter his own offspring with blade or that he deposed falsely as the informant is his sister.

P.W.11 Md. Aziz Miah and P.W.12 Md. Full Miah were tendered by the prosecution and the defence also declined to cross-examine them.

P.W.13 S.I. Syed A. Mannan is the 1st Investigating Officer of the case. In his deposition this witness avers that on 03-04-

2011, he was posted at the outpost of Bhairab Police Station under Kishoregonj District. On the same date while he was on special duty along with other forces within the periphery of Bhairab Police Station, he was instructed over wireless to go to the Bhairab Upazila Hospital urgently. On going there, he found deceased victim Sumaiya lying on a stretcher. Thereafter, he held inquest (Exhibit No.3) of the deceased victim and put his signature (Exhibit No.3/2) thereto and sent the dead body to Kishoregonj Adhunik Sadar Hospital for autopsy. The neighbouring people caught hold of accused Abul Hossain due to alarm raised by the mother of the deceased including others. Thereupon, S.I. Manik Banik along with police personnel appeared at the spot and took the accused to the police station. During investigation, he visited the spot and prepared sketch map along with index (Exhibit No.5) thereof, seized alamats vide seizure list. By dint of a seizure list he seized a Sharp blade and other alamats (already marked as Material Exhibit No.I series). He seized the blood smeared wearing lungi of the accused from in front of Thana hazat vide seizure list (Exhibit No.6). On the strength of another seizure list (Exhibit No.7), he seized the blood stained cut piece of a half-pant as well as a cut piece of

Nima (নিমা) of the deceased victim. He also made necessary arrangements for recording the confessional statement of the accused by a competent Magistrate and also examined witnesses under section 161 of the Code. Later, he handed over the case docket to the Officer-in-Charge of Bhairab Police Station due to his transfer elsewhere. P.W.13 proves the seized lungi as well as the blood stained wearing apparels of the deceased victim as Material Exhibit Nos.II and III series respectively.

P.W.13 denied the defence suggestions that he did not carry out the investigation properly or that the accused made confession as tutored by the police.

P.W.14 Inspector Md. Shajahan Kabir is the recording officer as well as the 2nd Investigating Officer of the case. In his evidence this witness claims that on 03-11-2011, he was posted as Officer-in-Charge at Bhairab Police Station, while he received a written FIR along with apprehended accused Abul Hossain, whereupon he registered the case and handed over the task of investigation to S.I. Abdul Mannan (P.W.13) who prepared sketch map along with index of the P.O. and made necessary arrangements for recording the confessional statement of accused Abul Hossain. S.I. Abdul Mannan also held inquest of the dead

body of deceased victim and sent it to the morgue of Kishoregonj Sador Hospital for post-mortem examination and further that he also recorded the statement of witnesses under section 161 of the Code. On 27-04-2011, he (P.W.14) took the charge of investigation as the earlier investigating officer was transferred elsewhere. During his investigation, he visited the spot, examined witnesses and consulted the case record prepared by the earlier investigating officer. However, having found prima-facie incriminating materials, he submitted police report against accused Abul Hossain under section 302 of the Penal Code. P.W.14 proves the FIR form including his signature appearing thereon as Exhibit Nos.8 & 8/1 respectively.

P.W.14 denied the defence suggestions that the investigation of the case was not done properly or that deceased victim Sumaiya died upon being hurt from a fallen cooking tool (খুঁটি).

P.W.15 Dr. Muhammad Abdul Mukit is a member of the medical board which, on 04-04-2011, held autopsy of the cadaver of deceased victim Sumaiya (2), at the identification of Constable No.205 Forkan Ali and found the following injuries:

“On cut throat wound on the front of neck extending from left side of neck to right upper part of neck measuring 6" x 1" with cutting of underlying muscles, both common carotid arteries, trachea and oesophagus.”

On dissection: Ecchymoses and clotted blood was found in an around the injuries. Both common carotid arteries and oesophagus were completely cut.

According to their opinion, the death was caused due to shock and haemorrhage as a result of the above mentioned injuries which were ante-mortem and homicidal in nature. P.W.15 proves the post-mortem report including his signature appearing thereon as Exhibit Nos.9 and 9/1 respectively.

In reply to cross-examination P.W.15 says that an infant cannot make noise after sustaining the aforementioned cut injuries.

These are all about the evidences that were 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 is patent that there is no dispute about the time, place and manner of occurrence. Even, the defence did not dispute the

brutal killing incident of victim Sumaiya Akhter (2) by slaughtering. Nevertheless, since the matter involves capital punishment in the form of death penalty, we feel it necessary to have a look at the inquest report to see for ourselves as to what injury or injuries were found on the person of the deceased victim at the initial stage of the case and what the apparent cause of death.

The inquest report of deceased victim Sumaiya Akhter has been marked as Exhibit No.3 of which, the relevant portion is quoted below in verbatim:

“মৃত্যুর বয়স অনুমান ০২ দুই বৎসর হইবে। গায়ের রং ফর্সা মুখমন্ডল গোলাকার। মাথায় ছোট লম্বা অনুমান $\frac{১}{২}$ ” কালো চুল আছে। মৃত্যুর চোখ দুইটি অধ্যমুদিত অবস্থায় আছে। নাক ও কান দুইটি স্বাভাবিক অবস্থায় আছে। মুখ খোলা অবস্থায় আছে। গলা ধারালো ব্লেন্ড দিয়া কাটা রক্তাক্ত অবস্থায় আছে। হাত দুটি শরীরের দুইপার্শ্বে লম্বা লম্বি অবস্থায় আছে। দুইটি হাতের আঙ্গুল অধ্যমুষ্টি অবস্থায় আছে। পা দুইটি লম্বা লম্বি অবস্থায় আছে। পায়ের আঙ্গুল স্বাভাবিক। মৃত্যুর পরনে কালো হাফ প্যান্ট ও গায়ে খয়েরী কালো শিট কাপড়ের একটি নিমা আছে। মৃতের গায়ের নিমা রক্তে ভিজা অবস্থায় ও প্যান্টের পিছনে সামান্য রক্ত আছে। মৃত্যুর মৃত দেহটি তার মায়ের সহায়তায় লাশটি উলট পালট দেখিলাম। মৃত্যুর শরীরে অন্য কোথাও তার কোন জখম বা আঘাতের চিহ্ন পরিলক্ষিত হইল না। মৃত্যুর যৌনাঙ্গে ও মলদ্বারে কোন কিছু দেখা যায় নাই।”

(Emphasis added).

From the aforesaid narration, it appears manifestly that a cut throat injury was found on the neck of the victim whose wearing apparels were besmeared with blood.

Regarding cause of death, it has been stated in Exhibit No.3 that:

“আমার প্রাথমিক তদন্তকালে জানা যায় অদ্য ইং০৩/০৪/১১ তারিখ সকাল অনুমান ০৯.৩৫ ঘটিকার সময় মৃত্যুর পিতা মোঃ আবুল হোসেন অত্র থানাধীন গাজীরটেক পশ্চিমপাড়াহু তাহার শ্বশুরালয় দোচালা টিনের বসত ঘরে উপস্থিত থাকিয়া পারিবারিক কলহের জের ধরিয়া তাহার উক্ত শিশু কন্যা সুমাইয়া খাতুনকে ধারালো ব্লেড দ্বারা গলায় পোচ দিয়া জবাই করিয়া নির্মম ভাবে হত্যা করে। ”

(Emphasis put).

It, therefore, appears that on preliminary investigation, it was found that due to family feud accused Md. Abul Hossain killed his infant daughter Sumaiya Akhter by slaughtering with blade.

It is on record that P.W.15 Dr. Md. Abdul Mukit was a member of the medical board which, on 04-04-2011 at 10.00 am, held autopsy of the cadaver of deceased victim Sumaiya Akhter and found the following injury:

“One cut throat wound on the front of neck extending from left side of neck to right upper part of neck measuring 6" X 1" ”

with cutting of underlying muscles, both common carotid arteries, trachea and oesophagus.

On dissection; Ecchymoses and clotted blood was found in and around the injuries. Both common carotid, arteries, trachea and oesophagus were completely cut.

According to the medical board, the cause of death of the deceased victim was due to haemorrhage as a result of the above mentioned injury which was ante-mortem and homicidal in nature. P.W.15 proves the post-mortem report including his signature appearing thereon as Exhibit Nos. 9 and 9/1 respectively. We find nothing on record to discard the evidence of P.W.15 who is a medical expert so far the cause of death of the deceased victim Sumaiya Akhter is concerned. Even, the defence also did not try to dispute the medico-legal evidence furnished by P.W.15. It appears that the post-mortem report also comes in agreement with that of the inquest report so far the injury found on the person of the deceased victim is concerned. In such a backdrop, we have no other alternative but to hold that deceased victim Sumaiya Akhter was brutally murdered.

Now, the most striking question that calls for our determination is, who is or are the actual assailant or assailants of deceased victim Sumaiya Akhter.

Upon skimming through the evidences and materials on record, it appears that P.W. 2 Mst. Suraiya Begum, wife of the accused as well as the mother of the deceased victim Sumaiya is the only star witness of the incident who on the date of occurrence found her husband to slaughtering her daughter, Sumaiya Akhter. To comprehend the matter in his true perspective, it would be profitable to quote the relevant evidence of P.W.2 in verbatim which reads as under:

“ঘটনা ০৩/০৪/১১ইং সকাল সাড়ে ৯ টা ঘটনাছিল আমার পিতার বসত বাড়ী।
মামলা করার সময় আমার বিয়ের বয়স অনুমান ২ বছর। আমরা স্বামী স্ত্রী রূপে ঘর সংসার
করা অবস্থায় আবুল হোসেনের ঔরষে আমার গর্ভে একটি কন্যা সন্তান হয়। কন্যার বয়স
ছিল অনুমান ১^১/_২ বছর। ঘটনার পূর্বে আমার স্বামী ও তার পরিবারের লোকের সাথে আমার
ঝগড়া বিবাদ হয়। ঝগড়ার এক পর্যায়ে আমি আমার কন্যা সন্তান নিয়ে আমার পিতার
বাড়ীতে চলে আসি। আমার স্বামী মাঝে মাঝে আমার পিত্রালয়ে আসত এবং কন্যার জন্য
জিনিস পত্র আনত। ঘটনার পূর্বের দিন অর্থাৎ ০২/০৪/১১ইং তারিখ সকাল ৮ টার সময়
আমার স্বামী আমার পিত্রালয়ে এসে ঘন্টা খানেক থেকে চলে যায়। এরপর ঘটনার তারিখ
সকাল ৯^১/_২ টার দিকে আমার স্বামী আমার পিত্রালয়ে এসে আমার কন্যাকে কোলে নেয়।

আমি বাহিরে যাই। সে বাচ্চাকে নিয়ে কিছু সময় থেকে ব্লড দিয়ে সে মেয়েকে গলায় জবাই করে। মেয়ের গোংরানো শব্দে ঘরে গিয়ে দেখি মেয়েকে চৌকির উপর কম্বলের উপর শোয়ায়ে ব্লড দিয়ে আমার মেয়েকে জবাই করছে।”

(Underlining is ours).

From the evidence P.W. 5, P.W.6, P.W.7, P.W.8 and P.W.9, it further appears that immediately after the occurrence, they found blood smeared accused Md. Abul Hossain fleeing the spot, whereupon some of them caught hold of him on chase. To conceive the matter in its proper way, we are to refer to the relevant evidences of the witnesses.

It is testimony P.W. 5 Md. Alam asserts that:

“ঘটনা ইং ০৩/০৪/১১ তারিখ সকাল ৯/৯^১/_২ টার সময়। বাদী ও আসামীকে চিনি। আগে আসামীকে চিনতাম না। আমাদের গ্রামে বাদিনীর পিতার বাড়ীতে ঘটনা। আমরা খেলছিলাম। রক্তাক্ত অবস্থায় আসামী আবুলকে লোকজন ধরতে আসলে আমরা তাকে ধরি। ধরার পর শুনি যে, সে তার নিজের মেয়েকে জবাই করে হত্যা করেছে। বাচ্চার মা ও অন্যরা বাচ্চাকে হাসপাতালে নিয়ে যায়। সে মারা গেছে। আসামী ডকে সনাক্ত।”

In his deposition P.W.6 Badal Miah avers that:

“ঘটনা ইং ০৩-০৪-২০১১ তারিখ সকাল ৯/৯^১/_২ টার সময়। বাদী ও আসামী স্বামী স্ত্রী সম্পর্ক। ঘটনার পর ডাক চিক্কার শুনে ঘটনা স্থলে যাই। দৌড়ে দিয়ে দেখি পাবলিক

আসামীকে ধরে রেখেছে এবং তার শরীৰে রক্ত। তখন আমি আসামীকে ধৰে বাদীৰ বাপেৰ
বাদীতে নিয়ে আসি। এরপর শূনি আসামী তার মেয়েকে জবাই করেছে।”

In his evidence P.W.7 Osman Miah gives out that:

“ঘটনা ইং ০৩/০৪/১১ সময় সকাল ৯^১/_২ টা। ঘটনাঙ্ল বাদীৰ পিত্ৰালয়। খুন হয়
সুমাইয়া। তার বয়স ছিল ৩ বছর। আমি গৰুকে খাবাৰ দিতে যাই। আসামী বাচ্চাটাকে খুন
কৰে ঘৰ রক্তমাখা শরীৰে বের হয়ে যাবাৰ সময় আমি দেখি। তখন বাদীৰ মহিলাৰা চিল্লা
চিল্লি শুরু কৰে। আসামী দৌড়ায়ে যেতে থাকে। আমি তার পিছনে লোকজন নিয়ে দৌড়ে
যাই। সামনে ইট খোলা ছিল। ইট খোলাৰ শ্ৰমিকৰা আগায়ে আসলে তাৰেৰ বললে তারা
আসামীকে আটক কৰে। তাৰপৰ আসামীকে ঘটনাঙ্লে নিয়ে এসে পুলিশকে খবৰ দিলে
পুলিশে দেয়া হয়। আমি ঘটনাৰ ৪ দিন পর দাৰোগাৰ কাছে সাক্ষ্য দিয়েছি। সুমাইয়াৰ মা
বাদী হয়ে এ মামলা কৰে। আসামী আবুল হোসেন কাঠগড়ায় আছে।”

In her evidence P.W. 8 Mst. Shuva Begum unfurls that:

“আমি মামলাৰ বাদী ও আসামীকে চিনি। তাৰা স্বামী-স্ত্ৰী। ঘটনা ০৩/০৪/১১ ইং
সকাল অনুমান ৯^১/_২ টাৰ সময়। বাদীৰ বাচ্চা সুমাইয়াৰ বয়স ছিল অনুমান ১^১/_২ বছর।
বাদীনিৰ পিত্ৰালয়ে ঘটনা। আসামী আবুল হোসেন তাৰ শিশু বাচ্চা সুমাইয়া কে জবাই কৰে
ফেলে। আমি গোবৰ ফেলতে গিয়ে দেখি আবুল হোসেন বাদীনিৰ পিতাৰ বসতঘৰ হতে
রক্তাক্ত অবস্থায় বের হয়ে যাচ্ছে। তখন আমৰা ডাক চিৎকাৰ কৰলে লোকজন এসে তাকে
আটক কৰে। আবুল হোসেন ডকে সনাক্ত।”

In his testimony P.W.9 A. Rouf Member discloses that:

“ঘটনা ০৩/০৪/১১ ইং সকাল অনুমান ৯^১/_২ টার সময়। ঘটনা বাদীনির পিত্রালয়ে। বাদী ও আসামী স্বামী-স্ত্রী। বাদীর সাথে আসামীর ঝগড়ার ফলে বাদীনি তার পিত্রালয়ে বাড়ীতে চলে আসে ঘটনার তারিখে আসামী আসে। ঘটনায় পাশের ঘরে আমি ঘুমিয়ে ছিলাম। চিৎকার শুনে উঠে দেখি আসামী বাদীনির পিতার ঘর হতে বের হয়ে যেতে থাকলে লোকজন তাকে আটক করে। আসামী আবুল হোসেন ধারালো ব্লেড দিয়ে নিজের শিশু বাচ্চাকে জবাই করে।”

From the aforesaid narration, it reveals clearly that immediately after the occurrence, the accused was apprehended on chase while his wearing apparels were besmeared with blood.

From the evidence of P.W. Nos.2, 9 and 13, it further appears that a sharp cutting crime blade was recovered from the possession of accused Md. Abul Hossain and his blood smeared lungi was also seized and those alamsats were produced in the court and marked as Materials Exhibit Nos.I and II respectively.

By giving suggestions to the relevant witnesses, the accused put forward his defence that at the material time he was suffering from mental disorder due to proverty, but nothing tangible is found on record in support of his aforesaid plea. Therefore, the aforesaid plea will not come in any aid of the accused.

Materials on record further go to show that there is another important piece of evidence in embroiling the accused in the infernal killing incident of deceased victim Sumaiya Akhter. On perusal of the record, it further appears that during investigation, accused Md. Abul Hossain made judicial confession which has been marked as Exhibit No.1.

It is by now well settled that an accused person can be found guilty and convicted solely banking on his confessional statement if, on scrutiny, it is found to be true, voluntary and inculpatory in nature. To find out whether the confession of accused Md. Abul Hossain has satisfied all the aforesaid criterion or not, we may now have a peep at the confession of the accused which reads as under:

“আমি রিক্তা চালাই। আমি ০২ বছর পূর্বে আমার মামাত বোন সুমাইয়াকে পারিবারিকভাবে বিয়ে করি ও আমাদের ০১ টি মেয়ে হয় তার নাম সুমাইয়া। আমি বিয়ের পর আমার বউকে আমার পিতা বাড়ীতে নিয়ে যায়। আমার পিতামাতার সাথে বনিবনা না হওয়ায় স্ত্রীকে শুস্তপুর পাকার মাথাতে বাসায় নিয়ে যায়। সেখানে আমার স্ত্রী অবৈধভাবে জমসেদের সাথে মেলামেশা করে। আমার স্ত্রী তার দুলাভাই মতির সাথে ও অবৈধ মেলামেশা করে। আমি যেদিন জমসেদ আমার স্ত্রীকে ধর্ষণ করে ঐ দিন রাতে স্ত্রীর সাথে মেলামেশার সময় দেখি আমার স্ত্রী গোপন অঙ্গের পর্দা ফাটা। আমি তৎপর বউয়ের সাথে

শারীরিকভাবে মিলিত হই তৎপর আমি ধর্ষনের বিষয় বুঝতে পেরে বউকে বলি যা হবার হইছে। আমার জন্য ভাত রাখ। আমি রিক্সা আনতে যায়।

আমার স্ত্রী আমার জন্য ভাত রান্না না করে জমসেদকে রুটি বানায়ে খাওয়ায়।

আমি রাগে স্ত্রীকে মারধর করলে সে তার বাপের বাড়ীতে যায়। তৎপর আমার খারাপ লাগায় আমি শুশুর বাড়ীতে মাঝে মাঝে যাইতাম।

ঘটনার দিন আমি ৪১ টাকা রিক্সা চালায়ে আয় করে নাস্তা করি ও একটা ব্লেন্ড কিনে শুশুর বাড়ীতে যায়। আমার নিয়্যত করি বউকে মেয়ে বিকে (মেয়েকে) মেয়ে নতুন একটা বিয়ে করবো। কারণ আমার বউয়ের ধর্ষনের পর আমি তার সাথে মিলিত হলে আমার গলা-বুক জ্বলতো ও হাত-পা ভাংগিয়া পরে যাইত। ঐদিন আমার শুশুর বাড়ীতে যেয়ে আমার মেয়েকে কোলে করে বসেছিলাম। আমার মেয়েকে অনেকে কোলে নিতে চাইলেও আমার মেয়ে কারও কোলে যায় নাই। তারপর আমার মাথায় ভূতের আচর হওয়ায় আমার মেয়ে সুমাইয়াকে গলায় ২/৩ টা আমার হাতে থাকা ব্লেন্ড দিয়ে পোছ দেয়। পোছ দেয়ার পর আমি মেয়েকে না দেখে দৌড় দেই তৎপর ২/৩ জন আমাকে ইটখোলার কাছ হতে ধরে শুশুর বাড়ীতে নিয়ে বেঁধে পুলিশে খবর দিলে পুলিশ আমাকে থানায় নিয়ে যায়। এই আমার জবানবন্দী।”

(Emphasis added).

From the aforesaid discussions, it is apparent that accused Md. Abul Hossain admitted in his confession that he slaughtered her daughter Sumaiya Akhter with a blade, and thereafter, he left the P.O. spot running, whereupon 2 or 3 persons detained him from the nearby area of a kiln, and eventually, police arrested

him. It further appears that in his confession the accused had tried to establish that being swayed away by the extramarital relation of his wife, he killed his daughter with blade and further that at the relevant time he was possessed by an evil force. But, in the facts and circumstances of the case, it appears that the plea taken by the accused is nothing but a ruse in order to avoid his criminal liability in the killing incident of his infant daughter inasmuch as no evidence, either oral or documentary, was found on record in support of the aforesaid plea of the accused.

P.W.1 Md. Ali Ahsan is the relevant Magistrate who got down the confessional statement of accused Md. Abul Hossain. From a combined reading of the evidence of P.W.1 and the confessional statement (Exhibit No.1) of the accused, it reveals that the relevant Magistrate undertook genuine effort to find out the true character of the confession and being satisfied about the voluntariness and truthfulness of the confession, he jotted it down and thereafter, it was read over and explained to the accused who admitted the same to be correct by putting his signature thereto. Exhibit No.1 further reveals that being repented, accused Md. Abul Hossain has made confession. Therefore, the confession of the accused can be regarded as true,

voluntary and inculpatory in nature. Even, the accused did not retract his confession by filing an application after coming out of the clutches of police and further that he also did not raise any objection touching the voluntary character of the confession while his attention was drawn to his confession at the time of examination under section 342 of the Code.

Contention has been raised on behalf of the defence that the prosecution witnesses did not corroborate the factum of apprehension of the accused after the incident as detailed out in the FIR which entertains doubt about the veracity of the prosecution case. This argument of the learned defence Advocate is untenable in law as because as per FIR story, upon hearing alarm of the informant (P.W.2), the neighbouring people present on the spot at the material time caught hold of the accused while he tried to flee upon coming out of the P.O. room. In his evidence the informant (P.W.2) gives out that the accused was detained while he tried to flee the spot upon seeing her (informant). Having seconded the aforesaid evidence of P.W.2, P.W.8 Mst. Shuva Begum disclosed in her evidence that she found accused Abul Hossain besmeared with blood who came out of the dwelling hut of the informant's father and was trying

to flee therefrom. On the other hand, P.W. 5 Md. Alam, P.W.6 Badal Miah and P.W.7 Osman Miah are the persons who made statement in unison that they caught hold of the accused on chase and thereafter, he was taken to the P.O. spot, wherefrom he was handed over to the police. In such a backdrop, the argument advanced by the learned defence Advocate on this count cannot be countenanced.

It has further been contended on behalf of the defence that according to the FIR story, before the occurrence the accused took his daughter from 01(one) room to the P.O. room, but the prosecution witnesses did not support the aforesaid case as made out in the body of the FIR. It is true that the prosecution witnesses did not literally prove the above factual aspect of the case, but that alone will not create any dent in the prosecution story inasmuch as it does not relate to the material aspect of the case. At best, it can be regarded as a minor omission on the part of the prosecution witnesses. Albeit, the informant (P.W.2) divulges in her evidence that in the morning of the date of occurrence at around 9.00 am her husband (accused) came to her father's house and took her daughter in his lap following which she (P.W.1) went out. Thereupon, having stayed with her

daughter for a while, the accused slaughtered her (victim) with a blade. Having heard groaning sound, she entered the P.O. room and found that the accused was slaughtering her daughter upon keeping her on a blanket of the cot. In the aforesaid premises, the argument advanced by the learned defence Advocate on this count appears to be wide of the mark.

It has also been argued on behalf of the defence that at the material time, the accused was suffering for mental disorder as a result he was unaware of the consequence of his own act. But the defence has hopelessly failed to prove that the accused was a person of unsound mind at the time of occurrence and as such he cannot get any benefit under section 84 of the Penal Code. In this connection, we may profitably refer to the decisions reported in 73 DLR (AD) 144, wherein our Apex Court has observed as underneath:

“19. The plea of unsoundness of mind of the accused-responder falls within the general exceptions of the Penal Code and the burden to prove such fact lies completely on the defence under section 105 of the Evidence Act, 1872 which provides:

When a person is accused of any offence, the burden of proving the existence of circumstances bringing

the case within any of the general exceptions in the Penal Code or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him and the court shall presume the absence of such circumstances.”

In para-20 of the aforesaid case, it was further observed that:

“20. In the case of Md. Abdul Majid Sarkar Vs State, 40 DLR (AD) 83 this division held “Section 105 of the Evidence Act, 1872 casts a burden upon the accused to prove the existence of circumstances bringing the case within any special exception or proviso contained in other part of the Penal Code, 1860.” Such view has also been reiterated in the case of Shah Alam Vs State, 42 DLR (AD) 31”

In the instant case at our hand, it appears that the defence during cross-examination of the prosecution witnesses took the plea of unsoundness of mind of the accused. But no evidence, either oral or documentary, has been adduced in the court on behalf of the defence in order to prove that at the material time he was mentally handicapped and was completely unaware of the

consequence of his own act. On perusal of the materials on record, it reveals explicitly that at the time of trial or while the case was pending before the Magistrate court, the accused never took the plea that on the date of occurrence as well as at the material time he was mentally sick. Under section 84 of the Penal Code the defence is to prove that the accused was of unsound mind at the time of occurrence which it has failed to establish in this case. Since the plea of insanity or unsoundness of mind of the accused is not clearly and distinctly proved, the accused cannot get benefit of the same nor can he get any benefit as provided under section 469 and 470 of the Code. In view of the above, the argument put forward by the learned defence Advocate falls to the ground.

Contention has further pressed into service that in his confession the accused disclosed that he inflicted 2/3 strokes with blade on the neck of his daughter which does not align with the post-mortem examination report during which only one injury was found on the neck of the victim and as such the confession cannot be branded as true.

On going through the evidence and materials on record, it appears that accused Abul Hossain slaughtered his minor

daughter with a blade. Therefore, it is immaterial to ascertain as to how many strokes the accused had made on the neck of his daughter. It is true that in his confession accused Abul Hossain gave out that he made 2/3 strokes on the neck of her daughter and further that during post-mortem examination one cut throat wound on the front of neck of the deceased victim was found extending from left side of neck to right upper part of neck measuring 6" x 1" with cutting of underlying muscles, both common carotid arteries, trachea and oesophagus. Considering the injury found on the neck of the deceased victim, we found no force in the argument advanced by the learned defence Advocate as such the same is untenable in law.

On going through the confession of accused Abul Hossain, it transpires that he tried to give out that at the material time he was possessed by an evil force. But no such evidence was led on behalf of the defence to prove the plea that at the material time he was under an evil influence. Furthermore, the facts and circumstances of the case also do not lend support to the aforesaid plea of the accused as because from the evidence on record, we found that after committing murder of his daughter the accused tried to flee away from the P.O. house after coming out of the P.O. room while he was besmeared with blood and

further that he was caught on chase by the neighbouring people. Keeping the aforesaid in view, the argument advanced by the learned defence Advocate as well as the plea taken by the accused in his confession cannot also be countenanced.

Regard being had to the aforesaid discussions and the observations made thereunder, we are of the dispassionate view that the prosecution has been able to prove the charge levelled against the accused to a nicety, and accordingly, the learned Additional Sessions Judge rightly and correctly adjudged his guilt under section 302 of the Penal Code by the impugned judgment and order which does not call for any interference by this Court.

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

From the proved facts of the case, it transpires that condemned accused Md. Abul Hossain is the father of deceased victim Sumaiya Akhtar (2), who had no knowledge about any earthly matter as because she was an infant of about 2(two) years old. There was no enmity, whatsoever, with the victim infant. Even though, accused Md. Abul Hossain brutally killed his infant daughter, Sumaiya Akhter by slaughtering her with a blade like a sacrificial animal. The accused did not even feel any twinge in his conscience in finishing off the life of his infant

child, Sumaiya Akhter who had a long peaceful life ahead of her. The accused deprived of his infant daughter to enjoy the air and ambiance of this beautiful world and therefore, he cannot expect any leniency so far his sentence is concerned. Rather, considering the facts and circumstance of the case, we feel that death penalty would be the only appropriate punishment for the ruthless father which will equally commensurate with the magnitude of the crime committed by him.

Accordingly, the death reference is accepted.

The sentence of death imposed upon accused Md. Abul Hossain is hereby confirmed. The impugned judgment and order of conviction and sentence is upheld.

The connected Criminal as well as Jail Appeal are dismissed.

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

Md. Mostafizur Rahman, J.

I agree.