

4 SCOB [2015] HCD 102**High Court Division
(Criminal Appellate Jurisdiction)**

Criminal Appeal No. 02 of 2006

Md. Forhad Hossain Sheikh
....Appellant

Vs.

The State

....Respondent.

Mr. Md. Zamiruddin Sircar, Adv. with
Mr. Abdul Bari, Adv. with
Mr. Idris Khan, Adv. And
Mr. Md. Zahirul Islam, Adv.
....For the Appellant
Mr. Zahirul Haque Zahir, DAG with
Mr. Nizamul Haque Nizam AAG and
Mr. Atiqul Haque Salim A.A.G.
.....For the State.Heard on 25.05.2005 and
Judgment on: 26.05.2015**Present:****Mr. Justice Shahidul Islam****And****Mr. Justice K. M. Kamrul Kader****Circumstantial Evidence:****Commission of crime can also be proved by circumstantial evidence. Circumstantial evidence is more cogent and convincing than the ocular evidence. It is correctly said that witnesses may tell a lie and it is not difficult to procure false tutored and biased witnesses but it is very much difficult to procure circumstantial evidence. ... (Para 43)****Burden of proof in wife killing case:****Ordinarily, an accused has no obligation to account for which he is placed on trial but in a wife killing case or wife murder case, the position of law is all together is different. The murder having taken place while the convict was living with the deceased wife Asmina in the same house, the convict has an obligation to explain how his wife met her death. ... (Para 51)****Judgment****K. M. Kamrul Kader, J.**

1. This appeal is directed against the judgment and order of conviction and sentence dated 29.11.2005 passed by the Sessions Judge, Faridpur in Sessions Case No. 150 of 2004 convicting the appellant under section 302 of the Penal Code and sentenced him to suffer imprisonment for life and also to pay a fine of Taka 5000/- in default to suffer simple imprisonment for two years more.

2. Short facts, relevant for disposal of this appeal are that on 21.11.2001, at 12:05 hour, one Md. Idris Kazi lodged a First Information Report to the Bhangha Police Station alleging, inter alia, that his elder daughter Asmina Akhter aged about 19 years is married to this appellant Md. Forhad Hossain, 4/5 months before the alleged incident. Thereafter on 20.11.2001 at about 4.00 a.m. one Md. Hafiz Sheikh, uncle of this appellant Forhad Sheikh came to the informant's house and informed them that the mother of the appellant Forhad is

seriously ill and asked them if they want to see her, they have to go there at once. On receipt of this information the informant and his wife PW-6 Seria Begum went to the matrimonial house of their daughter, situated at Adampur. They found a dead body was covered with a piece of cloth at the eastern veranda (corridor) of their dwelling hut. The informant removed the cloth and found the dead body of their daughter Asmina Akhter. He also saw several injury marks on the dead body. He found injuries on top and bottom of the left eye, a blackish mark on the neck, an injury mark above waist on her back, an injury mark on the left side of her face and some small blackish marks on right hand of the dead body of their daughter. The informant suspected that the accused persons in connivance each other caused death of the victim Ashmnia Akhter. The informant also came to know that on 20.11.2001 at about 11 p.m. his daughter along with her husband went to bed at their matrimonial home and on that night at about 3.00 a.m. she was found death at eastern bank of the pond of their matrimonial home. He also came to know that accused Forhad wanted to marry a girl of his village on taking an amount of Taka 50,000/- as dowry and for that reason this appellant and others conspired to kill his daughter Asmina. Thereafter, he lodged this F.I.R and the same was registered as Bhanga Police Station case No. 12 dated 22.11.2001 under sections 302/34 of the Penal Code.

3. Inspector Abu Bakker Talukder the Officer-in-Charge of the Bhanga Police Station and Sub-Inspector Md. Motiur Rahman as investigating officers investigated the case. During investigation the investigating officers visited the place of occurrence, prepared a sketch map with separate index, seized alams, recorded the statement of the witnesses under section 161 of the Code of Criminal Procedure and collected the statement of the witnesses under section 164 of the Code of Criminal Procedure and post mortem report. On conclusion of the investigation and after finding prima facie case against this appellant he submitted the Charge Sheet being No. 6 dated 19.01.2003 under section 302 of the Penal Code.

4. Thereafter, the case was transmitted to the Court of Sessions Judge, Faridpur for trial. At the commencement of trial, charge was framed against this appellant under section 302 of the Penal Code to which he pleaded not guilty and claimed to be tried.

5. During trial prosecution examined as many as 14 witnesses to prove their case and the defence cross examined them but did not adduce any witness on his defence. However, the defence case as it appears from the trend of cross examination is that the appellant is innocent and he did not commit any offence as alleged against him and he was falsely implicated in this case. He did not conspire to kill the deceased for marrying a girl of his village on taking an amount of Taka 50,000/- as dowry. Further case is that on the alleged night and time of occurrence the accused husband was not present at their matrimonial house.

6. On conclusion of taking evidence, the accused was examined under section 342 of the Criminal Procedure to which he reiterated his innocence and refused to adduce any evidence in his defence.

7. On conclusion of the trial, the learned Sessions Judge, Faridpur convicted and sentenced the appellant as aforesaid.

8. Having aggrieved by and dissatisfied with the said judgment and order of conviction and sentence, the convict appellant preferred this instant Criminal Appeal before this Court.

9. Learned Counsel Mr. Jamir Uddin Sircar alongwith Mr. Abdul Bari, Mr. Idris Khan and Md. Zahirul Islam the learned Advocates for the appellant taken us through the First

Information Report, inquest report, Post Mortem Report, Charge Sheet, deposition of the prosecution witnesses and other material on record and submits at the very outset that in passing the impugned judgment and order the learned Sessions Judge, Faridpur seriously failed to consider that the prosecution totally failed to prove their case by adducing reliable oral, documentary and circumstantial evidence. The learned Sessions Judge also failed to consider the defence case, which more probable that the appellant was falsely implicated in the instant case. The appellant is innocent and he was not at all liable for the charge levelled against him. He further submits that the prosecution seriously failed to ascertain the exact place of occurrence, which makes the prosecution case shaky and doubtful. The place of occurrence mentioned in the sketch map as eastern side of the pond but the inquest report was prepared at the house of one Rustom Sheikh and PW-1 in his deposition as well as in the First Information report stated that he found the dead body of his daughter Asmina at the eastern veranda of her matrimonial home. As the place of occurrence is shifted from one place to another and the prosecution failed to prove the place of occurrence of the alleged incident, as such, the appellant is entitled to get the benefit of doubt, according to the provision of section 114 (G) of the Evidence Act. He next submits that the appellant was convicted under section 302 of the Penal Code, but it is evident from the prosecution case that the appellant and others tried to save the victim and took her to the pond to pour water on her head, as such the convict-appellant was at best liable to be found guilty under Section 304, Part-I and not under Section 302 of the Penal Code. Otherwise he would not try to save the victim. As such, it does not come within the preview of Section 302 of the Penal Code rather it attracts the ingredient of Section 304 Part-I of the Penal Code. He prays for allow the appeal and discharged the appellant from the charge levelled against him.

10. To substantiate his submission the learned Advocate for the appellant placed reliance on the decisions in the cases of ***Bandez Ali @ Md. Bandez Ali vs. The State reported in 40 DLR (AD) (1988) 200 and the State vs. Ashraf Ali and others reported in 46 DLR(AD) (1994) 241.***

11. Mr. Zahirul Haque Zahir, the learned Deputy Attorney General alongwith Mr. Atiqul Haque Salim, the learned Assistant Attorney General and Mr. Nizamul Haque Nizam, the learned Assistant Attorney General appearing for the State having taken us through the materials on record make his submission supporting the conviction and sentence and opposing the appeal. He submits that all facts have been proved by the cogent, credible and reliable evidence of the prosecution witnesses as well as circumstantial evidence. He also submits that the learned Sessions Judge rightly found the appellant guilty under section 302 of the Penal Code. So the judgment and order of conviction and sentence do not call for any interference from this court. He further submits that the prosecution proved their case beyond reasonable doubt. There is no contradiction in their statements on any material point and there is no illegality or irregularity in the said judgment and order of conviction and sentence, the prosecution witnesses corroborated with each other on material points and the judgment and order of conviction and sentence should be upheld by this Court. Learned Deputy Attorney General further submits that all the P.Ws. proved their case by adducing reliable oral and documentary evidence. The investigating officer investigated the case properly and fairly. He further submits that this is a wife killing case and there is no eye witness to this incident. The cardinal principle of the criminal jurisprudence is that the prosecution has to prove their case beyond reasonable doubt. However, in a wife killing case, where wife died at her matrimonial home and husband was present in that house. Under such circumstances, some liabilities were imposed upon the husband by the decisions of our Apex Court that the husband is under an obligation to explain the circumstances under which his wife was done to

death, when both of them were residing in the same house at the relevant time. He further submits that the appellant husband failed to discharge his duty as to how the victim, his wife met her death. He further submits that the prosecution proved their case by adducing oral and documentary as well as circumstantial evidence that on the alleged night of occurrence the appellant-husband was present at his home when his wife met her death. To make the husband liable the minimum facts either by direct or circumstantial evidence is that he was in the house at the relevant time. Then certain liabilities were imposed on the husband to explain how his wife met her death. The medical evidence suggest that the victim wife death was caused, due to asphyxia as result of throttling which was ante mortem and homicidal in nature and the appellant husband did not take any step to inform the police or any other law enforcing agency that the death was caused by any other reason. As such, the trial court after considering the evidence on record convicted the appellant. He further submits that the place of occurrence was not shifted from one place to another place and the victim wife was done to death at her matrimonial home. Thereafter, she was taken to the pond to pour water at her head and the dead body was left there, later on they took the dead body to the courtyard of one Rustom Sheikh, the uncle of this appellant. Thereafter, she was taken to the eastern veranda of the appellant's father's dwelling hut. The pond is also adjacent to the house of appellant Farhad. The victim met her death at her matrimonial home and the appellant with intention to suppress the facts and to divert the case of murder that they placed the dead body of the victim at different place, on different time. The learned Deputy Attorney General further submits that it is clear case of wife killing. At the time of alleged incident the appellant has requisite intend to kill the victim wife. As the medical evidence revealed that there are 8 (eight) injuries on the dead body of the deceased and death was due to asphyxia as a result of throttling which was ante-mortem and homicidal in nature. Death of the victim was not caused by sudden provocation or sudden altercation between the husband and wife or it cannot be consider as mere killing of a person or mere causing a person's death. Rather it was pre-planned murder with certain guilty mind or guilty intention of the appellant and there is motive for this murder. The convict appellant (husband) tried to marry a girl of his village on taking an amount of Taka 50,000/- as dowry and for that reason this appellant and others conspired to kill his daughter Asmina. As such, there is no ingredient to convert the sentence under section 304 Part -I of the Code of Criminal Procedure. There is no illegality or irregularity in the judgment and order of conviction and sentence passed by the Court below and he prays for dismiss the appeal.

12. Before entering into the merit of this appeal, let us discuss the prosecution witnesses one after another.

13. PW-1, Md. Idris Kazi is the informant and father of the victim Asmina Akhter, deposed that the alleged occurrence took place after 11.00 in the night of 20.11.2001. At about 4.00 a.m. on 21.11.2001 this appellant and his uncle Md. Hafiz Sheikh went to his resident and informed them that the mother of his son-in-law is seriously ill. He deposed that on receipt of this information this witness and his wife PW-6 Seria Begum went to the matrimonial house of their daughter, situated at Adampur and as they reached the resident of Idris Sheikh, the father of this appellant they found a dead body was covered with a piece of cloth at the eastern veranda (corridor) of the dwelling hut of Idris Sheikh. This witness removed the cloth and found the dead body of his daughter Asmina Akhter. This witness saw injuries on top and bottom of the left eye, a blackish mark on the neck, an injury mark above waist on her back, an injury mark on the left side of her face and some small blackish marks on right hand of the dead body of their daughter. He suspected that his son-in-law Forhad Hossain in connivance with his father Idris Sheikh, uncle Siddique Sheikh, cousin Hanif

Sheikh and uncle Harun Sheikh killed his daughter. This witnesses also deposed that he came to know that accused Forhad wanted to marry a girl of his village on taking an amount of Taka 50,000/- as dowry and for that reason his son-in-law Forhad Hossain and others family members conspired to kill his daughter Asmina. Thereafter, he filed this Ejaher on 21.11.2001, which marked as Exhibit-1 and his signature on it marked as Exhibit-1/1. He identified the accused Forhad Hossain Sheikh on dock.

14. During cross examination this witness deposed that his house is situated two mile away from the house of accused Forhad Sheikh. This witness deposed that the accused conspired to marry one Rafiza. He denied the suggestion that the accused did not conspire to marry Rafiza on taking an amount of Taka 50,000/-. During cross examination this witness deposed that he himself went to the Police Station and narrated the incident to the police officer and the Ejaher was prepared at his instruction. He denied the suggestion that he did not go to the Police Station. He denied the suggestion that the ejaher was not prepared at his instruction. He denied the suggestion that he lodged this ejaher falsely and the accused was not present at his home at the time of alleged occurrence.

15. PW-2, Abdus Sobhan Fakir, this witness deposed that on 20.11.2001 at about 8.00-8.30 p.m. he along with Omed Ali and Alauddin went to Sadipur to treat the wife of the nephew of Alauddin and on completion of treatment while they were returning home at about 11:30 p.m. they saw some persons were carrying a women to the ghat of the pond of Forhad, situated at village Adampur. This witness also deposed that Alauddin by flashing his torch asked them who they were, at that time; Forhad replied by disclosing his name and stated that they brought a woman to the ghat of the said pond for pouring water on her head as she was ill. Thereafter, they went to their home and on the following morning he came to know that Asmina Akhter was killed by her husband Forhad. Thereafter he went to the matrimonial home of the victim and saw the dead body of Asmina Akhter. These witnesses also saw blackish mark on the neck and hand of the dead body and he came to know that the accused Forhad killed her. He identified the accused on dock.

16. During cross examination this witness admitted that his house is situated at 100 cubits away from the house of Idris Kazi and his village is more than a mile away from the house of Forhad. He came to know about this murder at about 7.00 a.m. on 21.11.2001. He told the informant Idris Kazi that he saw Forhad and others took a woman to the ghat of the pond in the previous night. He denied the suggestion that he deposed falsely about his going to sadipur on 20.11.2001 and the seeing of the accused Forhad and others carrying a woman to the ghat of the pond. He denied the suggestion that he deposed falsely in this case.

17. PW-3, Alauddin, this witness deposed that on 20.11.2001 at about 8.00 p.m. this witness alongwith Omed Ali and Sobhan Fakir went to Sadipur at his sister's home and Sobhan Fakir treated his nephew's wife. They started for their home at about 12:00 O-Clock at night and on their returning home, as they reached near the house of Forhad situated at Adampur, they saw 3 persons were carrying a women to the ghat of the pond. This witness also deposed that he by flashing his torch asked them who they were, at that time; Forhad replied by disclosing his name and stated that they brought a woman to the ghat of the said pond for pouring water on her head as she was ill. Thereafter, they returned to their respective home and in the following morning he came to know that the wife of Forhad and daughter of Idris Kazi namely Asmina was killed by the accused Forhad. This witness also deposed that at about 7.00 a.m. in the morning he went to the house of Forhad and saw the dead body of

Asmina. He also saw there are injury marks at the top of left eye, lip, back and on the neck of the dead body. He identified the accused on dock.

18. During cross examination this witness deposed that his house is situated 400 yard away from the Idris's house and more than a mile away from the house of accused Forhad. He denied the suggestion that he did see the accused Farhaed on the alleged night of occurrence. He denied the suggestion that he did not see Forhad and others were carrying a woman towards the ghat of the pond. He denied the suggestion that he deposed falsely in this case, at the instigation of Idris Kazi.

19. PW-4, Md. Haider Kazi, this witness deposed that on 20.11.2001 at about 5.00 p.m. he went to the house of accused Forhad to invite them. At that time, his brother's daughter Asmina told him that accused Forhad beat her at 10.00 a.m. on that day and he tore her cloths and broke her bracelets. He further deposed that the accused assaulted her and asked her to bring an amount of Taka 50,000/= from her parents. The victim Asmina wanted to come with him, at that time he told her that he could not take her with him as he will go elsewhere for inviting others. On the following day, he came to know that accused Forhad killed Asmina. This witness also deposed that on getting that information he went to the house of accused Forhad and saw the dead body of Asmina and also noticed a blackish mark on the neck and injuries on the left eye of the dead body. He further deposed that the police prepared inquest report in his presence and he put his signature on it. He identified the inquest report, which marked as Exhibit-2 and his signature on it marked as Exhibit 2/1. This witness also identified the accused on dock.

20. During cross examination this witness deposed that the inquest report was prepared by the police at 9:00 a.m. on 21.11.2001. This witness denied the suggestion that he did not go to the dwelling hut of Forhad on 20.11.2001 or Asmina did not tell him that she was assaulted by the accused. This witness admitted that he is full brother of the informant. He denied the suggestion that he deposed falsely in this case.

21. P.W-5, Sheikh Omed Ali, in his deposition he deposed that on 20.11.2001 he alongwith Alauddin and Sobhan Fakir went to Sadipur for treatment of Alauddin's nephew's wife. On their returning home at about 11:00 p.m. as they reached near the house of accused Forhad, they saw 3 to 4 persons were carrying a woman to the pond and Alauddin by flashing his torchlight asked their identity, at that time, the accused Forhad replied by disclosing his name and stated that they brought a woman to the ghat of the said pond for pouring water on her head as she was ill. Thereafter they went to their respective houses; on the next date he came to know from one Abdur Rashid Matabber and others that the accused Forhad killed his wife Asmina. Next, he went to the house of accused Forhad and saw the dead body of Asmina. He also deposed that he saw the injury mark on the left eye and black mark on the neck of the dead body of Asmina.

22. During cross examination this witness admitted that his house is situated 150/200 cubits away from the house of the informant and the house of Forhad is situated two miles away from his house. He also admitted that he did not see informant Idris Kazi at the place of occurrence. He denied the suggestion that he did not see the accused Forhad on the alleged night of occurrence. He denied the suggestion that he made his statement to the Magistrate on 22.05.2002, after six months of the alleged incident. He denied the suggestion that the investigating officer recorded his statement after 3/4 months of the alleged incident. He

denied the suggestion that he did not see Forhad and others were carrying a woman towards the ghat of the pond. He denied the suggestion that he deposed falsely in this case.

23. PW-6 Seriya Begum is the mother of the victim Asmina and wife of the informant. In her deposition she deposed that the alleged occurrence took place on 20.11.2001. The accused Forhad's uncle came to their house and told them that Forhad's mother was serious ill and she was about to die. She also deposed that on getting that information they went to the house of accused Forhad and saw the dead body of her daughter Asmina. She also saw black mark on the neck and injury mark on left eye of the deceased Asmina. This witness further deposed that 4/ 5 days before the alleged incident accused took her daughter to their matrimonial home and the accused Forhad demanded an amount of taka 50,000/-from them. She identified the accused on dock.

24. During cross examination this witness deposed that her house is situated two mile away from the house of the accused. She admitted that they get this information in the early morning, at the time when the people taking their *Saheri*. Thereafter, this witness along with her husband went to the place of occurrence. The police came to the place of occurrence after some time. This witness denied the suggestion that she did not receive any information about this incident from Shekih Hafez, uncle of the accused Forhad. She denied the suggestion that she did not make any statement to the police officer that the accused demanded an amount of Taka 50,000/= from them. She denied the suggestion that she did not see black mark on the neck or any injury mark on the left eye of the dead body. She denied the suggestion that she deposed falsely in this case.

25. PW-7, Rowshanara Begum, this witness deposed that on 20.11.2001 her cousin Alauddin alongwith Kabiraj Sobhan Fakir and another came to her house on her call to treat her daughter-in-law and Kabiraj gave her treatment on the night they left Sadipur for their home. On the following morning this witness came to know from the passerby that the accused Forhad killed his wife Asmina. This witness also deposed that two days after the alleged incident she came to the house of Alauddin, at that time, he disclosed that on their returning home from her house after treatment, they saw Forhad carried a woman to the pond.

26. During cross examination this witness deposed that her house is situated about 1 ½ /2 miles away from the house of Alauddin. During cross examination this witness denied the suggestion that the plea of illness of her daughter-in-law was false. She denied the suggestion that she deposed falsely in this case.

27. PW-8, Shahed Ali is a hawker, deposed that about 4 years before the alleged incident, at about 11.00-12.00 a.m. he went to Adampur for hawking cosmetics and some other items and many women came to him to purchase these articles. At that time, accused Forhad came to him and took away Asmina and assaulted her. He also deposed that Asmina was purchasing a chain from him and the Forhad asked her why she purchase this articles and threaten to kill her. At that time, other women told him that they are husband and wife. This witness identified the accused on dock.

28. During cross examination this witness deposed that the place of occurrence is situated 3 ½/4 miles away from his house. He denied the suggestion that he does not hawking any articles and the accused did not assault or abuse the victim Asmina for purchasing articles.

29. PW-9, Sheikh Satter, deposed that on 20.11.2001 at about 9.00 p.m. while he was returning home from the Atrashi, at that time, he saw people at the resident of Idris Sheikh

of village Adampur and they are saying that the wife of Forhad was ill. He further deposed that on the following day he heard that the accused Forhad's wife died.

30. During cross examination this witness admitted that Police Officer recorded his statement after 7/8 months of the alleged incident.

31. PW-10, Abdur Rashid, this witness testified that on 21.10.2001 at about 8.00-9.00 a.m. he came to know from the passersby that the daughter of Idris Kazi namely Asmina died at her matrimonial home situated in village Adampur. He deposed that her husband name is Forhad. During cross examination this witness deposed that his house is situated quarter mile away from the house of informant Idris Kazi.

32. During cross examination this witness admitted that he made his statement to the police officer after 2/3 months of the alleged incident. He denied the suggestion that he deposed falsely in this case.

33. PW-11, Md. Zahidul Islam is a Magistrate First Class, this witness deposed that on 22.05.2002 he recorded the statement of the witnesses namely Alauddin, Abdus Sobhan and Omed Ali, under section 164 of the Code of Criminal Procedure.

34. During cross examination this witness admitted that in their statements he did not mention the Police station case number.

35. PW-12 Inspector Md. Elahi Box Sikder, C.I.D of police is the 2nd investigating officer, he after receiving the charge of investigation of this case, perused the diary of the previous investigating officer. He also deposed that during investigation he visited the place of occurrence and after conclusion of the investigation he submitted the charge sheet against the accused under Section 302 of the Penal Code.

36. During cross examination this witness admitted that Sub-Inspector Motiur Rahman of Bangha Police Station as the investigating officer, investigate the case previously. He denied the suggestion that he did not visit the place of occurrence.

37. PW-13 Dr. Ajoy Kumar Sarker is the medical officer, in his testimony testify that he held autopsy on the dead body of the deceased Asmina on 22.11.2001 brought and identified by Constable No. 414 Mojibur Rahman and found the following injuries:-

1. One abrasion over anterior aspect of middle part of neck measuring 3" x 1 ½" size.
2. Rounded bruised area with crescentic nail marked over anterior aspect of both side of neck, 4 on left side and 2 on right side (diameter of each is about 1.5 cm.).
3. 1"x1" area of abrasion over left eye lid found.
4. ½"x ½" area of abrasion found over lower eye lid.
5. 2"x1" area of abrasion found over left cheek close to left angle of mouth.
6. 2" x 2" size area of bruise found over left side of back.
7. Tongue found protruded in between the teeth.
8. ½"x1" abrasion found over pina (over tragus).

38. He opined that death was due to asphyxia as a result of throttling which was ante-mortem and homicidal in nature.

39. During cross examination this witness denied the suggestion that his opinion was not correct.

40. PW-14 Inspector Md. Motiur Rahman is the 1st investigating officer; this witness deposed that on 21.11.2001 he was working as Sub-Inspector at Bhanga Police Station. On receipt of written Ejahar, the Officer-in-Charge Abu Bakker Talukder lodged the Bhanga Police Station case No. 12 (11) 2001. He identified the FIR Form, which marked as Exhibit-3 and he identified the signature of the Officer-in-Charge Abu Bakker Talukder, which marked as Exhibit-3/1. This witness deposed that he was appointed as investigating officer by the Officer-in-Charge. During investigation he visited the place of occurrence, prepared sketch map with separate index, sketch map marked as Exhibit-4 and his signature on it marked as Exhibit-4/1 and the index marked as Exhibit-5 and his signature on it marked as Exhibit-5/1. He prepared the inquest report at the resident of one Rustom Sheikh which marked as Exhibit-2 and his signature on it marked as Exhibit-2/2. He recorded the statement of the witnesses under Section 161 of the Code of Criminal Procedure and collected the statement of the witnesses under Section 164 of the Code of Criminal Procedure and he arrested the accused. On conclusion of investigation and after finding prima facie case against the appellant, he submitted the charge sheet, under section 302 of the Penal Code.

41. During cross examination this witness admitted that he recorded statements of the witnesses Abdus Sobhan, Alauddin and Sheikh Omed Ali on 04.12.2002 and the statements of witnesses Satter and Abdur Rashid on 25.12.2002. This witness admitted that he went to the place of occurrence on 28.05.2002 and he prepared a sketch map and index on that day. He denied the suggestion that he did not go to the place of occurrence on 21.11.2001. He also denied the suggestion that his investigation was perfunctory.

42. These are the deposition of the prosecution witnesses.

43. We have gone through the First Information Report, Inquest Report, Charge sheet, deposition of the prosecution witnesses, impugned judgment and order, grounds taken in the petition of appeal and other materials on record and we have given our anxious consideration to the submissions advanced by the learned Advocates for both sides. We find that the appellant Forhad Sheikh was convicted and sentenced on the basis of the evidence adduced by the PW-1 Idris Kazi, PW-2 Abdus Sobhan Fakir, PW-3 Alauddin, PW-5 Skeikh Omed Ali, PW-6 Seriya Begum and PW-13 Dr. Ajoy Kumar Sarker and circumstantial evidence. In the instant case, there is no ocular evidence witnessing the commission of offence committed by convict appellant in their matrimonial home. Prosecution relied upon circumstantial evidence to proof of its case. Commission of crime can also be proved by circumstantial evidence. Circumstantial evidence is more cogent and convincing than the ocular evidence. It is correctly said that witnesses may tell a lie and it is not difficult to procure false tutored and biased witnesses but it is very much difficult to procure circumstantial evidence.

44. In the instant case, we find that PW-1 Idris Kazi the father of the deceased Asmina Akhter lodged the First Information Report to the Bhanga Police Station on 22.11.2001 alleging that at about 4.00 a.m. on 21.11.2001 one Hafiz Sheikh uncle of this appellant Forhad came to their house and informed him that appellant mother was serious ill and asked him if they wanted to see her, they have to go their home at once. On getting this information, PW-1 and his wife PW-6 Seriya Begum went to the matrimonial house of their daughter, situated at Adampur. They found a dead body was covered with a piece of cloth at

the eastern veranda (corridor) of the dwelling hut of appellant's father. The informant removed the cloth and found the dead body of their daughter Asmina Akhter. He also saw several injury marks on the dead body. He found injuries on top and bottom of the left eye, a blackish mark on the neck, an injury mark above waist on her back, an injury mark on the left side of her face and some small blackish marks on right hand of the dead body of their daughter. The informant suspected that the accused persons in connivance each other caused death of the victim Ashmnia Akhter. The informant also came to know that on 20.11.2001 at about 11 p.m. his daughter along with her husband went to bed at their matrimonial home and on that night at about 3.00 a.m. she was found death at eastern bank of the pond of their matrimonial home. He also came to know that accused Forhad wanted to marry a girl of his village on taking an amount of Taka 50,000/- as dowry and for that reason this appellant and others conspired to kill his daughter Asmina. Thereafter, he lodged this F.I.R and the same was registered as Bhanga Police Station case No. 12 dated 22.11.2001 under sections 302/34 of the Penal Code. PW-14 Inspector Md. Motiur Rahman came to the place of occurrence and prepared the inquest report at the residence of one Rustom Sheikh, in presence of witnesses. He sent the dead body to the morgue for autopsy. PW-13 Dr. Ajoy Kumar Sarker, who examined the dead body of the victim Asmina on 22.11.2001 and the prepared Post Mortem Report. He found 8 (eight) injury marks on the dead body and opined that death was due to asphyxia as a result of throttling which was ante-mortem and homicidal in nature. Prosecution examined as many as 14 witnesses to prove their case and defence examined none in their defence. On conclusion of the trial the appellant was convicted and sentenced as aforesaid.

45. **First** question raised by the learned Advocate for the appellant that whether or not the prosecution failed to ascertain the exact place of occurrence. In the instant case, we find that in the sketch map the investigating officer marked the place of occurrence is the western side of the pond of the victim's matrimonial home. PW-2, Abdus Sobhan Fakir, PW-3, Alauddin and P.W-5, Sheikh Omed Ali in their deposition they deposed that they went to Sadipur for treatment of Alauddin's nephew's wife. On their returning home at about 11:00 p.m. as they reached near the house of this appellant Forhed, they saw 3 to 4 persons were carrying a woman to the pond and Alauddin by flashing his torchlight asked their identity, at that time, the appellant Forhad replied by disclosing his name and stated that they brought a woman to the ghat of the said pond for pouring water on her head as she was ill. PW-14 Inspector Md. Motiur Rahman prepared the inquest report; he found the dead body was lying at the courtyard of one Rustom Sheikh. PW-1 Idris Kazi in his deposition deposed that he found the dead body of his daughter was lying at the eastern veranda (corridor) of the house of appellant's father. The learned Advocate for the appellant argued that the shifting of place of occurrence one after another creates reasonable doubt of the prosecution case. The learned Deputy Attorney General argued that there is no shifting of the place of occurrence the accused persons to suppress the killing of the deceased, to divert the murder and to take a false plea took the dead body to the ghat of said pond and the dead body was lying there till morning. Thereafter they took the dead body into their house. So there is no shifting of the place of occurrence.

46. We have perused the evidence on record and find that PW-1 Idris Kazi came to know that the victim Asmina Akhter went to bed along with her husband on their matrimonial home at about 11.00 p.m. on the alleged night of occurrence. Thereafter, at about 11:00 to 12:00 p.m. on alleged night of occurrence PW-2, Abdus Sobhan Fakir, PW-3, Alauddin and P.W-5, Sheikh Omed Ali saw this appellant Forhed alongwith 3 to 4 persons were carrying a woman to the pond. Further, all three places were mentioned by the prosecution witnesses are

actually the matrimonial home of the deceased. So we are of the view that the occurrence took place at the matrimonial dwelling hut of the victim, thereafter she was taken to the pond of the said house to pour water on her head as her condition further deteriorated or in the mean time, she met her death and the dead body was lying there till morning. Thereafter, they took the dead body into their house. So we are of the view that there is no shifting of the place of occurrence and the dead body of the deceased was taken by the appellant and others from one place to another for their own convenience and the victim was found dead at her matrimonial home.

47. **Second** question is raised by the learned Advocate for the appellant that the appellant was convicted under section 302 of the Penal Code, but it is evident from the prosecution case that the appellant and others tried to save the victim and took her to the pond to pour water on her head, as such the convict-appellant was at best liable to be found guilty under Section 304, Part-I and not under Section 302 of the Penal Code.

48. In a case where requisite *mens rea* is found proved the accused still can be convicted and punished under section 304, Part-I of the Penal Code, if the act amounting to murder falls within any of the five exceptions to Section 300 of the Penal Code.

49. In the Instant case, we find that the defence did not take any plea except his innocence. There is no eye witness or ocular evidence and none of the prosecution witnesses witnessed the incident. There is no evidence that the appellant was provoked by victim or he lost his self-control or mischief was committed by a sudden act or fight, without any premeditation, rather it is evident appellant Forhad wanted to marry a girl of his village on taking an amount of Taka 50,000/- and for that reason this appellant and others conspired to kill the victim Asmina. Further, the incident took place in between at about 11.p.m. to 3.00 a.m. in the middle of the night and PW-13 Dr. Ajoy Kumar Sarker examined the dead body of the victim Asmina on 22.11.2001 and he prepared Post Mortem Report. He found 8 (eight) injury marks on the dead body and opined that death was due to asphyxia as a result of throttling which was ante-mortem and homicidal in nature. We are of the view that at the time of alleged incident the appellant has requisite intend to kill the victim wife. As the medical evidence revealed that there are 8 (eight) injuries on the dead body of the deceased and death was due to asphyxia as a result of throttling which was ante-mortem and homicidal in nature. Death of the victim was not caused by sudden provocation or sudden altercation between the husband and wife or it cannot be consider as mere killing of a person or mere causing a person's death. Rather it was pre-planned murder with certain guilty mind or guilty intention of the appellant and there is motive for this murder. As such, the appellant Forhad was rightly found guilty under Section 302 of the Penal Code as there is no evidence in this case to bring the said murder within any of the five exceptions to Section 300 of the Penal Code.

50. Now the question is who caused her death and whether the prosecution could prove that the convict appellant in furtherance of his intention caused her death. There is no ocular evidence. None of the prosecution witnesses saw the death of the deceased. The Trial Court convicted and sentenced the appellant mainly on the basis of the evidence adduced by the PW-1 Idris Kazi, PW-2 Abdus Sobhan Fakir, PW-3 Alauddin, PW-5 Skeikh Omed Ali, PW-6 Seriya Begum and PW-13 Dr. Ajoy Kumar Sarker and circumstantial evidence. We have categorically considered the depositions of all the prosecution witnesses and other relevant documents on record and we find that this is a wife killing case. In this case, there is no direct evidence against the convict appellant in causing murder of the deceased. The prosecution

sought to prove the charge on certain circumstantial facts that victim was living with the convict appellant and he was present in the house at the time of murder. We find that prosecution to prove its case relied upon the following circumstantial evidence.

51. **Firstly**, the deceased and the convict appellant were admittedly husband and wife and they lived in the same house at the time of occurrence. The convict appellant was present there and it was not strongly denied by the defence. Ordinarily, an accused has no obligation to account for which he is placed on trial but in a wife killing case or wife murder case, the position of law is all together is different. The murder having taken place while the convict was living with the deceased wife Asmina in the same house, the convict has an obligation to explain how his wife met her death. The plea adopted from the side of husband appellant that he was not present in his house at the time of alleged occurrence proved to be false.

52. **Secondly**, the medical evidence of PW-13 Dr. Ajoy Kumar Sarker, who held autopsy on the dead body of the deceased Asmina Akhter on 22.11.2001 and found following injuries on the dead body:-

1. One abrasion over anterior aspect of middle part of neck measuring 3" x 1 ½" size.
2. Rounded bruised area with crescentic nail marked over anterior aspect of both side of neck, 4 on left side and 2 on right side (diameter of each is about 1.5 cm.).
3. 1"x1" area of abrasion over left eye lid found.
4. ½"x ½" area of abrasion found over lower eye lid.
5. 2"x1" area of abrasion found over left cheek close to left angle of mouth.
6. 2" x 2" size area of bruise found over left side of back.
7. Tongue found protruded in between the teeth.
8. ½"x1" abrasion found over pina (over tragus).

53. He opined that death was due to asphyxia as a result of throttling which was ante-mortem and homicidal in nature.

54. **Thirdly**, the convict appellant as the husband or any member of their family did not take any initiative to inform the local police station in respect of unnatural death of his wife the deceased Asmina Akhter. The silence on the part of the convict appellant and his other family members are unnatural and unbelievable.

55. **Fourthly**, it is evident from the record that the appellant flee away from the place of occurrence thereafter he was arrested by the local Police, which could be regarded as guilty mind of the convict appellant.

56. **Fifthly**, the false plea adopted by the convict appellant that he was not present on the alleged date, time and place of occurrence i.e. their matrimonial home, when his wife met her death. But the PW-2, Abdus Sobhan Fakir PW-3, Alauddin and P.W-5, Sheikh Omed Ali in their deposition deposed that on the alleged night of occurrence he was present at their matrimonial home, when his wife met her death. The convict appellant was present there and it was not strongly denied by the defence and the trial court also found the plea as false and fabricated one. This false plea completes the chain of circumstances.

57. As there is no break in the chain of causation and chain or circumstances connecting the convict appellant with the killing of the victim Asmina Akhter and as circumstantial evidence is more cogent than the evidence of eye witnesses and after perusing the materials on record, we are of the view that the prosecution able to connect the convict appellant with

the killing of his wife the victim Asmina Akhter, which attract the provision of section 302 of the penal Code.

58. In view of the above discussion, we are constrained to hold that the prosecution prove the charge brought against the appellant, under Section 302 of the Penal Code beyond reasonable doubt, as such, we are of the view that there is no reason to interfere with the impugned judgment and order of conviction and sentence. We are inclined to dismiss the appeal and upheld the judgment and order of conviction and sentence dated 29.11.2005 passed by the Sessions Judge, Faridpur in Sessions Case No. 150 of 2004.

59. **Accordingly, the appeal is dismissed.** The appellant is directed to surrender before the trial court within 30 (thirty) days from the date of receipt of this order failing which the trial court is directed to secure his arrest as per law.

60. Send down the lower Court records with a copy of this judgment at once.