

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice A.K.M. Rabiul Hassan

Criminal Appeal No.7028 of 2020

S. I. Zahidur Rahman

.... Appellant

-Versus-

The State and another

.... Respondents

With

Criminal Appeal No.7498 of 2020

Md. Rashedul Hassan

-Versus-

The State and another

With

Criminal Appeal No.9222 of 2022

Rasel

-Versus-

The State

Mr. S. M. Shahjahan, Senior Advocate with

Mr. Khd. Gulzar Hossain, Advocate

.... For the appellant of
Criminal Appeal No.7028 of
2020.

Mr. A.M. Mahbub Uddin Khokon, Senior Advocate with

Mr. Md. Sarwar Ahmed, Senior Advocate with

Mr. Md. Abdur Razzak Razu, Advocate

Ms. Kalpana Akter Banu, Advocate

Ms. Afifa Begum, Advocate

Mr. Md. Musa Mansury, Advocate

Ms. Soheli Parvin Eti, Advocate

....For the appellant of Criminal Appeal No.7498 of 2020.

Mr. Najmul Karim, Advocate

....For the appellant of Criminal Appeal No.9222 of 2022.

Mr. Mohammad Anik Rushad Haque, Additional Attorney General with

Mr. Bodiuzzaman Tapader, Deputy Attorney General

....For the respondent No.1 of all three Criminal Appeals.

Mr. Z. I. Khan Panna, Senior Advocate with

Mr. S. M. Rezaul Karim, Advocate

Mr. Md. Shahinuzzaman, Advocate

Mr. MHM Shihab Ahmed Shirazee, Advocate

Ms. Banarupa Roy. Advocate

....For the Respondent No.2 of

Criminal Appeal Nos.7028 of 2020 and 7498 of 2020.

Heard 09.07.2025, 30.07.2025, 31.07.2025, 04.08.2025, 06.08.2025 and 07.08.2025.
Judgment on 10.08.2025 and 11.08.2025.

S M Kuddus Zaman, J:

Criminal Appeal No.7028 of 2020 at the instance of convict Sub-Inspector Zahidur Rahman, Criminal Appeal No.7498 of 2020 at the instance of convict Assistant Sub-Inspector Md. Rashedul Hasan and Criminal appeal No.9222 of 2022 at the instance of convict Rasel having arisen out of the identical judgment and order of conviction and sentence dated 09.09.2020 passed by the learned Metropolitan Session Judge, Dhaka in Sessions Case No.6171 of 2014 under Section 15 of the নির্ধাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ (Act No.50 of 2013) above three Criminal Appeals are heard together and being disposed of by this single judgment.

Facts in short are that PW1 Md. Imtiaz Hosssain Rocky lodged a complaint on 07.08.2014 to the learned Metropolitan Session Judge, Dhaka against six Police Officers of Pollabi Police

Station including appellant Zahidur Rahman and appellant Sumon under Section 15 of the নির্ধাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ (hereinafter referred to as Act No.50 of 2013) alleging that on 08.02.2014 his elder brother Jony, he and many others were enjoying the musical program at Block-B, Section-11, Mirupur in connection of pre wedding (গায়ে হলুদ) celebration of PW8 Md. Belal. At 2.00 A.M. accused Sumon started teasing, touching and obstruction performing girls. Victim Jony gave Sumon a slap to prevent his advice and obscene behavior who angrily left the Program threatening revenge. At 2.30 A.M. appellant Sub-Inspector Jahid accompanying accused Rasel, co-accused Sumon and 25-26 police personals stormed above venue and ransacked the podium and arrested Rocky. Accused Zahid arrested Jony and fired pistol shots to keep local people at bay and arrested PW2 Titu, PW3 Rajon, PW5 Javed and PW6 Imran from above venue and PW Foysal from his home. At 3.00 A.M. accused Zahid and co-accused Nos. 2-5 dragged Rocky, Jony, Foysal, Titu and Rajon in the first floor of Pallabi Police station and subjected Rocky and Jony to indiscriminate beatings. Accused Zahid and co-accused Nos.2-5 tied hands of Rocky and

Jony with a pillar and gave continuous beatings for about two hours. Rocky, Jony and other victims were taken to Mirpur Modern Hospital for treatment. The doctor advised to admit Jony but Sub-inspector Rashed brought back Jony to police custody and again subjected Rocky and Jony to torture. Jony was denied drinking water who fell seriously ill and was taken to Mirpur Modern Hospital where he was declared dead. There were visible marks of injuries on the person of Jony. On above occurrence of murder of Jony accused No.4 Sumon Kumar Saha as informant filed G. R. Case No.16 on 09.02.2014 under Sections 302/34 of the Penal Code falsely alleging that Jony died due to free fight between two groups of people belonging to Rahmat Camp and Irani Camp. On 20.07.2014 Khurshida Begum, mother of Jony, as Complainant filed a case against accused Zahidur Rahman under Section 15 of Act No.50 of 2013 which is pending for inquiry. Accused Nos.1-6 being Police Officers the Complainant shall not get justice if above complaint is investigated by police.

The learned Metropolitan Sessions Judge recorded statement of Complainant Rocky and sent above complaint to the Chief Metropolitan Magistrate, Dhaka for judicial inquiry.

PW22 Md. Maruf Hossain, Metropolitan Magistrate in course of inquiry recorded statements of prosecution witnesses and held an exercise for identification of suspect Police Officers by showing photographs of all 86 on duty Police Officers to the victims and eye witnesses and in above inquiry allegations brought against accuseds Sub-inspector Zahidur Rahman, Assistant Sub-Inspectors Rashedul Hasan and Md. Kamruzzaman Mintu and Sumon and Rasel having prima facie proved he sent them for trial and the allegations brought against Sub-inspector Abdul Baten, Sub-inspector Rashed, Officer-in-charge Ziaur Rahman and Constable Nazrul Islam having not prima facie proved they were not sent for trial.

The learned Metropolitan Session Judge accepted above inquiry report and framed charge against accused Sub-inspectors Zahidur Rahman, accused Assistant Sub-inspector Kamruzzaman Mintu and Rashedul Hasan, Sumon and Rasel under Section

15(1)(2)(3)(4) of নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ who pleaded not guilty and demanded trial.

At trial the prosecution examined 24 witnesses and the defence declined to cross examine PW5 Javed, PW6 Imran, PW13 Sahidul Islam Shipon, PW14 Foysal and PW15 Mithu and cross examined remaining 19 prosecution witnesses. The documents and articles produced and proved by the prosecution were marked as Exhibit Nos.1-7 series.

On conclusion of prosecution evidence the learned Session Judge examined accused Zahidur Rahman Zahid, Rashedul Hasan, Md. Rasel and Sumon under Sections 342 of the Code of Criminal Procedure who reiterated their claim of not guilty and declined to examine any witness or produce any document. Accused Kamruzzaman Mintu having absconded he could not be examined under Section 342 of the Code of Criminal Procedure, 1898.

On consideration of facts and circumstances of the case and evidence on record the learned Metropolitan Sessions Judge convicted Sub-inspector Zahidur Rahman, Assistant Sub-

inspector Md. Rashedul Hasan and absconding Assistant Sub-inspector Kamruzzaman Mintu under Section 15(2) of the নির্ধাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ and sentenced them to imprisonment for life and fine of Taka 1,00,000/- each in-default rigorous imprisonment for six months more and further pay Taka 2,00,000/- each as compensation. Accused Rasel and Sumon were convicted under Section 15(3) of the নির্ধাতন এবং হেফাজত মৃত্যু (নিবারণ) আইন, ২০১৩ and sentenced to rigorous imprisonment for seven years and pay fine of Taka 20,000/- in default suffer rigorous imprisonment for three months more.

Mr. S. M. Shahjahan, learned Senior Counsel appearing for appellant Sub-Inspector Zahidur Rahman submits that the investigation of above complaint of PW1 Rocky by the Judicial Magistrate was unlawful and without jurisdiction since the Complainant did not seek judicial investigation either in the complaint or in his statement to the Session Judge. The learned Sessions Judge committed serious illegality in taking cognizance against accused Jahid and holding above trial in violation of Section 193 of the Code of Criminal Procedure since above

accused was not sent by the Magistrate for trial. The learned Advocate further submits that the inquest of the dead body of victim Jony was held under the supervision of an executive Magistrate and post-mortem examination was held by PW21 Dr. Shafiuzzaman. Above Executive Magistrate and Dr. Shafiuzzaman gave evidence in support of the inquest report and post-mortem report respectively. In above inquest report mentions were made of minor injuries on insignificant organs of Jony. PW21 Dr. Shafiuzzaman held that death of Jony was caused due to cardiac failure. In cross examination he stated that the victim had enlarged heart and he was suffering from myocardial infraction and the death of Jony was not caused due to internal or external injuries which were found on his person. The prosecution did not declare PW12 Dr. Shafiquzzaman as a hostile witness nor subjected him to cross examination. In view of above evidence there is no scope to designate the death of Jony as homicidal in nature. The learned Advocate lastly submits that for the occurrence of death of Jony police filed G. R. Case No.16 dated 09.02.2014 and mother of Jony as complainant lodged a complaint on 08.02.2014 to the Metropolitan Session Judge. This

complaint was lodged long after six months of death of Jony. On consideration of above contradictions and deficiencies in the prosecution case and facts and circumstances of the case the learned Metropolitan Sessions Judge should have acquitted accused Sub-inspector Zahidur Rahman of the charge framed against him under Section 15(2) of the নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ but the learned Sessions Judge utterly failed to appreciate the legal value of above materials on record and relevant law properly and most illegally convicted appellant Zahidur Rahman under above provision of Act No.50 of 2013 and sentenced him thereunder to imprisonment for life and fine which is not tenable in law.

Mr. Md. Sarwar Ahmed, learned Senior Counsel appearing with Mr. Md. Abdur Razzak Razu for appellant Assistant Sub-Inspector Md. Rashedul Hasan submits that the name of the appellant was not mentioned in the complaint which was lodged after six months of the occurrence. The complainant gave evidence before the Judicial Magistrate but he did not mention the name of accused Rashedul Hasan. Nor the Complainant made

mention of the assault or torture subsequently attributed to accused Rashedul Hasan. The learned Judicial Magistrate employed an unlawful and unprecedented method for identification of suspect Police Officers without presence of a neutral Magistrate by showing only the photographs of duty Police Officers to prosecution witnesses. Above method is unknown to the Police Regulation and the Code of Criminal Procedure and PW1 Rocky could identify appellant Rashedul Hasan as an accomplice but other three witnesses did not identify the appellant as an accomplice. As such no reliance can be placed on above identification of appellant Rashedul Hasan and on the basis of above flawed identification he should not have been implicated in this case. It has been alleged by PW1 Rocky that appellant Rashedul Hasan pressed his hand and the hand of Jony by his leg which has not been corroborated by any other witnesses namely PW2 Titu, PW3 Rajon, PW4 Foysal and PW6 Imran. There was no sign or mark of injury on the hand of PW1 Rocky. In the inquest report or post mortem report of Jony there is no mention of any mark of injury on the hand of Jony. There is no evidence, oral or documentary, that above pressing of hands

contributed to death of Jony. As such conviction and sentence of accused Rashedul Hasan under Section 15(2) of Act No.50 of 2013 to life imprisonment has of no legal basis and not tenable in law. In support of his submissions the learned Counsel refers to the case laws reported in 11 BLD (AD) Page-2, 40 DLR (1988) (HCD) Page-97, 40 DLR (AD) Page-290 and 74 DLR (AD) 91.

Mr. Mahbub Uddin (Khokon), learned Senior Counsel appearing for Above Rashedul Hassan submits that the allegation against above appellant is very minor and the alleged torture, pressing of hands of PW1 Rocky and Jony remains uncorroborated by any other evidence. Appellant Rashed is a law abiding police officer and he has already served out more than 5 years of above sentence. On consideration of above facts and circumstances of the case and evidence on record, the conviction of above appellant may be altered to Section 15(1) of Act No.50 of 2013 and his sentence may be reduced to five years, concluded the learned Advocate.

Mr. Najmul Karim, learned Advocate for appellant Rasel submits that Rasel is not a member of police or any law enforcing

agency and he had no contribution to arrest, unlawful confinement or torture of Rocky or Jony. The sole allegation leveled against appellant Rasel is that he disclosed the identity of Jony to appellant Zahidur Rahman. Above allegation even if admitted as true that does not constitute an offence of torture or murder by torture punishable under Section 15 of Act No.50 of 2013. PW1 Rocky has stated that Jony drove the car of appellant Zahid and Zahid visited their house and he was acquainted with their mother PW9 Khurshida. As such there was no necessity or importance of introducing Jony or Rocky to appellant Zahid. The prosecution alleges that co-accused Sumon was an informer of appellant Zahidur Rahman and above occurrence originated due to unlawful and obscene behavior of Sumon with performing girls. There is no allegation that Rasel abated or participated in the commission of torture. But the learned Metropolitan Session Judge utterly failed to appreciate above facts and circumstances of the case, status of appellant Rasel and evidence on record correctly and most illegally convicted appellant Sumon under Section 15(3) of নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩

and sentenced him there under which is without any lawful basis and not tenable in law.

On the other hand Mr. Bodiuzzaman Tapader, learned Deputy Attorney General appearing for the State submits that appellant Zahidur Rahman and Rashedul Hasan were on duty in the night of occurrence in Pallabi Police Station. PW1-PW6 are victims and eye witnesses of above occurrence and all above witnesses have given mutually corroborated and consistent evidence alleging that appellant Zahidur Rahman commanded a police force to the occurrence place at about 2.30 A.M. and ransacked the podium, created an environment of panic and started mass beatings. Accused Sumon an informer of appellant Zahidur touched, teased and obstructed performing girls. Sub-Inspector Zahidur Rahman instead of disciplining Sumon most illegally arrested the complainant, Jony, PW2 to PW6. PW13 Shipon and PW14 Foysal are two neutral and independent eye witnesses who have given a pen picture the occurrence. Instead of keeping above victims in the holding cell of the police station appellant Zahidur dragged them on the first floor and subjected

them to severe torture. Appellant Zahid has been mentioned as the mastermind of above occurrence in the complaint of PW9 Khurshida Begum and in Police Case No.16 filed by Sub-Inspector Shovan Roy. The purpose of above case was to bury the crimes committed by the accuseds. PW1-PW6 were cross examined by the defence but no suggestion was put to them that Sub-inspector Zahidur Rahman was not in charge of the police force who went to the occurrence place or Zahid was not on duty at the time of occurrence or he was not involved in above occurrence. On consideration of above facts and circumstances of the case and evidence on record, the learned Metropolitan Sessions Judge rightly convicted appellant Sub-inspector Zahidur Rahman under 15(2) নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ and sentenced him thereunder to imprisonment for life and fine which calls for no interference.

As far as appellant Rashedul Hasan is concerned learned Deputy Attorney General submits that on the day and time of occurrence 86 Police Officers were on duty and the learned Judicial Magistrate placed the photographs of all above 86 Police

Officers before the eye witnesses of above occurrence so that they could identify the accomplice Police Officers. PW1 Rocky identified two Police Officers including appellant Rashedul Hasan as an accomplice. At trial inquiring Magistrate Maruf Hossain gave evidence as to the method of identification of appellant Rashedul Hasan but he was not cross examined by appellant Rashedul Hasan on above evidence. No suggestion was put to PW1 Rocky that above process of identification was flawed or unreliable or appellant Rashedul has been erroneously implicated in this case. On consideration of above evidence on record the learned Session Judge rightly convicted accused Rashed Hasan under Section 15(2) of Act No. 50 of 2013 and sentenced him thereunder which calls for no interference.

Learned Deputy Attorney General submits that appellant Rasel was present in the place of occurrence and he abetted the unlawful arrest of PW1 Rocky and Jony by Sub-Inspector Zahid. He told to appellant Zahid that Jony gave a slap on Suman which resulted into his unlawful arrest, torture and death. On consideration of above facts and circumstances of the case and

evidence on record, the learned Metropolitan Session Judge has rightly convicted and sentenced appellant Rasel under Section 15(3) of the নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ which calls for no interference.

Mr. S.M. Rezaul Karim, learned Advocate appearing for respondent No.2 submits that this is a case under the নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ which is a special legislation. This is not a case under the Penal Code, 1860 and this case will not be guided by the provisions of the Code of Criminal Procedure, 1889. Appellants Zahidur Rahman and Rashedul Hasan were Police Officers and they committed above offences in police uniform by abusing authority. Section 19 of Act No.50 of 2013 provides a special Rule of evidence that if a complainant suffers injury due to negligence or callousness of any Government Officer or any other person acting under the Government Officer then the Government Officer shall have to prove that above injury was not caused due to his negligence or callousness. Complainant Rocky himself is a victim of torture and eye witness to the torture and murder of his brother Jony. PW1 Rocky has brought above

complaint against the appellant and he has given evidence in support of above allegations. The learned Metropolitan Session Judge accepted above statement and inquiry report and indicted the appellants for commission of torture punishable under Section 15 of the নির্ষাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩. As soon as the learned Sessions Judge framed charge against the appellants the onus shifted upon the accused persons to prove that they did not subject PW1 and Jony to torture. Above appellants cross examined above PWs but did not adduce any evidence to prove their claim of not guilty. In view of above special Rule of evidence and the facts and circumstances of the case the learned Metropolitan Sessions Judge has rightly convicted appellants Zahidur Rahman, Rashidul Hasan and Rasel under Section 15 of Act No.50 of 2013 which calls for no interference.

Mr. Mohammad Anik Rushad Haque, learned Additional Attorney General appearing for the state gave a detailed submission touching the background of promulgation of Act No.50 of 2013 in compliance of the United Nation Convention

against Torture and Other Inhuman or Degrading Treatment and Punishment, 1984 and mentions that the main objective of Act No.509 of 2013 is to make the rough members of the law enforcing agency accountable and prevent unlawful arrest, detention and torture. Torture has been defined in Section 1 Clause (6) of above Act as causing physical or mental pains. In addition any act by a Government Officer or using official power to extract information or confession or to punish any person or intimidate any person is also torture. Act No.50 of 2013 makes the criminal responsibility of rough members of law enforcement agency as individual liability of concerned officer. The force or the state shall not be responsible or share the criminal liability of its rough officer. The individual responsibility of the offence committed jointly by more than one member of law enforcement agency must be determined on the basis of evidence. If the torture causes death of the victim then the accused be convicted under Section 15(2) of the Act No.50 of 2013 but if the torture does not result into death then the accused be convicted under Section 15(1) of the Act No.50 of 2013. The act of attempt, aid, instigation or criminal conspiracy to commit torture has been made an offence under Section 13(2) and

sentence has been provided in Section 15(3) of above Act. A special Rule of evidence has been provided in Section 19 of above Act which places the burden on the indicted rough member of law enforcement agency to prove that he did not cause alleged torture or death. An accused under this Act shall not get the privilege of presumption of innocence as has been given to an accused under the Code of Criminal Procedure. The learned Additional Attorney General lastly submits that in the post mortem report PW21 Shafiuzzaman has stated that the cause of death of victim Jony was cardiac failure due to coronary insufficiency which was ante mortem in nature. Undisputedly Jony a man of 25 years of age was of good health while enjoying musical program. He was arrested unlawfully by appellant Zahid at 2.30 A.M. and taken to hospital twice within a couple of hours for treatment of injuries cause by torture and ultimately he died. In the inquest report and post mortem report, there are visible marks of injury on the person of Jony. There are consistent evidence of PW1 to PW4 who are victims and eye witnesses that Jony was subjected to continuous and merciless beatings. Above circumstances and brutal torture might have caused unbearable

stress and emotional distress causing cardiac failure. On consideration of above facts and circumstances of the case and evidence on record the learned Metropolitan Session Judge rightly convicted appellants Zahid and Rashedul Hasan under Section 15(2) of নির্ধাতন এবং হেফাজত মৃত্যু (নিবারণ) আইন, ২০১৩ which calls for no interference. The learned Additional Attorney General lastly submits that appellant Rasel is not a member of any law enforcement agency but he is also liable to be convicted and sentenced under above Act since he instigated, aided and participated in criminal conspiracy for commission of torture of the PW1 Rocky and Jony.

Let us consider above submissions of the learned Advocates for the respective parties in the light of facts and circumstances of the case and evidence on record and determine if the learned Metropolitan Session Judge on correct appreciation of materials on record rightly convicted and sentenced appellants Jahid and Rashedul Hasan under Section 15(2) of Act No.50 of 2013 and appellant Rasel under Section 15(3) of Act No.50 of 2013.

As mentioned above the prosecution has examined 24 witnesses to bring home the charge leveled against five accused persons namely Sub-Inspector Zahidur Rahman, Assistant Sub-Inspector Rashedul Hasan, Assistant Sub-Inspector Kamruzzaman Mintu, Rasel and Sumon.

PW1 Md. Intiaz Hossain Rocky, complainant and brother of Jony stated that they were enjoying musical program organized for গায়ে হলুদ ceremony of PW8 Md. Billal. Since 2.00 A.M. accused Sumon repeatedly went on the podium and touched, teased, annoyed and obstructed performing girls. To prevent Sumon Jony gave him a slap who angrily left the venue threatening revenge. After about 20-30 minutes accused Jahid alongwith 22-25 police personnel stromed above venue and started ransacking the podium and mass beating and then arrested him. Victim Jony drove the car of accused Jahid for same days and he had acquaintance with Jahid. Jony asked Jahid as to why his brother (Rocky) was arrested. Accused Rasel told accused Zahid that Jony slapped on the face of Sumon and accused Jahid arrested Jony and fired two pistol shots to keep the people at bay. They also

arrested PW2 Titu PW3 Rajon and PW4 Foysal and took all of them to Pallabi police station. Accused Jahid dragged him alongwith Jony, PW2 Titu, PW3 Rajon and PW4 Foysal on the 1st floor of Pallabi Police Station and subjected him and Jony to repeated cricket bat blows. In above room there were 5-6 Police Officers when Jony and he were tortured. His hand and hands of Jony were tied with a pillar and Zahid and other 4-5 Police Officers gave them beatings with cricket stamps causing their fall on the floor. Accused Rashidul Hasan stood on his hands and hands of Jony and co-accused Kamruzzaman Mintu stood on their legs. Accused Jahid again started beating them with cricket stamp and Jony was denied drinking water. PW2 Titu, PW3 Rajon and PW4 Foysal were also subjected to torture. At 4.30-5.00 P.M. Police took Jony, PW4 Foysal, and PW2 Titu and him to the Modern Hospital for treatment. The Doctor advised to admit them into hospital but police brought them back to police station. In the police lockup Jony became sick due to chest pain and police took him to hospital. He fall asleep and after getting bail on the next day came to know that Jony had died. He was admitted to hospital and after getting recovery filed this case. The witness

proved the complaint and his signature on the same which were marked as Exhibit Nos.1 and 1/1 respectively. In cross examination he stated that Jony drove the car of accused Jahid for some time and Zahid visited their home and was acquainted with him and his mother. In cross examination by accused Rashed and Kamruzzaman Mintu he stated that he works as a car mechanic and he filed this case after 3-4 months of the occurrence. He or Jony did not have any dispute or enmity with accused Rashed or Kamruzzaman Mintu. He mentioned the names of the accused persons in the complaint on hearing from PW15 Mithu. He lastly stated that he gave evidence to the Police Headquarters but he did not mention the names of accused Rashed or Kamruzzaman. Nor he mentioned their names in the Complaint. He denied that accused Rashed and Kamruzzaman Mintu were not present in the place of occurrence nor they tortured him or Jony.

PW2 Md. Sharif Ahmed Titu stated that he was present in the গায়ে হলুদ musical program of PW8 Md. Billal. Co-accused Suman went on the podium and touched and teased the performing girls. To prevent accused Sumon from above obscene

behavior Jony gave him a slap who angrily left the venue threatening revenge. After about 32-40 minutes appellant Jahid alongwith some police stormed above venue and started ransacking podium and arrested PW1 Rocky. Accompanying local elders Jony came to know the cause of arrest of Rocky. Appellant Jahid fired pistol shots to create panic and arrested Jony. On their way to home Rajon and Foysal was arrested by accused Jahid. They were taken to Pallabi Police Station and PW1 Rocky and Jony were dragged on the 1st floor and their hands were tied with a pillar and appellants Jahid, Rashedul Islam and Kamruzzaman Mintu and other Police Officers gave them indiscriminate beatings with cricket bats. PW1 Rocky and Jony fell on the ground and Zahid, Kamruzzaman Mintu and Rashedul pressed the hands and legs of Rocky and Jony. Police took him alongwith PW1 Rocky, Jony and PW4 Foysal to Modern Hospital for treatment. The doctor advised to admit them to hospital or take to Dhaka Medical College Hospital for treatment. But accused Rashedul asked the doctor to wash their injuries with Savlon and give some tablets. Police brought them back to the police station lock up. After half an hour Jony felt chest pain and

they all raised alarms and two Constables took Jony to hospital. Due to above torture Jony succumbed to death. In cross examination he denied that in above musical program there was a quarrel and free fight between two groups of people and he was giving false evidence. He denied that Rasel was not present in the place of occurrence. He admitted that he did not mention the name of Rashedul Hasan while giving evidence to Police headquarters. He alongwith PW1 Rocky, PW3 Rajon and PW12 Eklash participated in the suspect identification by seeing the photographs of 86 Police Officers. He denied that in above exercise he could not identify the appellant.

PW3 Md. Mainul Islam Rajon stated that he went to the musical program for গায়ে হানুদ ceremony of PW8 Md. Billal. When Sumon continuously teased and obstructed performing girls. Jony gave a slap on Sumon who left the venue threatening revenge. At 2.30 A.M. 20-25 police stormed above venue and he set out for home. Police arrested him and PW2 Titu from the road and took them to Pallabi Police station. Accused Kamruzzaman Mintu asked him to bring Taka 10,000/- from his family otherwise he

would be subjected to torture. He heard sounds of beatings of the victims from 1st floor of the police station. Since his mother could not come with money he was taken on the 1st floor where he found Jony and PW1 Rocky were lying on the ground and accused Rashed, Kamruzzaman, SI Jahid and some other persons were torturing them. PW2 Titu and PW4 Foysal were crying. He was tortured due to non payment of money by his guardian. Jony, PW1 Rocky, PW2 Titu and PW4 Foysal were taken to hospital for treatment. Accused Jahid told him that he would not be released unless Taka 10,000/- was paid. Accused SI Zahid demanded his mobile phone which he did not comply. He was taken to the lockup where he saw Jony, Titu and Foysal. Suddenly Jony felt chest pain and started screemning. They raised alarms and police took Jony to hospital where Jony died due to above torture. In cross examination by accused Zahid he stated that after demise of Jony Sub-Inspector Shovon Kumar Saha and mother of Jony filed two separate cases. He denied that above occurrence was on outcome of a free fight between two groups of people belonging to Rahmat camp and Irani camp and Jahid lawfully arrested them and produced them in Court. He denied that they were creating

public nuisance by arranging music program. In cross examination by accused Rashedul Hasan he stated that he did not obtain any injury certificate in support of his claim of torture. He gave evidence to police headquarter and to the Judicial Magistrate but he did not mention the name of accused Kamruzzaman or Rashedul Hasan. He denied that victim Jony died of heart attack and accused Kamruzzaman and Rashedul Hasan were falsely implicated in this case.

PW4 Md. Foysal stated that police started beating his father in front of their home. He asked police as to why his father was being beaten and police arrested him by breaking open the gate and took him to the Pallabi police station. Police subjected Jony and PW1 Rocky to continuous and merciless beatings. Police also subjected him to torture causing fracture in his hand and leg. He found PW1 Rocky, Titu and Rajon on the first floor of the police station. Rocky and Jony were tied with a pillar and subjected to merciless beatings. Accused Jahid gave beatings on the leg and chest of PW2 Titu and took them to Modern Hospital. The doctor wanted to admit Jony to Hospital but Police took them back to the

police station and kept in the lockup. After Fajar prayer Jony felt chest pain and started screaming and police took him to hospital. After getting bail he was admitted to Islami Bank hospital for treatment of his broken hand and leg and came to know that Jony had died. In cross examination by accused Jahid he denied that the occurrence took place due to rivalry and free fight between two groups of people of Rahmat camp and Irani camp and police came to the occurrence place to restore order and lawfully arrested them. He denied that Jony died of heart decease and he was giving false evidence. In cross examination by Rashedul he stated that he did not mention the name of accused Rashedul and Mintu to the Magistrate and he has mentioned their name in Court after hearing from the complainant. He denied that accused Rashedul and Mintu were not involved in above occurrence.

PW5 Md. Javed stated that at about 1.00-1.30 A.M. hearing noise and alarms he came to the গায়ে হলুদ venue and found police arrested PW1 Rocky and Jony and police fired gun shots and held lathi charge. While he was leaving the venue police arrested him and he found PW4 Foysal and PW6 Imran in the same police

transport. At about 2.00-2.30 A.M. Police brought PW1 Rocky, Jony and Foysal in the lockup whose condition were very bad and there were visible marks of injuries on their persons. They were subjected to physical assaults on the first floor of the police station. In the morning Jony felt chest pain and police took him to hospital and after getting bail from Court he came to know that victim Jony had died. The cross examination of above witness was declined by all accused persons.

PW6 Md. Imran Hossain stated that in the music program of PW8 Billal accused Sumon teased, touched and obstructed performing girls. Jony gave Sumon a slap who angrily left the venue threatening revenge. After an hour police came and fired gun shots and people started running. Police arrested Jony and PW1 Rocky and took them to Pallabi Police Station. Police also arrested him alongwith Foysal and Javed and took to the police station. He heard sounds of beatings from the first floor of police station. They were put into the lockup and Jony felt chest pain and police took him to hospital. They were granted bail and came to know that Jony had died. Cross examination of above witness

was declined by accused Rasel, Jahid, Kamruzzaman and Rashedul. In cross examination by accused Sumon he stated that he did not know the name of the girl who was teased by accused Sumon.

PW7 Md. Jahid is the uncle of victim Jony and Rocky who stated that PW9 Khursihda informed him over telephone that Jony and Rocky were arrested by police. After Fazar prayer he went to Pallabi police station and found them in the lockup and they asked him to save their life. He came to know that accused Zahid arrested them and he told SI Jahid that physical condition of Jony and Rocky were very bad and requested him to release them but accused Jahid declined. Subsequently he came to know that Jony has died. In cross examination he stated that he learnt from TV news that accused Jahid was arrested. He denied that he did not see accused Jahid in the first floor of Pallabi police station.

PW8 Billal stated that accused Zahid demanded Taka 5,00,000/- to him over mobile phone but he declined to pay above money. On 06.02.2014 accused Jahid sent co-accused Rasel to him for collecting of above money but he did no pay any money. He

organised a musical program on account of his গায়ে হলুদ celebration on 09.02.2014 which continued up to 12.20 A.M. At 2.00 A.M. he heard gun shots and sounds at the gate of his house. Police arrested Rocky, Jony, Rajon and Faysal and some other persons. He came to know from TV news that Jony has died in police custody. In cross examination he denied that Jahid Daroga did not demand money to him nor accused Rasel came to collect above money.

PW9 Khursheda Begum mother of PW1 rocky and Jony stated that the occurrence took place at 2.30 A.M. on 09.02.2014 in the গায়ে হলুদ program of PW8 Billal. Accused Sumon went on the podium and obstructed performing girls. Jony gave him a slap and he angrily left the venue threatening revenge. After 22-25 minutes police rushed to above venue and started indiscriminate beatings of the people. PW1 Rocky was arrested at the showing of accused Rasel. Police fired gun shots and arrested Jony. Accused Jahid arrested Foysal from his home and took all of them to the police station. His brother Jamil and Shamim went to police station and informed her that the conditions of Rocky and Jony

were very bad. They requested accused Jahid to release them for medical treatment but he refused. She and wife of Jony went to the police station at 6.00 A.M. and learnt that Jony has been removed to Heart Foundation Hospital. They went to the Heart Foundation Hospital and found Jony was lying in a police transport. She came to know from TV news at 10.00 A.M. that Jony had died in police custody. She admitted PW1 Rocky to Islamic Hospital for medical treatment and went to file a case over above occurrence to Pallabi police station but they refused to register her case. She moved to the Chief Metropolitan Magistrate Court Dhaka and lodged a complaint being No.34 of 2014 dated 04.02.2014. Police also filed a case for above occurrence. PW1 Rocky filed this case under the নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩. In cross examination by accused Rasel she denied that Rasel was admitted to Mirpur Heart Foundation Hospital for the period from 07.02.2014 to 16.02.2026. In cross examination by accused Jahid she stated that PW1 Rocky filed this case after about 4-5 months of her case. She stated that Executive Magistrate Mahbubur Rahman performed inquest of the dead body of Jony. She saw the post mortem report of deceased Jony. She denied that

the inhabitants of Rahmat camp asked for stopping music but they did not comply with that request and there was a free fight between the people of above two groups. In cross examination by accused Sumon she denied that accused Sumon was not present in the occurrence venue nor he was involved in above occurrence.

PW10 Md. Imran Khan stated that he was present in the music program for গায়ে হলুদ celebration of PW8 Bellal. Girls were dancing and singing on the stage but co-accused Sumon was teasing, touching and obstructing above girls. Jony gave Sumon a slap who threatened revenge and angrily left the venue. A police team came and Sub-Inspector Jahid arrested Rocky on the identification of Sumon and also arrested Jony. People of the locality protested and police started lathi charge and accused Jahid fired gun shots and took accused Jony, Rocky and others to Pallabi Police station. In the morning he came to know from TV news that Jony died in the police custody. In cross examination by accused Rasel he denied that Rasel was falsely implicated in this case and he was not present in the occurrence place. In cross examination by accused Rashedul Hasan he stated that he was a

Journalist. There were 39 camps in above locality and he did not give evidence to the Magistrate or to the police headquarters about above occurrence nor he visited Pallabi police station or hospital. He denied that he was not present in the occurrence place and Jony sustained injury in course of quarrel between two groups of people.

PW11 Md. Jamil the maternal uncle of Jony stated that he went to see Jony and Rocky in the police custody and found them lying in the police lockup and they asked him to save their lives. He requested police to send them to hospital. He saw dead body of Jony and noticed black marks on hand, body and leg. The witness proved the inquest report and his signature on the same which were marked as Exhibit Nos.2 and 2/1 respectively. In cross examination he stated that at the time of holding inquest a Magistrate was present. He denied that due to quarrel in the গায়ে হানুদ program of Billal victim Jony sustained injury or Jony died of heart attack.

PW12 Ekhlash stated that at 2.15 A.M. on his way to home he saw police were beating local people. Police also subjected his son

PW4 Foysal to beatings and when his daughter and wife came to save his son they were also subjected to beatings. Police arrested his son PW4 Foysal and took him to Pallabi Police Station. At 6.00 – 7.00 A.M. he went to above police station but he was not allowed entry. They came to know that Foysal, Jony , Rocky and Rajon were taken to hospital. Subsequently he came to know from TV news that Jony had died. Cross examination of above witness was declined by Kamruzzamn Mintu, Rashedul Hasan, Sumon and Rasel. In cross examination by accused Zahid he denied that the police did not come to his home in the morning and subjected the members of his family to beatings or the occurrence took place due to a free fight between people of two different camps.

PW13 Shahidul Islam Shipon is the Manager of the musical team who performed in above program. He stated that they started the musical program for গায়ে হলুদ celebration of PW8 Billal at 11.00 P.M. After 12.00 hours while Dalia was performing on the stage a boy was teasing, touching and disturbing her. Jony gave a slap to above boy, Sumon, who left the venue. He stopped the program for few minutes and about 25-30 police stormed to

the podium, started ransacking chairs and he alongwith other artists took refuge in the green room. He heard screames and gun shots. After a while he came out and saw police arrested of Jony and Rocky. On the next morning he came to know from TV news that Jony had died. The cross examination of above witness was declined by the defence.

PW14 Md. Foysal is a betal leaf vendor who stated that at 1.30 A.M. he heard about quarrel in the গায়ে হলুদ program of PW8 Billal. While he was passing by above venue police arrested him and snatched Taka 4,000/- and Tajbih and dragged him into a police transport alongwith Rocky and Javed. He was thrown in the police lockup but Jony and Rocky were not there. They were taken on upstairs and he heard alarms and screams from the first floor. Police took Jony and Rocky to the hospital. He subsequently came to know that Jony had died. Cross examination of above witness were declined by the defence.

PW15 Md. Mithu Hossain, a Driver of accused Zahid stated that at about 1.30-2.00 A.M. on 09.02.2014 Jahid Daroga boarded his microbus and set out for Irani camp and several police

transports followed him. Above police men arrested four persons including Jony and Rocky. About 3.00-3.30 A.M. police put Jony and Rocky in his microbus and took them to Hospital. Their conditions appeared to be very serious and he helped police to take above four persons to another hospital and they were taken back to police custody. At 7.00 A.M. he again came to hospital with a police officer and saw Jony was sitting on a wheel chair and a police van was waiting. At 11.00 A.M. he came to know that Jony had died. He lastly stated that Jahid Daroga was present in the Court. He did not know Mintu or Rashed. The cross-examination of above witness was declined by the defence.

PW16 Aminul Islam @ Noyon Murad is a Senior Reporter of Mohona Television who stated that on an information that informer Sumon and Jahid Daroga were confined by local people he rushed to Irani camp and found accused Sumon sitting in a room and he recorded his statement. He stated that he was dancing in the গায়ে হালুদ program of Billal and Jony gave him a slap. To take revenge on Jony he telephoned Zahid Daroga who rushed to the occurrence place alongwith Nasim and Rasel and

gave beatings to Jony and took him to police station. Jony was again subjected to beatings in the police station. In the morning Jony was taken to the hospital and he heard that Jony had died. In cross examination by accused Zahid he denied that he was giving false evidence and accused Sumon did not mention to him the name of Jahid. In cross examination by accused Rasel he denied that accused Sumon gave to him a false statement.

PW17 Rubina Yeasmin, a Staff Reporter of GTV stated that she went to the venue of above musical program on 09.02.2014 at noon and learnt that police arrested Jony from above venue and tortured him to death. In cross examination she stated that their investigation found that only SI Zahid was involved in above occurrence. In cross examination by SI Zahid she denied that she prepared a false report by video editing in order to get more viewers and she did not see the occurrence.

PW18 Md. Monirul Islam is an Inspector of Police who stated that on the basis of identification by Mohammad he held inquest of the dead body of Jony in presence of PW23 Executive Magistrate Kazi Mahbubur Rahman and found following injuries:

“বাম হাতের বাহুর উপরের অংশে, কাধে ও কনুই এর নীচে আঘাতের কালো দাগ আছে এবং উক্ত হাতের বাহুর উপরের দিকে কালো জখমের দাগ আছে। ডান পায়ের হাটুর নীচে উপরে এবং হাটুর ডান পাশে কালো জখমের দাগ আছে এবং উক্ত পায়ের উরুতে আঘাতের দাগ আছে। বাম পায়ের উরুর দুই পাশে এবং হাটুর উপরে জখমের চিহ্ন আছে। হাটুর নীচে ও উরুতে আঘাতের চিহ্ন আছে। পুরা নিতম্বে আঘাতের চিহ্ন রহিয়াছে।”

The witness proved above inquest report and his signature on the same which were marked as Exhibit No.2 and 2/1 respectively. He forwarded the dead body of Jony for post-mortem examination by PW19 Constable Md. Mannaf Ali by a chalan. The witness proved above chalan and his signature on the same which were marked as Exhibit Nos.3 and 3/1 respectively. In cross examination he stated that he did not find any mark of injury on the upper side of the hand and leg.

PW19 Md. Mannaf Ali is the Police Constable who stated that pursuant to PCC No.299 of 2014 of Pallabi P.S. and General Diary No.613 dated 01.02.2014 he carried the dead body of Jony to Dhaka Medical College Hospital for post mortem examination. In

cross examination he stated that there is no mention of blood stained T-shirt and Jence pant in above chalan.

PW20 Md. Sentu Rahman Heera is the word boy of Mirpur Modern Hospital who stated that he was on duty during 9.00 A.M. of 08.02.2014 to 4.30 A.M. of 09.02.2014 when Police of Pallabi P.S. brought four accused persons in the hospital and Emergency Duty Officer examined them and gave them treatment. At 6.30 A.M. police again brought one person out of above four to the hospital and the duty Doctor finding bad condition advised to take him to Mirupur Heart Foundation hospital. One of the police persons who brought above accused to the hospital disclosed his name as Rashedul Hasan. In cross examination by Rashedul Hasan he stated that above Jony was suffering from chest pain and he was sent to Mirpur Heart Foundation Hospital.

PW21 Dr. A. K. M. Shafiuzzamn, Assistant professor of Forensic Medicine, Department of Dhaka Medical College Hospital stated that on identification by constable Md. Manna Ali,

he performed post mortem examination of the dead body of Jony (age-25) on 10.02.2014 at 2.30 P.M. and found following injuries:

“(1) Abrasions found (a) above the right elbow Joint measuring $\frac{3}{4}$ ” X $\frac{1}{2}$ ”. (b) below the right elbow joint measuring 1” X $\frac{1}{2}$ ” on the posterior aspect of the elbow joint. (c) over the right knee joint measuring 1” X $\frac{1}{2}$ ”. (d) left knee joint 1” X $\frac{1}{2}$ ”.

Bruises found on the

(a) left upper arms measuring $\frac{1}{2}$ ” X $\frac{1}{2}$ ”

(b) over the left shoulder measuring $\frac{3}{4}$ ” X $\frac{1}{2}$ ”

dag found in the back of the both thigh at bulitial region. Mentioning the inquest report which was post mortem staning.

On dissection (internal Injury)

Extra Vessation of blood (bruise) found on the

(a) Left upper arms near the left shoulder

measuring $1'' \times \frac{1}{2}''$

(b) Right knee joint $1'' \times \frac{1}{2}''$ and left knee joint

measuring $1'' \times \frac{1}{2}''$

(c) Right thigh $1'' \times \frac{1}{2}''$

(d) on the left thigh $1'' \times \frac{1}{2}''$

Microscopically heart enlarge, deproximal left part coronary artery is atherosdord and the caliber was narrowed. Mentioned injuries were antimortem. Heart sent for Histopathology and viscera sent for chemical analysis."

In his opinion death was due to cardiac failure as a result of coronary insufficiency which was antemortem in nature. The witness proved above post mortem report and his signatures on the same which were marked as Exhibit Nos.4, 4/1 respectively.

He gave signature on the death certificate issued from the emergency section of Dhaka Medical College Hospital. The witness proved above death certificate and his signatures on the same which were marked as Exhibit No.6 and 6/1 respectively. In cross examination by Sub-inspector Jahid he stated that he found the heart was enlarged and full and shows sign of micordial infraction. The death of Jony was not caused due to internal and external injuries.

PW22 Md. Maruf Hossain is the Judicial Magistrate who stated that on conclusion of inquiry of the complaint of PW1 Rocky he found truth in the allegations brought against Sub-inspector Zahidur Rahman, Sumon, Rasel and Assistant Sub-Inspectors Rashedul Hasan and Md. Kamruzzaman and sent them to stand trial. The witness proved above report and his signatures on the same which were marked as Exhibit No.7 and 7/1 respectively. In cross examination by accused Jahid he stated that he did not examine the Executive Magistrate who supervised the inquest of the dead body of Jony. The post mortem examination was done by a Doctor who gave final opinion after

receipt of viscera report. He has no knowledge if the Doctor mentioned that the death was due to heart failure. In the inquest report there are mentions of injuries. He did not find any video footage of taking Jony to the Modern Hospital. He did not visit the place of occurrence nor he prepared any sketch map of the same. Jony died on 09.02.2014 and for above occurrence Mirpur P. S. Case No.16 dated 09.02.2014 under Section 144/323/304/34 was filed and he examined ejahar of above case. He did not examine informant Shovon Kumar Saha or the recording officer of above case. In above case mention was made as to arrest of accused persons under Section 154 of the Code of Criminal Procedure. In above case Jony and Rocky were arrested. It was stated in above ejahar that there was a conflict between the inhabitants of Irani camp and Rahmot camp centering গায়ে হানুদ program of PW8 Billal. During his inquiry accused Jahid was in the custody and he could not record his statement. He did not arrange any Test Identification parade for identification of suspects. He did not examine any Doctor of the Modern Hospital where Jony was taken for treatment. He could not obtain any prescription since no doctor gave him treatment. Ward boy of

above hospital Md. Sentu Rahman Heera gave evidence to him. He stated that deceased Jony complained of chest pain. In the musical program there were Shipon and other five artists. There was a sound system in above musical program. He came to know that there was CC camera in the Pallabi police station but above CC camera was not operational. He denied that Jony was suffering from heart ailment and he died of heart decease and he prepared a false report being influenced by media report.

PW 23 Kazi Mahbubur Rahman is the Executive Magistrate who supervised inquest of the dead body of Jony. He stated that in his presence and on his direction PW18 Sub-inspector Monirul Islam prepared inquest report of the dead body of Jony and he gave signatures on above report. The witness proved his signatures on the inquest report which was marked as Exhibit No.2/4. In cross examination by accused Zahid he stated that he did not know if witnesses of inquest report were relatives of Jony.

PW 24 Md. Mominul Islam Sohel is the Investigating Officer of Pallabi P.S. Case No.16 dated 09.02.2014 under Sections 144/323/302/34 of the Penal Code. He stated that he was the

Investigating Officer of above police case and the Complaint Case No.34 of 2014 under Sections 302/34 of the Penal Code filed by the mother of Jony. In the mean time PW1 Rocky filed a complaint to the Metropolitan Sessions Judge, Dhaka under Section 15 of the নির্ধাতন এবং হেফাজত মৃত্যু (নিবারণ) আইন, ২০১৩ and judicial inquiry of above complaint was concluded and report was submitted against Sub-Inspector Jahid, Assistant Sub-Inspector Rashed and Kamruzzaman and police informer Sumon and Rasel. On the basis of above inquiry report the learned Metropolitan Session Judge has framed charge on 17.04.2016 against above accused persons. Since for one occurrence there cannot be more than one case on the direction of the superior officer he has submitted FRT in above case. In cross examination by accused Jahid he denied that he submitted FRT in above case without realizing the facts and law of above case.

Above is all about the evidence oral and documentary adduced by the prosecution to bring home the charges leveled against five accused persons under Section 15 of the নির্ধাতন এবং হেফাজত মৃত্যু (নিবারণ) আইন, ২০১৩.

At the very outset we shall proceed to examine the legal objections raised by the learned Senior Counsels for the appellants against taking of cognizance by the learned Session Judge, the judicial inquiry of the Complaint instead of Police investigation and the method employed by the inquiry Magistrate for identification of suspect Police Officers.

The নির্ধাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ (Act No.50 of 2013) is a special law which has been promulgated to fulfill the treaty obligation of Bangladesh to the United Nation Convention against Torture and Other Cruel, Inhuman and degrading Treatment and Punishment, 1984 (UNACT). This is a case under Section 15 of the Act No.50 of 2013 and not under the Penal Code, 1860. Section 9 of Act No.50 of 2013 has made the provisions of the Code of Criminal Procedure, 1898 subject to the provisions of Act No.50 of 2013.

The “custodial death” has been progressively and inclusively defined in Section 7(2) stating that death of any person in the custody of a Government Officer constitutes custodial death. Moreover death of any person at the time of effecting his

arrest or detention or interrogation also constitutes custodial death. But surprisingly “Custodial death” has not been made an offence nor any sentence has been provided for causing custodial death. To realize the true spirit and commitment of above UN Convention it is necessary to make custodial death an offence and provide appropriate sentence for the same in above Act.

Section 19 of the Act provides a special Rule of evidence which is reproduced below:

“১৯. ব্যক্তিগত দায়বদ্ধতা ও অপ্রত্যক্ষ প্রমাণঃ কোন সরকারী কর্মকর্তা অথবা তাহার পক্ষে কর্তব্যরত কোন ব্যক্তির গাফিলতি বা অসতর্কতার কারণে অভিযোগকারী ক্ষতিগ্রস্ত হইলে অভিযুক্ত ব্যক্তিকেই প্রমাণ করিতে হইবে যে, তাহার বা তাহার পক্ষে কর্তব্যরত ব্যক্তির গাফিলতি বা অসতর্কতার কারণে ঐ ক্ষতি হয় নাই।”

Above special Rule of evidence flips the onus of prove upon the accused Government Officer that the loss or injury of the complainant did not cause due to his negligence or callousness or any other person acting under him. There is no presumption of innocence for the accused as available to an accused in trial under

the and Code of Criminal Procedure, 1889 and the Evidence Act, 1872.

This case has a peculiar background Police lodged a case being No.16 on the next date for the above occurrence and in above case the presence and involvement of appellant Zahid was mentioned. The intention behind of filing of above case was not to ensure justice for the atrocities committed by rough Police Officers but to bury the grievances of the victims. It was stated in above FIR that the murder of Jony was caused due to free fight between two groups of people belonging to Rahmat camp and Irani camp which was totally unfounded.

PW1 Rocky has in his evidence explained the reason and cause of delay of 6(six) months in lodging the complaint. He has stated that after release from Hospital he was physically sick and mentally traumatized and he had to consult relatives and friends as to lodging a proper case against the rough members of the police. In view of above facts and circumstances of the case we are unable to accept the submissions of the learned Senior Counsel for Rashedul Hasan that above delay in lodging the complaint

was not explained and above complaint was an outcome of embellishment and afterthought.

A person who is not a member of any law enforcement agency may also be prosecuted and tried under above Act if being empowered by any Government Officer he participates in or abates, instigates or conspires the Commission of torture.

In view of Sections 13, 15 and 19 of Act No.50 of 2013 we are unable to find any substance in the submission of the learned Advocate for appellant Rasel that since he was a civilian and not a member of any law enforcing agency he was not liable to be prosecuted and tried under Act No.50 of 2013.

Section 4 of Act No.50 of 2013 authorizes any person to lodge a complaint to the competent Court as to commission of torture and Section 14 declares the Court of Session as the competent Court who shall on receipt of a complaint record the statement of the complainant and if satisfied pass an order under Section 5(2) for investigation of the Complaint. If the Complainant is skeptical about proper investigation of the complaint by police and the learned Session Judge if satisfied them he shall pass an

order for judicial inquiry. PW1 Rocky mentioned in the Complaint that he would not get justice if his complaint was investigated by police. In his statement to the learned Session Judge he wanted that the complaint be investigated by any organization other than police. On consideration of above facts and provisionary of Sections 4 and 5 of above Act the learned Sessions Judge rightly took cognizance and passed an order for judicial inquiry of above Complaint which calls for no interference.

In the Complaint mention was made that besides accused Nos.1-6 other 4-5 unknown Police Officers also tortured Jony and Rocky. But the complainant did not know the names of above Police Officers. It is difficult for an ordinary person to identify a uniformed member of law enforcement agency by name and rank. A witness may claim that he has seen the perpetrators of the crime but he did not know their names or identity and he would recognize them if he could see them again. In such a situation an Investigation Officer will be required to provide the witnesses an opportunity to identify the suspects. While investigating an offence police employs Section 282 of the Police Regulation of

Bengal, 1943 and arranges a Test Identification Parade in presence of a Magistrate to identify suspects. PW22 Magistrate Md. Maruf Hossain employed an innovative method for identification of suspect Police Officers. He produced photographs of all 86 Police Officers who were on duty in Pallabi Police Station on the date and time of above occurrence to the eye witnesses for identification of suspect Police Officers. PW1 Rocky seeing above photographs could identify two accused person namely Assistant Sub-Inspectors Rashedul Hasan and Kamruzzaman Mintu.

It is not disputed that above 86 Police Officers whose photographs were shown to above witnesses were on duty in Pallabi Police Station on the date and time of above occurrence. PW22 Maruf Hossain was cross examined by the defence but he was not cross examined on above method of suspect identification. Nor any suggestion was put to above witness that above method of suspect identification was motivated or the appellant Rashedul Hasan was unjustly affected. In above view of the facts and circumstances of the case and materials on record we are unable to find any substance in the submission of the learned

Advocate for appellant Rashedul Hasan that above process of suspect identification was unlawful and unreliable and on the basis of above flawed identification implicating Rashedul in this case was unlawful.

The evidence of a victim witness carries special evidential value since he himself suffered due to the commission of the offence. Giving of false evidence in a criminal case has two dimensions, on the one hand if acquits the real criminals and on the other hand innocent persons suffer unnecessarily. PW1 Rocky to PW5 have suffered torture and PW2 Rocky has lost his brother Jony. PW1 to PW5 had no reason to give false evidence to give benefit to give the real offenders. PW1 Rocky stated in cross examination that he or his family did not have any dispute, rivalry or enmity with any accused person. There is nothing on record to show that any prosecution witness had enmity with any accused person.

Now we turn to analyze the evidence adduced by the prosecution in the context of above facts and circumstances and determine how far the prosecution has succeeded to prove the

charge brought against the accused persons that they subjected Jony and PW1 Rocky to torture and death of Jony was caused due to above torture.

PW14 Foysal is a poor betal leaf seller. PW8 Md. Billal is the groom for whose pre-wedding ceremony above musical program was organized. PW13 Shipon is the Manager of the Artist Team who was performing music and dance in above program. Above three witnesses PW8 Billal, PW13 Shipon and PW14 Foysal are neutral and independent witnesses who have given consistent and mutually corroborative evidence as to the place, time and manner of first part of above occurrence. PW13 Shipon stated that after 2.00 P.M. while Dalia was performing dance accused Sumon went on the Podium and teased, touched and obstructed her. To prevent Sumon from above absence behavior Jony gave him a slap and Sumon left the venue angrily threatening revenge. After about 22-30 minutes about 25-30 police persons emerged and started ransacking podium, lathi charge and fired gun shots. Police arrested Jony and Rocky. PW14 Foysal stated that the occurrence originated due to intervention of rough Police Officers who

unlawfully arrested him and looted his small money. He further stated that police kept him in the holding cell but Jony and Rocky were taken on the first floor of the police station and he heard alarms and screams above floor and Jony and Rocky were taken to Hospital. PW5 Javed stated that Police stormed in the গায়ে হলুদ programe, ransacked the podium, fired gun shots and arrested him and put him into the police station lockup. Rocky and Jony were brought in the same lockup after about $2\frac{1}{2}$ hours and their physical condition was very bad. There were visible marks of injuries on their persons and they were unable to stand on their feet. They were subjected to torture. Jony felt chest pain and was removed to hospital and he came to know that Jony had died. Above three witnesses namely PW5 Javed, PW13 Shipon and PW14 Foysal were also not cross examined by any accused person. Above uncontroverted evidence of PW5 Javed, PW13 and PW14 Foysal clearly prove that the occurrence originated from obscene and rude behavior of accused Sumon with women artists and Jony prevented him by giving a slap. Instead of disciplining accused Sumon Police protected him and illegally arrested Jony

PW1 Rocky, PW2 Titu, PW3 Rajon, PW4 Foysal and others and fired gun shots and held indiscriminate lathi charge. PW1 Rocky and Jony were taken to the first floor of the police station instead of lockup and subjected them to torture which caused death of Jony. PW5 Javed, PW8 Belal, PW13 Sipon and PW14 Foysal gave consistent evidence as to the place, time and manner of arrest, detention and torture of Rocky and Jony by rough Police Officers. The defence did not cross examine above witnesses for the sole cause that they did not mention the name of accused persons as the perpetrators of above crime.

Above deficiency in the uncontroverted evidence of PW5 Javed, PW8 Belal, PW13 Sipon and PW14 Foysal have been made up by the consistent and mutually corroborated evidence of four victim and eye witnesses of above occurrence, namely PW1 Rocky, PW2 Titu, PW3 Rajon and PW4 Foysal. They have stated that accused SI Jahid arrested and took them to the Pallabi Police Station but instead of putting in the lockup Jony and PW1 Rocky were taken to the first floor of above police station. PW1 Rocky has given a pen picture as to how he and his brother Jony were

subjected to endless and brutal torture by accused Zahidur Rahman and his colleague Police Officers. Accused Zahid gave them indiscriminate beatings and then tied their hands with a pillar by handcuff and gave merciless beatings causing their fall on the ground. Then they were flipped over and appellant Jahid started beating on their back. Jony was denied drinking water and medical treatment. PW2 Titu and PW3 Rajon have in their evidence materially and substantially corroborated the evidence of PW1 Rocky, PW5 Javed, PW8 Bellal, PW13 Shipon and PW14 Foysal.

PW2 Titu and PW3 Rajon were also subjected to torture but the learned Session Judge did not frame a separate charge against the accused persons for torturing PW2 Titu, PW3 Rajon and PW14 Foysal. The charge was framed against the accused persons for commission of torture on Jony and PW1 rocky and causing death of Jony.

PW20 Sentu Rahman Heera a ward boy of Mirpur Modern Hospital stated that at 4.30 A.M. police brought four persons to hospital for treatment and who received treatment from the

Emergency Medical Officer. At 6.30 A.M. police again brought one person out of above four for medical treatment. All above patients were young men of 22-25 age group. The condition of the latter person was critical and he was referred to Heart Foundation Hospital. Above evidence proves that firstly Jony, PW1, PW2 and PW4 were taken to above Hospital for treatment and second time Jony alone was taken for treatment. Above PW Nos.1, 2, 4 and Jony were arrested from above musical program during 2.30 A.M. to 3.00 A.M. and within a couple of hours police had to take above young men to hospital for treatment. Again at 6.30 A.M. Police had to take Jony above to Hospital for treatment whose condition was critical and he was sent to Heart Foundation Hospital. He lastly stated that accused Rashedul Hasan was among the Police Officers who brought above PWs and Jony to Hospital. The defence did not dispute the facts that Jony, PW1 Rocky, PW2 Titu and PW4 Foysal were taken to hospital for treatment within a couple of hours of their arrest nor it has been denied that deceased Jony was again taken to above hospital at 6.00 A.M. – 6.30 A.M. PW20 Sentu was not cross examined as to above evidence that accused Rashedul Hasan was among the Police

Officers who brought above PWs to hospital nor any suggestion was given to him that his above evidence was false.

PW18 Monirul Islam prepared inquest report of the dead body of deceased Jony in presence of PW 23 Kazi Mahbubur and they have given mutually consistent and corroborative evidence in support of existence of visible marks of injuries on the person of Jony and above evidence is supported by the inquest report (Exhibit Nos.2). All above evidence prove beyond reasonable doubt that PW1 Rocky and Jony were unlawfully arrested from above musical program by accused Sub-Inspector Zahidur Rahman and he unlawfully detained them on the first floor of the Police station and subjected them to torture.

Mr. S.M. Shahjahan, learned Senior Counsel for accused Zahidur Rahman submits that PW21 Dr. Shafiuzzaman after reviewing the visera report and other materials held that the death of Jony was caused by cardiac failure and the injuries which were visible on the person of Jony did not cause his death. In cross examination by the defence he further stated that the heart of victim was found enlarged and there were visible sign of

cardiac infraction. Above evidence clearly show that the death of Jony was not caused due to torture and he died a natural death due to heart ailment. PW21 was not declared a hostile witness by the prosecution and cross examined. As such there is no scope to discard above uncontroverted evidence of above witness and designate the death of Jony as murder.

The post mortem examination of the dead body provides scientific findings as to the cause of death on the basis of nature, extent, measurement and location of the injuries, if any, and above scientific findings carry important evidential value at trial. But the opinion of the doctor as to cause of death which contradicts the overwhelming circumstantial and oral evidence of eye witnesses cannot be regarded as scientific evidence. PW21 Dr. Shafiuzzaman has exceeded the limit of his responsibility by stating that the injuries mentioned in the post mortem report were not sufficient to cause death of Jony. PW21 Dr. Shafizuzzaman was required to mention the cause of death not to mention what did not cause death of Jony. Above unwarranted opinion of PW21

Doctor Shafiuzzaman makes above post-mortem report controversial.

As mentioned above the prosecution has succeeded to prove by legal evidence that after unlawful arrest at about 2.30-3.00 A.M. Jony was taken to the first floor of the police station and subjected to tortured which required his treatment. After return from hospital Jony and PW1 Rocky were again subjected to sever torture. Above sudden arrest, unlawful detention, continuous torture, deprivation of drinking water and proper medical treatment caused serious physical injuries, fears and mental stress and trauma to Jony. If assaults are severe enough to cause significant physical and emotional distress that may cause fatal heart attack. Above physical and phyological pain, stress and trauma suffered by Jony caused his cardiac arrest resulting into his death and above death of Jony may be designated as murder by heart attack.

In above view of the facts and circumstances of the case and evidence on record we are unable to find any illegality in the impugned judgment and order of conviction and sentence dated

09.09.2020 passed by the learned Metropolitan Session Judge against appellant Sub-Inspector Zahidur Rahman convicting him under Section 15(2) of Act No.50 of 2030 and sentencing him thereunder to suffer rigorous imprisonment for life and also pay fine and compensation for causing death of Jony by torture.

It is true that the name of appellant Rashedul Hasan was not mentioned in the Complaint nor PW1 Rocky mentioned his name to the Judicial Magistrate. But PW1 Rocky has in his evidence before the trial Court mentioned the name of appellant Rashedul Hasan and alleged that above appellant also tortured him and Jony. The evidence of a competent witness before the trial Court if survives the test of cross examination becomes substantive evidence and a Court can record an order of conviction and sentence on the basis of such evidence. PW1 Rocky stated that he did not mention the name of accused Rashidul Hasan in the Complaint or to Police Headquarters or to the Judicial Magistrate for the reason that he could not identify him. It turns out from the statement of PW1 Rocky to the inquiring Magistrate that he mentioned that one unknown Police Officer

pressed his hands and the hands of Jony with leg when accused Jahid was beating them. Above statement of PW1 Rocky shows that above allegation of pressing their hands by one Police Officer was not concocted or after thought. Had PW1 Rocky been driven by any bad intention he could mention the name of a Police Officer but he did not do that. PW1 Rocky mentioned the name of accused Rashidul Hasan only after identifying him out of photographs of 86 Police Officers. On consideration of above facts and circumstances of the case and materials on record we are unable to accept the submission of the learned Advocate for appellant Rashidul Hasan that his implication in this case was without lawful basis or an outcome of subsequent embellishment.

Learned Advocate for appellant Rashedul submits that there was no mark of injury on the hands of Rocky or Jony nor above claim was supported by the inquest report or the post mortem report. There is no claim that above torture caused death of Jony. As such conviction of accused Rashed under Section 15(2) of Act No.50 of 2013 was flawed and not tenable in law.

As mentioned above Section 1(6) provides that causing physical or mental pain constitutes torture. Presence of marks of injury is not required. It is true that above pressing of hands by leg did not cause death of Jony nor caused grievous injury to PW1 Rocky. But appellant Rahidul Hasan has committed above torture and he is personally responsible for above offence. On consideration of above materials on record we hold that accused Rashidul Hasan committed an offence punishable under Section 15(1) of the নির্ধাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ and not under Section 15(2) of Act as was held by the learned Metropolitan Sessions Judge.

The facts and circumstances of the cases referred to above by learned Advocate for Rashedul is distinguishable from the facts and laws of this case and above case laws have no manner of application in this case.

We hold that the ends of justice will be met if the conviction of accused Rashidul Hasan is converted to Section 15(1) of the নির্ধাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ and he is sentenced to suffer rigorous imprisonment for 10 years and also

pay fine of Taka 50,000/- or in default to suffer rigorous imprisonment for 3 months more and pay compensation of Taka 25000/- which will be paid to the heirs of deceased Jony.

As mentioned above appellant Rasel is not a member of any disciplined force. It has been alleged that accused Sumon was an informer of Zahid. There is no allegation that Rasel was an agent of Sub-inspector Jahid or any other police officer. Police Officers maintain civilian informers in lieu of payment of nominal money for collection of information as to the offenders. Accused Rasel cannot be designated as a Government Officer or an authorized or empowered agent of a Government Officer. The sole allegation brought against appellant Rasel is that he introduced Jony to appellant Zahid and disclosed that Jony gave a slap on the face of co-accused Sumon. PW1 Rocky has stated that Jony was well acquainted with appellant Jahid and he drove the car of Zahid for some days. It is true that Jony gave a slap on co-accused Sumon. The Appellant gave true information to a Police Officer which does not constitute an offence. In above view of the facts and circumstances of the case and evidence on record we are unable to

find any legal basis of the impugned judgment and order of conviction and sentence passed by the learned Metropolitan Sessions Judge against accused Rasel under Section 15(3) of the নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ and we find substance in Criminal Appeal No.922 of 2022 and above judgment and order of the trial Court is liable to be set aside and accused Rasel is entitled to be acquitted of the charge brought against him under above provision of Act No.50 of 2013.

Before parting we want to express our concern and sadness due to the facts that above Police Officers unlawfully arrested, detained and tortured to death Jony a young man of 25 years, in the views of many men, women and Police Officers. But above rough Police Officers remained outside of departmental accountability.

In any political and administrative system police is an indispensable organization to maintain order and protect life and property. No civilized society can be imagined without a disciplined police force. Such an important and powerful

institution needs stringent supervision and control both internal and external.

Learned Advocate for appellant Rashedul Hasan shared with us a copy of the enquiry report of the Dhaka Metropolitan Police as to above occurrence. It turns out from above report that the internal supervision, monitoring and command and control of police totally collapsed in above occurrence. A team of 22-30 armed Police Officers commanded by appellant Zahid committed severe atrocities on the law abiding citizens, held indiscriminate lathi charge, ransacked dwelling houses, fired gun shots and created an environment fear and panic. Instead of keeping Jony in the holding cell he was taken on the first floor of the police station and tortured to death. All duty Officers of the police station did not support or participate in above atrocities and torture but none reported above incidents of severe breach of Rule and abuse of human rights to the higher authority. On above occurrence police filed GR Case No.16 dated 09.02.2014 under Section 144, 323, 302 and 34 of the Penal Code, 1860 stating that Jony died due to free fight between two groups of local people which was totally

false. Above case of police was a design to hide and protect the rough Police Officers and bury the grievance of the complainant.

Act No.50 of 2013 has excluded the Government and the law enforcement agency from any liability for commission of torture by any rough member of the force. Jony was the only bread earner for his family. Now his widow, old mother, and two children needs support for survival and the compensation provided to the victim or his heirs out of money of the accused under Section 15 of Act No.50 of 2013 is utterly inadequate.

In the result, Criminal Appeal No.7028 of 2020 is dismissed and the impugned judgment and order of conviction and sentence dated 09.09.2020 passed by the learned Metropolitan Session Judge, Dhaka in Metro Sessions Case No.6171 of 2014 against accused Sub-Inspector Zahidur Rahman is upheld.

Criminal Appeal No.7498 of 2020 is allowed in part and conviction of Md. Rashidul Hasan is converted to Section 15(1) of the নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ and he is sentenced to rigorous imprisonment for 10 years and pay fine of Taka 50,000/- or in default suffer imprisonment for 3 months

more and also pay compensation of Taka 25,000/- which will be paid to the heirs of deceased Jony.

Criminal Appeal No.9222 of 2022 is allowed and impugned judgment and order of conviction and sentence dated 09.09.2020 passed by the learned Metropolitan Session Judge, Dhaka in Metro Sessions Case No.6171 of 2014 against accused Rasel under Section 15(2) of the নির্যাতন এবং হেফাজতে মৃত্যু (নিবারণ) আইন, ২০১৩ is set aside and above Rasel is acquitted of above charge. Let appellant Rasel be set at liberty at once if he is not wanted in any other case.

Send down the lower Court's record immediately.

Mr. A. K. M. Rabiul Hassan, J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER