

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL APPELLATE JURISDICTION)

Present:

Mr. Justice S M Kuddus Zaman

And

Mr. Justice Md. Aminul Islam

Death Reference No.82 OF 2017

The State

... Petitioner

-Versus-

Most. Rahima Sultana Rumi & others

...Condemned-prisoners

with

Criminal Appeal No.6819 OF 2017

Most. Rahima Sultana Rumi

.....Convict-appellant

-Versus-

The State

... Respondent

with

Criminal Miscellaneous Case No.26998 OF 2018

Md. Rafa A Misty

.....Accused-petitioner

-Versus-

.....The State

....Opposite party

with

Jail Appeal No.251 of 2017

Most. Rahima Sultana Rumi

.....Convict-appellant

-Versus-

.....The State

Mr. Khaled Mahmudur Rahman, Advocate

...For the Convict appellant Most.
Rahima Sultana Rumi in Criminal Appeal
No.6819 of 2017.

Mr. S. M. Shahjahan , Senior Advocate with
Mr. Rafsan-Al-Alvi, Advocate

...For the accused-petitioner Md. Rafa
A Misty in Criminal Miscellaneous Case
No.26998 of 2018.

Mrs. Projna Parumita Roy, Advocate

.....For the Convict appellant Most.
Rahima Sultana Rumi in Jail Appeal No.251
of 2017.

Mr. Sujit Chatterjee, DAG with

Ms. Farhana Afroze Runa, A. A. G with

Mr. Abdul Aziz Masud, A. A. G. with

Md. Shamim Khan, A. A. G

... For the State.

Heard on 01.11.2023 and Judgment on 02.11.2023.

S M Kuddus Zaman,J:

This Death Reference under section 374 of the Code of Criminal Procedure, 1989 (hereinafter referred to as the Code) has been submitted by the learned Judge of Druo Bicher Tribunal No.4, Dhaka for confirmation of the sentence of death imposed against two accused persons, namely (1) Most. Rahima Sultana Rumi and (2) Md. Rafa A Misty in Druto Bicher Tribunal Case No.03 of 2016 arising out of Mirpur Model Police Station Case No.34 dated 15.12.2013

corresponding to G. R. No.1117 of 2013 under sections 302/34 of the Penal Code, 1860 on 30.05.2017 for commission of murder of victim Humayan Kabir, an Assistant Sub-Inspector of Police.

In above judgment the learned Judge of the Druto Bichar Tribunal No.4 Dhaka has also convicted co-accused Ms. Ria under sections 302/34 of the Penal Code and sentenced her to imprisonment for life and fine of Tk.20,000/- (twenty thousand) or in default imprisonment for 01 (one) year.

Being aggrieved by above judgment and order of conviction and sentence passed by the learned Judge of Druto Bichar Tribunal No.4, Dhaka condemned accused Most. Rahima Sultana Rumi preferred Criminal Appeal No.6819 of 2017 and condemned accused Md. Raza A Misty preferred Criminal Miscellaneous Case No.26998 of 2018 under section 561A of the Code of Criminal Procedure for quashment of above judgment and order of conviction and sentence.

Above mentioned condemned accused Most. Rahima Sultana Rumi further preferred Jail Appeal No.251 of 2017

challenging the legality and propriety of above judgment and order of conviction and sentence.

Since above Death Reference No.82 of 2017, Criminal Appeal No.6819 of 2017, Criminal Miscellaneous Case No.26998 of 2018 and Jail Appeal No.251 of 2017 arose out of above identical judgment and order of conviction and sentence and involve identical questions of facts and laws all above Death Reference, Criminal Appeal, Criminal Miscellaneous Case and Jail Appeal are heard together and being disposed of by this single judgment.

Facts in short are that P.W.1 Bazlur Rashid brother of victim Humayan Kabir lodged an ejahar on 15.12.2013 alleging that on receipt of a phone call at 12.30 AM on 15.12.2013 from the Shah Ali Police Station, Dhaka as to the death of his brother he rushed to above police Station and saw the dead body of his above brother. He came to know that accused Most. Rahima Sultana Rumi wife of his brother victim Humayan Kabir had murdered him on 14.12.2013 by pushing medicine through injection in collaboration with accused Md.

Rafa A Misty and Ria due to family feud any time from 11.00AM to 3.00 PM.

P.W.6 Sub-Inspector Md. Ahsan Habib rushed to the occurrence house on 15.12.2013 pursuant to C.C. No.900/12 and found the dead body of victim Humayan Kabir lying on a cot. He performed inquest of above dead body in presence of the witnesses and prepared a report and forwarded the dead body for post mortem examination.

The investigation of the case was assigned to P.W.8 Md. Mainul Islam, Inspector of Police who visited the place of occurrence, prepared a sketch map of the same along with an index thereof and tried to seize alamats and recorded statements of the witnesses. He arrested accused Most. Rahima Sultana Rumi and produced her before a judicial Magistrate for recording of her confession under section 164 of the Code of Criminal Procedure and collected the post mortem report. In above investigation offence punishable under sections 302/34 of the Penal Code, 1860 having prima-face proved against three accused persons, namely, accused Most. Rahima Sultana Rumi, accused Md. Rafa A Misty and accused

Most. Ria he submitted charge sheet No.536 dated 20.07.2014 against them.

At trial prosecution examined 9 witnesses who were cross examined by the defence. Documents produced and proved by the prosecution were marked as Exhibit No.1 to 5 series.

The defence case as it transpires from the trend of cross examination of prosecution witnesses and statement made by accused Most. Rahima Sultana Rumi in her evidence as D.W.1 is that she is innocent and victim Humayan Kabir might have injected Vecuronium bromide medicine outside of the occurrence home and the occurrence did not take place in the home of victim Humayan Kabir.

On consideration of facts and circumstances of the case and evidence on record the learned Judge of the Druto Bichar Tribunal convicted above mentioned three accused persons namely (1) Most. Rahima Sultana Rumi, (2) Md. Rafa A Misty and (3) Most. Ria under sections 302/34 of the Penal Code, 1860 and sentenced accused Most. Rahima Sultana Rumi, and accused Md. Rafa A Misty to death and accused Most. Ria to

suffer imprisonment for life and fine of taka 20,000/- or suffer imprisonment for 01 (one) year more.

As mentioned above to bring home the charge levelled against above mentioned three accused persons under sections 302/34 of the Penal Code the prosecution has examined 9 witnesses out of 15.

P.W.1 Bazlur Rashid, the brother of victim Humayan Kabir and informant of this case, stated that on 14.12.2013 at 12.30 AM he was informed from Shah Ali Police Station over telephone that his above brother has died. He rushed to above Police Station at 4.00 AM and saw the dead body of his brother Humayan Kabir. Above dead body was forwarded to Dhaka Medical College Hospital for post mortem examination. He went to the occurrence house and came to know that accused Most. Rahima Sultana Rumi jointly with her friends, namely co-accused Ria and her husband co-accused Misty murdered his brother by injecting medicine and strangulation. He lodged FIR of this case and accused Most. Rahima made a confession and she is present in the dock. The witness proved the FIR and his signature on the same which

were marked as Exhibit Nos.1 and 1/1 respectively. In cross examination he stated that he lives in Mymensingh and on receipt of above information from the police station he rushed to Dhaka by a private car. His brother victim Humayan married Most. Rahima in 2008 and he did not have any acquaintance with accused Most. Rahima before above occurrence. He does not know anything about the occurrence day duty roster of his brother. He denied that victim Humayan Kabir had a dispute with accused Misty due to latter's unlawful transactions or accused Ria murdered victim Humayan while he was sleeping beyond the knowledge of accused Most. Rahima. He did not have any opportunity to talk with accused Most. Rahima about above occurrence. He denied that he was giving false evidence in support of above case.

P.W.2 Mahbubur Rahman is the ground floor tenant of the occurrence house who stated that on 14.12.2013 at 12.30 AM police took him to the occurrence house of victim Humayan Kabir and in his presence police performed inquest of the dead body of victim Humayan and he gave signature on

above inquest report as a witness. The witness proved above inquest report and his signature on the same which were marked as Exhibit Nos.2 and 2/1 respectively. He further stated that in their presence accused Most. Rahima confessed to have committed murder of her husband by pushing injection with the aid of her friend and friend's husband. In cross examination he stated that he did not know when the occurrence took place nor he knew the name of the owner of the of the occurrence house. Police took him to the occurrence house at 12.30 AM and he found accused Rahima was present in above house. He denied that accused Most. Rahima did not make any confession in his presence or he was giving false evidence. The witness lastly stated that he did not find accused Misty and Ria in the occurrence house.

P.W.3 Emdadul Haque is the Metropolitan Magistrate who recorded the confession of accused Most. Rahima under section 164 of the Code of Criminal Procedure. The witness stated that he gave accused Most. Rahima three hours time for reflection of memory and on compliance of all relevant rules and practice recorded confession of above accused under

section 164 of the Code of Criminal Procedure. The witness proved the confession of accused Most. Rahima and his five signatures and two signatures of above accused on above confession which were marked as Exhibit Nos.3, 3/1 and respectively. In cross examination he denied that he did not record the statement of accused Most. Rahima Sultana properly or the accused gave above confession in fear of police. The confession of accused Rahima is reproduced below:

যে মারা গেছে সে আমার স্বামী। আমরা পরস্পর ভালবাসা করে বিয়ে করি। আমার একটি বাচ্চা আছে। সে আমাকে অনেক ভালবাসত আমিও তাকে খুব ভালোবাসতাম। কিন্তু আমার বিয়ের পর দেখলাম সে অন্য মেয়ের সাথে প্রেম করত। আমি হাসপাতালে duty করতাম। সে হবিগঞ্জে যখন চাকুরী করত আমি ফোন দিলে দেখলাম call waiting পরে একদিন রাত ০১ টার সময় একটি মেয়ে ফোন দিয়েছে আমি ফোন ধরছি। পরে একদিন আমার স্বামী আমার নিকট স্বীকার করছে সে তাকে বিয়ে করছে। একদিন শবে বরাতের রাতে আমাদের মধ্যে মারামারি পরে মিলমিশ হয়ে যায়। আমার স্বামী বিভিন্ন হোটেলের সাথে রাত কাটাত। শুক্রবার রাতে ১৩.১২.২০১৩ তারিখে আমাকে বলে আমি নুপুরের কাছে যাব। যে (নুপুর) ইয়াবা খায়। ১৪.১২.২০১৩ তারিখে পৌনে এগারটায় সে বাসায় আসছে। আমি তাকে মারতে চাইনি কিন্তু তার সাথে ঝগড়া করব এই উদ্দেশ্য ছিল। মিষ্টি আমাকে যে ভাবী আপনার স্বামী ইয়াবা খেয়ে আসছে ওকে ঘুমের ইনজেকশন দিয়ে দেন। তারপর ঐ দিন মিষ্টি আমার স্বামীকে ইনজেকশন দেয়। সে বলে অল্প দিলে কিছু হয় না। আমি কিন্তু পায়ের কাছে ছিলাম।

মিষ্টি পুরা ইনজেকশন দিয়ে দেয়। আমি অল্প দিতে বলছিলাম। কিন্তু সে পুরাটা দিয়ে দিচ্ছে। রিয়া ছিল মাঝখানে। পরে মিষ্টি বলে যে ভাবী ও মরে গেছে। আমি থানায় ফোন দিতে চেয়েছিলাম। কিন্তু ওরা দিতে দেয় নাই।

P.W.4 Taslima is a house maid of victim Humayan Kabir who stated that she was working as a house maid in the occurrence house of victim Humayan Kabir. Accused Misty and Ria are husband and wife and they came to the occurrence house one day before the occurrence. At 11.00 AM on the date of the occurrence victim Humayan came to the occurrence house when she was in another room along with the son of above victim. Accused Most. Rahima Sultana, Misty and Ria asked her to go to the roof along with above baby and she went there. She returned to the occurrence house after Asar prayer when accused Most. Rahima asked her not to go to the room of victim Humayan. At that time accused Most. Rahima, Misty and Ria disclosed to her that they had murdered victim Humayan by pushing injection. After about $1-\frac{1}{2}$ hours accused Misty and Ria went out of the ghor and accused Most. Rahima informed police about the death of victim Humayan. Police came and took Most. Rahima and

herself to the Police Station. Accused Most. Rahima confessed to have murdered her husband to the local police. In cross examination she stated that she does not know where victim Humayan Kabir slept in the previous night of the occurrence. At 11.00 AM victim Humayan came to the occurrence house and laid on the bed. Accused Misty and Ria came to the occurrence house one day before the occurrence along with some furniture. At the time of the occurrence she was on the roof of the occurrence house. Accused Most. Rahima informed the police station about the death of victim Humayan Kabir over telephone and police came to the occurrence house within 5-7 minutes. Police interrogated her and took her to the police station. She lastly stated that she wrote her evidence according to the instruction of police and came to court along with her aunty.

P.W.5 Constable No.4246 Md. Nur Nobi accompanied Sub-Inspector Md. Ahasan Habib who first visited the occurrence house. He stated that on 14.12.2013 at 12.10 hours he received an information about the death of a person in the occurrence house. He accompanied Sub-Inspector Ahasan

Habib to the occurrence house and found the dead body of the victim lying on a cot. He found a woman in the next room was chewing betel leaf who disclosed that the dead body was of her husband Assistant Sub-Inspector Humayan. Above woman disclosed that her friend Misty and Ria murdered above victim by poison. In cross examination he denied that he did not see accused Rahima chewing betel leaf or she told that accused Misty and Ria murdered victim Humayan Kabir by administering poison.

P.W.6 Sub-Inspector Ahasan Habib performed inquest of the dead boy of the victim Humayan. He stated that on 15.12.2012 at 12.15 AM he went to the occurrence house of victim Humayan with whom he was acquainted before and found his dead body lying on a mat beside the cot. He also found the wife of above victim namely Most. Rahima Sultana in the occurrence house. He performed inquest of above dead body in presence of the witnesses and prepared a report. The witness proved his signature on the inquest report which was marked as Exhibit Nos.2/2. He forwarded above dead body to the Dhaka Medical College Hospital for post mortem

examination. In cross examination he stated that he went to the occurrence house at 12.15 AM and performed inquest of above dead body sitting in the occurrence ghor. He found accused Rahima and a child was sitting on a cot.

P.W.7 Constable No.26568 Md. Abu Kawsar stated that he accompanied Sub-Inspector Ahasan Habib on 15.12.2013 to the occurrence house and Sub-Inspector Ahasan Habib prepared inquest report of the dead body and forwarded above dead body to Dhaka Medical College Hospital for post mortem examination. In cross examination he stated that they went to the occurrence house at 12.10 AM and inquest report was prepared in the above house.

P.W.8 Md. Mainul Islam is an Inspector of police and investigating officer of this case who stated that on 15.12.2013 he was assigned the investigation of this case. In course of investigation he visited the place of occurrence and prepared a sketch map of the same along with an index thereof, tried to seize alams and recorded statements of witnesses under section 161 of the Code of Criminal Procedure. He arrested accused Most. Rahima and produced her before the Judicial

Magistrate for recording her confession under section 164 of the Code of Criminal Procedure. In above investigation offence punishable under sections 302/34 of the Penal Code having prima-facie proved against three accused persons namely Most. Rahina Sultana Rumi, Md. Rafi A Misty and Most. Ria he submitted charge sheet against them. In cross examination he stated that he could not find out that exact time of death of victim Humayan Kabir. He saw the dead body of victim Humayan on 15.12.2013 at 3.30 hours but he could not seize any alamat. Accused Misty and Ria were acquainted with victim Humayan. In course of investigation of a criminal case of accused Misty victim Humayan developed intimacy with accused Misty and Ria. He could not say where was the place of duty of victim Humayan Kabir before the occurrence. He does not know where victim Humayun Kabir went after eating supper in the night of 13.12.2013 or at what time he went out of the home. He recorded statement of accused Most. Rahima under section 161 of the Code of Criminal Procedure on 15.12.2013. In cross examination he stated that he did not seize any alamat. He does not know

where victim Humayan performed his duty before the occurrence night. Nor he knows after eating supper on 13.12.2013 when and where victim Humayan Kabir went. Accused Rahima informed the Shah Ali Police Station about the occurrence over telephone and she was arrested from the occurrence house. He could not recollect if there was any mark of injury on the person of victim Humayan Kabir. He does not know from which place victim Humayan Kabir last time came to the occurrence house. He denied that victim Humayan Kabir came to the occurrence house after receiving injection or poison or he was brought back to occurrence home dead and he has submitted a false charge sheet against the accused persons.

P.W.9 Dr. Kazi Golam Mokhlesur Rahman performed post mortem examination of the dead body of victim Humayan Kabir who stated that on 15.12.2013 he performed above post mortem examination and found marks of injury. After receipt of the viscera report he gave post mortem report with following opinion:

“On consideration of the post mortem findings and chemical examiners report-Death, in my opinion was due to asphyxia as a result of combined effect of throttling and injected “Vecuronium bromide”.

The witness proved the post mortem report and his signature on the same which were marked as Exhibit Nos.6 and 6/1 respectively. In the viscera chemical examination report Vecuronium bromide was found and on the basis of above report he prepared the final post mortem report. In cross examination he stated that he found mark of injection push on cubital fossa. If Vecuronium bromide enters into body that may cause death by obstructing breathing process. The quantity of Vecuronium bromide was not mentioned in the viscera report. There is no mention in the report as to before what time of death of the victim above drug was injected. He did not see any syringe or alat of the occurrence.

Above is all about the evidence oral and documentary adduced by the prosecution to bring home the charge brought

against three accused persons under section 302/34 of the Penal Code, 1860.

After conclusion of prosecution evidence only present accused Most. Rahima was examined under section 342 of the Code of Criminal Procedure in which she reiterated her claim of not guilty and gave evidence in support of above claim as defence witness No.1.

In above evidence accused Rahima stated that she worked as a Senior Staff Nurse at National Heart Foundation and on the date of occurrence she returned to the occurrence home at 3.00 PM. At 4.00 PM she went to see the condition of her husband and found that accused Misty and Ria were not available and her husband was dead. She informed police station about above occurrence and police came and took the dead body to the police station. She accompanying her son went to the police station. In cross examination she stated there were two bed rooms in occurrence house and accused Misty and Ria were in the room of her husband. She denied that she confessed to have committed murder of her husband by pushing injection with the aid of Misty and Ria.

D.W.2 Md. Kamrul is the brother of accused Most. Rahima who lives in Valuka of Mymensingh and who came to the occurrence house after receipt of the news of death of victim Humayan Kabir. In his evidence D.W.2 Kamrul has supported the evidence of D.W.1 Most. Rahima.

Mr. Sujit Chatterjee learned Deputy Attorney General for the State submits that an Assistant Sub-Inspector of Police, namely, Humayan Kabir was murdered in his dwelling house any time from 11.00 AM to 3.00 PM of 14.12.2013 and on conclusion of post mortem examination P.W. 9 Dr. Kazi Golam Mokhlesur Rahman found that above death of victim Humayn Kabir was homicidal in nature and the same was caused due to injecting Vecuronium bromide and strangulation. P.W.4 Taslima was the maid of the occurrence house of victim Humayan Kabir and an independent and important witness of this case. She stated in her evidence that accused Most. Rahima, Misty and Ria confessed to her that they had committed murder of victim Humayan Kabir by pushing injection. Accused Rahima has made a confession under section 164 of the Code of Criminal Procedure before

P.W.3 Emdadul Haque. P.W.3 Emdadu Haque has stated that he recorded above confession on compliance of all legal requirements and above confession was made voluntarily. In above confession Most. Rahima has stated that victim Humayan Kabir was murdered by pushing Vecuronium bromide injection. It is true that she attributed the act of pushing above injection to co-accused Misty. But she has confessed that she was present at the time of pushing above murderous injection and she did not make any endeavor to prevent above murder.

P.W.5 Md. Nur Nobil, P.W.6 Md. Ahasan Habib and P.W.7 Abu Kawsar are police officers who on receipt of a telephone call from accused Most. Rahima first entered into the occurrence house. All of them have consistently stated that they found the dead body of victim Humayan Kabir in the occurrence house and P.W.6 Ahasan Habib performed inquest of above dead body. Above evidence clearly prove that the murder of victim Humayan Kabir took place in the occurrence house.

The evidence of P.W.4 Taslima and confession of accused Most. Rahima prove the presence of accused Misty and Ria in the occurrence house at the time of murder of victim Humayan Kabir. The prosecution has succeeded to prove by above circumstantial evidence and consistent and mutually corroborative oral evidence of P.W.4 Taslima, P.W.5 Nur Nobil, P.W.6 Md. Ahasan Habib, P.W.7 Md. Abu Kawsar and P.W.9 Dr. Kazi Golam Mokhlesur Rahman that accused Rahima, Misty and Ria in furtherance of their common intention committed murder of victim Humayan Kabir by pushing Vecuronium bromide injection and throttling any time between 11.00AM to 3.00 PM on 14.12.2013 in the occurrence house.

On consideration of above legal evidence on record the learned Judge of the Druto Bichar Tribunal has rightly convicted accused Most. Rahima Sultana Rumi, Md. Rafa A Misty and Most. Ria under sections 302/34 of the Penal Code which calls for no interference.

As far as the sentence of death is concerned learned Deputy Attorney General submits that this is a preplanned,

cool blooded and brutal murder of a police officer by his friends Misty and Ria and wife accused Most. Rahima in the broad day light in his bed room. On consideration of above circumstances and materials on record and individual contribution of each accused person in the commission of above murder the learned Judge has rightly sentenced accused Most. Rahima and accused Misty to death which is lawful and the same calls for no interference.

The death reference may be accepted and appeals preferred by accused Most. Rahima may be dismissed and the rule issued for quashment of above judgment and order of conviction and sentence at the instance of accused Misty may be discharged, concluded the learned Deputy Attorney General.

Mr. Khaled Mahmudur Rahman learned Advocate for condemned accused Most. Rahima Sultana Rumi submits that P.W.4 Taslima was not a maid of victim Humayan nor she was present in the occurrence house. It is true that accused Most. Rahima has made a confession before a judicial Magistrate under section 164 of the Code of Criminal Procedure. But

above confession was obtained by putting her in fear of causing serious harm to her minor son. Above confession was neither voluntarily made nor the same was proved to be true by other legal evidence.

The learned Advocate further submits that the victim was a police officer who came to home with serious sickness and directly went to bed and met with a mysterious death. In the previous night victim Humayan Kabir left his home after eating supper at 9.30 AM and did not return in the night. It is not disputed that in the previous night of the occurrence victim Humayan Kabir was not on official duty. The investigation officer could not find out the place of stay of the victim or the persons with home he stayed the previous night and the half of the occurrence day. P.W.6 Md. Ahasan Habib performed inquest of the dead body of victim Humayan Kabir but he did not find any external mark of injury. P.W.9 Dr. Kazi Golam Mokhlesur Rahman stated that in the viscera report existence of Vecuronium bromide was detected and on the basis of above findings he prepared final post mortem report. It is not disputed that accused Most. Rahima informed

the Shah Ali Police Station about the mysterious death of her husband and all through she co-operated with the police. Had she been involved in the above murder she would have fled away. She had a minor boy and victim Humayan is his biological father. There is no allegation of extramarital relation of accused Most. Rahima. The prosecution could not attribute any solid motive to accused Rahima for alleged commission of murder of her husband.

The learned Judge of Druto Bichar Tribunal has recorded the impugned judgment of conviction and sentence on the basis of confession of accused Most. Rahima under section 164 of the Code of Criminal Procedure. But in above confession accused Most. Rahima did not confess to have committed murder of her husband.

The learned Judge of the Druto Bichar Tribunal has completely failed to appreciate above circumstances and legal evidence on record and most illegally convicted accused Most. Rahima and although she is a woman and mother of a minor son most illegally imposed death sentence against her which is not tenable in law, concluded the learned lawyer.

Mr. S. M. Shahjahan learned Senior Advocate for petitioner Md. Rafa A Misty submits that P.W.8 Md. Mainul Islam who is the investigation officer of this case has stated that accused Misty and his wife Ria had developed intimacy with victim Humayan Kabir in course of investigation of a criminal case against accused Misty. As such accused Misty had no motive or reason to commit murder of victim Humayan Kabir. The prosecution did not in the FIR attribute the main role of commission of murder of victim Humayan Kabir to accused Misty. It was stated in the ejahar that accused Misty aided accused Most. Rahima, the wife of victim Humayan Kabir in the commission of above murder. The motive of above murder was stated to be family feud. But on the basis of charge sheet statement and confession of accused Most. Rahima under section 164 of the Code of Criminal Procedure the role in pushing Vecuronium bromide injection was erroneously attributed to accused Misty although there is nothing on record to show that accused Misty had necessary skill to push above injection.

The confession of co-accused Most. Rahima cannot be used against accused Misty since above confession has not been corroborated by other legal evidence. The learned Judge of the Druto Bichar Tribunal has failed to take into account above circumstances and evidence on record properly and most illegally relied upon the confession of co-accused Most. Rahima and used the same against accused Misty and on the basis of the same convicted accused Misty under section 302 of the Penal Code and sentence him to death which is not tenable in law.

Ms. Projna Parumita Roy learned Advocate appearing for accused Most. Rahima Sultana Rumi for Jail Appeal No.251 of 2017 adopted the submissions made by learned Advocate Mr. Khaled Mahmudur Rahman as mentioned above.

We have considered the submissions made by the learned Advocate for respective parties and carefully examined all materials on record including the FIR, charge sheet, oral evidence of 9 prosecution witnesses, Exhibited documents and other materials on record.

At the very outset it may be mentioned that in this case there is no eye witness who saw the commission of murder of victim Humayan Kabir an Assistant Sub-Inspector of Police.

P.W.6 Ahasan Habib prepared the inquest report of the dead body of victim Humayan Kabir. He did not find any visible mark of injury on the person of victim Humayan Kabir. He merely found blackish colour on the neck and back of above victim. The post mortem examination of above dead body was performed by P.W.9 Dr. Kazi Mokhlesur Rahman who stated that in the viscera chemical examination report the presence of "Vecuronium bromide" was found and on the basis of above report he prepared his final post mortem report. In cross examination above witness stated that he found the mark of injection push on "cubital fossa" of victim Humayan Kabir. If "Vecuronium bromide" enters into the liver and kidney that may cause death by stopping breathing system. He could not say what quantity of Vecuronium bromide was found in the viscera nor he could mention when or at what time before death above medicine was injected.

It is true that in the post mortem report there are mentions of mark of injuries on the neck and parietal and frontal region of head of victim Humayan Kabir. But as mentioned above the cause of death was not above injuries. In fact there is no mention of any injury on the neck and head of victim Humayan in the evidence of the prosecution witnesses or in the confession of accused Most. Rahima made under section 164 of the Code of Criminal Procedure or in the inquest report of the dead body of victim Humayan.

In the chemical examination report (Exhibit No.5) no poison was found in the liver or kidney of victim Humayan Kabir and only the presence of Vecuronium bromide was found. It may be mentioned that Vecuronium bromide is a medicine of general anesthesia which is used for making patients unconscious before doing surgery. Above is not a medicine for sleeping. Above medicine can be injected by an anesthetist having special knowledge and skill since the safe quantity varies on the basis of age, health and other physical conditions of the patient. Injecting excessive quantity of "Vecuronium bromide" undoubtedly causes death.

In above view of the materials on record we hold that the death of victim Humayan Kabir was caused for injecting excessive quantity of "Vecuronium bromide" in his cubital fossa.

P.W.8 Md. Mainul Islam, investigation officer of this case stated that after completion of Romeo duty victim Humayan Kabir returned to home at 9.30 PM on 13.12.13 and after eating supper he went out of the occurrence house and returned in above house on 14.12.2013 at 11.00 AM. In cross examination above witness stated that he could not say after eating supper on 13.12.2013 where the victim went or with whom he spent the night and the next morning. It is highly deplorable that the investigating officer could not find out whereabouts of the victim in the previous night and morning of his death and the persons who were with him during above time. P.W.9 Dr. Kazi Golam Mokhlesur Rahman could not mention the exact time when the "Vecuronium bromide" was injected in the body of victim Humayan Kabir or how much time above medicine took to cause his death.

P.W.8 Mainul the investigating officer of this case stated in cross examination that he could not seize any alat of above occurrence of murder. No syringe or ampoule of above Vecuronium bromide was recovered from the occurrence house and produced at trial. Nor even the bed sheet on which the victim was lying at the time of injecting of above medicine was seized. The prosecution could not provide any explanation for non seizure of above important alat which were necessary to prove that the alleged occurrence took place in the occurrence house. As such a reasonable suspicion arises as to the claim of the prosecution that the occurrence of injecting Vecuronium bromide on victim Humayan Kabir took place in the house of above victim.

The prosecution has designated P.W.4 Taslima as a neutral, trustworthy and important witness since she was a maid of victim Humayan Kabir and she was present in the occurrence house at the time of the alleged occurrence.

Before proceeding to analyze the evidence P.W.4 Taslima it needs to be noted that on receipt of a telephone call from accused Rahima P.W.6 Sub-Inceptor Ahasan Habib

accompanying P.W.5 constable Nur Nobil and P.W.7 Md. Abu Kawsar first came to the occurrence house at 12.30 AM on 15.12.2013. In their evidence above three P.Ws consistently mentioned that they found accused Most. Rahima in the occurrence house along with her minor boy. But none of above three prosecution witnesses has mentioned anything about the presence of P.W.4 Taslima in the occurrence house.

P.W.4 Taslima has stated that police took Most. Rahima and herself to the police station. But no police officer who gave evidence in this case supported above claim of P.W.4 Taslima. Accused Most. Rahima while giving evidence as D.W.1 stated that police took her to police station along with her baby boy. But she did not mention the existence of Tasmila in the occurrence house nor she supported above claim of P.W.4 Tasmila that police also took her to police station.

No mention was made about P.W.4 Taslima in the FIR or in the evidence of P.W.1 Bazlur. In his evidence P.W.1 Bazlur did not say that Taslima was a house maid of the victim Humayan Kabir and she was present in the occurrence house at the time of the occurrence.

The cases involving the commission of an offence in the dwelling house like the present case the maids or male servants of the occurrence house are important witnesses. As such at the initial stage investigation officer takes maids or male servants for interrogation to collect necessary information and in appropriate cases such maids or servants are produced before a Magistrate for recording their statements under section 164 of the Code of Criminal Procedure. But P.W.8 Mainul who is the investigation officer of this case did not mention in his evidence that P.W.4 Taslima was a maid in the occurrence house at the time of the occurrence. Moreover P.W.2 Mahbubur Rahman who lives in the first floor of the occurrence house and who came to the occurrence house at 12.30 AM on 15.12.2013 did not mention the presence of P.W.4 Taslima in the occurrence house. All above evidence on record makes the claim of the prosecution that P.W.4 Taslima was a maid of victim Humayan and she was present in the occurrence house at the time of the alleged occurrence unbelievable.

Now let us analyze the evidence of P.W.4 Taslima. She stated that victim Humayan came to the occurrence home at 11.00 AM and she went to the roof of the house along with the baby boy. She came back to the occurrence house after Asar prayer and accused Most. Rahima asked her not to go into the room of victim Humayan. On the same breath she claimed that accused Most. Rahima, Misty and Ria confessed to her that they had committed murder of victim Humayan by pushing injection. In cross examination she stated that victim Humayan after coming to home lied down on bed. She was on the roof of the occurrence house at the time of the murder. She lastly stated that she wrote her evidence according to the instruction of police and came to the court with her aunty.

It is clear from above evidence that from 11.00 AM to Asar prayer time P.W. 4 Tasliam was outside of the occurrence house and she did not see anything which led to the mysterious and tragic death of victim Humayan Kabir. It is not understandable as to why three accused persons would make an extra judicial confessions to P.W.4 Tasmila who was a young maid of about 15 years of age. The last sentence of her

evidence that she wrote her evidence according to the instruction of police finally makes her evidence a tortured and unbelievable one.

On consideration of above evidence on record we hold that the prosecution has failed to prove by legal evidence that P.W.4 Taslima was a maid of victim Humayan and she was present in the occurrence house at the time of the alleged occurrence and accused Rahima, Misty and Ria made an extra judicial confession to her.

The learned Judge of Druto Bichar Tribunal accepted the confession made by accused Most. Rahima under section 164 of the Code of Criminal Procedure to P.W.3 Emdadul Haque on 16.12.2013 as voluntarily made and true.

Let us analyze the statement made by accused Most. Rahima to P.W.3 Emdadul Haque under section 164 of the Code of Criminal Procedure and see if above statement can be designated as a confession. A confession is an admission to guilt. The confession must disclose the commission of an offence and secondly the maker of the confession must

implicate himself or herself in any way in the commission of above offence.

In above statement under section 164 of the Code of Criminal Procedure accused Most. Rahima stated that her husband returned back to home on 14.12.2013 at 10.45 AM. Co-accused Misty stated to her that her husband had consumed Yeaba and advised her to inject him “ঘুমের ইনজেকশন” and then accused Misty himself pushed her husband above injection. She advised accused Misty to inject a small quantity but she injected full quantity. At the time of pushing of above injection she was standing near the feet of victim Humayan.

Firstly above statement if considered in its totality does not disclose a criminal intention to commit murder of victim Humayan. Secondly accused Most. Rahima did not involve herself in any way in the pushing of the murderous injection. Accused Misty allegedly advised accused Most. Rahima to push “ঘুমের ইনজেকশন” not Vecuronium bromide.

We have found from the evidence of D.W.1 Most. Rahima Sultana that she was a senior staff nurse of National Heart Foundation. In the charge sheet the investigating officer

stated that accused Rahima brought one ampoule of Vecuronium bromide from above hospital and kept in the occurrence house. But there is no evidence on record to substantiate above claim of the investigating officer. No prosecution witness has stated in court that accused Most. Rahima brought Vecuronium bromide medicine from the Heart Foundation Hospital to the occurrence house. It is understandable that accused Most. Rahima had necessary skill to push Vecuronium bromide injection in the cubital fossa of victim Humayan. But there is no evidence on record to show that accused Most. Rahima pushed above murderous injection in the cubital fossa of victim Humayan Kabir. In her statement under section 164 of the Code of Criminal Procedure accused Most. Rahima did not confess that she pushed above injection to her husband. None can introduce a new word or a change any word in above statement of accused Most. Rahima made under section 164 of the Code of Criminal Procedure on the basis of perception.

Above statement of accused Rahima made under section 164 of the Code of Criminal Procedure cannot be designated

as a confession. As such the questions of using above statement as a legal evidence against co-accused Misty or Ria does not arise at all. Besides above claim of accused Rahmia made under section 164 of the Code of Criminal Procedure that co-accused Misty pushed above injection has not been supported or corroborated by any other legal evidence. Moreover the presence of accused Misty and Ria in the occurrence house at the time of the occurrence has not been proved by legal evidence. In above view of above facts and circumstances of the case and materials on record we hold that this is a case of no evidence as far as accused Misty and Ria are concerned.

It is not the case of the prosecution that accused Rahima who is the wife of victim Humayan committed murder of her husband while she and her husband Humayan were living in the occurrence house. It is true that in the FIR the allegation of pushing murderous injection was attributed to accused Rahima. But in the charge sheet P.W.8 Mainul shifted above allegation to co-accused Misty.

It is true that accused Ria was on abscontion during the investigation and trial of the case but that fact alone does not make her liable for the commission of murder of victim Humayan Kabir. Since we have found that the impugned judgment and order of conviction and sentence was passed unlawfully and on an erroneous perception of law and facts and this is a case of no evidence against accused Ria and the impugned judgment is liable to be set aside accused Ria should also get benefit of this judgment.

In above view of the materials on record we are unable to find any substance in this Death Reference which is liable to be rejected and we find substance in Criminal Appeal No.6819 of 2017 and Jail Appeal No.251 of 2017 which deserve to be allowed and the rule issued in connection of Criminal Miscellaneous Case No.26998 of 2018 under section 561A of the Code of Criminal Procedure deserves to be made absolute.

In the result, Death Reference No.82 of 2017 is rejected and Criminal Appeal No.6819 of 2017 and Jail Appeal No.251 of 2017 are allowed and the rule issued in Criminal Miscellaneous Case No.26998 of 2018 is made absolute.

The impugned judgment and order of conviction and sentence dated 30.05.2017 passed by the learned Judge of Druto Bichar Tribunal Court No.4, Dhaka in Druto Bicher Tribunal Case No.03 of 2016 arising out of Mirpur Model Police Station Case No.34 dated 15.12.2013 corresponding to G. R. No.1117 of 2013 under sections 302/34 of the Penal Code, 1860 is set aside.

Let accused Most. Rahima Sultana Rumi, Md. Rafa A Misty and Most Ria be set at liberty at once if not wanted in connection with any other case.

Let the lower court's record along with a copy of this judgment be transmitted down at once.

Md. Aminul Islam, J:

I agree.

Md. Kamrul Islam
Assistant Bench Officer