

District: Manikganj.

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Appellate Jurisdiction)**

Present:

**Mr. Justice Md. Zakir Hossain
And
Mr. Justice Md. Toufiq Inam**

Death Reference No.32 of 2018.

The State.

-Versus-
Selina Akter (Absconding),
----- Condemned-Convict.
Md. Nazrul Islam,
----- Condemned-Prisoner.
Mr. Mohammed Abdul Baset, DAG with
Ms. Anjuman Ara Begum, A.A.G,
Ms. Selina Parvin (Setu), A.A.G.
Mr. Md. Syedur Rahman Mainul, A.A.G.
Mr. Kazi Mohammad Moniruzzaman Dablu, A.A.G.
Mr. Md. Mizanur Rahman, A.A.G. and
Mr. Md. Shaikhul Islam, A.A.G.
----- For the State.
Ms. Nargis Akter, Advocate (State Defence Lawyer)
----- For the Condemned-Convict.
Mr. S.M. Asraful Hoque, Advocate, with
Mr. Babu Lal Saha, Advocate
--- For the Condemned-Prisoner.
With

Criminal Appeal No. 8212 of 2022.

**And
Jail Appeal No. 207 of 2022.**

Md. Nazrul Islam

----- Condemned-Prisoner-Appellant.

-Versus-

The State.

----- Respondent.

Mr. S.M. Asraful Hoque, Advocate, with
Mr. Babu Lal Saha, Advocate

---- For the Condemned-Prisoner-Appellant.

Mr. Mohammed Abdul Baset, DAG with
Ms. Anjuman Ara Begum, A.A.G,
Ms. Selina Parvin (Setu), A.A.G.
Mr. Md. Syedur Rahman Mainul, A.A.G.
Mr. Kazi Mohammad Moniruzzaman Dablu, A.A.G.
Mr. Md. Mizanur Rahman, A.A.G. and
Mr. Md. Shaikhul Islam, A.A.G.

----- For the Respondent.

Heard On: 05.01.2026, 07.01.2026 and 08.01.2026
And
Judgment Delivered On: 11.01.2026.

Md. Toufiq Inam, J:

This Death Reference under section 374 of the Code of Criminal Procedure, 1898, together with connected Criminal Appeal No. 8212 of 2022 and Jail Appeal No. 207 of 2022, arise out of the judgment and order dated 20.03.2018 passed by the learned Senior Sessions Judge, Manikganj, in Sessions Case No. 136 of 2016, whereby accused Selina Akhter and Md. Nazrul Islam were convicted under sections 302/34 of the Penal Code and sentenced to death.

The reference has been made to this Court for confirmation of the death sentence, while the convicted prisoner Md. Nazrul Islam has preferred the aforesaid appeals challenging both his conviction and sentence. As the Death Reference and the connected appeals emanate from the same judgment and involve identical questions of fact and

law, they were heard analogously and are being disposed of by this common judgment.

The substance of the prosecution case is that Idris Ali, a rickshaw puller by profession, resided with his wife Selina Akhter at village Kamarghona/Kadamtala under Harirampur Police Station. It is alleged that Selina Akhter was of questionable character and maintained illicit relationships, which led to persistent marital discord. Due to her conduct, several village arbitrations (salish) were convened, which ended in compromise. Taking advantage of the strained marital relationship, accused Md. Sattar gradually developed close association with Selina Akhter under the pretext of reconciliation, which eventually turned into an illicit relationship. This led to factional disputes in the locality.

At the instigation of Md. Sattar, Selina Akhter lodged a case under the Nari-O-Shishu Nirjatan Daman Ain against certain local rivals, which was subsequently found to be false. As a result, Selina Akhter began frequently attending court and gradually abandoned her domestic responsibilities. When Idris Ali attempted to restrain her from continuing such association and court attendance, Selina

Akhter, in collusion with accused Md. Sattar, Md. Nazrul Islam and Dulal, allegedly conspired to eliminate him.

In execution of the said plan, Selina Akhter went to her paternal home at Maniknagar with her children, travelling on the rickshaw of Idris Ali himself. Thereafter, she contacted the other accused persons over mobile phone. After taking meals together at Selina's father's house, Selina Akhter allegedly administered sleeping substances mixed with food to Idris Ali. Upon returning home, Idris Ali collapsed in front of his house and was carried to the veranda. Between midnight and 2:00 a.m. on 28.11.2011, the accused persons allegedly strangled Idris Ali with a nylon rope, restrained his limbs, and slaughtered him by cutting his throat with a sharp weapon. The dead body was thereafter concealed by covering it with a quilt, and the accused persons fled from the scene.

Initially, an FIR was lodged on 29.11.2011 by convict Selina herself. Subsequently, the names of the accused persons, including Selina, were disclosed in the confessional statement of accused Sattar. Pursuant to the direction of the Court, PW-1 lodged the second FIR. On the basis of this FIR, Harirampur Police Station Case No. 02 dated 05.02.2013 was registered and investigation was entrusted to

the Detective Branch, Manikganj. After completion of investigation, charge-sheet was submitted against Selina Akhter, Md. Sattar, Md. Nazrul Islam and Dusal under sections 302/34 of the Penal Code.

Charges were framed on 28.08.2016. As Selina Akhter and Dusal were absconding, charges could not be read over to them and State Defence Counsel was appointed. During pendency of the trial, accused Md. Sattar died and was discharged from the case by order dated 30.05.2017. The prosecution examined seventeen witnesses. As the accused persons were absconding, their examination under section 342 CrPC could not be held. Upon conclusion of the trial, the learned Senior Sessions Judge convicted Selina Akhter and Md. Nazrul Islam and sentenced them to death, giving rise to the present reference and appeals.

Mr. Mohammed Abdul Baset, learned Deputy Attorney General, submits that the defence arguments ignore the cumulative effect of the evidence. He contends that although there is no direct eyewitness, the prosecution has successfully established a complete and unbroken chain of circumstances including motive, last seen together, recovery of the dead body from Selina's house, medical evidence proving homicidal death, incriminating conduct of the

accused, and voluntary confessional statements duly corroborated by independent evidence. He, therefore, prays for acceptance of the Death Reference, confirmation of the sentence of death, and dismissal of the connected Criminal Appeal and Jail Appeal.

Per Contra, Mr. S.M. Ashraful Hoque (George), learned Advocate appearing with Mr. Babu Lal Shaha for the appellant Md. Nazrul Islam, contends that the prosecution has failed to prove the charge beyond reasonable doubt as the case rests entirely on circumstantial evidence without any direct eyewitness. According to him, the alleged motive is weak, speculative and based on village gossip, insufficient to sustain a conviction. He submits that recovery of the dead body from Selina's house does not ipso facto implicate Md. Nazrul Islam, nor does it establish his exclusive presence or control over the place of occurrence.

He further relies on the testimony of PW-10, who stated that when Idris was offered to hire his rickshaw, Idris replied that Sattar and Fela had already hired it and PW-10 saw Idris leaving with two or three persons. Therefore, according to the defence, Idris was "last seen" with Sattar and Fela, and not with Nazrul.

The defence also assails the confessional statements of accused Sattar and Md. Nazrul Islam, arguing that the same were not voluntary and were subsequently retracted. It is contended that a retracted confession, in the absence of strong independent corroboration, is unsafe to rely upon, particularly in a capital case. Alleged procedural irregularities, including delay in production before the Magistrate, are cited as factors vitiating the confessions. He further argues that according to the section 164 records, Md. Nazrul Islam was arrested on 02.12.2012 at 7:00 p.m. and produced before the Magistrate on 04.12.2012 at 12:00 noon, beyond the permissible period of 24 hours, rendering the confession unreliable. The defence also points out discrepancies between the confessional statements- Nazrul stating that Selina cut the throat while he held the legs, whereas Sattar stated that Nazrul cut the throat and Selina restrained the victim—arguing that such inconsistency establishes coercion. Finally, it is submitted that absconcence cannot be treated as proof of guilt.

In addition, Mrs. Nargis Akhter, learned State Defence Lawyer for convict Selina Akhter, submits that the prosecution failed to produce any witness to show that Selina was present in the house at the time of occurrence; that neither the alleged weapon of offence was

recovered nor viscera was done to find out victim's consumption of the sleeping pill; that Selina, being the informant in the first FIR, was later made an accused in the second FIR lodged by PW-1, an interested police witness; and that although witnesses spoke about her questionable character and village salish, no salishdar was examined.

In reply, Mr. Mohammed Abdul Baset, learned Deputy Attorney General, submits that the confessions were recorded in strict compliance with section 164 CrPC by a competent Magistrate, found to be voluntary, and corroborated by medical and circumstantial evidence. He further submits that section 106 of the Evidence Act squarely applies, as the accused failed to explain the homicidal death occurring within premises under their control. Abscondence is relied upon not as sole proof, but as an additional incriminating circumstance. He also points out that PW-2, PW-3, PW-4 and PW-15 testified regarding Selina's questionable character, which remained unchallenged due to lack of cross-examination.

We have meticulously reappraised the entire evidence on record, as is our bounden duty in a death reference. It is true that there is no direct eyewitness to the act of killing. The prosecution case,

therefore, rests on circumstantial evidence supported by medical testimony, recovery of incriminating articles, conduct of the accused, and, most significantly, the confessional statements of accused Md. Sattar and Md. Nazrul Islam recorded by PW16 under section 164 of the Code of Criminal Procedure.

Firstly, as regards the argument that there is no evidence of Selina Akhter's presence in the house at the relevant time and hence section 106 of the Evidence Act is inapplicable, the contention proceeds on a fundamentally erroneous understanding of the provision. Section 106 does not mandate the prosecution to prove the physical presence of the accused at the exact moment of death. What is required is proof of foundational facts showing that the occurrence took place in circumstances where the facts leading to the death were especially within the knowledge of the accused.

In the present case, it is an admitted and proved fact that the dead body of Idris Ali was recovered from the dwelling house of Selina Akhter, covered with a quilt, during the night hours. The prosecution has also led evidence to show that the deceased returned home with Selina shortly before the occurrence and that no outsider's presence was noticed thereafter. Once it is established that a homicidal death

occurred inside the residential premises under the control and domain of the accused, the burden shifts upon such accused to explain how the death occurred. This is precisely the situation contemplated by section 106 of the Evidence Act. Selina Akhter offered no explanation whatsoever and instead absconded. Such silence, when explanation was legally expected, constitutes a strong incriminating circumstance. The defence attempt to confine section 106 to proof of physical presence at a precise time would render the provision redundant and is contrary to settled jurisprudence.

Secondly, the contention regarding non-recovery of the sharp weapon and absence of viscera examination is equally untenable. It is well settled that recovery of the weapon of offence is not an indispensable requirement for sustaining a conviction when the nature of injuries, medical evidence, and other circumstances clearly establish homicidal death. PW-13, the autopsy surgeon, categorically found signs of strangulation and a deep incised wound on the throat and opined that death was caused by hemorrhage, shock, and asphyxia, ante-mortem and homicidal in nature. This medical evidence fully corroborates the prosecution narrative and the confessional statements. As regards viscera examination, it becomes relevant primarily in cases of suspected poisoning where cause of

death is otherwise doubtful. In the present case, the cause of death is clear, definite, and medically established. Therefore, absence of viscera analysis does not create any lacuna in the prosecution case.

Thirdly, the argument that PW-1 is an interested witness is misconceived. PW-1 lodged the second FIR pursuant to a judicial direction after the initial FIR lodged by Selina herself was found to be misleading. Merely because PW-1 is a police officer or initiated the formal process of investigation does not make him an “interested witness” in the legal sense. Interest must be personal, direct, or motivated by animus against the accused. No such motive has been shown or even suggested. More importantly, the prosecution case does not rest solely on PW-1; it is supported by independent witnesses, seizure witnesses, medical evidence, inquest report, and confessional statements. Hence, the defence objection on this score is without merit.

Fourthly, the plea that accused Md. Nazrul Islam was produced beyond 24 hours and therefore his confession stands vitiated also fails. The record reveals that he was produced before the Magistrate within a reasonable time and the confession was recorded after affording him adequate reflection time. PW-16, the Magistrate,

clearly testified that all statutory safeguards under section 164 CrPC were followed and that she found no sign of torture or coercion. There is no material to suggest unlawful detention or extraction of confession by force. The defence has failed to demonstrate any prejudice caused by the alleged delay. It is settled law that a confession does not become inadmissible merely due to minor or explainable delay unless such delay is shown to have resulted in coercion or prejudice, which is conspicuously absent here.

Fifthly, the defence reliance on the variation between the confessional statements regarding the precise roles played by each accused is misplaced. The variations pointed out relate only to the mechanics of participation—who held which part of the victim or who inflicted the fatal cut. On all material particulars, namely the motive, conspiracy, presence of the accused persons, the manner of killing, and concealment of the dead body, the confessions are consistent and mutually corroborative. Such minor discrepancies are natural and, in fact, indicative of voluntariness, as mechanically identical confessions are often suspect. The core incriminating narrative remains intact and is further corroborated by medical and circumstantial evidence.

It is well settled that conviction can safely be founded on circumstantial evidence if the circumstances proved form a complete and unbroken chain leading only to the hypothesis of guilt and excluding every reasonable possibility of innocence. Tested on this settled principle, the prosecution evidence in the present case fully satisfies the required standard.

The evidence of PW-2 to PW-5 clearly establishes the strained marital relationship between the deceased Idris Ali and his wife Selina Akhter, repeated village arbitrations, and persistent domestic discord preceding the occurrence. These witnesses consistently testified regarding Selina's conduct, her association with accused Md. Sattar, and the deteriorating domestic atmosphere. Their evidence also establishes that on the morning following the occurrence, the dead body of Idris Ali was found lying on the veranda of his dwelling house, covered with a quilt. Nothing has been elicited in cross-examination to discredit their testimony.

PW-8, PW-9, PW-12 and PW-14 proved the inquest report and consistently deposed that the dead body was recovered from within the homestead of the deceased, which was under the control and domain of accused Selina Akhter. PW-6, PW-7 and PW-11 proved

the seizure of the quilt, nylon rope and blood-stained wearing apparel from the place of occurrence. These recoveries lend material corroboration to the prosecution case and are consistent with the manner of occurrence described in the confessional statements.

PW-10 testified that on the night preceding the occurrence, Idris Ali was seen leaving in the company of the accused persons. Even if the deceased was seen with more than one accused, this circumstance does not weaken the prosecution case; rather, it reinforces the inference that the accused persons were acting in concert. The “last seen together” circumstance, though not conclusive by itself, constitutes an important link in the chain of events when read with other incriminating circumstances proved on record.

The medical evidence provided by PW-13, the autopsy surgeon, is clear, cogent and unequivocal. He found marks of strangulation and a deep incised wound on the throat and opined that death was caused by hemorrhage, shock and asphyxia, ante-mortem and homicidal in nature. This medical opinion completely rules out accidental or suicidal death and fully corroborates the prosecution narrative as well as the confessional statements. The absence of recovery of the sharp weapon or viscera examination does not detract from the

prosecution case, as the cause and manner of death stand firmly established through post-mortem findings.

The confessional statements of accused Md. Sattar and Md. Nazrul Islam, recorded under section 164 CrPC and proved by PW-16, constitute a pivotal piece of evidence. Both confessions provide a detailed, natural and coherent account of the motive, conspiracy and execution of the murder, clearly implicating themselves as well as co-accused Selina Akhter. PW-16, the Magistrate, testified that she followed all statutory safeguards, administered due warnings, allowed adequate time for reflection, and found the confessions to be voluntary. No allegation of coercion or torture was made before her, nor is there any credible material suggesting otherwise.

In this context, section 30 of the Evidence Act assumes particular significance. The confessions of accused Md. Sattar and Md. Nazrul Islam, made while they were jointly implicated in the same offence, directly affect themselves as well as co-accused Selina Akhter. These confessions are not being treated as the sole basis of conviction but are taken into consideration to lend assurance to the substantive evidence on record. The principles enunciated in *State vs. Mir Hossain @ Miru (56 DLR 124)*, *Ausar Ali vs. State (1998 BLD (AD)*

43), Sukur Ali vs. State (74 DLR(AD) 11) and The State vs. Most. Kulsum Nahar Beauty and others (33 BLT (HCD) 272) fully justify such use of confessional evidence.

The conduct of the accused further strengthens the prosecution case. The concealment of the dead body, the attempt to mislead the investigation by lodging an initial misleading FIR, and the prolonged absconcence of Selina Akhter constitute strong incriminating circumstances. Absconcence, though not substantive proof of guilt, is a relevant corroborative factor when read with other evidence on record.

On a cumulative assessment of the entire evidence, we find that the prosecution has established a complete and unbroken chain of circumstances pointing unerringly to the guilt of the accused persons and inconsistent with any hypothesis of innocence. The motive, last seen circumstance, recovery of the dead body from Selina's house, medical and documentary evidence, voluntary confessional statements, and incriminating conduct of the accused collectively lead to the irresistible conclusion that Idris Ali was murdered pursuant to a premeditated conspiracy and that Selina Akhter and

Md. Nazrul Islam actively participated in the commission of the offence with common intention.

However, considering that the conviction substantially rests on circumstantial evidence and confessions, and having regard to the principles governing capital punishment, we are of the view that this is not a “rarest of rare” case warranting death penalty. The ends of justice would be met by commuting the sentence to imprisonment for life.

Accordingly—

- i) Death Reference No. 32 of 2018 is rejected. The conviction under sections 302/34 of the Penal Code is hereby affirmed, but the sentence of death is commuted to imprisonment for life. Criminal Appeal No. 8212 of 2022 and Jail Appeal No. 207 of 2022 are disposed of to that extent.

- ii) The authorities concerned are directed to secure arrest of absconding convict Selina Akhter to compel her to serve the sentence of imprisonment for life.

- iii) The condemned prisoner Md. Nazrul Islam shall be transferred from condemned cell to general prison at once. He shall remain in jail to serve out the sentence of imprisonment for life in accordance with law.
- iv) The convicts shall receive the benefit of section 35A CrPC and other remissions as per law.

The Office is directed to transmit the lower court records forthwith and communicate this judgment to the trial court and concerned authorities for immediate compliance.

(Justice Md. Toufiq Inam)

Md. Zakir Hossain, J:

I agree.

(Justice Md. Zakir Hossain)