

District: Gazipur.

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

Present:

**Mr. Justice J.B.M. Hassan
And
Mr. Justice Md. Toufiq Inam**

Death Reference No.65 of 2018

The State

-Versus-

1. Md. Alamgir Hossain (absconding),
2. Most. Shahnaz,

----- Condemned-Prisoners.

Mr. M. Masud Rana, D.A.G. with
Mrs. Ayasha Akhter, A.A.G,
Mr. Mir Moniruzzaman, A.A.G, and
Mr. Md. Tareq Rahman, A.A.G.

----- For the State.

Mr. Md. Hafizur Rahman Khan, Advocate,

--- State-Defence Lawyer for the condemned-prisoners.

With

Jail Appeal No. 199 of 2018.

Most. Shahnaz ---- Condemned-Prisoner-Appellant.

-Versus-

The State

..... Respondent.

Mr. Md. Hafizur Rahman Khan, Advocate

----- For the Condemned-Prisoner.

(As State-Defence-Lawyer).

Mr. M. Masud Rana, D.A.G. with
Mrs. Ayasha Akhter, A.A.G,
Mr. Mir Moniruzzaman, A.A.G, and
Mr. Md. Tareq Rahman, A.A.G.

----- For the Respondent.

Heard On: 15.01.2025, 19.01.2025, 20.01.2025.

and

Judgment Delivered On: 22.01.2025.

Md. Toufiq Inam, J:

Both Death Reference No. 65 of 2018 and Jail Appeal No. 199 of 2018 arise from the judgment and order of conviction and sentence dated 31.05.2018, passed by the learned Additional Sessions Judge, 2nd Court, Gazipur, in Sessions Case No. 727 of 2014. By the said judgment, the accused persons-(1) Md. Alamgir Hossain and (2) Most. Shahnaz were found guilty under section 302/34 of the Penal Code and sentenced to death along with a fine of Tk. 10,000 each. The conviction followed the brutal killing of Nazmul Mollah, a 4-year-old boy, whose body was found concealed inside a bag in the room of the accused, Shahnaz. The child had gone missing a day earlier. The incident occurred in a rented house where both the victim's family and the accused were residing as tenants.

PW1, Md. Nazimuddin Mollah, lodged an FIR with Kaliakoir Police Station on 03.02.2014, stating that he, his wife, five daughters, and 4-year-old son, Nazmul Mollah (the victim), were living in a rented house owned by Muslem Uddin in the village of Purbo Andermanik. The informant, a mason by profession, shared the premises with the accused persons-(1) Md. Alamgir Hossain and (2) Most. Shahnaz, who were also tenants and known to each other. Alamgir had earlier proposed to the informant's daughter Akhi, but after she rejected him, he became hostile and issued threats against the family. On 01.02.2014, around 5 PM, Nazmul went missing. Despite extensive searches, he could not be located. Shahnaz's absence from her room raised suspicion. The next day, around 3:30 PM, the informant and

neighbors entered her room and discovered a large bag near a tin partition. Inside the bag lifeless body of little Nazmul was found. An outcry followed, and both Alamgir and Shahnaz were apprehended by locals and handed over to the police.

On 02.02.2014, PW6, Sayed Azharul Islam, Sub-Inspector of Police, arrived at the scene after registering General Diary (GD) No. 27 dated 02.02.2014 with Mouchak Police Outpost. He recovered the victim's body, prepared the inquest report, and subsequently sent the body to the morgue for autopsy.

On 04.02.2014, both accused made confessional statements before the learned Magistrate (PW8), who recorded the same in accordance with Section 164 Cr.P.C.. Upon investigation, PW6 found a prima facie case against both accused and submitted Charge Sheet No. 122 dated 29.04.2014 under Section 302/201/34 of the Penal Code.

Accused-appellant Most. Shahnaz was never granted bail since her arrest and remained in custody throughout the proceedings. In contrast, co-accused Md. Alamgir Hossain was granted bail on 18.04.2016 in Miscellaneous Case No. 14210 of 2016. However, his bail was subsequently cancelled on 07.08.2017 due to his failure to appear before the court.

Upon perusal of the materials on record and after hearing the parties, the court concerned framed charges under Section 302/34 of the Penal Code against both accused on 08.03.2016. The charge was read over and explained to accused Shahnaz,

who was present in court, and she pleaded not guilty and claimed to be tried in accordance with law. The co-accused Alamgir, however, remained absent on that date.

To prove the charge, the prosecution examined eight witnesses, including the informant, local witnesses, the concerned doctor, the learned magistrate, and the investigation officer. All witnesses were duly cross-examined by the learned advocate for accused Shahnaz and by the state-appointed defence counsel for absconding accused Alamgir. The accused persons did not adduce any witnesses in their defence. Since the accused Alamgir Hossain was absconded during trial, his trial was proceeded in accordance with section 339 B (2).

The defence version of the case, as emerges from the cross-examination, is that both accused persons are entirely innocent and have no connection to the alleged murder. They assert that their confessional statements made before the magistrate were neither true nor voluntary.

Upon conclusion of the prosecution evidence, accused Shahnaz was examined under Section 342 Cr.P.C. to enable her to explain the allegations brought against her. During the examination, she claimed to be innocent and again pleaded not guilty, declining to adduce any evidence in her defence. After conclusion of the trial, the court convicted both accused under Section 302/34 of the Penal Code for the murder of the victim, Nazmul, and sentenced them to death, along with a fine of Tk. 10,000 (ten thousand) each.

Following the pronouncement of the judgment, the trial court referred the matter to this Court for confirmation of the death penalty, as per Section 374 Cr.P.C. This reference has been registered as Death Reference No. 65 of 2018. Simultaneously, the condemned prisoner, Shahnaz, filed Jail Appeal No. 199 of 2018, seeking acquittal of the charge. The absconding convict, Alamgir, did not file any appeal. Since both the Death Reference and Jail Appeal arise from the same impugned judgment, they have been consolidated for hearing and are being disposed of together in this judgment.

Mr. M. Masud Rana, the learned Deputy Attorney General for the State, submits at the outset that there are no discrepancies regarding the date, time, place, or manner of the incident. He refers to the testimonies of PW1, PW2, PW3, and PW5, who were present when the dead body was recovered, noting that the body was found in Shahnaz's room in a large bag near the tin-partition wall. Upon unzipping the bag, the witnesses discovered the lifeless body of Nazmul inside.

Mr. Rana further points out that the cause of death was asphyxia due to strangulation. Mr. Rana argues that the prosecution's version of events is corroborated by the confessional statements of both accused persons and supported by the testimonies of PW1, PW2, PW3, PW4, and PW6, as well as other circumstantial evidence. He contends that the prosecution has proven the case beyond all reasonable doubt.

Conversely, Mr. Md. Hafizur Rahman Khan, the learned defence counsel, raises concerns regarding the involuntariness of the confessional statements. He argues that the confessions were not recorded at the free will of the accused persons and that the provisions of Sections 164 and 364 Cr.P.C. were not properly followed by the recording magistrate, PW8. Specifically, he points out that the magistrate failed to issue a certificate under her own hand, as required by law, rendering the confessions inadmissible and unreliable.

Mr. Khan further contends that there were no eyewitnesses to the incident, and the confessional statements were made after 24 hours of police custody, without proper judicial authorization. He argues that, under these circumstances, the confessions should be excluded. To support his argument, he cites *The State v. Babul Miah*, reported in 63 DLR (AD) 10, and *Md. Rezaul Karim Vs. The State*, reported in 23 BLD (2003) 255. He also asserts that the confessions are exculpatory in nature, and therefore the conviction cannot be based solely on these statements, citing *Abu Jamal Vs. The State*, reported in 51 DLR 57.

Regarding the absconding convict, Md. Alamgir Hossain, Mr. Khan refers to the case of *Alamgir Hossain Vs. State*, reported in 22 BLC (AD) 155, arguing that absconding alone does not serve as conclusive evidence of guilt or a guilty conscience, and should not be used to corroborate the confessions of other co-accused in support of a conviction.

Under the facts and circumstances a thorough evaluation of testimonies of the prosecution witnesses is necessary for proper adjudication of the Death Reference and the connected Jail Appeal:

PW1 (Md. Nazim Uddin), as informant, deposes that the accused Shahnaz and Alamgir Hossain were friends. At the time of the incident, he was residing in a rented house in the Kaliakoir area, where his son also lived with him. The accused, though from different areas, were living as tenants near his house and worked as assistants to masons under other contractors. The occurrence took place between 5 PM on 01.02.2014 and 3 PM on the following day in the rented house of the accused in Purbo Andermanik, owned by Muslem. Accused Alamgir had proposed to his daughter, Akhi Akter, but she rejected the proposal, which angered him. Alamgir used to visit his house frequently. On the day of the incident, his son went missing in the evening. He informed the neighbors, and they began searching for him. Eventually, they found Nazmul's dead body inside a large bag in the rented room of accused Shahnaz; upon unzipping the bag, his dead body was discovered. The accused had killed his son and concealed his body in the bag.

During cross-examination on behalf of accused Shahnaz, PW1 stated that he had returned home after work and found that his son was missing; his daughter had informed him that her brother had been missing since the afternoon. The body was recovered from the house of accused Shahnaz. They lived in an adjacent

rented room, and he denied the suggestion that accused Shahnaz was at the market at the time of the incident. The police arrested Shahnaz from her room. During cross-examination by the defense counsel on behalf of absconding accused Alamgir, PW1 further stated that he did not hear that accused Alamgir had proposed to his daughter. He denied the suggestion that Alamgir was not involved in the incident.

PW2 (Nazma Khatun, mother of the victim) states in her chief statement that the victim, Nazmul, was her son, aged about four years. The accused are Shahnaz and Alamgir, both of whom were known to her and lived as tenants. The incident occurred on 01.02.2014 at the rented house of Muslem Uddin in Purbo Andermanik. Accused Shahnaz is present in the dock. Her husband and she went to work, leaving her son in the care of her daughter at home. In the afternoon, they could not find her son. Upon returning home and not finding him, they began searching. While searching, she discovered her son's body inside a chained bag in the room of accused Shahnaz. She unzipped the bag and retrieved the body. She stated that accused Alamgir and Shahnaz together strangled her son to death and then stuffed the body inside the bag. The police arrested the accused at the place of occurrence, and the body was sent to the morgue for autopsy. She demands justice for the murder of her son.

During cross-examination by accused Shahnaz, PW2 stated that at the time of the incident, they lived in the Kaliakoir police station area as tenants; she was working in a garment factory.

Although she did not directly see them kill her son, who was four years old, she testified that the accused called her son, took him away into the house, and strangled him to death. Her daughter, Akhi, saw Alamgir and Shahnaz taking her son, Nazmul, away. She denied the suggestion that accused Shahnaz was not at the house at the time of the incident and that the accused were not involved.

PW3 (Akhi Akter, sister of the victim) testifies that the victim, Nazmul, was her younger brother. The incident occurred on 01.02.2014 at the house of Muslem in Andermanik, under the Kaliakoir police station. They were tenants in Muslem's house, and the accused, Alamgir and Shahnaz, also lived there. At the time of the incident, she had just been married, and the accused lived next to her. All were tenants in Muslem's house. Accused Alamgir had sought a romantic relationship with her, which she declined, and he often harassed her. She further explains that they are four sisters and one brother; her parents and sisters were at work on that day. Because she rejected Alamgir's proposal, the accused, Alamgir and Shahnaz, reportedly developed hostility toward them, which led to an argument between her mother and accused Shahnaz, with Shahnaz supporting Alamgir. On the day of the incident in the afternoon, her brother Nazmul went missing. He was their only brother and was wearing a gold chain and earrings, which they believed would ward off evil. They began searching for him, and accused Alamgir himself informed the police that a boy had been killed, stating that the body was found inside a sack in Shahnaz's room. Later, the

police, accompanied by Alamgir, went to Shahnaz's room. There, they found that her brother's hands and legs were tied, he had been strangled with a rope around his neck, and was subsequently placed inside a sack. The police recovered the body, prepared an inquest report, and sent it to the morgue. Shahnaz was arrested, and an interrogation was conducted. While accused Shahnaz is present in the dock, Alamgir is not. She also noted that foam was seen coming out of her brother's mouth, suggesting that something might have been forced upon him. She testified that the accused persons killed her brother and kept him inside the room.

During cross-examination by accused Shahnaz, PW3 states that they lived in separate adjacent rooms, with accused Shahnaz and Alamgir residing side by side and a yard between them, along with other nearby houses. She added that accused Shahnaz used to show affection toward her brother and frequently visited their house, while accused Alamgir had proposed to her romantically. She denies the suggestion that accused Shahnaz was not involved in the offence, as well as the suggestion that accused Shahnaz did not kill her brother. She states that a large crowd gathered at the scene, and when the police arrived, accused Shahnaz attempted to flee but was caught. During cross-examination by absconding accused Alamgir, PW3 states that Alamgir had proposed to her 5-6 days before the incident, and she denies any suggestion that Alamgir was not a tenant or not involved in the incident. She also denies that Alamgir did not know Shahnaz.

PW4 (Alhaj Md. Amirul Islam Linkon, son of the landlord Muslem), in his deposition states that he received a phone call informing him that Nazmul was missing. The informant, Nazimuddin, lived with his family as tenants in their old house. The accused, Shahnaz and Alamgir, were also tenants. Upon hearing the news, he advised them to announce the missing news on the mosque loudspeaker. Later, he went to the house. The body was found inside a sack in the room of accused Shahnaz. The police arrived, recovered the dead body, and prepared an inquest report, in which he put his signature. Nazmul's sister had been proposed to, which led to conflicts. The informant, Nazimuddin, wanted to leave the house. Out of anger, accused Shahnaz and Alamgir killed Nazmul and placed his body in a sack inside the room. Though the police interrogated him, he told them the same thing. Accused Shahnaz confessed to the crime.

During cross-examination by the accused Shahnaz, PW4 states that the incident occurred in their old house. They now live in the new house. No one said that they had seen Nazmul being killed. He cannot say if there was any conflict between the victim's parents and accused Shahnaz. However, he states that there was a dispute regarding a love proposal. This matter was brought to his mother for resolution. Accused Alamgir made a love proposal to Nazmul's sister, which caused conflict. There were arguments with Shahnaz, but he is not sure of the exact reasons for those arguments. He denies the suggestion that at least Shahnaz knows nothing about the incident. All tenants lock their rooms when they leave. He signed the inquest report after reading it. Blood

was coming out from Nazmul's mouth. There were no injuries found on his body. Shahnaz was present at the scene. Accused Alamgir was also there. During cross-examination by the absconding convict Alamgir, PW4 states that there was a dispute over a romantic issue. His mother told him about that. He then told her to evict the tenants. PW4 denies the suggestion that accused Alamgir was not involved in the incident.

PW5 (Alamgir Hossain, a shopkeeper near the place of occurrence), deposes that an announcement was made by the mosque's loudspeaker the next day in the afternoon that the victim was recovered from the room of accused Shahnaz Begum. The accused killed the child, broke his hands and legs, put the body in a bag, and locked it inside Shahnaz's room. Shahnaz was sitting inside, locking the door. The police arrived and entered her room with me. The body of the child, along with the bag, was recovered. The police prepared an inquest report in which he signed. He identified the accused Shahnaz in the dock; he could not recognize the other accused, Alamgir, if present.

During cross-examination, PW5 states that his shop is located at Andermanik Mor. He had seen the child before. He knows the house where he was born. Announcements were made from the mosque the previous day. In the afternoon, everyone was saying the missing child had been found.

PW6 (Sayed Azharul Islam, the investigating officer), in his testimony states that on 01.02.2014, he was serving as the in-

charge of Mouchak outpost under Kaliakoir police station. As per GD No.27 dated 02.02.2014, while he was on duty, he was informed that a dead body was found in a sack inside the rented room of accused Shahnaz. Upon receiving this information, he went to the scene with his team and recovered the dead body, which was identified by the father. An inquest report was prepared. The body had swelling on the head, slight swelling on the face, a slightly open mouth, black marks around the neck, and signs of strangulation. From the scene, he recovered a biscuit-colored polyester cloth bag in which the victim's body was concealed. The arrested accused persons, Alamgir Hossain and Shahnaz, were interrogated and later produced before the court, where both confessed to their crime. Their statements were recorded under section 164 Cr.P.C. before the magistrate. Witness statements were recorded under section 161 Cr.P.C. The post-mortem report was collected. Based on their confessions, investigation, witness statements, and overall analysis, he found a prima facie case against Alamgir Hossain and Shahnaz under sections 302/201/34 of the Penal Code and submitted the charge sheet. Accused Shahnaz is present in the dock, while the accused Alamgir is absent.

During cross-examination by the accused Shahnaz, PW6 states that he found evidence of hostilities between the accused and the victim's family. Witnesses stated that Alamgir had proposed to the informant's daughter, Akhi, which led to his anger. Moreover, Shahnaz had an altercation with the wife of the landlord. When the victim's mother sided with the landlord's

wife, it created enmity between Shahnaz and the victim's mother. The victim's body was recovered from Shahnaz's room, packed in a sack. He denies the suggestion that he forced the accused into confessing through physical assault. He also denies the suggestion that Shahnaz is not involved in the incident.

PW7 (Dr. Tapon Kanti Sarker, who conducted the autopsy), deposes that he found the following injuries:

1. A continuous ligature mark around the neck, approximately half a breadth wide.
2. A bruise over the frontal region of the head, measuring 1 inch by 1 inch.

Upon examination of the scalp, a hematoma was present. The meninges and brain were found to be congested. On deep dissection, the throat muscles at the site of the ligature mark were congested, and most internal organs exhibited signs of congestion. PW7 opined that the cause of death was asphyxia resulting from ligature strangulation, which was ante-mortem and homicidal in nature.

PW8 (Tasnim Zohra), the magistrate who recorded the confessional statements of the accused persons), deposes that she was a Senior Judicial Magistrate and recorded the confessional statements of accused Shahnaz and Alamgir Hossain on 04.02.2014. She allowed four hours-time for both of them to rest before recording their statements. The statements were read over to them, and they acknowledged understanding and signed them. She further deposes that she complied with the

provisions of sections 164 and 364 Cr.P.C., completed the necessary forms, and signed them. During cross-examination, PW8 denies the suggestion that the confessions were obtained through physical torture.

The defence counsel contends that all the incriminating parts of the confessions were not explicitly presented to the accused during the examination under section 342 Cr.P.C., rendering the examination under section 342 defective. Section 342 of the Cr.P.C. empowers the court to examine the accused after the prosecution's evidence has been presented, allowing the accused to explain any circumstances appearing in the evidence against them. This examination is a critical part of the trial process, ensuring that the accused has an opportunity to respond to the evidence presented and to offer an explanation. Failure to properly conduct this examination can lead to a defective trial process.

It is true that the duty of the court is to put to the accused, during the examination under section 342 Cr.P.C., in a clear and comprehensible manner, the material circumstances appearing against the accused in evidence to enable him or her to offer an explanation. What is essential is that the accused is given a fair opportunity to explain the substance of the allegations and the evidence against him/her.

In the present case, it appears that all the allegations, key incriminating evidence of PWs and the incriminating part of the

confessions were brought to the notice of the accused Shahnaz present in court during her examination under Section 342 Cr.P.C. She had the opportunity to deny, explain, or comment on the evidence put to her.

Although it is not the purpose of section 342 Cr. P.C to provide a detailed analysis of all the evidence but to ensure that the accused understands the material allegations and has a fair chance to respond. The test is whether the accused was misled or prejudiced. In this case all the allegation and incriminating evidence including the incriminating parts of confessional statements have been brought to the attention of the accused Shahnaz present in court. But she did not raise any objections at the time of such examination or during trial, nor is there any indication that omission as alleged by the defence Counsel, has affected the fairness of the proceedings or caused a prejudice to her.

Besides, since the accused Shahnaz was present at the time of taking evidence of the prosecution witnesses and heard the testimonies of PWs, she got the opportunity to address the core allegations and evidence during her examination under section 342 Cr.P.C. and therefore it did not prejudice her in any manner. Thus, we find that the examination of the accused Shahnaz under section 342 Cr.P.C was done properly. In this connection reliance can be placed in the case of *Munir Hossain alias Suruj vs. the State* reported in *1BLC (AD) 82*.

Admittedly, there is no eye witness of this rootless occurrence. The date, time place and manner of occurrence of this unfortunate incident are almost unchallenged. No discrepancy is found from the testimonies of the prosecution witnesses. Rather, all the witnesses have categorically made depositions in support of the prosecution. Besides, both the accused Alamgir Hossain and Shahnaz made a confessional statements to the learned magistrate, PW8 who recorded the same in accordance with section 164 Cr,P.C.

The confessional statement of the accused Most. Shahnaz which was recorded by the PW8 on 04.02.2014 is reproduced below:

“১/২/১৪ শনিবার ৫টার দিকে আলমগীর নাজমুলকে সিগারেট আনতে পাঠায়। নাজমুল দোকানে সেন্টারফুট ও খায়। খেয়ে অনেকক্ষন দাড়িয়েও ছিল। সিগারেট নিয়ে বাসায় এসে টিভি দেখছিল। ও বোনের হাতে কামর দিয়ে ঘর থেকে বের হয়ে এসে আলমগীরের ঘরে যায় সিগারেট দিতে। আমি গিয়ে দেখি আলমগীর ওকে বিস্কুট খেতে দিয়েছে। হাতে আধা খাওয়া বিস্কুট। আমি বের হয়ে এসে আমার ঘরের কাজ করছিলাম। আমি নাজমুলের রত্না ডাক শুনে আলমগীরের ঘরে গিয়ে দেখি দরজা লাগানো। দরজা ধাক্কালে কিছুক্ষণ পর দরজা খুলে দেয় নাজমুলকে চৌকির নিচে রেখে। আমি নাজমুলকে দেখে বলি কি করলি। সে আমাকে বলে আমি পাশের রুমে আছি বললে ফাসিয়ে দিবে। এরপর আলমগীর দড়ি নাজমুলের গলায় পেচিয়ে টেনে ধরে। সে চিৎকার দিলে আমাকে মুখ চেপে ধরতে বলে। আমি মুখ চেপে ধরতে গেলে আমার হাতে কামড় দেয়। আমি হাত সরিয়ে একটি বালিশ দিলে আলমগীর বালিশ দিয়ে মুখ চেপে ধরে। নাজমুল মারা গেলে ঐ ভাবে চৌকির নিচে ঢুকিয়ে রাখে। রাত ৭/৮ টায় ব্যাগে ভরে ফেলে দিয়ে আসতে চায়। পরে ব্যাগ এনে আমার ঘরে রাখে। ওর ঘর থেকে কোষল এনে ঢেকে রাখে। এই আমার জবানবন্দি।”

The confessional statement of the accused Alamgir Hossain that was recorded on 04.02.2014 by the PW8 is reproduced below:

“১/২/১৪ তারিখ শনিবার বাসায় গিয়ে সকাল ১০টার দিকে ঘুম দেই রুমে। বিকাল ৫টার দিকে উঠি। শাহনাজ আমার পাশের রুমে ভাড়া থাকে। উঠে দেখি শাহনাজ ছাড়া কেউ বাড়ীতে নাই। সবাই কাজে গেছে। নাজমুল চিৎকার দিলে আমি চিৎকার শনে শাহনাজের রুমে যাই। গিয়ে দেখি শাহনাজ এক হাত দিয়ে নাজমুলের মুখ চেপে ধরে রেখেছে। আরেক হাত দিয়ে গলা চিপে ধরে রেখেছে। শাহনাজ আমাকে বলে ঘটনা কাউকে বললে আমাকে ফাসিয়ে দিবে। আমি শাহনাজকে বলি তুমি একাজ কিভাবে করলা। শাহনাজ আমাকে বলে বিষ খাইয়ে গলাটিপে নাজমুলকে মেরে ফেলেছে। আমাকে নাজমুলের হাত পা ধরতে বলে। এরপর আমি ও শাহনাজ নাজমুলের হাত পা ধরে বাজারের ব্যাগে ঢুকাই। শাহনাজ বলে রিক্সায় করে নিয়ে দূরে গিয়ে ফেলে দিতে। এরপর বাজারের ব্যাগ থেকে বের করে রেক্সিনের ব্যাগ এর মধ্যে নাজমুল এর লাশ ও কাথা বালিশ ঢুকাই। লাশ শাহনাজের ঘরেই রাখা হয়। এরপর আমি আমার বড় ভাইয়ের বাসায় গিয়ে ঘটনা জানাই। লোকজন নিয়ে গিয়ে শাহনাজকে ধরিয়ে দেই। এই আমার জবানবন্দি।”

The defence counsel has raised the issue that the confessional statements were taken after 24 hours of police custody, rendering their admissibility and reliability unlawful, as an accused cannot remain in police custody beyond 24 hours without being presented before a magistrate, as per Section 61 Cr.P.C. Any detention beyond this period must be authorized by a magistrate. If the confessions are recorded after 24 hours in police custody without proper judicial authorization, the confessional statements may be deemed involuntary and inadmissible as evidence.

Upon careful examination of the case diary (CD) and relevant materials, it appears that the accused persons were arrested on 03.02.2014 at 11:05 AM and were produced before the learned Magistrate on 04.02.2014 at 10:00 AM. This productions were well within the 24-hour statutory period as mandated under Section 61 Cr.P.C.. Therefore, there was no violation of the legal requirement regarding the timely production of the accused persons before the Magistrate.

It is true that the recording Magistrate, while documenting the confessional statements, erroneously recorded the date of arrest as 02.02.2014 instead of 03.02.2014. However, such an inadvertent error does not vitiate the prosecution case or affect the voluntariness of the confessional statements. The accused Most. Shahnaz herself, in her retraction petition, confirmed that her arrest took place on 03.02.2014, which corroborates the official arrest record and supports the prosecution's position. Furthermore, at the time of recording the confessions, the Magistrate duly cautioned the accused persons, ensured that they are making the statements voluntarily, and afforded them adequate reflection time as per Section 164 Cr.P.C.. Notably, the accused persons did not raise any allegation of torture, coercion, or inducement before the Magistrate, either at the time of recording their confessions or thereafter. This further strengthens the presumption that the statements were made voluntarily.

Even assuming arguendo that there was a slight irregularity or minimal delay, which is denied by the prosecution, the law is

well-settled that a minor procedural lapse, absence of proof of prejudice or coercion, does not by itself render a confession inadmissible. In the present case, no prejudice has been caused to the accused persons, and their voluntary and informed confessional statements remain admissible and reliable. Therefore, the production of the accused persons within the lawful period stands fully justified, and the defence's objections in this regard are without any merit.

In this case, the motive underlying the crime appears to stem from a combination of personal grievances and a desire for retaliation. Testimonies from PW1, PW3, and PW4 indicate that the accused, Alamgir, had proposed a romantic relationship to the victim's sister, Akhi (PW3), which was rejected. This rejection reportedly led to disputes and a sense of humiliation for Alamgir. Additionally, the victim's family intended to evict the accused-tenants from their rented premises, further escalating tensions between the parties. These factors suggest that Alamgir's actions may have been driven by a desire to revenge.

While proving motive is not mandatory in a murder case, it becomes significant when the evidence is primarily circumstantial. In such instances, establishing a plausible motive can strengthen the prosecution's case by providing context to the accused's actions. Therefore, the combination of Alamgir's unreciprocated romantic advances and the familial disputes over eviction provides a coherent narrative that may have contributed to the tragic outcome. This context is crucial for understanding

the dynamics leading to the crime and assessing the culpability of the accused persons.

Besides PW3 Akhi Akter, sister of the victim deposes that- “আসামী আলমগীর আমার সাথে প্রেমের সম্পর্ক করতে চেয়েছিল। আমি রাজি হই নাই। আলমগীর আমাকে প্রায়শঃ বিরক্ত করতে। আমরা চার বোন, এক ভাই। আমার মা-বাবা, বোন duty-তে যায়। আমি প্রেমের প্রস্তাবে রাজি না হওয়ায়, আসামী আলমগীর শাহনাজ আমাদের প্রতি আক্রোশ সৃষ্টি হয়। এই বিষয় নিয়ে আসামী শাহনাজের সাথে আমার মায়ের কথা কাটাকাটি হয়। আসামী শাহনাজ আলমগীরের পক্ষ নেয়। ঘটনার দিন বিকেল বেলা থেকে আমার ভাই নাজমুলকে খুঁজে পাওয়া যাচ্ছিল না।” PW4 in his cross examination states that – “তবে প্রেমের বিষয় নিয়ে বিরোধ ছিল। আমার মায়ের কাছে বিচার দিয়েছিল। আসামী আলমগীর, নাজমুলের বোনকে প্রেমের প্রস্তাব দেয়। সেই কারণে বিরোধ সৃষ্টি হয়। শাহনাজের সাথে এজাহারকারীর ঝগড়া হতো। তবে কি নিয়ে ঝগড়া হতো এত কিছু জানতাম না।” This testimonies confirmed the ongoing conflict between the accuseds and victim’s family, providing a clear desire to retaliate or revenge as a motive.

PW3 deposes clearly that- “আসামী শাহনাজ ভাইকে আদর করতে” and during the relevant time of occurrence the area was lonely as the tenants were out of their houses for their respective works. This affection and circumstance of the location provided them with opportunity to commit the crime. This motive establishes that the crime was not accidental or impulsive but rooted in hostility.

In this case, the evidence strongly supports the presence of *mens rea* (guilty mind) for both accused persons, Alamgir and Shahnaz, indicating deliberate intent to commit the crime.

Firstly, the act of luring the 4-year-old victim, Nazmul, into the room, followed by his murder by strangulation and subsequent concealment of the body in a bag, suggests careful planning and deliberate intention. The violent nature of the killing, including the deliberate strangulation of a defenseless child and the breaking of his limbs, indicates an intent to harm and kill rather than any accidental or negligent conduct. Furthermore, the act of locking the room after the crime and placing the body in a polythene bag inside Shahnaz's room demonstrates a clear intention to obstruct justice and avoid detection. These actions collectively establish a "common intention" between the accused persons to commit the murder.

From the testimonies of PW1, PW2, PW3, PW4, and PW6, alongside the circumstances and evidence, it is evident that the acts were carried out with malice, stemming from personal grievances and anger against the victim's family. The common intention to commit the murder can be inferred from the surrounding facts, circumstances, and the conduct of the accused. Therefore, the prosecution has successfully established that both accused persons acted with the necessary intent to commit the offence, and their actions were in furtherance of a common intention to murder the victim.

The confessions of the accused persons, Alamgir and Shahnaz, were recorded by Magistrate PW8 in accordance with Section 164 Cr.P.C.. We have meticulously examined the confessional statement of the accused persons and found that the magistrate

ensured that both accused persons were informed of their right to remain silent and the potential use of their statements in court. The confessions were read over to them, and they put their signatures, indicating their voluntary participation. Magistrate, PW8 put her signature under the printed certificate. The questioning indicates that the magistrate ensured the confession was made voluntarily and without coercion and duress and or undue influence.

Moreover, minor procedural lapses, such as the absence of a signature or certificate in a specific place, do not invalidate a confession if it is otherwise recorded in substantial compliance with the law, as established in the case of *State vs. Abul Kashem and others (13 SCOB [2020] HCD 103)*. Additionally, Section 80 of the Evidence Act presumes the regularity of judicial acts performed by a magistrate, including the recording of confessional statements. Therefore, despite minor procedural omissions, the confessions remain admissible and reliable.

In the present case, the confessional statements made by both accused persons, Shahnaz and Alamgir are pivotal in establishing their involvement in the crime. Each accused admitted to their own role while attempting to shift greater blame onto the other. Such cross-implicating confessions suggest mutual participation and a shared intent, thereby rendering the statements inculpatory in nature. Under Section 30 of the Evidence Act, 1872, when multiple individuals are jointly tried for the same offence, the confession of one accused that implicates both themselves and

others may be taken into consideration against the co-accused. These confessions serve to corroborate other evidence and to lend assurance to the overall case against both accused persons.

Both the confessional statements of the accused Shahnaz and Alamgir strengthen the case as disclosed their participation as well as the way of killing. The confessional statements are corroborated by multiple pieces of evidence:

1. Testimonies of PW1, PW2, PW3, and PW5, which align with the details provided in the confessions.
2. Medical findings by PW7, Dr. Tapon Kanti Sarker, who confirmed that the victim's death resulted from ligature strangulation, consistent with the method described in the confessions.
3. The recovery of the victim's body from Shahnaz's room, as documented in the inquest report, further substantiates the confessional accounts.

During the examination of accused Shahnaz under Section 342 Cr.P.C. on 26.04.2018, her attention was specifically drawn to the confessional statement she had previously made. Notably, she did not raise any allegations of police torture, coercion, or undue influence at that time. This aligns with the precedent set in *Khalil Mia (Condemned Prisoner) vs. State*, reported in 4 BLD (AD) 223, where the Appellate Division held that if an accused does not object to the confession when it is brought to their

notice under Section 342 Cr.P.C., the confession can be relied upon as voluntary and admissible evidence.

The records indicate that accused Shahnaz filed a petition for retraction of her confessional statement on 20.06.2017, more than three years after the original confession made on 04.02.2014. In this context, the case of *Md. Shahidul Islam @ Shahid vs. The State*, reported in 8 BLT (HCD) 150, is instructive. The court in that case observed that a delayed retraction, especially one made more than two months after the confession, casts doubt on claims of coercion or duress. This principle resonates with the present case, where the retraction was unreasonably delayed by over three years, thereby undermining the credibility of the coercion claim.

A thorough analysis of the confessional statements reveals detailed accounts of the murder of a defenseless four-year-old victim. The confessions unequivocally establish that the victim was killed by the accused persons. These confessions are corroborated by the testimony of PW7, Dr. Tapon Kanti Sarker, who conducted the post-mortem examination and opined that the victim's death resulted from hemorrhage and shock due to asphyxia from ligature strangulation, which was antemortem and homicidal in nature. The recovery of the dead body from the room of accused Shahnaz and the inquest report supports the confessional statements. Furthermore, the confessions are consistent with the testimonies of prosecution witnesses, forming an unbroken chain of circumstantial evidence. As such, the

confessions are found to be lawful, voluntary, truthful, and inculpatory in nature.

Based on the confessions and the corroborating evidence on record, we find the confessions of both accused persons to be voluntary and truthful. In the case of *Ali Asgar and Another vs. The State*, reported in 1986 BLD 436, it was held that a voluntary and truthful confession can form the sole basis for the conviction of its maker, irrespective of whether it has been retracted.

Notably, these statements were made immediately after the occurrence, enhancing their credibility compared to statements given after prolonged interrogation. Both confessions were recorded by Magistrate PW8, and the testimonies discussed above align consistently. This consistency indicates that the confessional statements were made voluntarily, without any external compulsion. Consequently, both confessional statements stand as truthful and voluntary.

The motive, the confessional statements, recovery the body and corroborative witnesses accounts form a strong circumstantial evidence chain together, they establish a clear narrative of both the accuseds' guilt and their active role in committing the crime and concealing the dead body. On a close assessment we find that the confessional statements of both the accuseds, testimonies of the prosecution witnesses supported the event in terms of commission of killing of victim by both the accuseds. Further, the defence could not offer any believable explanation for

Alamgir's prolonged absconion, nor any credible refutation of the detailed confessional accounts of Shahnaz. His absence during trial, and the failure to provide any counter-narrative, weigh heavily against Alamgir.

In view of the above discussion we find that the prosecution has successfully proven the charge against both the accused persons beyond all reasonable doubt. Accordingly, we do find no reason to interfere with trial court's finding of guilt of the accused Alamgir Hossain and Most. Shahnaz under sections 302/34 of the Cr.P.C.. Therefore, the conviction to both the accuseds are hereby upheld. Both the accused have no prior record of criminal activity and they are of tender age, lacks of full maturity and judgment at the time of committing the offence. It would be just if the sentences of death awarded to them by the trial court is commuted to for life.

In the result:

1. The Death Reference No.65 of 2018, in respect of the convicts- (1) Md. Alamgir Hossain son of late Kuddus Ali, Village-Buiddamara Notun Bazar, Police Station & District- Narsingdi and (2) Most. Shahnaz, wife of- Yakub Ali, village-Dorjipara, police station-Birol, District- Dinajpur, present address both of them: East Andermanik, Muslem's House, P.S. Kaliakoir, District-Gazipur, is hereby rejected and the connected Jail Appeal No.199 of 2018 filed by accused Shahnaz is dismissed. Sentences for both the convicts are modified as under:

The sentences of death as imposed upon both the convicts under Section 302/34 of Penal Code by the learned Judge of Additional District Judge, 2nd Court, Gazipur in Sessions Case no.727 of 2014 are **commuted to imprisonment for life** with a fine of Tk.10,000 (ten thousand) each in default to suffer rigorous imprisonment for 2(two) months more;

2. The authority concerned is directed to secure arrest of the absconding convict- Md. Alamgir Hossain son of late Kuddus Ali to compel him to serve the sentence as awarded upon him;
3. The authorities concerned, including the jail authority are directed to transfer the condemned prisoner Most. Shahnaz, wife of- Yakub Ali, from the condemned cell to the general prison at once; and
4. The convicts will get the benefit of Section 35A Cr.P.C. and other remissions as permissible under the Jail Code.

The Office is directed to send down the LC records together with a copy of this judgment at once.

(Justice Md. Toufiq Inam)

J.B.M. Hassan, J:

I agree.

(Justice J.B.M. Hassan)