

District: Dhaka.
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. 13 of 2018.

The State

-Versus-

Md. Khalil

----- Condemned-Prisoner.

Mr. Mohammad Osman Chowdhury, 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. Obayed Ahmed, Advocate,

--- For the Condemned-Prisoner.

With

Criminal Appeal No.1409 of 2018.

With

Jail Appeal No. 59 of 2018.

Md. Khalil.

..... Convict-Prisoner-Appellant.

-Versus-

The State

.....Respondent.

Mr. Obayed Ahmed, Advocate,

--- For the Convict-Prisoner-Appellant.

With

Criminal Appeal No.2491 of 2018.

With

Jail Appeal No.87 of 2018.

Md. Akter alias Adhaira alias Atahar alias Adal.
..... Convict-Appellant.

-Versus-

The StateRespondent.
Mr. Md. Mizanur Rahman, Advocate,
--- For the Convict- Appellant.

With

Criminal Appeal No.13860 of 2018.

(Arising out of Jail Appeal No. 78 of 2018)

Md. Rustam Ali Hawlader alias Rafiqul Islam Akon alias
Hashem,

..... Convict-Appellant.

-Versus-

The StateRespondent.
Mr. Md. Mansur Habib, Advocate with
--- For the Convict- Appellant.

With

Criminal Appeal No.5779 of 2018.

Md. Md. Sobuj alias Sapon.

..... Convict-Appellant.

-Versus-

The StateRespondent.
Mr. Gazi Towhidul Islam, Advocate,
--- For the Convict- Appellant.

With

Criminal Appeal No.2291 of 2018.

Md. Moti alias Jitu.

..... Convict-appellant.

-Versus-

The StateRespondent.
Mr. Gazi Towhidul Islam, Advocate,
--- For the Convict- Appellant.

With

Criminal Appeal No.1236 of 2020.

With

Jail Appeal No. 60 of 2018.

Md. Habib alias Habibur Rahman,
..... Convict-Appellant.

-Versus-

The StateRespondent.
Mr. Gazi Towhidul Islam, Advocate,
--- For the Convict- Appellant.

With

Criminal Appeal No.4348 of 2021.

With

Jail Appeal No.79 of 2018.

Md. Jalal Uddin alias Jalal
..... Convict-Appellant.

-Versus-

The StateRespondent.
Mr. Md. Iqbal Hossain Chowdhury, Advocate,
--- For the Convict- Appellant.

Mr. Mohammad Osman Chowdhury, 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: 24.10.2024, 27.10.2024, 28.10.2024,
03.11.2024, 05.11.2024, 11.11.2024, 12.11.2024,
19.11.2024.**

and

Judgment delivered on: 20.11.2024.

Md. Toufiq Inam, J:

The Death Reference No.13 of 2018, Criminal Appeals and the Jail Appeals numbered above have arisen out of the judgment and order of conviction and sentence dated 01.02.2018 passed by the learned Special Sessions Judge and the Judge of Druto Bichar Tribunal No.2 Dhaka, in Special Sessions Case No. 23 of 2014

arising out of the Jatrabari Police Station Case No.42 dated 13.09.2013 corresponding to G.R. No. 811 of 2013 convicting all the appellants and sentencing accused Md. Khalil to death and the other appellants to suffer imprisonment for life and to pay a fine of Tk. 20,000 (twenty thousand) each under section 396 of the Penal Code for murdering the victim, Bakhtiar during dacoity.

The Death Reference and all the Appeals have been heard together and are being disposed of by this consolidated judgment.

Brief version of the prosecution case is that on 13.09.2013, Zahid Al Latif alias Khoka (PW1), lodged a First Information Report (FIR) with the Jatrabari Police Station under Section 396 of the Penal Code alleaging that at approximately 1:00 a.m. on the same day, Zahid Al Latif went to bed while his wife, Shamsun Nahar Ferdoushi (PW2), and son, Bokhtiar Md. Latif (victim), were watching television in the bedroom. Between 3:10 a.m. and 3:15 a.m., a group of 7-8 dacoits forcibly entered the house by breaking the window grills and entered the bedroom. Bokhtiar saw the intruders and raised hue and cry, at which point one of the dacoits shot him with a firearm, causing him to collapse. Hearing the commotion and the sound of gunfire, the informant woke up. One of the dacoits tied his hands and legs. The dacoits proceeded to break two steel almirahs (cupboards) and robbed several gold items, including a gold chain (0.75 bhor), a pair of gold earrings (1 bhor), a V-shaped gold necklace (1 bhor). The

dacoits then entered the room of the informant's sister-in-law (bhabi) and stole a gold chain (0.75 bhor) and two gold chains (0.50 bhor each). The robbery took place between 3:10 a.m. and 3:30 a.m. Bokhtiar was immediately taken to the emergency department of Dhaka Medical College Hospital, where the on-duty doctor declared him dead. The dacoits escaped with gold ornaments worth approximately Tk. 1,80,000.

On the basis of the said FIR, the Officer-In-Charge of Jatrabari Police Station started Jatrabari Police Station Case No. 42 dated 13.09.2013 against 7/8 unknown accused persons under section 396 of the Penal Code.

Sub-Inspector-Md. Sobahan Sharif and constable 6539-Md. Monzil conducted the inquest of the dead body of the deceased Bokhtiar and prepared an inquest report on 13.09.2013 at 07.15 hours. Dr. Sohel Mahmud (PW25) conducted the post mortem of the dead body of the victim in the Forensic Medicine Department of Dhaka Medical College, Dhaka on 13.09.2013.

During investigation of the case accused appellants Khalil, Akter, Jalal, Rustom and Suboj alias Sapon were arrested by the police on 26.10.2013 and they were produced to the learned Magistrate. The accused appellant Habib was arrested on 27.10.2013; while the accused appellant Moti alias Jitu was arrested on 23.03.2014 in connection with the case. The police during investigation recovered a revolver from the possession the appellant Khalil and four bullets from the accused appellant Akter. In due course, accused appellant Akter, Jalal, Habib, Moti

alias Jitu made confessional statements to the concerned magistrates (PW 22 and PW23) who recorded the same under section 164 Cr.P.C.

However, after investigation the police submitted the charge sheet against the 7 accuseds-appellants being Charge Sheet No.179 dated 13.04.2014 under sections 396/412 of the Penal Code.

Ultimately the case was transferred to the learned Metropolitan Session Judge Dhaka for trial, where it was registered as Metro Sessions Case No. 4706 of 2014. The case record was then transferred to the Druto Bichar Tribunal No.2, Dhaka wherein it was numbered as Special Sessions Case No. 23 of 2014. The court framed charge against the accused appellants under sections 396/412/34 of the Penal Code. The charges were read over to them and the accuseds pleaded not guilty.

In course of trial, the prosecution examined as many as 28 witnesses in their favour; while the defence examined none. The defence version of the event, as it transpires from the trend of cross examination, is that the accuseds were innocent and had been falsely implicated in the case.

After hearing both the prosecution and the defence and on appraisal of the evidence, the Tribunal by the impugned judgment found the appellants guilty and sentenced to suffer death penalty to the accused Khalil and imprisonment for life to the rest accused appellants.

Being aggrieved by and dissatisfied with the impugned judgment and order of conviction and sentences, the convict appellants have preferred the present appeals. Since the tribunal has awarded capital punishment of death to the accused appellant Khalil, it made a statutory reference under section 374 Cr.P.C. to this court for confirmation of death sentence imposed upon him.

Mr. Mohammad Osman Chowdhury, the learned Deputy Attorney General, appearing on behalf of the State, makes arguments in support of upholding the conviction and sentence awarded by the tribunal. Conversely, the learned advocates Mr. Gazi Towhidul Islam, Mr. Obayed Ahmed, Mr. Mansur Habib, and Mr. Md. Iqbal Hossain Chowdhury, representing their respective appellants seek for an order of acquittal.

Mr. Obayed Ahmed, learned Advocate for the condemned prisoner-Md. Khalil (in Criminal Appeal No. 1409 of 2018, arising from Jail Appeal No. 59 of 2018), argues that no Test Identification Parade (TIP) was conducted to identify the accuseds. He contends that in the absence of TIP, the prosecution's case of murder during dacoity, under Section 396 of the Penal Code, cannot be sustained. He points out that none of the five eyewitnesses (PW1, PW2, PW3, PW4, and PW12) identified the accuseds. The only incriminating material against Khalil was the confessional statements of co-convicts- Md. Akter, Md. Moti alias Jitu, Md. Habibur Rahman, and Md. Jalal Uddin, which implicated Khalil. However, Mr. Ahmed argues that these statements could not form the sole basis of non-

confessing convict-Khalil's conviction without corroborative evidence.

He further goes on to argue that even if Khalil was present with a firearm during the dacoity, his alleged shooting on the victim, Bakhtiar, was in self-defence. According to him, the victim grappled Khalil from behind, leaving him no choice but to fire, which negates any intention to kill.

Mr. Gazi Towhidul Islam, appearing for appellants Md. Akter (in Criminal Appeal No. 2491 of 2018), Md. Habibur Rahman (in Criminal Appeal No. 1236 of 2020), and others, stresses that TIP is essential for identification of the accuseds in a dacoity case. He cites a case reported in *7 BLC (2002), page-480*, to argue that the prosecution failed to hold a TIP, resulting in doubts about the identification of the real perpetrators. He also contends that since the prosecution has failed to establish the appellants' recognition through a TIP, the benefit of the doubt should be extended to them.

Mr. Islam further submits that the confessional statements of the co-convicts were exculpatory in nature and procured under coercion and duress, making them neither true nor voluntary. Relying on the case reported in *14 BLT (HCD) 2006, page-395 (Alamgir v. State)*, he argues that confessions of co-accused cannot be the sole basis of conviction without independent corroborative evidence. He highlights that in cases, such as case reported in *42 DLR (AD) 186*, courts have held that confessions

must be corroborated by credible evidence and recorded in adherence to the procedural safeguards.

Next, Mr. Islam argues that past criminal records should not overshadow the assessment of the present case, as justice should focus on the current offence, especially given the prevailing socio-economic conditions.

Mr. Iqbal Hossain Chowdhury, representing appellant, Md. Jalal (in Criminal Appeal No. 4348 of 2021), argues that no TIP was conducted, and no prosecution witness identified Jalal in court. He submits that Jalal's alleged role was limited to purchasing an "iron rod" for breaking a lock, and he did not actively participate in the alleged dacoity. Considering Jalal's nine years in custody, Mr. Chowdhury prays for a commutation of his sentence if acquittal is not decided.

Mr. Mansur Habib, learned Advocate appearing for appellant Rustom Ali (in Criminal Appeal No. 13860 of 2018), at the very outset, adopts the arguments advanced by the other learned defence advocates. He also implores for commutation of Rostom's sentence in light of his prolonged custody.

Mr. Mohammad Osman Chowdhury, learned Deputy Attorney General, appearing with Assistant Attorney Generals- Mrs. Ayasha Akhter, Mr. Mir Moniruzzaman, and Mr. Md. Tareq Rahman, argues that the confessional statements of four co-convicts-Md. Akter, Md. Moti alias Jitu, Md. Habibur Rahman, and Md. Jalal Uddin-were consistent, voluntary, and corroborated by the prosecution evidence. He contends that

under Section 30 of the Evidence Act, 1872, these confessions could be used against both the confessing and non-confessing accuseds. He refers to the case reported in *39 DLR (AD) 1987, page-196*, to support the admissibility of confessional statements.

Mr. Chowdhury further submits that all the accused actively participated in the dacoity, and their roles were clearly described in the confessional statements. He argues that any belated retraction of these confessions held no value. Citing the case reported in *59 DLR (2007) HCD, page-227*, he accentuates that retracted confessions, if corroborated by other evidence, remain admissible.

Regarding the absence of TIP, Mr. Chowdhury submits that it was superfluous, as PW1 and PW2 had the opportunity to see the accuseds immediately after their arrest. He cites the case reported in *19 DLR (1967) 662* to argue that TIP is a discretionary device of the prosecution and not mandatory if the accuseds could be identified through other means.

Additionally, he argues that the recovery of robbed gold ornaments from appellant-Rustom's possession created a presumption of guilt under section 114(a) of the Evidence Act, for which no plausible explanation was provided. Relying upon the case of *Salauddin v The State reported in 32 DLR 227* wherein it was held that accused brought out robbed items from place known only by him -is strong circumstances to establish that he himself involved in the offence, he added.

To reach a just decision, the evidence and arguments presented by both parties need careful examination.

PW1 (Zahid Al Latif), the informant deposes in his testimony that the location of the incident was my bedroom. On the date of the incident, I went to bed at night. My wife, Shamsunnahar Ferdousi, was watching television in our bedroom. Our only child, Bakhtiar Md. Latif, approximately 20 years old, came from the adjacent room to our bedroom and sat with his mother to watch television. Suddenly, hearing a commotion and gunshots, I woke up from sleep. When I got up, I saw my son lying on the floor of the bedroom, writhing in pain, and my wife was screaming that my son had been shot. I rushed to my son and saw 4-5 people in the room with their faces covered. One of them held a knife to my chest while a revolver was tucked into his waistband. His height was approximately 5 feet 5 inches. He was constantly using foul language and instructed another to tie my hands and legs. One of them tied me with my hands behind my back and also tied my wife with her scarf in the same manner. Hearing our commotion, our maid, Rozina, came from my mother's room, located in the adjacent room, to check what was happening. They brought her inside the room and detained her. The intruders repeatedly demanded money and the keys to the cupboard. Taking the key from my wife, they opened a cupboard on the western side of the room and ransacked it, pulling out all the clothes and belongings. They opened the drawers and took a gold ball chain weighing approximately .75 bhoris, two gold earrings weighing around 1 bhoris, and a "V"-

shaped gold chain weighing approximately 1 bhorī. One of the dacoits pocketed these items from the drawer. Failing to obtain keys to the other cupboards, one of them ordered to break them open. Two dacoits then started breaking the two cupboards on the eastern side of the room using iron rods. They managed to break one cupboard and found a gold chain with stones weighing approximately .75 bhorī and two baby chains weighing around .50 bhorī, which another dacoit pocketed. Meanwhile, my wife began crying, saying that our son had died. One of them allowed her to approach my son. I told my wife to check where he was shot since blood was not visible on the surface. When she slightly raised his left hand, we noticed blood underneath. Upon further inspection, she found a bullet wound on his left chest. She screamed, saying our son had been shot in the chest and had died.

PW2 (Samshun Nahar Ferdousi), the mother of the deceased deposes that on the date of the incident, 13.09.2013, between 3:10 AM and 12:30 AM, the incident took place in our single-story house at the aforementioned address. At around 3:10 AM, I was sitting in my bedroom watching a TV series. My husband was sleeping beside me. Our only son, the victim of this case, Bakhtiar Md. Latif, was watching the series and playing games with me. At that moment, 5-6 individuals suddenly entered our room. I and my son Bakhtiar started shouting, asking, "Who are you?" The dacoits were armed with pistols, knives, sharp iron rods, and screwdrivers etc. One of them cut the mosquito net string hung in the room and told us to remain silent. My son got

off the bed, and I followed him. One of the dacoits turned off the TV. When my son grabbed one of the dacoits, the latter shot him in the chest with a pistol in his hand. The bullet hit my son's left chest. I started screaming that my son had been shot. One of the dacoits turned on the room light. My son collapsed to the ground. Another dacoit kept demanding keys and money. They opened a cupboard on the west side of the room and took gold ornaments, including a pair of earrings weighing 1 bhoris, a "V"-shaped chain weighing 1 bhoris, a gold ball chain weighing .75 bhoris, two baby chains weighing .50 bhoris each, and a stone-studded gold chain, totaling approximately 4 bhoris.

PW 2 further states that the dacoits tried breaking into two cupboards on the eastern side but managed to open only one, from which they took more items. They failed to open the other cupboard. By then, my son, lying on the floor, took a final deep breath. When I tried to approach him, the dacoits threatened to shoot and kill me. She identified the accuseds in the dock.

During cross examination on behalf of the convict Khali, PW2 states that while her son grappled one dacoit he shot fire on his left chest twice.

PW3 (Md. Rasel) deposes that three dacoits entered into his room and tied his hands with his old lungi; his wife Champa shouted and then he heard the sounds of gun fire as well as hue and cry from the Khoka uncle's room. He further states that as the faces of the dacoits were under masks he could not recognize them. PW4 Champa also deposes like her husband Md. Rasel, PW3, narrating the event.

PW5 (Syed Razaul Karim), is the seizure list witness who saw the alamots in the house; PW6 Salim Reza Khokon, is a seizure list witness who in his examination in chief states that he went to the place of occurrence and came to learn that the dacoits killed Bakhtira; PW7 Md. Sohel, deposes that he was employed as cashier in the nearby filling station owned by the informant; PW8 Md. Jahangir Alam, PW9 Md. Abul Kalam Azad @ Bhutto were also the employees of the nearby filling station. They rushed to the place of occurrence when the dacoits left the scene.

PW10 Mir Ahsanul Alam, is the brother-in-law of the informant. PW11 Akteruzzaman, is the neighbour of the Informant makes depositions as to what they saw after the event of the dacoity.

PW 12 Rozina, was the maid to the house of the Informant, who saw that the dacoits were under masks at the time of commission of dacoity.

PW13 Shakawat Hossain Mukul, was the neighbor of the Informant; PW14 Md. Lal Chand, is a seizure list witness. In his presence a revolver from the right waist of Khalil and four rounds of ammunition were recovered inside a matchbox located in the pocket of appellant, Akter.

PW15 Md. Solaiman, the landlord of the appellant-Rustom testifies that in his presence two gold chains, exhibits-8, were recovered from Rustom's showcase at his pointing out. He also identifies his signature as exhibit-8/1 in the seizure list; while

PW16 Md. Mojnu Talukder, is also a seizure list witness to the articles recovered from the appellant Rustom's house.

PW17 Md. Sobhan Sarif S.I., is the postmortem witness; while PW18 Abdul Monjil Mia, brought the dead body to the Dhaka Medical College Hospital.

PW19 Md. Golam Rabbani, Sub Inspector of DB, DMP, deposes that on October 26, 2013, while I was serving as a Sub-Inspector of Police at DMP Detective Branch (DB), I was assigned to investigate Jatrabari Police Station Case No. 42 dated 13.09.2013, for the purpose of arresting the unidentified accused persons. On that day, under the leadership of DB AC Jahangir Alam and AC Barkat Ullah Chowdhury, I, along with Police Inspector Yunus Ali, Police Inspector Mezbah Uddin, Police Inspector Shafiquddin, Ashraf, Sub-Inspector Golam Mawla, Constable Alamgir, and Constable Mahbub Hossain, left for a special operation duty in the Dhaka Metropolitan area. At approximately 6:45 PM that day, while stationed at the south side of Mugda Stadium in Maniknagar, we received confidential information that armed criminals were present inside a lane near Ahad Telecom on the north side of Mugda Stadium. Acting on this information, our team, led by the team leader, reached in front of Ahad Telecom at 7:05 PM and apprehended two suspects, (1) Khalil and (2) Akter, who were acting suspiciously. In the presence of witnesses (1) Rajon, (2) Lal Chan, and (3) Al Amin, a body search of the detained accused Khalil revealed a .32 caliber revolver, approximately 6 inches long and manufactured in England, tucked into the right waistband of his

pants. A search of the other accused, Akter Hossain, uncovered 4 rounds of ammunition labeled “.22 caliber” inside a matchbox located in the right pocket of his pants.

PW19 further states that by the orders of the team leader, Jahangir Alam, the recovered firearm was seized by Police Inspector Md. Yunus Ali at 7:15 PM in the presence of the witnesses, who also signed the seizure list. Upon interrogation, the arrested suspects confessed that they had used the firearm on 13.09.2013, during dacoity at the house of one Khoka in the Jatrabari area, where they shot and killed Khoka’s son, Bakhtiar. The suspects further admitted that others involved in the dacoity included Rustom Ali, Khalil, Habib, Sapon, Jalal, Moti, and an individual referred to as Chacha. Among the detained suspects, Khalil, Akter, Rustom Ali, Sapon, and Habib are present in the dock today.

PW20 Md. Jamal Uddin, a ballistic expert who conducted the ballistic deposes that- “আমি পরীক্ষা করে মতামত দেয় যে, প্রাপ্ত ২টা ফায়ার বুলেট প্রাপ্ত আলামত রিভলবার দ্বারা ফায়ার করা হয়েছে।” He identified his opinion and signature thereon.

PW21 Md. Shafiuddin Sheikh, one of the police team members who arrested Khalil and Akter and recovered bullets exhibit-7/2 deposes similarly like the PW19.

PW22 Mr. Md. Nuru Miah, the learned magistrate who recorded the confessional statements of three accused persons namely Md. Akter, Md. Habibur Rahman and Md. Jalal Uddin. In his

examination in chief he confirms that the statements he recorded were found voluntarily given and seem to be true.

PW23 Md. Tosruzzaman, another learned magistrate who recorded the confessional statement of appellant Md. Moti @ Jitu deposes that the confession was given without any fear and it was given voluntary.

PW24 Md. Arfan Ullah, Chief Metropolitan Magistrate who conducted Test Identification Parade (TIP) of the gold chains recovered from the possession of accused Rustom. He states that PW1 and PW2 recognized the two gold chains from similar 20 pieces of gold chains and identified those the robbed articles.

PW25 Dr. Sohel Mahmud, deposes that he had under taken the autopsy of the dead body and found that:

- “I) One fire-arm entry wound on left chest 6" left to midline and 7" below the left clavicle (6th inter costal space).
- II) Abrasion on the left chest 1" below the wound No. 1(1"x $\frac{1}{4}$ ").

On dissection: I) Heart perforated. II) A bullet was recovered from the back of the chest in between the 6th and 7th ribs beneath the skin and handed over the escorted police constable. PW25 opines that the cause of death due to haemorrhage and shock resulting from above mentioned injuries which was antemortem and homicidal in nature.

PW26 Md. Nasir Uddin, sub-inspector and I.O. of the case in his deposition categorically describes about the recovery of bullet shells and other alamots. PW27 Md. Younus Ali, another investigating officer deposes in line of the others.

PW 28 Dr. Mohammad Walid, the elder brother of the informant, testifies that upon hearing the news of the incident, he rushed to the emergency department of Dhaka Medical College Hospital and saw the dead body of the victim and heard about the incident from PW2, the mother of the victim.

When these PWs are cross examined by the defence they remain unshaken and gave identical version as narrated in their respective examinations in chief.

PW2, the victim's mother, is an eyewitness. She identified the accused who fired the fatal shot on her son, Bhaktiar. She states that:"আমার ছেলে একজন ডাকাতকে ধরিয়ে ফেলিলে সে তাহার হাতে থাকা পিস্তল দিয়া আমার ছেলের বুকে গুলি করে। উক্ত গুলি আমার ছেলের বুকের বাম পাশে লাগে"

While PW1, father of the victim stated that – he woke up upon hearing the hue and cry as well as the sound of gunshot and found his son lying on the floor and he also saw 4/5 persons in his room with clothing masks. Of whom one is carrying a revolver in his waist. The condemned prisoner Khalil was arrested by the PW19 and PW21 on 26.10.2013 with a .32 bore (6 chambers) revolver. This testimony of PW2 is supported by PW1, the victim's father, who heard the burst of gunfire and saw the masked dacoits in the room. Accused-Khalil was arrested with a .32-bore revolver, and the ballistic expert (PW20)

confirmed that the recovered revolver was consistent with the fatal injuries.

Now question arises, whether absence of TIP for identifying the perpetrators had affected the prosecution case. All the five eyewitness (PW1, PW2, PW3, PW4, and PW12) stated that the dacoits were wearing clothing masks during the dacoity, making facial identification impossible. Moreover, PW1 and PW2 had seen the accuseds just after their arrest. This diminishes the practicality and necessity of conducting a TIP for identifying the accuseds.

However, we are of the view that if the confessions made by the four accuseds with regard to their involvement in the dacoity and murder of Bakhtiar are found voluntarily given and truthful, those confessions can serve the purpose of identification of the perpetrators. A voluntary confession, supported by corroborative evidence, is sufficient to establish guilt without the need for a TIP.

PW15 and PW16 confirmed the recovery of robbed gold chains from the possession of the accused Rustom. PW24, the Chief Metropolitan Magistrate, conducted a TIP for the recovered gold chains, where PW1 and PW2 identified the robbed items. Evidence shows that recovery of robbed item from appellant-Rustom and identification of the same by the owner (PW1 and PW2) through a TIP.

Furthermore, PW19, PW21, and PW14 testified about the recovery of firearms and bullets from the accused Khalil and

Akter. The ballistic report (PW20) confirmed that the bullets recovered matched with the bullets used in the murder of Bakhtiar. The testimony of the investigating officers and seizure witnesses (PW26, PW27) strongly ties the accused to the crime scene and the murder weapon. It is our view that recovery of weapons and other incriminating materials from the accused's possession provides direct evidence of their involvement.

Now let us consider the confessional statement made by the accused Jalal dated 29.10.2013 recorded by the PW22, which runs as under:

“আমি একদিন কমলাপুর রেলস্টেশনের ৮নং প্ল্যাটফর্মে একা বসে ছিলাম। এই সময় আলমগীর নামে একজনের সাথে আমার পরিচয় হয়। সে আমাকে বাড়ী ভাড়া করে রাখে। এই আলমগীর আমাকে আক্তার, খলিলের সাথে পরিচয় করে দেয়। ওদের মাধ্যমে সবার সাথে পরিচিত হয়। আলমগীর আমাকে লোহার রড আনার জন্য ৬০০/- টাকা প্রদান করলে তা দিয়ে আমি লোহার রড কিনে নিয়ে আসি। ১১/০৯/২০১৩ ইং তারিখ খলিল আমাকে যাত্রাবাড়ী ব্রীজের নিচে আসতে বললে আমি সেখানে যাই। সেখানে খলিল, আক্তার, হাবিব, রুস্তম, স্বপন, ট্রাক ড্রাইভার মতি ও চাচা বলে সবাইকে ডাকি এমন একজন ছিলাম। ডাকাতি করার জন্য যাত্রাবাড়ী ফ্লাই ওভার নীচে ঘটনাস্থলে যাই কিন্তু আমি যে রড কিনেছিলাম তা দিয়ে ঘরের তালা ভাঙা যাবে না বলে ঐ রাতে ফিরে আসি। পরের দিন ১২/০৯/২০১৩ ইং তারিখ পুনরায় ঘটনাস্থলে মিলিত হয়। তখন আমি তালা ভাঙার জন্য মোটা লোহার রড কিনে এনে ছিলাম। ঘটনাস্থলের বাদীর দেওয়ালের পাশে ট্রাক ড্রাইভার মতিকে আমি, খলিল, হাবিব, রুস্তম, স্বপন, আক্তার, চাচা বাড়ীর ওয়াল টপকে তালা ভেঙ্গে ঘরে ঢুকি। যে রুমে আমরা ঢুকেছিলাম সেখানে টেলিভিশন চলছিল। বাড়ীর মালিক তার স্ত্রী ও ছেলে একই রুমে ছিল। আমরা মুসারী খুলতেই তারা জেগে যায়। তারা চিৎকার করতে থাকে। ছেলের পিতাকে ধরে হাবিব ও আক্তার হাত বেঁধে ফেলে।

অতঃপর আলমিরার চাবি নিয়ে ৩/৪ ভরি স্বর্ণালংকার নিয়ে নেয়। পরবর্তীতে আরও দুটি আলমারি ভাংগা হয়। কিন্তু সেখানে কিছু পাওয়া যায়নি। বাড়ীওয়ালার ছেলে খলিলকে জাবরে ধরে ফেলে। খলিল নিজে বাঁচার জন্য বাড়ীওয়ালার ছেলেকে দুটি গুলি করে। ছেলের মা ছেলেকে খাওয়ানোর জন্য পানি চাইলে আজার রুস্তম পানি দিলে রুস্তম ছেলেকে পানি খাওয়ায়। রুস্তম আমাদের জানায় যে, ছেলেটা মারা গেছে। এখানে আর থাকা যাবে না। আমরা দ্রুত গতিতে ঐ ঘটনাস্থল ত্যাগ করে যে যার মত বাড়ীতে চলে আসি। একদিন পরে। কাজের বিনিময়ে আমাকে পাঁচ হাজার টাকা প্রদান করে।”

The confession of the accused Akter dated 03.11.2013 recorded by the PW22 is reproduced below:

“১৩/৯/১৩ ইং তারিখ আমাকে মতি যাত্রাবাড়ী ফ্লাইওভারের নিচে ঘটনাস্থলে নিয়ে যায়। তখন রাত ২.৩০ থেকে ৩.০০ টা ছিল। সেখানে আমরা সবাই উপস্থিত ছিলাম। হাবিব মতি দালাল, জালাল বাকীদের নাম মনে নাই। আমরা সেখানে ডাকাতির উদ্দেশ্যে প্রবেশ করি। বাড়ীর বাইরে ট্রাক অপেক্ষারত ছিল। আমি বাড়ীর বাইরে পাহারা দিছিলাম। অপর দিকে মতি জালাল, হাবিব ও অন্যান্যরা ভিতরে ঢুকে। আমি গুলি করতে দেখি নাই। তারা ভিতরে ডাকাতি করতে গিয়েছিল। ডাকাতির পরে তারা ট্রাক করে যার যার বাড়ীতে চলে যায়। পরবর্তীতে দুই দিন পরে মতি আমাকে মুগদা ডেকে চার হাজার (৪,০০০/=) টাকা ডাকাতি স্বরূপ প্রদান করি। ডাকাতি করে কি কি মালামাল পেয়েছিল তা আমাকে দেখায়নি। আমাকে পাহাড়ায় প্রতিদানে সামান্য টাকা দিয়েছিল। এর মানে আমি কোন ডাকাতিতে অংশ গ্রহন করি নাই। এটি আমার প্রথম কাজ। ইতিপূর্বে এ ধরনের কোন কাজে আমি অংশ করি নাই।”

The confessional statement of the accused Habib dated 10.11.2013 recorded by the PW22 runs as under:

“আসামী খলিল আমার আত্মীয় হয়। খলিলের মাধ্যমে আমার সাথে আলমগীর পরিচয় হয়। আলমগীর আমাকে মোবাইল ফোনের মাধ্যমে মুগদা আসতে

বলে। মুগদাতে আমি, আজার, রুস্তম, সবুজ, চাচা এর সাথে পরিচয় করিয়ে দেয়। আলমগীর আমাদের যাত্রাবাড়ী পেট্রোল পাম্প ব্রীজের নিচে ডাকাতি করার জন্য আসতে বলে। ১২/৯/১৩ ইং তারিখ রাত ১.০০ ঘটিকায় আমি যাত্রাবাড়ী ব্রীজের নিচে আসি। ব্রীজের নিচে আজার, সবুজ, খলিল, চাচা, রুস্তম, জালাল এর সাথে একত্রিত হই। অনুমান রাত ১.৩০ ঘটিকার সময় ট্রাকে করে বাড়ীতে আসি। যে বাড়ীতে ডাকাতি করবো সেই বাড়ীর দেয়ালের পাশে ট্রাক রাখা হয়। ট্রাক ড্রাইভারের নাম ছিল মতি। অনুমান ২.৩০ ঘটিকায় আমরা ওয়াল টপকে বাড়ীতে ঢুকি। ঢুকানোর পর জালালের কাছে থেকে লোহার রড নিয়া তালা ভাংগা হয়। তালা ভেঙ্গে আমরা সবাই ভিতরে ঢুকি। ঘরের ভিতর তখন টেলিভিশন চলছিল। আজার ও রুস্তম মুসাড়ী ছিরে ফেলে। আজার বাড়ী ওয়ালকে বেঁধে ফেলে। বাড়ীওয়ালার ছেলে লাফ দিয়া খলিলকে জাবরে ধরে ফেলে। তখন খলিল তার হাতে থাকা পিস্তল দিয়ে ছেলেটাকে পর পর দুটি গুলি করে। আলমারির চাবি নিয়া আজার আলমারি খুলে স্বর্ণালংকার নেয়। অপর দুটি আলমারি ভেঙ্গে ফেলে। বাড়ী ওয়ালার বউ তার ছেলেকে পানি খাওয়াতে বললে আজার ফ্রিজ থেকে পানি এনে রুস্তমকে দেয় এবং রুস্তম ছেলেটিকে পানি খাওয়ায়। তখন রুস্তম আমাদের জানায় যে ছেলেটি মারা গেছে এবং আমাদের বাড়ী থেকে বেরিয়ে যেতে বলে। তখন আমরা তাড়াহুড়া করে বাড়ী থেকে বেরিয়ে যাই। যে যার মত বাড়ীতে চলে যাই। পরবর্তীতে এই কাজের জন্য আমাকে কোন টাকা পয়সা দেওয়া হয়নি।”

And the confessional statement made by accuse Moti alias Jitu dated 25.03.2014 recorded by the PW23 is quoted below:

“আমি মাতুয়াইল স্ট্যাণ্ডে ট্রাক চালাই। আজার এর সাথে ২ বছর আগে নারায়নগঞ্জে এক দোকানে বসে পরিচয় হয়। আজার আমাকে ১১/৯/১৩ তারিখ ট্রাক ভাড়া করে বলে রাত ২.৩০ টার দিকে আসবা আমাকে ২,০০০/- টাকা দেয়। বলে রাত্রে ডাকাতি করতে যাবো। আমি ঐ দিন যাই। ঐ দিন কাজ হয়নি। ঐ দিন আজার আমাকে রুস্তম, হাবিব, খলিল ও জালালদের সাথে পরিচয় করিয়ে দেয়। পরের দিন ১২/০৯/২০১৩ ইং দিবাগত রাত ৩.০০ টায় ঐ

বাড়ীর পাশেপাশের বাড়ী ওয়ালের পাশে রাখি। আমি এসে আক্তার, খলিল, রুস্তম, জালা, স্বপন ও চাচাকে দেখি। ওরা ওয়াল টপকিয়ে যাত্রাবাড়ীর ঐ বাড়ীতে চুকে। তখন রাত ৩.০০ টার বেশী বাজে। আমি বাইরে ছিলাম। ওরা ২০/২৫ মিনিট পরে ওয়াল টপকিয়ে তাড়াছড়া করে বের হয়। রুস্তম বলে এখানে থাকা যাবে না। তাড়াতাড়ি চল। খলিল বাড়ী ওয়ালার ছেলেকে খলিল গুলি করে মেরে ফেলেছে। আমি দ্রুত গাড়ী চালাই। ওরা দুজন ধোলাইখালে নামে। আমি গাড়ী চালাই। প্রথমে কে কে নামে দেখি নাই। বাকীদের মুগদায় নামাই। আমাকে আক্তার আবার ২০০০/- টাকা ভাড়া দেয়। আমি গাড়ী মাতুয়াইলে রেখে বাসায় চলে যাই। দুদিন পরে আক্তার আমাকে ৪,০০০/- টাকা ডাকাতির বিনিময়ে দেয়। আমার নামে আরো মামলা আছে। আমি যা বলছি সত্য বলছি।”

Upon careful consideration of the evidence and the law, it is evident that the confessional statements of the accused—Jalal, Akter, Habib, and Moti—were recorded in the prescribed forms. A thorough review of these confessional statements reveals that the learned Magistrates, PW22 and PW23, adhered substantially to all legal formalities. They administered the necessary statutory warnings, informing the confessing accused that they were not obligated to make any confessions and that such confessions, if made, could be used as evidence against them. Only after satisfying themselves that the accuseds were making their confessions voluntarily the Magistrates proceeded with the recording.

The appellants’ counsel contended that the confessions of Akter and Habib were extracted through police torture, oppression, and maltreatment. It was argued that petitions for retraction of their

confessions were submitted to the trial court. However, the evidence of PW22 (Md. Nuru Mia) and PW23 (Md. Tosruzzaman), the recording Magistrates, do not indicate any visible injuries on the accuseds at the time of recording their confessions. Furthermore, Akter and Habib, who made retraction petitions later, did not raise any complaints of police torture or intimidation before the Magistrates. This lends credence to the conclusion that the confessions were both voluntary and truthful.

There is nothing on record to suggest that the Magistrates violated the mandatory provisions of sub-section (3) of Section 164 of the Code of Criminal Procedure while recording the confessions. Additionally, the certificates appended to the confessions clearly indicate that the Magistrates ensured the voluntariness of the statements.

During the examination of the accuseds under section 342 Cr.P.C. all incriminating allegations brought against them including judicial confessions made by 4 co-accuseds were brought to their attention and duly explained in court. But no allegations of police torture or coercion were raised. This aligns with the precedent set in the case reported in *Khalil Mia (Condemned Prisoner) vs. State [4 BLC (AD) 223]*, where the Apex Court held that a confession specifically brought to the notice of the accused under Section 342 Cr.P.C. can be relied upon if no objections are raised.

Regarding the delayed retraction petitions filed by Akter and Habib, the case of *Md. Shahidul Islam @ Shahid vs. State* [8 BLT (HCD) 150] is instructive. In that case, the court observed that a delayed retraction, made more than two months after the confession, casts doubt on the claim of coercion or duress. This principle resonates with the facts of the present case, where the retractions were similarly delayed.

Based on the foregoing discussions and the evidence on record, we find the confessions of the four accuseds to be both voluntary and truthful. Reference may be made to *Ali Asgar and another vs. State* [1986 BLD 436], wherein 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.

The confessions of co-accused persons are also relevant under Section 30 of the Evidence Act, which provides:

“When more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some others is proved, the Court may take into consideration such confession as against such other person as well as against the person who makes such confession.”

This section renders the confessions of co-accused admissible against others when considered alongside corroborative evidence. In the case of *State vs. Mir Hossain @ Miru* reported in 56 DLR 124 reiterates that a co-accused's confession can

justify conviction if corroborated by independent evidence, whether direct or circumstantial.

A close analysis of the confessions reveal detailed accounts of the dacoity, including role played by individual participant, the fact of condemned prisoner Khalil's gun-firing on the victim during the crime. These narratives of confessional statements are entirely consistent with the prosecution evidence on record. The confessions unequivocally establish an unbroken chain of circumstances that the victim was shot by Khalil; while the other accuseds acted in concert to commit the dacoity. The confessions are corroborated by the testimony of PW25, Dr. Shohel Mahmud, who conducted the post-mortem examination. He opined that the victim's death resulted from hemorrhage and shock due to antemortem bullet injuries, which were homicidal in nature. Furthermore, the recovery of the revolver from Khalil's possession and the ballistic report supports the confessions.

Five eyewitnesses, PW1, PW2, PW3, PW4, and PW12, described the sequence of events. PW1 and PW2, the victim's parents, provided direct accounts; while PW3, PW4, and PW12 corroborated the circumstances. Furthermore, PW19, PW21, and PW14 testified about the recovery of firearms and bullets from the accused Khalil and Akter. The ballistic report (PW20) confirmed that the bullets matched those used in the murder of Bakhtiar. The testimony of the investigating officers and seizure witnesses (PW26, PW27) strongly ties the accuseds to the crime scene and the murder weapon. We find that recovery of weapons

and other incriminating materials from the accuseds' possession provides direct evidence of their involvement.

The evidence clearly establishes that Khalil was armed with a revolver and fired the fatal shots, leading to the victim's death. The testimonies of prosecution witnesses (PW1 to PW13) collectively prove the time, place, and manner of the incident, as well as the involvement of other accused persons in the crime. The recovery of revolver and robbed items, the sequence of events, and eyewitness accounts collectively lend credibility to the confessions.

The prosecution has already presented strong and admissible evidence, including: (a) The confessional statements of the four co-accuseds, recorded by PW22 and PW23 (b) The recovery of robbed items, identified by PW1 and PW2, as well as the recovery of a revolver and bullets linked to the accused persons, as testified by PW15, PW16, PW19, PW21, and PW24 (c) Corroborative testimonies of prosecution witnesses, supported by expert findings such as the ballistic report and autopsy. Given this compelling body of evidence, the necessity of conducting a TIP for identifying the dacoits becomes redundant. The perpetrators were none but the accused-appellants.

In light of the prosecution's evidence, arguments presented by both parties, and discussions made above, we are convinced that the prosecution has proven its case beyond reasonable doubt against the accused-appellants. Accordingly, we find no justification to interfere with the Tribunal's decision regarding

the conviction of the accused-appellants under Section 396 of the Penal Code.

Nonetheless, in criminal cases, mitigating factors are circumstances that can reduce the severity of a sentence, even when the accused are found guilty. In this case, we have examined the possibility of mitigating factor. However, we do find no mitigating circumstances that could warrant leniency. Rather, aggravating factor—namely, the significant past criminal records against all the accused-appellants are noticeable.

Section 396 of the Penal Code provides the court with discretion in sentencing, allowing the punishment to reflect the culpability, role, and degree of cruelty exhibited by each accused during the commission of a conjoint dacoity. From the evidence presented, it is clear that the condemned prisoner Md. Khalil played a leading and particularly cruel role. He was armed with a revolver and fired two fatal shots that resulted in the death of the victim, Bakhtiar. Khalil's actions demonstrate extreme cruelty and a central role in the crime, justifying the imposition of capital punishment.

The other accused appellants-Akter, Rustom, Habib, Jalal, and Sobuj alias Sapon-were also active participants in the offence, as established earlier. Although they did not physically injure anyone, their action after the victim was fatally shot by Khalil reveal their culpability. Instead of halting their criminal conduct, they proceeded to rob the gold ornaments, demonstrating cruelty and indifference to the victim's death. The sentence to

imprisonment for life awarded to these appellants by the Tribunal appears justified in light of their active involvement and culpability.

The remaining accused appellant, driver Moti alias Jitu, played a peripheral role in the commission of the offence. As a member of the gang, he waited outside the boundary wall of the house during the dacoity. His involvement, though not central, facilitated the crime. Considering his limited role, his culpability can be viewed as relatively lesser than the other co-accuseds.

In the result-

- (1) The Death Reference no.13 of 2018 is accepted and the **sentence of death awarded to the condemned prisoner- Md. Khalil by the Tribunal is hereby confirmed**, the Criminal Appeal No. 1409 of 2018 and connected Jail Appeal No.59 of 2018 preferred by condemned prisoner Md. Khalil are hereby dismissed;
- (2) The Criminal Appeal Nos. 2491 of 2018, 4348 of 2021, 13860 of 2018, 5779 of 2018, 1236 of 2020, and Jail Appeal Nos. 87 of 2018, 79 of 2018, 78 of 2018, 60 of 2018. preferred by the accuseds - (1) Md. Akter alias Adhaira alias Atahar alias Adel (2) Md. Jalaluddin alias Jalal, (3) Md. Rustom Ali Hawlader alias Rafiqul Islam Akon alias Hashem, (4) Md. Sobuj alias Sapon and (5) Md. Habib alias Habibur Rahman alias Dakat Habib are hereby dismissed; **Sentences to imprisonment for life to**

these appellants together with fines of taka 20,000/- each, as awarded by the Tribunal, **are upheld;**

- (3) The Criminal Appeal No. 2291 of 2018 preferred by the accused-appellant Md. Moti alias Jitu is also dismissed with modification of sentence. His sentence is hereby reduced to **rigorous imprisonment for 10 (ten) years** together with a fine of taka 20,000/- in default to suffer rigorous imprisonment for 3(three) months more; and
- (4) The appellants will get benefit of the provision of section 35A Cr.P.C. and other remissions in accordance with the Jail Code.

Send down the LC records.

Communicate this order to the concerned authorities at once together with a copy of this judgment.

(Justice Md. Toufiq Inam)

J.B.M. Hassan, J:

I agree.

(Justice J.B.M. Hassan)