Present:
Mr. Justice Md. Atoar Rahman
And
Mr. Justice Md. Ali Reza

Death Reference No. 62 of 2018

The State .....Petitioner

-Versus-

Md. Alam and another .....Condemned-Prisoners

With

Criminal Appeal No. 6068 of 2018

Md. Alam .....Condemned-Prisoner-Appellant

-Versus-

The State .....Respondent

With

Criminal Appeal No. 5321 of 2022

Ali Azam .....Condemned-Prisoner-Appellant

-Versus-

The State .....Respondent

With

Jail Appeal No. 194 of 2018

Md. Alam .....Condemned-Prisoner-Appellant

-Versus-

The State .....Respondent

And

Jail Appeal No. 150 of 2021

Ali Azam .....Condemned-Prisoner-Appellant

-Versus-

The State

.....Respondent

Mr. Md. Monzurul Alam Sujan, Deputy Attorney General with
Mr. S M Younus Ali Robi, A.A.G
Mr. Md. Zobaidur Rahman Babu, A.A.G
Mr. Md. Mashiur Rahman (Riad), A.A.G
Mr. Khalilur Rahman, A.A.G and
Mr. Amran Hossain, Assistant Attorney General
.....for the State

Mr. M. Syed Ahmed (Raja), Senior Advocate with

Mr. Md. Mutasim Billah Masum,

Mr. Faysal Mustafa and

Mr. Tajul Islam, Advocates

....for Condemned-prisoner Md. Alam

Mr. Sarker Muhammad Al Amin, Advocate

.....for Condemned-prisoner Ali Azam

Heard on: 14.08.2025, 21.08.2025 and 28.08.2025

Judgment on: 30.10.2025

***Md. Ali Reza, J*:**

Under Section 374 of the Code of Criminal Procedure (hereinafter referred to the Code) the proceedings of this case has been submitted to this Court by the learned Additional Sessions Judge, 7th Court, Chattogram for confirmation of death sentence passed against condemned prisoners Md. Alam and Md. Ali Azam by judgment and order dated 28.05.2018 in Sessions Case Number

861 of 2013 convicting them under sections 302/201/34 of the Penal Code. Both the condemned prisoners Alam and Azam preferred Criminal Appeal Number 6068 of 2018 along with jail Appeal Number 194 of 2018 and Criminal Appeal Number 5321 of 2022 along with jail Appeal Number 150 of 2021 respectively against judgment and order of conviction passed against them sentencing them to death by hanging. This reference and appeals are taken up and heard together and disposed of by this common judgment.

The case of the prosecution is that the brother of victim named Md. Rafiq lodged a First Information Report (FIR) on 15.09.2012 with Hathajari Model Police Station alleging that his brother victim Akter Hossain owned a CNG auto-rickshaw which he used for his livelihood. The accused persons had long been enticing his bother to sell the CNG vehicle with the assurance that they would purchase for him a higher-grade vehicle in return. Eventually at a place in Modonhat his brother sold the CNG vehicle to one Elias Company for taka 2 lac 90 thousand and set out towards his home. At that time the accused persons along with four to five unknown individuals induced his brother to board an unidentified CNG auto-rickshaw claiming that they would arrange

for the purchase of a better vehicle and took him away to an undisclosed location. When his brother did not return home at the usual time the informant went to the place of incident and immediately searched in the nearby markets and at the houses of close relatives but found no trace of him. Subsequently when he contacted the addresses of the said accused persons they could not be located either. Under these circumstances it was believed that the accused forcibly kidnapped his brother to embezzle the cash obtained from selling the CNG vehicle with the intention to commit murder or other atrocities at an unknown location. Upon this allegation the case was filed.

The investigating officer in course of investigation visited the place of occurrence, prepared sketch map with index and seizure list, recorded statements of the prosecution witnesses under section 161 of the Code, reviewed inquest and post mortem report, sent the samples from the victim's remains for DNA analysis and also reviewed the statements of accused Alam and Azam under section 164 of the Code and having found prima facie case submitted police report number 132 on 15.07.2013 against Alam, Naser, Rakib and absconding accused Azam under section 364/302/201/34 of the Penal Code and they were placed on trial

before the Additional Sessions Judge, 7th Court, Chattogram on 09.03.2014 who framed charge against them to which they pleaded as not guilty and demanded trial. Charge could not be read over to accused Azam being absconded. Prosecution examined as many as 11 witnesses out of 13 as mentioned in the police report. On conclusion of examination of prosecution witnesses accused Rakib, Naser, Alam except the absconding accused Azam were examined under section 342 of the Code to which they reiterated their claim of being not guilty and consented to produce defence witnesses on their behalf and accordingly adduced Jose Mohammad as DW 1 and Nur Mohammad as DW 2 on 14.01.2018. Defense claimed that they have been falsely implicated and the confessional statements are effect of torture.

On consideration of evidence and other materials on record the learned Additional Sessions Judge passed the judgment and order of conviction and sentence as aforesaid and sent the reference to this Court.

Mr. Md. Monzurul Alam Sujan, Deputy Attorney General along with Mr. S M Younus Ali Robi, Mr. Md. Zobaidur Rahman Babu, Mr. Md. Mashiur Rahman (Riad), Mr. Khalilur Rahman and Mr. Amran Hossain, Assistant Attorneys General appearing

for the State in support of the death reference upon referring to the evidence on record and the impugned judgment submits that the learned trial Court in its judgment has coherently examined the confessional statements recorded under section 164 of the Code and found them internally consistent and correctly held that the occurrence was premeditated. He then submits that the dead body was recovered in consequence of the disclosure made by the accused which upon DNA profiling was conclusively identified as that of the victim. He proceeds that the prosecution has unequivocally discharged its burden of proving the charge against the accused by adducing lawful, cogent and credible evidence and the impugned judgment founded upon sound judicial reasoning appropriately addresses a most atrocious and barbaric homicide of a young man whose death occurring at an inopportune place and time constitutes a grave affront to the social order. He invites our attention to the inculpatory character of the confessional statements made by two accused persons which are mutually corroborative in material particulars. He lays emphasis on the point that a prudent and reasonable person upon perusal thereof can readily comprehend the distinct and active participation of each of the convicts in the commission of the offence. He finally

submits that the prosecution has proved the guilt beyond reasonable doubt and the conviction and sentence of death awarded by the trial Court are legally sustainable and immune from interference.

Mr. M. Syed Ahmed (Raja), Senior Advocate along with Mr. Md. Mutasim Billah Masum, Mr. Faysal Mustafa and Mr. Tajul Islam, learned Advocates appearing on behalf of the condemned prisoner Md. Alam in Criminal Appeal Number 6068 of 2018 along with Jail Appeal Number 194 of 2018 and Mr. Sarker Muhammad Al Amin, learned Advocate appearing on behalf of the condemned prisoner Ali Azam in Criminal appeal Number 5321 of 2022 along with Jail Appeal Number 150 of 2021 respectively make almost same and supportive submissions. They contend that the accused persons have been falsely and maliciously implicated in the instant case and the prosecution has utterly failed to lead any evidence demonstrating how the accused became connected with the alleged offence. They submit that the so-called confessional statements of the accused were obtained through unlawful means and inhuman torture rendering the same totally false, fabricated and inadmissible in law. They further contend that the theory of the prosecution that the victim was

enticed on the pretext of purchasing a new model CNG or for fishing or the sale proceeds of the CNG were thereafter misappropriated pursuant to a premeditated plan has not been proved to satisfaction. They continue that the story of keeping by the victim the sale proceeds with accused Alam and then went fishing is implausible and nothing but a concocted and fanciful story. They point out that according to the evidence adduced by defence accused Alam at the relevant time was present at his shop but the trial Court failed to appreciate that aspect of the case causing miscarriage of justice. They also submit that the allegation in the police report concerning the alleged involvement of accused Alam in another murder case relating to one Arif also remains unproved. They again submit that the trial Court failed to apply its judicial mind to the facts and circumstances of the case in hand and erroneously subjected the accused to the penalty of death when there is no ocular testimony in support of the prosecution case nor any specific allegation of overt act attributable to the accused in the evidence on record. They further submit that for the purpose of DNA examination the prosecution collected only a small portion of skeletal remains and therefore the said test cannot be regarded as accurate. They very candidly point

out and submit that in respect of the seizure list marked as exhibit-2 and the inquest report marked as exhibit-3 the evidence of PW-2 Abdul Hashem and PW-3 Jagir Hossain who deposed and proved their respective signatures therein have not been found reliable and thus it can safely be concluded that it has not been established in law that the recovered skeletal remains and the black steel-buckled belt have been legally proved to be the belongings of victim Akter. They finally submit that since the prosecution failed to prove the charge beyond reasonable doubt by acceptable corroborative evidence the impugned judgment is liable to be set aside and the reference be rejected.

Subsequently, the learned Senior Advocate Mr. M. Syed Ahmed (Raja) in emphatic supporting the submissions earlier advanced by the defence counsels forcefully contends that the prosecution has furnished false information regarding the withdrawal of money from the bank through the cheque in question because the police report shows that on 04.09.2012 victim Akter along with the accused persons withdrew taka 2 lac from the bank but the statement recorded under section 164 of the Code reflects that the said amount was withdrawn on the following day and thus the motive suggested by the prosecution

has not been proved at all and the accused have been falsely implicated in the case. He referring to the DNA report points out that the said report has not been formally proved in accordance with the law by its issuing authority and since DNA Act 2014 came into operation subsequent to the DNA test conducted in 2013 the said Act shall not apply retrospectively and as such the DNA test report in question does not carry any evidentiary value. He concludes that as a matter of settled criminal jurisprudence if there exists even the slightest doubt in the prosecution case the benefit of such doubt must go in favour of the accused.

From reading of the evidence on record it appears that PW-1 Rafiq is the brother of the victim Akter. He lodged the FIR Exhibit-1 on 15.09.2012 after 11 days of the day of occurrence. He stated in his examination-in-chief that when his brother victim Akter did not return home on 04.09.2012 he attempted to contact him by mobile phone but found the phone switched off. He then went out in search of him and continued looking in the Modonhat area but without success. On 03.10.2012 police apprehended accused Azam, Alam, Rakib, Naser. The police then took accused Azam and Alam to a hill area west of the University of Chattogram where in pursuance of their disclosure the dead body

was recovered. He identified the dead body and an inquest report exhibit-3 was prepared on the spot bearing his signature. The defence did not conduct any cross-examination on this highly material point. If the dead body was recovered solely in pursuance of the disclosure made by accused Azam and Alam such recovery inevitably establishes their connection with the commission of the offence. The fact that the defence did not challenge this specific assertion of PW-1 gives rise to the presumption that the allegation brought in the police report is not false. In terms of section 58 of the Evidence Act facts which are not specifically denied are deemed to have been admitted. Under the settled principle of law the absence of cross-examination on a material point amounts to an implied acceptance of the truth of that statement. Accordingly the unchallenged statement of PW-1 being direct and credible stands proved against the accused.

PW-2 Hashem who is also the brother of victim Akter in a voice corroborated PW-1 in his deposition on the point that the dead body was recovered from the hilly area inside the university pursuant to the disclosure and indication of accused Azam and Alam but he was not cross-examined on this material point as well. It is also settled principle of law as reflected in section 146

of the Evidence Act that cross-examination is the means by which a party tests the veracity or uprightness of a witness and its absence operates as an implied admission of its truth. PW-2 also proved his signatures given in the seizure list exhibit-2 and inquest report exhibit-3.

PW-3 Jasim Uddin deposed that on the date of occurrence victim came to his shop accompanied by his friends Azam and Alam. In effect his evidence is that he saw the victim in the company of accused Azam and Alam for the last time. The defence apart from giving a bare suggestion did not put any substantive question to the witness in cross-examination to challenge his assertion that the victim had visited his shop with those accused.

Pw-4 Jagir Hossain deposed that pursuant to extra judicial confession police accompanied by accused Azam and Alam and PW-1 Rafiq recovered the skeletal remains of the victim along with his wearing apparel and a knife from the western hill of the university but he was not cross-examined that the recovery was not from the western hill but from some other place to impeach this material fact but instead he confronted only suggestion. He

also proved his signatures given in seizure list exhibit-2 and inquest report exhibit-3.

PW-5 Sekendar is a signatory to the inquest report prepared in respect of the recovered body and he was not cross-examined on this point. Accordingly the uncontroverted testimony of PWs 3, 4, 5 being consistent and corroborative carries full probative value and forms an unbroken chain of circumstance linking accused Azam and Alam with the commission of the offence.

PW-6 SM Masud Parvez is a Senior Judicial Magistrate who recorded confessional statements of accused Alam and Azam under section 164 of the Code. He stated in his examination-in-chief that while he was working as Senior Judicial Magistrate at Chittagong accused Alam and Azam were produced before him within the date and time prescribed by law for recording their confessional statements under section 164 of the Code. The confessional statements of accused Azam and Alam are exhibits-4 and 5 respectively wherein he put his signatures. He in compliance of all legal formalities recorded such confessions and in cross-examination he denied the suggestion led by defence.

PW-7 Dr. Prodip Kumar Nath proved the post mortem report which was tendered and marked in evidence as exhibit-6

and in cross-examination he admitted that he in fact did not know the skeleton belonged to whom.

PW-8 Nur Ali Chowdhury Bahadur deposed that he purchased the CNG auto-rickshaw of victim Akter for Taka 2,90,000.00. PW-9 Nasima Akter who is the wife of PW-8 and PW-10 who is the relative of PW-8 corroborated the statement of PW-8 that he purchased the auto-rickshaw and paid the consideration money accordingly.

The investigating officer Md. Shariful Islam as PW-11 deposed that upon examining the mobile call records of both victim and accused persons he was able to unravel the core facts of the occurrence and consequently apprehended the accused persons. He further stated that pursuant to and in consequence of the disclosure and identification made by the arrested accused persons the skeletal remains and bodily remnants of the victim were recovered from the hill located to the west of Chittagong University in presence of witnesses. The victim's clothing, waist belt and the knife used in commission of the homicide which were found in the skeletal remains were recovered from the spot in accordance with the pointing out of the accused persons. He prepared the seizure list and obtained the signatures of the

witnesses and himself signed the same. He arranged for the recording of the confessions of the arrested accused persons under section 164 of the Code. He also caused certain portions of the skeleton along with blood samples of the victim's brother and father to be sent for DNA profiling to ascertain whether the skeletal remains belonged to the victim. Upon receipt of the DNA report exhibit-9 it was confirmed that the skeletal remains were indeed those of the victim. Subsequently he submitted the police report before the Court under the relevant portions of law. It is evident from cross-examination that the defence was unable to dislodge or impeach the evidence of this witness.

Accused Ali Azam and Md. Alam made confessional statements on 04.10.2012 which were recorded by PW-6 SM Masud Parvez. Both confessions unequivocally demonstrate that deceased Akter had recently sold his CNG auto-rickshaw to one Elias Company for a substantial sum and part of which was received in cash and part by cheque. The proceeds of this sale through cheque amounting to Taka 2 laks were deposited and later withdrawn in presence of the accused. The money was temporarily kept in the custody of accused Alam. The prospect of gaining this sum formed the principal motive for the crime.

Both accused narrate that prior to the incident they had resolved to kill Akter in order to misappropriate the sale proceeds. This plan was communicated to co-accused Rakib and Naser who assented and armed themselves with a knife and a chopper. The choice of location was made in a secluded forested area within the University of Chattogram campus to ensure concealment and minimize the risk of detection.

Those further reveal that in pursuance of the conspiracy accused Alam exploiting Akter's fondness for fishing deceitfully persuaded him to accompany them to his uncle's hill project on the pretext of a fishing trip. This calculated inducement demonstrates deliberation and forethought and the use of deception to facilitate the killing.

The confessions are mutually corroborative in describing the manner of assault. While returning from the fishing spot Akter paused to urinate. At that moment accused Alam stabbed him in the back with a knife. Accused Azam struck him with a chopper (da). Co-accused Rakib also delivered a chopper blow and accused Azam inflicted a further blow to the neck. The combined effect of these injuries caused profuse bleeding which led to the death of victim Akter. Following the killing the accused dragged

and hid the body within the forest to delay its discovery or to keep invisible forever. The place of concealment was later identified by the accused during investigation leading to recovery of skeletal remains.

The confessions also disclose that the sum kept in Alam's custody was retrieved after the killing and distributed among the conspirators. Accused Azam, Rakib, Nasir received Taka 50 thousand each and the remainder was retained by Alam. Alam subsequently purchased a Pulsar motorcycle and they absconded to avoid apprehension.

The confessions though recorded separately are consistent in material particulars such as motive, planning, selection of location, roles assigned to each participant, sequence of assault, concealment of the body and post-crime distribution of money. This internal consistency coupled with recovery of the body and weapon at their instance lends intrinsic reliability to both statements.

The confessions reveal a premeditated, deliberate and jointly executed homicide committed with a clear pecuniary motive and their voluntary nature, internal corroboration and external verification through recoveries elevate their probative

value to the level of conclusive proof from where there is point of no return.

The police report reveals that on 04.09.2012 through the mediation of PW-10 Elias the price of the CNG was determined at taka 2 lac 90 thousand. The victim in presence of accused Alam and Azam received taka 90 thousand in cash and also accepted a cheque for taka 2 lac which was withdrawn on the same day. Mediator Elias as PW-10 corroborated this statement although he was not subjected to cross-examination on this crucial point. In support of defence neither DW-1 nor DW-2 presented any convincing evidence suggesting that the accused were not involved in the incident. A careful examination of the entire sequence of events and the statements of exhibits-4 and 5 made by Azam and Alam under section 164 of the Code indicate that the precise date of withdrawal from the bank purportedly on 05.04.2012 remains unclear as the accused either did not mention any prior date in their confessions or may have deliberately provided false information. Taking into account the overall circumstances of the case and the incontrovertible evidence including DNA report exhibit-9 and the recovery of the victim's body from the hillside marshland exactly one month later

according to the disclosure and indication of the accused coupled with their highly coherent confessional statements it is conclusively established that accused Alam and Azam murdered victim Akter with the intent of misappropriating the proceeds from the sale of the CNG. This act is extremely heinous, brutal, reprehensible and profoundly regrettable. Having attentively considered the matter in its entirety we find no reasonable or legal basis to interfere with the well-reasoned judgment delivered by the learned trial Court in respect of conviction.

Now the question arises that whether section 38 read with section 37 of the DNA Act 2014 exempts DNA report exhibit-9 from the necessity of formal proof. In the instant case the DNA report was tendered in evidence by PW-11 and marked as exhibit-9 and as it appears the report was not challenged in cross-examination. Exhibit-9 was issued by DNA Analyst Md. Mahmud Hasan of National Forensic DNA profiling Laboratory (NFDPL) under the supervision and authority of the Head of NFDPL named Professor Sharif Akhteruzzaman (PhD) but none of them was called for proving the report exhibit-9. Learned Senior Advocate Mr. M. Syed Ahmed (Raja) disregarding exhibit-9 emphatically submits two folds argument. Firstly he argued that exhibit-9

cannot be accepted as evidence being short of formal proof and secondly the DNA Act 2014 being substantive special law has got no retrospective effect in respect of exhibit-9 being prepared in 2013.

Section 38 of the DNA Act 2014 clearly stipulates that a DNA report prepared by an authorised laboratory shall be admissible in evidence without the necessity of formal proof. The legislative intent behind this provision is to ease the evidentiary burden and to recognize DNA analysis as a scientifically reliable mode of proof in judicial proceedings. It is settled principle of statutory interpretation that procedural laws are generally retrospective in nature unless the statute expressly provides otherwise while substantive laws affecting vested rights are presumed to be prospective. The exemption from formal proof of DNA reports as provided under section 38 is procedural in character as it merely relates to the mode of proving an existing piece of evidence and does not create or extinguish any substantive right.

In the present case although the DNA test was conducted on 11.06.2013 prior to the enactment of DNA Act 2014 the question of its admissibility and mode of proof arises only when the matter

is brought before the Court. At the stage the procedural law in force must govern the evidentiary process. Therefore the benefit of section 38 must extend retrospectively to DNA tests conducted earlier as the section is procedural in nature.

Accordingly this Court holds that DNA Act 2014 by virtue of section 38 shall have retrospective effect with regard to the admissibility and proof of DNA reports. Hence exhibit-9 does not require formal proof by the expert who prepared it and the same shall carry evidentiary value notwithstanding that the test was conducted in 2013. In this respect we also rely on the principle laid down by our Appellate Division in State Vs. Abul Hashem reported in 34 DLR(AD) 125 where it was held that procedural statutes operate retrospectively. We therefore failed to find substance in the submission made by Mr. M. Syed Ahmed (Raja).

On a further scrutiny of the judgment rendered by the learned trial Court it transpires that the decision has been delivered in a methodical, lucid and judiciously reasoned manner in so far as it implicates and convicts accused Alam and Azam while acquitting Rakib and Nasir save and except one aspect namely the finding under section 201 of the Penal Code with which we are constrained to record our respectful disagreement.

From the ordering portion of the impugned judgment it appears that the learned trial Court convicted accused Alam and Azam under section 302 of the Penal Code read with section 34 as well as under section 201 thereof and awarded sentence of seven years' rigorous imprisonment together with fine under section 201 in addition to the substantive sentence under other sections. However a plain reading of section 201 of the Penal Code makes it manifest that the said provision contemplates punishment for a person who with intent to screen the principal offender from punishment imposed by law causes any evidence of commission of an offence to disappear or gives false information with respect to the offence. It does not envisage that the principal offender himself shall be held guilty under the said section. Accordingly in the present case the principal offenders named Alam and Azam cannot legally be fastened with criminal liability under section 201 of the penal Code. This proposition stands further fortified by the illustration appended to section 201 which unequivocally clarify that the offence under this section is attracted only when a person other than the principal offender conceals or obliterates evidence with a view to shielding the offence.

In view of the foregoing discussion the accused persons named Alam and Azam entitled to be exonerated from the charge and sentence imposed under section 201 of the Penal Code and the punishment awarded to them thereunder stands set aside.

Finally there is an important issue that needs to be discussed and decided. At the fag end of the argument learned Senior Advocate Mr. M. Syed Ahmed (Raja) refers to the cases of Nalu Vs. State, 17 BLC(AD) 204; Shafiqul Islam Vs. State, 73 DLR(AD) 189; Manoj Vs. State, (2023)2 Supreme Court Cases 353, Ranjitsingh Vs. State, (2005)5 Supreme Court Cases 294; Premjibhai Vs. State, 2009 Cri.L.J. 2888; Bachan Singh Vs. State, (1982)3 Supreme Court Cases 24; Machhi Singh Vs. State, AIR 1983 SC 957; D.R. Bhagare Vs. State, AIR 1973 SC 476; Jagmohan Singh Vs. State, AIR 1973 SC 947 and candidly brings up that even when the prosecution has been able to adduce sufficient evidence to prove the charge under section 302 of the Code the Court below while inflicting capital punishment has got to consider that at the inception a balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and

mitigating circumstances before the opinion is exercised but the learned Court below failed to appreciate this aspect of the case.

The solitary question is whether notwithstanding the brutality of the crime this case passes the narrow gate of the "rarest of the rare" so as to warrant death or whether the legitimate aims of punishment are adequately served by commuting the sentence to imprisonment for the remainder of the convict's natural life. From perusal of exhibits 1 (FIR), 4 (confessional statement of accused Azam), 5 (confessional statement of accused Alam) it appears that the accused persons were around 25(twenty five) years of age at the time of the offence. That is a stage of life where emotional maturity and cognitive judgment are still developing. It is an established principle of sentencing jurisprudence that youthfulness is a mitigating factor which must be afforded due consideration. It appears that Alam has undergone seven years of incarceration subsequent to his death sentence and Azam who initially absconded has been in custody for about 05(five) years following his apprehension. There is no evidence of any antecedent hostility or prior enmity between the appellants and the victim. The commission of the unlawful acts appears to have been motivated solely by avarice. Human beings by their

inherent nature are not predisposed to criminal conduct. Such behaviour often arises from adverse social, economic or environmental circumstances rather than innate depravity. Had the accused persons been nurtured in a stable, healthy and morally sound environment it is probable that they would not have committed the offence for which they now stand convicted.

It is well settled that the death penalty should be awarded only in the “rarest of rare” cases where alternative punishment is inadequate to meet the ends of justice. But in the instant case both convicts are young adults. Youth is recognized as a mitigating factor in criminal jurisprudence as it indicates potential for reform. Alam has endured 07(seven) years and Azam about 05(five) years under the shadow of death sentence. This prolonged psychological trauma termed as the “death row phenomenon” favours commutation. Both convicts by demonstrating cooperation provided voluntary statements under section 164 of the Code which can be recognized as a mitigating circumstance. They had no antecedent enmity with the victim and the crime was committed solely due to greed and not out of vendetta. Perusal of the record reveals that although Alam was implicated in a murder case in 2008 he has not to date been convicted by any competent

court. In accordance with the principle of presumption of innocence he cannot be regarded as guilty or culpable until duly adjudicated by a court of law.

The irreversible nature of death penalty demands utmost caution. Punishment must be proportionate, humane and reformative. Life imprisonment till natural death achieves the goals of retribution, deterrence and social protection while preserving the fundamental right to life. While the seriousness of the offence constitutes an aggravating factor the mitigating circumstances such as youth, prolonged incarceration under death row, voluntary cooperation and absence of prior hostility weigh strongly in favour of commutation. The reformative theory of justice recognizes that even a person guilty of grave crime may through long incarceration experience moral and psychological transformation.

In order to secure ends of justice this court is of the view that the present case does not fall within the “rarest of the rare” doctrine that would mandate capital punishment. The retributive objective of sentencing can be adequately fulfilled by imposing a sentence of rigorous imprisonment for life to be served for the

remainder of the convicts' natural life without remission or premature release.

Therefore this Court deems it just, equitable and legally tenable to commute the sentence of death by hanging into one of life imprisonment.

Accordingly this death reference is rejected and Criminal Appeal Numbers 6068 of 2018 and 5321 of 2022 preferred by Md. Alam and Ali Azam respectively are dismissed with modification. The Jail appeal Numbers 194 of 2018 and 150 of 2021 preferred by Md. Alam and Ali Azam respectively are disposed of. The concerned jail authority is directed to shift the convicts named Md. Alam, son of Dasto Mohammad of Village Fotepur, Chattogram University Dakkhin Campas, Holboton Colony of Police Station Hat Hajari of District Chattogram and Ali Azam, son of Md. Solaiman @ Buchikya Chora of Village Zobra, Yeasin Sowdagarer Bari (জোবরা ইয়াসিন সওদাগরের বাড়ী) A/P-North Side of Chittagong University Field on Hill (চট্টগ্রাম বিশ্ব বিদ্যালয় মাঠের উত্তর পার্শ্বের পাহাড়) of Police Station Hat Hajari of District Chattogram to normal jail from the condemned cell forthwith.

Send down the lower Court's record along with the copies of this judgment to the concerned Court and the jail authority at once.

Md. Atoar Rahman, J:

I agree.

Naher, B.O.