

**IN THE SUPREME COURT OF BANGLADESH
APPELLATE DIVISION**

Present:

Mr. Justice Syed Refaat Ahmed, Chief Justice

Mr. Justice Md. Ashfaqul Islam

Mr. Justice Zubayer Rahman Chowdhury

Mr. Justice Md. Rezaul Haque

Mr. Justice S. M. Emdadul Hoque

Mrs. Justice Farah Mahbub

Criminal Appeal No. 65 OF 2025

WITH

Criminal Petition for Leave to Appeal No. 673 of 2025

Criminal Petition for Leave to Appeal Nos. 2380-2399 of 2025

Criminal Petition for Leave to Appeal Nos. 2400-2427 of 2025

(From the judgment and orders dated 01.12.2024 passed by the High Court Division in Death Reference Nos. 144 of 2018 and 145 of 2018 with Criminal Appeal Nos. 13554 of 2018, 13634 of 2018, 13802 of 2018, 13803 of 2018, 13802 of 2018, 13838 of 2018, 13839 of 2018, 13887 of 2018, 13888 of 2018, 13908 of 2018, 13909 of 2018, 13920 of 2018, 13921 of 2018, 13922 of 2018, 13923 of 2018, 13954 of 2018, 13955 of 2018, 13964 of 2018, 13965 of 2018, 13966 of 2018, 13967 of 2018, 13984, of 2018, 14014 of 2018, 14015 of 2018, 2162 of 2019, 2163 of 2019, 3446 of 2019, 3447 of 2019, 3448 of 2019, 3449 of 2019, 3450 of 2019, 3451 of 2019, 3452 of 2019, 3453 of 2019, 3453 of 2019, 3454 of 2019, 4602 of 2019, 4603 of 2019, 5985 of 2024, 5493 of 2024, 5376 of 2024, and with Criminal Miscellaneous Case Nos. 8344 of 2019, 4345 of 2019, 19785 of 2020, 38472 of 2019, 46068 of 2024, 60518 of 2024, 19784 of 2020, 60519 of 2022 and 46067 of 2024 along with Jail Appeal Nos. 331 of 2018, 332 of 2018, 333 of 2018, 372 of 2018, 373 of 2018, 374 of 2018, 377 of 2018, 379 of 2018, 380 of 2018, 381 of 2018, 382 of 2018 and 384 of 2018)

The State represented by the Deputy
Commissioner, Dhaka

.....Appellant/Petitioner
(In all the cases)

-Versus-

Mawlana Sheikh Abdus Salam and others

.....For the Respondents
(In CrI. A. No.65/25 & CrI. P. Nos.673, 2382, 2404 of 2025)

Md. Abdus Salam Pintu

.....For the Respondent
(In CrI. P. Nos.2380, 2402 of 2025)

Md. Lutfuzzaman Babor

.....For the Respondent
(In CrI. P. Nos.2381, 2403 of 2025)

Arif Hasan @ Sumon @ Abdur Razzak

.....For the Respondent
(In CrI. P. Nos.2383, 2405 of 2025)

Md. Jahangir Alam

.....For the Respondent
(In Crl. P. Nos.2384, 2406 of 2025)

Md. Abul Kalam Azad @ Bulbul and another

.....For the Respondents
(In Crl. P. Nos.2385, 2407 of 2025)

Moulana Abdul Hannan @ Moulana Sabbir Ahmed @ Md. Abdul Hannan Sabbir
and another

.....For the Respondents
(In Crl. P. Nos.2386, 2408 of 2025)

Major General (Rtd) Razzaqul Haider Chowdhury

.....For the Respondent
(In Crl. P. Nos.2387, 2409 of 2025)

Brigadier General (Rtd) Md. Abdur Rahim

.....For the Respondent
(In Crl. P. Nos.2388, 2410 of 2025)

Moulana Abu Sayed @ Dr. Zafor

.....For the Respondent
(In Crl. P. Nos.2389, 2417 of 2025)

Md. Shahadat Ullah @ Jewel

.....For the Respondent
(In Crl. P. Nos.2390, 2413 of 2025)

Hossain Ahmed Tamim

.....For the Respondent
(In Crl. P. Nos.2391, 2414 of 2025)

Md. Rafiqul Islam @ Sabuj @ Khalid Saifullah @ Samim @ Rashed

.....For the Respondent
(In Crl. P. Nos.2392, 2415 of 2025)

Hafez Moulana Abu Taher

.....For the Respondent
(In Crl. P. Nos.2393, 2416 of 2025)

Md. Uzzal @ Ratan

.....For the Respondent
(In Crl. P. Nos.2394, 2418 of 2025)

Mynuddin Sheikh alias Mufti Mynuddin alias Khaza alias Abu Zandal alias
Masum Billah

.....For the Respondent
(In Crl. P. Nos.2395, 2419 of 2025)

Md. Ariful Islam @ Arif

.....For the Respondent
(In Crl. P. Nos.2396, 2420 of 2025)

Moulana A. Rouf @ Abu Omar Abu Homaira @ Pir Shaheb

.....For the Respondent
(In Crl. P. Nos.2397, 2421 of 2025)

Mufti Shafikur Rahman

.....For the Respondent
(In CrI. P. Nos.2398, 2426 of 2025)

Mufti Abdul Hai

.....For the Respondent
(In CrI. P. Nos.2399, 2427 of 2025)

IGP (Rtd) Khoda Baksh Chowdhury

.....For the Respondent
(In CrI. P. No.2400 of 2025)

Special Police Super (Rtd) Ruhul Amin and others

.....For the Respondent
(In CrI. P. Nos.2401 of 2025)

Shahudul Haque

.....For the Respondent
(In CrI. P. No.2411 of 2025)

Ashraful Huda

.....For the Respondent
(In CrI. P. No.2412 of 2025)

Md. Abdul Malek @ Golam Mohammad @ G.M

.....For the Respondent
(In CrI. P. No.2422 of 2025)

Md. Abdul Mazed Vat @ Md. Yousuf Vat

.....For the Respondent
(In CrI. P. No.2423 of 2025)

Md. Abu Bakar Siddik @ Hafez Selim Howlader

.....For the Respondent
(In CrI. P. No.2424 of 2025)

DIG Khan Sayeed Hasan and another

.....For the Respondents
(In CrI. P. No.2425 of 2025)

For the
Appellant/Petitioner
(In all the cases)

: Mr. Abdul Jabber Bhuiyan, Additional Attorney-General with Mr. Abdullah Al Mahmud, Deputy Attorney-General, Mr. Md. Jahirul Islam Sumon, Deputy Attorney-General, Mr. Md. Asad Uddin, Deputy Attorney-General, Mr. Md. Akhteruzzaman, Deputy Attorney-General, Ms. Jamila Momtaz, Deputy Attorney-General, Ms. Fatima Akther, Assistant Attorney-General, Mr. Md. Obaidur Rahman, Assistant Attorney-General, Mr. A.S.M. Sayem Bhiyan, Assistant Attorney-General and Ms. Sadia Afrin Shapla, Assistant Attorney-General instructed by Mr. Md. Helal Amin, Advocate-on-Record.

For the Respondent
Nos.17-19
(In CrI. A. No.65 of 2025 &
CrI. P. No. 673 of 2025)

: Mr. S.M. Shajahan, Senior Advocate with Mr. A.M. Mahbub Uddin, Senior Advocate, Mr. Bodruddoza, Senior Advocate, Mr. Ruhul Quddus, Senior Advocate, Mr. Emdadul Haque Azad, Senior Advocate and Mr. Kayser Kamal, Advocate instructed by Mr. Md. Zahirul Islam and Mr. Md. Abdul Hye Bhuiyan, Advocates-on-Record.

- For the Respondent Nos.4 & 12 : Ms. Madhu Malati Chowdhury Barua, Advocate-on-Record.
(In CrI. A. No.65 of 2025 & CrI. P. No. 673 of 2025)
- For the Respondent No.14 : Mr. Mohammad Shishir Monir, Advocate instructed by Mr. A.B.M. Shamsul Alam, Advocate-on-Record.
(In CrI. A. No.65 of 2025 & CrI. P. No. 673 of 2025)
- For the Respondent No.15 : Ms. Nahid Sultana, Advocate-on-Record.
(In CrI. A. No.65 of 2025 & CrI. P. No. 673 of 2025)
- For the Respondent Nos. 1, 5-11, 13, 16 : Not represented.
(In CrI. A. No.65 of 2025)
- For the Respondent : Not represented.
(In CrI. P. Nos.2380-2399 & 2400-2427 of 2025)
- Dates of hearing : The 17th July, 31st July, 19th August, 20th August, 21st August, 2025.
- Date of judgment and order : The 4th September, 2025.

ORDER

In view of the facts, circumstances, settled propositions of law as well as serious doubt raised about the voluntary nature of the confessional statements under section 164 of the Code of Criminal Procedure, 1898 by all the convicted accused as discussed hereinabove, we are of the opinion that the High Court Division was justified in rejecting the Death Reference, allowing the appeals and jail appeals and making the Rules absolute and thereby, setting aside the conviction and sentence passed by the Trial Court against the appellants and the non-appealing convicts.

Circumstances under which confessional statements of the accused were obtained have given rise to serious doubt about their voluntariness inasmuch as the alleged mastermind of the offence Mufti Abdul Hannan was produced before the Magistrate to record his second confessional statement long four years after making his first confessional statement, and that too, while he had been

languishing in a condemned cell for a prolonged period. The remaining accused persons made confessional statements when they were produced before the Magistrate after having been in police custody for a long time as discussed above. Furthermore, the confessional statements of three accused were recorded by a single Magistrate on the same day with unusual haste in gross violation of the prescribed Rules. The prayers of most of the accused persons for retraction of their confessional statements on the ground of inhuman torture on their persons and their unauthorized detention in custody by the law-enforcing agencies without the order of a Magistrate coupled with the aforesaid circumstances have rendered the confessional statements highly doubtful as to their voluntary nature.

Moreso, the prosecution case has been nipped in the bud by the execution of accused Mufti Abdul Hannan prior to his examination under section 342 of the Code of Criminal Procedure, 1898. Accordingly, either on account of these confessions being obtained by oppression of the persons making the said confessions and/or the aggravated nature of the prevailing circumstances under which these were extracted, these confessions have been rendered unreliable in the eyes of the law. In the ultimate analysis, therefore, the confessions do not withstand the test of reliability.

Moreover, some pertinent issues, as stated hereinbefore, were lost sight of by the High Court Division which ought to have been addressed and discussed in the impugned judgment.

That apart, the observation of the High Court Division to the effect that the case needs to be investigated afresh does not appear to be proper in light of the materials on record and in the facts and circumstances of the case. In deference too to the doctrine of separation of powers, an observation of a Court should not ordinarily dictate policy outcome. Predicated on that position adopted by this

Court, an expunction of the High Court Division's observation is merited on the ground that it constitutes a judicial overreach treading into matters of policy-making.

Consequently, we do not find any infirmity and illegality in the aforesaid decision of the High Court Division, except with regard to the aforesaid observations made by that Court, which call for any interference by this Division.

Accordingly, by unanimous decision the appeal is dismissed with observations, expunctions and modification in the operative portion of the impugned judgment of the High Court Division. The finding of the High Court Division that its judgment of acquittal will also apply to non-appealing convict is, hereby, affirmed.

The following observations of the High Court Division, namely:

“This killing needs to be investigated properly, independently in order to have a fair justice to the departed soul, which has totally been absent till today in this case. In the premises, we feel that this case should be referred to the Ministry of Home Affairs to take necessary steps to investigate the case afresh by way of a proper and expert investigation agencies to have a proper administration of justice in the case”

are, hereby, expunged.

The order of the High Court Division, in continuance of the said observations, to the effect that-

“Let a copy of this order be communicated to the Ministry of Home Affairs for proper and necessary steps in the light of the above observation.”

is, hereby, set aside.

The jail authority is, hereby, directed to set the convicts-respondents at liberty, if any, remaining in jail custody, if they are not wanted in connection with any other case.

Let an advance copy of this order be sent expeditiously to the jail authority for immediate compliance.

Let the warrants, if any, which are pending in this case, be recalled.

Predicated on the above, all the connected Criminal Petitions for Leave to Appeal stand disposed of.

The judgment in detail shall follow.

C.J.

J.

J.

J.

J.

J.

The 4th September, 2025
(Sarwar, RRO)