

District: Tangail.

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

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

Death Reference No.111 of 2018.

The State.

-Versus-

Md. Kamrul Islam,

----- Condemned-Prisoner.

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

----- For the State.

Mr. Md. Golam Nabi, Advocate, with
Mr. Muhammad Ahsan Habib, Advocate and
Mr. Muhammad Khairul Bashar, Advocate

--- For the Condemned-Prisoner.

With

Criminal Appeal No. 11154 of 2018.

And

Jail Appeal No. 280 of 2018.

Md. Kamrul Islam,

----- Condemned-Prisoner-Appellant.

-Versus-

The State.

----- Respondent.

Mr. Md. Golam Nabi, Advocate, with
Mr. Muhammad Ahsan Habib, Advocate and

Mr. Muhammad Khairul Bashar, Advocate
 ---- For the Condemned-Prisoner-Appellant.

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

Heard On: 05.01.2026, 11.01.2026 and 13.01.2026

And

Judgment Delivered On: 14.01.2026.

Md. Toufiq Inam, J:

Pursuant to Section 374 of the Code of Criminal Procedure, 1898 [“the CrPC”] the instant Death Reference being no. 111 of 2018 has been made to this Court by the Nari-O-Shishu Nirjatan Daman Tribunal, Tangail, following pronouncement of its judgment dated 13.09.2018 in Nari-O-Shishu Case No. 415 of 2014. By the said judgment, the Tribunal convicted the sole accused, Md. Kamrul Islam, under section 9(2) of the Nari-O-Shishu Nirjatan Daman Ain, 2000 (as amended in 2003) [“the Ain 2000”] and sentenced him to death with a fine of Tk. 1,00,000 (one lac).

The reference has been heard together with the above noted connected Criminal Appeal No. 11154 of 2018 and Jail Appeal No.

280 of 2018 filed by the condemned prisoner challenging the same judgment. As all these proceedings arise out of the selfsame judgment, they have been heard together and are being disposed of by this common judgment.

The prosecution case, in brief, is that the informant, Md. Abul Kalam of village Bhutia under Madhupur Police Station, Tangail, had an eight-year-old daughter named Bithi. On 19.05.2014 at about 5:00 p.m., while the victim was walking along a footpath near a place known as “Boyratala,” situated to the north-eastern side of the informant’s house, the accused, a neighbour, enticed her on the pretext of giving her litchis and took her away. When the victim did not return home by evening, the informant, along with relatives and local people, searched for her, during which the accused also participated. At about 7:30 p.m., three minor children informed the informant that they had seen the victim going towards Sujan’s banana garden at Boyratala in the company of the accused.

The matter was immediately reported to the police. Upon arrival, the police detained and interrogated the accused, who falsely stated that he had handed over the victim to his brother-in-law, Ujjal, and another unknown person in a microbus, and that she had been taken

to Dhaka. Acting on this statement, the police, along with the informant and the accused, searched various places in Dhaka, but the victim could not be traced. On further interrogation in the morning of 20.05.2014, the accused confessed that he had taken the victim to a jungle beside the road near Akrachana ball field under Bhutia village, forcibly raped her, and, after she became unconscious, left her body in a drain beside the jungle after covering it with leaves.

On the basis of the first information report, a case was registered at Madhupur Police Station under section 9(2) of the Ain, 2000. The accused subsequently made a judicial confession under section 164 of the CrPC, which was recorded by PW-9. During trial, the prosecution examined eleven witnesses. The accused was examined under section 342 of the CrPC on 05.08.2018, where he denied the allegations and declined to adduce any defence evidence. Upon conclusion of the trial, the learned Tribunal convicted the accused and sentenced him to death, giving rise to the present Death Reference and the connected appeals.

Mr. Mohammed Abdul Baset, learned Deputy Attorney General appearing for the State, submits that the prosecution has been able

to prove the charge under section 9(2) of the Ain, 2000 beyond all reasonable doubt by cogent, consistent, and reliable evidence. He argues that the case is founded on unimpeachable circumstances, namely, the last-seen evidence of a natural child witness, the voluntary judicial confession of the accused, recovery of the dead body on the showing of the accused, and strong medical evidence conclusively proving rape followed by homicidal death.

He further contends that the confessional statement recorded under section 164 of the Code of Criminal Procedure was made voluntarily after due compliance with all legal formalities, as proved by the Magistrate (PW-9), and that the same finds ample corroboration from independent evidence. He also submits that the conduct of the accused in deliberately misleading the family members of the victim by giving false information about taking the victim to Dhaka constitutes a strong incriminating circumstance pointing unmistakably to his guilt.

With regard to sentence, Mr. Baset submits that the offence involves the rape and murder of an innocent eight-year-old child, committed in a brutal and barbaric manner, which has shaken the conscience of society. He argues that such a heinous crime squarely

falls within the category of the “rarest of rare” cases and that any leniency would undermine public confidence in the administration of criminal justice. He, therefore, prays for acceptance of the Death Reference, confirmation of the sentence of death, and dismissal of the Criminal Appeal and Jail Appeal.

Per contra, Mr. Md. Golam Nabi, learned Advocate appearing with Mr. Muhammad Ahsan Habib and Muhammad Khairul Bashar, learned Advocates for the condemned accused, submits that both in the FIR and in his court deposition, PW-1 stated that the dead body was recovered in his presence and at the pointing out of the accused. In contrast, PW-2 to PW-5 deposed that the dead body was recovered at a time when the informant (PW-1) and the accused were in Dhaka. According to him, this material discrepancy strikes at the root of the prosecution case, and the benefit of such inconsistency must, therefore, go in favour of the accused.

Mr. Nabi also argues that it has been mentioned in the inquest report that the victim’s neck was fractured, but neither in the confessional statement nor in the post-mortem report was any fracture of the neck found, and such discrepancy casts a serious

doubt on the prosecution case. Referring to the deposition of the Investigating Officer, he submits that the accused remained in police custody throughout and that the confessional statement was extracted under coercion, rendering it neither true nor voluntary.

He further submits that the alleged recovery of the dead body on the showing of the accused has not been proved in accordance with law, as the evidence regarding the place, time, and presence of witnesses is contradictory and uncertain. Such recovery, therefore, cannot be treated as an incriminating circumstance of decisive value. He argues that the prosecution evidence, even if taken at its highest, does not form a complete and unbroken chain so as to exclude every hypothesis consistent with the innocence of the accused. He argues that the so-called “last-seen” evidence rests on the testimony of a solitary child witness, whose statement, according to him, suffers from inherent infirmities and lacks independent corroboration from any neutral witness. He adds that the medical evidence, far from conclusively supporting the prosecution story, leaves room for doubt regarding the exact manner and timing of death, and does not lend unqualified assurance to the alleged sequence of events narrated in the confession.

Let us now meticulously reappraise the entire evidence on record, which is our bounden duty in a death reference, and, most importantly, examine with anxious scrutiny the confessional statement of the convicted accused recorded under section 164 of the CrPC by PW-9.

PW-1 Md. Abul Kalam, the informant and father of the victim, has fully supported the prosecution case and reiterated the contents of the FIR in all material particulars. He stated that the accused enticed his minor daughter on the pretext of giving her litchis, actively participated in the night-long search, deliberately misled the family members by giving false information about Dhaka, and subsequently confessed before the assembled villagers that he had raped and killed the child and concealed her body in a drain. He proved the FIR and his signature thereon and further stated that the accused made a confessional statement before a Magistrate. In cross-examination, PW-1 categorically denied the defence suggestions of false implication, prior enmity, or fabrication. Being the father of the victim, his presence, conduct and testimony are natural and expected, and nothing has been elicited to discredit his credibility.

PW-2 Anisur Rahman corroborated the sequence of events relating to the disappearance of the victim, the information supplied by the child witnesses, the detention of the accused, his false explanation regarding Dhaka, and his subsequent confession leading to the recovery of the dead body. PW-3 Anisur Rahman (son of Abdur Rashid) stated that the dead body was recovered from a drain in his pineapple garden as shown by the accused, and that the victim's wearing apparels and blood-stained leaves were seized in his presence. His testimony directly corroborates the disclosure made by the accused and rules out any theory of planted recovery.

PW-4 Rafiqul Islam consistently supported the prosecution case regarding the disappearance of the victim, the collective search, the information given by the child witnesses, the confession of the accused, and the recovery of the dead body. PW-5 Jahangir Hossain, an inquest witness, stated that blood stains were found on the private parts of the victim, lending contemporaneous corroboration to the allegation of sexual assault.

PW-6 Lata Akter, a child witness and playmate of the victim, gave a clear, spontaneous and natural account that she saw the accused taking the victim towards Sujon's banana garden on the pretext of

giving her litchis. Her testimony constitutes vital last-seen evidence. Despite searching cross-examination, her evidence remained consistent and unshaken. No motive for false implication or tutoring has been suggested or established. It is well settled that the testimony of a child witness, if found natural and trustworthy, can safely be relied upon. While PW-7 Alamgir was tendered by the prosecution.

PW-8 Laskar Ali corroborated the preparation of the inquest report and seizure list and confirmed that the dead body was recovered on the showing of the accused. PW-9 A.B.M. Ashfaul Haque, the learned Magistrate, proved the confessional statement recorded under section 164 CrPC and categorically stated that all statutory safeguards were strictly observed. He deposed that the accused was given sufficient time for reflection, was warned that he was not bound to confess, was kept free from police influence, and that the confession was made voluntarily. There is no material on record to suggest any departure from the mandatory legal requirements.

PW-10 Dr. Profulla Kumar, who conducted the post-mortem examination, proved the post-mortem report and unequivocally opined that the victim was subjected to forcible sexual assault and

thereafter died a homicidal death. PW-11 SI Atikul Haque, the Investigating Officer, detailed the entire course of investigation, including GD entry, arrest, interrogation, recovery of the dead body on the showing of the accused, preparation of inquest and seizure lists, recording of statements and submission of the charge-sheet. His evidence remained consistent and inspires confidence.

It is not disputed that the victim Mosammat Bithi, aged about eight years, went missing on the afternoon of 19.05.2014 and that her dead body was recovered on the following morning from a drain beside a jungle near Akrachana ball field. The post-mortem report and the testimony of PW-10, the medical officer, conclusively establish that the victim was subjected to forcible sexual assault and thereafter died a homicidal death. The extensive injuries found on her genital organs, along with swelling, bleeding and signs of violence, completely rule out any possibility of accidental or natural death. The evidence of the inquest witnesses (PW-5 and PW-8) lends further corroboration to the medical findings.

The judicial confession of the accused is detailed, graphic, and unequivocally self-inculpatory; the relevant portion thereof reads as follows:

“.....আমার বয়স ২০ বছর। আমি কামলা দেই। আমি ১৯/৫/১৪ ইং তারিখ কামলা দিয়ে বাড়ী আসি। বাড়ি এসে বিকাল বেলা গোসল করে দোকানের দিকে যাই। দোকান এ যাওয়ার আগেই আমার চাচাতো বোন বিথির সাথে দেখা হয়। তখন সময় ছিল অনুমান বিকাল ৬.০০ টা। এরপর আমি বিথিকে লেচু খাওয়ার কথা বলে ডাইকা নিয়ে যাই। এরপর আমি বিথিকে আকরাচনা বলমাঠের পার্শ্ব জঙ্গলের দিকে নিয়ে যাই। ঐ খানে কেউ ছিল না। বিথি লেচু খাওয়ার লোভে আমার সাথে যায়। জঙ্গলে নিয়ে যাওয়ার পর আমি বিথিকে তার সালায়ার কামিজ খুলতে বলি। কিন্তু বিথি খোলে না। এরপর আমি বিথিকে শোয়াইয়া জোর করে তার পায়জামা খুলি। এরপর আমি আমার সোনা মানে যেটা দিয়ে আমি প্রশাব করি সেটা বিথির প্রশাব এর জায়গায় ঢুকিয়ে দেই। এই ভাবে কিছুক্ষন করার পর আমি দেখি বিথি কিছু বলেনা বা চিৎকার করে। প্রথমে বিথি চিৎকার করতেন। এরপর দেখি বিথি অজ্ঞান হয়ে গেছে। তখন আমি ভয় পাই। এরপর আমি বিথিকে কোলে করে নিয়ে আসি। সেখানে কেউ ছিল না। তখন অন্ধকার ছিল। এরপর আমি বিথিকে আকরাচনা বলমাঠের পার্শ্ব থাকা ড্রেনে শোয়াইয়া রাখি। এরপর আমি তাকে ঐ খানে রেখে বাড়ী চলে আসি। বাড়ি আসার পর বিথির বাবা মানে আমার চাচা আমাকে বিথির বিষয়ে জিজ্ঞাসা করে। তখন আমি চাচাকে বলি বিথি কোথায় গেছে তা জানিনা।”

This judicial confession of the accused is detailed, graphic, and replete with intrinsic particulars relating to the enticement of the minor victim, commission of rape, and subsequent disposal of the

dead body. Such minute and coherent details were within the exclusive knowledge of the perpetrator and could not have been fabricated or supplied by the police. The confession finds strong corroboration from independent evidence, including the medical findings and the recovery of the dead body at the place disclosed by the accused.

PW-9, the Magistrate who recorded the confession, categorically testified that all statutory safeguards were strictly observed. He stated that the accused was given sufficient time for reflection and that the confession was made voluntarily, without any threat, inducement, or promise. The defence allegation of coercion is wholly unsubstantiated and stands squarely contradicted by the unimpeached testimony of the Magistrate. Mere police custody prior to recording the confession, in the absence of any proof of threat or inducement, does not render a confession involuntary.

Pursuant to the disclosure made by the accused, the dead body of the victim was recovered from a drain in a pineapple field at the precise location pointed out by him. This recovery has been consistently proved by PW-1, PW-2, PW-3, PW-4, PW-8, and PW-11. Recovery of the dead body at the instance of the accused is a

highly incriminating circumstance and provides strong corroboration to the judicial confession.

The defence contention regarding an alleged discrepancy in the inquest report mentioning a fractured neck is devoid of merit. An inquest report is not a substantive piece of evidence and merely notes the apparent external condition of the body. The medical evidence, which is decisive on the cause of death, conclusively establishes rape followed by homicidal death. Such minor variation neither strikes at the root of the prosecution case nor creates any reasonable doubt.

The prosecution has successfully proved the circumstance that the accused was last seen in the company of the victim immediately prior to her disappearance. PW-6, a child witness and playmate of the victim, gave a clear, natural, and convincing account that she saw the accused taking the victim towards Sujan's banana garden on the pretext of giving her litchis. Her testimony remained consistent and unshaken in cross-examination, and nothing has been elicited to suggest tutoring or fabrication. The evidence of PW-1, PW-2, and PW-4 materially corroborates this circumstance.

Once the victim was last seen in the exclusive company of the accused and was thereafter found to have met an unnatural death, the burden shifted upon the accused to explain how they parted company. The accused has offered no explanation whatsoever, either during trial or in his examination under section 342 CrPC. His mere denial, coupled with complete silence in the face of such incriminating circumstances, further fortifies the prosecution case.

The conduct of the accused is also highly incriminating. While ostensibly participating in the search, he deliberately misled the victim's family by giving false information regarding her alleged presence in Dhaka. This false explanation, along with his shifting and inconsistent versions, clearly reflects a guilty conscience and constitutes an important link in the chain of circumstances. The medical evidence fully corroborates the prosecution case and is in complete consonance with the judicial confession. The grave injuries on the genital organs, accompanied by swelling, bleeding, and other clear signs of violence, as described by PW-10, are wholly consistent with the manner of assault admitted by the accused. The recovery of the naked body bearing such injuries completes the unbroken chain of circumstantial evidence.

From the evidence of all eleven prosecution witnesses, it is evident that the informant, the last-seen child witness, the recovery witnesses, the medical officer, the Magistrate, and the Investigating Officer consistently supported the prosecution case. The prosecution relied upon last-seen evidence, extra-judicial and judicial confessions, recovery of the dead body at the instance of the accused, medical evidence, and other corroborative circumstances to establish the charge under section 9(2) of the Ain, 2000.

It is our considered view that a conviction under section 9(2) of the Ain, 2000 is sustainable where a voluntary judicial confession, recorded in compliance with law and containing facts within the exclusive knowledge of the accused, is corroborated by recovery of the dead body at his instance, consistent medical evidence, credible last-seen testimony, and his failure to explain the incriminating circumstances. Minor discrepancies in the inquest report or prior police custody do not vitiate such conviction to its maker in the absence of proof of coercion.

Upon a cumulative assessment of the entire evidence, we find that the prosecution has successfully proved each link in the chain of

circumstances beyond reasonable doubt. The evidence forms a complete and unbroken chain leading only to the conclusion that the accused Md. Kamrul Islam enticed the minor victim, subjected her to brutal rape, caused her death, and concealed her body. We find no illegality, infirmity, or perversity in the findings of the learned Tribunal in holding the accused guilty under section 9(2) of the Ain, 2000. Accordingly, the conviction of the accused is hereby affirmed.

However, in deciding the sentence, we have taken into account that the accused was a young offender, that prolonged confinement in the condemned cell has itself inflicted extreme mental agony, and that there remains a possibility of his moral reformation and eventual reintegration into society. While the offence is undoubtedly heinous and has shaken the conscience of the society, the mitigating circumstances noted above persuade us to commute the sentence of death imposed upon the accused to imprisonment for life

Consequently-

- i) The Death Reference No. 111 of 2018 is rejected. The conviction of the condemned convict is affirmed;

however, the sentence of death is commuted to imprisonment for life together with a fine of Tk 100,000. Consequently, the connected Criminal Appeal No. 11154 of 2018 and Jail Appeal No. 280 of 2018 are disposed of in the above terms.

- ii) The condemned prisoner Md. Kamrul Islam son of Md. Saban Ali @ Fazlul Haque shall be transferred from condemned cell to general prison at once. He shall remain in jail to serve out the sentence of imprisonment for life in accordance with law, subject to any remission or benefit of section 35A CrPC.
- iii) The Office is directed to transmit the lower court records forthwith and communicate this judgment to the tribunal and concerned authorities for immediate compliance.

(Justice Md. Toufiq Inam)

Md. Zakir Hossain, J:

I agree.

(Justice Md. Zakir Hossain)