

LEX/BDHC/0106/2019

Equivalent Citation: 71 DLR (2019) 598

IN THE SUPREME COURT OF BANGLADESH (HIGH COURT DIVISION)

Criminal Appeal Nos. 5113, 5038, 5071, 5208 and 5743 of 2013

Decided On: 30.01.2019

Appellants: **Asif Imran and Ors.**

Vs.

Respondent: **State**

Hon'ble Judges:

A.K.M. Abdul Hakim and Fatema Najib, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: S.M. Shajahan, Senior Advocate and Muhammad Masud-ul-Haque, Advocate

For Respondents/Defendant: Harun-ar-Rashid, DAG

JUDGMENT

Fatema Najib, J.

1. These five Appeals are directed against the judgment and order of conviction dated 27-6-2013 passed by learned Judge of Druto Bichar Triabunal No. 1, Dhaka in Druto Bichar Tribunal Case No. 14 of 2006 corresponding to GR case No. 520 of 2005 arising out of Kotwali Police Station Faridpur Case No. 25 dated 17-11-2005 convicting all 9 (nine) appellant-accused under sections 302 and 34 of the Penal Code and sentencing each of them to suffer imprisonment for life and to pay a fine of Taka 50,000 (Fifty thousand) each in default to suffer rigorous imprisonment for a period of 1 (one) year more. All these appeals are now being disposed of by this common judgment as the same Wised out of the judgment dated 27-6-2013 passed by learned Judge of Druto Bichar Tribunal No. 1, Dhaka.

2. These appeals were sent by the Hon'ble Chief Justice of Bangladesh by order dated 7-9-2015 to be heard and disposed of by the Judge presided over by Mr. Justice AKM Abdul Hakim.

3. The prosecution case in brief, is that, the informant Md. Hasanuzzaman, District Representative of "The Daily Samakal" (PW 1) went to Faridpur Samakal Bureau office on 17-11-2005 at about 1-00 pm and saw the door of the office was closed from the inside. He waited there for some time and called the name Goutam Das but did not get any response from the room. He was in doubt that Goutam Das might be attacked by the terrorist. Meanwhile, he brought the matter to the notice of 2-3 journalist. Thereafter, on the advice from all he tried to see inside the occurrence room from the adjacent under construction building, and saw Goutam was lying on the floor. He informed the police, the police force came to the spot, recovered the body of Goutam at 2-00 pm by breaking the door with shabal in presence of journalists and large number of people. The dead body of the victim Goutam Das was lying on the floor near the door on the south of the room with broken knee. He was strangulated with a white nylon tides, his tongue came out. The police prepared

inquest report (Exhibit-3) on 17-11-2005 at 14-45 pm and sent the dead body for post mortem. Then he lodged ejahar (Exhibit-1) with the Kotwali Police Station, Faridpur on 1.7-11-2005 at 23-00 pm. The investigation of the case was held by SI, Golam Nabi.

4. The investigating officer, PW 26 after taking up the investigation visited the place of occurrence along with SI Mosaddeque, SI Abu Zihad Khan and Others. Due to insufficient light, the investigating officer could not inspect the place of occurrence till 23-25 pm and prepared seizure-list (Exhibit 2) in presence of the witnesses (PW 21, 10, 11) and also seized the alams and taken those in his custody. The day after the occurrence on 18-11-2005 at 7-15 am, the investigating officer visited place of occurrence and prepared sketch map of the occurrence with a separate index (Exhibit-12, 13) and recorded the statement of the witnesses under section 161 of Criminal Procedure Code. During investigation, three accused persons namely, Asad-bin-Kadir @ Asad, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas and Md. Tamjid Hossain @ Babu, had made confessional statements under section 164 of Criminal Procedure Code by (Exhibits-4, 4ka and 4Kha). After the completion of the investigation, the investigating officer SI. Md. Golam Nabi, PW 26 submitted charge-sheet under sections 302 and 34 of the Penal Code against accused Asif Imran @ Imran, Asif Imtiaz @ Bulu, Kazi Murad @ Murad, Zahid Khan @ Zahid, Apon @ Quamrul Islam Apon, Md. Siddiqur Rahman @ Siddique, Asad-bin-Kadir @ Asad, Md. Rajib Hasan Mia @ Mona, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas and Tamjid Hossain @ Babu.

5. The case was ultimately sent to the Druta Bichar Tribunal No. 1, Dhaka after Gazette notification No. SRO No. 159 Ain of 2006 dated 27-6-2006 by the Ministry of Home in Kotwali Police Station Case No. 25(11)05 corresponding to GR Case No. 520 of 2005 and the same was registered as Druta Bichar Tribunal Case No. 14 of 2006. On examining the materials on record the Judge, Druta Bichar Tribunal have taken cognizance of charge-sheet against accused under sections 302 and 34 of the Penal Code. Then the case was fixed for hearing for framing of charge. Since some accused were absconding, on their behalf State defense lawyer were appointed on 3-8-2006. Advocate Emdadul Hoq, was appointed as State defense lawyer for the absconding accused Zahid Khan @ Zahid and Advocate Kazi Wakhimul Haq Modi was appointed as State defense lawyer for Apon @ Apon Quamrul Islam Apon.

6. After examining ejahar, charge-sheet, the statements made under section 161 of the witnesses, the confessional statements made by the accused Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas, Asad-bin-Kadir @ Asad and Md. Tamjid Hossain @ Babu under section 164 of the Code of Criminal Procedure framed charge on 15-8-2006 under sections 302 and 34 of the Penal Code against the accused appellants and the charge was read over in presence of accused appellants Asad-bin-Kadir, Md. Siddiqur Rahman @ Siddique Mia, Tamjid Hossain @ Babu, Md. Rajib Hasan Mia, Asif Imran @ Imran Abu Taher Md. Murtoza Ehsan @ Appollo Biswas and they pleaded not guilty and claimed to be tried. Since the other accused were absconding at the time of charge-frame, so the charge framed was not read over to them.

7. At the trial the prosecution examined as many as 27 witnesses including the informant and the documents produced which were marked as Exhibits-1-16, material exhibits which were marked as I-VII. After closing the evidences adduced by prosecution, the accused except Zahid Khan Zahid were examined under section 342 of the Code of Criminal procedure as Zahid Khan Zahid died by this time. During the examination, they pleaded themselves again to be innocent and led no evidence.

8. The defense version, as appeared from the trend of the cross-examination of the PWs was that they were falsely implicated in the case. The police had tortured on accused Asad-bin-Kadir, Tamjid Hossain and Appollo Bishwas and compelled them to confess implicating themselves as well as the other accused. In fact, Goutam committed suicide due to depression.

9. The learned Judge of the tribunal, after considering the evidence on record found all the appellants of the charge to be guilty.

10. Being aggrieved, convicted appellants Asif Imran @ Imran, Asif Imtiaz @ Bulu, Apon @ Quamrul Islam Apon and Md. Rajib Hasan Mia @ Mona preferred Criminal Appeal No. 5113 of 2013, Md. Siddiqur Rahman @ Siddique Miah, Tamjid Hossain @ Babu preferred Criminal Appeal No. 5038 of 2013, Asad-bin-Kadir @ Asad preferred Criminal Appeal No. 5071 of 2013, Kazi Murad @ Murad preferred Criminal Appeal No. 5208 of 2013 and Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas preferred Criminal Appeal No. 5743 of 2013 against their conviction and sentence dated 27-06-2013 passed by the learned Judge, Druta Bichar Tribunal.

11. Mr. SM Shahjahan and Mr. Muhammad Masud-ul-Haque, Advocates appeared for the appellants in Criminal Appeal No. 5113 of 2013, Mr. Md. Helal uddin Mollah appeared for the appellant Md. Siddiqur Rahman @ Siddique and Tamjid Hossain @ Babu in Criminal Appeal No. 5038 of 2013. Mr. Abdur Rashid and Md. Omar Faruque, Advocates appeared for the appellant Asad-bin-Kadir @ Asad in Criminal Appeal No. 5071 of 2013. Mr. Sk. Baharul Islam, Advocate for the appellant Kazi Murad alias Murad. Mr. Md. Helal-Uddin Mollah, Advocate also appeared for the appellant Abu Taher Md. Murtoza Ehsan alias Appollo Biswas in Criminal Appeal No. 5743 of 2013. We have perused the records and examined the evidence adduced by the prosecution.

12. Let us now advert to the evidence from the prosecution side.

13. The informant, Hasanuzzaman, PW 1 representative of "Daily Samakal" of Faridpur District, narrated the prosecution Case, in his brief, it was stated that on 17-11-2005 at afternoon like the other days he went to Samakal office situated at Sarani Market at second floor, Mujib Road. The deceased Goutam used to stay and sleep on that room occasionally. He found the door was locked and he was calling the name Goutam but did not get a response. Then he went to the ground floor and informed the other two journalists. Thereafter, on advice of others he tried to see inside of the occurrence room from the adjacent under construction building. He saw a body was lying on the floor then he informed the matter to police. Police came and broke the door with Sabol in presence of journalist and many people. The dead body of deceased Goutam have been recovered and found that the deceased have been strangulated with nylon tides. Police prepared inquest report in presence of him and others. The deceased was sent to morgue for post mortem. The relatives of the deceased did not reside in Faridpur. Thereafter, he as the informant lodged First Information Report.

14. PW 1 further deposed that the following day of occurrence on 18-11-2005 he came to know that eye-witness Monir Molla, tea-stall-keeper, security guard, night guards of the place of occurrence told that they saw the accused, Imran, Siddique Mia and Zahid in the ground floor of the Saranika Market. He also said in brief that the witness Monir Molla has made statement and according to his statement the accused Tamjid Hossain Babu has been arrested, who also told the names of accused Apon, Asad-bin-Kader, Bulu, Kazi Murad. All of them conspired to kill the deceased long

before the occurrence. Some accused stayed in Jamuna Hotel on the night before the occurrence, that is on 16-11-2005. Thereafter, the accused Asad-bin-Kadir was arrested and he made confessional statement. According to his statement, the accused Appollo Bishwas has been arrested and he also made a confessional statement. The deceased Goutam made reporting regarding the corruption, irregularity of renovation work of Mujib Sarak and for this reason the accused made plan and conspiracy to kill Goutam. The Police seized banner from the office of Samakal in his presence. The ejahar which he lodged was marked as (Exhibit-1) and his signature thereon was marked as Exhibit-1/1. The seizure list and signature thereon which were marked as Exhibits-2 and 2/1. The inquest report and his signature put on it as witness were marked as Exhibit 3 and 3/1. Banner, reporting were marked as material Exhibits I, II series.

15. In cross-examination by Asad-bin-Kadir, Md. Siddiqur Rahman @ Siddique Mia, Tamjid Hossain @ Babu, Md. Rajib Hasan Mia, Asif Imran @ Imran and Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas. PW 1 stated that the door of the occurrence room was made of wood and there was lock on door and a hatch-bolt also. They used hatch-bolt. Islamia Hotel building was situated on the western side of Madrasa super market and Sarani super market. He along with his fellows Nirmalendu and other tried to see the inner side of the Samakal office from the roof of Islamia Hotel building. Nirmolendu was the District representative of 'Ajker Kagoj' back then. Since the door was not opened, he rushed to the ground floor and met Sankar Babu in the Fax shop. He then talked to Hori, the cousin of the deceased. Father, mother, elder brother and sister of Goutam were residing in Bhanga upazila of Faridpur. The dead body was taken to press club. He had given suggestion that he had the key but did not open the door, meaning that he willfully suppressed the truth, called police and had broken the door by the police, then on giving false statement filed the instant case which he denied. He had given suggestion that accused were workers of BNP and they have been falsely implicated in the instant case which he denied. He also gave suggestion that the accused who made confessional statements, they were taken into police custody and under torture and pressure they made confessional statements which he denied. He further had given suggestion that being encouraged, and to drive the case in a different angle he lodged the instant case which he also denied.

16. In cross he also said at the time of occurrence he was thana representative of the Daily Samakal. He said that the deceased Goutam and he was working in the Samakal office. In the morning both of them used to collect reports and generally opened the office between 1-00/1-30 p.m. in the afternoon. Sometimes he came to Samakal office before Goutam and vice versa also. There were other two markets, namely, Maya super market, Madrasha super market which are adjacent to Sarani market, Maya market is two storied building and Madrasha market is one storied building. There are about 70-80 shops in three markets. Sarani super market is two storied building. There is no way to go from second floor of Maya market to second floor of Sarani market. There was a collapsible gate in Sarani market from where the stairs begin to go up. At the time of occurrence in the second floor of Sarani market two journalists, Panna Bala, Moshiur Rahman along with one peon stayed there. There was no care taker in Sarani market, key of collapsible gate was kept with the tenants of second floor of the Saranika market and he stayed generally in Samakal office up to 7-00 pm.

17. The other accused were absconding. On their behalf State defence adopted the cross.

18. Salamat Hossain Khan, as PW 2 in his brief stated that he is the editor of Weekly Progotir Din. He is the witness of seizure list. In his presence one banner and report with signature of Bureau chief of Daily Samakal Paper were seized and he put his signature, which was marked as Exhibit-2/2. A bunch of key with cover of chocolate color was also recovered from the bed of the deceased which was marked as material exhibit IV. In cross by the accused Asad-bin-Kadir, Md. Siddiqur Rahman @ Siddique Mia, Tamjid Hossain @ Babu, Md. Rajib Hasan Mia, Asif Imran @ Imran, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas, he stated that he knew Goutom who was killed due to discharge of his professional duties. In cross by accused Apon @ Kamrul Islam Apon and Kaji Murad @ Murad, he stated at the time of seizing articles, the informant, member of police and he was present there. No employees of shops of the ground floor of the said market was present there. He did not see any relatives of the deceased. In cross by the State on behalf of absconding accused Asif Intiaj @ Bulu, he stated that he did not remember that in his newspaper it was published that Goutam was killed due to publication regarding the irregularity and corruption about Mujib Sarak.

19. Panna Bala as PW 3 in his chief stated that he is a journalist working in Daily Protom Alo as District representative and deceased Goutom Das was well known to him. On 1-8-2005 he left the job of Daily Prothom Alo and joined in Daily Samakal. Goutam Das was a committed Journalist. He had personal relationship with the deceased Goutam. Goutam used to regularly write on terrorism, social justice and against the renovation work of Mujib Sarak in Faridpur. He was not in Faridpur on 17-11-2005 at the time of occurrence. He was informed by Nirmolander, representative of 'Ajker Kagoj' Faridpur that Goutam is not opening the door and requested him to come to the place of occurrence. Then he came to Bureau office, Samakal. His body was found in a half-laid posture but taking support of the wall behind. Police prepared inquest report. The deceased was strangulated with nylon ropes, his two legs were folded with the floor. He signed the seizure list and same was marked as Exhibit 3/2. He made a statement to the investigating officer.

20. He was cross-examined by the accused Apon @ Kamrul Islam Apon and Kazi Murad @ Murad. In cross he said he saw the people who were witnesses of inquest report. He said Goutam spent most of the time in office. He went outside in need. Inquest report was prepared at 2.40 pm in his presence. He read the report and then signed on it. He did not remember the name of the writer of inquest report. A meeting was held protesting the killing. The police super had given speech in the meeting. He knew that the accused had given confessional statements, He had been given suggestion that confessional statements were made under torture which he denied.

21. He was crossed by the State defence on behalf of absconding accused Asif Intiaz @ Bulu and adopted the cross. He denied that he did not say in statements given under section 161 that the accused Bulu, Murad and others were implicated in the murder. He did not see any articles seized. No picture of the dead body taken through the window. Similarly, no photograph or video was taken while breaking the lock. No photograph was published in newspaper.

22. He was crossed by the accused Asad-bin-Kadir, Md. Siddiqur Rahman @ Siddique Mia, Tamjid Hossain @ Babu, Md. Rajib Hasan Mia, Asif Imran @ Imran and Abu Taher Md. Murtoza Ehsan @ Apollo Bishwas. There was no office except Samakal Office in second floor of the building. There was no care taker in ground floor, first and second floor of the building. He did not know that Imran and other have beaten

the deceased 4/5 days before of the occurrence. He denied suggestion that the police had tortured the accused under their custody and the accused were compelled to make confessional statements. He stated to investigating officer that on 24-10-2005 about renovation work a program was held under the banner of “পাঠক ফোরাম সুহৃদয় সমাজ” and he joined in that program at the invitation of Goutam Das.

23. Monir Molla, as PW 4 in his chief stated the he had a tea stall in Sarani Market, Mujib Sarak, Faridpur. On 17-11-2005 he came from his house to tea stall and worked there from 9-00/9-15 am to 1-00 pm and then went to his house. He again came at 2-00 pm to his tea-stall and heard Goutam was killed. The State defense crossed him declaring hostile. In cross he said he did not see the occurrence. He did not know who are the accused. He did not know who killed Goutam Das. He had given suggestion that he suppressed the real facts and adduced false statement under the threat and pressure of the accused which he denied.

24. Moshiur Rahman Khokon as PW 5 in his brief stated that he was a photo journalist and worked as journalist in Prothom Alo since 2003. When he joined in Prothom Alo, Goutam Das was then District representative of Prothom Alo in Faridpur and he had good relation with Goutam Das. Goutam Das always wrote about corruption, terrorism which destroys the society. The deceased Goutam Das wrote in newspaper about illegal activities of the accused Imran, Bulu and others like stealing car etc. On 17-11-2005 at about 12 am he came to know that barricade has been put in Dhaka-Faridpur highway and he went there. While staying there, he heard over mobile phone that Goutam Das has been killed. He along with Panna Bala rushed to Samakal office and saw the dead body of Goutam Das. After 2/1 days of the occurrence he came to know through police that the accused Imran, Bulu, Kazi Murad, Apon and Zahid killed the deceased Goutam. He also came to know that Goutam published in different newspaper against the accused in respect of their corruption regarding renovating work of Mujib Sarak. The investigating Officer took 5 pictures in connection of this which were marked Exhibit-X series. He also heard that the arrested accused made confessional statements wherein they implicated themselves with the murder of Goutam.

25. He was crossed by Asad-bin-Kadir, Siddique Mia, Tamjid Hossain @ Babu, Md. Rajib Hasan Mia, Asif Imran @ Imran and Abu Taher Md. Murtoza.

26. In cross he said the investigating officer recorded his statements. He came to know through police after 2/1 day of the occurrence that the accused Imran, Bulu, Kazi Murad, Apon and Zahid Killed Goutam. He had given suggestion that he did not say to the investigating officer that Goutam has been killed due to corruption of the accused regarding renovation work of Mujib Sarak has been published in different newspaper. He denied the suggestion. He also had been given suggestion that he did not tell the investigating officer that the accused were appointed as contractor of renovation work of Mujib Sarak, which he denied. Goutam Das had father, Mother, brother and sister.

27. In cross by Kazi Murad, Apon @ Qamrul Islam Apon adopted the cross and in addition said he was not with the accused while the accused made confessional statements. He had given suggestion that he did not know through police two or one day after occurrence that the accused Imran, Murad, Apon Zahid and others killed Goutam which he denied.

28. In cross by State defense on behalf of absconding accused Asif Imtiaj @ Bulu

and Zahid Khan @ Zahid adopted the cross and in addition he had given suggestion that falsely he implicated the accused with the murder of Goutam, which he denied.

29. Ruhul Kabir Jewel, as PW 6 in chief stated that he is the representative of Daily Manab Jomin, Faridpur. He knew Goutam Das and they worked together. Goutam Das has written article in his paper regarding the irregularity and corruption of the contractors about the renovation work of Mujib Sorak. Asad, Appollo, Babu, Apon were arrested by police who were contractors of a syndicate group. The report has been published by Goutam Das wherein the name of Asad, Babu, Imran, Apon, Siddique, Zahid and others were mentioned. After 15/20 days of the said publication Goutam has been killed. Then they knew, the contractors of said group conspired and killed Goutam with ulterior motive. The accused Asad, Appollo, Babu made confessional statements to police and Magistrate implicating themselves engaged as guard at the time of committing murder by other accused who went to Goutam office and killed Goutam regarding that he published in his newspaper.

30. In cross by Apon @ Quamrul Islam Apon and Kazi Murad he said he had relation with Goutam prior to 2005. He made a statement to investigating officer. He had given suggestion that he made the statements in court out of the statements made to investigating officer and police officers which he denied. In cross by Asad-bin-Kadir, Siddiqur Rahman @ Siddique Mia, Tamjid Hossain @ Babu, Rajib Hasan Mia, Asif Imran, Abu Taher @ Appollo he adopted cross. In addition, he said that he did not remember that he told the name of Asad, Babu, Imran, Bulu, Apon, Siddique, Zahid to investigating officer. He also did not remember whether the group of contractors killed Goutam in collusion with each other. He also did not remember whether he said to police that Asad, Appollo, Babu made confessional statement and Apollo, Babu, Asad were keeping guard under the stairs and other accused went to office of Goutam. He had given suggestion that he did not say the name of the accused to investigating office which he denied. No articles were seized from him.

31. In cross by State defense for Asif Imtiaj @ Bulu and Zahid Khan @ Zahid he adopted the cross. In addition, he had given suggestion he is a fake journalist which he denied.

32. Md. Harun Ansari, as PW 7 stated in brief that he was a staff reporter of "Daily Naya Diganta". He heard the news at 1-30 pm on 17-11-2005 that Goutam Das was killed in his office room. Then he went to the place of occurrence and saw the people. He saw the dead body of Goutam Das lying in the south of the room of Samakal Office situated in the 2nd floor of Sarani Market. Police prepared inquest report in his presence and he made a signature on it which was marked as Exhibit-3/3. Later on, he came to know some accused made confessional statements.

33. In cross by Apon @ Qamrul Islam Apon @ Apon, Kazi Murad @ Murad he said that he did not make statement to the investigating officer. He had relation with Goutam Das before the year of 2000. He stayed in the place of occurrence from 1-30 pm to 1-45 pm. He saw police, businessman, shop-keeper and at least 200/250 peoples.

34. In cross by Asad-bin-Kadir, Siddiqur Rahman @ Siddique Mia, Tamjid Hossain @ Babu, Rajib Hasan Mia, Asif Imran, Abu Taher @ Imran and Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas adopted the cross. In addition, he stated when he heard the news he was not at home. Arjoo was not witness of inquest report.

35. In cross by State defense for Asif Imtiaj @ Bulu and Zahid Khan @ Zahid he

adopted the cross. In addition, he stated that broken lock was not seized.

36. Md. Jasimuddin, 1st class Magistrate as PW 8 in chief stated that while he was working at Collectorate office in Faridpur he recorded the confessional statement of Md. Ashad-bin-Kadir under section 164 of the Code of Criminal Procedure on 20-11-2005 which was marked as Exhibit-4 and signature was marked as Exhibit-4/1 (series). On 22-11-2005 he recorded the confessional statement of the accused Abu Taher Md. Murtoza Ehsan @ Appollo under section 164 of the Code of Criminal Procedure. The confessional statement of Abu Taher Md. Murtoza Ehsan @ Appollo was marked as Exhibit 4/ka and his signatures was marked as Exhibit-4/ka/1(series). On 26-11-2005 the accused Tamjid Hossain Babu made a confessional statement which he recorded was marked as Exhibit-4(kha) and his signatures which was marked as Exhibit-4kha/1 (series). On 20-11-2005 the witness Monir Molla made a statement under section 164 of the Code of Criminal Procedure which was recorded by him and marked as Exhibit-5 and his signature thereon was marked as 5/1(series). On 26-11-2005 the witness Babi Akther made a statement before him under section 164 of the Code of Criminal Procedure which was marked as Exhibit-5ka and his signature which was marked as Exhibit-5ka/1 (series). In cross by Apon @ Quamrul Islam-Apon and Kazi Murad @ Murad he stated that an application has been submitted by Asad-bin-Kadir on 14-2-2006 where upon he put his signature and also it was mentioned in that application that Asad has been arrested on 19-11-2005. He had given suggestion that actually Asad has been arrested on 19-11-2005 but due to dictation of police officer he wrote the date 20-11-2005 instead of 19-11-2005 which he denied. The accused Appollo retracts his statements on 28-12-2005. Tamjid Hossain Babu also retracted his statement on 21-12-2005. In the form of confessional statement, it was written the accused Asad-bin-Kadir @ Asad was sent to jail but not written when he was sent to jail. He recorded the statement of Abu Taher Murtoza @ Appollo started from 4-10 pm but when it got end and when he was sent to custody, not mentioned. In the same way he started recording the statement of the accused Tamjid Hossain Babu on 21-11-2005 from 1-00 pm but when it got end and where the accused was sent not written. He had given suggestion that he recorded the confessional statement of the accused at the direction of the police which he denied. He had given suggestion that the statement made by the accused was not inculpatory statement as the statement was not confessional statement which he denied.

37. In cross by the accused Asad-bin-Kadir, Siddiquir Rahman @ Siddique Mia, Tamjid Hossain @ Babu, Rajib Hasan Mia, Asif Imran, Abu Taher @ Imran and Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas he adopted the cross. In addition, he said in para 4 and 5 of the confessional statement was not written by his hand. He also said that he asked question to the accused if they made statements they would not be sent to custody. But this was not written. Before the statements made by the witnesses they were not made by oath. He had given suggestion that he recorded the statements of the witnesses at the direction of investigating officer which he denied.

38. In cross by State defense for Asif Imtiaz Bulu and Zahid Khan he adopted the cross. In addition, he said that the statement recorded in separate sheet out of prescribed form/sheet was not signed by the accused. He has been given suggestion that under pressure of police and journalist he has taken written statements of the accused in separate sheet which he denied.

39. Milon Bishwas, as PW 9 in his brief said he is Head Clerk of Banga KM College. The deceased Goutam Das also lived in the same village. On 17-11-2005 at about 6-30/7-00 the uncle of Goutam came to him and told him to inform Goutam that his

cousin was admitted to Medical College. He called Goutam and told him why he did not go to hospital by this time and on reply Goutam said he would go to hospital. Then afterward he had no connection with Goutam and on that day while he was working in his College, the elder brother of Goutam informed him Goutam was killed.

40. In cross by accused Apon @ Quamrul Islam Apon @ Apon, Kazi Murad @ Murad he had given suggestion that he did not tell investigating officer that Goutam Das was killed after 7-00 am which he denied.

41. In cross by the accused Asad-bin-Kadir, Siddiquir Rahman @ Siddique Mia, Tamjid Hossain @ Babu, Rajib Hasan Mia, Asif Imran, Abu Taher @ Imran and Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas he adopted the cross. In addition, he said that he went to College from his house. Goutam Das had an uncle named Joyhind whose daughter is Dalia. He had given suggestion that he is an arranged witness of the police and at the direction of police he made statement which he denied.

42. In cross by State defense for Asif Imtiaj @ Bulu and Zahid Khan @ Zahid he said his educational qualification is BA. He knew Goutam Das got married. He had given suggestion Goutam had an extra marital relation with Dalia, Goutam Das married the daughter of sweeper and for this reason Goutam Das did not go to his village, Dalia attempted to commit suicide and Goutam Das committed suicide, no one killed him, which he totally denied.

43. Constable No. 931 Abdur Rashid, as PW 10 in his brief stated he along with Golam Nabi (SI) went to Alimpur, Sultangonj house of the accused Asad-bin-Kadir. Constable No. 156 Sarwar also went along with him at 10-05 am and a Nokia mobile set with Grameen sim was seized from the wife of Asad-bin-Kadir. SI Golam Nabi seized the said mobile set along with sim in his presence. The seizure list was marked as Exhibit-6 and his signature thereon was marked as Exhibit-6/1. Thereafter mobile set along with sim has been handed over to the wife of Asad-bin-Kadir through zimmanama.

44. In cross by Asad-bin-Kadir, Siddiquir Rahman, Tamjid Hossain, Rajib Hasan, Asif Imran, and Abu Taher Md. Murtoza he stated that he did not remember whether there were houses surrounding the said house. He had given suggestion that at the time of seized articles he was not there which he denied.

45. In cross by accused Apon @ Quamrul Islam Apon @ Apon, Kazi Murad @ Murad adopted the cross.

46. In cross by State defense for Asif Imtiaj @ Bulu and Zahid Khan @ Zahid he stated on 21-11-2005 he went to the house of Asad-bin-Kadir through CC. He had given suggestion that he did not go to the aforesaid house, prepared the seizure list in thana and signed on it at the direction of the police officer which he denied.

47. Sarwar Constable No. 156 as PW 11 in his brief stated he along with three persons went to house of the accused of Asad-bin-Kadir and a Nokia mobile set along with sim has been seized by SI Golam Nabi from Bobi Akter wife of the accused of Asad-bin-Kadir. He identified his signature on seizure list which was marked as Exhibit-6/2 and the same was given back under jimma of Bobi Akther.

48. In cross by accused Apon @ Quamrul Islam Apon @ Apon, Kazi Murad @ Murad he stated that he did not sign the zimmanama. He did not see the seized mobile

along with sim in the court. He had given suggestion that at the time of seized articles he was not present there and later on he signed in thana which he denied.

49. In cross by Asad-bin-Kadir, Siddiqur Rahman, Tamjid Hossain, Rajib Hasan, Asif Imran and Abu Taher Md. Murtoza he adopted the cross. In cross by absconding accused Asif Imtiaj @ Bulu and Zahid Khan @ Zahid adopted the cross. In addition, he stated he did not remember as to whether they called the owner of the house and the tenants of shop-keepers of the surroundings. The persons who were in the parlor was not called. He had given suggestion that he did not go to that house on 21-11-2005 and signed the seizure list which he denied.

50. PW 12, Sheikh Matiar Rahman Khokon, in his brief stated that he is a night guard of Jamuna Hotel in Faridpur. On 16-11-2005 he was on duty from 7-00 pm to 7-00 am in Jamuna Hotel. On 17-11-2005 he went to home after duty and came back at 4-00 pm in Jamuna Hotel and heard that Goutam Das of adjacent building was killed and Suman and Nizam staff of the hotel has been arrested by Police.

51. He has been declared hostile and crossed. In cross he had given suggestion that he has seen Appollo Bishwas to drink in hotel at 12-00 o'clock, on 16-11-2005, 5/6 persons came in hotel and among them Imran. Kazi Murad were calling him by the name and he will know them if they came in front of him which he denied. Imran and Kazi Murad did not come in the said hotel. They are known as famous person. They did the renovation work of Mujib Sarak. He had given suggestion that he gave false statement by pressure of the accused which he denied.

52. In cross by Asad-bin-Kadir, Siddiqur Rahman, Tamjid Hossain, Rajib Hasan, Asif Imran and Abu Taher Md. Murtoza stated one day police has taken him in thana and told him to say whatever they told otherwise he will suffer 14 years in jail. In between Mujib Sarak and Jamuna Hotel there is a Madrasha Market. There is a gate in the north of Sarani Market through which people can go to Mujib Sarak from Sarani Market. On 16-11-2005 from 12-00 pm to 7-00 am he has seen many people to go and come. On that day at 3-00 pm he saw Goutam along with two persons went to the room where Goutam resided in the second floor of Sarani Market. He saw 2 people came out after 25/30 minutes. He did not know the said people.

53. In cross by accused Apon @ Quamrul Islam and Kazi Murad stated to adopt the cross.

54. In cross by State defense for Arif Imtiaj @ Bulu and Zahid Khan @ Zahid he adopted the cross. In addition, he stated on 16-11-2005 after the gates were closed at night, he did not see anyone to come and go. He had given suggestion that no one made him bias and gave threat, made himself a witness to protect himself from torture of the police, which he denied.

55. Doctor Md. Nur Hossain, as PW 13 in his brief stated that he prepared post mortem report of Goutam Das. During post mortem he found the following injuries:

- 1.** Circular ligature mark 2 (two) in number one adjacent to another ligature 1/2".....wide situated over the thyroid cartilage. The knot was situated on the right side of the neck.
- 2.** Abscission was found on the back of both elbo joint.
- 3.** Dislocation on the left wrist joint.

On dissection of head, Thorax and abdomen, no internal injury was found. The vis-cera was found congested.

On dissection of neck extravasation of clotted blood was found at the site of ligature. Thyroid bone was found fractured and trachea was found congested.

Opinion: death was due asphyxia leading to respiratory failure as a result of strangulation by ligature which was antemortem and homicidal in nature.

56. He identified his signature on the report which was marked as Exhibit-7 and Exhibit-7/2.

57. In cross by all the accused he stated that the deceased was not identified by his relatives. He did not mention the age of injury. He has been given suggestion that he prepared the post mortem report according to inquest report which he denied.

58. Inspector Syed Abdul Ali, as PW 14 in his chief stated that he filled up the FIR column and lodged the case and the charge of investigation was given to SI Golam Nobil, ejahar column and his signature on it was marked as Exhibit-8 and 8/1 (series).

59. In cross by the accused except the absconding accused he stated ejahar Was lodged against unknown accused.

60. In cross by State defense for the absconding accused he stated the time of occurrence was mentioned as before 1-00 pm. The case was lodged after 9 hours from receiving the dead body.

61. Md. Abdul Hossain Azad, as PW 15 in his brief stated that he is a reporter of "Ajker Prothasha Patrika" and "Danik Vorer Patrika". Hearing the news, he went to Samakal office and saw the dead body of the deceased and inquest report was prepared in his presence. He identified his signature which was marked as Exhibit-3/4.

62. In cross by the accused Tamjid Hossain Babu, Md. Siddiqur Rahman @ Siddique, Md. Rajib Hasan Mia and Abu Taher Md. Murtoza @ Appollo Bishwas he stated the investigating officer asked him at the time of preparing inquest report.

63. In cross by the rest of the accused, he adopted the cross.

64. Md. Hemayet Hossain Himu, as PW 16 in his brief stated he is a journalist of "Dainik Khabor" He heard the dead body of Goutam Das has been found in his office and went there and saw DC, SP along with police. An inquest report was prepared and he signed on it. His signature was marked as Exhibit-3/5.

65. In cross by all accused including State defense he stated that investigating officer did not ask him.

66. Md. Imran Hossain Sagor, as PW 17 in his brief stated he was running a residential Hotel business in the name of Jumuna Hotel in Faridpur, Investigating officer seized one page of Register of Jamuna Hotel and seized page of register was marked as (Exhibit-9ka) and his signature was marked as (Exhibit-9ka/1).

67. In cross by all accused including State defense he stated in his hotel when any guest checks-in and checks-out those were entered in the Register Book. He

identified that register book. He saw under his signature the date is over writing. On 16-11-2005 at night, the name of MM. Jaman, Seraj Lovlu Mia, Saikder Rahman, Salim Ahammad, Jahangir Alam, Maksudur Rahman Haji Salim Bepari, Fazlul Alam, Milon, Masum, Diponkor Bishas, Ashraf Ali as guests were recorded in the register book. In that register book Safique including 10 people were enlisted. Those who resided in the hotel, a list of guests was sent to thana on that day.

68. Zihadur Rahman, as PW 18 in his brief stated that he is a driver. He was running phone business at that time and went to the owner of shop with Sagor (PW 17) to buy it on that day. Officer in charge Who was in civil dress asked him and took his address. He identified his signature on the register book and his signature was marked as Exhibit-9/2.

69. In cross by all accused he stated that under his signature the date 23 was written which was later over written as 22. He signed on a blank paper. He is not owner or employee of that hotel.

70. Md. Lokkman Hossain, as PW 19 in his brief stated that he is doing business in Faridpur. He was asked by police 8/9 days after the murder of Goutam at 7-00/7-30 am in the morning.

71. In cross by all the accused including State defense stated he had no knowledge of the occurrence.

72. Ariful Islam Bidduth as PW 20 in his brief stated that at the time of occurrence he was doing his business in the ground floor of Maya Super Market and he did not know about Goutam murder.

73. He was declared hostile by prosecution, and crossed him. He had given suggestion that while Munir in preparing tea, he heard somebody were talking which he denied. Goutam was working to their adjacent market. He came to know that Goutam has been killed on 17-11-2005 at 1-00/1-30 pm in his office room. He had given suggestion that he stated false statement under the pressure of the accused which he denied.

74. In cross by all accused including State defense stated that he has been taken in thana just 2 days after killing of Goutam to speak about Goutam killing and gave him threat that he would be made accused if he refused to give statement which he denied.

75. Bobi Akhter, as PW 21 in his chief stated that she was doing her job at Alipur Sultana Beauty parlor in Faridpur. On 21-11-2005 police called her in thana and her Nokia mobile set has been seized and subsequently the same has been given in her Jimma. She identified her signature in seizure list which was marked as (Exhibit-10/1). The Jimmanama was marked as (Exhibit-11) and her signature was marked as (Exhibit-11/1). The mobile set along with sim was marked as (material (Exhibit-V)). On asking by police she said, her husband, the accused Asad-bin-Kadir was doing job in Bonalota cinema hall and everyday her husband went out at 10/11 am and returned home at night 11/12. On 17-11-2005 her husband Asad-bin-Kadir went out at 10-00 am.

76. She was declared hostile and crossed. In cross she stated that she heard Goutam died on 17-11-2005. She had given suggestion that her husband was conspirator and planner, her husband got a phone from Imran and went to the place of occurrence

without informing her which she denied. She also had given suggestion that she stated false statement to protect her husband and under pressure by other accused which she denied.

77. In cross by all accused including State defense she stated that police arrested her husband on 19-11-2005. On 21-11-2005 police took her in thana and seized her mobile. She said to police that her husband did not use her mobile. She also stated that her statement was not read over by police and she signed on a blank paper. She did not go to magistrate. She had given suggestion that her husband and the other accused were conspiring with each other and then killed Goutam which she denied. She also stated that her husband and other accused have no connection with Goutam murder.

78. Badsha Howladar, as PW 22 in his brief stated he had a shop under Sarani Market adjacent to "Mujib Sarak".

79. He was declared hostile and crossed by the prosecution. In cross he had given suggestion that there was a collapsible gate in the north of Sarani Super Market and key of that gate was kept with him, every day he opened the gate with the key and on 17-11-2005 in the morning he opened the gate with the key which he denied. The day Goutam was killed, he saw Monir was preparing tea. He went home at afternoon for lunch and came back at shop at 3-00 pm and then came to know that Goutam has been killed. He had given suggestion that Goutam has been killed for publishing the irregularity on construction work of Mujib Sarak which he denied. He had also given suggestion that he was not telling the truth as the accused would have harmed him which he denied.

80. In cross by all accused including State defense he stated that he had no left leg and did not see in the left eye. He did not open the collapsible gate of the "Sarani Market". He did not know that Goutam has been killed due to publishing the news on renovation work of "Mujib Sarak" which he denied. He also said no one threatened him.

81. PW 23 Md. Obaidur Rahman Khan, a Shop owner in his brief stated that he had a shoe shop in Sarani Market. At about 1-30/2-00 pm he was over hearing that Goutam was killed. He saw the dead body of Goutam with tides in the neck. Munir and Badsha does not open the gate of that market. He did not know who killed Goutam, He was declared hostile and crossed. In cross he had given suggestion that he suppressed the fact by stating that Munir and Badsha did not open the two gate of that market which he denied, He did not know the accused in dock. He did not know that Goutam was killed by the accused due to renovation work of "Mujib Sarak." He had given suggestion that the accused have given him threat and the accused are influential persons in the locality which he denied.

82. In cross by all accused including the State defense he stated he was doing job in the shop which situated in Sarani Market. Madrasha Market and Maya Super Market are adjacent to Sarani Market. There are two gates in the north and south of the Sarani Market through which customer enter into the market from road. The shop keepers of Sarani Market are responsible to open and close the collapsible gate. The shops of Munir and Badsha were out of the Sarani Market.

83. Sub-Inspector Md. Aminur Rahman, as PW 24 in his brief stated that he prepared the inquest report of the deceased Goutam Das and sent the dead body for post mortem to hospital through challan by Constable 892 Babul Khan. He identified his

signature on inquest report which was marked as (Exhibit-3/6). The challan which was marked as (Exhibit-11) and signature was marked as (Exhibit-11/1). Sando Ganji, (white) trouser (mud colour) white tides were marked as material Exhibit-VII.

84. In cross by all the accused including State defense he stated that high official went to the place of occurrence before he reached there. He saw the door of the room was open where the dead body of Goutam was found and sent the dead body for post mortem through constable. Later on, he did not receive the seized articles. He also stated that the seized articles he sent, were not marked to identify.

85. Subed Kumar Kundo, as PW 25 in brief Stated that he is a contractor and had a firm in the name "Messers Subod Kumar Kundo", He got tender of four groups for the year 2004-05 and those were Kamarkhali Faridpur Sarak. He saw in newspaper that Goutam was killed. He was declared hostile by prosecution and crossed. In cross he stated that he had no knowledge as to whether the renovation work of "Mujib Sarak" which was included into those work as mentioned above, He had given suggestion that he got the renovation work of "Mujib Sarak" at two crore sixteen lacs taka and with the reference of elder brother of Imran he sold the same, which he denied.

86. In cross by all accused including State defense. He had given suggestion that he suppressed the truth under coercion by the accused which he denied.

87. Investigating officer, Sub-Inspector Golam Nabi, PW 26 deposed that while working in Kotwali thana having authority to investigate, he went to the place of occurrence and prepared Sketch map and index which were marked as (Exhibit 12 and 13) respectively and signature there on were marked as Exhibit-12/1 and 13/1 respectively, He recorded the statements of the witness under section 161 of Criminal Procedure Code. He also prepared the surrounding place of the occurrence which was marked as Exhibit-13(ka) and his signature thereon was marked as Exhibit-13(Ka)/1. He seized the report of Goutam, Bannar and his signature thereon which was marked as Exhibit-2/3. The mobile with sim which was seized from Bobi Akther and handed over by Zimmanama to Bobi Akhter on which he signed was marked as Exhibit-6/4. He seized the Guest Register from Jamuna Residential Hotel and his signature thereon was marked as Exhibit-9ka/3. After investigation he submitted charge-sheet being No. 8 dated 19-01-2016.

88. In cross by the accused Tamjid Hossain Babu, Md. Siddiqur Rahman, Md. Rajib Hasan, Abu Taher Md. Murtoza stated the place of occurrence is about 500 to 1000-yards away from thana. He reached in the place of occurrence at 23-25 on 17-11-2005 after getting charge for investigation. The ejahar was lodged on 17-11-2005 at 12-00 and he got charge of investigation at 23-05. SI Aminur Rahman went to place of occurrence at 14.45 on 17-11-2005, SP Abdul Jahid, OC Syed Mannan Ali went with SI Aminur Rahman in the place of occurrence against GD No, 754 dated 17-11-2005. He did not go through GD at the time of investigation. The place of occurrence was in the 2nd floor of a three storied building and when he went to the place of occurrence, he found the door was opened, who opened the door first he did not know and also he did not see any police officer in that room. Si Abu Zihad Khan, SI Mosaddek were accompanied with him, he did not know the informant before. He asked the informant in the occurrence room. He did not find the broken door. He kept investigation pending for sometimes since he had no previous experience, On 18-11-2005 at 7-15 (morning) he started the investigation and SI Abu Zihad khan and SI Mosaddek were with him. He seized some articles of hand writing of Goutam. He did not ask the owner of the building. There are many keys of a lock. He did not

investigate regarding those keys as he did not feel necessity. The deceased Goutam stayed in his office room. Goutam had a wife from sweeper community but since she was absconded at that time she was not asked. He did not ask the brother, sister, father of the wife of Goutam as they denied. He did not ask the father, mother and brother who served in police service and cousin brother who was a student of Rajendra college of Faridpur. Goutam went to Hospital at occurrence night to look after his cousin sister Dalia who was under treatment there for attempting to commit suicide. On inquiry he found that the shop-keeper Badsha and Monir Molla went to home at night. Goutam stayed in his office room till 3-00 pm at night, He did not inquire as to whether she was admitted in hospital or not, did not seize the register book of the hospital. He did not ask the nurse of that hospital. He did not find in his inquiry who opened the gate to enter the place of occurrence. He found keys of those gate under the bed of Goutam which he seized but those keys were not identified by any one as to those keys for which gates. He did not ask Engineer or any person of Roads and High way. He did not seize any documents of that office. He seized the paper where Goutam was writing but he did not inquire as to whether those were published in the newspaper. Then he said those were published in paper. During his investigation he wanted to know from Grameen Phone the incoming and outgoing number prior to occurrence on 17-112005. He was informed those were 017-8506138, 017-7243106, 017-636699 but he did not submit anything regarding that. He had given suggestion that the names mentioned in that paper, actually those killed Goutam but under their pressure he suppressed their name. He had given suggestion that he willfully did not ask the brother, sister, father and mother of Goutam as the real offender will be find out if they were asked which he denied. He had given suggestion that he tortured the accused daily to make confessional statements which he denied, He had given suggestion that the owner and publisher of Samakal paper who was the supporter of a political party, the accused were supporter of opposite political party and under pressure of the informant and their owner the accused have been implicated in the present case which he denied.

89. He did not compare the hand writing of Goutam kept in his office with the report he seized. He did not seize any lock. He had given suggestion that Goutam has been appointed Bureau chief for time being, at this, the plaintiff along with other killed Goutam on conspiracy which he denied.

90. In cross by the accused Kazi Murad, Asif Istiaque Babu and Quamrul Islam Apon he had given a suggestion that Parma did not tell him on 24-10-2005 that under a banner of elite class of daily news Samakal the human chain was held, Moshiur Rahman did not tell that Goutam Das published in the newspaper regarding ill work of the accused Imran, Bulu and others. On 17-11-2005 at 12-00 hours a strike was going on in the High way of Faridpur-Dhaka and he took some photographs, at the time of taking the photographs he heard that Goutam Das was killed. He had given suggestion that the accused Appollo, Asad, Babu did not give statement before police and magistrate, Appollo, Babu, Asad were not engaged with the guard under the stairs of the office, which he denied. He had given suggestion that he did not investigate properly, which he denied.

91. Md. Siddiqur Rahman, as PW 27 in his brief, it was stated that he is working as UD Assistant in the Narayangang Roads and Highway office. While he was working in the office of Roads and Highway, he has given an authorization letter to the accused Asif Imran whose three signatures on it has been attested by Subod Kumar Kundo. Subud Kumar Kundo has withdrawn Taka 7,94,185 (Seven lacs ninety four thousand one hundred eighty five) through 4 cheques for which Asif Imran was authorized

person.

92. In the cross he stated, who and when signed the authorization letter, he did not know. He did not see the original copy of authorization letter.

93. Mr. Md. Helal uddin Mollah, the learned Advocate on behalf of the Convict-Appellants of 5038 of 2013 and 5743 of 2013 submits that the accused-appellant Md. Siddiqur Rahman @ Siddique Mia is neither named in the First Information Report nor he was recognized by any of the inmates at the time of occurrence and there is no substantive evidence against him. He further submits that the learned Judge of Drutta Bichar Tribunal convicted the accused appellant Md. Siddiqur Rahman @ Siddique Miah on the basis of confessional statement of co-accused Asad-bin-Kadir, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas, Md. Tamjid Hossain and that there is no supporting evidence of the confessional statement against the present appellant Siddiqur Rahman @ Siddique Miah. He next submits that the accused-appellant Siddiqur Rahman @ Siddique Miah was taken on remand repeatedly but the police failed to record confessional statement from him. Moreover, the three confessional statements under section 164 of the Code of Criminal Procedure made by Asad-bin-Kadir, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas and Md. Tamjid Hossain @ Babu are not corroborative, rather contradictory. Two witnesses, Monir Mollah and Bobi Akther who made statements under section 164 of the Code of Criminal Procedure but they did not say that they saw the occurrence. Monir Mollah and Bobi Akther who deposed in court as witness but they were declared hostile by prosecution, which means they dismissed the previous statement made under section 164 of the Code of Criminal Procedure. So, the statements made by two witnesses have no evidentiary value under section 155 and 157 of Evidence Act. In this regard he referred a decision reported in 42 DLR (AD) 253. He also submitted that Abu Taher Md. Mortuja Ehsan @ Appollo Bishwas and other accused made confessional statement under section 164 of the Code of Criminal Procedure where they stated they knew the alleged occurrence after murder. Moreover, they did not say regarding the manner of killing where they implicated themselves. The learned Advocate tried to submit confessional statements of accused Tamjid Hossain @ Babu and Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas are exculpatory. He further argued ejahar has been filed after 9 hours of the occurrence. No explanation has been given for delay in lodging ejahar. Ejahar was lodged against unknown persons, at the time of filing of ejahar no assign or allege to be expressed within the four corners of ejahar regarding motivation of murder. But it was made after thought. The room from where the dead body of the deceased has been found, the lock has not been seized, even in whose presence the lock was broken those were not produced before court. He submits that the recording that the Magistrate has recorded as the confessional statements is not as per rules embodied in section 164 and 364 of the Code of Criminal Procedure. Finally, he submits that the accused were not drawn to their confessional statements when they were examined under section 342 of the Code of Criminal Procedure, they are obviously prejudiced. Such defense is not curable under section 537 of the Code. He lastly submits that PW 2 and PWs 3, 5, 6, 7, 15 and 16 are reporters of newspapers and hear say witnesses, they in a chorus deposed that Goutam has been murdered for reporting on the irregularity, corruption on renovation work of "Mujib Sarak", Faridpur. But failed to prove the involvement of the accused in the work of "Mujib Sarak", Tamjid Hossain Babu was arrested on 18-11-2005 but his confessional statement was recorded on 26-11-2005 which means he was taken under police custody for about 9 days and tortured him for which he was bound to make confessional statement. He submits PW 9 disclosed the real story that there was a quarrel and love affairs with cousin Dalia for which she tried to commit suicide and

later on hospitalized where the deceased went to visit her. After coming from hospital due to various depression he committed suicide.

94. Mr. SM Shahjahan, the learned Senior Advocate on behalf of the convicted Appellant Asif Imran @ Imran, Asif Imtiaz @ Bulu, Apon @ Quamrul Islam Apon, Md. Rajib Hasan Mia @ Mona of Criminal Appeal No. 5113 of 2013 submits there is no eye-witness and all the witnesses are hear say witnesses. The two witnesses who made statement under section 164 of the Code of Criminal Procedure, they deposed later on in the court which totally contradicted with the statements earlier made under section 164 of the Code of Criminal Procedure. These accused were not examined properly under Section 342 of the Code of Criminal Procedure. These accused were not drawn by the confessional statements made by the accused Asad-bin-Kadir @ Asad, Tamjid Hossasin @ Babu, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas.

95. He further submits that learned Judge of Druta Bichar Tribunal on the basis of confessional statements made by the three accused, convicted these accused. He submits that the confessional statement of co-accused is not substantive evidence against another accused and without any supporting evidence to these confessional statements, it cannot be considered as evidence under section 30 of the evidence Act. In support of his submission, learned Advocate refers to a decision reported in 37 DLR (AD) 139. He finally submits that the prosecution miserably failed to prove the case, but the learned Judge of Druta Bichar Tribunal on misconception of law based on confessional statements without corroborating the other evidence convicted these accused which needs to be interfered.

96. The learned Advocate Mr. AK Baharul Islam on behalf of the convict-appellant Kazi Murad @ Murad of Criminal Appeal No. 5208 of 2013 adopted the submissions advanced by the learned Advocate Mr. SM Shahjahan, who argued on behalf of the convict appellants Asif Imran @ Imran, Asif Imtiaz @ Bulu, Apon @ Quamrul Islam Apon, Md. Rajib Hasan Mia @ Mona in Criminal Appeal No. 5113 of 2013.

97. The learned Advocate Mr. Md. Abdur Rashid with Mr. Md. Omar Faruque on behalf of the Convicted Appellant, Asad-bin-Kadir @ Asad adopted the submissions made by learned Advocate Mr. Md. Helal Uddin Mollah who delivered his submissions on behalf of the convicted Appellant Md. Siddiqur Rahman @ Siddique Mia, Tamjid Hossain @ Babu of Criminal Appeal No. 5038 of 2013 and convicted Appellant Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas in Criminal Appeal No. 5743 of 2013.

98. Mr. Harun Ar-Rashid, learned Deputy Attorney General on behalf of the State has submitted that the learned Judge of Druta Bichar Tribunal has rightly convicted the accused appellants who made confessional statements and also the other accused on the basis of confessional statements supporting the evidence by PW 4, 6, 7, and 21 also Exhibit-5 and 5ka. He referred the decisions reported in 67 DLR (AD) 6, 8 BLC 109 and 18 MLR 25. He also argued at the time of examination under section 342 of the Code of Criminal Procedure attention was drawn to the accused with respect to the said confessional statements but nothing was said by them that the same was not voluntary. He finally submits that the learned judge duly considered and properly appreciated the evidence of the witnesses examined by the prosecution and rightly passed the order of conviction and sentence against the accused-persons.

99. We have heard that the arguments advanced by the learned Advocates of both sides and gone through the impugned judgment passed by the Judge, Druta Bichar

Tribunal-1, the confessional statements made by three accused, the oral and documentary evidence and other materials on record.

100. There is no denying of the fact that Journalist Goutam Das was killed in his office room of Sarani Super market at afternoon on 17-11-2005 or at any time before 2-00 pm. The prosecution alleged Goutam Das was murdered and the defense alleged Goutam committed suicide. Perused the post-mortem report which was marked as Exhibit-7. The doctor gave clear opinion that "In my opinion death was due to asphyxia leading to respiratory failure as a result of strangulation by ligature which was antemortem and homicidal in nature" Dr. Md. Nur Hossain who held postmortem was examined before court as PW 13. He identified his signature in postmortem report which was marked as Exhibit-7/1. He stated in his brief that he found injuries over the deceased Goutam at the time of post mortem. He found the following injuries:

1. Circular ligature mark 2(two) in number one adjacent to another ligature 1/2" wide situated over the thyroid cartilage. The knot was situated on the right side of neck.
2. Abrasion was found on the back of both elbow joint.
3. Dislocation of the left wrist joint.

101. On dissection of head, throat and abdomen, no internal injury was found. The viscera are found congested on direction of neck extravasation of clotted blood was found at the site of ligature. Thyroid bones were found fractured and trachea was found congested.

102. On perusal of inquest report (exhibit-3) it appears the inquest of the deceased was held on 17-11-2005 at 14-85 pm prepared by SI Aminur Rahman (PW 24). The Goutam Das was found lying in the floor of the room whose knees was folded back beside a wall, his neck was tied with a thin white plastic rope which was folded twice with a knot. Hasanuzzaman PW 1 who stated in his brief that he saw from adjacent building that Goutam Das was lying on the floor Plastic white rope was produced before the court which was marked as material Exhibit-III. So, postmortem report Exhibit-7, Inquest report Exhibit-3 material Exhibit-III coupled with evidence of PW 1, PW 13 and PW 24 proved beyond any doubt that victim Goutam Das was murdered. On the contrary, the defense did not prove by any oral or documentary evidence that Goutam committed suicide.

103. It is evident that in the present case there is no eye-witness of the occurrence and that the accused were suspected on the basis of statement of tea-stall keeper Munir Molla PW 4 as stating that accused Imran, Jahid and Siddique were seen in the ground floor of Sarani Market on 17-11-2005 at 7 a.m. Then on the basis of the statements of Monir Molla other accused were arrested one by one.

104. The prosecution depended on three confessional statements of Asad-bin-Kadir, Abu Taher Md. Murtoza Ehsan, Md. Tamjid Hossain @ Babu. Apart from those confessions the prosecution came with the circumstantial evidence against all the accused namely (1) the accuseds Imran, Siddique, Jahid and Apon were seen by PW 4 in the occurrence place (Sarani Market) on 17-11-2005 at 7-00 a.m. (2) The deceased Goutam has published in newspaper regarding the irregularity work and about misappropriating of fund and corruption on renovation work of Mujib sarak by the said accused and misdeeds of the accused which created enmity between the

deceased Goutam and the accused.

105. The informant, Hasanuzzaman as PW 1 deposed that he was at that time representative of Daily Samakal Office in Faridpur. He went at 1-00 pm (afternoon) on 17-11-2005 to 2nd floor of Sarani market where Goutam used to stay occasionally. He found the door was locked from inside. Then he went to the adjacent under construction building Islamia Hotel from there he saw Goutam Das was lying on the floor. He lodged ejahar at 11-00 p.m. at night on that day. Next day on 18-11-2005 he came to know from tea stall keeper Monir Molla, the night guard Mator Rahman Khokon (PW 12) that on 17-11-2005 at 7-00 am the accuseds Imran, Siddique Mia and Zahid came by motor cycle in the ground floor of Sarani market. On 19-11-2005 Monir Mollah gave statement before police and thereafter Monir Mollah also has given statement on 20-11-2005 before the Magistrate under section 164 of the Code of Criminal Procedure which was marked as Exhibit-5. According to his statement the accused Tamjid Hossain Babu has been arrested on 21-11-2005 by police: Then Tamjid Hossain made a confessional statement through which he came to know that accused Apon, Asad-bin-Kadir, Bulu, Kazi Murad were involved with the murder of Goutam Das. He also came to know that some accused stayed on 16-11-2005 in Jamuna Hotel. Subsequently, Asad-bin Kadir and Apollo Biswas were arrested on 20-11-2005 and they made confessional statement. He came to know more that the deceased reported in the newspaper regarding the irregularity and corruption about the renovation work of Mujib sarak for which the accused made conspiracy to kill Goutam. In cross-examination he stated at the time of occurrence Panna Bala (Journalist), Moshiur Rahman (Photo Journalist) and one MLSS whose name he did not know were present in the office of 'Protom Alo'. Panna Bala was produced before the court as PW 3 and he stated in his brief that he was out of Faridpur at that time and after hearing the news of murder of Goutam, went to the place of occurrence and found the dead body of deceased Goutam Das. Moshiur Rahman as PW 5 was produced before court and stated he heard the news of death of Goutam Das, went to the occurrence with Panna Bala. He also stated that Goutam published in newspaper on renovation work of Mujib sarak and in this regard a human chain was held under the banner of cross section people. He took some pictures which was published in papers. The investigating officer seized those pictures which were marked as Exhibit-X (series). It may be mentioned that an ejahar has been filed after 9 hours of the occurrence. Explanation was given in ejahar to the effect that after conversation with the relatives of Goutam the ejahar has been filed. So, after Conversation with the relatives ejahar was filed after 9 hours of the occurrence, which is Well explained.

106. Monir Mollah, tea stall-keeper made a statement under section 164 of the Code of Criminal Procedure on 20-11-2005 which was marked as Exhibit-5. The confessional statement reads as follows:--

“আমি ফরিদপুর শহরে স্বরনী মার্কেটের নীচে চা বিক্রি করি। ১৭-১১-২০০৫ ইং তারিখ সকাল ৭টায় আমি দোকান খোলার জন্য আসি মার্কেটের চাবি আমার নিকট থাকে। গেট খুলে আমি চুলা জ্বালিয়ে দোকান প্রস্তুত করি। তখন সিদ্দিক, ইমরান ও জাহিদ একটি মটর সাইকেল করে মার্কেটে আসে। মার্কেটে ঢুকে তারা আসাদ ও বাবুর সাথে কথা বলে। ২/৩ মিনিট পর তারা সাংবাদিক গৌতমদার অফিসে যায়। ২০/২২ মিনিট পর তারা নিচে নামে। ইমরান, সিদ্দিক ও জাহিদ মটর সাইকেলে চড়ে যায়। সিদ্দিক মটর সাইকেল চালায়। আসাদ ও বাবু হেটে চলে যায়। বেলা অনুমান ১২-০০টায় সাংবাদিক পান্না বালার অফিসে ৪টা চা চায়। চা দিয়ে আমি বাসায় যাই। বেলা অনুমান ২টায় আমি আবার দোকানে আসি। তখন দেখি সাংবাদিক গৌতমের অফিসে অনেক লোকের ভীড়। লোকজনকে জিজ্ঞেস করি। শুনলাম গৌতম খুন হয়েছে। ইমরান, সিদ্দিক, জাহিদ, আসাদ ও বাবু মিলে গৌতমকে খুন করেছে।”

107. Monir Molla as PW 4 in his brief Stated that he had tea-stall at Sarani market, Mujib sarak, Faridpur. On 17th he came to his tea-stall at 9-00/9-15 am and Stayed there up to 1-00 pm (after noon) and then went home. He was declared hostile by prosecution. In his cross-examination he stated that--

“সত্য নয় যে, বিজ্ঞ ম্যাজিস্ট্রেটের কাছে বলেছিলাম যে, ১৭-১১-২০০৫ইং তারিখে সকাল ৭-০০মিঃ এ আমি দোকান খুলতে এসেছিলাম, মার্কেটের চাবি আমার কাছে থাকতো, গেট খুলে চুলা জ্বালিয়ে দোকান প্রস্তুত করি, তখন সিদ্দিক, ইমরান ও জাহিদ একটি মটর সাইকেল করে মার্কেটে আসে, মার্কেটে ঢুকে তারা আসাদ ও বাবুর সাথে কথা বলে, ২/৩ মিনিট পর তারা সাংবাদিক গৌতম দাসের অফিসে যায়, ২০/২২ মিনিট পর তারা নীচে নামে, ইমরান, সিদ্দিক ও জাহিদ মটর সাইকেলে চড়ে যায়, আসাদ ও বাবু হেটে চলে যায়।”

He had given suggestion that under pressure and coercion by the accused, he suppressed the truth and deposed false statement which he denied. In cross by the accused Asad-bin-Kadir. Md. Siddiqur Rahman @ Siddique Mian, Tamjid Hossain @ Babu. Md. Rajib Hasan Mia, Asif Imran @ Imran and Abu Taher Md. Murtoza Ehasan @ Appollo Bishwas he stated as--

“স্বরনী সুপার মার্কেট, সকাল ১০-০০/১০-১৫মিঃ এ খোলে। পুলিশের কাছে জবানবন্দী দেয়ার পর থেকে আমি থানায় ছিলাম। জবানবন্দী দেয়ার পূর্বে ১৯৭১/২০০৫ইং তারিখে আমায় থানায় নেয়া হয়। আমাকে থানায় রাখা হয় ৩ মাস। পরবর্তীতে আমার পুলিশ লাইন জুড়ে দণ্ডরীর চাকুরী দেয়া হয়। আমাকে কোর্টে নিয়ে যায় বাদী সাংবাদিক হাসানুজ্জামান। আমার পূর্বে পুরুষাঙ্গে একটি অস্ত্রপচার হয়েছিল। পুলিশ আমায় থানায় নিয়ে উক্ত অস্ত্রপচারের সেলাই খুলে ফেলে। আমাকে কিছু বক্তব্য বলে আসামীদের নাম প্রকাশের জন্য বলা হয়। পুলিশ আরো বলে তাদের বক্তব্য মতে জবানবন্দী না দিলে আমাকে আলিপুরের মনি মার্জার কেসে আসামী হিসাবে জড়িয়ে দেবে।.....“আমি কোন ঘটনা দেখি নাই, অত্র মোকদ্দমার আসামীগণ কে কে আমার জানা নাই।”

108. Night guard of Jamuna Hotel, Sheikh Motiar Rahman Khokon as PW 12 stated in brief that on 16-11-2005 he was on duty from 7-00 am, night to 7-00 am morning in

Jamuna Hotel and after duty he went home and again came back at 4-00 am in Jamuna Hotel and heard Goutam Das of adjacent building Sarani market was killed. The investigating officer asked him during the investigation. He also stated that the accused were influential persons in the locality.

109. Monir Mollah made his statement under section 164 of the Code of Criminal Procedure on 20-11-2005 and deposed in Court on 27-3-2007 long after 2 years. From the statement made by night Guard by stating that the accused Imran, Kazi Murad were influential persons in the locality which clearly shows that the accused were influential persons at the relevant time. Monir Mollah by his statement....

“আমি ফরিদপুর শহরে স্বরনী মার্কেটের নীচে চা বিক্রি করি। ১৭-১১-২০০৫ ইং তারিখ সকাল ৭-০০ টায় আমি দোকান খোলার জন্য আসি মার্কেটের চা বি আমার নিকট থাকে। পেট খুলে আমি চুলা জ্বালিয়ে দোকান প্রস্তুত করি। তখন সিদ্দিক, ইমরান, ও জাহিদ একটি মটর সাইকেলে করে মার্কেটে আসে।” which clearly proved that the accused Imran, Siddique and Zahid came on 17-11-2005 at 7-00 am (morning) in Sarani market.

110. The accused Asad-bin-Kadir in his confessional statement (Exhibit-4) stated as “ইমরান, জাহিদ ও সিদ্দিক মটর সাইকেলে চড়ে ভাসারা পত্রির দিকে যায়। মটর সাইকেল চালায় সিদ্দিক।” So, from the statement made under section 164 made by Monir Mollah and confessional statement made by Asad-bin-Kadir are consistent and corroborated each other that the accused Imran, Zahid and Siddique came in Sarani Market. But Monir Mollah deposed in court just opposite to statements made under section 164 earlier. He stated that he has been detained in thana for 3 months and he had given a job in police line. But the document speaks that he made his statements just after on third day of the occurrence, i.e. 19-11-2005. No documents have been produced to prove that he was doing job in police line. Therefore, it is presumed that under pressure and threat the witness, Monir Mollah departed himself to State in court which he stated earlier under section 164. So, the citation referred by learned Advocate Helal Uddin reported in 42 DLR (AD) 253 has no manner and application in the facts and circumstances of the present case. Thus Exhibits-4 and 5, coupled with PW 4 and 12 it is proved that the accused Imran, Siddique and Zahid came in Sarani Market on 17-11-2005 at 7-00 am which was seen by Monir Mollah (PW 4), Guard Sheikh Matiur Rahman Khokon (PW 12), Guard Sheikh Matiur Rahman was declared hostile by prosecution and in cross-examination he said, the accused Imran, Kazi Murad are influential person and they execute the work of Mujib Sarak. The accused Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas in his confessional statement stated--

.....“আমি বর্তমানে গজারিয়া হাটের ইজারাদার। ১৬-১১-২০০৫ তাং রাত অনুমান ১১-৩০ টায় ফরিদপুর শহরস্থ যমুনা হোটেলের ম্যানেজারের দোতলাস্থ কক্ষে বসে টিভি দেখিছিলাম।”.....সকাল অনুমান ৭টায় হোটেলের নাইট গার্ড খোকন আমাকে ঘুম থেকে জাগায়।”

So, the statement made by guard clearly proved that the accused are influential and the statement of the accused Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas proved that Guard Matiur Rahman Khokon was in Jamuna hotel who woke up the accused Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas. In this way the statement of Guard Matiur Rahman Khokon (PW 12), the statement (Exhibit-4ka) made by accused Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas made the statement of Monir Mollah stronger (PW 4).

111. Let us now deal with the confessional statement made by the accused Asad-bin-Kadir Exhibit-4, wherein he stated that--

.....“আমি বনলতা সিনেমা হলে সুপার ডাইজার হিসেবে চাকুরী করি। ১৭-১১-২০০৫ তাং সকাল অনুমান ৭-০০ টায় ইমরান আমার ত্বীর মোবাইলে ফোন করে আমাকে যমুনা হোটেলের সামনে আসতে বলে। আমি এসে স্বরনী মার্কেটের নীচ তলায় সিড়ির গোড়ায় বাবুকে দাঁড়ানো দেখি। তাকে জিজ্ঞাসা করলাম এত সকালে দাঁড়ানো কোন# সে বলে কাজ আছে। তাকে জিজ্ঞাসা করলাম আর কেউ আছে কিনা। সে বলে ইমরান, জাহিদ, সিদ্দিক ও কালো মোটা করে আপন উপরে আছে। আমি উপরে উঠে দেখি ঐ ৪ জন গৌতমের অফিসের সামনে দাড়িয়ে ফিসফাস কথা বলেছে। আমি উপরে না উঠে নীচে নেমে বাবুর সাথে কথা বলতে থাকি। পরে এ ৪ জন নীচে নেমে এসে আমাকে ও বাবুকে একদিকে যেতে বলে। আমিও বাবু সিড়ির গোড়ায় পাহাড়ায় থাকি। ইমরান, সিদ্দিক, জাহিদ ও আপন গৌতম কে খুন করে। খুন করে নেমে ইমরান, জাহিদ ও সিদ্দিক মটর সাইকেলে চড়ে ভাস্বরী পত্রির দিকে চলে যায়। মটর সাইকেল চালায় সিদ্দিক। আমি ও বাবু হেটে চলে যাই। রাস্তার কাজ করার সময় ইমরান আমাকে দৈনিক ২০০ টাকা দিতে চেয়েছিলাম। রাস্তার খারাপ কাজের খবর পত্রিকায় প্রকাশ করায় গৌতমকে খুন করা হয়। এর ৩/৪ দিন আসে গৌতমকে কিছুকালতে পেয়ে ধাৰড় দেয়। গৌতমকে শাস্ত্যেস্তা করার জন্য আমার একত্রিত হই।”

112. From the confessional statement it is found:

- a. Imran called him to go to Jamuna Hotel over phone to his wife.
- b. He saw Babu standing in the ground floor of Sarani Market.
- c. On his asking he said, Imran, Jahid, Siddique and Apon are in the upper floor.
- d. He saw they were whispering.
- e. The said four persons came down and told them to stand in one side and then the accused Asad-bin-Kadir and Babu i.e. Tamjid Hossain @ Babu were engaged as guard.
- f. Imran, Siddique, Jahid and Appollo killed Goutam.
- g. Imran wanted to give him taka 200 every day at the time of progress of the road work.
- h. Goutam was murdered for publishing the report in the newspaper regarding construction of road work.
- i. They have assembled to give good lesson to Goutam.

113. Led us deal with the case of another confessed-accused Abu Taher Md. Murtoza Ehsan @ Appollo Exhibit-4(ka), which reads as under:

..... “কিছুক্ষন পর ইমরান, জাহিদ, সিদ্দিক, মনা, আপন, বুলু, মুরাদ এবং অপরিচিত ৩ জন যমুনা হোটেলে এসে ৮ নং রুমে যায়। কিছুক্ষন পর রাত অনুমান ১২.০০ টায় ইমরান এসে আমি রাতে হোটেলে থাকবো কিনা জিজ্ঞাসা করে। আমি মদ্যপ ছিলাম। কি বলেছিলাম মনে নাই। পরে ইমরান ভাই আমাকে যমুনা হোটেলের ২নং রুমে থাকতে বলে। হোটেলের বয় নাম এন্টি করতে বললে ইমরান ভাই তাকে ধমক মেরে সিদ্দিক, জাহিদ, আপন সহ চলে যায়। আমি ২নং রুমে গিয়ে ঘুমিয়ে পড়ি। সকাল অনুমান ৭-০০ টায় হোটেলের নাইটগার্ড খোকন আমাকে ঘুম থেকে জাগায়। আমি বের হয়ে দেখি ৮ নং রুম থেকে বুলু সহ সবাই বের হয়ে নীচে যাচ্ছে। আমি তাদের পিছনে নীচে নেমে ইমরান ভাই, জাহিদ, সিদ্দিক ও আপন কে দেখতে পাই। ইমরান ভাই আমাকে বলে একটি কিলিং মিশন আছে। আমাকে সিড়ির গোড়ায় পাহারায় থাকতে বলে তারা অপর সিড়ির কাছে যায়। সেখানে আসাদ ও বাবুকে থাকতে বলে ইমরান ভাইসহ বাকীরা স্বরনী মার্কেটের তৃতীয় তলায় যায়। অনুমান ২৫/৩০ মিনিট পর তারা নীচতলায় নেমে আসে। আমি ঐ সিড়ির কাছে গেলে ইমরান ভাই বলে মিশন শেষ। গৌতমকে শেষ করে দিয়েছি। সে আমাদেরকে যার যার মতো কেটে পড়তে বলে। সবাই তাড়াহুড়া করে চলে যায়। আমি আমার বাসায় চলে যাই।”

114. From the above confessional statement, it appears that-

1. He was ejaradar.
2. On 16-11-2005 at night 11:30 the previous day of the occurrence, he was watching TV in the room of manager of Jamuna Hotel.
3. After a while, Imran, Jahid, Siddique, Mona, Apon; Bulu, Murad and three unknown persons came in Jamuna Hotel and went to Room No. 8.
4. At about 12-00 Imran came and asked him whether he will stay in hotel, He was drunk at that time.
5. As advice by Imran he stayed in the room No. 2.
6. The day after i.e. 17-11-2005 at about 7-00 am night guard woke him up and he saw from room No. 8 that everybody including Babu were going to the ground floor.
7. He saw Imran, Jahid, Siddique and Apon, Imran told him that they have a killing mission.
8. Imran told him to guard the bottom of stairs. Asad and Babu were engaged as guard on the other side of stairs.
9. Imran and the others went to second floor of Sarani Market and after 25-30 minutes Imran told mission is finished and Goutam is killed.

115. Md. Tamjid Hossain made a confessional statement which was marked as Exhibit-4(Kha). The confessional statements of Tamjid Hossain reads as follows:

..... “আমি ইমরানদের ঠিকাদারী প্রতিষ্ঠানের কর্মচারী। ফরিদপুর শহরের মুজিব সড়কের নির্মাণ কাজ আমি তদারকী করতাম। অফিসের সকল লেখা জোখার কাজ সহ লেবার পেমেন্ট আমি করতাম। ১৬-১১-২০০৫ তাং রাতে ইমরান আমাকে কাজের সাইটে ১৭-১১-২০০৫ তাং সকাল ৭-০০ টায় স্বরনী সুপার মার্কেটের সামনে-রাস্তায় দাড়িয়ে থাকি। কিছুক্ষণ পর আসাদ এসে আমাকে নিয়ে স্বরনী সুপার মার্কেটের ভিতর গেটের নিকট সিড়ির গোড়ায় নিয়ে যায়। সেখানে ইমরান, সিদ্দিক, জাহিদ, আপন কে দাড়ানো দেখি। ডান দিকে একটু দূরে মনা, এ্যাপোলো, কাজী মুরাদ, বুলুকে দাড়ানো দেখি। তখন ইমরান আসাদকে বলে বাবুকে নিয়ে সিড়ির গোড়ায় দাড়িয়ে থাক। কিছুক্ষণ পর অনুমান ২০মিঃ পর ইমরান, জাহিদ, সিদ্দিক আপন স্বরনী মার্কেটের তৃতীয়তলা থেকে নেমে এসে বলে কাজ শেষ। যে যার মতে চলে যাও। সে আসাদকে বলে বাবুকে নিয়ে চলে যাও। তখন আমি জনতা ব্যাংকের মোড়ে চলে যাই। সকাল ১০-০০টা পর্যন্ত সেখানে থাকি। পরে আমি বাসায় চলে যাই। আমি রিক্সায় বাসায় যাই।”

116. It is found from the confessional Statement that--

- a. He was an employee of construction firm of Imran and he supervised the construction work of Mujib Sarak.
- b. On 16-11-2005 Imran instructed to remain present on 17-11-2005 at 7-00 in front of the road of Sarani Super Market.
- c. After a while Ashad came and he along with Asad went to the stair near the inside gate of Sarani Market and found Imran, Siddique, Zahid, Apon were standing. He also found Mona, Appollo, Kazi Murad and Bulu but they were a bit away.
- d. After 20 minutes Imran, Jahid, Sidduque, Apon came down from second floor and said the job is done and left the place.

117. From reading the confessional statements made by accused Asad-bin-Kadir, Abu Taher Md. Murtoza @ Appollo Bishwas, Tamjid Hossain Babu it appears that they themselves admitted their participations in the prior concert to kill Goutam. Though they did not implicate themselves in causing any injury tp the deceased but admitted their involvement in guarding the stairs of the occurrence place, Sarani Market at the time of killing Goutam. The above statements of the accused Asad-bin-Kadir, Abu Taher Md. Murtoza @ Appollo Bishwas, Tamjid Hossain Babu so far relates to prior concert to kill Goutam Das, and their presence in guarding the stair of the occurrence place appears to be inculpatory in nature.

118. Both learned Advocates, Mr. Helal Uddin Mollah and Mr. SM Shahjahan tried to argue against the voluntary nature of the confession by accused Asad-bin-Kadir, Tamjid Hossain Babu, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas contending that the recording Magistrate proceeded mechanically in making his endorsement in column 5 of Exhibit-4, 4(ka), 4(kha), as such, the mandatory requirements of law in recording the confessional statement was not followed. From the evidence of PW 8, Md. Anwar Hossain, the confessional statements recording Magistrate, it appears that accused Asad-bin-Kadir was arrested at 12-02 on 20-11-2005 and produced before him at 12-30 on the same date. It further appears the accused Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas was produced before him at 3-15 on 22-11-2005, It also

appears from the confessional statement that the accused Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas arrested at 3-15 pm on the same date i.e. 22-11-2005. PW 8 deposed that he observed all the formalities as contemplated in law to ensure about the willingness of the accused for recording the confession of Asad-bin-Kadir, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas. Accordingly, to PW 8, before recording the statement he told the said accused that he was a Magistrate, the accused was not bound to make any confession and if he did so it would be used as evidence against him. In his cross examination he said that he did not tell the said accused as to whether any mark of torture. But no suggestion has been given him that there were marks of torture in their body. Similarly Tamjid Hossain Babu was arrested on 18-11-2005 and produced before the Magistrate on 26-11-2005, PW 8 deposed that he observed all the formalities as contemplated in law to ensure about the willingness of the accused for recording the confession. The accused Tamjid Hossain Babu and Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas filed a retract petition on 21-12-2005 and 27-12-2005 respectively alleging that they had been tortured and beaten to confess.

119. On scrutinizing the Exhibit-4, (4ka) and (4kha) the confessional statements of accused-appellants Asad-bin Kadir, Abu Taher Md. Murtoza Ehsan Appollo Bishwas, Tamjid Hossain Babu, in column 5 we found an endorsement of the learned Magistrate to the effect that he ascertained the willingness of the said three accused to record their confession after explaining them about required questions. In the premises it can not be said that PW 8 made his endorsement in column 5 mechanically as submitted by learned Advocates Helal Uddin Mollah and SM Shahjahan for the appellants.

120. The learned Advocates, however, pointing to the column 6 of the Exhibits-4, 4ka, 4kha, argued that the Magistrate did not assure them by telling that they would not be sent to remand to further police custody and as such, the voluntary character of their confession can not but be doubted. It appears from Exhibit-4, 4ka, 4kha that after recording of confessional statements, PW 8 sent the said accused to judicial custody (jail hayat) on the same day, and, as such, non-assurance, in our view, did not create any doubt on the voluntary character of the confession of the accused.

121. From the above it transpires that the recording Magistrate after being satisfied with the free will of appellant Asad-bin-Kadir, Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas, Tamjid Hossain Babu recorded their confession statement and made endorsement substantially in terms of section 164(3) of the Code of Criminal Procedure on Exhibits-4, 4ka, kha where there is an endorsement in terms of clause (3) of section 164 of the Code of Criminal Procedure. It may be fairly presumed that the recording Magistrate did his best to satisfy himself that the endorsement was made voluntarily. As we find from the confession and from the evidence of the recording Magistrate that after observing all formalities under law and having been satisfied with the willingness of the accused to confess their guilt we can not say that the voluntary nature of the confession of the accused were not there.

122. The three confessional accused implicated themselves in the alleged murder of Goutam Das along with Asif Imtiaz Bulu, Kazi Murad @ Murad Jahid Khan @ Zahid, Apon @ Quamrul Islam Apon, Md. Siddiquir Rahman Siddique Mia, Md. Rajib Hasan Mia. Asif imran @ Imran. It is settled law that confession of a co-accused is not substantive evidence against another accused and without any supporting evidence this confessional statement can not be considered as evidence under section 30 of the evidence Act. The accused Asad-bin-Kadir stated as “.....বলে ইমরান, জাহিদ, সিদ্দিক ও কালো মোটা

করে আপন উপরে আছে। আমি উপরে উঠে দেখি ঐ ৪ জন গৌতমের অফিসের সামনে দাড়িয়ে ফিসফাস কথা বলছে।ইমরান, সিদ্দিক, জাহিদ ও আপন গৌতমকে খুন করে। খুন করে নেমে ইমরান, জাহিদ ও সিদ্দিক মটর সাইকেলে চড়ে ভাঙ্গারা পড়ির দিকে চলে যায়।.....গৌতমকে শাস্তি করার জন্য আমরা একত্রিত হই।”

123. Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas stated in his confessional statement that--

“আমি তাদের পিছনে নীচে নেমে ইমরান ভাই, জাহিদ, সিদ্দিক ও আপনকে দেখতে পাই। ইমরান ভাই বলে কিলিং মিশন আছে.....ইমরান ভাই সহ বাকী স্বরনী মার্কেটের তৃতীয় তলায় যায়। অনুমান ২৫/২৬ মিনিট পর তারা নীচ তলায় নেমে আসে।.....ইমরান ভাই বলে মিশন শেষ। গৌতমকে শেষ করে দিয়েছি।” Md Tamjid Hossain in his statement stated “আমি তাদের পিছনে নীচে নেমে ইমরান ভাই, জাহিদ, সিদ্দিক ও আপনকে দেখতে পাই। ইমরান ভাই বলে কিলিং মিশন আছে ইমরান ভাই সহ বাকী স্বরনী মার্কেটের তৃতীয় তলায় যায়। অনুমান ২৫/২৬ মিনিট পর তারা নীচ তলায় নেমে আসে।ইমরান ভাই বলে মিশন শেষ। গৌতমকে শেষ করে দিয়েছি।”

124. From the confessional statements made by three accused as mentioned above, it clearly shows that they implicated the accused Imran, Jahid, Siddique and Apon. But Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas implicated also Mona, Kazi Murad and Bulu also in his confessional statement but the other confessional accused did not implicate them in their confessional statements.

125. Now, the question is the accused Imram, Siddique, Jahid, Apon, Mona, Bulu, Kazi Murad who were implicated by confessional statements made by the accused as stated above whether is corroborated by other evidences. The informant Hasanurzzaman PW 1 in his deposition stated that he came to know about murder of Goutam from Tea-stall keeper Monir Molla, night guard Motiar Rahman of the Sarani market where the occurrence took place and Monir Molla made a statement. On the basis of statement made by Monir Molla the accused Tamjid Hossain Babu was arrested and then Asad-bin-Kadir and thereafter Appollo Bishwas were arrested. The record shows Tamjid Hossain Babu was arrested on 18-11-2005. Asad-bin-Kadir and Appollo Bishwas were arrested on 20-11-2005 and 22-11-2005 respectively. Monir Molla, teastall-keeper made a statement under section 164 of the Code of Criminal Procedure (Exhibit-5) wherein he stated as--

“.....: মার্কেটের চাষি আমার নিকট থাকে। গেট খুলে আমি চুলা জ্বালিয়ে দোকান প্রস্তুত করি। তখন সিদ্দিক, ইমরান ও জাহিদ একটি মটর সাইকেলে করে মার্কেটে আসে। মার্কেটে ঢুকে তারা আমাকে ও বাবুর সাথে কথা বলে। ২/৩ মিনিট পর তারা সাংবাদিক গৌতমের অফিসে যায়। ২০/২২ মিটি পর তারা নীচ তলায় নামে।”..... “ইমরান, সিদ্দিক, জাহিদ, আসাদ ও বাবু মিলে গৌতমকে খুন করেছে।”

126. So, in the statement of Monir Molla, the presence of Imran, Zahid and Siddique are established. But Monir Molla after 2 years on 27-3-2007 as PW 4 departed from his earlier statement made under section 164 of the Code of Criminal Procedure. He was declared hostile. The date he deposed in court, the accused Asif Imtiaz @ Bulu, Zahid Khan @ Zahid were absconding. The guard Sheikh Motiar Rahman Khokon as PW 12 stated that the accused Imran and Kazi Murad were influential person and involved in constructing the Mujib Sarak. The accused Abu Taher Md. Murtoza Ehsan

@ Appollo Biswas stated in his confessional statement (Exhibit-4ka) that “সকাল অনুমান ৭-০০ টায় হোটেলের নাইট গার্ড খোকন আমাকে ঘুম থেকে জাগায়।” But the said night guard Sheikh Motiar Rahman Khokon who was declared hostile by prosecution and crossed him. In cross he had given suggestion that he did not wake up Appollo Bishwas at 7-00 am in the occurrence at Sarani market which he denied. So, there is obvious no doubt that Monir Molla and the night guard Khokon under pressure or threat of influential accused restrained them to speak the truth. Therefore, there is no scope to disbelieve the Statements made under section 164 by Monir Molla. We have perused the material Exhibits marked as I, II which are the reports written by deceased Goutam Das published in different newspaper regarding the illegal activities, corruption and bad-deeds of the accused. These reports were produced by the informant Hasanuzzaman who was a journalist and colleague of the deceased, collected from the room of deceased. The defense challenged those writing of Goutam Das but they did not prayed for expert. So, exhibit 5, 4ka coupled with PW 4, 12 and PW 1 and material Exhibits-I, II proved that the accused Imran, Siddique, Zahid were involved directly in killing Goutam Das. In this respect reliance may be placed to the decision reported in 8 BLC 562, wherein it has been held. "It is well settled that when a case rests on circumstantial evidence, such evidence must satisfy three tests: (1) the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; (ii) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; (iii) the circumstances taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the offence was committed by the accused and none else."

127. The accused namely Asif Imtiaz Bulu, Kazi Murad @ Murad, Apon @ Kamrul Islam Apon, Md. Rajib Hasan Mia were convicted only on the basis of confessional statements without any corroborating evidence. It is settled principle of law that a conviction on the sole basis of confession of the co-accused can not be sustained. Except implication in the confessional statements no material is found and taken into consideration against these accused-appellants Asif Imtiaz @ Babu, Apon alias Kamrull Islam Apon, Md. Rajib Miah alias Mona, Kazi, Murad alias Murad as such, we find no evidence to maintain conviction therein. This is not tenable in the Criminal Justice. In this respect we can place reliance in the case of Amir Hossain Howlader vs. State reported in 37 DLR (AD) 139 in which it has been held that confessional statement of co-accused implicated by the other co-accused is not admissible for latter's conviction. The case reported in 51 DLR 507 it was held since the confessional statements is not required to be taken on oath and taken in presence of a co-accused and not listed by cross-examination it can not be considered as substantive evidence against the co-accused.

128. In the present case the broken door, lock, key was not seized. No witness was produced who witnessed breaking the door. This is not significant lapse on the part of prosecution, who proved the case otherwise.

129. In the circumstances and in view of our discussion we are of the opinion that the prosecution has been able to prove the case beyond doubt against accused-appellant (1) Asif Imran @ Imran, (2) Md. Siddiquir Rahman @ Siddique Miah, (3) Tamjid Hossain @ Babu, (4) Asad-bin-Kadir @ Asad and (5) Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas. The prosecution relied on some circumstantial evidences, discussed above, and on the above three confessions (Exhibit-4), (4ka) and (4kha) against other accused appellants namely Asif Imtiaz @ Babu, Apon @ Kamrul Islam Apon, Md. Rajib Mia @ Mona, Kazi Murad @ Murad. We have already, on discussion,

found those circumstantial evidences were not cogently and firmly established which should be of a definite tendency unerringly pointing towards the guilt of the said accused persons. But the Judge of Drudda Bichar Tribunal erroneously of law and fact convicted the accused Asif Imtiaz @ Babu, Apon @ Kamrul Islam Apon, Md. Rajib Mia @ Mona, Kazi Murad @ Murad, without having the supporting evidences.

130. On perusal the examining statement made by the accused under Section 342 of the Code of Criminal Procedure, it appears that the oral evidence of each witness was not drawn to the attention of the accused. Even the confessional statement was not also separately drawn to the attention of the accused. But oral evidence of all witnesses including the confessional statements all together were drawn to the attention of the accused. So, we are of the view that there is no serious irregularity by which prejudice was caused. Therefore, the citation referred by learned Advocate Mr. SM Shahjahan reported in 18 MLR (AD) 112 is not applicable in the present case as the facts and circumstances is different.

131. In the result, the Criminal Appeal No. 5113 of 2013 preferred by Asif Imran @ Imran, Asif Imtiaz @ Bulu, Apon @ Quamrul Islam Apon, Md. Rajib Hasan Mia @ Mona so far as it relates to convict-appellants No. (1) Asif Ihitiaz @ Bulu, (2) Apon @ Quamrul Islam Apon, (3) Md. Rajib Hasan Mia @ Mona is allowed, the same appeal relates to convict-appellant Asif Imran @ Imran is dismissed. Criminal Appeal No. 5208 of 2013 preferred by convict-appellant Kazi Murad alias Murad is allowed, Criminal Appeal No. 5038 of 2013 preferred by convict-appellants No. (1) Md. Siddiquir Rahman @ Siddique Miah and (2) Tamjid Hossain @ Babu are dismissed, Criminal Appeal No. 5071 of 2013 preferred by convict-appellant Asad-bin-Kadir @ Ashad is dismissed and Criminal Appeal No. 5743 of 2013 preferred by convict-appellant Abu Taher Md. Murtoza Ehsan alias Appollo Bishwas is dismissed.

132. The impugned judgment and order dated 27-6-2013 passed by the learned Judge, Drudda Bichar Tribunal No. 1, Dhaka in Drudda Bichar Tribunal Case No. 14 of 2006 against the convict-appellants namely Asif Imran @ Imran, Md. Siddiquir Rahman @ Siddique Miah, Tamjid Hossain @ Babu, Asad-bin-Kadir @ Asad and Abu Taher Md. Murtoza Ehsan @ Appollo Bishwas are hereby confirmed.

133. The impugned judgment and order dated 27-6-2013 passed by learned Judge, Drudda Bichar Tribunal No. 1, Dhaka in Drudda Bichar Tribunal Case No. 14 of 2006 against the convict-appellants namely (1) Asif Imtiaz @ Bulu son of Md. Nurul Alam @ Monsur Ali @ Hazi Monsur Ali Laskar of Kamalapur, Kuthibari, Kamalapur Sarkar Para Road, (2) Apon @ Quamrul Islam Apon, son of A. Hye @ Abdul Hye of Adampur, Mollabari Char, (3) Md. Rajib Hasan Mia @ Mona, son of Md. Suja Uddin Mia Piaru of Kuthibari, Kamalapur, all of Police Station Kotwali, District-Faridpur and (4) Kazi Murad alias Murad son of Kazi Mohammad Hossain of Village-Baralia Kazibari Police Station-Bashikpur, District-Lakshmipur, at present-Kathibari, Kamolapur, Police Station-Kotwali, District-Faridpur are acquitted of the charge leveled against them. They and their sureties are hereby discharged from the bail bonds.

134. Let the convict appellants namely (1) Asif Imtiaz @ Bulu son of Md. Nurul Alam @ Monsur Ali @ Hazi Monsur Ali Laskar of Kamalapur, Kuthibari, Kamalapur Sadar Road, (2) Apon @ Quamrul Islam Apon, son of A. Hye @ Abdul Hye of Adampur, Molabari Char, (3) Md. Rajib Hasan Mia @ Mona, son of Md. Suja Uddin Piaru of Kuthibari, Kamalapur and (4) Kazi Murad alias Murad son of Kazi Md. Hossain of Village-Baralia Kazibari are released from jail custody forthwith if not wanted in connection with any other case.

Let a copy of the judgment and the Lower Court Records be sent to the concerned court at once.

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