



EXTRACTION OF CONFESSIONAL STATEMENTS IN THE CRIMINAL JUSTICE OF
BANGLADESH: LAW AND REALITY

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ABSTRACT

The main objective of this paper is to assess the various types of irregularities which are being practiced in the Criminal Justice System of Bangladesh both by the police and magistrates in extracting confession from the accused. In doing the assessment the paper examined the existing laws for confession and its evidentiary value in Bangladesh. Some evidences are also shown to suggest that convictions based exclusively on confessions are frequent occurrences in Bangladesh because it is the easiest way of concluding a case. Finally the paper recommended some courses of actions to be taken in order to address the problems of torture of accused persons at police custody and forcible extraction of confession by magistrates.

Keywords: Confession, Torture, Police Custody, Bangladesh.

1. INTRODUCTION

According to a report in the very front page of a national daily newspaper in Bangladesh that “Torture under police remand for extracting confession has increased by denying the ruling of the high court, arresting political leaders and doing business”¹ So the concept of confession which existed since time immemorial needs serious help or correction. The provisions of evidence relating to confession which was passed way back in 1872 needs a serious revamp to come into terms with backlog of criminal cases in Bangladesh. The Evidence Act 1872 needs to be changed considerably especially in case of confessions so as to increase the expediency of the criminal trials as to bring back the faith of the judiciary by expedient disposing of Criminal Cases. Despite the fact that Bangladesh has some excellent laws to control crime, the rate of violence in the country is high and 'justice for all' is not the case at all. Frankly, justice is mainly for those who can afford legal support and for those who can 'pay' for it. According to newspaper reports, the rate of impunity by law enforcement agencies is high and corruption in those quarters is an open matter. One of the many laws that are abused by

¹ The Daily Nayadiganta, 26th December, 2012.

some quarters of the justice system is the law pertaining to confessions. The general practice is that if a person confesses, it makes the work of the investigators easier.²

According to Justice Stephen –“A confession is an admission made at any time by a person charged with a crime stating or suggesting the inference that he has committed the crime”. “A Confessional statement must not only be voluntary, but it must be true at the same time. The veracity of the confessional statement must not be tested in a vague and hypothetical manner, but in a concrete and logical manner in light in the evidence adduced by the prosecution”.³ “A confession is a particular species of admission peculiar to criminal proceedings. It is an admission made by a person charged with a crime which taken as a whole states or suggests the inference that the committed the crime.”⁴

We know that confession is not admissible if it is made to the police officer. So the confession contained in the FIR cannot also be admissible as evidence since this FIR is generally filled in the police station. But it is to be noted that where a confession is contained in the FIR the whole report need not be excluded and portions of a statement which have no connection with actual narrative relating to the crime may be admitted. A statement by a person admitting that he was with the dacoits and saw one of the dacoits buying instruments to be used for the purpose of decoity is not a confession of the offence of dacoits and is admissible even if made to police.⁵

The protection to the life and personal liberty of individuals are inalienable and universal human rights recognized in a growing body of international human rights instruments of which Bangladesh is a party. Bangladesh is a ratifying party of the 1966 International Covenant on Civil and Political Rights (ICCPR),⁶ International Convention on the Elimination of all forms of Racial Discrimination (CERD),⁷ Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),⁸ Convention on the Elimination of all forms of Discriminations against Women (CEDAW)⁹, Convention on the Rights of the Child (CRC)¹⁰ and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It is also a signatory of the 1948 Universal Declaration of Human Rights. Under these international instruments state parties are required to submit periodic reports stating actions they have taken to comply with their obligations as bested upon them. These instruments also unequivocally outlaw all kinds of torture, cruel, inhuman or degrading treatment or punishment without any derogation. The Universal Declaration (Article 5), ICCPR (Articles 4.2 and 7) and the Torture Convention may be relied upon to show that acts of torture under police remand in Bangladesh constitute a gross violation of human rights recognized in and protected by international law and the United Nations.

1.1 CONTEXTUAL FRAMEWORK

(a) Provisions Under The Evidence Act, 1872

A confession is received in evidence on the presumption that no person will voluntarily make a statement which is against his interest, unless true. The force of a confession depends upon its voluntary character. If the making of the confession is proved beyond question it is the

²Rahman Sairah, “The accused and his confession” The Daily Star, 1st December, 2007.

³*State vs. Hamidul 61DLR (2009)614* as cited in- CHOWDHURY M JASIM ALI, “Shakka Ain: Shahaj Patt, first edition , August 2012, page-47.

⁴*Pakala Narayana vs. King Emperor 43CWN 473 (475)* cited in- CHOWDHURY M JASIM ALI, “Shakka Ain: Shahaj Patt, first edition, August 2012, page-47.

⁵Hamid Syed Sarfaraj, “law and practice of the evidence”, 1st published October, 2011, page 236.

⁶This ICCPR was ratified by Bangladesh on 7th september 2000.

⁷ This convention (CERD) ratified by Bangladesh on 11th June 1979.

⁸Bangladesh has ratified this convention (CAT) on 5th October, 1998.

⁹This convention (CEDAW) was ratified by Bangladesh on 6th November 1984.

¹⁰This (CRC) has been ratified by Bangladesh on 3 august 1990.

highest sort of evidence, and one of the most effective proofs in law. Sections 24-30 of Evidence Act have provided provisions protecting constitutional right of individual under Article .35 (4). Under the evidence act -1872 the sections that are from 24-30 are mainly divided into three parts. Section 24-26 deal with circumstances in which confession becomes irrelevant; Section 24 to 29 speaks of relevant confessions and section 30 is concerned with confession by co accused. The presumption of genuineness of the recorded confession by the magistrate is discussed in Section 80.

(b) Confession When Irrelevant

Confession caused by inducement, threat or promise, when irrelevant in criminal proceedings,- “A confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the Court have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the Court, to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of temporal nature in reference to proceeding against him”.¹¹ “No confession made to police officer shall be proved as against a person accused of any offence”.¹² “No confession made by any person whilst he is in custody of a police officer, unless it is made in the immediate presence of a Magistrate, shall be proved as against such person”.¹³ The object of these sections is to prevent the abuse of the powers by the police. A confession is admissible, if made to a Magistrate or to a person other than a police officer but in the immediate presence of the Magistrate, but it will be inadmissible if it is made to police officer even in the presence of a Magistrate.

Sections 24, 25 & 26 have excluded confessions as evidence. But these sections have an exception which has been stated in section 27 of the Evidence Act. Under this section, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not , as relates distinctly to the fact thereby discovered, may be proved. So it is clear from these sections that a confessional statement made to a police officer is inadmissible in evidence. But such improperly obtained statement (whether amounting to confession or not) may lead to the discovery of facts, things, documents etc. When a statement leads to the discovery of some dead body, weapon or ornaments, the presumptions of falsity attached to the excluded confessions disappears and that part of the information which relates distinctly to the discovery of a fact is held to be admissible by the theory of confirmation by subsequent facts.

What we have observed in the foregoing discussions is that the statute has fully ensured the constitutional protection enshrined in art.35 (4) of Bangladesh Constitution. Section 164 of Criminal Procedure Code has provided provisions which have guaranteed the voluntary nature of a confession. Again the provisions contained in sections 24, 25, 26 of Evidence Act have omitted to confer evidentiary value on a confession given under inducement, threat or promise, any confession made to the police officer, or in the police custody. So theoretically everything is o.k. No person is compelled to be a witness against himself. The court will take a confession into account only when it is satisfied that it has been made voluntarily, freely and under no compulsion.

¹¹Section 24 of the Evidence Act-1872.

¹²Ibid Section 25.

¹³Ibid Section 26.

(c) Confession When Relevant

How much of information received from accused may be proved,- “When any fact is proved to be discovered in consequence of information received from a person accused of any offence in the custody of a police officer, so much information (whether it amounts to confession or not) as relates distinctly to the fact thereby discovered, may be proved”.¹⁴ Confession made after removal of impression caused by inducement, threat or promise relevant:- “If such a confession as is referred to in section 24 is made after the impression caused by any such inducement, threat or promise has, in the opinion of the court, been fully removed it is relevant.”¹⁵ This section should be amended as section 24 should be amended. So, therefore, section 28 should be reworded as that “ If such a confession as is referred to in section 24 is made after the impression caused by any threat or violence has in the opinion of the court, been fully removed it is relevant.” Confession otherwise relevant not to become irrelevant because of promise of secrecy, etc.:- “If such a confession is otherwise relevant it does not become irrelevant merely because it was made under a promise of secrecy, or in consequence of a deception practiced on the accused person for the purpose of obtaining it, or when he was drunk or because it was made in answer to questions he need not have answered, whatever may have been the form of those questions, or because he was not warned that he was not bound to make such confession, and that evidence of it might be given against him.”¹⁶

In criminal cases, the public interest lies in prosecuting criminals and not compromising with them. Therefore, where an accused person is persuaded to confess by assuring him of secrecy of his statements or that evidence of it shall not be given against him, the confession is nevertheless relevant.

(d) Confession By A Co-Accused

Although section 30 of the evidence act provides that confession by a co- accused is relevant against other co-accused, it does not say whether conviction may be given on the basis of a confession by a co-accused. The appellate division in *Mubarak Hussein vs. state*¹⁷ held that confession by a co-accused is to be considered along with other evidence. Since other evidence has been found meager which also lacks independent corroboration, the confession of a co-accused even if accepted as true, cannot be the basis of a conviction of the appellant. Again confession of co-accused shall not be deemed as evidence under section -3 of the evidence act if it is not supported or corroborated by other evidence in the court of law.¹⁸ Similarly the high court division in *Mamud Ali vs State*¹⁹ held that a statement made by a co-accused cannot be treated as substantive evidence against the other accused person sufficient sustain his conviction. The high court division also held in the *State vs. Lt.Colonel Syed Faruk Rahman*²⁰ that the conviction cannot be based solely on the basis of confessional statement of a co-accused unless it is corroborated by some other independent evidence.

(e) Provisions Under The Code Of Criminal Procedure, 1898

Recording of confessional statement is a matter not only of form but also of substance. The recording Magistrate should make his real endeavour for ascertaining that the accused is

¹⁴ Ibid Section 27.

¹⁵ Ibid Section 28.

¹⁶ Ibid Section 29.

¹⁷ 3BLD (AD) 329.

¹⁸ *Abu Syeed vs. State* 53DLR (2001)556, *Amir Hossain Howlader vs. State* 37 DLR (AD) (1985)139.

¹⁹ 37 DLR 261; see also in 27 DLR SC 29, 4BLD AD 193, 13 DLR 591, 12 DLR SC 156

²⁰ 53 DLR 287.

making the statement voluntarily and should record the confessional statement by strictly following the provisions of sections 164 and 364 The Code of Criminal Procedure.

The requirements of law in recording a statement under section 164 of the code of criminal procedure read with section 364 of the same code are as follows.²¹ Firstly, the Magistrate should give the accused presented before him sufficient time to think and contemplate. Secondly, The Magistrate declares to the accused that he is a Magistrate not a police officer and also explains to him that he is not bound to confess and the confession may be used as evidence against him and he will not be returned to police custody if he will have confessed or not. Thirdly, the Magistrate will record confession only when it appears to him that such confession is voluntary. Fourthly, the Magistrate will ensure that there is no police personnel present in the room or within the sight or hearing of the accused.²²

The Magistrate is required to remove any impression of threat, inducement and promise from the mind of accused in order for his confession to be relevant and admissible. Fifthly, the Magistrate will not administer any oath and record the statement in the words of the accused as closely as possible and the statement will be read out to the accused and signed both by the accused and magistrate.²³ A confession recorded under section 164 of the code of criminal procedure does not necessarily prove itself, it may have to be proved by the recording magistrate at the trial. The accused will have the right to cross examine the magistrate.²⁴

(f) Provisions In The Constitution Of Bangladesh

According to Article 35 (4) of the Constitution- 'no person accused of any offence shall be compelled to be a witness against himself'. The main objective of Article 35(4) is to protect an accused person from any compulsion to make self-incriminating statements. Thus, the operative word here is 'compulsion', which may be translated to mean 'duress'. Thus, in order to gain the protection of Article 35 (4) of the Constitution testimonial compulsion, it must be proved that the accused person made his statement under compulsion and that is not voluntarily given.²⁵ The *Constitution of Bangladesh* also guarantees fundamental rights to life and personal liberty²⁶, equality before law,²⁷ protection of law,²⁸ safeguards against arrest and detention²⁹ and freedom of movement³⁰.

Its protection in respect of trial and punishment requires that "no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment"³¹. These constitutional guarantees are not barely ornamental and declaratory, but entail precise legal obligations. Articles 44 and 102 of the Constitution provide judicial remedy against any violation of fundamental rights. So the constitutional provisions are very clear against the torture, illegal detention before or after extracting confession. But in spite of these keeping under custody beyond the period of twenty four hours and custodian tortures are very much regular affairs in Bangladesh.

²¹ Mollah Raju , ' A Text book on Evidence Act 'first edition, May-2011,pages-60-61;also see Muhammed Nazrul Islam, 'Reflections on the law of Evidence' first edition, march 1995,pages-132-135

²² *Jafar Alam Chowdhary vs. State*. 20 DLR 666

²³ *Nasher Ali Sardar vs. State* 39 DLR AD 194

²⁴ *Babul vs.state* 42 DLR AD 186.

²⁵ Rahman Sairah, "The accused and his confession" The Daily Star, 1st December, 2007)

²⁶ Article 32 of The Bangladesh Constitution, 1972

²⁷ Ibid Article 27.

²⁸ Ibid Article 31.

²⁹ Ibid Article 33.

³⁰ Ibid Article 36.

³¹ Ibid Article 35.5

(g) Provisions In The Penal Code-1860

There are clear provisions regarding the torture, hurt and wrongful confinement for extracting confession and punishment regarding the same in the penal code 1860 such as- “Voluntary causing hurt to extract confession, or to compel restoration of property”³², “Voluntary causing grievous hurt to extort confession or to compel restoration of property”³³ and “Wrongful confinement to extort confession or compel restoration of property.”³⁴ So these are the provisions as mentioned in the penal code against torture, hurt and wrongful confinement for extracting confession but we can very hardly see the application of this section against the perpetrators in Bangladesh. Again Sections 330, 331 and 348) penalizes offences relating to causing hurt or wrongful confinement to extract confession. However, these provisions do not meet the standards of the CAT or define 'torture' as a crime.

2. DISCUSSIONS

A confession can only be retracted by the accused person who made the confession. A retracted confession is a statement made by an accused person before the trial begins by which he admits to have committed the alleged crime but which he repudiates at the trial. In other words, sometimes an accused is found to rescind from his confession in the trial court. From the view of the admissibility alone, the mere fact that the confession is retracted is immaterial, unless it is shown to be improperly induced³⁵. Retracted confession without independent corroboration cannot sustain conviction.³⁶ The court may convict an accused on his confession alone, although retracted at a later stage, usually the court wants some corroboration of the confessional statement at an earliest opportunity may lead support to the defense plea that the confession was not voluntarily one, but from a belated retraction of a confession no inference adverse to the accused can be made³⁷. It is a rule of prudence that a retracted confession needs corroboration inasmuch as it is always open to suspicion and cannot be acted upon unless corroborated by independent and credible evidence.³⁸

In *State vs Lahu Miah*³⁹ the appellate division relied upon some Indian supreme court's decisions and held that notwithstanding the general principle that a confession should be accepted or rejected as a whole, but in certain facts and circumstances, the inculpatory part may be accepted if the exculpatory part is found to be false or basically improbable regard being had to reason and human conduct. In *Vijendrajit vs state of Bombay*⁴⁰, the accused was charged under section 66(b). The accused admitted in his statement that he was in charge of the *godown* but denied that the contraband was discovered from it and contended that it was found from outside the *godown*. The court accepted the former part of his statement, but rejected the latter part in its view the prosecution had proved beyond reasonable doubt.⁴¹

The section-25 of the evidence act very clearly provides that no confession made to a police officer shall be proved against a person accused of a crime except section 27 of the same act. A confession made to a police officer inadmissible not only against the person making it but also inadmissible against the other accused. The appellate division categorically held in

³²Section-330 of the Penal Code-1860

³³Ibid Section-331.

³⁴Ibid section-348.

³⁵*Golam mohammed vs. E*, 1942 Lah 271, See also in “The law of Evidence: Theory and Practice” by Barrister Abdul Halim, First edition, July-2008, page-91.

³⁶*Abdus shukkur vs. state* 16 DLR 147, *Palanisay vs.state*, AIR 1986 SC 593

³⁷*State vs. kamal* 49 DLR (1997) 381; *State vs. Lahu Miah* 39 DLR (AD) 117).

³⁸*State vs. Ali Kkibria*, 43 DLR 512)

³⁹39 DLR (AD) 117

⁴⁰1953 SCJ 330

⁴¹HALIM MD.ABDUL ,the law of evidence –theory and practice, First Published:july,2008,pages-86)

*Mohammed Siddikur Rahman va the State*⁴², that any statement made to a police officer is inadmissible as evidence under section-162 of the Cr.pc and any confession made to a police officer is inadmissible under section 25 and 26 of the evidence act. Likewise the Pakistan Supreme Court held in *Mohammed box vs the state*⁴³, that even if the accused makes confession on oath to a police officer, still that confession will not be admissible in the eye of law.⁴⁴

Confession made by the accused to any person other than police officer can be used as evidence in the court provided that such confession must satisfy the conditions of section-24 of the evidence act. In other words, such a confession must be made voluntarily and without any inducement, threat or promise otherwise that confession or statement becomes useless in any criminal proceedings.⁴⁵ The high court division held in *State vs Hasan Ali*,⁴⁶ That extra-judicial confession, by its nature, is very weak type of evidence and it is unsafe to base conviction of an accused person on his extra-judicial confession alone.⁴⁷

Section 167 empowers any first class magistrate to authorize the detention of any person arrested by the police under s. 54. Magistrates, other than first class, need to be specially empowered to be able to authorize such detention. Under s. 167(5) of the CrPC, the competent magistrate may continue the detention up to 120 days. A magistrate who lacks jurisdiction to try the case in question is allowed to grant detention for up to a maximum 15 days (s. 167.2). If such a magistrate considers further detention necessary, he/she may order the accused to be forwarded to the magistrate competent to try the case.

Section 164 and 364 of the code of criminal procedure 1898 mentioned the rules and procedures for the magistrate to follow before the recording of confession. In a case the high court division held that “Under section 164(2) –the act of recording confession is a very solemn act and in discharging his duty, the magistrate must take care to see that the requirements of sub-section (2) of section 164 are fully satisfied.”⁴⁸ In the same case the honorable high court division also held that “ under section 164(3) –“it is a mandatory requirement that after recording of a confessional statement the recording magistrate is required to make a memorandum to the confession containing a column to the effect that he had warned the accused that he was not bound to make a confession, that if he makes a confession, it would be used against him, that the statement was true and voluntary, that it was read over to the maker after his statement was recorded which was the true and corrected version and it contained a full and true accused of statement by the maker.”⁴⁹

The learned higher court further directed in the same case that under section 164(3) - “the provision of sub-section 3 of the section 164 is mandatory and therefore he is required to fill the column -7 of the form 84 for recording confession which is a column for recoding a brief statement of the magistrate’s reasons for believing that the statement was voluntarily made,”⁵⁰ We can also see in the form no. (M) 84 used to record the confessional statement by the Magistrate states inter alia: 'Magistrates should clearly understand the great importance of giving their closest attention to the procedures to be followed, from first to last, in the recording of confessions. This procedure should be followed without haste, with care and deliberation, it being understood that this duty is not a distasteful and minor appendage or addition to their normal functions, but one which is of consequence to the confessing accused, his co-accused and court responsible for the administration of criminal justice. A confession which is recorded

⁴²7 BLD(AD)93

⁴³ 9 DLR (SC)11)

⁴⁴ Supra note 43, P-88.

⁴⁵ Assistant collector, Central Excise vs Duncan Agro Industries ltd(2000)7 SCC 53,AIR 2000 SC 2901.

⁴⁶ 19 BLD (HCD)418)

⁴⁷Supra note -46, pages-88.

⁴⁸ State vs. Babul Miah ,63 DLR 10

⁴⁹Ibid.

⁵⁰Ibid.

perfunctorily and hastily is a source of embarrassment to the trial court, the prosecution and the defense.⁵¹ Our Supreme Court has explicitly held, in *State Vs. Abul Hashem*,⁵² that a magistrate cannot record a confession that is extracted through torture. And then, just to make sure, the magistrate has to affix his own signature at the end, verifying that the statement was not produced through torture.

There is a strict time limit for recording of a confessional statement from an accused person. Accordingly in a case the high court division directed that “the confessional statement could not be said to be voluntary since it was recorded three (3) days after the accused was arrested and certainly after illegal detention on police custody”.⁵³ Their lordship Appellate Division (Criminal) Md Fazlul Karim J Md Abdul Matin J BK Das J ABM Khairul Haque J MM Hossain J SK Sinha in a Judgment on (*April 7th, 2010 State v Babul Mia*) The learned Judges –“disbelieved the confessional statement on the reasoning that his statement was recorded after three months of the occurrence and under such circumstances "the effect of such confessional statement loses its force apart from being obtained such confessional statement by means of torture or intimidation.”⁵⁴ In *State Vs. Farid Karim*,⁵⁵ the fact that the accused was in police custody for unexplained two days before the police produced him for making confessional statement, was one of the important factors in the confessional statement being found involuntary.

Successive governments in Bangladesh have displayed their inability to govern with the help of ordinary laws. They have enacted draconian laws, such as the *1974 Special Powers Act*, the *2000 Public Safety Act* and the *2002 Speedy Trial Act*, to maintain order. These special power acts have been drafted vaguely and broadly to encompass wide-ranging arbitrary actions and discretionary measures of the Executive. These have also given the police an almost free hand to arrest and detain people at will in the name of maintaining order, took away the citizens’ constitutional rights protection, and compromised good governance by abandoning the accountability and transparency of executive acts. The police can for example arrest a person under s. 54 and first look for grounds of arrest under the CrPC. Failing this, they can justify the arrest and preventive detention without trial under various special laws. There are some occasions where the police have included the detainees in criminal cases, even though their names were not recorded in the First Information Report (FIR) filed with the police station. Thereafter they were charged. The victims of such incidents revealed to the Odhikar investigators that the police had asked for money from them or their relatives for their release and that their failure to pay this bribe had kept them in custody. The police threatened those who could not pay with being included in pending criminal cases, and beat ruthlessly.⁵⁶

On 23 July 1998, police of city detective branch of Dhaka arrested Shamim Reza Rubel, a brilliant student of BBA of the IUB from near his house at about 4.30 P.M. he was tortured barbarously in the DB custody. As a result of torture Ruber falsely said that he would give them arms and also confess before magistrate regarding the same if he was allowed to go to his residence. After arrival near of his house he denied his previous statement. Then police beat him, kicked him mercilessly and threw him on electrical light post. Members of his family tried to save him from the claws of police, but failed. Rubel was taken to the custody of police again and he was succumbed to death for cruel and inhuman torture. The police claimed two

⁵¹ SAIRAH RAHMAN, “The accused and his confession” *The Daily Star*, 1st December, 2007

⁵² 3 MLR (HCD) 30

⁵³ *State vs. Md. Roushan Mondal*, 59 DLR 72 HCD)

⁵⁴ *Supra* note 51 & 52.

⁵⁵ 8 BLT (AD) 87.

⁵⁶ “Reasonable suspicion vs. unreasonable impunity”, *The Daily Star*, 8 December 2001, Dhaka, online, report by human rights organisation Odhikar. as cited in – M RAFIQUL And S M Solaiman – “Torture under Police Remand in Bangladesh: A Culture of impunity for gross violation of human rights”, published in- ‘Asia-Pacific Journal on Human Rights and the Law 2: 1-27, 2003. 2004 Koninklijke Brill NV. Printed in the Netherlands)

lach taka as bribe on condition of Rubel's release .but their demand was not satisfied .one day hartal was observed by the opposition political parties against the killing of Rubel.⁵⁷ A Former Deputy Attorney died under police custody in a city hospital. On August 11, 2011, at the order of high court judges Shamsuddin Chowdhury Manik and Gobinda Thakur, he was arrested and tortured by police until he suffered from a massive myocardial Infarction.

The Supreme Court of Bangladesh in *State v Munir and Another* held that confessional statements can be the sole basis for conviction if the confession is voluntary and true.((1996) 1 BLC 345.same decision we can see in *jhumur ali and others vs state*.⁵⁸ Article 35(4) of the Constitution forbids any compulsion on a detainee to make a confession or to be a witness against him/herself. The CrPC itself has provided safeguards against involuntary confessions made by a detainee under coercion (s. 163).

Section 164 allows the detainees to refute the statements or confessions given to the police during remand, and to give fresh statement to the magistrate. A great disparity exists between the spirit of s. 163 and s. 164 and the practice under s. 167 by granting frequent remands with the knowledge that they will be treated inhumanly or tortured. Prior to recording any confession of the person sent on remand, s. 164 requires the magistrate to make such a person aware of the fact that he/she is not bound to make any confession and that his/her confession, if voluntarily given, may be used as evidence against him/her. To make sure this information is communicated, the magistrate is required to take a note to this effect at the foot of the record. It is all too common that a single person is remanded for more than once without assigning any reasons whatsoever.

The accused in remand will often be threatened by police before being produced before the magistrates, and warned that further remand will be sought if he/she refutes the confession or informs the magistrate about torture or ill-treatment, and that more severe treatment will be waiting during the next round of remand. In such a dilemma, many remand victims prefer to condone their false confessions and even accept imprisonment for life, or any other term, as preferable to endless life-threatening torture and inhuman treatment in successive remands.⁵⁹ The police indiscriminately arrest innocent civilians merely on the basis of suspicion and without any warrant primarily for receiving bribes. The arrestees who cannot afford to pay bribes for a quick release are being put in remand where they may be subjected to barbarous treatment resulting in death. It may also see them implicated ex post facto in criminal cases based on confessions extracted during remand by employing "third-degree" methods. Eventually many of them choose life term imprisonment as a comparatively better alternative to successive repressive remands and hiding the coercion used for their confession. The number of custodial deaths in jails and police stations surpasses 19,000 since 1972, of which barely three or four cases have so far been tried.⁶⁰

⁵⁷Annual report 1998, Bangladesh rehabilitation centre for trauma victims(BRCT).P-8 as cited in ,MD.FAIZ-UD-DIN, "The role of police in the administration of criminal justice: Bangladesh perspective", published in the Rajshahi University Studies V01.28,2000)

⁵⁸ 7 BLC 62,also in 51 DLR 244)

⁵⁹M Rafiqul And S M Solaiman -"Torture under Police Remand in Bangladesh: Culture of impunity for gross violation of human rights", published in-'Asia-Pacific Journal on Human Rights and the Law 2: 1-27, 2003.2004 Koninklijke Brill NV. Printed in the Netherlands.

⁶⁰Ain O Salish Kendro (ASK), Human Rights in Bangladesh 1998, Dhaka: The University Press Limited, 1999, p. 60.

Table 1: The statistics of Consequences of torture⁶¹

<i>Serial no-</i>	<i>Year</i>	<i>Death under police custody</i>	<i>Torture by police and other legal agencies</i>	<i>Death in jail</i>
1	1994	12	3014	31
2	1995	12	2810	10
3	1996	19	3617	29
4	1997	38	3000	23
5	1998	56	555	52
6	1999	12	---	30

Table 2: The annual reports of Odhikar on the nature of violation of human rights 2005-2010

<i>Serial no-</i>	<i>Year</i>	<i>Death caused in police custody</i>	<i>Death caused in jail custody</i>
1	2005	06	76
2	2006	84	62
3	2007	--	--
4	2008	--	66
5	2009	123	50
6	2010	109	60

3. STATUTORY REMEDIES TORTURE

Punitive measures are remedial in nature. These remedies strict liability on the law enforcement agencies and magistrates for the abusive application of s. 54 and s. 167 before confess during remand and sections 164 and 364 of the Cr.pc at the time of confession that abrogates the lawful rights of citizens.

There are many instances where police personnel are punished through departmental action for negligence to duty and corruption in the name of remand for extracting confession. But action is hardly taken for the infringement of fundamental rights through torture during remand, despite the fact that custodial violence by police is an offence punishable with imprisonment under s. 29 of the *1861 Police Act* and s. 53 of the *1976 Dhaka Metropolitan Police Ordinance*, both of which are still in force. In recent years, there were only two instances where police personnel have been punished, for custodial death and for raping a woman in custody.⁶² In addition to departmental action, the law enforcement personnel responsible for torture during remand must be brought to justice on every occasion pursuant to the *Penal Code 1860*. Commanding officers are authorized to take actions against their subordinates responsible for torture under s. 33(b) of the *Police Regulations*. Being their immediate controlling authority, the commanding officers should also bear responsibility for the crimes committed by their subordinates.

Some form of departmental disciplinary action against commanding officers may render them more vigilant about the acts of their subordinates. Any external eyewitness, other than the police, for custodial deaths or torture could not practically be expected. It is unlikely that a police officer will testify that an arrestee was tortured to death by his/her colleague(s). Reliance on post-mortem reports in determining the cause of death must be made with utmost caution. The honesty and impartiality of government nominated pathological surgeons are often in doubt because of cover-ups and questionable in respect of forensic uses. For example,

⁶¹Sources: Human rights; fact finder; annual report 1998 (BRCT); The Daily Sangram, 4th January 2000, and The Daily Star, October 5, 2000)

⁶² "Sensational Rubel murder case verdict", The New Nation, 18 June 2002, online

Nasim (who was in 2002, the private secretary of the then opposition leader and present prime minister Sheikh Hasina) was inhumanly tortured during police remand which included electric shocks to his private parts, but the government-chosen medical board reported that he had only mild injuries. In *Shaikh Baharrul Islam v State*, (1991) 43 DLR 336 the Supreme Court of Bangladesh held that it was not possible to prove the cause of death of a person in the police station, because only those who beat him had special knowledge how he was beaten to death.⁶³

Magistrates are legally obliged to consider the progress of investigation before granting remand and to find reasonable grounds in order to send any person on remand. In reality though, they hardly check the police diary of the arrested persons nor record the reasons for granting remand. Whatever may be the reasons for their indolence or negligence to check the diary and record the reasons, they could be tried under the existing penal law of Bangladesh. According to s. 219 of the *Penal Code 1860*, ordering remand by a magistrate in disregard of the spirit of law or being influenced by extraneous causes amounts to committing an offence for which he/she could be punished with imprisonment for a term of up to seven years, or receive a fine, or both. Such a magistrate cannot take shelter behind the *Judicial Officers' Protection Act 1850*, as this Act accords immunity only from civil liabilities, not criminal laws. Magistrates are public servants appointed to perform judicial functions in a manner that ensures just, and prevents unjust, application of the law. Protection may be applicable for genuine errors or honest mistakes, but not for willful offences. Bangladesh is a peoples' republic and its Constitution has rendered public servants accountable to the public, who have every right to know how fairly and transparently the state functionaries work.⁶⁴

Compensation and fine against the perpetrators can be a mode of remedy to Offer compensations to victims for the injuries and damages they sustain as a result of the wrongful application of these laws. It imposes vicarious liability on the State. The Latin maxim *salus populi suprema lex* (the safety of the people is the supreme law) lies at the heart of the liability regime of the State. Article 9(5) of the ICCPR also entitles individuals to compensation for unlawful arrest or detention. The State must be "right, just and fair" in interrogating criminal suspects. It must employ scientific and efficient methods of investigation within the purview of law. The *Constitution of Bangladesh* does not contain any explicit provision for granting monetary compensation for the contravention of legally protected rights. This is not a unique situation but is quite common in many other constitutions. In these countries, their highest courts, through judicial activism, have evolved the principle of compensation in case of violation of personal right to life or liberty. Like India and Bangladesh, the *Constitution of Ireland* does not contain any express provision for monetary compensation. But the Irish judiciary has developed remedies, which include award of damages against both the individual officials directly responsible and the State in redressing the injuries sustained as a result of the contravention of fundamental rights.⁶⁵

4. CONCLUSION

None of Bangladeshi laws admits involuntary confession in judicial proceedings. Yet law enforcement agencies have been arbitrarily arresting thousands of innocent citizens for decades, in most cases either for political end or for getting bribes. The magistrates have been ordering remands indiscriminately for extracting confessions, where violence and torture are endemic. In such a situation both the police and the lower judiciary are on the verge of their doom by losing public confidence. The higher judiciary is more cautiously restrained than proactive as a custodian of the citizen's constitutional guarantee. The law regarding confessions

⁶³Supra note 66

⁶⁴Ibid

⁶⁵Ibid

makes it clear that the recording of confessional statements; the format the Magistrate must follow that what may be admissible as a confession. The Constitution makes it clear that no one must be compelled to be a witness against himself and that no one must be subject to cruel, degrading and inhuman treatment. What is now necessary is the proper and effective implementation of these laws, and if necessary, their amendment, in order to ensure that a person on trial is innocent until it can be proven that he is guilty.

The Executive must understand the ethos and spirit of good governance propelled by the constitutional rule of law. It must learn to live and operate within the bounds of law. It is incumbent upon the Executive to act together with Parliament and the judiciary in working out legal safeguards against the self-serving and sectarian use of police powers. It would be rewarding for the civil society of Bangladesh, and for those innocent victims who despair in police remand, if the Executive government reflected on its human rights record. The citizens of Bangladesh cannot have a dignified human existence unless the ongoing barbarous acts of torture under police remand in the name of extracting confessional statements are subject to the law, and their perpetrators are brought to justice.