

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

...

**CRA No. 04/2009
Cr. Ref No. 11/2009**

*Reserved on: 22-05-2025
Pronounced on: 07.07.2025*

Hassan Bhat
Adopted son of Rehman Dar
R/O Soznipora, Budgam.

...Appellant(s)

Through: Mr. S. T. Hussain, Sr. Advocate
With Ms. Nida Nazir, Advocate.

VERSUS

State of J&K through Police Station Budgam.

...Respondent(s)

Through: Mr. Hakim Aman Ali, Dy. AG.

CORAM:

**HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE.**

JUDGMENT

Sanjay Parihar, J:

1. Appellant is aggrieved of conviction dated 24th March, 2009 for offence U/S 302 RPC followed by order of sentence dated 26.03.2009 passed by **Sessions Judge Budgam** (hereinafter referred as 'the trial Court') whereby he has been convicted and sentenced to imprisonment

for life with fine of Rs. 5000/-. Reference has also been made by the trial Court for confirmation of the sentence.

2. At the stage of admission of appeal and in terms of order dated 25.05.2009, appellant has been released on bail after having been in custody for over 7 years.

3. The case set up by the prosecution is based on the incident dated 23rd November, 2001 when, PW-1 Ghulam Ahmed Dar lodged a written report with Police Station, Budgam, alleging therein that appellant Hassan Bhat has attacked Ghulam Mohd. Dar S/o Abdul Rehman Dar resident of Soznipora (hereinafter referred to as “deceased”) who was on way to offer morning prayers at a nearby Mosque after having Sehri, being the month of fasting, wherein deceased had been inflicted axe blows twice from its sharp side, first overhead and another on face resulting in deceased dying on spot. The complainant further alleged that appellant after committing the act had escaped along with axe towards village Cheka Sheera. Pursuant to said report, case FIR No. 290 of 2001 of P/S Budgam, came to be registered against the appellant for offence under Section 302 RPC and the investigation commenced. The police party on being informed took over the body of the deceased which was lying on the road leading to mosque, prepared its seizure memo and upon completion of medico-legal formalities, the body of deceased was handed over to his legal heirs for performing the last rites. Appellant was later arrested on 10.12.2001 and during questioning, he is alleged to have

made disclosure statement regarding the commission of offence and also having concealed the weapon of offence (axe) in his orchard. In furtherance to his disclosure, the appellant took the police party to the specified spot, where the weapon of offence was hidden and came to be recovered at his instance which was seized. On obtaining forensic report as well as other documentary evidence appellant was charge-sheeted for having committed murder of the deceased. It was further alleged that the appellant had been inimical towards deceased who had a dispute over ancestral property for 3 years. On 22nd November, 2001 accused while ploughing his land at Premkha faced objection from the deceased and that made the appellant furious who allegedly threatened to kill the deceased.

4. Accused was charge-sheeted for offence u/s 302 RPC before the Court of Munsiff JMIC Budgam, who in terms of order dated 22.01.2002 committed the accused and the charge-sheet to the Court of Sessions at Budgam, where vide order dated 09.04.2002, he was formally charged u/s 302 RPC to which he pleaded not guilty and was, therefore, put to trial.

5. The Prosecution, in order to prove its case, examined PW Ghulam Ahmed Dar, PW Ghulam Rasool Dar, PW Ghulam Hassan Ganie, PW Rasool Dar S/o Reshi, PW Ramzan Ganei, PW Ghulam Mohi-ud-in Dar as eyewitnesses whereas PW Mohd. Akbar SGCT, PW Shamsuddin SGCT, PW Const. Khursheed Ahmed, PW Const. Shabir Ahmed as witness to the seizure. Dr. Bashir Ahmed was produced as the medical

expert, Dr. Manzoor Ahmed Khan as expert of forensic examination besides PW Mohd. Subhan, the Investigating Officer.

6. After closure of prosecution evidence in terms of Section 342 CrPC, the incriminating evidence was put to the accused wherein he explained that all eye-witnesses were inimical towards him who are interested in his conviction and have thus deposed falsely. Neither any recovery was effected from him nor has he committed the offence; that there was land dispute between him and the complainant party which was going on for over 3 years and taking advantage of that litigation the complainant party got orchestrated a false case against him. That he was the step-father of deceased and had lot of love and affection towards him, so there was no question of appellant killing the deceased. Appellant in defense has produced Mst. Khati (wife of accused and also mother of deceased). DW Manzoor Ahmed Ganie and DW Zuni.

7. For the purposes of disposal of this appeal the narration of the prosecution evidence and evidence of the defense witnesses is briefly reproduced herein below.

8. **PW Ghulam Ahmed Dar**, the complainant as well as the informant has supported the contents of FIR dated 23.11.2001 (EXPW 1/1) in its material particulars by stating that accused Hassan Bhat, who also happen to be adopted son of Rahim Dar, killed the deceased near Masjid Sharif Soznipora with Axe in the manner he gave its blow upon his head because of that impact he fell down and later on he gave another

blow on left side of his face resultantly Ghulam Mohd. Dar died on spot whereas accused along with Axe fled from spot. The witness further went on to narrate that he along with his brother 3 in nos. were first to witness the incident and after he raised hue and cry other people also assembled. After hitting the deceased the accused fled from the spot. He further claimed that prior to that accused inflicted blow to the deceased over his head twice which he did not witness. The deceased had already laid on ground and that he saw the accused fleeing from the spot. They tried to lift the deceased but he was already dead. He admitted his signature on EXPW 1/1. Dead body was taken by police and after medical examination his dead body was handed over for last rites. After 20 days of the incident, he heard that accused had been arrested and they were called to the Police Station. It was at that time when accused during questioning disclosed that the Axe which he used for killing the deceased has been concealed by him underneath soil near an apple tree in his own orchard. It was on the identification of the accused that weapon of offence was recovered. He is witness to its recovery which is EXPW 2/50. He further went on to disclose that deceased was killed because while accused was ploughing the land the deceased had started interfering, for which accused had threatened to kill him. Upon cross-examination the witness had deposed that almost all the inhabitants of the village observe fasting and, on that day, it was early in the morning after they took Sehri and were proceeding towards the Mosque when the incident happened.

He raised cry that attracted lot of people that included Rashid Dar, Sadiq Dar, Qadir Dar, Mahad Dar, Ghulam Hasan Ganie, Rasool Mir, Abdul Dar. It was only Rasool Dar and Rahman Dar who had witnessed the incident, the others came later on. The Axe was recovered after 23 days of the incident and at that time it was found having bloodstains He also admits that the property of the deceased is in their possession and walnut crop was sold and the money was given to the mother of the deceased. The witness has admitted that they had litigation with the accused over the land belonging to the deceased. He further admitted that over the said land they are also the claimants. That the weapon of offence (axe) was not a small one but was a big one. The witness also denied the suggestion that it is he and his brothers who had killed the deceased. He also admitted that, under law, he and his brothers are rightful claimants of the property of the deceased but for that law will take its own course.

9. PW Ghulam Rasool Dar has stated that he knew accused as well as the deceased and it was on 23rd of November Ramadan fasting after having Sehri when he went towards Mosque for offering prayers, he saw accused hitting deceased with Axe over neck. The deceased was about to reach to the door of the Mosque. The accused then gave the third blow, with, that very axe. The witness was accompanied by his brother Ghulam Ahmed Dar. People came on spot and upon seeing them, accused fled away carrying axe along with him. He claims to have signed the seizure memo EXPW 2/1 after 10-20 days of the occurrence and police arrested

accused, he made a disclosure statement in Kashmiri language disclosing axe to have been hidden by him underneath an apple tree in his orchard. Later the accused dug out the said Axe from the said place in presence of witness. He admitted to have witnessed the document of recovery of weapon of offence. **On cross-examination**, the witness has claimed that the deceased was their co-sharer and it was in presence of the witness when the accused inflicted third blow of axe on the face of the deceased and he fell down. However he denied the suggestion that he is deposing against accused as they are inimical towards him. After witnessing the incident, he too raised hue and cry which attracted attention of other people who had been to the Mosque. The moment Azan took place, he left towards Mosque and on way he saw the incident, there his brother Ghulam Ahmed Dar too was with him. **It was early morning when the incident took place though the sun was yet to come out he further went on to say there was enough light.** He denied the suggestion that since he is the relative of the deceased that is why he is making false statement against the accused. Rahim Dar had adopted the accused and denied suggestion that because of that adoption the complainant and his brothers were having enmity with the accused. The initial complaint was lodged by his brother which was written by the police personnel. It is Ghulam Ahmed Dar, the informant, who signed the application. Deceased received multiple blows and because of that he died on spot He has

admitted having put his thumb impression over the seizure memo as well as the recoveries.

10. PW Ghulam Hasan Ganie has narrated that it was the November 2001 in early morning when around 6 AM while he was on way to offer Fajr prayers and had reached near Masjid Sharif and was offering prayers when he heard noise emanating from outside. People were saying that near the compound of Masjid murder has taken place. He went on spot, saw deceased lying in pool of blood who had received head injury, people were saying that he has been killed with axe, which act was committed by the accused who had fled away from the spot. Police party came on spot and conducted the investigation. On cross-examination he has stated that he also heard that police had seized Axe though he was not witness to its seizure. After the incident they did not offer early morning prayers.

11. PW Rasool S/o Reshi narrated that prior to the incident dated 23.11.2001, there was dispute between the accused and deceased and on the day of incident accused gave multiple blows to the deceased with an Axe which resulted into his death. **On cross-examination** he claims that, the moment he reached on spot by that time deceased had already died. PW Rasool Dar claims that Rahim Dar happened to be maternal grandfather of the deceased and denied the suggestion that his brother was thrown out by Rahim Dar as the former had committed theft. That Gaffar Dar and Rahim Dar both were brothers whereas Rasool and Rahim Dar were entangled in a land dispute. After demise of deceased, the

property of deceased has not been occupied by the complainant rather it is being managed by his mother. He does not remember as to what is the exact property of the deceased. **PW Mohd. Ramzan Ganie** is narrating that on 23.11.2001 he heard cries emanating from nearby Mosque situated at Soznipora. He, being Chowkidar of the village, went on spot along with Numberdar where everybody was telling that the accused has killed deceased and also that he had taken along Axe with him. The witness reached on spot and police also arrived there. **PW Ghulam Mohi-ud-din Dar@ Mahad Dar**, has narrated that he is resident of the village of the deceased, he also knew accused who both were having land dispute. The land of the witness is adjacent to that of the accused and while the accused was ploughing his land deceased came on spot and started objecting to the ploughing of the land by accused. There was heated exchange between them. The deceased came and got the bulls freed. On next day of 23rd November while the witness was on way to Mosque, though he usually does not go to the Mosque, but it was Friday so while on way to Mosque after having Sehri he saw deceased lying on ground. There was electric light besides, he also saw accused Hasan Bhat who was carrying an Axe with which he gave a blow over the head of the deceased as well as at a place adjacent to left ear. Witness could not dare to go near to the crime scene. Rasool Dar raised alarm that attracted other people as well. Thereafter he saw body of the deceased lying on ground. Thereafter one Mohd. Dar also arrived on spot and they both saw Hasan

Bhat accused on spot and in their presence he escaped. Witness went on to narrate that it was Hasan Bhat accused who gave axe blow to the deceased which the witness saw with his own eyes. **Upon cross-examination** has narrated, that he was on his way to the Mosque rather he had reached inside, when he heard noise from outside. It was slight dark but fit enough to find another person. Persons who were offering prayers in the Mosque too came out. There was lot of hue and cry, he saw deceased lying on ground and also could see accused hitting deceased, he also saw deceased being hit by the accused when his body was lying on ground. Soznipora is a big village, accused Hassan Bhat is adopted son of Rahim Dar whereas deceased was also the maternal grandson of Rahim Dar. Some of the property of the deceased is lying with the complainant rest he does not know though his house is locked and no one is residing there. On another occasion he was found narrating that upon seeing the dead body he too became unconscious but before becoming so, he could see accused hitting deceased with an axe. The witness took advantage of nearby wall so as to gain foothold, he went on to narrate that he did not knew that prior to the incident there was any dispute between the two. Admitted that the complainant and his brothers are also related to the deceased and his grandfather Rahim Dar. He further went on to narrate that he has been shown the axe in the Court, which he identifies.

12. PW Ghulam Rasool is found narrating that he knew both accused and deceased. The mother of the deceased has contacted second marriage

with accused so the later happened to be step-father of the deceased and there was dispute regarding estate of Rahim Dar. It was the month of Ramzan he does not remember the exact date but after having Sehri he was on way to Majid Sharif, there he saw lot of people had assembled who told him that accused has killed deceased. Police party came who took the body of the deceased though the witness was declared hostile but on cross-examination admitted it to be true that accused and deceased was having land dispute for quite some time. He also admitted to have not witnessed the occurrence and his deposing on hearsay. **PW Shamsuddin SGCT** admitted that accused made disclosure statement in Kashmiri narrating about having used Axe in killing of deceased which Axe he has concealed in his orchard. Witness admitted contents of the EXPW 2/5 thereafter the disclosure accused was taken to the spot where he at his own disclosure got the Axe recovered. On cross-examination narrated that he is police personnel of the rank of selection grade He denied the suggestion that there is an enquiry against him of having made false statement. Accused was lodged at Budgam Police Station where he made disclosure statement. From Police Station they went to Khansaheb; after making disclosure statement the accused took them to a place which was not known to the witness and there the accused recovered the Axe after digging out the clay underneath where the weapon of offence had been concealed, which was recovered. **PW Const. Khursheed Ahmed**, too has admitted the contents of EXPW 2/5 regarding disclosure statement

and also identified the place where from accused made its recovery. On further cross-examination narrated that when the weapon of offence was recovered it was having blood stains. The disclosure was recorded at 12:30 PM whereas within the 2 hours the recovery was affected from the place which was to the knowledge of the accused.

13. PW Constable Shamim Ahmed is found narrating that accused took them to his orchard where underneath an apple tree he had concealed the Axe which was recovered at his behest. The disclosure was made on 13th December at 12 PM and on that very day they went to the spot and by 2 PM the recovery was affected from Soznipora, a place about 2 Kilometers away from the Police Station. The Axe was kept in an orchard which was a big chunk of land bearing 50 to 60 kanals. The orchard was fenced; after entering inside the orchard, the accused took them underneath a tree and there from he dug out the clay and recovered the Axe. It was the accused who dug out the land and recovered Axe which was shown to the witness. The witness again admitted that the Axe upon its recovery was having blood stains.

14. PW Bashir Ahmed Shah, narrated that “he conducted the post-mortem of the dead body and the found injuries in the nature of,

- a. A wound on the scalp extending from front of scalp to occiput with sharp edges dividing the scalp causing fracture to scalp bones and laceration of brain matter length about 20 CMS depth of about 5 CMS.*
- b. A wound extending from left eye brow to lobule of left ear about 5 CM deep and 10 CM long edges sharp.*

c. Most probable cause of death is severe head injury by some sharp object with hemorrhagic shock.

After preliminary examination of the dead body, he conducted the autopsy. The detailed report on the file and shown to him is correct. It is marked as EX.PW/M-I. Viscera was sent for forensic opinion. The report was received therefrom and dispatched to Police concerned. As per the opinion of Forensic Laboratory, no poison has been detected. The witness was not asked to submit any final opinion because the opinion was asked from Forensic Lab., they provided the same as mentioned above. On cross examination, he narrated that this was the first autopsy which was conducted by him. He was assisted by paramedical staff; he did not mention in the certificate whether rigor mortis was present or not. After conducting autopsy, he reserved opinion pending receipt of forensic examination. He is not sure as to what was the cause of death. He conducted autopsy and recorded probable cause of death of deceased. Admitted that final opinion was never sought from him by the police. In between the police has shown him Axe on 13.12.2001, and on seeing the Axe and having regard to the size of the weapon and the depth of wound he could find that the weapon was used in inflicting the injury, the head injury was in the size of 20 cm x 5 cm deep. The depth of the wound in this case would have depended on the direction of the assailant and the force while inflicting the injury had the axe been struck with full force it would have divided the skull that both the injuries would give rise to rupture of blood. That the injury caused on the person of the deceased

could not be caused by fall on stony surface. On examination by Court narrated that the wounds and injuries inflicted on the person of the deceased were sufficient to cause death. The infliction of first wound out of the two was sufficient to make the victim fall on ground. The position of the assailant in the present case was that of a standing person as well that of the victim on receiving the first injury the victim could have fallen on the ground and the second blow could have been caused in between the falling process. In this case the primary cause of death of the deceased were the wounds and the secondary cause is the loss of blood.

15. PW Dr. Manzoor Khan the forensic expert has narrated that he conducted chemical test on the exhibits which were forwarded to him that contained parts of stomach, liver piece, brain piece and spleen and he could find that no poison was detected.

16. PW Abdul Rashid Dar is also a witness to the incident, who too is found narrating to have found the body of the deceased having received three blows taken over by the police. The witness had been declared hostile and has admitted that there was a land dispute between the accused and the deceased. On reaching the scene of crime he saw PW No.1 &2 and others present. That the property of the deceased is in possession of Ghulam Rasool Dar and they are ploughing it even the land of Ghulam Hassan Bhat was in possession of PW 1 and 2, so much so the house of Ghulam Hassan Bhat is also in their possession. People were saying that deceased was hit by accused in presence of PW 1 and 2. He

admitted that there was dispute between the parties over landed property.

PW Sohail Ahmed Kanth has narrated that he was forwarded with blood-stained apparels of deceased which were examined by him and found them containing blood stains which belonged to the blood group of the deceased.

17. PW Mohd. Subhaan, Sub-Inspector is the investigating officer of the case. He is found narrating that it was on 23rd November, 2001 when he got information about the incident from the complainant Ghulam Ahmed Dar who had arrived at Police Station Khansaheb and lodged a written report. The witness admitted the exhibit PW 1/1 of registering the case, proceeding on the spot and seizing the body of the deceased along with having prepared the site- plan which is EXPW 20/3. That the body was seized and later on send to forensic examination. He collected blood-soaked soil, small pieces of timber and the clothes worn by the deceased which was sent to forensic examination. He also prepared for the Mazrubi, which is EXPW 20/v. After autopsy dead body was given to the heirs of the deceased. Thereafter they started searching for the accused, it was only on 10th December, 2001 that the accused could be arrested. He made a disclosure statement in the Kashmiri language which bears his signatures and same was recorded in the presence of witnesses which is marked as EXPW. Thereafter accused was taken to the spot where he had concealed the weapon of offence which was an Axe kept hidden under soil near an apple tree. He identified the weapon in the open Court. He

had prepared the sketch map of the weapon. During investigation he came across the material that there was animosity between the accused and the deceased for the last 3 years and on 22nd November, 2001 the accused was ploughing his land on which deceased objected and thereafter on the next day incident happened. As per the investigation offence under Section 302 RPC was made out against the accused. On cross-examination has narrated that occurrence has taken place at 4:30 AM in the morning at the place which is 2 Kilometers away from the Police Station. He denied the suggestion that EXPW 1/1 was written in the police post. The fact of the matter is that it was the maker who got it with him, when he went on spot the Numberdar and chowkidar were accompanying him. Accused was arrested from village Hari Wani on 10.12.2001 whereas the disclosure statement was recorded on 13.12.2001. The weapon of offence was found at a place which is in the shape of an orchard fenced with barbed wire. The same was concealed underneath the soil at a depth of one foot. It was the accused who dug the soil with his own hands and took out the weapon of offence.

18. Based on the evidence produced by the prosecution the trial Court proceeded to record finding of guilt and has convicted the appellant for offence U/S 302 RPC which judgment is impugned before us. The Appellant has raised following questions of law to assail the impugned judgment of conviction:-

(i) That the trial Court has failed to appreciate that the medical expert, who conducted autopsy, was a simple post-graduate of GMC, Srinagar, thus was not fit enough to conduct autopsy, therefore an incompetent person to give medico-legal opinion. There was no reason for the trial Court to have relied upon such a medical examination.

(ii) The next point of law according to learned counsel for appellant is that statement under Section 342 CrPC has not been recorded in its right prospective because no specific questions have been put to the accused nor his explanation has been sought. Even the charge has not been properly framed, thus was highly defective and prejudicial to the hearing of the accused.

(iii) That the weapon of offence so seized could not be used against the accused because according to the trial Court the weapon of offence was wiped clean, and, if it was so, then there was no question of having any stains of blood on it and in case it was not having blood stains then there was no evidence connecting the recovery with the weapon of offence especially when the IO is narrating that it was having blood stains.

(iv) There was not any corroborative evidence U/S 27 of the Evidence Act because not only the disclosure but even the recovery is prepared in a dubious manner.

(v) That, according to the medical expert the most probable cause of death is severe head injury which is an element of uncertainty because it was the case of one blow according to the doctor.

(vi) That the trial Court has relied upon the testimony of those witnesses who were interested in seeing the conviction of the accused. Not only they were inimical but bore animosity with the accused, thus the evidence was to be cautiously examined. The trial Court has not looked for independent corroboration of the incident and has believed oral evidence which was hearsay in nature.

That the investigation has been conducted in most casual manner and normally in such cases the accused deserve to be acquitted but here the accused has been convicted on cleansing evidence and because of the fact that the prosecution witnesses have made parrot like narration which was highly unbelievable. on these grounds the appellant seeks this Court's intervention to record finding of acquittal by oversetting the conviction.

19. It is on these ground that the learned counsel appearing for the appellant seeks intervention of this Court in reversing the judgment of conviction.

20. On the other hand, respondent claim that the trial Court has relied upon natural evidence which was forthcoming and merely because PW 1, PW 2 and rest of the witnesses were close relatives of deceased would not wash their testimony rather even the accused was also related to the witnesses so there was no question of the complainant and the eyewitnesses falsely implicating the accused. That the firsthand account of the complainant and other witnesses of the incident is sequential as much as all witnesses have identified accused as the only assailant who with Axe inflicted murderous assault on the deceased which was of a nature that led to on spot death of the deceased. The medico-legal opinion has been prepared by MBBS doctor who was capable of conducting autopsy and the defense during cross-examination has not been able to dislodge the medical expert of his competence and capacity to conduct autopsy. That recovery has been substantiated by reliable and cogent evidence and the fact that the weapon of offence was hidden underneath and near an apple tree, which place was to the special knowledge of the accused. So much so there is evidence of the witnesses having found accused digging out the soil so as to recover the weapon of offence which recovery has been substantiated by all the witnesses, so there is no reason to disbelieve the version of the prosecution witnesses. Not only the

prosecution has proved culpability of the accused but also has proved the motive of the crime because the accused and the deceased were having enmity with regard to landed property. It was further contended that the defense has not been able to dislodge the narration of the witnesses and in statement recorded under Section 342 CrPC, the accused has not been able to lay any specific evidence even the defense witnesses also point towards there being animosity between the accused and the deceased. The witnesses were natural and merely because they were related to deceased, that would not wash their testimony.

21. We have heard learned counsel for the parties and have also minutely gone through the record of the case.

22. Before proceeding ahead, since the main limb of appellant being that PW 1 and PW 2. were related to deceased thus, being interested witnesses, their evidence is to be disbelieved as there is no independent corroboration of the occurrence. In ***Dharnidhar vs State of Uttar Pradesh, 2010 (7) SCC 759***, it has been held as under: -

*“There is no hard-and-fast rule that family members can never be true witnesses to the occurrence and that they will always depose falsely before the court. It will always depend upon the facts and circumstances of a given case. In **Jaya Balan v. UT of Pondicherry**, this Court had occasion to consider whether the evidence of interested witnesses can be relied upon. The Court took the view that a pedantic approach cannot be applied while dealing with the evidence of an interested witness. Such evidence cannot be ignored or thrown out solely because it comes from a person closely related to the victim. The Court held as under: (SCC p. 213, paras 23-24)*

*“23. We are of the considered view that in cases where the court is called upon to deal with the evidence of the interested witnesses, the approach of the court, while appreciating the evidence of such witnesses must not be pedantic. The court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the court must not be suspicious of such evidence. **The primary endeavor of the court must be to look for consistency. The evidence of a witness cannot be ignored or thrown out solely because it comes from the mouth of a person who is closely related to the victim.***

24. From a perusal of the record, we find that the evidence of PWs 1 to 4 is clear and categorical in reference to the frequent quarrels between the deceased and the appellant. They have clearly and consistently supported the prosecution version with regard to the beating and the ill-treatment meted out to the deceased by the appellant on several occasions which compelled the deceased to leave the appellant's house and take shelter in her parental house with an intention to live there permanently. PWs 1 to 4 have unequivocally stated that the deceased feared threat to her life from the appellant. The aforesaid version narrated by the prosecution witnesses viz. PWs 1 to 4 also finds corroboration from the facts stated in the complaint.”

23. Again, in *Mano Dutt vs State of U.P, 2012 (4) SCC 79,*

Hon'ble the Supreme Court has held that,

“More often than not, in such cases involving family members of both sides, it is a member of the family or a friend who comes to rescue the injured. Those alone are the people who take the risk of sustaining injuries by jumping into such a quarrel and trying to defuse the crisis. Besides, when the statement of witnesses, who are relatives, or are parties known to the affected party, is credible, reliable, trustworthy, admissible in accordance with the law and corroborated by other witnesses or documentary evidence of the prosecution, there would hardly be any reason for the Court to reject such evidence merely on the ground that the witness was family member or interested witness or person known to the affected party. There can be cases where it

would be but inevitable to examine such witnesses, because, as the events occurred, they were the natural or the only eye witness available to give the complete version of the incident. In this regard, we may refer to the judgments of this Court, in the case of *Namdeo v. State of Maharashtra*, [(2007) 14 SCC 150]. This Court drew a clear distinction between a chance witness and a natural witness. Both these witnesses have to be relied upon subject to their evidence being trustworthy and admissible in accordance with the law. This Court, in the said judgment, held as under:

"28. From the aforesaid discussion, it is clear that Indian legal system does not insist on plurality of witnesses. Neither the legislature (Section 134 of the Evidence Act, 1872) nor the judiciary mandates that there must be particular number of witnesses to record an order of conviction against the accused. Our legal system has always laid emphasis on value, weight and quality of evidence rather than on quantity, multiplicity or plurality of witnesses. It is, therefore, open to a competent court to fully and completely rely on a solitary witness and record conviction. Conversely, it may acquit the accused in spite of testimony of several witnesses if it is not satisfied about the quality of evidence. The bald contention that no conviction can be recorded in case of a solitary eyewitness, therefore, has no force and must be negated."

24. So, when the eye witnesses are stated to be interested, and inimically disposed towards the accused, it has to be noted that it would not be proper to conclude that they should shield the real culprit and rope in innocent person. The truth of the evidence has to be evolved pragmatically. So, the Court should not evaluate the evidence from the prism of suspicion and merely because the witnesses are related and are inimically disposed towards the accused, that would not wash away their testimony. If upon careful analysis and scrutiny of their evidence, the version given by the witnesses appears to be clear, cogent and credible, there is no reason to

discard the same. Keeping the aforesaid legal proposition in mind, we proceed to evaluate the testimonies of Prosecution Witnesses.

25. PW 1 Ghulam Ahmed Dar, who is not only an eye-witness but also the complainant in this case, has supported the contents of the complaint to the extent that it was the appellant who killed the deceased with an axe having struck him twice, firstly on his head and then on his face. The witness has stood to the test of cross-examination and it transpires from the record that the witness has been put to a lengthy cross-examination spanning over days together but despite that, the defense was not able to dislodge him. The witness has also supported presence of PW Rasool and Rehman Dar as the two other persons who arrived at the crime scene, immediately which is to his knowledge. The rest of the witnesses too are claimed to have appeared immediately. Similarly, PW Rasool and Mahad Dar@ Gh.Mohi-ud-din Dar too have supported the prosecution by stating that it was the deceased who was carrying axe with which he hit the deceased.

26. According to appellant, the informant (PW Ghulam Ahmed Dar) has admitted in his cross-examination that he and his brother had also taken possession of the house and land of the accused, so in such cases where there is existing close relationship which has turned into animosity, the Court should not rely on such evidence. It is true that PW Ghulam Ahmed Dar and PW Rehman Dar have admitted that a portion of the property of the accused is in their possession, however, nowhere have they admitted

that possession was taken by force. In fact, the accused, the deceased, and the witnesses are all closely related. Notably, PW Ghulam Ahmed Dar, Ghulam Rasool, and Rehman Dar categorically stated that a portion of the walnut crop from the land was given to the mother of the deceased. As already discussed, all three witnesses were subjected to lengthy cross-examination. However, the defense failed to discredit their testimony. They consistently narrated that it was the accused who was carrying the axe and who inflicted fatal blows on the deceased while the later was on his way to attend the local mosque. PW Mahad Dar, though not a close relative of the deceased, the accused, or the complainant, also witnessed the incident. He clearly stated that he saw the deceased lying on the ground in an injured condition, having sustained fatal injuries, and that the accused, who was carrying the axe, fled the scene upon seeing the witnesses. This witness further narrated that a day prior to the incident, there had been a scuffle between the accused and the deceased, when the former was ploughing his land and the later objected to it. During this scuffle, a heated exchange of words took place, and the accused is said to have allegedly threatened the deceased with dire consequences.

27. It is relevant to state here that the deceased happens to be the step-son of the accused, and after the mother of the deceased contracted a second marriage, the deceased initially lived with his mother for some time. Thereafter, he is stated to have separated and started living with his maternal grandfather (Rehman Dar). It has further come in evidence that

the said Rehman Dar had adopted the accused, whereas PW Ghulam Ahmed Dar and others happen to be the nephews of Rehman Dar. Admittedly, there was a dispute between the parties regarding succession to the estate of Rehman Dar. However, merely the existence of a dispute would not render the eye-witness account of the incident dated 23.11.2001 as tainted. At the cost of repetition, the defence has not been able to cast much doubt on the testimonies of either the complainant and his brothers or PW Ghulam Ahmed Dar, who has categorically not only identified the accused as the assailant but also stated that he found the deceased lying on the ground in an injured condition, having received fatal injuries, and the accused carrying an axe and escaping from the scene after hitting the deceased. Conversely stated, if the accused were innocent and had no involvement in the incident, there would have been no reason for him to flee from the scene of the crime. The fact that he was arrested more than 18 days after the incident goes on to show that he had absconded, which further links him to the occurrence.

28. The appellant has further assailed the judgment on the ground that the medical expert was merely a postgraduate student at Government Medical College, Srinagar, and thus not competent to conduct the autopsy of the deceased. Therefore, it was argued that the veracity of the said doctor could not be relied upon to hold the accused guilty. Such an argument, on the face of it, is noted but rejected, as PW Dr. Bashir Ahmed Shah is the person who conducted the autopsy of the deceased and gave the

opinion as to the cause of death. He was a Medical Officer at the relevant time and was cross-examined by the defence; however, there is not even a whisper in his cross-examination, nor any suggestion by the defence questioning his competency to conduct the autopsy of the deceased. This witness, after completing his postgraduation in medical sciences from GMC Srinagar, was serving as a Medical Officer for the first time and thus is stated to have conducted his first autopsy. However, that does not mean he was unfit or disqualified from conducting the autopsy. He was on the rolls of the Government at the relevant time, posted as a Medical Officer, and given the nature of the cross-examination conducted by the defence, there was no reason for the trial court to disregard the statement of the doctor, whose testimony assumes importance in the facts and circumstances of the case. The Medical Officer stated that the deceased had received fatal injuries over the scalp, extending from the scalp to the occipital region, thereby dividing the scalp, causing a fracture to the skull bone and laceration of brain matter. The dimension of the injury was 20 cm in length and 5 cm in depth. In addition, there was another wound, 10 cm long and 5 cm deep, extending up to the lobule. Both these injuries were severe, caused by a sharp-edged weapon, which resulted in hemorrhagic shock and ultimately led to the death of the deceased. He further opined that the weapon was shown to him on 13.12.2001, and upon examining it, he stated that it was capable of causing the nature of injuries inflicted. On cross-examination, he also disclosed that the wounds and injuries were

sufficient to cause death. The position of the assailant in the present case was that of a standing person, while the victim, on receiving the first injury, could have fallen to the ground, resulting in the assailant delivering a second blow. The primary cause of death was the wounds; the secondary cause was the loss of blood.

29. Almost all the prosecution witnesses are found narrating that the deceased had died on spot. Given the aforesaid background, the defense having not been able to even suggest to the witness (Dr. Bashir Ahmed) whether he was duly qualified or not, cannot now turn around and question the competency of medical expert. We have perused his testimony as well as the medical opinion and found that the said witness was not only competent to hold and conduct autopsy of deceased, but also had the wherewithal to opine as to the cause of death.

30. Next it has been argued that the axe was never sealed and the article used for sealing was never kept in possession of respectable witnesses nor registered in police Malkhana. So, the weapon of offence was kept with the police IO and non-sealing of the said weapon makes the recovery inadmissible that too because the witnesses to the recovery and seizure were close relatives of the deceased.

31. Although the argument of the learned senior Counsel, that the trial court did not appreciate that the doctor had very categorically stated that the weapon, projected as weapon of offence, produced before him did not bear blood stains, appears to be sound. However, trial court does not

appear to have altogether ignored this aspect but has effectively dealt with the same and has returned a finding to this effect also. The trial court while dealing with this aspect of the matter has held that, although the investigating officer in his statement has admitted that he did send the weapon of offence to FSL for expert opinion, however the record of the case did not support such statement of the IO. The trial court has, in unambiguous terms, held in the impugned judgment that while this may be a good argument to suggest that the prosecution did not conduct the investigation from a proper perspective, the plea cannot come to the rescue of the appellant-accused. This is because there is sufficient evidence on record, in the form of statements of eye witnesses before the court, which has convinced it that the accused-appellant had, in fact, used the axe to inflict a blow on the deceased with the intention to cause death. Therefore, the circumstantial evidence referred to by the learned Senior Counsel regarding the weapon of offence having been recorded as blood-stained is of no significance or help to the appellant-accused. We do not find the impugned judgment to be erroneous on this aspect, as the trial court is well justified in holding that the plea taken in defence by the learned counsel may suggest a circumstance in the appellant's favour. However, when there is direct evidence available on record showing that the accused-appellant, in fact, used the axe to kill the deceased, the circumstance sought to be introduced to seek the benefit of doubt or to cast a shadow over the prosecution case is not forthcoming and is, accordingly, rejected.

32. There is another background to this aspect, since the weapon of offence is stated to have been recovered at the behest of appellant after he dug out soil (one feet beneath) from a place where it was hidden after commission of offence and given the time line that occurrence happened on 23rd of Nov and recovery took place on 13th Dec, this intervening period was fair enough to wipe out blood stains from the weapon of offence or to get it mingled with foreign substance thereby leaving remote chances of blood stains being noticeable.

33. This takes us to the next contention of the learned senior counsel for the appellant who pointed out that the trial court has not recorded the statement of the accused appellant under Section 342 of the CrPC in its right perspective for having not put a specific question and sought his explanation to the allegation that were averse to accused. In order to appreciate such contention, we have gone through the statement of the accused/ appellant made under Section 342 CrPC before the trial court. We do not see that such a defense is available to the appellant as the trial court while recording the statement of the accused under Section 342 of the CrPC has sufficiently put the accused /appellant all the questions necessary to seek explanation from the accused and trial court has specifically asked the accused/ appellant as to what is his defense to the incriminating material brought on record against him by the prosecution. In that view of the matter the submission made by the learned counsel of non-compliance of Sec.342 Cr P C also fails and is turned down accordingly.

34. Another ground of the appellant to challenge the impugned judgment was that the trial court has failed to appreciate the evidence brought on record in his defense by producing, Mst. Khati W/O Gh Hassan Bhat and Manzoor Ahmed Ganie. While elaborating it was argued that the defense witnesses have deposed before the trial court in respect of the controversy that was subsisting between the parties which might have led to the scuffle and the trial court ought to have taken note of such statement, however it did not do so and failure of trial court in not assessing the impact of the witness's statement produced in defense by the appellant put under cloud the impugned judgment as a whole and as a result whereof the appellant accused deserves to be acquitted of the charges by setting aside the impugned judgment on this count also.

35. We have gone through the evidence on record. According to PW Mohd. Subhan I/O, accused was arrested on 10.12.2001 and, while in custody, he made disclosure in Kashmiri which was recorded in presence of the witnesses as EXPW and thereafter, the accused was taken to the spot where, he, concealed the weapon of offence (axe kept hidden under soil near an apple tree in his own orchard). He has identified this weapon in the open Court which is marked as EXPW 2/50. Constable Khursheed Ahmed, Constable Shamsuddin, PW Shamim Ahmed, all are police personnel and the complainant PW Ghulam Ahmed Dar, are witness to the recovery of axe which recovery is EX PW 2/50. Ghulam Ahmed Dar categorically is found narrating that the weapon was recovered on the

identification of the accused, which fact is also strengthened from the testimony of police witnesses. So much so, it has come in the oral evidence that the weapon was recovered from a place which was in the nature of an orchard owned by the accused which orchard was completely fenced and it was accused who took the police party and the witnesses on spot on 13.12.2001 then led them to a place near an apple tree, there he dug out the soil up to one feet deep and there from the weapon (axe) was recovered. All these witnesses have been thoroughly cross-examined by the defense, thereto in cross-examination their veracity has not been dislodged as all these witnesses have fared well. The fact that the place from where the recovery was affected was not accessible to one and all, but was to the peculiar knowledge of the accused and also the fact that the weapon was recovered after digging soil up to one foot, goes on to show that the place from where recovery was affected was only known to the accused. If he had not led the police party and the witnesses to the spot, no such recovery could have been made possible. Learned counsel for the appellant had argued that accused was arrested on 10.12.2001 and that the recovery has been affected on 13.12.2001 which recovery is outcome of torture thus does not stand as fair evidence. That argument has no reasonable basis because neither during investigation, nor at the stage of the charge the defence has raised any eyebrows against police investigation or element of torture, if any. Had it been so, immediately after recovery when the accused was produced before Judicial Magistrate First Class for grant of

judicial remand, no allegation of torture was ever made which goes on to show that the argument has been laid for the first time just to escape from the culpability and the defence had no material to corroborate this aspect. In fact, the wife of the accused had stepped into the witness box. She too is not found narrating that the said recovery is outcome of torture or police exercise. Once that is the case, then there was no reason for the trial Court to have disbelieved the testimony of police witnesses and informant towards recovery of the weapon of offence.

36. It was also contended by the learned counsel for the appellant that the trial Court did not translate the deposition of the medical expert in English and refused to appreciate the evidence of the doctor and the second infirmity is that the trial Court did not appreciate the evidence of forensic expert without explaining to the accused when he was examined under Section 342 Cr.P.C. as regards the nature of forensic evidence. It is true, in the impugned judgment the trial Court has not given the resume of what was stated by the medical expert though brief description thereof ought to have been the part of the judgment so as to enable the Appellate Court to evaluate the testimony of medical expert, but that does not mean that the trial Court has not appreciated the medical evidence. It is not the case of the defence that no such medical examination was ever conducted or that autopsy report is an afterthought. The accused has neither been deprived of a fair trial nor has he been prejudiced by the act of the trial Court in not giving in the judgment the resume of medical expert. Already the

testimony of medical expert (in English vernacular) is on record of the file and since the judgment has been rendered after perusing the record of the trial Court, no exception can be taken to such an act of not translating the deposition of the doctor in English vernacular or making it part of the judgment. It was further contended that the trial Court in case of animosity between the witnesses and the accused was bound to look for corroboration because the fact that the deceased was killed by the accused, when animosity exist, is to be corroborated by other evidence which could only be properly recovered under Section 27 of the Evidence Act and the FSL Act which should have been explained to the accused. In this case as the case property was not sealed, the FSL report becomes inadmissible in evidence. The blood-stained axe or clothes are to be kept in malkhana and this register becomes primary evidence which was not done. It was, therefore, argued that this Court is bound to re-read the entire evidence and return a finding accordingly.

37. We have taken note of the submissions made by the defence. At the cost of repetition we are of the firm view that the case of the defence that, recovery being tainted and inadmissible, such an argument has no credibility because the record speaks otherwise. Not only the recovery has been affected at the behest of the accused, but the recovered item, i.e., axe has been identified by the witnesses being the same weapon which was in the hands of the accused when they saw the incident. The medical expert is also strengthening the said recovery by testifying that it is the same axe

which was shown to him on 13.12.2001. The forensic expert in this case was PW Manzoor Khan and PW Sohail Ahmed Kanth who found that the apparels produced before them for forensic examination contain blood stains which belong to the deceased. The Investigating Officer though has admitted that he did not send the weapon of offence to FSL for expert opinion, however, the record of his statement ran contrary to the material available and the trial Court has found that there was sufficient evidence on record in the shape of statement of witnesses who had witnessed the assault by the accused on deceased which he made with intention to cause death. So, the weapon of offence having been not examined by the forensic expert though can be stated to one of a grave lacuna, however, given the facts the incident happened on 23.11.2001 whereas the recovery of the weapon had been affected from an orchard that too from a place where the soil was dug up to one foot and from that spot, the weapon of offence has been recovered. There were greater chances that by the time the weapon was recovered, the chances of there being blood stain over it were too remote thus leading the Investigating Officer to conclude that sending of axe to forensics would be a futile exercise.

38. Coming to the aspect of investigation being allegedly faulty, we would like to say that we do not agree with the argument, we would rather like to say that assuming that there was investigational lapse on the part of IO for not forwarding the weapon of offence for forensic examination, but for that reason alone the accused person cannot be let off or acquitted for

the fault of the prosecution, the perpetrator of such a ghastly crime cannot be allowed to go scot-free. The accused was armed with deadly weapon and he attacked the victim while he was on way to offer morning prayers. At that time, he was completely unarmed and was taken by surprise. In fact, according to eyewitnesses, the accused had already hidden himself and when deceased came for morning prayers, the accused attacked him from behind taking the deceased by surprise. The evidence on record in the nature of testimony of eyewitness, seizure witness as well as medical expert points towards the ghastly manner in which the crime was committed coupled with the fact that the weapon of offence had remained underneath soil for more than 18 days and being an orchard and in the month of November, where on account of coming winter season because of the condition of moisture, the chances of weapon loosing blood stains warranting its examination from forensic expert would not have led to desired results, thus, giving an impression to the IO to not to forward such a weapon for forensic examination and the same would be a futile exercise. This must have been the probability lurking in the mind of the IO when he chose not to forward the weapon to the forensic expert. Though he admits to have shown it to the medical expert and the medical expert is also corroborating that said weapon was capable enough in inflicting the sharp-edged injuries over deceased that proved fatal to him. In this regard, reliance is placed on the judgment of Hon'ble the Supreme Court in **State of UP v. Jagdeo and others, AIR 2003 SC 660**

39. In so far as the plea that defence evidence has not been appreciated, we have gone through the material available on record perusal whereof reveals that the defense witnesses have admittedly deposed before the trial court that the deceased had usurped the land of the appellant-accused and, on such count, there used to be verbal fights. This statement of the defense, would lead one to believe only one thing that parties to the dispute had a history of fights and scuffles over the title and possession of land which led to the death of the deceased. We do not subscribe to the view of the appellant's counsel that the impact of such statement would be useful to the appellant as the only conclusion that could be drawn by such statement is that the deceased has become the victim of the land dispute that involved admittedly from the other side the appellant- accused before us. We do not see possibility of any other view than the one that the land dispute has become reason of animosity which led to the death of the deceased at the hands of the appellant-accused.

40. Challenge is also thrown to question the impugned judgment of the trial court on the ground that it has failed to appreciate the timing of the lodgment of FIR, the timing when the statement of the eyewitnesses was recorded, the seizure of the weapon of offence made, the said weapon of offence was taken to the doctor and why was there a delay in the investigation of the case and why was it conducted in a casual manner. Again defense, is wrong in projecting that the trial court did not take notice of these aspects of the matter and, therefore, there is no findings recorded

by the trial court in this behalf. However, as the impugned judgment would very categorically show that the trial court has dealt with these aspects quite effectively while holding that there is absolutely no delay in registration of the FIR and the disclosure statement made by the accused appellant was not expected in the knowledge of the police beforehand and in that view of the matter, it was quite obvious that the police would take time in ascertaining the facts leading to the killing of the deceased at the hands of the appellant. The trial court has further observed that there are no lacunas as pointed out by the defence that the investigation of the case was conducted casually and that the FIR was not registered promptly or that the evidence was collected with delayed dispatch are of no significance. Since the investigation in murder case cannot be expected to be concluded within a fortnight as if the investigating agency had to swing a magic wand to ascertain the truth and conclude the investigation. The investigation of the case of such a serious nature was bound to take time and this is what has happened in the instant case. The submissions made does not carve out any exception that would convince the court that irrespective of certain procedural and investigating irregularities that has prejudiced the appellant-accused in any way much less in a plausible way. The trial court has unambiguously held that any circumstantial evidence, even if that is of great significance, would automatically pale into insignificance in presence of the direct evidence available in the shape of the statement of the eyewitnesses to the occurrence. We concur with the view of the trial court

that the procedural irregularities or the technicalities cannot outweigh the direct evidence that too in a murder trial and the only possible conclusion, on the basis of the material as was made available to the trial court by the prosecution, was leading to the suspect that is appellant and the trial court has rightly accepted the prosecution case in its entirety and convicted the appellant of the offence alleged against him.

41. We are convinced that learned senior Counsel appearing for the appellant has not been able to carve out a case in favour of the appellant by pointing out any legal infirmity in the impugned judgment that warrants interference by this court. All the grounds taken in defence by the learned Senior Counsel to challenge and seek reversal of the impugned judgment have been found to be feeble to lend any support to the appellant. We are conscious that the case involves the liberty of an individual, however that does not mean that we should forget altogether that a precious life has already been lost and the law has to take its own course. The trial court was having sufficient material before it to take a view in favour of the prosecution and against the appellant as it had clinching evidence on record to believe that the appellant was the one who had a dispute with the deceased over a patch of land which the appellant claimed to be of his own, therefore, the motive of killing was pretty much available to the appellant and the motive obviously was to kill the deceased and usurp the land in dispute. The trial court further was having sufficient evidence on record given by the eyewitnesses to the occurrence that the appellant was the one

who subjected the deceased to certain blows of the axe which resulted in his death and when such clear evidence is available with the trial court in a murder trial, the trial court cannot be expected to get swayed by the circumstances or by the emotions. In **AIR ONLINE 2010 SC 441 Singapagu vs State of A. P** it has been held as under,

“16. In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of offence. He has further chosen a vital part of the body i.e. the head for causing the injury which, had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased.” In [Som Raj v State of H P 6](#), this Court while deciding the question of whether a single blow on the skull with a darat would attract conviction under [Section 302](#), held thus:

“16.2. From the statements of Dr Suman Saxena (PW 4) and Dr B.M. Gupta (PW 5), the nature of injuries caused to the deceased has been brought out. A perusal thereof would leave no room for doubt that the appellant-accused had chosen the sharp side of the darat and not the blunt side. The ferocity with which the aforesaid blow was struck clearly emerges from the fact that the blow resulted in cutting through the skull of the deceased and caused a hole therein, resulting in exposing the brain tissue. When a blow with a deadly weapon is struck with ferocity, it is apparent that the assailant intends to cause bodily injury of a nature which he knows is so imminently dangerous, that it must in all probability cause death.”

42. In the present case, the weapon in use was an axe and its blow had such an impact that it caused a head injury measuring 20cm in length and 5 cm in depth thereby piercing the skull bone and exposing brain tissue. So much so, the accused delivered another blow over right eye of deceased after he had fallen to the ground. The eye- witness account states that the assault was of such nature that resulted into instant death of

deceased. Appellant, therefore, in all probabilities intended to cause bodily injury of a nature which he knew was likely to cause the death of deceased. The fact that injury was aimed at the head of deceased was sufficient enough to exhibit his intention.

43. For all what has been said hereinbefore, we do not see any merit in this appeal, which is, accordingly, dismissed and as a corollary thereof, the impugned judgment and the order of sentence are upheld. The criminal reference made by the trial court in consequence of upholding of the impugned judgment and order of sentence is also accepted.

44. Registry is directed to return the record of the trial court along with a copy of this judgment. Since Appellant is on bail, his bail bond shall stand withdrawn and he shall surrender to custody immediately so as to undergo sentence as imposed by the trial court. In case of default, the trial court is hereby directed to take necessary steps for enforcing the sentence.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:

07.07.2025

Akhil Dev

Whether the order is reportable: Yes