

THE COURT OF PRINCIPAL DISTRICT AND SESSIONS JUDGE, SRINAGAR

| File No. | D.O.Institution | D.O.Decision |
|--------------------------|-----------------|--------------|
| 19/Sessions | 28.02.2012 | 29.04.2024 |
| CNR NO. JKSG010000102012 | | |

State (UT of J&K) through P/S Safa kadal

Versus

1. Mst. Shahzada wife of Late Mehraj-ud-Din
Resident of Gana colony, Guzerbal
2. Mohammed Rafiq Sofi son of Gh.Rasool Sofi
Resident of Noorbagh, Srinagar.

...Accused

FIR No. 06 of 2012 of P/S Safa kadal

Offence under Sections 302,34,120B,201 RPC

CORAM; JAWAD AHMED

JO CODE: JK00053

PP for State (UT of J&K).

Adv. Jehangir Yaqoob Wani, Advocate Tasleema Jan and Adv.Junaid Gaffar Bhat for the accused persons.

(J U D G M E N T)

1. Precisely the facts of this charge-sheet are that on 9th of January, 2012, police post Noor bagh received information from reliable source that at Guta colony, Guzarbal one person namely Mehraj-ud-Din Misser son of Ghulam Mohammed Misser Resident of Patlipora, Chattabal has died under suspicious circumstances and his dead body has been taken to SMHS Hospital by the legal heir. The information was entered in Roznamcha as report No. 21 under Section 174 CrPC and started investigation in the matter. During investigation the police took the custody of the dead body of Mehraj-ud-Din Misser and prepared a memo in this regard. The search of dead body was conducted. Police prepared the injury memo. On 10th of January, 2012 police took the dead body to the control room for post mortem. After conducting the post mortem, the dead body was handedover to the legal heirs of deceased for performing its last rites. Police also recorded statement some witnesses under Section 175 CrPC. During the inquiry about the death of the deceased under suspicious circumstances, on 19th of January, 2024 police came to know that on 9th of January, 2012 the wife of the deceased namely Shahzada and Mohammed Rafiq Sofi son of Ghulam Rasool Sofi Resident of Noor bagh in furtherance of a planned conspiracy with common intention killed the

deceased in his house by hanging him with a scarf. After entering police report on the roznamcha of police post, FIR No. 06 of 2012 was lodged at police station Safa kadal for offences punishable under Sections 302 read with Section 34 of RPC. Police undertook investigation of the case. During investigation police went on spot, prepared site plan of the place of occurrence. The wife of the deceased Shahzada was questioned. During questioning she made disclosure in kashmiri in presence of respectable persons and said that she and Mohammed Rafiq Sofi i.e., accused No.2 were in love with each other and they wanted to marry but, the deceased Mehraj-ud-Din Misser was hurdle between them. She disclosed that on 9th of January, 2012 they (accused persons) in furtherance a planned criminal conspiracy killed the deceased Mehraj-ud-Din Misser by strangulating him with a scarf and thereafter burnt that scarf in an iron pan (Batti) by using Kerosene oil. She can identified that iron pan and help in its recovery. Disclosure of accused No.1 was recorded and thereafter, on her identification one iron pan (Batti) was recovered. It was seized and sealed and sent to FSL for its chemical analysis. On its chemical analysis, it was found that scarf was burnt in that iron pan (Batti). therefore, offence under Section 201 RPC was added. During investigation, the investigating officer found that the deceased and accused no.2 were having friendly relation besides having business relation. They used to visit each others house. The accused No.2 would also purchase vegetables for the deceased. The deceased with his sons would sell vegetables in village. In the meanwhile accused No.2 would also put up in the house of deceased in absence of the deceased, with the result the wife of the deceased i.e., accused no.1 developed illegal relations with accused No.2 and they wanted to marry each other. The infamous relation between the accused had spread in the area and the deceased became a hurdle between them. To achieve their object, the accused persons hatched a conspiracy. In furtherance of that conspiracy and with common intention, they killed the deceased by strangulating him with a scarf on 09.01.2012 and burnt that scarf i.e., weapon of offence in an iron pan. The medical opinion was obtained from the doctor i.e., PW-1. From his opinion, it was proved that the deceased was killed by strangulation. The accused persons were taken into custody and arrested on 19.01.2012. The police completed the investigation concluding that the offences punishable under Sections 302, 34, 120-B, 201RPC are made out against the accused persons. Accordingly, the charge-sheet was presented

against the accused persons before the court of learned CJM, Srinagar on 28.02.2012.

2. Upon committal the file of this charge-sheet was received in this court on 12.03.2012. On same day i.e., 12.03.2012 charges were framed against the accused persons for commission of offences punishable under Sections 302,34,120-B,201 RPC. The substance of accusations were put to the accused who had pleaded not guilty and accordingly prosecution was asked to lead the evidence in the case.

3. Prosecution cited 28 witnesses in the calendar of challan for establishing the charges against the accused persons. Out of these 28 witnesses prosecution has examined 21 witnesses i.e., PWs-1 to 4; PWs 6 to 14; PWs 16 to 19; PW-23 and PWs-25 to PWs-27 and failed to examine PW-5, PW-15, PW-20, PW-21, PW-22 and PW-28. Prosecution evidence was closed vide order dated 31.05.2022. When the case was listed for recording the statements of accused persons under Section 342 CrPC, it was found that in 2014 floods, the file has got partly damaged and in the flood with the result the statements of PW-3, PW-4, PW-6, PW-7, PW-8, PW-9, PW-10, PW-11, PW-13 and PW-14 have got completely damaged and were not legible. As such, the PP and defence counsel were directed to assist the court in reconstructing their statements. The accused furnished the photo copies of the statements of PWs-3,4,6,7,8 & 9. The copies of these statements were furnished to the learned PP. In the meanwhile PP filed an application under Section 540 CrPC for producing the other witnesses. The application of the prosecution under Section 540 CrPC was partly allowed, whereby the prosecution was directed to produce I.O for recording his statement but, no other witness whom the (prosecution) had failed to produce for the reasons recorded in order dated 05.08.2022. As stated hereinabove, the statements of PWs' 3,4,6,7,8,9,10,11 & 14 had got washed in 2014 floods and out of whom the defence counsel had produced the photo copies of the statements of PWs 3,4,6,8 & 9, the learned PP did not object to the veracity /correctness of the photostat copies of the statements of these witnesses. Accordingly, the photo copies of the certified copies of these statements were taken on record. So far as the washed out statements of PWs'-10,11,13 and 14 are concerned, the learned PP, vide order dated 05.08.2022 was directed to produce the certified or uncertified copies of the statements of these four prosecution witnesses i.e., PW Nos. 10,11,13 and 14, otherwise he shall produce these four witnesses for recording their

statements afresh. However, the learned PP neither produced certified or uncertified copies of the statements of PW Nos. 10,11,13 & 14 nor he could produce these witnesses for recording their statements afresh. Prosecution could not even avail the right to produce I.O of the case for recording his statement. As such, the prosecution's right to produce I.O for recording his statement and the PWs Nos. 10,11,13 & 14 for recording their statements afresh was closed vide order dated 02.09.2022.

4. The accused persons were admitted to interim bail by this court on 11.03.2013 and as per interim order passed in the file, their interim bail was made absolute

5. It may not be out of place to mention here that the full statement of PW-1 is also not available. Part of his statement was recorded on 09.04.2012 when his statement seems to have been deferred and then again as second time appeared when his statement has been completed. Thus, there are statements of 17 prosecution witnesses available on record including part statement i.e., concluding statement of PW-1.

PROSECUTION EVIDENCE

6. **PW-1 Ali Mohd Mir**, when appeared 2nd time has stated in examination-in-chief that he has not recorded his statement in any other court other than this statement before the court. The witness was declared hostile.

On cross examination by PP, the witness has stated that he is an illiterate person. However, he admits his thumb impression. It is true that prior to this statement, he has given his statement in other court. Witness stated that he was asked to put his thumb impression and accordingly he put his thumb impression. He was not forced by the judge, but, he put his thumb impression without any pressure. Deceased was his cousin brother (Phuferai bai). Accused no.2 is his neighbor. He has no knowledge whether accused No.2 used to visit the house of deceased or not. On the death of deceased, he used to go there. There was gathering of people. He has no knowledge how Mehraj-ud-din (deceased) died. No Batti was seized in his presence. His cell Number is 9906602815. Witness stated that he provided phone number to the police personnel. He does not know Zahoor Ahmad Zarger, Phone number was recorded in police chowki by police. At that time nobody was present there besides him. Wife of Mehraj-ud-Din is his relative. Wife of deceased is in Jail and his home had collapsed.

On cross examination by defense counsel, witness stated that when he went on spot there were 100 to 200 people. Rafiq Sofi resides in another Mohalla, he was present there on spot. He cannot say, he did not see the sons of deceased there. He does not remember, whether Mehraj Ud Din was given some drops of water in his presence. He does not know who had taken the deceased to hospital. In his presence Mst.Shahzada did not give any statement in police station nor she was arrested by police. He was called three/four days thereafter by police in police station..

7. **PW-2 Zahoor Ahmed Zarger** examined on 03.07.2012 whose statement has been recorded on 26/09/2019 has stated in examination in chief that he knows the accused persons. He identifies his Signature on the disclosure statement memo which has been already marked as EXTP-13. Its disclosure statements are not true and are incorrect. He stated that disclosure statement was already written when his signature was taken over it. The witness was declared hostile.

On cross examination by learned PP, witness stated that when his signature was taken on disclosure statement at that time the accused persons were in lock up. He had not signed any other blank paper till date. He had not filed any complaint regarding his signature on blank paper. He admitted his signature on Discovery Memo (fard-i-Baramadagi) which is made part of file and his cell number is also mentioned on said memo, same is correct. He knows the accused No. 2 Mohammad Rafiq, who is brother of his friend. Name of his friend is Noor Mohammad. He has not told him that he has to record his statement in the court. He did not accompany the police anywhere. He came in court for recording his statement. God knows better why accused persons were behind bars and on what basis the case is. He had not asked the accused persons why they are behind bars. He had heard from police that murder has taken place and accused persons are behind the bars in connection with the same. He didn't remember when he had signed the papers. He did not remember when accused persons were released.

No question has been put to witness by counsel for the accused persons though he was given chance to cross examining the witness.

8. **PW-3 Abdul Rashid Nath** , examined on 11.10.2012. In examination in chief the witness stated that on 07/01/2012, he was at Taziyat at chattabal.

Thereafter said he was at Nawa kadal. Deceased had come over there for Taziyat. Deceased fainted there, one person namely Abdul Ahmad Chan resident of Zainakote asked him to drop the deceased at his home. He took deceased with him and reached Bhagwanpora, and at that time accused Mohammed Raifq and wife of deceased i.e. accused No.1 were also present besides there younger son was also present there. The witness stated that after laying the deceased on bed, Mst Shahaza prepared tea and served one cup to the deceased and also one cup to him. He remained for half an hour there and then left to his home. The witness stated that next date he heard that deceased has died and he went to visit the deceased's house to condole his death. The witness stated that he has no knowledge about the cause of death of the deceased. He had not seen dead body of deceased. However, he offered his funeral Prayer (Nimaz Janaza). He gave statement in police. He has put his thumb impression on the statement given to the police. He gave his statement and police was recording his statement. Thereafter he put his thumb impression on it. He was knowing the deceased and his wife, because they were his neighbors.

On cross examination by defense counsel witness stated that he went Nawakadal for Chahrum. It was winter season. When deceased fainted there, he was not present there. Auto driver was not known to him. Deceased was unconscious in the auto and could not move. When deceased was taken out of auto, at that time his wife came out from his house and laid him on a bed. It was about 11:30 am. He does not know accused Mohammed Rafiq Sofi and He has never seen him. He heard the name of accused is Mohd Rafiq Sofi. He was not called by police in police station for identification purposes. He does not remember when and on what date he has given his statement at police station. His statement under 161 CrPC was not read over to him. He does not remember what clothes were worn by the deceased on the day of occurrence. The witness stated that on the day of occurrence accused was not wearing cap. He left the home of the deceased at 12:30 P.M. He has no personal knowledge regarding the death of the deceased. Deceased Mehraj-ud-din was not angry nor was anguished by his presence.

9. **PW-4 Nadeem Mehraj** examined on 06.09.2012. In examination in chief, the witness stated in examination in chief that deceased was his father. The occurrence is of 7/8 months old. One day before the death of deceased,

he was at home and went to maternal home with Bilal Ahmad Dar. His maternal uncle took him to work and on their return he came to know that his father has died. He does not know how his father had died. He has seen the dead body of the deceased in control room. Accused No. 2 had friendly relation with the deceased, and they used to purchase and sell vegetables together. They often used to visit each other's house. Accused No.2 occasionally used to stay in deceased's house and his father most of the times also used to stay in house of accused No. 2. Accused and deceased used to sell vegetables in villages. He has no knowledge his how father died. He has no knowledge who was present in his house on the day when deceased had died. However, the family members of his father would have been at home. Accused persons were used to talk to each other. Challan was registered after the death his father, police came to his house. Police recorded his statement, He put his thumb impression on his police statement. He made the statement, police put it into writing.

On cross examination by defense counsel, witness stated that he returned from Kupwara around 5/6 pm. He heard at Noor Bagh that his father has died. At 6:00 PM, he heard that his father has died, and he directly went to SHMS hospital. He does not remember who told him that his father has been admitted in SMHS hospital. He went to SMHS hospital, with his maternal uncle in car. In SMHS hospital, at that time, at least 10-15 people had gathered there. One among them was Bilal Ahmad, however, he does not remember names of others. He and his maternal uncle reached SMHS hospital at 6:30 pm, but at that time father was taken to control Room. He is an illiterate person. His statement, which was recorded at police station, was not read over to him. 4/5 days after the death of his father, police recorded his statement but, he does not remember the date. In police station Munshi has asked him to put signature on a blank paper and thereafter he wrote the contents. The statement attributed to him by police was not read over to him in the court by public prosecutor in the court. On the day when he went to SMHS hospital and control room with his maternal uncle, on that day accused No. 2 on that day didn't meet him. In his statement under section 161 CrPc, it is written that "when he returned in the evening, Mohd Rafiq Sofi met him and his maternal uncle at cement Kadal and told them that his father has died" is wrong. Accused No. 2 was doing business with his father for last 10

years and was known to him. Accused No.2 used to come to his father's house for last 10 years. He knows where accused No.2 resides and he used to go to his home. He does not know whether accused No.2 was having animosity with his neighbors or not. Accused No.2 was respected by everyone in his vicinity. His mother was not having any animosity in her vicinity. His mother (accused No.1) would never talk to any unknown male person in his presence. Accused persons were having good relations with each other. Character of accused No.1 is very good. The deceased never told in his presence to accused No.1 that accused No. 2 is not a good person. Deceased was always saying that accused persons have good relations with each other. He has no knowledge that the accused persons having affairs with each other. He never doubted that accused persons may have killed his father, because of love affairs with each other. He would never think that her mother can have any physical relation with any unknown person. She is pious lady. It is true that relations between accused persons are just like brother and sister.

10. **PW-6 Noor Mohammad Dar** examined on 01.12.2012 has stated in examination in chief that he knows the accused persons present in the court. Shahzada accused No.1 is also known to him. She is his sister. He was also knowing the deceased Mehraj-ud-din, he was his brother in law. Accused Mohd Rafiq was having friendly relations with deceased and were having good relations since long. Deceased and accused Mohd Rafiq also used to come to their home. Accused Mohd Rafiq was trained by them and he was selling vegetables etc. with them. Only deceased would have said why accused was coming to his home. Mohd Rafiq had good relations with him and with his brothers. Deceased died on 09/01/2012. He went at 11:00 pm to the house of deceased, where he heard that deceased has been taken to control room and was told that there was mark on the neck of the deceased. But he did not see that mark with his eye, when deceased was taken for last bath (ghusul), he did not see the deceased. He has no knowledge how deceased died. He has no personal knowledge about occurrence. After 4-5 days of occurrence, he gave his statement to police. He is illiterate. He does not know on what papers police obtained his thumb impression. However, he gave same statement to the police, which he made in the court.

On cross-examination by defense counsel, witness stated that on the day of occurrence, he was not at his home as he was outside. Liver of

deceased was damaged due to which he was suffering from severe ailments. He heard that deceased had gone to Nawakadal for condolence and fainted there. When accused Mohd Rafiq used to visit to the house of the deceased, the deceased would never get irritated or annoyed, instead he would be happy. No further question asked.

11. **PW-7 Tariq Ahmad Dar** examined on 01.12.2012 stated in his examination in chief that he knows the accused person present in the court and also the accused No.1, she is his sister. Accused No.1 was married to the deceased some 30 years back. Deceased was having two issues and their names are Jan Mohammad and Imran both are alive. Deceased was a vegetable vendor. Deceased and accused Mohd Rafiq were having friendly relations for 8-10 years. They were having good relations with each other and used to visit each other's house. Deceased got fainted. He heard deceased died on 09/01/12. Then he went to the house of the deceased, Deceased was his brother in law He heard at his home that deceased has died. He heard that deceased had fainted there and was taken to the hospital, where he died, and thereafter he was taken to control room. His statement was recorded by the police. He has no knowledge how deceased died.

On cross examination by the defense counsel, witness stated that whenever accused Mohammad Rafiq was visiting to the house of deceased, the deceased used to feel happy. He has no personal knowledge about the occurrence. When he went to SHMS hospital, many people had gathered there. At that time deceased was alive. The medicines etc, were administered to deceased in hospital. His statement recorded u/s 161 CrPC is wrong to the extent that it was 5 in the evening, he was with his wife in an auto. He found his sister disturbed on the road. He alighted from the auto and tried to go to the home of his sister but, his sister didn't allow him to enter into her home. He stated that deceased was suffering from severe liver ailments since long.

12. **PW-8 Hilal Ahmad Dar** examined on 01.12.2012 has stated in examination in chief that he know the accused person present in court. He also knows the accused No. 1, Mst. Shahzada, she is his sister. Deceased was married to Mst.Shazada. Deceased was residing at Chattabal. 20-21 years ago marriage was solemnized between deceased and Shahzada. Out of said wedlock, two children were born namely Jan Mohammad and Imran and both

are alive. Deceased used to visit the house of the accused Mohammad Rafiq. When accused Mohammad Rafiq used to visit the house of deceased, deceased would feel happy at that time. Sometimes, he used to visit his sister's home and sometime see the accused Mohd Rafiq there. On 09/01/12, he went to Kupwara with his nephew and on the same day in evening, he heard that deceased has died. How deceased died, he has no knowledge. However, then went to the home of the deceased for condolence. Deceased was taken to the hospital. He has not seen the dead body of the deceased. At the time of last bath (Ghusul) of the deceased, he was also present there. He has not seen any mark or scar on the neck of the deceased, deceased was buried. Thereafter police came and recorded his statement.

On cross examination by defense counsel witness stated that whenever he visited the house of his sister, he would see accused Mohammad Rafiq there, deceased never felt angry but, feel happy. His statement recorded by the police was not read over him in the court by the public prosecutor. Before the police, signed on blank paper then said he put his thumb impression. What statement police has written, he does not know.

13. **PW-9 Bilal Ahmad Rather** examined on 01.12.2012 stated in examination in chief that he knows the accused person present in court and also know the accused No. 1. However, he has no relation with the accused persons. Deceased Mehraj-ud-Din was also known to him. The mother of his carpenter friend had died in Nawa kadal. He went there for condolence and deceased was also there for condolence. Deceased met him there and told him that his health condition is not good. Every day he visited to his deceased carpenter's house till his Fateh Khawani. On the 4th day (Chahrum), he came at 9.30 am. Deceased came inside and fainted them and told that he will go to his home after Fateh Khawani. Thereafter, the health conditions of deceased deteriorated and he boarded an auto. He asked Abdul Rashid to take him to his home. How deceased died, he has no knowledge.

On cross examination by the defense counsel, witness stated that he was working in the house of the deceased. During those days whenever accused Mohd Rafiq would come to the house of the deceased, he(deceased) would feel happy. Deceased was a vegetable vendor. Prior to the death of his deceased, he(deceased) was suffering from liver disease.

14. **PW-12 Mohammad Sultan ASI No.237/H** examined on 28.03.2013 has stated in his examination in chief stated that on 19th January 2012, he was posted as Assistant Police Officer at Police post Noor Bagh. On 9th of January 2012, in evening hours, information was received from reliable sources that one person namely Mehraj ud din Misser, who died at his home due to some reason, has been taken to SMHS hospital. On receipt of this information, he along with some other police personnel reached SMHS hospital, where Mehraj-ud-Din was brought dead in emergency ward. On his examination strangulation marks were found on his neck. He prepared a docket for postmortem. There was no arrangement of conducting postmortem in SMHS Hospital for which the deceased was taken to PCR for postmortem. However, due to late hours, his postmortem was not conducted. Deceased was kept in mortuary of PCR. On 10th of January, 2012, postmortem of deceased was done and other formalities were completed. The dead body was handed over to the legal heirs of the deceased for funeral/ last rites, regarding which report U/S 174 CrPC was registered at the police station and inquest proceedings were started. During the inquest proceedings, on 19/01/2012 Mst. Shahzada Begum disclosed before him and in presence of other persons that her husband deceased Mehraj-ud-Din Misser was killed by strangulating his neck by using scarf pursuant to pre-planned conspiracy with Mohammad Rafiq Sofi. SHO prepared her disclosure memo. However, the accused No.1 had burnt the scarf on the day of occurrence in an Iron Pan(Batti). She also said in her disclosure memo that said iron pan has been kept hidden, which can be recovered on her identification. Her Disclosure memo was prepared, which he signed as witness and the Iron batti was recovered on her identification on which recovery memo was prepared, which he signed as witness. He prepared **fard-i-maqboozgi nash**, written and signed by him. It has been already exhibited as EXTP-1. Receipt of dead body is on the file, written and signed by him. He identified his signature on it. Its contents are correct. It has been already exhibited as EXTP-1/1. Memo of personal search of Mehraj-ud-Din is written and signed by him. He identified his signature on it. It is exhibited as EXTP-12. He identified his signature on the memo of disclosure statement of accused, its contents are true and correct. It is already marked as mark-1. He identified his signature on memo of recovery with respect to Iron Batti. Its contents are true and correct. It has been already exhibited as EXTP-1/2. He identified the accused person present in

court, who has made disclosure and recovery of batti. He identify other accused person in open court. The Memo of injury on file is written and signed by him. Its contents are correct. He identified his signature on it, which is exhibited as EXTP-12/1. I card of deceased on file is same which was recovered during the search of the deceased. He identified the seized iron pan (batti) which was recovered on the disclosure of the accused No.1. It is exhibited as EXTP-MAT/1.

On cross examination by defense counsel, witness stated that he has retired from service. On receiving the information he and some constables, whose names he does not remember at this time, reached SMHS hospital. In the meanwhile D.O also reached SMHS Hospital, D.O reached about 5 minutes later to the hospital. D.O was accompanied with 3 constables whose names he does not remember. He conducted proceedings in the hospital. Deceased was dead before he was reached to hospital. Doctor told him that he was dead prior to his reaching. Deceased was accompanied by 10-15 people to hospital. Deceased was brought to hospital by his neighbors. He enquired from these persons, however, he does not remember their names. Accused Shahzada was arrested around 10 days after the occurrence on 19/01/2012. In the meantime she was called for questioning 2-3 times, entries were made in the Diary regarding her interrogation. In addition to this, investigation was also made at her home and entries were made regarding the same. Whenever, accused was called for investigation to police station at that time none of the lady constable was present or called in the police station. However, her family members were present. When investigation was done at her home at that time none of the lady constable was with them. When they went on 19th January, at that time they had one lady constable with them. Prior to 19th January, he and one constable went to the house of accused for investigation and inquired about the occurrence and he does not remember the constable who was accompanying him. They went there during day hours for investigation. At the time of disclosure made by the accused, he, SHO, some constables, civilians and 4-5 constables were present there. However, he does not remember the time, probably it was mid day i.e 12:00 pm to 12:15 pm and 4-5 civilians were present. The disclosure statement was made in the house of accused and same disclosure statement was made in the police station. Disclosure statement was made in the Lobby of the house. The

person who recorded her disclosure statement, he recorded it in Kashmir language. Disclosure of accused was written on spot. His signature was third or fourth one on the disclosure statement. Disclosure was signed by two persons and 3rd one was his. Two civilians who have signed the disclosure memo one of them was probably Ali Mohammad and second one was Bilal Ahmad, probably Bilal Ahmad and Noor Mohammad. He does not remember how many civilian persons were there at that time, thereafter memo of recovery of batti was made. He was on spot and had signed the memo of recovery. The iron pan (batti) was in front of the wall. Any person who would have gone there would have seen it there. Batti was neither under grounded nor was wrapped hidden in any cloth. The batti was empty there. On spot some of dust on the batti was sealed separately. SHO sealed the batti and also sealed the dust. The letter which was forwarded to FSL was sent by SHO. He has no knowledge whether he had forwarded one or two letters. Recovery memo was prepared on spot. Recovery memo is not written by him, but he signed it. He cannot say during signing how many signatures were there. Recovery memo was signed by 2-4 persons. Out of them two were civilians. Batti was shown to him in the court but, dust was not shown to him in court. In recovery memo there must be mention of that batti and dust recovered. Recovery memo was not read over to him in court today. Recovery memo is read over to him but, there is no mention of the dust. He has no personal knowledge whether there was any illegitimate relation between accused No.1 and accused No.2 but, I.O can say about it. It is true that accused No.2 used to visit the residence of accused No.1.

15. **PW-16 Mohd Shafi Beigh** examined on 07.02.2013, has stated in his examination in chief that he knows deceased Mehraj-ud-Din. He also knows the wife of deceased Mst. Shahzada. He also knows accused Mohd Rafiq. He used to whole sell the vegetables to both deceased and accused Mohd Rafiq. He used to visit them. Accused Rafiq and deceased were jointly doing the business of vegetables. They had family relations with each other. He has no knowledge about the relations of accused Rafiq and Mst Shahzada. He also resides in their neighborhood. Deceased-Mehraj-ud-Din had good relations with his wife. He said so because he usually used to go to their house. He has no knowledge whether Rafiq Ahmad used to visit to the house of Shazada in absence of the deceased. He heard that deceased had fainted at grave yard.

He has no knowledge when deceased died. He gave his statement at police station. He put his thumb impression over it. He put his thumb impression on the statement which he narrated to them. Accused Mohd Rafiq is present in the court.

On cross examination by defense counsel, witness stated that the statement which he had given at the police station was not read over to him today in the court. He used to visit house of accused person weekly as well as monthly. The statement recorded U/S 161 CrPC by the police is wrong to the extent that “wife of deceased Mst. Shahzada Begum and deceased-Mohd Rafiq had illegitimate relations with each other”. Police has falsely and baselessly written that deceased and Mst Shahzada usually used to fight with each other.

16. **PW- 17 Abdul Majeed Lone** examined on 05.10.2018 has stated in examination-in-chief that he does not know the accused persons present in court. He was knowing the deceased Mehraj ud din. On the day of occurrence, he heard the noise. He does not remember how old the occurrence is. However, it was winter season. In Noor Bagh area there was a cry that Mehraj-ud-Din has died. On hearing the cry, he also went on spot. They offered water to him. Deceased opened his eyes. He was alive at that moment. Thereafter he was taken to hospital and where he died. Deceased was in his house at that time. Thereafter police also came on spot. He also gave his statement on a plain paper. He can't sign but use thumb impression. He knows the son of the deceased Mehraj-ud-din. He does not know what was the name of the wife of deceased. He has a shop near the place of occurrence. He is doing welding work there. The son of Mehraj-ud-din had come to his shop in respect of some work. He did not remember his name. Deceased had heart stroke. His shop is situated at Noor Bagh. He is running his shop there for last approximately 40 years. Thereafter, he constructed his house there. Witness was declared hostile.

On cross examination by learned PP, witness stated that police has written his wrong statement. It is wrong to say that the death of deceased was caused due to strangulation of his throat. Accused persons are also residing at Noor Bagh. He does not remember the date of occurrence. The occurrence took place in evening time. They had taken him to hospital also. He has no knowledge whether Shahzada is wife of the deceased. At the time

of death, deceased was in middle age. He was neither too old nor too young. Burial was done at the home of the deceased. He has no knowledge regarding the arrest of the accused persons. Accused persons have no relation with each other. He does not know whether accused No.2 used to visit the house of accused No.1 or not. Witness stated that when Police completed the recording of his statement, thereafter, he put his thumb impression on it. He put his thumb impression on his recorded statement at Noor Bagh.

On cross examination by counsel for accused persons, witness stated that it was winter Season when he heard hue and cry (Shor-Gul) at the place of occurrence. When he went to his house, he had fainted (Chaker aya tha). Prior to this he also got fainted at Chattabal. When deceased gained his consciousness, he took water and opened his eyes. Thereafter they along-with many people took Him (deceased) to the hospital. As it was winter season, due to which deceased was wearing PHERAN and was also wearing MUFLER around his neck. They any way took the accused to the hospital as people had gathered there. He cannot say what statement police had recorded as he is illiterate. He has not said to police that there is some relationship between the accused persons nor he has a personal knowledge about it.

17. **PW-18 Fayaz Ahmad Sofi**, examined on 26.05.2014, has stated in his examination in chief examination that deceased was known to him. He stated that once he had done business of vegetables with him. He heard that deceased died. However, he has no knowledge how deceased died. Accused No.1 i.e., wife of deceased is known to him, as he has seen her in the area. Accused No. 2 is also known to him. He has not given any statement to the police. Witness has been declared hostile.

On cross-examination by PP, witness stated that it is true that he is carpenter and it is also correct that sometimes he would also do business vegetable business. It is also correct that once he has sold vegetables to the deceased. Deceased and accused No. 2 were doing the vegetable business in partnership. It is also correct that when two persons do business in partnership then they also do business outside home and they can visit the house of each other as well. He has no knowledge whether deceased was selling vegetable in the village. Some police personal had come to his house and told him that he has to make the statement. He had no relation with

deceased nor had any relation with accused No.1. If somebody is known as characterless person, then whole area knows about it. In the same way if there had been any notoriety about the accused persons, same would have been heard by whole area. On the day when deceased died he was at Anantnag and heard about it on the second day. He cannot say whether the relations between deceased and accused No.1 were good. He has no knowledge whether deceased was strangulated. He did not participate in the last rites of the deceased. He had put his thumb impression. He put his thumb impression on paper at the police station. Police personnel of police station told them they want to free the accused persons. The thumb impression was taken on plain paper. He is the owner of a double storied house. He might have signed plain paper occasionally. This is true that a person of integrity must not sign or put thumb impression on plain paper. The statement was not read over to him by the police and he put his thumb impression without reading it. He did not go to police station to release the accused persons.

On cross examination by defense counsel, witness stated that in Kashmir due to prevailing situation almost every ordinary person is scared of the police. The police person who got his signature was very dangerous persons. If he would have refused to sign, he would have been behind the bars.

18. **PW-19 Noor Mohammad Sofi**, examined on 20.12.2018, has stated in examination in chief that accused No.2 is his brother. Accused No.1 is his neighbor. He does not remember how much time has elapsed since the occurrence. Deceased was also known to him. How deceased died, he has no knowledge. He signed the receipt of dead body. Receipt of memo of dead body was shown to the witness in open court. Witness identified his signature on the receipt memo of dead body. The Contents of receipt of dead body were read over to the witness, same are admitted to be true and correct. It is exhibited as EXTP-19. He also identified his signature on the memo of search memo (Fard-i-Jama Talashi). He admitted the contents of search memo of deceased Mehraj-ud- Din as true and correct. It is exhibited as EXTP-19 /1. Thereafter burial of deceased was done. Accused persons were arrested by police. Why accused persons were arrested by police he has no knowledge. Police has lodged the case. He even does not know, how deceased Mehraj-ud-

Din died. Deceased was his neighbourer. Deceased was taken to Control room hospital where his postmortem was conducted.

On cross examination by defense counsel, witness stated that when son of the deceased Mehraj-ud-Din called him on phone, he told him that Mehraj Ud Din has fainted. It took him two to three minutes to reach to the house of deceased after receiving the phone call. When he reached the house of the deceased, lot of people had gathered there. In his presence deceased took some water and deceased said that he is having chest pain. Deceased, Mehraj-ud-din at that time was wearing pheran and muffler. People present in the room tried to take off Pheran and Muffler, which the deceased had worn but, they failed to take out the pheran from the body of the deceased. Then six/seven persons took deceased to SMHS hospital in an Alto vehicle. When deceased was taken to hospital, he was admitted in emergency ward, he was given one injection. After 10 minutes of giving injection to deceased, doctors declared deceased Mehraj-ud-Din as dead. His brother was arrested by police on the basis of suspicion). Thereafter, he went to police station, Police station means police post Noor Bagh He asked Incharge of police post Noor Bagh why his brother has been arrested. In reply Incharge of Police Post Noorbagh asked him to get 10 people of the Mohalla then his brother will be released. He signed on a blank paper in presence of police. He has no knowledge what police has written on those papers.

19. **PW-23 Mohammad Saleem Malik**, examined on 07.02.2013, stated in examination in chief that deceased was known to him, because his workshop is near his house. Wife of the deceased is also known to him. Accused Mohd Rafiq is not known to him. However, he had seen him in the Mohalla. When he was leaving from his workshop, he heard that deceased fainted and died. He did not see accused Mohd Rafiq visiting the house of deceased. Deceased Mehraj ud din and accused Mohd Rafiq were doing the vegetable business jointly, as such they used to visit the each others house. Deceased and his wife were not having any dispute or would fight each other. He did not sign any paper. He has signed a blank paper at the police station. The witness was declared hostile.

On cross examination by the learned PP, witness stated that he owned a property in the shape of a house. If he has to sell out his house, he will not

sign on a blank paper. SHO first inquired from him and then he asked him to sign. In his workshop 4-5 people are working there. Actually, he does not sign on any blank paper. No further question.

No question was put to the witness on cross-examination by counsel for the accused though he was given chance to cross-examine the witness.

20. **PW-25 Dr. Qaiser Ahmed War**, examined on 10.06.2015, stated in his examination in chief that in the year 2012, he was posted as medical officer in PHC Zadibal. Dead body of Mehraj-ud-Din Misry son of Ghulam Mohammad Misry was brought by ASI Mohd Sultan No.237/H of police division Noorbagh for the purpose of postmortem. Prior to postmortem, he examined the body of deceased. On the neck of the deceased, he found four ligature marks on left side and three marks on right side of throat. After that he found blood clot like on the face of deceased. Nails had turned black. He did postmortem of body of the deceased. He recorded all the details of the postmortem in the report. Report annexed with file is same which he has issued. He himself has written the contents of a report. Its contents are true and correct. He identified his signature on it. It was exhibited as EXPT-25. As per his initial report, the cause of death was stoppage of oxygen to the brain. It can also be caused by hanging (FANSI LAGNEY). He has not issued the Final report regarding the cause of death, because he had forwarded the viscera to pathology department of Medical College for examination. He has not received the report regarding the Viscera, and due to which final report regarding the death was not issued by him. If the report of said viscera is shown to him, on that basis he could have issued the final report of cause of death of the deceased. He identified his signature on the back side of the letter bearing No. FIR/06-12ISSK dated 09/02/2012. He had received that letter. He stated that answer to a questions in the letter was given by him on the back side of the said letter. The answer given by him is true and correct. On the basis of the postmortem, he has mentioned cause of death of deceased; Most likely due to strangulation and not of hanging and ligatures marks found on the neck of the deceased, which can be caused by Scarp contents. The contents about his report on back side of the letter are true and correct, which has been marked as EXTP-25/1”

On cross examination by defense counsel, witness stated that on the day of occurrence, he was posted at PHC Zadibal for 2 years. He has no specialization/specialist in postmortem. Prior to this he had also done postmortem 3 times. The dead body of deceased was brought to him at 11 am. He was not asked for taking oath before recording his statement. In conducting the said postmortem, he was assisted by some officials of the department namely Mohd Yousuf, who is also from the Health department. The official who has assisted him in the postmortem had not signed EXTP-25. The postmortem report of the deceased will tell the actual time of the death of the deceased. He stated that the actual time cannot be said, but approximate time can be depicted. As per postmortem there can be difference of 8/9 hours regarding time of death. Question: The probability of giving actual cause/time of death while conducting postmortem is in minutes and not hours. Answer: Yes. Question: What is the difference between Autopsy and Postmortem? Answer: Both are same. Autopsy is the medical terms of Postmortem. While conducting postmortem, he has checked the nails of the deceased and have not found any dust or earth, mud particles in the nails of the deceased. There was no mark of physical violence or scar other than the ligature marks on neck of the deceased. At the time of postmortem, he examined the heels and elbows of the deceased. There were no such marks of rubbing on them. In hanging the weight of body can cause blockage in the neck. In strangulation to press the neck some others help is required. Deceased was physically weak and slim. If somebody is hanged, in such a situation there cannot be any mark of struggle on the other parts of the body. And in case of strangulation there can be marks of struggle on the other parts of the body. Actual cause of death of the deceased was cardiac pulmonary arrest, secondary to asphyxia, which had occurred due to block of neck vessels. There are many causes of C.P arrest and this could be one of them. If any person dies and is not buried for more than 10-12 hours then there are chances of change of color of the body. Turning body into blackish depends on the temperature. If anybody dies by hanging then in such situation he will not able to drink water. If someone shows signs of thirst then it means he is alive. If somebody is hanged he will die instantly but in some cases it will take some time. Question: In strangulation death is instant? In reply to that question witness stated that most of the times death due to the strangulation is instant and the question asked is wrong. He cannot say

with sure that the marks on the neck were due to Scarf or due to MUFLEER. This can happen by Scarf or by Muffler. If somebody is wearing jacket and over it is wearing Pheran and having cap on head and is wearing muffler around his neck and in same situation some people are taking him somewhere in auto, and during travel if the muffler in his neck is pulled by force from both side sit can cause marks and Pressure required for pressing the neck vessels can be generated due to this and this can also lead to asphyxia which occurs in strangulation also.

21. **PW-26 Mushtaq Ahmad Bhat**, examined on 04.04.2022 stated in examination in chief that on 30th January 2012, he was posted as Head Biology /Serology Division FSL Srinagar. One sealed packet was received on 24/01/12. This sealed packet was in a piece of cloth. It was marked as Mark-A and seal was affixed on the packet. This seal was of Executive Magistrate Srinagar, and it had come from Sub division Police officer Maharaj Gunj, Srinagar, vide letter No. FSL/12/CPN/430 dated 23/01/2012. It was sent through ASI Mohammad Sultan bearing No.237/11.On opening the pocket one Iron pan(batti) in which there was some burnt thing was recovered. He put mark MI over it. Thereafter they examined it and it was found that there were burnt fibers. Thereafter, he forwarded that thing to other laboratory. He identified his signature on it. The report bearing No.FSL/36/DOC/SR Dated 30/01/12 was seen by him. He identified his signature on it. It is true and correct. The opinion was given by him. Burn Fibers were detected bearing No. M-01. It has been exhibited as ExPW-26.

On cross examination by the counsel for the accused persons, witness stated that he has done M.Sc Zoology. He has got training from NICFS Delhi. He has got training in biology and serology. The witness stated that he has given his opinion in number of cases of the same nature. In reply to a question, witness stated that he cannot say many days ago the thing was found burnt in batti and they do not perform such experiments. The witness stated that he cannot say about the thing which was found burnt and turned into the ashes is of one month or two months old.

22. **PW- 27 Mirza Vilayat Hussain** examined on 04.04.2022 has stated in examination-in-chief that that in January 2012, he was posted as patwari in Halqa Baghwan Pora, In Baghwanpora Ghat Colony, Noor Bagh. Somebody was

hanged and murdered. The Tehsildar concerned deputed him as field Patwari to prepare the map (Khaka) where the murder had taken place. He went on the spot and prepared the map. He prepared the map himself and made entry in daily diary (Roznamcha) of Halqa Patwar Baghwanpora. The witness stated that he also prepared Khaka (Map) of the spot which is on the record of the file. He has seen it. It is the same which he had prepared on spot. He admitted it to be in his hand-writing and also identified his signature on it as true and correct. It were marked as Extp-27/1.

On cross examination by defense counsel, witness stated that he went on spot on the day of occurrence. He does not remember when the papers were prepared which were shown to him in court on the record of the file. The reply to a question, witness stated that he does not remember after a lapsing of how many days he visited the spot. The Tehsildar concerned had verbally directed him to visit the place of occurrence and prepare the map but, the Tehsildar was not accompanying him. The Map and report were prepared on the same day by him. He admitted that the report was written by him and also signed by him. He has submitted the said report to police concerned.

23. The statements of accused persons under Sections 342 CrPC was recorded on 12.09.2022. In her statement under section 342 CrPC accused No.1 again refuted allegations against her. She stated that PW-2 has not admitted the recovery memo though admitted his signature on the same. She stated that PW-12 has made totally false statement. Police personal visited her house for 9 days and when they could not find any evidence against her, police told her to sign some papers which were already written and some were plain papers. She was told that some legal formalities are required to be completed. She is illiterate and only affixed her thumb impression on the paper. She was not read the contents of the papers on which her thumb impression was obtained. She has not made any disclosure statement, because she has not committed any offence. After obtaining her thumb impression on the papers, she was called at police station. Thereafter she does not know how she has been dragged in this case. She has refused allegation of having any illegal relation with accused Mohammed Rafiq Sofi. She has not identified any iron pan nor she helped in recovery of any such iron pan. She is innocent. She has stated that she has no knowledge that the

deceased had any mark on her neck/throat. If there was any such mark, she does not know now about such mark. When her husband complained some pain at home, at that time he had no mark on her neck. In her presence no site plan was prepared nor any proceeding was conducted in her presence.

23. The accused No.2 in his statement recorded under Section 342 CrPC also refuted allegation against him. He stated that PW-12 has made false statement. He has never hatched any conspiracy with A-1 nor he is involved in commission of any offence. The deceased was his neighbourer and best friend. He was arrested in this case merely on suspicion but, he is innocent. PW-19 is his neighbour. He has good relations with him. He had taken the deceased to hospital for treatment. He does not know whether he had signed any paper or not. He expressed his ignorance about any mark on the neck of the deceased. He has also expressed ignorance about the seizure and FSL report of any iron pan(Batii). He stated that in his presence no inquiry was conducted by PW-27.

24. The accused were not given the benefit of Section 273 CrPC. They were given chance to enter on their defence and were given chance to produce the defence evidence if they chose so. In their defence they have produced one witness namely Mehraj-ud-Din Khan.

25. The defence witness Mehraj-ud-Din has stated in his examination-in-chief that he was knowing the deceased. He is mason (mistry) by profession. He has worked in the construction of the house of the deceased. Mst. Shahzada, accused No.1, and the deceased were living a happy life. They had no dispute between themselves. One day before the death, the deceased had visited to one of his relatives for condolence purpose. There he got fainted and was taken back to his home. Next day he heard that he has died.

On cross-examination he has stated that he was working the construction of new house of the deceased as deceased had good relation with his family members. On the day the deceased died, he was working in construction of their house. The deceased was knowing accused No.2.

26. The defence evidence was closed on 30.12.2022.

27. I have heard the learned PP and the counsel for the accused persons at length and have also gone through the whole record of the case particularly the evidence led by the prosecution.

28. The learned PP during the course of argument went through the statements of all the prosecution witnesses. He submitted that PW-12 has proved that the disclosure statement ExtP-13 made by accused No.1 wherein, she had disclosed to the police that in furtherance of a conspiracy she alongwith accused No.2 killed the deceased by strangulating him using a scarf which was burnt by them in an iron pan (Batti). She also identified that iron pan and on her identification the iron pan has been seized in this case. He further submitted that PW-26 has proved that the scarf was burnt in that iron pan (Batti). He submitted that it is admitted that accused No.1 was the wife of the deceased. The witnesses have proved that accused No.1 & 2 were having affairs, who wanted to marry but, the deceased was a hurdle between them. To achieve the object of turning their love affairs into marriage, the accused persons done away the life of the deceased by hatching a criminal conspiracy. In furtherance of such conspiracy, on 9th of January, 2012 they strangulated the deceased at his home by using a scarf. The learned PP submitted that the evidence brought by the prosecution has proved the guilty of the accused persons beyond any doubt and submitted that they may be convicted for the commission of offences punishable under Sections 302,34,120-B,201 RPC.

29. On the other hand the defence counsel submitted that whatever evidence has been brought on record by the prosecution that does not remotely connect the accused persons with the alleged commission of crime. She submitted that there is no eye witness to the occurrence. The case of the prosecution has based on circumstances. One of the circumstances on which the prosecution has banked upon is the disclosure statement of accused no.1 but, the prosecution has failed to prove that accused No.1 has made any disclosure statement in the case. She submitted that there is no evidence to prove that the accused persons were having any illicit relation, which, according to prosecution, was the cause for killing the deceased by the accused persons. She submitted that the only possible conclusion which can be drawn on the basis of the evidence is that the accused persons are innocent have committed no offence whatsoever. She submitted that the

accused persons who are facing trial in the case for last more than 10 years, may be acquitted.

30. I have considered the arguments of the Id. PP and the defence counsel and have also given my thoughtful consideration to whole evidence brought on record by the prosecution and the material placed with the charge-sheet in the form of various exhibits.

31. The allegation against the accused persons is that they were in relationship and wanted to marry. The deceased, who happened to be husband of the accused No.1, was a big hurdle in turning their intimate relationship into marriage. To remove this hurdle they hatched a criminal conspiracy to do away with this hurdle. In further of that conspiracy, on 9th of January, 2012, when the deceased was at his home, the accused persons killed him by strangulation using a scarf which they subsequently burnt using kerosene oil in an iron pan(batti). Initially police conducted inquest inquiry in the matter. During the inquest proceedings, it is alleged that accused No.1 disclosed to the police that she alongwith accused No.2 killed the deceased by strangulation for the reason that they (accused persons) were having love affair wanted to marry but, deceased was a hurdle in the marriage. As per the charge-sheet, this disclosure of A-1 led the recovery of iron pan (batti), in which the accused persons had burnt the scarf used by them in strangulating the deceased.

32. It is not the case of the prosecution that there is any eye witness to the killing of the deceased by the deceased persons. Till 19th of January, the investigating agency had no clue about the cause of death of the deceased. The first circumstance on which the prosecution has based its case is the disclosure statement of accused No.1, wherein she had allegedly disclosed to the police how she and accused No.2 killed the deceased. She allegedly disclosed to the police that the scarf used by them in strangulating the deceased was burnt by them in an iron pan, which she can identify. It is also alleged that she identified that iron pan subsequent to her disclosure statement. Six witnesses besides I.O have been cited as witness to the disclosure statement of accused No.1. As stated at the very out set that out of 28 witnesses, only 21 have been examined. Out of these 21 witnesses, statements of some of the witnesses including PW's No.10,11,13 & 14 have

got completely washed out in 2014 floods. The statements of PW's No. 10,11,13 & 14 could neither be reconstructed nor prosecution was able to re-examine them despite giving the prosecution good chance to produce them.

33. PW-11 Ali Mohammed Najar, PW-2 Zahoor Ahmed Zarger, PW-10, Ruksana Akhter, PW-11 Mehraj-ud-Din, PW-12 Mohammed Sultan, PW-13 Mohammed Shafi have been cited as witnesses to the disclosure statement of the accused No.1, besides the I.O of the case i.e. PW-28. Out of these 7 witnesses, except the I.O, prosecution has examined all other six witnesses. However, the statements of PWs Nos-1, 2 and 12 are available on record. Whereas, the statement of PWs No. 10, 11 & 13 have got completely washed out in the 2014 floods and their statements could neither be reconstructed nor they have been re-examined by the prosecution.

34. The PW-1 has turned hostile. He has not proved the disclosure statement of accused No.1 Even on cross-examination by prosecution, he has not said anything about the disclosure statement of accused No.1 nor any question in this context has been put to him. Similarly, the PW-2 has also turned hostile. He too has not proved the disclosure statement of accused No.1 nor in cross-examination by the learned PP he has said anything in support of the alleged disclosure statement of the accused No.1. The PW-12 has stated that he identified his signature on the disclosure statement of accused No.1 and has stated that its contents are true and correct but, in cross-examination he again stated that on 19th of January, 2012 the accused No.1 had made the disclosure statement in the lobby of her house where they had gone in connection with the inquiry of the case. Her statement was written there. The two civilian also signed her disclosure statement. As per his statement, the accused No.1 has not made the disclosure while in custody of the police but, she has made the disclosure at her home where the police had gone in connection with the inquiry of the case under Section 174 CrPC. He has stated that there were 4-5 civilian also. So far the witnesses cited to the disclosure statement of A-1 are concerned only two civilians have been shown witness to her disclosure statement i.e., PW-1 & PW-2. Both have turned hostile and have not proved the contents of this disclosure statement of accused No.1. It is the case of the prosecution that after the disclosure statement, the accused No.1 identified the iron pan in the compound of the house of the deceased. Again PW-1 Ali Mohammed, PW-2 Zahoor Ahmed

Zarger and PW-12 Mohammed Sultan have been cited witness to this, besides PW-11. The two witnesses i.e., PW-1 & PW-2, as said hereinabove, have not proved this recovery memo. On cross-examination, PW-3 has categorically stated that no iron pan was seized in his presence. PW-12 no doubt has admitted the contents of seizure memo regarding seizure of iron pan marked Ext P-1/2 but, in cross-examination he has stated that this iron pan was in front of the wall and any person who would have gone through that side would have seen it as it was not kept hidden there. He has stated that on spot apart from iron pan (Batti) some dust was also seized but, there is no mention of seizure of any dust in any memo on record nor it has been shown to him in the court. He has again stated that this recovery was made in presence of the civilians. The two civilians who have been shown witnesses to this memo have turned hostile and have not supported this memo. The main circumstance on which the whole case of the prosecution is based upon is the disclosure statement of accused No. 1 but, prosecution has not been able to prove it beyond any doubt that actually the accused No.1 has made the disclosure statement, which led the investigating agency to the recovery of anything related to this case. Thus, the prosecution has failed to prove the very foundation of the case.

35. The case of the prosecution is that the accused persons were having love affair and they wanted to marry but, the deceased was big hurdle in their marriage. To prove this circumstance about the intimate relationship between the accused persons again there is no evidence. All the witnesses who have been examined have not made even a whisper about the intimate relationship between the accused persons. Even PW-12, who is the police official, has stated in cross-examination that he has no personal knowledge that the accused persons were having any illegitimate relationship between themselves. PWs Nos. 1,2,3,4,6,7,8,9,17,18,19 and 23 have been shown as eye witnesses but, they have not made any incriminating statement connecting any of the accused with the alleged commission of crime. Some of them have stated that one day before the death of the deceased they saw the deceased had got faint while he was attending condolence meeting of some of his relative. They have said that deceased had some prior ailment.

36. It is the case of the prosecution that the deceased was strangled. If a person is strangled, to save himself such person would definitely try to move

his arms, use his nails to scratch anything around him or to move his legs with full force to save himself and in the process there would be some dust particularly in his nails or some signs of rubbing the foot heels etc. The PW-25 Dr. Qaiser has stated that while conducting post mortem, he checked the nails of the deceased but, did not find any dust, earth or mud particles in his nails nor he had any violence or scare on any other part of his body. There was no mark of rubbing on his arms or elbow or heels. He has also gone on record to say that he cannot say for sure that the marks on the neck of the deceased were due to scarf or due to the use of mufflar. It is the case of the prosecution that the iron pan seized in this case was sent to FSL for its chemical analysis as to what had been burn in that iron pan. The PW-26 is witness to the FSL report. He has stated in cross-examination that burnt fiber were detected in that iron pan but, no opinion with regard to the presence of inflammable substances in that iron pan has been given by him. Rather he has stated that he cannot say what would have been burnt and turned into ashes in such iron pan one month ago.

37. The I.O of the case was an important witness in this case, who has not turned in the witness box to record his statement and has thereby deprived the accused persons to cross-examine him about the circumstances for which he had sent the accused persons to face the trial in this case. This is another factor which adversely tells upon the prosecution case.

38. For the aforesaid reasons and keeping in view the peculiar circumstances of the case, I find that the prosecution has desperately failed to prove the charges/allegations against the accused persons. As such, this challan fails and is accordingly dismissed as not proved and the accused persons are acquitted of the charges levelled against them. They are also discharged of their liability of bail and personal bonds. The seized items, if, any shall be destroyed after the appeal period is over.

39. The challan stands accordingly disposed of and be consigned to records after its due completion.

Announced
29.04.2024
(IAS)

(JAWAD AHMED)
Principal Sessions Judge,
Srinagar

