

HIGH COURT OF JAMMU & KASHMIR AT JAMMU

Criminal Appeal No. 12/2010
C/W Confirmation No. 2/2010

Mohd Baksh Vs State and others

Coram:
Hon’ble Mr. Justice Hasnain Massodi, Judge.
Hon’ble Mr. Justice Bansi Lal Bhat, Judge

Appearing Counsel:
For the appellant (s) : Mr. G.S. Gill, Advocate
For the Respondent (s): Mr. Gagan Basotra, Sr. AAG.

1.	Whether to be reported in Press/Journal/Media	:	Yes/No/Optional
2.	Whether to be reported in Digest/Journal	:	Yes/No

Per Bansi Lal Bhat-J

1. This appeal is directed against judgment of conviction dated 27.1.2010 and order of sentence dated 28.1.2010 recorded and passed by learned Sessions Judge, Ramban by virtue whereof the Appellant (hereinafter referred to as the accused) has been held guilty of offence u/s 302 RPC and sentenced to rigorous imprisonment for life and fine of Rs.10, 000/-; in default of payment of fine to suffer imprisonment for one year. Reference has also been made by learned Sessions Judge for confirmation of sentence. The Appeal and the Confirmation Reference were heard together.
2. Prosecution case, in brief, is that on 21.9.2005, the informant Farid Ahmed S/O Mohd. Hussain R/O Budhan Tehsil Mahore appeared before Abdul Majid-ASI of Police Station Gool, who was camping at Budhan, and gave verbal information that on 20.9.2005 at 11 AM, while he was proceeding from his Gharat (water-mill) to his home, he noticed the accused quarreling with Mst Rakhela Akhter W/O Mohd Mansha, beating her and dragging her inside the house. The informant claimed that when he

rushed there, he found the door of the house latched. Upon unlatching of the door, he found Mst Rakhela Akhter lying dead. She had sustained injury on the back side of her head, which was bleeding. A blood-stained axe was lying near her body. The accused had escaped from the spot. He claimed that Muneer Hussein S/O Fateh Mohd and Jamal Din S/O Ali, who were called by him on spot, too had seen the occurrence. Husband of the deceased was out of station and there was no adult member of the family in the house. The information laid by informant Farid Ahmed was recorded by Abdul Majid, ASI and forwarded along with his docket to Police Station, Gool for registration of case. Based on the information emanating from informant Farid Ahmed, a case under FIR No.75/2005 for offence under section 302 RPC was registered at Police Station, Gool. ASI, Abdul Majid took up the investigation in hand. He seized the axe and the soil-both blood-stained and sealed the same. He also seized the dead body of Mst Rakhela Akhter and arranged its postmortem examination. The body of the deceased was later delivered to the family for last rites. He recorded the statements of witnesses and arrested the accused. The investigation disclosed that the accused was inimical towards his brother Mohd. Mansha on account of dispute relating to land. The accused had temporarily migrated to Dharmari. On 20.9.2005 when Mohd Mansha had gone to Thuru, the accused arrived in the house of Mohd Mansha, beat up Mst Rakhela Akhter and after dragging her inside struck her head with an axe resulting in her death. The accused closed and latched the door of the house and made good his escape. The

investigation culminated in filing of charge-sheet against the accused for offence under section 302 RPC.

3. The case landed in the court of learned Additional Sessions Judge Reasi in pursuance of the committal proceedings conducted by learned Judicial Magistrate, Gool. The charges were framed against the accused for offence under section 302 RPC, to which he pleaded not guilty and claimed trial. prosecution adduced evidence at the trial, brief resume whereof is summarized as follows:-

Prosecution Evidence

4. **PW Mohd. Mansha** is the husband of deceased. He deposed that his father had partitioned the land between him and the accused, who is his brother. He alleged that it was three days prior to the occurrence, the accused had threatened to eliminate him or his wife unless the witness abandoned his land. The witness claimed that he did not succumb to the threat of accused. On Tuesday, while he was going to fetch food grains, the accused came across him at Payan. However, they did not engage in conversation. When he reached near Payan School after collecting food grains, he was told by Mushtaq Ahmed S/O Muneer Hussain that the accused had killed his (witness's) wife. He rushed to his house, where he found his wife lying dead. The accused had previously beaten up his father and dumped him in the oven. He found the axe lying beside the dead body of his wife. On cross-examination the witness stated that the accused was arrested at Katra. While returning from Chhansok village he learnt about the murder of his wife. However, the person laying

information did not nominate the accused, as he had not witnessed the occurrence. When he reached home, around 40 people had assembled on spot. His father was not at home on that day. The accused was putting up separately. The accused was married. Shamas Din, Shab Ali, Latif, Ghulam Hussain, Gania, Muneer Hussain, Qasima and Jamal Din lived adjacent to his house. Farid Ahmed is the brother of the deceased. He had sent Muneer and Mushtaq to inform his in-laws and his in-laws reached his house before the police arrived there. When he reached home, dead body of his wife was lying on the ground in the living room and axe was lying by its side. The Numberdar, Chowkidar and Sarpanch were present on spot. They had noticed blood oozing out of the wound sustained by the deceased in her head. Militancy had vanished a year before in the area. The witness denied the suggestion that his wife had died on account of an injury sustained by a fall from a tree. He also denied the suggestion that the accused was working as a laborer at Katra when the occurrence took place. Police had seized the axe. However, the same was not shown to him in the court.

5. **PW Muneer Hussain** deposed that he was cutting grass at the time of incident .He heard a noise. He thought that the accused may be having a tiff with his brother Mohd Mansha as the two brothers were at dispute in regard to land. Earlier the accused had beaten up his father when he tried to intervene. PW Farid Ahmed called him and he went on spot. He found that the deceased had been murdered. On enquiry Farid Ahmed told him that the accused had murdered the deceased and escaped from the spot.

The body of the deceased was lying on the ground. It was drenched in blood. The blood-stained axe was lying beside the dead body of deceased. Mohd Mansha had gone to Thuru in the morning to fetch rations. The witness claimed that he had gone to call Mohd Mushtaq. Police arrived in the morning and arranged postmortem on the body of the deceased. The witness testified to the contents of seizure memo of the body of the deceased marked as EXPW- MH, receipt of dead-body marked as EXPW MH-1, seizure memo of axe marked as EXPW MH-2, seizure memo of blood stained soil marked as EXPW-3 and superdnama in respect of a ring marked as EXPW MH-4 bearing his signatures. Six days thereafter, he visited Police Station, Gool in the company of Farid Ahmed and in his presence the accused had confessed his guilt. The witness denied that the accused had made any disclosure statement. He was declared hostile to prosecution and cross examined wherein he deposed that he was cutting grass at a distance of 2/3 chains from the house of deceased. When he reached on the spot, he found both the brothers beating their father. Many people had assembled on spot. On the day of incident when he reached on spot, the accused was not there. When he asked the persons present on spot as to how the deceased had been murdered, they had expressed their ignorance. He had not seen the accused on that day. He had found the body of the deceased lying in the kitchen.

6. **PW Dr. Arshad** deposed that he had conducted postmortem on the body of deceased Mst Rakhela Akhter on 21.9.2005. He found an incised wound 3cm x 5cm x 15 cm on base of skull extending from

left mastoid proto prance to right mastoid proto prance. All the layers of skull were torn along with incision, fracture occipital bone. In his opinion, the death occurred due to the injury to the vital centers of brain caused by sharp edged weapon. Time since death was 12-24 hours at the time of autopsy. He proved the postmortem report marked as EXPW-A. On cross examination, he stated that the injury sustained by deceased was possible by a fall from a hill and could also be caused by a sword.

7. **PW Farid Ahmed deposed** that while coming from the Gharat he was on way to his house when he noticed the accused beating the deceased He rushed towards the house of the deceased. Meanwhile, the accused pushed the deceased inside the room of the house. Thereafter he found the accused closing and latching the door of the room and escaping from the spot. The witness claimed that he was threatened by the accused with elimination if he disclosed the incident to anybody. The witness claims to have called Muneer Hussain and Jamal Din. Nearby Army post was informed of the incident which called the police. Police arrived on spot, seized body of the deceased besides blood-stained soil and axe. Postmortem was conducted on spot. Six days thereafter, he learnt that the accused had been arrested by the police. He went to Police Station where the accused made a disclosure statement in presence of the witness and Muneer Hussain. The witness testified to the contents of seizure-memo of body of deceased, receipt of body of deceased, seizure memo of axe, blood-stained soil and superdnama in respect of ring which bear his signatures. He proved the statement made before

the police. On cross-examination he stated that his Gharat was located at a distance of about 200 meters from the place of occurrence. He was the first person who reached on spot. Infant children of the deceased, one aged two and a half years and the other only three months were also present on spot. Body of the deceased was lying in the kitchen. When the witness was barely five meters away, the accused was leaving after closing the door. Then he entered into the kitchen and called Muneer Hussain who arrived there within five minutes. Muneer Hussain lived at a distance of about 40 meters from the house of deceased. Jamal Din also lived nearby and he too reached there. They had not seen the accused who made good his escape. The deceased was his real sister. He made statement before the police after about 25 days. When confronted with his statement recorded under section 161 Cr PC to the effect that when he unlatched the door of the house and found the body of the deceased with an injury on head which was bleeding, the accused had escaped from the spot. He denied the truth of the statement to the extent of escaping of accused and claimed that he had told the police about the threat emanating from the accused. Army personnel had not visited the spot. Police arrived there on the next day, lifted the axe and sealed it. Police station was at a distance of 15 Kms from the place of occurrence. Villagers stayed on spot overnight. The house of the deceased had two rooms having kitchens. Numberdar and Cowkidar also had signed the documents prepared by the police. Husband of the deceased returned home at night. He had left his home in the morning. The witness claimed that while

coming from his Gharat he had witnessed the occurrence from a distance of about 50 meters. He denied that he had noticed the accused committing murder of deceased. He denied that he had gone there to see the deceased but instead discovered her dead body. The accused had good relations with his wife. The deceased too was having good terms with her husband.

8. PW Jamal Din deposed that he heard cries of Ghulam Farid who called him on spot. He saw the body of deceased lying there. Ghulam Farid and Muneer Hussain reached there before him. Police arrived there on the following day and seized body of deceased. Doctor accompanying the police conducted postmortem of deceased on spot. Nothing was seized in his presence. However, the police had lifted the axe and blood-stained soil. The witness was declared hostile to prosecution and cross-examined. He supported the receipt of dead body of deceased, seizure of axe and blood-stained soil received by the police and identified his signatures on the memos. On cross-examination he stated that his house was at a distance of 20 chains from the place of occurrence. When he reached there, many people had gathered on spot. Body of the deceased was lying in the kitchen. Blood-stained soil and axe lying beside the body of the deceased were seized in his presence. However, the same were not sealed. His statement was recorded on the same day. He was also called to the Police Station a month later where his thumb impressions were taken.

9. PW Abdul Majid, ASI deposed that he conducted investigation in the case. On 20.9.2005 at about 4 PM a wireless message was received from BSF to the

effect that in village Bhiminbas a dead body was lying inside a house. It was the rainy season and the topography was difficult. Thus, there was a delay in reaching on spot. He reached there on the following day in the afternoon. He found that the house of accused was locked. Two infants were in the house. The body of the deceased was found lying in the room after the house was unlocked. The deceased had sustained injury in her head on back side. Blood-stained axe was lying nearby. He prepared the documents including seizure memos. Dr Arshad Ahmed conducted postmortem on spot. He sent the docket to Police Station for registration of the case. The case was registered on 21.9.2005. He conducted the investigation. He sealed the seized articles and got them re-sealed before the Tehsildar. Body of deceased was delivered to her relatives for last rites. Accused was arrested on 25.9.2005 from the house of his relatives. Remand was obtained from the Magistrate. Accused confessed his guilt before him. Witness proved the docket recorded by him and bearing his signatures marked as EXPW AM, site plan marked as EXPW A/M, seizure memo of body of the deceased marked as EXPW MH, Fard Surat-Hall marked as EXPW M-2, receipt of dead body of deceased marked as EXPW MH/1, seizure memo of axe marked as EXPW MH-2, seizure memo of blood-stained soil marked as EXPW MH-3, superdnama of ring marked as EXPW MH-4, imprint of the seized axe marked as EXPW AM-3 and arrest memo of accused marked as EXPW AM-4. He further deposed that the accused had disclosed that he had placed the axe beside the body of the deceased and bolted the door from outside. On cross-examination he

deposed that the FIR was registered on 22.9.2005. He prepared the seizure-memo before registration of the case but had not examined the witnesses. Farid Ahmed had made a verbal statement before him and he had prepared the docket which was submitted to Police Station. He had not recorded the statement of Farid Ahmed. Police Station was already informed through a wireless message when his docket reached there. The seizure memos relating to body of deceased had been prepared on 21.9. 2005 before registration of the case but the same bears FIR number. PW Farid Ahmed had broken the lock of the room. The witness claimed that he seized the lock but the seizure memo was not placed on the record. He claimed that he was aware of the fact that the murder had been committed by the accused as PW Farid Ahmed had claimed that he had seen the accused beating the deceased and dragging her inside the house. He could not examine the witnesses earlier as it was a rainy season, the population was scattered and the presence of militants in the area made the task difficult. However, he denied the suggestion that the militants had committed the murder of deceased. He had enclosed the application, produced by Farid Ahmed before him, with the docket but the same was not traceable.

- 10.** Accused has been examined in terms of mandate of section 342 Cr PC to explain incriminating circumstances emerging from prosecution witnesses recorded at the trial. He denied the allegations leveled by prosecution witnesses and pleaded that he had been falsely implicated by the relatives of the deceased. He raised plea of alibi claiming that on the

date of incident he was away at Katra working as a labourer and his arrest was affected at Katra. It appears that he has examined one Yousuf R/O Thuru as the solitary defense witness who deposed that on 22.9.2005 the accused was working with him at Katra. Defense witness claimed that they were working at Katra since 4/5 months and were putting up together. He learnt after four days that the deceased had died. He visited village where he was told that some unidentified persons had killed the deceased. The witness claimed that the brother of the deceased had falsely implicated the accused. On cross-examination the Defense Witness stated that he could not give the dates when he had gone to work and when he had returned to his home. Sister of the accused had asked him to depose in favour of accused who had committed a crime.

- 11.** Heard the rival sides and perused the record.
- 12.** Learned counsel for accused submitted that the trial court has misinterpreted and misconstrued the prosecution evidence. It is pointed out that out of seven witnesses examined at the trial two independent witnesses have turned hostile to prosecution whereas the solitary eye-witness relied upon by the trial court was an interested witness and not worthy of confidence. Learned counsel further submitted that the testimony of PW Farid Ahmed is full of contradictions and the same could not have been relied upon. It is further pointed out that the Investigating Officer has not sent the seized axe and blood-stained gloves for Expert's opinion to FSL. It is also submitted that there has been a considerable delay in examining the witnesses by the Investigating Officer which creates doubt in respect

of prosecution version. It is pointed out that the FIR has not been proved by PW Farid Ahmed who claimed to be an eye-witness though he has not seen the occurrence and that his testimony does not inspire confidence. Thus, it is contended that the finding of guilt is not justified on evidence brought on record by prosecution. Per contra, learned Sr. AAG submitted that the testimony of PW Farid Ahmed implicating the accused establishes beyond doubt that the deceased was murdered by none else other than the accused. It is submitted that PW Farid Ahmed is a natural witness and his testimony cannot be discarded merely because he happened to be a close relative of the deceased. It is pointed out that the deceased was real sister of PW Farid Ahmed and the manner and circumstances in which the crime was committed clearly establish that the witness had the occasion and opportunity to watch the occurrence in the manner deposed to by him. It is submitted that the evidence brought on record by prosecution proves the guilt of accused to the hilt and the defense plea of alibi stands dislodged. Learned Sr AAG has defended the impugned judgment of conviction and order of sentence.

- 13.** We have given our thoughtful consideration to the arguments advanced at the Bar. The golden thread in the web of criminal jurisprudence is the sacred and inviolable principle that the prosecution has to prove the guilt of accused beyond any shadow of doubt. The fact that the accused has been convicted of offence of murder and sentenced to life imprisonment besides fine, does not absolve this Court of its duty to re-appreciate the evidence upon which conviction is founded. This court has to come

to an independent finding in regard to guilt or innocence of accused on re-appraisal of evidence adduced at the trial.

- 14.** PW Muneer Hussain, who was cutting grass on his land, claims to have been attracted to the scene of offence on hearing an alarm. PW Farid Ahmed asked him to look sharp. Upon reaching there, he found deceased Rakhela lying dead. Apart from other facts, he has proved seizure of body of deceased besides seizure of an axe and blood-stained soil. Seizure memo of body of deceased has been marked as EXPW MH. PW Farid Ahmed too is witness to this document. PW Abdul Majid has proved the site-plan marked as EXPW AM-1. Perusal thereof reveals that the body of the deceased was found lying in Room no. 1 of her house. Investigating Officer has also proved inquest report marked as EXPW AM-2, perusal whereof brings it to fore that the body of the deceased was found with an injury on back side of the head. Testimony of PW Dr. Arshad, who proved the postmortem report of deceased marked as EXPW-A, establishes that the deceased had sustained an incised wound of 3cm x 5cm x 15cm on base of skull extending from left mastoid proto prance to right mastoid proto prance. All the layers of skull were torn along with incision, fracture of occipital bone. He found that the brain membranes were ruptured. Bilateral post. Lobes of cerebrum, cerebellum and pans were extensively damaged. In his opinion, death occurred due to cardiopulmonary arrest subsequent to injury to the vital centers in brain caused by a sharp-edged weapon. The recovery of dead body of deceased from her house with a head injury and the opinion of medical

Expert that the death has been caused on account of an injury to the vital centers of brain caused by a sharp-edged weapon, establishes the factum of deceased having died an unnatural death.

- 15.** Now coming to the re-appraisal of evidence in regard to authorship of crime, be it seen that prosecution relied on direct evidence of PW Farid Ahmed and extra-judicial confession of accused. In so far as extra-judicial confession is concerned, the same does not fall within the purview of section 27 of the Evidence Act and has rightly been discarded from consideration. On its plain reading, the Fard-I-Inkshaf is a confessional statement which does not lay information leading to discovery of a fact hitherto unknown as the statement clearly specifies that an axe used as a weapon of offence was left beside the dead-body of deceased. Fard-I-Inkshaf is hit by section 24 of the Evidence Act and this mode of proof cannot be permitted to establish culpability of accused. It appears that during the course of trial, this mode of proof has been abandoned and rightly so.
- 16.** It is well settled that where the prosecution case rests on the testimony of sole eye-witness, the same must be wholly reliable. This statement of law has been further elaborated in judgment reported in AIR 1991 SC 1735. It was laid down that where the prosecution rests on sole testimony of an eye-witness, same should be wholly reliable. However, it does not mean that each and every type of infirmity or minor discrepancy would render the evidence of such witness unreliable. The credibility of the witness should be tested with reference to the quality of his evidence which must be above board, unblemished

and beyond suspicion. The testimony of solitary eye-witness must impress the Court as being natural, fully truthful and convincing. Such testimony must inspire confidence of such a degree that the Court finds no hesitation in recording the conviction solely on his uncorroborated testimony. This exposition of law was made by Hon'ble Apex Court in Thimoepa Chandappa vs. State of Karnataka reported in (2006) 11 SCC 323. In Ria Singh and ors. Vs. State of Punjab AIR 1965 SC 328 the Hon'ble Apex Court held:-

"Evidence of an eye-witness, who is a near relative of the victim, should be closely scrutinized but no corroboration is necessary for acceptance of his evidence."

The Hon'ble Apex Court reiterated this legal position in State of Rajasthan vs. Om Parkash reported in 2007 (12) SCC 381 as follows:-

"The deposition of a solitary witness who is also related to the deceased can be relied on without corroboration, if the evidence is cogent and not shaken by the defense and same can be the basis for conviction of the accused."

The Hon'ble Apex Court again reiterated the same legal position in Jarnail Singh vs. State of Punjab reported in 2009(1) Supreme 224 as under:-

"Conviction could be based on the sole testimony of a solitary witness provided his presence at the place of occurrence was natural and his testimony should be strong, reliable and free from any blemish."

- 17.** Adverting to the direct evidence as mode of proof, we find that the testimony of PW Farid Ahmed gives a natural account of the events attending upon murder of deceased. The witness is the brother of the deceased. According to his account, as he left his Gharat for his house, he noticed the accused assaulting the deceased. He rushed to the scene of offence. Meanwhile, accused pushed Mst. Rakhela inside the room of her house. Witness claims to have seen the accused bolting the door of the room from

outside and making good his escape. While escaping, the accused threatened the witness with elimination. The witness claims to have called out Muneer Hussain and Jamal Din. He informed the Army camp about the incident and the Army called the police which reached on spot on the following day. The police seized the body of deceased besides an axe and blood-stained soil. The dead body was delivered to witness for last rites after conducting of postmortem. The testimony of this witness has been subjected to a fairly lengthy cross-examination. His testimony has been assailed to shake his credit and brand him as an interested witness. His cross-examination reveals that the Gharat, from which he claimed to be going to his house, belonged to him. According to him, the Gharat was located about 200 meters away from the place of occurrence. He claimed to be alone at that time. Only two infant children of deceased, the eldest one being two and a half years old were present on spot. He was still five meters away when he found the accused bolting the door. He had a brief conversation with the accused. When he unbolted the door and entered into the kitchen, he found body of deceased lying there. He called Muneer Hussain living at a distance of about 40 meters from there. Muneer Hussain reached there. Jamal Din living at a distance of 50 meters also reached there. According to his account, Muneer Hussain and Jamal Din had not seen the accused who had absconded. It appears that the statement of this witness was recorded by the Investigating Officer around 12 days after the occurrence though the witness claims to have made statement after about 25 days of the incident. When confronted with

his statement recorded under section 161 Cr PC, he supported the statement to the extent that he unbolted the door of the room and found body of the deceased lying on the ground with head injury which was bleeding and an axe was lying beside it. However, he did not support the statement to the extent that the accused Mohd. Baksh had escaped from the spot. He claims to have told the police that the accused had threatened him but the same does not find reflection in his statement recorded under section 161 Cr PC. He claimed that he had deputed two persons to report the matter at the military camp. No Army personnel had visited the spot. His cross examination has further revealed that the axe, used as a weapon of offence, was lifted by police from the spot, sealed and seized in presence of villagers. Police station was at a distance of 15 kms from his village. The witness has refuted the suggestion that the accused was away at Katra on the day of occurrence. His cross examination has further revealed that the husband of deceased namely Mohd. Baksh was away from home on that day and he had returned at night. It is in his cross-examination that he had covered around 60 meters from his Gharat and he had witnessed the occurrence from a distance of about 50 meters. He refuted the suggestion that he had seen the accused committing the murder of deceased. He also refuted the suggestion that he had gone to see the deceased and when he reached there, he discovered dead body of deceased lying in her room.

- 18.** On close scrutiny of testimony of PW Farid Ahmed it transpires that he is a natural witness who was returning from his Gharat located at a distance of

about 200 meters from the place of occurrence and he had the occasion and opportunity to witness the occurrence from a distance of about 60 meters as claimed by him. It has not been demonstrated in the cross-examination of the witness that the witness suffered from visual impairment rendering him incapable of watching the event while coming from his Gharat or that the place outside the house of the deceased, where she was being subjected to assault and beating by accused, was not visible from the pathway used by the witness while proceeding from the Gharat towards his house. In absence of suggestions to that effect in cross-examination, the assertion of witness that he watched the occurrence from a distance while coming home from the Gharat, cannot be disbelieved merely because he happened to be the brother of the deceased. It is well settled that testimony of a related witness cannot be discarded merely on the ground of relationship. In absence of any motive attributed to PW Farid Ahmed for false implication of accused, the testimony of the said witness cannot be rejected on the ground of interestedness. It is inconceivable that a brother would spare the real killer of his sister and rope in an innocent person. Viewed from this perspective, eye-witness account of PW Farid Ahmed cannot be termed unreliable and unworthy of credit.

- 19.** Looking for corroboration to the testimony of Farid Ahmed, we find that PW Muneer Hussain who was cutting grass on the land nearby had rushed to the spot on hearing cries of PW Farid Ahmed .He has deposed in unambiguous terms that he found the body of deceased lying on spot and when he enquired from PW Farid Ahmed about the incident,

he was told that the accused had escaped after committing the murder of deceased. The witness found the body of deceased drenched in blood and blood-strained axe lying by its side. The witness claimed that he had come across the accused on the way. The testimony of this witness corroborates the version of witness Farid Ahmed in material particulars on the aspect of his being present on spot and the witness Muneer Hussain rushing to the spot on hearing the cries of PW Farid Ahmed. The testimony of the witness who found the deceased lying on spot in a pool of blood with an axe used as a weapon of offence lying by its side also corroborates the presence of accused near the place of occurrence as the witness while rushing to the spot on hearing cries of PW Farid Ahmed, came across the accused on the way. Cross-examination of PW Muneer Hussain reveals that he was cutting grass 2/3 chains away from the house of the deceased. The accused was not on spot at that time. However, the witness changed his stand after being declared hostile by prosecution in regard to his previous statement on the aspect of disclosure statement attributed to accused and denied having met the accused on the date of occurrence. This however, does not reflect upon his corroborative version in regard to the factum of his reaching the spot on hearing cries of PW Farid Ahmed, discovering the dead body of deceased lying in a pool of blood and learning about the murder of deceased at the hands of accused from PW Farid Ahmed. PW Jamal Din corroborated version of PW Farid Ahmed by deposing that he had rushed to the spot on hearing his cries. He found body of deceased lying there. He has stated in

unambiguous terms that PW Farid and Muneer Hussain were present on spot when he reached there. This witness too has been declared hostile by the prosecution as he declined to support the prosecution case in regard to seizures affected on spot though he admitted that the police had lifted an axe and a sample of blood-stained soil from there. In his cross examination, he supported seizure of axe vide EXPW MH-2. It is in his cross examination that he reached on spot at about 11 A.M. The police reached there on the following day. He had seen the body of the deceased lying in the kitchen. It appears that the testimony of this witness on the aspect of his being attracted to scene of offence on hearing cries of PW Farid Ahmed has not at all been assailed in his cross-examination. Nothing has been elicited in the cross-examination of PW Muneer Hussain and Jamal Din to demonstrate that their testimonies were tainted on account of being inimical to the accused or that they had a motive for falsely implicating the accused.

- 20.** On careful re-appraisal of their testimonies, we have no reason to doubt their status as independent witnesses who amply corroborate testimony of PW Farid Ahmed and instill confidence in his version in regard to the events and circumstances attending upon the murder of deceased. The objections raised by accused in this regard are accordingly repelled.
- 21.** Testimony of PW Farid Ahmed, the solitary eye-witness, being found capable of inspiring confidence implicates the accused as the author of crime of murder of the deceased. Admittedly PW Farid Ahmed did not witness the act of deceased being assaulted with an axe. He never came up with the version that

he had seen the accused causing fatal blow to deceased with an axe. He made no effort to gloss over the truth. He watched from a distance the accused beating the deceased. While he was trying to cover the distance, he noticed the accused pushing the deceased inside her room and after some time, saw him coming out of the room and bolting the room. On reaching the spot, he was threatened by the accused who managed his escape from there. Upon unbolting of the door, PW Farid Ahmed found the deceased lying on the floor of the kitchen in a pool of blood which was oozing out of injury sustained on the back side of her head. The deceased had an instantaneous death which is rendered probable in view of evidence tendered by Medical Expert who found that the deceased died due to cardio pulmonary arrest subsequent to injury to the vital centers in brain caused by a sharp edged weapon. Testimony of PW Farid Ahmed clearly establishes that none else other than two infant children of deceased with eldest being barely two and a half years old were around when the accused, continuing with assault of deceased, pushed her inside her room and emerged out shortly thereafter making good his escape after bolting the door. It is true that the testimony of PW Farid Ahmed in regard to factum of threat emanating from accused does not receive corroboration from any independent source but that does not create any dent in prosecution version in as much as, even apart from that fact, none else other than the accused can be held responsible for causing death of deceased in the manner alleged by prosecution. Testimony of PW Farid Ahmed having been found reliable and worthy

of confidence, cannot be discarded even in regard to this fact once the presence of accused on spot is believed.

- 22.** Testimony of PW Mohd Mansha-husband of deceased brings it to fore that the accused – his real brother, was dissatisfied with the partition of estate of his father and he used to extend threats to Mohd Mansha. His testimony establishes that threat to eliminate the witness or his wife (the deceased) had emanated from the accused merely three days prior to the incident of murder. The witness had gone to Thuru in the morning of the day of occurrence to collect food grains. His testimony indicates that the accused was harboring ill-will against him and the deceased and he got an opportune time to choose a soft target when the poor defenseless woman was alone in her house with her two infant children. He has refuted the suggestion that Mst Rakhela died in consequence of having a fall from a tree. The suggestion made to him bears no nexus with the defense plea of alibi raised by the accused in his examination under section 342 Cr PC who has adduced evidence in support of such plea. The witness came across the deceased when witness was going to Pian for collecting food grains but there was no conversation between them. However, when the witness was returning with food grains, he was informed about the murder of deceased. On reaching home, he found the body of the deceased lying on the floor in living room.
- 23.** Learned counsel for appellant has pointed out some contradictions in prosecution version which, according to him, rendered the prosecution version highly doubtful. It is pointed out that the testimonies

of PW Farid Ahmed, Jamal Din and Muneer Hussain revealed that the body of deceased was lying in the kitchen while husband of deceased-Mohd Mansha maintained that when he reached the village, he found the body of deceased lying on the floor of living room. The inconsistency in regard to location where the body of deceased was lying is sought to be projected as a contradiction on material particulars of the case but a closer look at evidence would not justify the argument advanced. PW Farid Ahmed has stated in unambiguous terms that the house of deceased had two rooms, both having kitchens. It is manifestly clear that the kitchens formed part of the living rooms. Thus, no contradiction can be said to have been brought out on this score. Learned counsel for appellant has also referred to testimony of Investigation Officer, Abdul Majid ASI to project that the author of crime was unknown as the Investigation Officer, Abdul Majid had unlocked the room where the body of deceased was lying when he visited the spot on the following day of occurrence. This argument is without substance in as much as the testimony of IO runs counter to FIR and the ocular testimonies of Farid Ahmed, Jamal Din, Muneer Hussain and Mohd Mansha and much significance cannot be attached to the same.

- 24.** On appreciation of direct evidence of PW Farid Ahmed, it is difficult to attach any importance to the version of Investigation Officer to the effect that the room where the body of deceased was lying was locked when he visited the spot on the following day of occurrence. It is unfortunate that the Investigation Officer has made departure from the prosecution

version on many aspects of the case which speaks volumes about his professional efficiency. To demonstrate the same, be it seen that the Investigation Officer has claimed in cross-examination that PW Farid Ahmed had filed a written complaint with him which he had sent to the Police Station along with his docket for registration of case. The statement appears to have been made oblivious of the fact that the case had been registered on the basis of statement of PW Farid Ahmed recorded by the Investigating Officer Abdul Majid at Bhimberbas on 21.9.2005 and not on the basis of a written report filed before him by PW Farid Ahmed. No lapses in investigation have been pointed out. A closer look at the testimony of Investigating Officer shows that he has cared least to scrupulously depose about the facts coming to his knowledge and made fool of himself by making ridiculous statements in cross-examination on several aspects of investigation. At one stage, he deposed that informant Farid Ahmed had made a statement before him and he had written the docket for registration of case on the basis of such statement but he had not recorded the statement. This is followed by another version that Farid Ahmed had filed a written report in regard to occurrence and he had dispatched the same to Police Station along with his docket but the same did not form part of record. The conduct of Investigating Officer in witness-box speaks volumes about his sense of responsibility. Be that as it may, it is well settled that any irregularity or illegality in investigation cannot be permitted to reflect upon the case and no benefit can be derived by accused from such irregularity or illegality. It is shocking that the

Investigating Officer has not stood on a firm ground while deposing in the case and despite there being no flaw in investigation; he has blown hot and cold for reasons unknown. The officers dealing with the investigation of sensitive cases like murder cannot be permitted to behave in such a manner and conduct themselves in an irresponsible fashion as has been done by the Investigating Officer in the instant case. Investigating Officer Abdul Majid needs to deal with for his delinquent conduct.

- 25.** On re-appreciation of evidence of solitary eye-witness corroborated by other ocular evidence and the report of Medical Expert we find that the prosecution has discharged its burden of proving guilt of the accused beyond reasonable doubt. The evidence brought on record is trust-worthy and establishes complicity of accused as the author of crime beyond any shadow of doubt. The solitary defense witness has knocked the bottom of the defense plea of alibi by admitting that the sister of accused had asked him to depose in favor of accused who had committed the crime. The conclusions drawn by the learned Sessions Judge on appreciation of evidence are well merited and we are of the considered opinion that the judgment of conviction rendered by the trial court does not suffer from any legal infirmity or factual frailty. The finding of guilt of accused is based on proper appreciation of evidence and there is no scope for interference with the same.
- 26.** We, accordingly, find no merit in the instant appeal. The same is dismissed. Confirmation reference is allowed. Result of the appeal/confirmation proceedings be certified to the learned trial court in

terms of provisions of section 425 Cr PC for carrying out the sentence imposed on the accused. Record of trial court be returned forthwith.

27. Copy of the judgment be sent to the Director General of Police, J&K, Jammu for appropriate action against the Investigation Officer, Abdul Majid, the then Assistant Sub Inspector. Action taken shall be communicated to the Registry of this court within three months.

28. Appeal file be consigned to records.

(Bansi Lal Bhat)
Judge

(Hasnain Massodi)
Judge

Jammu:
24/03/2014
RSB, Secy

This judgment is pronounced by me today in terms of Rule 138(4) of the Jammu and Kashmir High Court Rules, 1999.

(Tashi Rabstan)
Judge

Jammu
24.03.2014