

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

**Reserved on 04.08.2023**

**Pronounced on 19.03.2025**

**CrIa (D) No. 4/2021 c/w**

**CrI Ref.(L) No. 1/2021**

**CrIa (D) No. 7/2021**

**Mohammad Akram Wani & Ors.**

...Petitioner(s)/Appellant(s)

Through: Mr. S.T. Hussain, Sr. Adv. with  
Ms. Nida Nazir, Adv. (CrIa (D) No. 4/2021)  
Mr. Rizwan-ul-Zaman, Adv. with  
Mr. Shafi Bhat, Adv. (CrIa (D) No. 7/2021)

**Vs.**

**State Th. Police Station**  
**Awantipora**

...Respondent(s)

Through: Mr. Mohsin Qadri, Sr. AAG with  
Mr. Taha Khalil, Assisting counsel

**CORAM:**

**HON'BLE MR. JUSTICE ATUL SREEDHARAN, JUDGE**

**HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE**

**JUDGMENT**

**Per Atul Sreedharan J.**

1. The present appeals have been filed by the Appellants who are aggrieved by the judgment dated 19/02/2021, passed by the Court of learned Additional District and Sessions Judge, Pulwama, in the case arising from FIR No. 96/2012 registered at Police Station, Awantipora. The case against the Appellants was instituted on

11/09/2012 and decided on 19/02/2021 after a trial spanning eight years.

**2. In Cr.A(D) No. 4/2021, Appellant No. 1 is Mohammad Akram Wani, Appellant No. 2 is Mohammad Ashraf Wani, Appellant No. 3 is Ishfaq Ahmad Wani and Appellant No. 4 is Mst. Zooni. Ishfaq Ahmad Wani, who has also filed a separate appeal which is Cr.A(D) No. 7/2021.**

**3.** The Trial Court acquitted five accused persons and convicted the four Appellants herein. The Appellant No. 1 to 3, Mohammad Akram Wani, Mohammad Ashraf Wani and Ishfaq Ahmad Wani have been convicted for offences u/ss. 302 r/w 120-B and 201 IPC while the Appellant No. 4, Mst. Zooni has been convicted for the offence u/s. 201 IPC.

**4.** *Per* prosecution, on 30/06/2012, Police Station, Awantipora received information from reliable sources that at Medora, one Farooq Ahmad Wani (hereinafter referred to as the “deceased”), son of Mohammad Akram Wani, resident of Medora, has been killed by his father, step mother, step brother and relatives at their home and thereafter the body was concealed at an unknown place. The motive was dispute over ancestral property. On receiving the information, FIR no. 96/2012 (Ex-P/2) was registered for offences under Section 302 read with

Section 34 of the Ranbir Penal Code (RPC).It is relevant to mention here that at the time the FIR was registered, the police had not recovered the body of the deceased, and most importantly, the appellants were named as accused in the FIR. The informant is anonymous at the time when the FIR was registered and has remained so throughout the investigation and trial. Elsewhere in this judgement, this Court shall address the relevance of the FIR being registered even before the body was recovered and where the informant was never examined as a witness.

5. The police arrived at the residence of the Appellant No. 1 and questioned him regarding the whereabouts of the deceased to which the Appellant No.1 informed the police that there was a quarrel between the Appellants and the deceased after which, the deceased jumped out of an open window and ran away.
6. The Appellant No.1 was taken into custody under Section 54 of the Cr.P.C for interrogation and, at Police Station Awantipora, in the presence of witnesses, the Appellant No.1 confessed that he, alongwith his son the Appellant No.2, his wife Zooni the Appellant No.4, and his daughter-in-law, Ms. Sakeena and, his nephew Ishfaq Ahmad Wani the Appellant No.3, assaulted the deceased with an Axe and a Danda in the room of the deceased at

8:30 pm on 29/06/2012 and killed him. Thereafter, they wrapped the body in gunny bags and threw it in a dry well at a place commonly known as Kanildar, situated in the fruit bearing orchard of Abdul Rehman Wani at Medora.

- 7.** It is further the case of the prosecution that on 03/07/2012, A2 and A3 were arrested and during interrogation, A2 Mohammad Ashraf Wani also gave a confession to the police admitting that all the accused, under a well-knit conspiracy, have killed the deceased. A2 also disclosed where the weapons used in the offence was concealed which later led to the recovery of an axe and a *Danda*.
- 8.** As regards the motive, it is the case of the prosecution that the deceased, who was the unmarried son of A1 from his first marriage, was residing in one room of the house belonging to A1 and was demanding his share in the movable and immovable properties of A1 and in this regard, had on a number of occasions damaged the standing crop and unripe fruit belonging to A1. In the narrative of the prosecution, it is also disclosed that the deceased had sought the intervention of the Ahli Baradari & Panchayat members, but on account of the non-cooperation of A1, the property dispute remained unresolved. It is also the case of the prosecution that on

account of the humiliation and harassment they faced at the hands of the deceased, and to grab the share of the deceased in the property, they conspired and murdered him.

- 9.** This is the prosecution's story as revealed from paragraph 1 to 7 of the Trial Court Order which has not been disputed by either side. Thus, the fulcrum of the prosecution's case is based upon the confessions of A1 and A2 and the resultant recovery of incriminating articles.
- 10.** The Ld. Counsels for the appellants have argued that the case against the appellants is one of no evidence. They say that the case is entirely based on circumstantial evidence and the evidence is fragmented and does not constitute a contiguous chain. They have further submitted that the entire case is based on the confession given to the police u/s. 27 of the Evidence Act, the seizure of articles from the scene of crime at the behest of A2 and the recovery of the body of the deceased at the behest of A1. They have also argued that there are grave contradictions among the various witnesses and that the confession also was extracted through coercive measures.
- 11.** The Ld. Counsel for the State on the other hand has submitted that the Trial Court judgement is well reasoned based on a proper appreciation of the evidence

on record of the basis of which the prosecution has been able to prove its case beyond reasonable doubt against the appellants. He has also argued that the confessions of the appellants can be used to prove the case against them as it has been recorded u/s. 27 of the Evidence Act and that the same has led to the recovery of artefacts connected to the crime.

**12.** In order to establish the culpability of the accused persons, the prosecution examined twenty-nine of the thirty-four witnesses till 25/01/2017 on which date, evidence for the prosecution was closed. Besides the oral evidence, the prosecution had produced and relied upon a number of documents. After recording the testimony of the prosecution witnesses, the incriminating material against the accused persons was put to them u/s. 313 Cr.P.C and the only defence raised by the accused was of false implication by the prosecution.

**13.** The evidence is entirely circumstantial. The prosecution has also stated that the evidence which has been brought on record conclusively establishes the guilt of the accused beyond all reasonable doubts. Defence on the other hand has contended that the prosecution has failed to connect the fragmented pieces of information to complete a contiguous chain of circumstances required to convict the Appellants. It is also the case of the

defence that recoveries attributed to A2 are extremely doubtful and it is not proved whether the articles were recovered from the ground or from the first floor of the house. It is also the case of the defence that the statements of material witnesses do not corroborate each other in any manner let alone on material particulars. It has also been argued that the disclosure statement attributed to A1 has not been made voluntarily but has been obtained under duress by the police. The defence has further taken the stand that the recovery of the dead body of the deceased is also shrouded in doubt as the site was already known to the people who had assembled on the spot even before the police had reached the site.

- 14.** In order to appreciate the nature of the evidence against the Appellant herein, it would be essential to briefly summarise the testimony of the prosecution witnesses. For the sake of clarity, this court has segregated the witnesses under the following heads of **(1) witnesses relating to confession, (2) witnesses relating to recovery of weapons used, (3) witnesses relating to recovery of body of the deceased, (4) forensic evidence and (5) police witnesses.** The original depositions are handwritten in Urdu which is indecipherable and incomprehensible to one of us (Atul Sreedharan J.) and so, this Court has relied upon the

English translation of the depositions given by the Ld. Counsel for the Appellant No.3. The Union Territory has not raised any objections with regard to the English translation and has also relied upon the same during their arguments. Where, in the discussion of the evidence, the part that appears in bold is the opinion of the Court on the evidence adduced.

### **WITNESSES RELATING TO CONFESSION**

- 15. PW1 is Ali Mohammad Wani**, he knows the accused and the deceased. On 30/06/2012 at about 9:00 AM, he heard the rumour that the deceased has been killed. He accompanied the police from P.S Medora and reached the house of A1, and in his presence, the police enquired from them about the deceased to which A1 and A4 informed the police that there was an altercation between A1 and the deceased who, upon being beaten by A1 with a lathi, fled through an open window. The police took A1 to police station Awantipora and the witness and one Bilal Ahmed were also directed to accompany them.
- 16.** At the police station, on account of aggressive interrogation by the police, at around 3:30 PM, in the presence of the police and the witness, A1 confessed that on 29/06/2012 at about 8:30 PM, when the deceased entered the house of A1 carrying eggs and milk, and was opening the lock with the assistance of his mobile light,



the accused Mohammad Ashraf (A2) gave one blow with an axe on the head of the deceased who in order to save his head, raised his hand. The first blow landed on the head of the deceased and the other blow hit his hand. It is further stated by the witness that as per the confession of A1, co-accused Ishfaq gave the blows of “Danda” on the legs of the deceased.

- 17.** A1 further stated in the presence of this witness that he (A1) snatched the Danda from Ishfaq and struck the deceased, upon which the deceased fell down. A-1 also disclosed that A-4 and A-5 (both acquitted) were guarding the main door and had bolted it. A-1 further stated that the ladies brought two gunny bags in which all the accused put the dead body of the deceased. One gunny bag was wrapped towards the head of the deceased and the other was wrapped towards the left feet. Thereafter the body was kept in the house under the staircase and after midnight, the accused persons threw the dead body in a dry well in Kanildar and covered it with straw. This statement made by A1 was written down by the police in his presence and the signature of the witness and that of Bilal Ahmed was obtained as witnesses. Accused Mohammad Akram is stated to have affixed his thumb impression upon the statement.

**18.** The witness says that A1 led the police towards the well in which the dead body was disposed of. The witness states that many people had assembled there and that the well, being deep, nothing was visible from above. The body was taken out and kept in the police station as it was too late in the day to send it for post mortem. The witness further states that during postmortem, the shirt was removed from the dead body and from its pocket ₹100 currency note was recovered. The witness further states that when the confession statement of the accused was being recorded, the Executive Magistrate was also present.

**19. In cross examination,** the witness states that in the morning of 30/06/2012, when the police entered the house of A1, the witness also accompanied the police. Before that, the witness says that they were in the market where there was a rumour that the deceased had been killed. He further states that in the market he found the Namberdar accompanying the people. He says he is unable to recall if the Namberdar, Chowkidar and the Panch were called to the police station. The witness says that when the confession statement of A1 was recorded, the Namberdar, Chowkidar, Sarpanch and the other respectable persons were not present. The witness further says that for recording the confession statement

of A1, the police did not take him before any Judge. Regarding the narrative of the incident, the witness states that the accused Mohammad Ashraf said that he gave a blow with an Axe on the head and after one blow the deceased, in order to save his head, raised his hand. The first blow struck his head and the second hit his (deceased) hand. The witness states that co-accused Mohammad Ishfaq struck the deceased with a *Danda*. Thereafter, he states that the accused No. 1 Mohammad Ashraf took the *Danda* from co-accused Ishfaq and struck the deceased who fell down. He further says that A1 narrated before the police in his presence that the female accused persons No. 4 and 5 were guarding the main door of the house which was locked from inside. The role of the ladies was to bring two gunny bags in which the body was later wrapped and that they assisted in the disposal of the body. He has become a witness to Exhibit P-1 which is the disclosure statement of A1. He is also a witness to Exhibit P 1/1 which is the memorandum of seizure of the wearing apparels of A1. He is also a witness to Exhibit P1/2 which is the shirt, under shirt and ₹100 which belonged to the deceased. He is also a witness to Exhibit P<sup>1</sup>/<sub>4</sub> which is the disclosure statement of accused No. 2 Muhammad Ashraf Wani.

**20. PW2 Bilal Ahmed Khan**, like PW1, this witness says that he knows A1 and the deceased. The first paragraph of his deposition gives the impression that this witness is an eyewitness. He says how there were differences between the deceased and A1 because of the unwillingness of A1 to part with property in favour of the deceased which according to the deceased was his share in the property. The witness also describes how the deceased had tried to involve members of the society as also the masjid committee in order to resolve the deadlock. However, no solution was forthcoming as A1 was adamant on not parting with any share in the property. The witness then gives an account of what happened on the night of the incident as to how the deceased returned home between 8 and 8.30 PM and how he was assaulted by the appellants as he was opening the door of his house and how he was assaulted with an axe by A1 on the head, which is at variance with the version given by PW1 who says that it was A2 who assaulted the deceased on the head with an axe. This witness also says that A1 was taken to the police station where A1 stated that he has nothing to do with the disappearance of his son but later, at 2.30 PM, A1 confessed to his crime saying that he had killed the deceased so that he did not have to share his property and disposed of the body in a well in Kanildar,

which is far from the habitation in Medora PS. The witness further stated that when the confession of A1 was being recorded at the police station he and his maternal uncle Ali Mohammad Wani (PW1) were present at the police station. This witness has also stated that the confession statement of A1, as read over in court, is correct. He has also stated that when the confession of A1 was being recorded by the police, the executive magistrate was also present. He is also a witness to the recovery of the dead body of the deceased and has also mentioned about the injuries present on the body. He is also a witness to the confession statement made by A2 in the presence of the police, the magistrate and PW1. He states that upon the confession made by A2 (to the police), the blood-stained axe and the *Danda* used in the offence was seized from the house where the murder was committed. He has proved the seizure memo of the axe and *Danda*. He has identified these objects before the Trial Court. He also states that A1 reiterated his confession at the site where the body was recovered, which was videographed.

**21. In cross examination**, the witness says that he had no personal knowledge of the facts of the case as on the morning of the discovery, he had heard that the appellants killed the deceased and disposed of the body

in the well. **Thus, the witness's testimony is hearsay, and his knowledge of the facts are based on the confession of A1 and A2 given to the police which was recorded in his presence.** He states he is the nephew of PW1.

- 22.** As regards the confession of A1, the witness says that initially A1 did not admit having committed the offence and stated that he is innocent. He further says that the Dy.SP, called the brothers of A1, namely Abdul Rashid Wani, Mohammad Hussain Wani, Ghulam Mohammad Wani, and Abdul Samad Wani to the police station and as suggested by the defence, these persons were detained in the police station for many days. He also admitted the suggestion that the Dy.SP had detained the sons of A1 namely, Shabir Ahmad, Mohammad Ashraf and Mansoor Ahmad, in the police station for about five days. He accepts the suggestion put to him by the defence that he had not seen a single act of the appellants that constituted the offence. He says that neither he nor his uncle (PW1) gave the first information to the police regarding the offence. He further says when the Dy.SP seized the axe and *Danda*, all the people were outside the house and the seizure memo was prepared outside the house.

**23. PW3Abdul Rashid Wani**, this is a witness to subsequent events relating to the investigation of the case. He has been declared hostile. He has stated that he has no personal knowledge about the offence, that the statement u/s, 164A Cr.P.C given by him before the Magistrate, was not out of free will, the confession statement of A1 was not recorded in his presence though the same bears his signature, that he did not see PW1 and PW2 at the police station when he was summoned there, that he heard that the dead body of the deceased was recovered at 6 PM. **In cross examination** by the defence, the witness says that he was detained for twenty-two days and was never produced before the Magistrate, his brothers Mohammad Hussain, Ghulam Mohammad and Abdul Samad were detained by the police was for eighteen days, that A1 and his three sons Shabir Ahmad, Mohammad Ashraf and Mansoor Ahmad were detained in the police station for two months without production before a Magistrate, that the police told him and his brothers that they would be released only if they testified against the appellants, while in police custody he was regularly beaten and that he gave the statement against the appellants only to escape harassment by the police.

**WITNESSES RELATING TO RECOVERY OF WEAPONS USED AND RECOVERY OF BODY**

**24. PW4 Abdul Hamid Tantray**, he says that the crowd collected at the residence of the appellants upon hearing the rumour that the deceased had been murdered, though he did not go there. He says that he reached the spot from where the body had been recovered and that A1 pointed to the well when asked by the police. He went to the residence of the deceased and witnessed the recovery of the axe and *Danda* which was recovered from the place pointed out by A2, and that he is also a witness to the process by which the police collected stains from the scene of occurrence. The axe and the *Danda* were not assigned any special mark by the police. **In cross examination**, the witness states that source of information relating to the murder was a rumour doing the rounds in the morning of 30/06/2012. He states that none of the accused had made a confession in his presence and that at the time of recovery of the dead body, there were ten thousand people present at the site of recovery. **PW5 Abdul Ahad Tantray**, has stated similarly PW4 in his chief examination. There is nothing significant in his cross examination.

**25. PW6 Ghulam Mohammad Yatoo**, he is the Namberdar of the village and his testimony is significant. In his chief examination, the witness states that a rumour spread in the village that Farooq Ahmad Wani has been murdered.



He called Ghulam Mohammad Khan, the chowkidar of the village to ascertain the fact, which was confirmed by the chowkidar. He says he informed the police upon which the police reached him and together they went to the house of A1. He is a witness to the recovery of blood stains from the scene of occurrence and also the axe and the *Danda* which were recovered at the instance of A2. **In cross examination**, the most significant statement made by this witness is that the police had detained the brothers of A1, namely Abdul Samad and Abdul Rashid, in the police station for fifteen days only because A1 had denied committing the offence. He denies the suggestion that the Dy.SP had detained three sons of A1 but admits that one son was taken into custody. He says that in his presence, the Executive Magistrate and the Dy.SP did not affix their signatures on the seizure memos. He accepts as correct the suggestion that none of the accused persons had confessed in his presence. **The testimony of this witness discloses an element of coercion by the police in securing the confession of A1. Also relevant is the fact that this witness has not been declared hostile by the prosecution and therefore, his statement relating to the detention of the brothers of A1 for fifteen days can be taken against the prosecution.**

**26. PW8 Ghulam Mohammad Khan**, this witness is the chowkidar. He has proved the seizure of the blood stains from the room occupied by the victim. He is also the witness to the seizure of the axe and *Danda* at the instance of A2. A part of his statement in chief is significant and different from the other witnesses. He states that he had brought the brothers of A1 to the police station upon the directions of the Dy.SP as A1 was not willing to confess. He says that the Dy.SP and the police party along with A1 went to the orchard at Kanildar. About five to six hundred people had already gathered there and the Dy.SP asked the people to be quite and hear what A1 has to say. There, near the well, the Dy.SP told A1 that the media and the press was there and that he should truthfully state what he knows. Upon this, A1 stated to Dy.SP that the body of the deceased was disposed of in the well. **This witness has not been declared hostile, and this part of his statement is made in his examination in chief. The narrative reflects, that the people in the area had already gathered near the well knowing what lay concealed therein.** A1 was taken near the well and was asked about the deceased by the Dy.SP to which A1 replied that the body of the deceased was in the well and the electronic media and the print media recorded the

confession. **In cross examination**, this witness states that it was the relatives of the deceased (from his mother's side who was the first wife of A1, whom he divorced) who informed the Namberdar that the deceased has been murdered.

### **POLICE WITNESSES**

**27. PW 12 Ghulam Mohammad ASI**, he says that he was in charge of the police station Awantipora on the relevant date as the SHO was on leave. The witness says that at 10 AM on 30/06/2012, information was received from reliable sources that at Medora, the previous night, one Farooq Ahmad Wani has been killed by his father (A1) along with other family members and that the body has been concealed at some unknown place. As the information was found to be reliable, FIR No. 96/2012 was registered for the commission of an offence u/s. 302 r/w 34 RPC. **The interesting aspect of this witnesses statement is that in a case where there are no eye witnesses, the source informant categorically states that the deceased was murdered, and that too by A1 and the other co-accused persons and on that basis, the FIR is registered against the appellants who are named in the FIR, even before the recovery of the body or the Post Mortem Report. It ought to have spurred the police to investigate as to how, the**

**source informant had this information that the son of A1 was murdered even before the recovery of the body and whether, the source informant was an eyewitness to the incident, and if not, was the source informant the actual killer and that was why he knew exactly what happened to the deceased when none other in the entire village had an inkling? However, the police do not pose these questions to itself and so, does not even investigate in that direction.**

- 28.** The witness further says that he went to the house of A1 and upon questioning him, A1 stated that there was an altercation between A1 and the deceased the previous night over share in property during which, A1 is said to have lightly beaten the deceased who ran away through a window. However, the witness not being satisfied with the answer, arrested A1 and took him to the police station and asked PW1 and PW2 to accompany them to the police station. There, A1 is said to have confessed to the offence and stated that the deceased was persistently asking for his share in the property and so on the night before, A2 struck the deceased on the head twice with an axe and A3, struck the deceased with a *Danda* and that A1 also struck the deceased with the *Danda*. He further says that the body was recovered at the instance of A1 and that there were no external injuries on it when the

same was removed from the well. **In cross examination,** the witness says that the source informant was actually the Namberdar (PW6) who informed this witness telephonically. **The Namberdar however, in his testimony says that he heard a rumour that the deceased has died, and he sent the chowkidar to confirm the rumour. The Namberdar does not say that it was A1 and the others who had murdered the deceased.** He further states that he did not inspect the room in which the deceased stayed as it was locked and A1 is alleged to have told the witness that the key to the room was not with him. **This contradicts the statement given by the seizure witnesses who state that the police lifted blood stains from the room of the deceased on the same day on which the body was recovered.** The witness further states that PW1 and PW2 who were witnesses to the memorandum of A1 u/s. 27 of the Evidence Act, were related to the deceased from his mother's side. He says that he had seized the blood-stained apparel of A1 and that he had checked the *Ganjeen* where the body was kept during the day, but did not find the axe. He further says that he did not find the *Danda* on the roof top when he went there for the first time. He also says that he had found blood stains on the walls of the room occupied by the deceased but not on

the floor. He says that the FSL personnel had collected the blood stains though they did not video graph the scene of occurrence. He says that it is evident from the videography that the SDPO Awantipora, one Inspector and police personnel are taking the accused towards the well where there are a large number of people. When the Dy.SP along with A1 reached the spot (well) fifty civilians were present there around the well. **The statement of this witness reveals that the site of the body was known to the members of the public who were already there even before the police reached the site with A1.**

**29. PW34 Tariq Ahmad**, he is the Inspector and SHO of PS Awantipora. He was on leave and that is why the initial investigation was done by PW12. He states that he has recorded the confession of A2. He states about the seizure of the evidence from the scene of crime and how the axe and the *Danda* were seized at the behest of A2. **In cross examination**, the witness states that the confession of A2 was recorded upon the dictation given by the witness to his reader.

### **FORENSIC EVIDENCE**

**30. PW26 Mohammad Yousuf Wani**, this witness is the Laboratory Assistant, Pulwama. He says he collected five pieces of blood stained thermocol and handed it over to the police. As regards the axe and the *Danda*, he is

uncertain if there were any blood stains on it when he seized them. **In cross examination**, he says that the scene of occurrence, was a room that was mud coated and that he did not find any blood on the walls (**which contradicts the statement of the seizure witnesses who say that there was blood on the walls**). However, in the corner of one of the walls he found blood stains which he collected with a gauze.

**31. PW27 Nazir Ahmad Dar**, at the material point of time, this witness was the Incharge FSL Unit at Pulwama. He says that at the place of occurrence, he handed over the blood-stained axe and *Danda* to the police along with five pieces of blood stained thermocol. In chief examination he also states that no fingerprints were found on the axe and *Danda*. **In cross examination** he says that he did not conduct any test at the site to confirm whether the articles were blood stained.

**32. PW31 Dr. Mohammad Yusuf Rather**, was the Assistant Surgeon SDH Pampore. In his examination in chief, he says that he performed the postmortem of the deceased and there was only one injury on the head which led to the fracture of the skull, causing death. Besides that, there were no other external injuries anywhere on the body of the deceased. The cause of death has been given as cardiopulmonary arrest due to brain damage. **On**

**cross examination**, the witness says that he did not measure the dimensions of the injury. He further says that the occipital bone **(does not mention whether it is the right or the left occipital bone)** was fractured in parts. He further says that the nature of the injury suggests that no blunt weapon was used. **The postmortem report and the testimony of the doctor is most perfunctory. He does not even describe the nature of the injury seen whether the same is a lacerated wound or an incised wound. He has failed to measure the dimension of the wound. He has failed to state categorically whether the injury could have been caused by an axe. Though, in cross examination he does say that the injury could not have been caused by a blunt instrument. Upon a question put to him by the Ld. Trial Court, he says that the injury mentioned in the postmortem report was caused by a sharp-edged object. However, the same is worthless because the doctor has not referred to the PMR to establish that the injury was caused by a sharp-edged object which he has recorded in the PMR. The testimony of the doctor is to prove the contents of the PMR and if the PMR does not disclose that the injury has been caused by a sharp-edged object,**



stating so before the Trial Court after a lapse of a long time, is worthless.

- 33. PW32 Dr. Mushtaq Ahmad Bhat**, he is the FSL expert who evaluated the artefacts for human blood and group. He states that all the objects sent to him had human blood of AB group. He does not state specifically about the axe. **In cross examination**, the witness states that AB is a common blood group. **In a case based upon circumstantial evidence, it was necessary for the police to have taken the blood samples of the accused persons also for the purpose of eliminating the possibility of the blood found on the artefacts as that being of the accused itself as the objects were seized allegedly from the house of the accused persons. Where the witness says that the blood group AB is common, the same could have been of the accused also, especially A1 who is the father of the victim. Detection is by deduction. Where there is no deduction of other probabilities, the benefit must go to the accused.**
- 34. PW33 Ms. Tahmeena Bhatt**, she is the Assistant Scientific Officer CNT FSL, Srinagar. She assessed the viscera for poison and none was detected. There is no further relevance of this witness.

**35.** Heard the Ld. Counsels for the appellants and the UT and have perused the record of the Trial Court. The first peculiarity that hits this Court is that in a case where there are no eye witnesses, a source information, which is held as reliable by the police, is received specifically to the effect that the deceased Farooq has been murdered by his father and the other co-accused persons. PW 12 states that this informant is the Namberdar. However, the Namberdar himself states that he heard a rumour that the deceased has been murdered and sent the Chowkidar to verify the veracity of the rumour. It is also surprising that purely on the basis of the source information, the FIR for offences u/s. 302 r/w 34 RPC is also registered with the appellants as named accused, even before the body was recovered and the PMR prepared. This is unusual. If the same is true, it leads to two prominent inferences. **Firstly**, there was an eyewitness in this case who wanted to remain anonymous or **secondly**, that the informant was the offender as he had precise knowledge relating to the murder of the deceased which was unknown to anyone else in the village and in order to deflect the attention of the police from himself, has implicated the appellants herein.

**36.** The next facet of this case is that the sole evidence against the appellants is the confession of A1 and A2 and but for this, there is no direct evidence to link the appellants to the crime. The state has argued that the confession can be relied upon as the same has led to the seizure of the weapons used in the crime. This requires an elucidation from this Court to examine if the proposition put for by the prosecution is correct. This has already been examined by this very bench in **Crl A (D) 12/2024 - Islam Ul Haq Peer Versus Union of India** and the Court feels that its reiteration in this case is necessary.

**MEMORANDUM US/ 27 OF THE EVIDENCE ACT –  
WHETHER A CONFESSION IN LAW?**

**37.** Article 20(3) of the Constitution accords protection against self-incrimination. This however is a right that may be waived by the accused if he **“voluntarily consents”** to confess. When an accused consents to confess and incriminate himself, such consent must be an **“Informed Consent”**, for which, the accused must possess the **“Consciousness of Consequence”** in order to give an informed consent whereafter, he relinquishes his right against self-incrimination and only then, would the confession be voluntary.

**38.** The right against self-incrimination is precious and the same cannot be waived by the accused in ignorance of the consequences of such relinquishment. A confession is a legitimate waiver of this right under article 20(3) of the constitution. But to ensure that a confession is either not prised out of the accused on account of fear or favour or simply on account of ignorance of the accused that he has such a right, it is necessary that certain procedures are assiduously adhered to by law enforcement agencies or any authority which can use a confession of a person which could result in the loss of his liberty, before such a confession can be held as inspiring confidence of the Court to base a conviction solely on the basis of the confession or even using it as reliable corroborative material. It is obvious that a confession must be voluntary as already stated hereinabove. But then the question arises as to what constitutes a voluntary confession?

**39. Firstly**, for a confession to be voluntary, it must be based on the **informed consent** of the accused. The Court or the authority must be certain that the consent of the accused to confess was given, free of coercion or favour, with the knowledge that he could be convicted/punished on the basis of the confession alone. This requires the magistrate or authority before whom such a confession is

made, to be satisfied that the accused has understood that he could be punished on the basis of his confession alone or that the same may be used against him as a corroborative fact to convict him.

**40. Secondly,** before an accused can give an “informed consent” it is necessary that he has **“consciousness of consequences”** which involves the accused having knowledge that not only shall he be convicted solely on the basis of his confession, but he must also be fully aware of the degree and extent of punishment that he may receive for the offence that he is convicted for. He should also be aware of the consequence that he would lose his right of appeal against a conviction based upon a confession, unless he is able to establish that the confession was prised out of him by fear or by fraud and misrepresentation played upon him, the onus of establishing which, shall be upon him. Thus, a confession must reflect informed consent on the part of its maker fully conscious of the consequences of giving an informed consent, for the confession to be accepted as voluntary. Merely asking the accused whether he is making the confession of his free will without any coercion, is inadequate unless, the accused is also made fully aware of the consequences which shall befall upon him for making such a confession.

**41.** Confession by the accused in a case arising from an investigation by the police, can only be recorded by the Judicial Magistrate u/s. 164 Cr.P.C (s. 183 of the BNSS) after ensuring all the pre-requisites (like ensuring the absence of the IO/police in the Court, warning that the accused is not under any compulsion to make a confession and that it can be used against him, and if the accused changes his mind then he shall be sent to judicial custody and not to police custody) are adhered to. In addition, before recording the confession of the accused, the Magistrate must inform the accused that he has the right to consult his lawyer before making the confession who can apprise him effectively and make him conscious of the consequence of making the confession. Where the accused is indigent, then a lawyer must be made available through legal aid. If the accused refuses right to counsel altogether, it must be so recorded by the Magistrate and only thereafter proceed to record the confession. Where the accused accepted access to a counsel, the Magistrate must record the name and enrolment number of the counsel to ensure that the process is verifiable on a later date, if the need arises. The Court is conscious that some of the requirements stated herein are in addition to what has been laid down in s. 183 of the BNSS but the same is not in derogation

to the intent of s. 183 of the BNSS and instead, the same only go to realise the protection accorded to the offender under article 20(3) of the constitution, to the greatest extent.

**42.** The procedure under Section 27 of the Evidence Act does not require the police recording the Memorandum to put the accused on notice that whatever he states which may lead to recovery of an article connected to the crime, may be used as evidence against him, in fact it accords none of the protections already stated hereinabove. Thus, this Court holds that the statement of an accused under Section 27 of the Evidence Act is only relevant to the extent of recovery of an artefact connected to the crime and is not a confession in law with reference to the inculpatory part of the memorandum u/s 27 of the Evidence Act.

**43.** Section 25 of the Evidence Act clearly renders irrelevant, any statement made by the appellant to a Police Officer in the course of investigation.

**44.** In other words, the accused must be aware, or put in a position, where there is consciousness of consequence of making a confession which shall be clear and unequivocal. Any other admission which is secured from the accused, in any manner, where the accused is unconscious of the consequences of his statement, the

same cannot be used against him as that would be in direct conflict of his right against self- incrimination.

**45.** It is essential to briefly refer to the case of Richard Buckland, the first person in the history of criminal jurisprudence against whom the charge of the rape and murder of two girls in a village in Leicestershire was dropped by the police on the basis of a DNA test. But what is relevant for the present case is not the exoneration of Richard Buckland on the basis of the science of DNA testing which was used for the very first time, but the fact that Richard Buckland had confessed to the police for a crime he had never committed, in a country where he could have been convicted only on the basis of the confession, subject to the same having inspired the confidence of the court. The stress that a person experiences psychologically when in police custody may make him confess to a crime that he never committed. For the record, Colin Pitchfork was finally convicted on the basis of the DNA science for the crime that was initially attributed to Richard Buckland on the basis of his confession.

**46.** In the specific facts on record in this case, it stands proved by the prosecution witnesses (PW2, PW3 and PW6 in paragraph 22, 23 and 25 *supra*) itself that pressure was brought to bear upon A1 to confess by detaining



persons of his family for several days till he confessed. PW3, though declared hostile has given a detailed account of how the pressure was brought to bear upon the appellants by the police to extract the confession from A1 and A2.

- 47.** Thus, this Court holds that the inculpatory part of the 27 memorandum allegedly given by A1 and A2, though in the presence of executive magistrate and the independent witnesses cannot constitute a legally valid confession as, all the inculpatory statements made by the appellant was during the time they were in the custody of the police and therefore, the inculpatory part is hit by s. 25 of the Evidence Act.
- 48.** Once, the confession given by the appellants have been set to nought, the evidence that remains is the discovery of the human remains of the victim, the seizure of the axe, the *Danda*, and the blood stains. As regards the discovery of the human remains of the victim, evidence on record has established that even before the police reached the site of recovery with A1, members of the public were already there (PW12 at paragraph 28 *supra*) therefore, as the remains were recovered from a place to which the general public had access and as the evidence reveals that the members of the general public were there at the site of recovery of the human remains even before

the police arrived at the site with A1. The recovery of the human remains of the victim cannot be said to be at the behest of A1.

**49.** As regards the seizure of the axe, *Danda* and the blood stains is concerned, PW2 says that he was not there inside at the time of seizure and the objects were brought out of the house and then he was made to sign the seizure memo. Even otherwise, evidence on record reflects that there was no injury on the deceased that was caused by a *Danda* (PW31 at paragraph 32). Therefore, the *Danda* was not a weapon that could be connected to the offence and therefore, its seizure and the presence of human blood of group AB, is suspicious. As regards the presence of blood group AB on the axe and the blood stains taken from the room of the deceased, which was exclusively used by the deceased, the discussion of this court in reference to the testimony of PW32 at paragraph 33 *supra* is reiterated. Thus, as the confession of A1 and A2 has been held by this court as legally untenable, the substratum of the prosecution's case disappears and in the absence of any independent and/or alternate evidence to substantiate the case of the prosecution, the case against the appellants fails the test of judicial scrutiny and this court holds that the

prosecution has not been able to prove the case against the appellants beyond reasonable doubt.

**50. Therefore, on the basis of what has been argued, considered, and held by this court hereinabove, the appeal is allowed. The impugned judgement of conviction and sentence is set aside. The bail bonds of appellants who are on bail stand discharged. Appellants still undergoing sentence shall be released forthwith.**

**(RAJESH SEKHRI)  
JUDGE**

**(ATUL SREEDHARAN)  
JUDGE**

**SRINAGAR:  
19.03.2025  
Altaf**

Whether approved for reporting? Yes