

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

CrI(A)(D) No. 58/2025
CrLM no. 1116/2025
CrI(A)(D) No. 63/2025
CrLM No. 1134/2025 c/w CrI Ref (L) No. 01/2025

Reserved on: 30.04.2026
Pronounced on: 29.05.2026
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Whether the operative part or full
Judgment is pronounced: **Full.**

(CrI(A)(D) No. 58/2025)

Ali Mohammad Dar aged 50 years
S/O Ama Dar
R/O Modergam, Tehsil and District Kulgam
through his son
Zuhaib Ali aged 21 years
S/O Ali Mohammad Dar
R/O Modergam, Tehsil and District Kulgam

.... Appellant(s)

Through: Mr. S. T. Hussain, Senior Advocate with
Ms. Nida Nazir, Advocate (in CrI(A)(D) no. 58/2025)
V/s

1. Union Territory of Jammu and Kashmir through
SHO Police Station Kulgam.
2. Superintendent Central Jail, Srinagar. Respondent(s)

Through: Mr. Alla Ud Din Ganai, AAG

c/w

(CrI(A)(D) No. 63/2025)

Mst. Muzamila

.... Appellant(s)

Through: Mr. Tahir Ahmad Bhat, Advocate with
Mr. Bhat Shafi, Advocate &
Mr. Abdul Wakeel Koka, Adv. (in CrI(A)(D) No. 63/2025).

V/s

State (Union Territory) of J&K
through Police Station Kulgam

Through: Mr. Alla Ud Din Ganai, AAG

CORAM:

HON'BLE MR JUSTICE SANJAY DHAR, JUDGE
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE

J U D G E M E N T

Per Sanjay Parihar-J

1. These appeals are directed against the judgment of conviction and sentence passed by the Court of Principal Sessions Judge, Kulgam (hereinafter referred to as "the Trial Court") in File Nos.330/B and

57/B arising out of FIR No. 343/2013 registered at Police Station Kulgam for offences under Sections 302/34 and 120-B RPC. By virtue of the impugned judgment, both the appellants came to be convicted for the offence u/s 302 RPC and sentenced to undergo imprisonment for life. A fine of ₹3,00,000/- was also imposed upon appellant Ali Mohammad Dar, with a default sentence of one year's simple imprisonment. However, appellant- Muzamilla who was wife of the deceased, no fine was ultimately imposed upon her. The Trial Court, while awarding sentence, also made a reference for confirmation of sentence.

2. Both the appellants have preferred separate appeals which, owing to the commonality of facts and issues involved, have been clubbed together and are being disposed of by this common judgment.
3. The conviction and sentence are assailed primarily on the ground that the findings recorded by the Trial Court are founded upon conjectures and surmises and are unsupported by legally admissible evidence. It is contended that the testimonies of the prosecution witnesses were neither reliable nor of sterling quality and were riddled with contradictions and inconsistencies, yet the Trial Court erroneously relied upon such shaky evidence to return a finding of guilt. It is further urged that the prosecution failed to establish the charges against the appellants beyond reasonable doubt and that the findings recorded by the Trial Court run contrary to settled principles governing criminal jurisprudence.
4. Briefly stated, the prosecution case before the Trial Court was that on 21.12.2013, Police Station Kulgam received information regarding the suspicious death of Abdul Rashid Dar S/o Haji Nabir Dar R/o

Modergam (hereinafter referred to as “the deceased”). Upon receipt of the information, PW-32 ASI Mohammad Sultan rushed to the spot and found the dead body of the deceased hanging from a tree in an orchard. It was noticed that the private parts of the deceased had been mutilated and that his neck bone appeared to have got fractured because of hanging. After conducting inquest proceedings under Section 174 Cr.P.C., it surfaced that the deceased had been killed by unknown persons and his body was subsequently hung from the tree to create an impression of suicide. Consequently, FIR No. 343/2013 under Section 302 RPC came to be registered and investigation was entrusted to PW-34.

5. During investigation, it allegedly transpired that the wife of the deceased, namely co-appellant Muzamilla, was maintaining illicit relations with appellant Ali Mohammad Dar and that both had conspired to eliminate the deceased. Upon detention and interrogation of the appellants and other suspects, appellant Ali Mohammad Dar allegedly made a disclosure statement to the effect that he had been in an illicit relationship with the co-appellant for a considerable period and that they had jointly planned the murder of the deceased. According to the prosecution, he disclosed that on the date of occurrence, the deceased was administered Anxit-0.5 tablets to render him unconscious, where-after his private parts were squeezed and a cloth was thrust into his mouth while his nostrils were closed, resulting in his death. Thereafter, during the night, the body of the deceased was allegedly taken from the house to a nearby orchard and suspended from a tree with the aid of a lady’s trouser and dupatta so as to portray the incident as one of suicide.

6. It is further alleged that co-appellant Muzamilla also made a similar disclosure statement on 27.12.2013. On the basis of the said disclosures, the investigating agency claimed to have recovered a Nokia mobile phone, one black dupatta, a steel glass, and a strip of Anxit-0.5 tablets containing four tablets. The medical opinion obtained during investigation opined that the death of the deceased had occurred due to fracture/dislocation of the neck bone caused by hanging.
7. On completion of investigation, the appellants were formally charge-sheeted on 20.02.2014 and the case was committed to the Court of Sessions. Charges under Sections 302/34 RPC and 120-B RPC were framed against both the appellants, to which they pleaded not guilty and claimed trial.
8. In support of its case, the prosecution examined as many as thirty-six witnesses, including PW-1 Mohammad Yousuf Dar, PW-2 Ghulam Mohammad Wani, PW-3 Abdul Hamid Wani, PW-5 Ghulam Mohi-ud-din Padder, PW-6 Manzoor Ahmad Dar, PW-14 Khalid Rashid Dar, PW-15 Uzma Rashid, PW-16 Chaman Lal, PW-31 Dr. Rayees Ahmad Halla, PW-32 ASI Mohammad Sultan, and PW-34 DySP Shabir Ahmad, among others.
9. After closure of prosecution evidence, the appellants were examined under Section 342 Cr.P.C., wherein they denied all incriminating circumstances put to them and asserted false implication. The defence also examined DW-1 Tufail Ahmad Shah.
10. The Trial Court, upon appreciation of the evidence, concluded that the death of the deceased was homicidal in nature and amounted to murder. It held that the prosecution had succeeded in establishing that both the appellants were maintaining illicit relations and had conspired

together to eliminate the deceased in order to continue their relationship unhindered. The Trial Court further held that the appellants had committed overt and covert acts in furtherance of the conspiracy and that the recoveries effected pursuant to the disclosure statements corroborated the prosecution case.

11. The defence set up by appellant Ali Mohammad Dar that he was not present at the place of occurrence was rejected by the Trial Court. It was observed that appellant Muzamilla, being the wife of the deceased, was present in the house and acted as the principal facilitator in execution of the plan. The Trial Court held that the prosecution had succeeded in proving the motive for commission of the offence and that the recovery of “Anxit” tablets established that the deceased had been administered sedatives before being subjected to physical assault and subsequently hanged in the orchard to give the appearance of suicide. On the aforesaid reasoning, the Trial Court convicted both the appellants for the offence punishable under Section 302 RPC and sentenced them accordingly.
12. Before advertng to the merits of the rival submissions, it would be appropriate to briefly advert to the evidence led by the prosecution witnesses. PW-1 Mohammad Yousuf Dar is a witness to the identification of the dead body. He stated that on 21.12.2013, the dead body of the deceased was found hanging from a tree in the orchard at Khirnad, with a lady’s trouser used as the ligature. He further deposed that the post-mortem examination was conducted at Kulgam. PW-2 Ghulam Mohammad Wani, the Numberdar of the locality, also stated that the body was recovered on 21.12.2013 from Khirnad, where it was found suspended from a tree. According to him, the ligature material

was seized and taken to the Police Station, after which the body was subjected to autopsy. He further deposed that appellant Ali Mohammad Dar made a disclosure statement in his presence, admitting that he was having illicit relations with the co-appellant and that both had conspired to eliminate the deceased. He stated that on or about 20.12.2013, the appellant had procured medicine from the shop of PW-16 Chaman Lal and handed it over to the co-appellant, who mixed it in milk and administered it to the deceased, following which they carried out the killing.

13. PW-3 Abdul Hamid Wani deposed that the body of the deceased was found hanging. He further stated that appellant Ali Mohammad Dar disclosed that the deceased's mouth had been gagged with a scarf and he was suffocated, while the co-appellant mutilated his private parts, thereby rendering him motionless. Thereafter, the body was allegedly taken to the Aad and hanged from a tree. He claimed to be a witness to the disclosure memo marked EXPW-5. He also stated that initially four to five persons from the locality had been suspected of the incident and arrested, but later the Police informed them that it was the appellant who had killed the deceased.
14. PW-5 Ghulam Mohi-ud-din Padder, the Sarpanch of the area, stated that the Investigating Officer informed him that co-appellant Muzamilla had admitted her involvement in the occurrence and disclosed that Ali Mohammad Dar had brought medicine to the house of the deceased. According to the witness, she had gone into the kitchen where her children were sitting, while the deceased was reciting the Quran in another room. She allegedly mixed the medicine in a glass of milk and gave it to the deceased. Thereafter, his face was

wrapped with a scarf, causing him to become unconscious, and later his body was taken to the Aad and hanged. He claimed to be a witness to the disclosure statement. However, he further admitted that the disclosure statement EXPW-5 was not recorded in his presence, nor in the presence of PW-6 Manzoor Ahmad Dar or PW-2 Ghulam Mohammad Wani. He also stated that when the Investigating Officer asked him to sign the disclosure statement, he initially refused and stated that he would sign only after putting questions to the appellant, whereafter he signed the same.

15. PW-6 Manzoor Ahmad Dar, brother of the deceased, stated that he was not present at the scene and had reached there only after a few days of the incident. He deposed that the appellants were allegedly having illicit relations and that on an earlier occasion the deceased had rebuked Ali Mohammad Dar and had even informed the latter's father-in-law and wife about the same. According to him, on 27.12.2013, co-appellant Muzamilla made a disclosure statement in his presence. He further stated that empty strips of medicine were recovered from an open place, the glass was recovered from the kitchen, and the scarf was recovered from a box containing other clothes. He deposed that after the deceased recited the Quran, the co-appellant administered milk mixed with medicine to him, rendering him unconscious. Thereafter, she covered him with a blanket and went to the kitchen where her children were present and served them food. Subsequently, Ali Mohammad Dar allegedly arrived carrying a lady's trouser and a piece of cloth, and the deceased was tied with the same, resulting in the breaking of his neck bone during hanging. The witness identified the

scarf, glass, mobile phone and medicine covers allegedly recovered during investigation.

16. PW-7 Abdul Salam Dar, another brother of the deceased, stated that he was in Uttar Pradesh at the time of the incident and, upon returning, learnt about the alleged illicit relationship between the appellants. He further stated that on an earlier occasion the deceased had reprimanded Ali Mohammad Dar and that a scuffle had even taken place between them in his presence. He also claimed to be a witness to the recovery proceedings and stated that the glass was recovered from a shelf. He admitted that whenever Muzamilla fell ill, it was appellant Ali Mohammad Dar who used to visit the house of the deceased to administer injections. He further stated that about five months prior to the incident, he had asked Ali Mohammad Dar to desist from maintaining relations with the co-appellant.
17. PW-14 Khalid Rashid Dar, son of the deceased, deposed that after Friday prayers he had gone to play with his cousin and, upon returning home, asked his mother about his father, whereupon she replied that he had gone to Kandipora for admission purposes. Since his father did not return, his mother asked PW-15 Uzma Rashid, daughter of the deceased, to call her maternal aunt so that they could all sleep together. Accordingly, they slept in the same room. In the morning he went to school and at about 11:00 AM learnt that his father's body had been found hanging from a tree. He immediately returned home and informed his mother, who at that time was in the cowshed. He further stated that during Shab-e-Qadr in the month of Ramzan, while his father was offering prayers and the witness was accompanying him, the deceased had sent him home to fetch tea, whereupon he saw

appellant Ali Mohammad Dar present in the house. He also stated that on 20th night his father had offered prayers throughout the night and thereafter left for Kandipora for admission purposes but never returned.

18. PW-15 Uzma Rashid, daughter of the deceased, stated that her father had gone out but did not return till the evening of 20.12.2013. On the following morning, while taking cow dung to the fields, her cousin informed her that her father's body had been found hanging in the Aad. Police thereafter arrived at the spot and took away the body. Subsequently, she came to know that her mother had allegedly participated in the killing of her father and had been arrested.
19. PW-16 Chaman Lal stated that he was working in the Health Department and that the father of appellant Ali Mohammad Dar was mentally unsound owing to an earlier head injury. According to him, the father of the appellant used to wander away during nights and, on being informed of his condition, the witness had arranged certain medicines for him after purchasing the same from Kulgam. He stated that some time earlier appellant Ali Mohammad Dar had obtained four tablets from him for administering the same to his father.
20. PW-17 Mst. Raja Begum, though declared hostile, stated that she had heard that the appellants were having illicit relations and that Ali Mohammad Dar used to visit the house regularly. According to her, the deceased as well as the villagers were unhappy about such conduct. She also stated that on the day the body was recovered, she saw the body of the deceased hanging from a tree. However, she denied having knowledge about any confession made by the appellants.

21. PW-18 Mst. Lateefa expressed ignorance regarding the occurrence.
- PW-22 Mohammad Yaseen Parray, who was working as a distributor for Vodafone Company, stated that on 02.01.2014 Police personnel approached him in connection with the investigation and sought details regarding SIM Nos. 8715029679 and 8713924979. Upon verification, he found that both numbers were registered in the name of appellant Ali Mohammad Dar. He advised the investigating agency to approach the Nodal Officer of Vodafone for further details.
22. PW-23 Mohammad Amin Dar, Tehsildar, stated that Police personnel from Police Station Kulgam produced before him one black scarf, one cream-coloured lady's trouser and a yellow-coloured cloth, all of which were sealed in his presence. He thereafter prepared the resealing memo and handed over the same to the Police.
23. PW-24, PW-25 and PW-26 deposed regarding the procurement of Call Detail Records from the service providers.
24. PW-29 Head Constable Mst. Maryam No. 1000/Kgm stated that co-appellant Muzamilla made a disclosure statement in Kashmiri language admitting her involvement in the killing of her husband. According to her, the disclosure memo was written by PW-32 ASI Mohammad Sultan, who obtained her signatures thereon. She could not recollect the exact time at which the disclosure statement was recorded, but stated that it was before 1:00 PM. She further stated that at the time of recording the disclosure statement, PW-34 DySP Headquarters Shabir Ahmad was not present. According to her, co-appellant Muzamilla had remained with her in a separate room for fifteen days and only thereafter ASI Mohammad Sultan directed her to bring Muzamilla to his room where the disclosure statement was

recorded. She admitted that the disclosure was recorded fifteen days after the occurrence and further stated that whatever narration was made by Muzamilla was reduced into writing.

25. PW-31 Dr. Rayees Ahmad Halla noticed a ligature in the form of a lady's trouser around the neck of the deceased. He observed a ligature mark in the upper part of the neck in the form of a groove, approximately one and a half inches in width, with multiple bruises on its surface. He also noticed multiple injuries on the scrotum in the form of abrasions with scab formation. According to him, the eyes were not protruded, pupils were dilated, and the tongue remained inside the mouth with cyanosed lips. He found dislocation at C1 and C2 vertebrae, while the chest was normal. He proved the post-mortem report EXPW-31 and stated that the ligature found around the neck could be used either for hanging or strangulation. According to him, death had occurred approximately 15–25 hours prior to the post-mortem examination. He further opined that the death was not a case of smothering and that there were fewer signs suggestive of asphyxia. In his opinion, the cause of death was dislocation of C1 and C2 vertebrae.
26. PW-32 ASI Mohammad Sultan deposed that on 21.12.2013 he received information that the dead body of the deceased was lying at Khirnad in village Motargam and that the death had occurred under suspicious circumstances. He stated that he initially photographed the scene of occurrence and that the body was identified by PW-1. According to him, during post-mortem it was noticed that there were bruises on the testes, scratches on the body and an apparently broken neck, from which he concluded that the deceased had been killed and

thereafter his body was hanged from the tree. He therefore inferred that the case was not one of suicide but homicide, upon which the FIR came to be registered.

27. PW-34 Dy.SP Headquarters Shabir Ahmad stated that initially the inquiry was conducted by ASI Mohammad Sultan and that after registration of the FIR he took over the investigation. According to him, during investigation several persons were rounded up on suspicion and eventually it surfaced that the deceased had become a victim of the alleged illicit relationship between the two appellants, who were thereafter apprehended and allegedly confessed their involvement in the crime. He proved the disclosure statements EXPW-5 and EXPW-5/1 and stated that pursuant thereto recoveries of a scarf, steel glass, mobile phone, medicine cover and SIM card were effected in the presence of witnesses. He further stated that Call Detail Records were obtained during investigation. However, he admitted that although the son and daughter of the deceased were present in the house on the night of occurrence, none of the witnesses had stated that they had seen appellant Ali Mohammad Dar entering the house of the deceased. He further stated that the occurrence had taken place during the night and that, according to the medical opinion, the cause of death was hanging. This, in brief, is the evidence that came to be recorded before the learned Trial Court.
28. The respondents, supporting the impugned judgment, argued that the findings recorded by the Trial Court are based on proper appreciation of evidence and call for no interference. It was contended that the defence failed to rebut the incriminating circumstances appearing against the appellants and that even in their statements under Section

342 Cr.P.C., no explanation was furnished as to how the deceased met with his death when both appellants were allegedly present around the scene of occurrence. It was further submitted that merely because the children of the deceased did not specifically disclose the presence of appellant Ali Mohammad Dar in the house does not dilute the otherwise cogent evidence brought on record by the prosecution.

29. We have heard learned counsel for the parties at length and carefully perused the record of the Trial Court.
30. At the outset, it may be noted that the prosecution case primarily rests upon the testimony of PW-32 ASI Mohammad Sultan, who conducted the initial inquest proceedings and concluded that the death was homicidal in nature warranting registration of an FIR. The prosecution has also relied heavily upon the disclosure statements allegedly made by the appellants, marked as EXPW-5 and EXPW-5/1, wherein they purportedly confessed to the manner in which the offence was committed. These disclosures are stated to have been corroborated by PW-2 Ghulam Mohammad Wani, PW-3 Abdul Hamid Wani, PW-5 Ghulam Mohi-ud-din Padder, PW-6 Manzoor Ahmad Dar, and PW-34 Dy.SP Shabir Ahmad, in whose presence the recoveries were allegedly effected.
31. The prosecution has further relied upon the medical evidence of PW-31 Dr. Rayees Ahmad Halla, who opined that the cause of death was dislocation of C1 and C2 vertebrae due to hanging. He also noticed ligature marks around the neck and injuries on the scrotum of the deceased. According to the prosecution, these injuries ruled out the possibility of suicide and pointed towards homicidal death.

32. PW-14 Khalid Rashid Dar and PW-15 Uzma Rashid, the children of the deceased, though not declared hostile, are stated to be material witnesses. The prosecution also relied upon the testimony of PW-16 Chaman Lal, from whose shop appellant Ali Mohammad Dar allegedly procured Anxit tablets used as sedatives.
33. The prosecution case, in essence, is that the appellants, owing to their illicit relationship, conspired to eliminate the deceased. On the intervening night of 20/21.12.2013, the deceased was allegedly administered sedatives mixed in milk, rendered unconscious, suffocated, subjected to mutilation of his private parts, and thereafter his body was taken to the orchard and hanged from a tree to simulate suicide. According to the prosecution, the recoveries made pursuant to the disclosure statements, coupled with call detail records showing communication between the appellants, established the conspiracy and guilt beyond reasonable doubt.
34. Having considered the evidence on record, it becomes necessary to examine the legal admissibility and evidentiary value of the disclosure statements relied upon by the prosecution. PW-3 Abdul Hamid Wani though admits of being signatory to the disclosure made by the appellants but hastened to add that he was told by police about the involvement of appellants. Similarly, PW- 5 who was the Sarpanch of the area states that the disclosure statement EXPW-5 was not recorded in his presence, nor in the presence of PW-6 Manzoor Ahmad Dar or PW-2 Ghulam Mohammad Wani. The entire prosecution case substantially revolves around the alleged disclosure statements made by the appellants while in police custody. The law regarding admissibility of such statements is no longer *res integra*. In

Venkatesh @ Chandra v. State of Karnataka 2023 Cr.L.J. SC 183,

the Hon'ble Supreme Court deprecated the practice of recording and relying upon entire confessional narratives under the guise of disclosure statements and held that only such portion of the statement which distinctly relates to the discovery of a fact is admissible under Section 27 of the Evidence Act. It was held as under,

“ We must observe that we have repeatedly found a tendency on part of the Prosecuting Agency in getting the entire statement recorded rather than only that part of the statement which leads to the discovery of facts. In the process, a confession of an accused which is otherwise hit by the principles of Evidence Act finds its place on record. Such kind of statements may have a direct tendency to influence and prejudice the mind of the Court. This practice must immediately be stopped. In the present case, the Trial Court not only extracted the entire statements but also relied upon them.

20. The other disturbing feature that we have noticed is that voluntary statements of the appellants were recorded on a DVD which was played in Court and formed the basis of the judgment of the Trial Court as is noticeable from paragraph Nos.34 and 35 of its judgment. Such a statement is again in the nature of a confession to a Police Officer and is completely hit by the principles of Evidence Act, if at all the accused were desirous of making confessions, the Investigating Machinery could have facilitated recording of confession by producing them before a Magistrate for appropriate action in terms of Sec.164 of the Code. Any departure from that course is not acceptable and cannot be recognized and taken on record as evidence. The Trial Court erred in exhibiting those DVD statement Exh.P-25 to 28. As a matter of fact, it went further in relying upon them while concluding the matter on the issue of conviction.”

35. Similarly, in **Indra Dalal v. State of Haryana AIR 2015 SCW 3474**

the Supreme Court reiterated that Section 27 of the Evidence Act is merely an exception to Sections 25 and 26 and permits admissibility only to the extent that the information supplied leads distinctly to the discovery of a fact. Any confessional or inculpatory part of the statement remains inadmissible. It was held as under,

“It is clear that Section 27 is in the form of proviso to Section 25 and 26 of the Evidence Act. It makes it clear that so much of such information which is received from a person accused of any offence, in the custody of a police officer, which has led to discovery of any fact, may be used against the accused. Such information as given must relate distinctly to the fact discovered. In the present case, the information provided by all the appellant-accused in the form of confessional statements, has not led to any discovery. More starkly put, the recovery of scooter is not related

to the confessional statements allegedly made by the appellants. This recovery was pursuant to the statement made by Harish Chander Godara. It was not on the basis of any disclosure statements made by these appellants. Likewise, insofar as confessional statement (Mark A) allegedly given by Jaibir is concerned, that is again in another FIR. We shall come to its admissibility separately. Therefore, the situation contemplated under Section 27 of the Evidence Act also does not get attracted. Even if the scooter was recovered pursuant to the disclosure statement, it would have made the fact of recovery of scooter only, as admissible under Section 27 of the Evidence Act, and it would not make the so-called confessional statements of the appellants admissible which cannot be held as proved against them”.

36. Applying the aforesaid settled principles to the present case, the narration allegedly made by the appellants before the police regarding their illicit relationship, conspiracy to eliminate the deceased, administration of sedatives, and the manner of commission of offence is clearly in the nature of a confessional statement made while in police custody. Such inculpatory narration is barred under Sections 25 and 26 of the Evidence Act and cannot be read in evidence except to the limited extent of discovery of facts under Section 27.
37. Even insofar as the recoveries are concerned, the evidentiary value thereof appears weak and inconclusive. The alleged recoveries of the scarf, glass, and Anxit strip were made from the house of co-appellant Muzamilla and not from any concealed or exclusive place known only to the appellants. It's not the case of the prosecution that it took finger prints on the seized glass allegedly used by appellant in offering glass of milk laced with Anxit and same later were sent for any kind of forensic examination. The recovery memos do not clearly indicate the exact place of concealment or the manner in which the articles were discovered pursuant to exclusive knowledge of the accused. Furthermore, the evidence of PW-16 Chaman Lal reveals that the Anxit tablets had been obtained by appellant Ali Mohammad Dar for

his mentally ill father, thereby considerably diluting the prosecution theory that the tablets were procured specifically for commission of the offence.

38. Significantly, the medical evidence also fails to support the prosecution version in material particulars. Though the prosecution alleged that the deceased had been rendered unconscious by administration of sedatives, the viscera examination did not reveal presence of any sedative or poisonous substance in the body of the deceased. Likewise, while the prosecution alleged smothering and suffocation, PW-31 Dr. Rayees Ahmad Halla categorically stated that it was not a case of smothering and that there were minimal features of asphyxia.
39. Equally important is the fact that there is no direct evidence placing appellant Ali Mohammad Dar in the house of the deceased on the intervening night of occurrence. PW-14 Khalid Rashid Dar and PW-15 Uzma Rashid, who were natural witnesses present in the house, nowhere stated that they had seen appellant Ali Mohammad Dar there during the relevant night. On the contrary, both witnesses consistently stated that their father had gone out and did not return home on that night. They further stated that all family members slept together in the kitchen that night and came to know about the deceased's body only the next morning. It had not been the case of the respondents that the body of the deceased was recovered from the room where appellant Muzamilla was sleeping with her children on the fateful night. So much so there is not an iota of evidence that on the night of 20th/21st of Dec., 2013 the appellants were seen around or near the place wherefrom the body was seen lastly and recovered.

40. The prosecution has also failed to establish any “last seen” circumstance against appellant Ali Mohammad Dar. Had he indeed visited the house during the night, the natural witnesses present therein would reasonably have noticed and disclosed his presence. The absence of such evidence strikes at the very root of the prosecution case. Constitution Bench of Apex Court in **Govinda Reddy v. State of Mysore [AIR 1960 SC 29]** laying out principals for appreciation of case based on circumstantial evidence held as under,

“The mode of evaluating circumstantial evidence has been stated by this Court in Hanumant Govind Nargundkar v. State of Madhya Pradesh, 1952 AIR (SC) 343, and it is as follows:

"It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

41. Thus, once the inadmissible confessional portions of the disclosure statements are excluded from consideration, the remaining circumstances relied upon by the prosecution fail to form a complete and unbroken chain pointing only towards the guilt of the appellants. The prosecution evidence, viewed cumulatively, falls short of the standard required for sustaining conviction in a case resting entirely upon circumstantial evidence.

42. The respondents contend that the mobile phone recovered from co-appellant Muzamilla, along with its Call Detail Records (CDR), establishes that she was in regular contact with the appellant, Ali Mohammad Dar, thereby indicating prior intimacy and proximity

between them. According to the respondents, the sequence of events brought on record demonstrates that the accused persons had entered into a conspiracy to eliminate the deceased. It is further submitted that the SIM card issued in the name of appellant Ali Mohammad Dar was being used by him for communication with the co-appellant, which, according to the prosecution, stands corroborated by the statements of the prosecution witnesses. The respondents also assert that the motive for the commission of the offence was evident, inasmuch as the deceased had become an obstacle in the relationship between the two and had previously reprimanded Ali Mohammad Dar for maintaining relations with the co-appellant.

43. In ***Sheo Shankar Singh vs. State of Jharkhand & Anr., AIR 2011 SC 1403***, it was held as under;

“The legal position regarding proof of motive as an essential requirement for bringing home the guilt of the accused is fairly well settled by a long line of decisions of this Court. These decisions have made a clear distinction between cases where prosecution relies upon circumstantial evidence on the one hand and those where it relies upon the testimony of eye witnesses on the other. In the former category of cases proof of motive is given the importance it deserves, for proof of a motive itself constitutes a link in the chain of circumstances upon which the prosecution may rely. Proof of motive, however, recedes into the background in cases where the prosecution relies upon an eye-witness account of the occurrence. That is because if the court upon a proper appraisal of the deposition of the eye-witnesses comes to the conclusion that the version given by them is credible, absence of evidence to prove the motive is rendered inconsequential. Conversely even if prosecution succeeds in establishing a strong motive for the commission of the offence, but the evidence of the eye-witnesses is found unreliable or unworthy of credit, existence of a motive does not by itself provide a safe basis for convicting the accused. That does not, however, mean that proof of motive even in a case which rests on an eye-witness account does not lend strength to the prosecution case or fortify the court in its ultimate conclusion. Proof of motive in such a situation certainly helps the prosecution and supports the eye-witnesses.”

44. PW-6 Manzoor Ahmad Dar, brother of the deceased, deposed that the appellants were allegedly involved in an extra-marital affair and that, on one occasion, the deceased had rebuked his wife over such

relationship. To a limited extent, a similar narration emerges from the statement of PW-17 Mst. Raja; however, upon close scrutiny, her testimony is found to be hearsay in nature. Even PW-6 was unable to specify when the deceased had allegedly rebuked his wife. Though emphasis has been laid by the prosecution on the assertion that appellant Ali Mohammad was often seen visiting the house of the deceased, the evidence in that regard is uncertain and unreliable.

45. The Call Detail Record (CDR) evidence relied upon by the prosecution, even if taken at its highest value, merely gives rise to a suspicion regarding the conduct and movements of the appellants. However, it is a cardinal and deeply entrenched principle of criminal jurisprudence that suspicion, no matter how grave, strong, or compelling it may appear, can never substitute proof beyond reasonable doubt. Criminal conviction cannot rest upon conjectures, assumptions, or moral conviction; rather, it must be founded upon legally admissible, cogent, and reliable evidence which conclusively establishes the guilt of the accused. In the present matter, the prosecution case admittedly does not rest upon any direct eye witness account and is founded entirely upon circumstantial evidence. It is well settled that in cases based solely on circumstantial evidence, the prosecution is under a stringent legal obligation to establish a complete and unbroken chain of circumstances which must point exclusively towards the guilt of the accused and must be wholly inconsistent with any hypothesis of innocence. Every link in the chain must be firmly proved, and the cumulative effect of all proved circumstances must lead to one irresistible conclusion, namely, that the accused alone are the perpetrators of the crime. In the instant case, however, the

prosecution has conspicuously failed to establish such a complete chain. There is not even an iota of reliable evidence demonstrating that the appellants were seen together at the relevant time or that they were in any manner involved in the alleged commission of the offence, except for the disclosure statements allegedly made by them while in police custody.

46. What further weakens the prosecution case is the uncertainty surrounding the very presence of the deceased at his home on the date and time of the alleged occurrence. Once the prosecution fails to establish this foundational fact with certainty, the entire edifice of its case becomes unstable and doubtful. The prosecution theory that the appellants administered sedatives to the deceased, rendered him immobile, and thereafter caused his death in the manner projected in the charge-sheet becomes highly improbable and unsupported by convincing evidence. The absence of any direct evidence, coupled with uncertainty regarding the circumstances immediately preceding the death, creates a serious dent in the prosecution narrative and undermines its overall credibility.
47. The prosecution has also sought to establish motive by alleging the existence of an illicit relationship between the appellants and contending that such relationship prompted them to eliminate the deceased. No doubt, motive assumes significance in cases resting entirely upon circumstantial evidence, as it may constitute one of the links in the chain sought to be established by the prosecution. However, motive by itself can never take the place of substantive proof. In the present case, the evidence led to establish motive is not only weak and uncertain but largely hearsay in nature. The witnesses

examined by the prosecution merely made vague assertions regarding the alleged relationship without furnishing any concrete or convincing material in support thereof. Significantly, the testimony of PW-7 Abdul Salam Dar reveals that appellant Ali Mohd. Dar used to visit the house of the deceased because Muzamilla had fallen ill and injections were required to be administered to her. This explanation provides an entirely plausible and innocent reason for his visits to the house of the deceased. Even the statement of the witness that he had, some months earlier, advised the appellant not to maintain proximity with the co-appellant does not establish either an illicit relationship or any criminal conspiracy to commit murder. At best, such evidence may create suspicion, but suspicion, however strong, cannot assume the character of legal proof required for sustaining a conviction in a criminal trial.

48. We remain fully conscious of the fact that the deceased met a homicidal death. However, the mere fact that a homicide has occurred does not automatically justify the conviction of the accused unless there exists reliable evidence connecting them with the commission of the offence. The prosecution was required to prove not only that the death was homicidal in nature, but also that it was the appellants and none else who caused such death. In the present case, there is a complete absence of tangible, independent, and legally admissible evidence linking the appellants to the homicidal death of the deceased. Instead, the entire prosecution case appears to have been built primarily upon the disclosure statements allegedly made by the appellants during police investigation. Thereafter, an attempt was made to lend credibility to those statements by tailoring the testimony of prosecution witnesses in support of the prosecution narrative.

49. A careful scrutiny of the evidence of witnesses associated with the recording of the alleged disclosure statements further demolishes the prosecution case. During cross-examination, several witnesses fairly admitted that the investigating agency had already informed them that the appellants were responsible for the killing of the deceased. Such admissions clearly indicate that the investigation had proceeded with a predetermined mindset and that the witnesses were influenced by the version supplied by the police. This circumstance seriously impairs the credibility and evidentiary worth of the prosecution evidence. It thus becomes manifest that the entire case of the prosecution substantially rests upon inculpatory statements allegedly made by the appellants while in police custody, unsupported by any independent corroborative evidence. It is a settled proposition of law that disclosure statements or confessional admissions made while in custody possess extremely limited evidentiary value and cannot form the sole basis of conviction unless duly corroborated by independent material evidence.
50. The trial Court, while recording conviction under Section 302 of the Penal Code, appears to have been greatly influenced by such disclosure statements without properly appreciating the settled legal principles governing their admissibility and evidentiary worth. The trial Court failed to notice the material contradictions, inconsistencies, and serious gaps in the prosecution case and consequently arrived at findings which cannot be sustained in law. The appreciation of evidence by the trial Court, therefore, suffers from perversity and misapplication of settled principles of criminal law.
51. It is a fundamental principle of criminal jurisprudence that the prosecution bears the burden of proving its case beyond all reasonable

doubts, and such burden never shifts. Where the evidence on record gives rise to two possible views, the one favourable to the accused must necessarily be adopted. The benefit of every reasonable doubt must go to the accused because the law presumes every person innocent unless proven guilty through reliable and unimpeachable evidence. In the present case, the prosecution evidence suffers from serious infirmities, material omissions, and inconsistencies which create substantial doubt regarding the truthfulness and reliability of the prosecution story. Consequently, the appellants are clearly entitled to the benefit of doubt. Their conviction and sentence, therefore, cannot be sustained in the eyes of law, is therefore, set aside. Accordingly, the appellants are acquitted of the charges framed against them and, if in custody, shall be released forthwith unless required in connection with any other case. Copy of judgement be notified to trial court for further compliance.

52. Reference is answered accordingly.

(SANJAY PARIHAR) (SANJAY DHAR)
JUDGE JUDGE

Srinagar
29.05.2026
“Imtiyaz”

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No