

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Crl R No. 21/2021

Mohd Sadiq S/o Salah Mohd. R/o
Village Kheora near Stadium Rajouri,
Tehsil & District Rajouri.

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

Through: Mr. R. P. Sharma, Advocate

Vs

..... Respondent(s)

1. Alfaz Begum W/o Nissar Hussain R/o
Ward No. 1 Kheora near Stadium Rajouri,
Tehsil & District Rajouri.

2. State of Jammu and Kashmir through
Police Station Rajouri.

Through: Mr. Waheed Choudhary, Advocate for R-1

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER (ORAL)
19.12.2023

1. The appeal preferred by the father of the deceased against the judgment of acquittal dated 23.10.2015 recorded by the Additional Sessions Judge, Rajouri (hereinafter to be referred as 'the trial court') in charge sheet titled, '*State vs. Alfaz Begum*' arising out of FIR No. 370/2013 registered with Police Station, Rajouri under Section 302, 364 and 120-B RPC was ordered to be treated as revision petition by virtue of order dated 07.10.2021.
2. The petitioner has impugned the judgment on the ground that there was overwhelming evidence in respect of encouragement and motivation to the actual accused person (minor) involved in the killing of the son of the

petitioner and despite that, the learned trial court acquitted the respondent No. 1.

3. Mr. R. P. Sharma, learned counsel for the petitioner argued that the prosecution had successfully proved the role of respondent No. 1 who had conspired with the main accused but the learned trial court has ignored the evidence in its entirety and as such, has fallen in grave error of law while acquitting the respondent No. 1.
4. Mr. Waheed Choudhary, learned counsel for respondent No. 1 on the contrary has submitted that the prosecution had miserably failed to prove that the respondent No. 1 conspired with the actual offender for the purpose of killing the son of the petitioner and rather in view of lack of evidence against respondent No. 1, the learned trial court was left with no other option but to acquit the respondent No. 1. He further submitted that the main accused who was child in conflict with law was tried separately before the Juvenile Justice Board and the Juvenile Justice Board, Rajouri vide its order dated 27.01.2021 has acquitted the juvenile of all the charges leveled against him.
5. Heard learned counsels for the parties and perused the record.
6. Briefly stated, the facts as they emanate from the charge sheet are that on 20.07.2013, the complainant i.e. petitioner presented an application with Police Station, Rajouri, thereby stating that his son who was a student of 6th Class was sitting along with his sisters on the roof of his residential house on 19.07.2013. At 9 PM in the night, the daughter of the petitioner came down from the roof and his son remained there. At 9:30 PM when

light came, they had dinner but his son did not come down. He called his son but there was no reply from him. He and his family members searched for his son but could not trace. They also searched for his son in the morning and during search at about 10:30 AM, the dead body of the son of the petitioner was found lying in the small cabin of the sports stadium. On receipt of the complaint, FIR No. 370/2013 of Police Station, Rajouri was initially registered for commission of offences under Section 302/364 RPC. During the course of investigation, it emerged that the juvenile accused had kidnapped the son of the petitioner and took him to sports stadium and closed his mouth with undershirt and also pushed his neck and by hitting his head with the brick, committed murder of the son of the petitioner. The complicity of respondent No. 1 also emerged during the course of investigation for conspiring the murder of the son of the petitioner. The Investigating Officer during investigation established the following facts that the petitioner had solemnized first marriage in Bhattian and he divorced the said wife. From the said wedlock, one son, namely, Mohd. Gafoor was born and his age was 38 years and he resided at Choudhary Nar Rethal. The petitioner also contracted second marriage with Mst. Nazir Begum, who also resided at Choudhary Nar Rethal. The petitioner had strange relation with his wife and from that wedlock, two sons and two daughters were born and they were married. The petitioner thereafter solemnized third marriage and out of the wedlock, one son i.e. deceased and three daughters were born. The petitioner was residing with his wife and children from this wedlock near Darhali river and had a

house and landed property over there. The house of Nissar Hussain and Sabar Hussain was also situated near the house of the petitioner. The petitioner divided the landed property and house amongst the children of three wives. The petitioner was having two shops at Gujjar Mandi and one shop was given to respondent No. 1 (daughter-in-law of the petitioner) at the time of marriage but after partition, the petitioner retrieved the said shop from respondent No. 1 against a sum of Rs. 50,000/-. The petitioner gave both these shops to the deceased and the mother of the deceased but respondent No. 1 was unhappy with his decision. The respondent No. 1 wanted to get both these shops and due to that, the relationship of respondent No. 1 became inimical with the petitioner and his wife. It also emerged during investigation that respondent No. 1 developed illicit relation with the other accused, who was minor and respondent No. 1 due to dispute in respect of the property got the minor son of the petitioner killed through the minor accused. The charge sheet was laid against respondent No. 1 before the court of Chief Judicial Magistrate on 14.11.2013 and on the same day, it was committed to the court of learned Principal Sessions Judge, Rajouri and the same was subsequently assigned to the learned trial court. The respondent No. 1 was charged for commission of offences under Section 302, 364 and 120-B RPC on 12.05.2014. The prosecution has examined 16 witnesses and respondent No. 1 admitted the statement of PW 23 Director FSL before the learned trial court.

7. In order to find out whether the judgment of the trial court is perverse or not, it is appropriate to have a brief resume of the relevant portion of the prosecution evidence.
8. **PW Mohd. Sadiq (petitioner)** has deposed that the deceased was taken by the sister of the juvenile accused for playing football in the evening at about 08 PM and they were playing till 8:30 PM. The electricity came at 09:10 PM and the deceased did not come home. He came to the house of Latief and the juvenile accused. Latief told that the deceased had gone with the juvenile accused. During search, he reached upto hospital and while he was coming back, Tariq and juvenile accused were coming from the stadium. He enquired from them and they disclosed that they were coming from the house of maternal uncle of the deceased. They searched for whole night and in the morning as well. The dead body of the deceased was found from the sports stadium. Tariq found the dead body and thereafter, Alfaz Begum and juvenile accused also went there. They hugged Tariq and became happy. He further deposed that the respondent No. 1 was having illicit relation with minor accused. During cross-examination, he admitted that there was no complaint of the children about the division of the property in any Panchayat and there was no case pending in the court. He also admitted that he lodged a report on the second day of occurrence and at that time, the juvenile accused was already arrested by the Police. The occurrence took place in the month of July and respondent No. 1 was arrested in the month of November.

9. **PW Hakam Din** does not pertain to respondent No. 1 as he deposed in respect of confession of the minor accused and in respect of certain recovery.
10. **PW Mohd. Latief** also does not pertain to respondent No. 1.
11. **PW Sariya Begum** has not made any incriminating statement against respondent No. 1 and during her cross-examination, she stated that respondent No. 1 was having good character.
12. **PW Tariq Hussain** turned hostile and did not support the prosecution.
13. **PW Jamshed Akhter (mother of the deceased)** has deposed about missing of her son and subsequent search to trace him. She further deposed that the cousin of the minor accused, namely, Tariq told that body of Asif (deceased) was lying in the small room of the stadium. She further stated that Nissar Hussain murdered her son through juvenile accused and respondent No. 1 was also involved in it. Respondent No. 1 was having enmity over the property. In fact respondent No. 1 had said that Asif would not survive and her mother would weep for whole life when her husband told that the documents were lying with the witness. During cross-examination, she stated that there was dispute of land with Nissar Hussain and the dispute was not regarding property and the house.
14. **PW Mohd. Rafiq** does not pertain to respondent No. 1.
15. **PW Mohd. Younis** also does not pertain to respondent No. 1.
16. **PW Mst. Shabnam Kouser** deposed that respondent No. 1 came to their house on 19.07.2013 at 04 PM and asked her father about the papers of land and he answered that the same were with the mother of Asif. He

further told that as and when she return, they would hand over the papers to her. Respondent No. 1 stated that Asif would not survive anymore and his mother would weep for ever. She went away and the same day, Asif went missing. She further deposed about the search made to trace her brother. She further deposed in respect of recovery of dead body of Asif. During cross-examination, she stated that the accused and her husband were having dispute over the land so she was fully confident about the murder but at the same time admitted that she had not seen the commission of murder but they were sure about the involvement of accused.

17. **PW Saima Kouser** stated that she along with younger sister and Asif were playing on the roof of house of Nissar Hussain on 19.07.2013 and thereafter, Asif went in the lobby of Nissar Hussain. The accused and juvenile accused were present and talking. After light came, she went inside the house. The respondent No. 1 came and demanded papers of land and her father replied that his wife was not at home and when she return, he would give the documents to her. When she and her mother enquired from the mother of juvenile accused, she replied that Asif and juvenile accused had gone to hospital. The dead body of the deceased was recovered from a small room of the stadium. During cross-examination, she stated that her statement was recorded after 8/10 days of occurrence. She has not stated that Alfaz Begum on 19.07.2013 at 4 PM demanded the copy of land document.

18. **PW Nazir Hussain** has deposed in respect of dispute of shop regarding which, Mohd. Sadiq had given Rs. 50,000/- to respondent No. 1. Respondent No. 1 threatened her father-in-law that if he would not give the shop to her it would not be better for him. During cross-examination, he stated that he had heard about the quarrel between the accused and her in-laws but had not seen with his own eyes.
19. **PW Abdul Gafoor** has turned hostile and did not support the prosecution. During cross-examination, no incriminating material could be extracted.
20. **PW Mohd. Azam** has deposed in respect of the site plan of the place of recovery of the dead body.
21. **PW Subash Chander** is the photographer. He clicked the photographs.
22. **PW Dr. Shalinder Sharma** stated that he conducted the post-mortem of the deceased. He has given the opinion after getting the FSL report. As per their opinion, the deceased died because of asphyxia due to strangulation.
23. **PW Varinder Gupta** is the Investigating Officer. He stated in respect of the investigation conducted by him. He also proved Fard Surathal, seizure memo of clothes, receipt of dead body, disclosure memo, recovery memo and the site plan. He further stated that after the completion of the investigation, the charge sheet was presented before the court. During cross-examination, he stated that the statement of the complainant i.e. petitioner was recorded on 20.07.2013 and the statements of rest of the members of the family were not recorded till four months. Mohd. Sadiq and his family members suspected the criminal conspiracy on the part of

accused Alfaz Begum over the land dispute. He could not say anything in respect of disputed land. He had not collected the documents from the revenue department. There was no witness who heard about the criminal conspiracy of the accused.

24. A perusal of the evidence brought on record reveals that PW Mohd. Sadiq and PW Jamshed Akhter and two daughters, namely PW Mst. Shabnam Kouser and PW Saima Kouser have deposed in respect of dispute between the petitioner and Nassir Hussain and respondent No. 1. It is evident from the testimony of these witnesses that they have simply narrated about the dispute in respect of shop and there is absolutely no evidence that respondent No. 1 conspired with minor accused for killing the minor son of the petitioner. PW Jamshed Akhter (mother of the deceased) has stated that it is Nisar Hussain who had killed her son along with minor accused and Alfaz was also involved in it. All the witnesses in fact only suspected the involvement of respondent No. 1 in respect of conspiracy with the minor accused to kill the minor son of the petitioner. The suspicion however strong may be cannot take place of proof. There is absolutely no evidence so far as respondent No. 1 is concerned that she at any point of time connived with minor accused for the purpose of killing the minor son of the petitioner.
25. After having gone through the evidence and the judgment passed by the learned trial court, this Court does not find that the learned trial court has passed the judgment by ignoring any vital piece of evidence brought on record by the prosecution. In view of the evidence led by the prosecution,

this Court has no hesitation to say that acquittal of respondent No. 1 was the only option available before the learned trial court. It is apt to note that the main accused, who was juvenile has already been acquitted by the Juvenile Justice Board as already mentioned above.

26. In view of the above, this revision petition is found to be misconceived, as such, the same is dismissed.

(RAJNESH OSWAL)
JUDGE

Jammu
19.12.2023
Neha-II

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

