

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 20.12.2024

Pronounced on: 31.12.2024

CRAA No.137/2010

c/w

CRR No.67/2010

CRAA No.137/2010

State of J&K through Crime Branch, Jammu

...Appellant(s)

Through:- Ms. Monika Kohli, Sr. AAG

V/s

1. Sham Singh S/o Gian Singh
2. Vikas Kumar alias Vicky S/o Reshi Kumar

Both residents of Puranadaroor, Katra.

...Respondent(s)

Through:- Mr. P.S.Parmar, Advocate

CRR No.67/2010

Rakesh Kumari, Age 46 years

W/o Sh. Kuldeep Kumar R/o Prana Droor,

Charan Padika, Tehsil Reasi District Udhampur

...Petitioner(s)

Through:- Mr. Sunil Sethi, Sr. Advocate with
M/s Waheed Choudhary &
Mohit Vaid, Advocates

V/s

1. Sham Singh S/o Gian Singh
R/o Daroor, Charan Padika, Katra.
2. Vikas Kumar S/o Reshi Kumar
R/o Daroor, Charan Padika, Katra

...Respondent(s)

3. State of J&K through Chief Secretary,
Govt. of J&K, Srinagar/Jammu.

...Proforma Respondent

Through:- Mr. P.S.Parmar, Advocate for R-1 & 2

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

Sanjeev Kumar J

1. Instant appeal by the then State of Jammu and Kashmir through Crime Branch, Jammu (now the Union Territory) arises out of a judgment dated 24th July, 2010 passed by the learned Principal Sessions Judge, Reasi [“the trial Court”] in case File No.27/14/Sessions titled *State v. Sham Singh and another* (FIR No.48/2006) for offences under Sections 302/34 RPC and 4/27 Arms Act, whereby the trial Court has acquitted the respondents of the charges and consigned the challan to records.

2. Before we advert to the grounds of challenge urged by Ms. Monika Kohli, learned Sr. AAG appearing for the appellant, we deem it appropriate to take note of the prosecution case, as was set up before the trial Court.

3) On the intervening night of 8/9th March, 2006, one Kundan Lal alias Fouzi S/o Kuldeep Kumar R/o P.P. Market, Puranadaroor was found to have been killed at Charanpadika adjacent to a bathroom complex. Information with regard to the murder was received in the Police Station, Katra in the form of a written application made by the mother of the deceased PW-Rakesh Kumari at 00045 hrs on 9th March, 2006. On the basis of the aforesaid information, FIR No.48/2006 under Sections 302/34 RPC and 4/25 Arms Act was registered in the

concerned Police Station. The investigation was initially handed over to Mr. Shamsheer Singh Sambyal, the then SHO Police Station, Katra. The complainant was not satisfied with the manner in which the investigation was being conducted by the Police Station, Katra. She approached this Court and on the directions of this Court passed on 5th May, 2007 in LPA (OWP) No.72/2006, the Crime Branch was handed over the case for re-investigation. Before this Court, the complainant had sought registration of a case of murder against five persons in addition to the respondents herein. Immediately upon taking over the investigation, the Crime Branch recorded the statements of the complainant and other witnesses under Section 161 Cr.P.C, visited the spot and prepared the site plan. Besides others, the statements of the daughter of the complainant Neeru Devi, maid Kamlo Devi, servant Anil Kumar and sister of the complainant Babli Devi were also recorded. The statements of PWs-49, 58 to 61 and 63 were found in contradiction with the statements of the complainant-Rakesh Kumari and her daughter Neeru Devi.

4) During investigation, it came to light that neither the complainant nor her daughter had any personal knowledge about the occurrence as both of them had reached on spot after the occurrence. The statements of few witnesses were recorded under Section 164 Cr.P.C.

5) The weapons of offence viz. a *Khokhri* and a *Toka* seized by the police during initial investigation were sent by the Crime Branch to FSL for opinion and it was found that these two weapons had been used for causing injuries to the deceased, which fact was also confirmed by the postmortem findings. It has also come in the investigation of the Crime Branch that the complainant and her daughter were also called to undergo Lie Detector Test but despite repeated requests, they showed their disinclination.

6) As per the investigation concluded by the Crime Branch, only two persons i.e. the respondents herein were held involved in the commission of crime and other five persons named by the complainant as participants in the crime were found implicated by the complainant on the basis of some old enmity. On the basis of the investigation conducted, the Crime Branch produced the challan before the competent Court of law against the respondents for commission of offences punishable under Sections 302/34 RPC and 4/27 Arms Act.

7) Vide order dated 26th December, 2007, the trial Court framed charge against the respondents for offences under Sections 302/34 RPC and 4/27 Arms Act for committing murder of the deceased by inflicting serious injuries upon him with *Toka* and *Khokhri* with intent to cause his death. The respondents pleaded not guilty to the charge and claimed trial. The prosecution was called upon by the trial Court to lead its evidence. The prosecution examined 58 witnesses out of 79

witnesses cited in the challan and dropped rest 21. The prosecution evidence was closed on 14th September, 2009 and the incriminating circumstances appearing in the prosecution evidence were put to the respondents and their statements under Section 342 Cr.P.C. were recorded on 26th November, 2009. The respondents denied the allegation of murder of the deceased but chose not to lead any evidence in defence.

7) The trial Court heard the matter finally and having given due consideration to the rival contentions and going through the entire record including the evidence recorded by the prosecution came to the conclusion that the prosecution had failed to establish the guilt against the respondents beyond all shadow of doubt and, thus, let off the respondents giving them the benefit of doubt vide judgment of acquittal dated 24th July, 2010. It is this judgment of acquittal passed by the trial Court, which is assailed by the Union Territory of Jammu & Kashmir by way of instant appeal and by the complainant-Rakesh Kumari by way of CRR No.67/2010.

8) We have heard Mr. Sunil Sethi, learned senior counsel for the revision petitioner and Ms. Monika Kohli, learned Sr. AAG for the Union Territory as also Mr. P.S.Parmar, learned counsel representing the respondents. We have also meticulously gone through the record including prosecution evidence and the manner in which it has been analyzed by the trial Court.

9) Having regard to the scope of interference in the acquittal appeal and the nature of evidence brought on record by the prosecution, we are of the considered opinion that the judgment of acquittal passed by the trial Court is legally perfect and does not suffer from any error of law or fact.

10) The judgment of acquittal passed by the trial Court is primarily based on the following reasons:-

- i) That the prosecution gave up in as many as 21 witnesses, which included some of the important witnesses required to prove the disclosure statements allegedly made by the respondents and the recovery of weapons of offence at their instance.
- ii) That the complainant PW-Rakesh Kumari and her daughter Neeru Devi, who have, for the first time, claimed to be the eyewitnesses of the murder of the deceased are contradicted by PWs-49, 58 to 61 and 63, who in their deposition have stated in unison that the complainant as well as her daughter reached on spot after the occurrence and the two persons, PWs-Manohar Lal and Sanjeev Kumar, who were cited as eye witnesses by the prosecution, have turned hostile, in that, they have stated about the occurrence involving three persons in the fight but have stated that they could not recognize the assailants.

- iii) That S.P.Reasi, PW-M.L.Mehra has in his deposition before the trial Court stated that he did receive a telephone call with regard to the murder of the deceased from the complainant-Rakesh Kumari but she did not reveal the name of the assailants who had committed the murder.
- iv) That as per the statement of Rakesh Kumari, she rang up the deceased from her landline phone at 9 p.m., to which the deceased responded by telling her that he was going to reach home within half an hour. No call is stated to have been made till 11 p.m. The complainant Rakesh Kumari has, though, stated that she called her son again at 11 p.m. when she was told by the deceased that he had been cornered by Sham Singh, Vicky, Vijay, Nandu, Sohan Singh, Suram Singh and Balwan Singh etc. However, statement of the complainant is contradicted and belied by her maid Kamlo, who, in her statement, has clearly stated that the complainant did not receive any response to the call made by her at 11 p.m. as the phone of the deceased was coming out of reach/switched off.
- v) That the complainant had a motive to implicate five persons in addition to the respondents herein on account of old enmity of these persons with the deceased- son of the complainant.
- vi) That the statements of the complainant Rakesh Kumari and her daughter Neeru Devi do not find support from the testimonies of

other witnesses who, as per the complainant, were accompanying her and the other circumstances emerging in the case and, therefore, the statements of the aforesaid prosecution witnesses cannot be relied upon nor can they be treated as eye witnesses to the crime.

- vii) The fact that the deceased was murdered by two persons is established but there is nothing in the prosecution evidence to come to a certain conclusion that he was murdered by the respondents and respondents alone.

Broadly, these are the reasons given by the trial Court to arrive at the conclusion that the guilt of the respondents has not been established beyond all reasonable doubt and, therefore, it would not be safe to convict the respondents.

- 11) Attacking the judgment of acquittal passed by the trial Court, Mr. Sunil Sethi, Senior Counsel and Ms. Monika Kohli, Sr. AAG would argue that the findings of fact returned by the trial Court suffer from grave perversity, in that, the trial Court has failed to give any good reasons as to why it has discarded the eye witness account of PW-Rakesh Kumari and her daughter Neeru Devi. Mr. Sethi would fairly concede that the Crime Branch, which re-investigated the matter, has not indicated or cited PW-Rakesh Kumari and PW-Neeru Devi as eye witnesses. He, however, submits that in the given facts and circumstances where the police under influence was not conducting

fair investigation, the witnesses aforesaid got first opportunity to disclose the truth before the Court. He would submit that PW-Rakesh Kumari was all along clamouring for justice and had in clear words and terms deposed before the S.H.O., Police Station, Katra and the Crime Branch team that her son had been murdered by the seven persons but no heed was paid to her statement. The Crime Branch, for reasons best known to it, disbelieved the complainant and her daughter on the basis of some contradictory statements made by the other witnesses. He would argue that it is because of the biased attitude adopted by the police, under some influence, the complainant had to approach this Court and it is only after the orders were passed by this Court, investigation, which was initially undertaken by the Police Station, Katra, was shifted to the Crime Branch. He would submit that even the Crime Branch failed to perform its statutory duty in a fair, impartial and transparent manner. It is submitted that all efforts were made to shield the accused and put up a case which would suit the respondents.

12) After considering the arguments and the grounds of challenge urged, we find ourselves completely helpless to take a view contrary to the one taken by the trial Court. The evidence on record produced by the prosecution is such as would not warrant conviction of the respondents. That apart, the scope of interference with the judgment of acquittal in the appeal is well circumscribed. Where, even on evaluation of the evidence, the Appellate Court is of the view that the

view other than the one taken by the trial Court is also possible, yet it will be loath to take such view unless the findings returned and the conclusion drawn by the trial Court are perverse.

13) Indisputably, the two prosecution witnesses i.e. PW-Rakesh Kumari and her daughter Neeru Devi have, in their deposition, given eyewitness account of the occurrence. They claim to have seen not only the respondents but five others inflicting injuries on the deceased. She has also given the motive of crime. It has come in her statement that on 02.03.2006 i.e. few days before the occurrence, her neighbour Vijay Singh had come to her residence along with his associates holding hockey sticks in their hands. They had enquired about her son. They further told the witness that his son had called the wife of Mr. Vijay Singh as “Bhabhi” and, therefore, must apologize for that. They left the house of the witness with a warning that they would not spare her son. The witness also claims to have approached the Sarpanch-Balwan Singh to complain against Vijay Singh but he declined to intervene because of his relationship with Vijay Singh, who was a person from his biradari. Regarding the occurrence, the witness submits that on the fateful day i.e. 08.03.2006 her son had gone to Katra to bring some necessary items for home. She called her son on telephone at 8 pm, to which he responded by saying that he was coming. However, he did not come and the witness again telephoned him at 11 p.m, to which call the deceased responded by saying that he had reached at Charanpadika where Sham Singh, Vicky, Vijay, Nandu,

Sohan Singh, Suram Singh and Balwan Singh had cornered him. The deceased indicated the place where he had been cornered as the place near the shop of one Gucchu. The witness claims to have rushed to the spot along with PWs- Kamlo, Neeru Devi, Shivani and Shivali. The witness claims that when she reached near the shop of Gucchu and was enquiring from his servant, she heard a voice “mummy bachao maar dia”. She ran towards bathroom where she saw Sham Singh, Vicky, Balwan Singh, Sohan Singh, Suram Singh Nandu and Vijay Singh beating her son. Sohan Singh and Balwan Singh had caught hold of him. She raised alarm, several pilgrims gathered etc etc.

14) The statement of PW-Rakesh Kumari is supported by her daughter- Neeru Devi. In the like manner she has also stated that after her mother- Rakesh Kumari spoke to the deceased at 11 p.m. She along with her mother rushed to the spot. They reached near the shop of Gucchu and enquired from his servant Ishera about the deceased. In the meanwhile, they heard the voice of the deceased from Nallah side. The deceased was crying “mummi bachao”. She also claims to have seen Suram Singh, Sohan Singh and Balwan Singh on the spot. They caught hold of her mother, whereas the others attacked the deceased with sharp edged weapons.

15) The trial Court has not believed the statement of these two witnesses, who, for the first time, claimed before the trial Court to have witnessed the crime, for the reasons that the Crime Branch, which

reinvestigated the matter, had found that these two witnesses reached the place of occurrence immediately after the occurrence had happened and, therefore, had not seen the assailants who killed the deceased.

16) Kamlo, the maid of Rakesh Kumari, who had rushed to the spot along with her, in her deposition, has been very categorical that after the witness alongwith mother of the deceased reached Charanpadika, the mother of the deceased Rakesh Kumari enquired from the shopkeeper about her son. She was told that her son had gone to bathroom. The witness states that she alongwith mother of the deceased went to the bathroom and found the deceased dead. The blood was present there.

17) PW-Isher Singh, who was first the person to be enquired about the deceased by Rakesh Kumari, in his deposition, has stated that he saw Rakesh Kumari on the road weeping and stating that her son had been murdered. PW-Babli Devi, has made the statements of Rakesh Kumari and Neeru Devi highly doubtful. PW- M.L.Mehra, SSP has categorically stated that when he was approached by the complainant-Rakesh Kumari through telephone, she did not disclose name of any of the assailants but reported that her son had been found dead.

18) Two eye witnesses PWs-Sanjeev Kumar and Manohar Lal have not supported the prosecution version that the deceased was killed by the respondents. They have only proved that there was a fight between three persons and that they could not recognize the persons involved in the fight. There is no effort made by the Investigating Officer to

conduct identification parade to identify the assailants and as to whether the persons involved in the fight leading to the murder of the deceased were those arrayed as accused in the case.

19) As a matter of fact, the entire case of the prosecution against the respondents was based on the testimonies of PWs-Manohar Lal and Sanjeev Kumar. Their statements also stood recorded under Section 164 Cr.P.C. PW-Sanjeev Kumar had categorically stated before the trial Court that the statement which he had made under Section 164 Cr.P.C. was under coercion from the Crime Branch. He, however, affirms that there were three persons fighting with each other but stated that he could not identify them.

20) There is another aspect which cannot be lost sight. PW-Rakesh Kumari has, in her deposition before the Court, stated that the deceased died on spot. However, as per the statement of the doctor, who conducted the autopsy of the deceased, the injuries caused to the deceased were not on vital parts and could not have caused instant death. He has stated that it could have taken half an hour before a person could die of such injuries because of blood loss and hemorrhagic shock.

21) The statements of PW-Rakesh Kumari and Neeru Devi, even if relied upon, cannot be made the sole basis of conviction of the respondents for the simple reason that their statements are not only contradicted by the other witnesses who were stated to be present at

the time of occurrence alongwith Rakesh Kumari and Neeru Devi, but also because it is consistent in the narration of the both that apart from the respondents five other persons were involved. However, the Investigating Officer could find no evidence against the other five.

22) Submission of Mr. Sethi that the statement of PWs- Rakesh Kumari and Neeru Devi may be possibly unbelievable insofar as five persons are concerned but can be relied upon so far as the respondents are concerned. He says that the doctrine “*Falsus in uno Falsus in Omnibus*” is a jurisprudential doctrine which is not applicable in India and an onerous duty is cast upon the Court to separate truth from falsehood.

23) There is no dispute with regard to the proposition put forth by the learned senior counsel, however, we are of the view that in the given facts and circumstances coupled with the other evidence available on record, even that part of the statements of Rakesh Kumari and Neeru Devi, as would inculcate the respondents, cannot be believed.

24) In the instant case, it is not feasible to separate truth from falsehood because the grain and chaff are inextricably mixed up. Besides, it also remains to be established as to which part of statement is true and which part is false. There is overwhelming evidence on record to show that PW-Rakesh Kumari and PW-Neeru Devi reached the place of occurrence after the murder had taken place and saw the

dead body lying near the washroom complex. PW-Babli Devi is sister of PW-Rakesh Kumari and has no reason to shield the murderers of her nephew. PW-Kamlo is maid of PW-Rakesh Kumari. She also had no reason not to state truth. Had PW-Manohar lal and PW-Sanjeev Kumar, cited eyewitnesses, stood by their statements, recorded during investigation by police, perhaps this Court would have taken the statement of PW-Rakesh Kumari that she saw respondents inflicting injuries on the deceased as truthful part of her statement disbelieving her that there were five others, who, too, inflicted injuries on the deceased and killed him. In such situation, it would have been possible to sift the grain from chaff.

25) From a reading of the entire evidence on record, it clearly comes out that PW-Rakesh Kumari and PW-Neeru Devi along with others reached the place of occurrence after the occurrence had taken place. The aforesaid witnesses named the respondents and five others on the basis of their suspicion, which they had in their mind because of some old enmity of these persons with the deceased. The evidence on record, no doubt, points towards the possibility and probability of the respondents being involved in the commission of the crime, however, in the face of the evidence on record, it is difficult for us to say with certainty that the murder of the deceased was committed by the respondents and respondents alone. The suspicion, howsoever grave it may be, cannot be a substitute for proof. It is cardinal principle of criminal jurisprudence that the guilt of accused is required to be proved

beyond reasonable doubt and not on the basis of inferences that can be drawn on the basis of preponderance of probabilities.

26) The evidence on record leaves us with a serious doubt in our mind about the certainty of the respondents having committed the crime. We, therefore, are in agreement with the trial Court that in the instant case the respondents are entitled to the benefit of doubt.

27) For the aforesaid reasons and also the reasons given by the trial Court, we find no merit in the acquittal appeal filed by the State as well as the criminal revision filed by the complainant. Both are, accordingly, dismissed.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU
31.12.2024
Vinod,PS

Whether the order is speaking : Yes
Whether the order is reportable: Yes