

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

Pronounced on: 31.12.2024

Case No. : CRAA No. 109/2012

State of Jammu and Kashmir through
S.H.O Police Station, Kishtwar.

...Appellant(s)..

Through: - Mr. Rajesh Thappa, AAG.

Vs

1. Bid Lal S/o Ram Lal, caste Brahman resident of Pallan Illaqa Kuntwara, Tehsil Kishtwar.
2. Madan Lal S/o Bid Lal R/o Pallan Illaqa Kuntwara, Tehsil Kishtwar.

... Respondent(s)..

Through: - Mr. Ankush Manhas, Advocate.

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

JUDGMENT

Puneet Gupta-J :

1. The appeal has been preferred against the judgment dated 15.10.2012 passed by the court of learned Principal Sessions Judge, Kishtwar, whereby the respondents-accused were acquitted of offence under Section 302/34 RPC. It is submitted in the appeal that the trial court has passed the judgment against law and facts and has not appreciated the evidence that was produced by the prosecution. The trial court has ignored the important pieces of evidence while passing the judgment.
2. The respondents have appeared through counsel and contested the appeal.

3. The scanned record of the trial court is also before the court.
4. The respondents are referred to as accused in the appeal for the purposes of discussion.
5. The complainant PW-Des Raj lodged a verbal report with Police Station, Kishtwar on 30.12.2000 to the effect that his son Rajesh Kumar alias Raju aged 13 years was playing hide and seek with Madan Lal (accused) but thereafter his son did not return. This happened on 29.12.2000. The son of the complainant was not found despite search by the family and villagers and it was on 30.12.2000 at about 2/2.30 PM that on search the dead body of the victim was found buried in a cave near the village. The boy was murdered by slitting his throat with some sharp edged weapon. The complainant suspected that the accused had murdered his son as they were inimical towards the complainant due to land dispute. FIR No. 169/2000 was consequently registered with Police Station, Kishtwar under Section 302 RPC. The investigation resulted into presentation of challan against the accused under Section 302/34 RPC. The charges were framed against the accused under Section 302/34 RPC. Accused denied the charges and claimed trial.
6. The prosecution produced number of witnesses in support of its case. A brief resume of the prosecution witnesses is required before the court can conclude if the judgment of the trial court can be sustained or not.
7. **PW-1 Des Ram** has deposed that he was informed by Des Raj and Sadhu Ram on 30.12.2000 when he was on duty at Nagbhtna that the son of the witness is missing from the last evening. The villagers were found searching for his son when he went back to the house. He observed the accused persons watching the situation very quietly. Gosawoon Ram and Jagat Ram had called and PW-Jagat Ram informed that dead body was lying in the cave. He along with chowkidar lodged written report with the Police Station. EXPW-1 is the FIR which bears the signature of the witness. The police

retrieved the body and seized the same. The other seizures also took place on spot. The accused-Bid Lal disclosed during investigation that the weapon of offence has been hidden by him and the police seized the axe which was taken out by Bid Lal. Seizure memo is exhibited as EXPW-K/1. The witness has identified the axe in the court. In cross-examination, the witness has stated that Jagat Ram is his brother-in-law who along with chowkidar PW-Prem Nath and PW-Prem Nath S/o Sunder also searched for the accused. He was not informed that anyone had witnessed the murder of his son. Except the accused all the villagers were present when police came on spot. The witness has also stated that the accused had watched secretly the situation during the search operation. He was suspicious of the accused as they had fled away from the area. He was informed by his wife that the accused Madan Lal had called his son. On 20th March, he visited the Police Station where the accused was being interrogated by the police and the accused was brought to the village as he had made disclosure of the axe which was blood stained but blood had dried.

8. **PW-2 Prem Nath S/o Gopal** has deposed that he was informed by the wife of Des Ram about the missing son since last evening and informed the father of the victim when he came back to the house from the duty that the son might have been killed by Bid Lal and his son Madan Lal. The dead body was found in a cave and the report was lodged with the Police Station. The witness speaks of the retrieving of the body by the police on the next day and seizure of clothes and clay etc. and he was witness to the memos prepared of the same. In cross-examination, he has deposed that the dead body was not visible from outside the cave and could be seen only after entering the cave. Prem Nath S/o Sunder was not present during search. He is not aware of the person who had murdered the deceased. The accused were arrested on the third day when police

came there. The axe was seized one month thereafter and seizure memo of the same was prepared which bears his signatures.

9. **PW-3 Shiv Lal** has deposed that on 29th December, 2000 he along with others went for the search of the son of Des Ram and the victim was found in a cave and was identified from his clothes. The accused persons left the spot though asked by him that nobody should leave the area till the police arrives on the spot. In cross-examination, he has stated that Des Ram is his cousin. The witness does not know how the victim died or who had killed the victim. Jagat Ram informed of the dead body lying in the cave. PW-Prem Nath S/o Sunder resides about 6 Kms from the spot.
10. **PW-4 Amri Devi**, mother of the deceased, has deposed that the accused had threatened to eliminate her family because of land dispute. The accused No.1 had called her son Rajesh at 4.30 PM but he could not go with him and thereafter the accused No.2 Madan Lal called her son for playing and her son accompanied the said Madan Lal. The younger son went to bring water. As her son Rajesh did not return by the evening, she enquired from the accused who showed ignorance about her son. Her son could not be traced in the village and thereafter the search was carried out by the villagers. The accused watched the situation secretly from their house. Goswain Ram informed the search party that Jagat Ram had found a dead body in a cave. The throat of her son had been cut. The accused had absconded from the place. In cross-examination, the witness has stated that her statement was recorded by the police on the day the police came on spot.
11. **PW-5 Jagat Ram** has deposed of the search and the recovery of the dead body. The witness has denied that the accused had any land dispute with Raj or his father. He did not suspect the accused. It is wrongly recorded in his statement by the Police that there was land dispute between the parties and further that the accused did not participate in the search operation.

12. **PW-6 Prem Nath** S/o Sunder has deposed that while he was on his way back from Kandni and reached at Pallan he heard screams of a child 'save save' (bachayo bachayo) and when he reached near that place he saw Madan Lal having caught hold of Rajesh from his arm and Bid Lal standing on the legs of child and slaughtering the throat of the child with an axe. When the accused were confronted of the reason for doing this act, the accused left the child there and chased him but he fled away from the place. He did not disclose the incident to anyone as he was threatened by the accused of the same consequence in case he revealed the occurrence. He disclosed the act of the accused persons after the accused were arrested by the police. The accused-Bid Lal took out the axe from inside the room and was accompanied by PW-Isher Lal and two constables. The witness identified his signatures on the recovery memo and also the axe in the court. In cross-examination, the witness has deposed that he has been performing his duty as VDC member for the last five-six years and has been provided 303 rifle for fighting with the militants. He does not know anything about the recovery of dead body of Rajesh Kumar. He visited the Police Station after ten days when he heard of the arrest of the accused. The accused had disclosed of the axe being kept in the house and the same can be recovered. He had disclosed to Des Ram of the occurrence and the involvement of the accused and thereafter Des Ram had lodged the report with Police Station and then states that he informed Des Ram of occurrence when accused were arrested 4/5 days after the occurrence. The witness has then again stated that he informed of the murder to Des Ram after fourth day of occurrence and then report was lodged and till then the search of Rajesh was going on. He did not participate in the search operation of the child. He had not disclosed the occurrence to his Commander-PW Isher Lal. The recovered axe and its handle had blood stains. Isher Lal and Numbardar Shiv Lal were present at the time of recovery and Des

Raj was in his house at that time. The witness cannot say from which room the axe was recovered as he did not enter the room. It is wrongly written in the memo that axe was recovered from corner of store beneath the gunny bags on the nishandehi of accused. Police informed him about the recovery of the axe from beneath the gunny bags. Shiv Lal was with him and was outside the room at the time of recovery and had signed the recovery memo. The axe is of common type and easily available.

13. **PW-7 Darshan Kumar** is the brother of deceased Rajesh Kumar. As per the witness the accused Madan Lal called him and his brother for playing and fishing and both of them accompanied Madan Lal. But after covering some distance Rajesh sent him back stating that the witness should bring water for the mother. Rajesh did not return till night and the villagers conducted the search but his brother could not be traced and the accused also showed their ignorance about his brother. The dead body of Rajesh was found buried on the next day at 2.30 PM and that dead body was noticed by Gulhari (PW-Jagat Ram).
14. **PW-8 Isher Lal** is witness to the disclosure made by the accused regarding the axe and also recovery of the axe from the house and the axe being got recovered by the accused Bid Lal. Disclosure and recovery memos bear his signatures and are exhibited as EXPW-K and EXPW-K/1 respectively. In his cross-examination, he has deposed that he also participated in the search of Rajesh. Des Ram and the witness were present when police seized axe at Pallan. Dy.S.P did not enter the room from where the axe was recovered. The disclosure memo EXPW-K pertains to both the accused. It is wrong to say that only the accused Bid Lal made disclosure statement and not the other accused and the mention only of accused-Bid Lal in the disclosure memo is wrong one. Prem Nath S/o Sunder was not present at the time of recovery.

15. **PW-9 Des Raj S/o Soba Ram** was declared hostile. On cross-examination, the prosecution could not elicit any positive response from the witness.
16. **PW-10 Sadhu Ram** has no personal knowledge of the occurrence and states that he had called Des Ram who was on his duty at Nagbhtna. The body was found in a cave.
17. **PW-11 Mohd. Iqbal Head Constable** has deposed that the accused had confessed their guilt because of land dispute in his presence and that of complainant in the office of SHO during questioning. He is witness to the disclosure and recovery memos. The disclosure was made by one accused in the room of SHO where complainant was only present. The arrest memo is in his handwriting and is also witness to the seizure of weapon of offence which was blood stained and was wrapped in a cloth.
18. **PW-12 Dr. Wajid Ali** is witness to the post-mortem report. The statement of the witness shall be referred to an appropriate stage of discussion.
19. **PW-13 Farooq Ahmed**, Naib Tehsildar, is witness to the resealing of the packets and issuance of certificate though he was not shown the certificate in the court.
20. **PW-14 Subash Chander** is Patwari and has prepared dasti khaka EXPW-15.
21. **PW-15 Babu Ram** is investigating officer who has carried out the initial investigation in the case and had visited the spot on 31.12.2000. He investigated the case till 24.01.2001. He does not know when the FIR was forwarded to the Magistrate nor the CD file has any such entry. FIR is required to be submitted to the Magistrate within 24 hours. The court is at a distance of 10 feet from the Police Station and is separated by a wall. As per the endorsement of court, FIR was sent after 17 days though could be easily sent on 31.12.2000 itself. The witness states of recording of statements of some witnesses and that none of them was eye witness to the

occurrence. As no eye witness was mentioned, as such, he cannot say about the place of occurrence nor was informed of same by anyone. He did not make any investigation regarding the place of occurrence.

22. **PW-16 Mohan Lal Thakur** has stated that he took over the investigation on 17.03.2001 and investigated the matter till 30.03.2001 during which the accused was arrested. Disclosure proceedings and recovery of weapon took place. He is witness to the recovery memo which bears his signatures. In cross-examination, he has stated that FIR was registered at 5 PM on 30.12.2000 and as per the endorsement it was filed with the court on 16.01.2001. CD file also does not mention as to when FIR was sent to the court. The accused were arrested in Malipeth on 08.03.2001 and who were absconding after the occurrence. The disclosure statement was made by the accused on 20.03.2001 in his office room. The room from where the article was recovered was not locked. The weapon of offence was not blood stained at the time of the recovery as the accused had cleaned the blood. As per investigation, the crime was committed inside the cave. The litigation was going on between the parties but he has no details of the same nor investigated this aspect of the matter.
23. **PW-17 Showkat Ali** had taken over the investigation of the case from PW-Mohan Lal Thakur in April, 2001. He had recorded the statements of Sadhu Ram and Des Raj. Later on, the investigation was handed over to Satish Kumar, IPS Incharge SHO. In cross-examination states that he does not know if there was any eye witness in the case and he did not enquire on this aspect of the case. Mohd. Iqbal was his reader and had recorded the statements during his investigation.
24. No other witness was produced by the prosecution.
25. The statements of the accused were recorded under Section 342 Cr.P.C and denied the incriminating circumstances appearing

against them in the prosecution evidence. The accused did not produce any evidence in defence.

26. Learned Additional Advocate General has argued that the learned trial court has not analysed the prosecution evidence in its right perspective and acquitted the accused persons on the ground of discrepancies which are not vital ones in the case. The statements of the witnesses and other attending circumstances including the medical evidence point towards the guilt of the accused. The prosecution has proved its case beyond shadow of doubt. The trial court judgment being not in consonance with the facts and law, the same is required to be set aside. The appeal against the acquittal of the accused be allowed and the accused be given maximum sentence as prescribed under law.
27. Learned counsel appearing for the respondent has argued that there is not an iota of evidence which could connect the accused with the commission of offence. The circumstances brought on record do not lead towards the guilt of the accused. The eye witness projected by the prosecution is not reliable and the court has rightly disbelieved the witness. The appeal is required to be dismissed.
28. The victim Rajesh Kumar was only just 13 years old when he was brutally killed. It is mentioned in the FIR by PW-Des Ram that his son Rajesh Kumar was playing with accused-Madan Lal on 29.12.2000 in the evening hours but did not return to the house and accused might be the killers of his son. The search operation carried out by the father of the victim and the villagers led to the finding of the victim body from a cave on 30.12.2000 at about 2.30 PM.
29. PW-6 Prem Nath S/o Sunder Dass is cited as eye witness in the challan and indeed his statement is of primary importance in the case. This witness claims to have seen both the accused participating in the crime as the accused Madan Lal is stated to have caught hold of Rajesh Kumar from his arms whereas accused Bid Lal while standing on the legs of Rajesh Kumar had slashed his

throat with an axe. The witness was chased by the accused persons after he asked them about their action but he was successful in fleeing from the spot. The witness has not disclosed the occurrence for some days due to the alleged threat extended by the accused to him. It is only after 4/5 days of the arrest of the accused that he claims that he had informed the father of the victim of occurrence. The witness is VDC member and has been provided with 303 rifle as per the own showing of the witness. It cannot be easily digested that the VDC member who has been assigned the task of fighting against the militants can be cowed down due to the threat extended by the accused persons. The version regarding threat is also otherwise not plausible one as the witness was not residing in the village where the accused were residing at the time of occurrence. The witness has deposed that he informed of the occurrence to PW-Daya Ram, father of the deceased, after 4/5 days when the search for the victim was still going on. There is a fallacy in the statement of the witness as the dead body of the victim was recovered on the very next day of the missing of the child and the search did not take place for 4/5 days as stated by the witness. The statement of PW-Des Ram is devoid of the factum of PW-Prem Nath informing him of having seen the occurrence wherein the accused were involved. Had PW-Prem Nath disclosed the killing of Rajesh Kumar to his father Des Ram then the father of the victim would have definitely deposed in the court that it was Prem Nath who had infact informed him of the involvement of the accused persons in the crime. The version of the eye witness cannot be accepted just because he has revealed the names of the accused and being involved in the occurrence. It is the overall impact of the statement that is required to be analysed and if the court finds the statement convincing and truthful one only then the same can be relied upon by the court and not otherwise. Infact the perusal of the statement of the witness Prem Nath makes out that he dilly-dallies even regarding the day

when he firstly informed Des Ram of the occurrence. It appears that the witness might have disclosed his being an eye witness to the occurrence only when the disclosure statement of the accused allegedly happens in the case. If that could be the case the statement is to lose the sheen for delayed information. The statement of the witness is not of sterling quality.

30. The statement of PW-Prem Nath S/o Sunder does not inspire confidence. He cannot be said to be reliable and credible witness. The trial court has extensively dealt with the statement of this witness and this Court is of the view that the trial court has not faulted in concluding that the statement of so called PW-Prem Nath S/o Sunder cannot be believed and relied upon.
31. The statements of two other witnesses pertain to the aspect of 'last seen'. The witnesses are the mother and brother of the deceased Rajesh Kumar. PW-Amri Devi, mother, has deposed that Madan Lal had called Rajesh Kumar for playing and her son accompanied the said accused. Rajesh Kumar did not come back in the evening and on the accused being enquired, they showed their ignorance. It is also stated by the mother that her younger son had gone to fetch water. PW-Darshan Kumar is the brother of deceased and has stated that the accused Madan Lal had called Rajesh for playing & fishing and both of them accompanied the accused. Rajesh sent the brother back so that he could bring water for the mother. The witness then states that his brother did not come back and search was launched to trace him. It may be noticed that whereas, PW Amri Devi has deposed that he asked her younger son to bring water, PW Darshan Kumar, brother of the deceased, on other hand, has stated that Rajesh Kumar had asked him to go back and fetch water for the mother. Mother does not say that PW-Darshan Kumar also accompanied the accused Madan Lal. These two versions do not reconcile with each other. The 'last seen' theory has to be considered in the light of other circumstances that have come on

record. Mere statement that the accused were seen with the victim at some point of time is not sufficient to hold the accused guilty. The complainant party and the accused had some land dispute and the FIR mentioning the name of the accused could be the result of such enmity cannot be ruled out. Moreover, the version put forth by two prosecution witnesses that the victim was called by accused Madan Lal for playing and the mother allowed her son Rajesh Kumar to play with Madan Lal, more so, when both the parties had enmity and the accused had threatened to eliminate family, the mother in that situation would allow her minor son to go with one of the accused is a version which cannot be easily accepted. It is also very pertinent to point out that PW-Amri Devi or for that matter, PW-Des Ram, father of the victim have stated that Rajesh Kumar was called by the accused Madan Lal for playing and his son had accompanied Madan Lal and thereafter his son could not be traced. It is unnatural that in case the witnesses had strong suspicion about the involvement of the accused persons in the missing of Rajesh Kumar, the said witnesses, parents, will not disclose the same to the villagers and specially those who had gone for the search of the said Rajesh Kumar even in the forest area. The parents of the victim have stated that the accused remained in the village and were watching the search operation secretly. The accused not accompanying the search party will not raise any presumption that they were involved in the murder of Rajesh Kumar. In fact, there is conflicting version regarding the presence of the accused persons during the search operation of Rajesh Kumar qua the statement of the parents of the victim. PW-Jagat Ram has recorded the presence of the accused persons during the search of Rajesh Kumar. The Court, in the circumstances, is not convinced that the aspect of 'last seen' as sought to be brought into picture by the prosecution in the case is proved.

32. The prosecution has examined witnesses regarding the disclosure of the alleged weapon of offence and its recovery from the accused. The trial Court has rightly disbelieved the so called disclosure and the alleged recovery of weapon in pursuance to the said disclosure made by the accused as the witnesses pertaining to the same have contradicted each other and one of the contradictions being that whereas, PW-8 Isher Lal has deposed that both the accused had made disclosure statements PW- Mohd. Iqbal, on the other hand, has deposed that only one accused had made the disclosure statement. EXPWK and EXPWK-I are the alleged disclosure statement and recovery memos respectively. The trial court has rightly noted that the witnesses have contradicted each other regarding the alleged recovery of axe having blood stains on it and the axe was sealed later on. The witnesses do not state that they actually saw the accused recover weapon in their presence. The accused making disclosure statement after 12 days of arrest is improbable.
33. The statement of PW- Dr. Wajid Ali who has conducted the post-mortem of the victim on 31.12.2000 and issued the post-mortem report EXPW-13 reveal that the cause of death is because of severed and haemorrhagic shock due to cut throat injury caused by heavy sharp cutting weapon. The weapon shown to the witness could cause the injury is also stated by the Doctor. No doubt, the death of the victim is homicidal but in order to prove the involvement of the accused, the prosecution has to bring together all the pieces of evidence so as to prove the guilt of the accused. The statement of the Doctor by itself will not bring home the guilt against the accused unless other circumstances also support the prosecution.
34. Last but not the least, PW- Des Ram, father of the accused has stated that written report was lodged with the police and PW Prem Nath S/o Gopal has also deposed that the report was lodged by PW Des Ram, father of the deceased in his presence and that of Hans

Raj and Des Raj. No such report is on the file nor the police version says so. In case the report has been filed what happened to that report is not made known to the Court and the trial Court has also noticed this important factor. Irrespective of the absence of written report on the file, if any, submitted by PW Des Ram in the police station, it is to be noticed that the FIR though registered on 30.12.2000 at 5 PM yet the same has been received by the Magistrate only on 16.01.2000 (in fact 2001) meaning thereby that the FIR has been sent to the learned Magistrate after 17 days of its registration. It is quite surprising that it took so many days to send the FIR to the Court which is just adjoining to the police station. It needs no reiteration that the FIR is required to be sent to the Court at the earliest without any delay in order to rule out any embellishment or fabrication of facts. The requirement of Section 157 Cr.P.C has been observed only in breach in the case in hand. There is no explanation nor could there be any as to why it took 17 days for the police to send the FIR to the Magistrate. PWs-Babu Ram, Mohan Lal Thakur and Showkat Ali who investigated the crime at different point of time have not been able to explain as to when the FIR was forwarded to the Magistrate. Further, as per the Investigating Officers, CD file does not record as to when the FIR was sent to the Magistrate though they say that it was presented on 16.01.2001 before the Magistrate. The inordinate delay in sending the FIR to the Magistrate and that too without any plausible explanation tendered by the three Investigating Officers, on the face of it, makes the FIR doubtful. The suspicion raised in the FIR against the accused could be the result of enmity between the two sides cannot be ruled out as this fact has been deposed by the complainant PW-Des Ram and his wife Amri Devi.

- 35.** From the discussion made above, it is made out that the statement of PW Prem Nath S/o Sundar who claims to be the eye witness is not found to be trustworthy, the complainant party failing to disclose

the suspected involvement of the accused in the missing of Rajesh Kumar even during search operation for two days, the last seen theory espoused by the prosecution being not proved, the disclosure statement and consequent recovery of the alleged weapon of offence (axe) not proved and the inordinate delay in sending the FIR to the Magistrate is not explained. The aforesaid factors do convince this Court also that the prosecution has failed to prove its case against the accused beyond shadow of doubt which is prerequisite before the accused can be held guilty. It is trite proposition of law that the acquittal by the trial court cannot be normally interfered with by the appellate court unless there is perversity in the judgment or where the trial court has completely ignored the vital evidence in the case.

- 36.** The Court is of the view that the trial court has dealt with all aspects of the case minutely and after proper analysis of the evidence has found the accused not guilty of the offence in which they have been charged. No interference is required by the appellate court in the judgment impugned in the present appeal. The judgment is upheld.
- 37.** The present appeal is without merit and is, accordingly, dismissed.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU:
31.12.2024
Pawan Chopra

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