

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

CRAA No. 3/2012

State of Jammu and Kashmir

.....Applicant(s)/Petitioner(s)

Through :- Mr Rajesh Thappa, AAG

v/s

1. Mir Hussain Respondent(s)
2. Mohd. Sharif
3. Mohd. Rafiq S/o Mir Hussain
4. Shida Bi W/o Mir Hussain
5. Ghulam Din S/o Mir Baz
6. Abdul Hassain S/o Mir Hussain
7. Riaz Ahmed S/o Mir Hussain

All residents of Khaitan Draba Tehsil
Surankote, Accused 6 & 7 are proceeded
u/s 512 Cr.PC

Through :- Mr. M K Sharma, Advocate

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

ORDER(ORAL)
27.03.2025

PER- SANJEEV KUMAR-J

1. The State of Jammu and Kashmir [now UT of J&K] is in appeal against a judgment of acquittal dated 12.11.2011 passed by learned Sessions Judge Poonch [**“the trial Court”**] in file No. 20/Sessions in case titled State Vs. Mir Hussain and ors.
2. The impugned judgment is assailed by the appellant primarily on the ground that there has been failure on the part of the trial Court to appreciate the evidence on record correctly. It is contended that the

evidence on record was sufficient to connect the respondents with the commission of offences punishable under Sections 302, 120-B RPC.

3. Before we advert to the grounds of challenge urged by Mr. Rajesh Thappa, learned AAG appearing for the appellant, we deem it appropriate to briefly take note of the prosecution case and the evidence led by the prosecution to prove it. On 19.03.2008, the Police Station, Surankote received an information that the dead bodies of Safiya Begum and her minor son namely Mohd. Salim, residents of Khaitan Draba Tehsil Surankote were lying on the bank of the river under suspicious circumstances. The police swung into action and initiated proceedings under Section 174 Cr.PC. ASI Ali Mohd., who was entrusted the investigation, went on spot along with Sub Inspector Shabir Hussein Shah and took into the custody the dead bodies of the deceased. After taking photographs of the dead bodies, the same were sent to the Surankote Hospital for post-mortem. On completion of post-mortem and other legal formalities, the dead bodies were handed over to the legal heirs of the deceased for their last rites. The statements of several witnesses under Section 175 Cr.PC were also recorded.

4. During the course of inquest proceedings, the investigation was handed over to Sub Inspector Shabir Hussein. During the course of examination of the legal heirs of the deceased Safiya Begum, the brother of the deceased Safiya Begum namely Mohd. Bashir (PW-2) deposed that the marriage of deceased Safiya Begum was contracted with the accused Mohd. Rafiq in the year, 2004 and out of the wedlock, one child was born. The relations between the deceased and her in-laws were not cordial. He further deposed that at the time of marriage of the deceased Safiya

Begum, the accused-Mir Hussain had borrowed a sum of Rs. 15,000/- from one Subash Khatri on interest and the same had been deposited in the name of Safiya Begum in the post-office. With the passage of time, PW-23 Subash Khatri started insisting for returning his money with interest. On 17.03.2008, the deceased Safiya Begum along with her minor child of about two years had gone to the house of Mohd. Rafiq S/o Haji Abdul Karim R/o Khetaan Draba to make a telephone call to her brother. The call could not materialize. The deceased along with her minor child stayed in the house of Mohd. Rafiq and returned to her in-law's house on the next day. The accused leveled allegations of unchastity on the deceased Safiya Begum. She was beaten by her husband-accused No. 3 namely Mohd. Rafiq. It was further deposed by PW-2 Bashir Mohd that on the intervening night of 18th and 19th March, 2008, the respondents herein with common intention killed Safiya Begum and her son namely Mohd. Salim and threw away the bodies of the deceased on the bank of a river at Fazlabad so as to give it a colour of death by drowning in the river. On the basis of this statement recorded by I/o Shabir Hussein, FIR No. 54/2008 for commission of offences punishable under Section 302/109 & 32 RPC came to be registered in the Police Station.

5. During the course of investigation, the statements of several witnesses including the brother of the deceased Bashir Ahmed were recorded under Section 161 & 164-A Cr.PC. The report of the post-mortem was also obtained from the Block Medical Officer, Surankote wherein, the cause of death was opined as suffocation by gagging the mouth and nose. On the basis of the evidence collected, the investigation was concluded as proved against all the respondents and a charge-sheet against the respondents for

offences punishable under Sections 302/34/109 RPC was presented before the competent Court of law.

6. On 21.04.2009, the respondents were charged for the commission of offence under Sections 302/120-B RPC and the charges were read over to them. The respondents denied all the charges and claimed to be tried. With a view to prove its case, the prosecution examined 28 out of 32 listed witnesses. On the closure of the prosecution evidence, the incriminating circumstances emerging from the prosecution evidence were put to the accused and their statements under Section 342 Cr. PC were recorded. The respondents denied all the allegations and claimed to be innocent. They, however, chose not to lead any evidence in defence.
7. The trial Court after hearing both the sides and having gone through the evidence on record, came to the conclusion that the prosecution had miserably failed to prove its case convincingly and beyond any reasonable doubt against the respondents. The trial Court, thus, acquitted all the respondents of the commission of offences they were charged with in terms of judgment dated 12.11.2011 passed by the trial Court. Feeling aggrieved, the appellant-State is before us in this appeal.
8. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the judgment impugned passed by the trial Court is legally correct and does not call for any interference by us in this acquittal appeal. The entire case of the prosecution is rested only on circumstantial evidence and the circumstantial evidence that was sought to be led by the prosecution in the case comprises of the following:-

- (i) The two of the accused namely Mohd. Rafiq and Mir Hussain were found at a place from where the dead bodies of the two deceased were later recovered.
- (ii) Pursuant to the disclosure statements made by the respondents, a shawl and a rope which were used for killing the deceased by suffocation were recovered.
- (iii) The post-mortem report confirmed that the death of the deceased had occurred due to suffocation and that there were bruise marks found on the lips and round the nose.
- (iv) The post-mortem report also found ring type mark on the ankles of the deceased Safiya Begum.

9. Admittedly, there are no eye witnesses to the crime in which mother and her minor son have lost their lives. So far as circumstantial evidence is concerned, there is some evidence led by the prosecution to prove the possible motive for commission of the crime. The fact that sum of Rs. 15,000/- stood deposited in the name of deceased Safiya Begum in the post-office stands proved. It has also come in the oral evidence particularly in the statement of PW-2 Bashir and PW-11 Lal Bi that Mir Hussain-father-in-law of the deceased Safiya Begum were pressurizing her to get the money withdrawn from the post-office as PW 23-Subash Khatri was insisting for the return of his money.
10. There is also some oral evidence on record to show that a day before the occurrence, the deceased Safiya Begum alongwith her son had gone to the house of one Rafiq Khan for making a telephone call to her brother and that she stayed in the house of Rafiq Khan on the said night. It is because of that, the respondents were doubting her character and, therefore, could be a possible cause for committing the murder of the deceased Safiya Begum and her minor son. However, the other circumstances like that the two of the accused namely Mohd. Rafiq and Mir Hussain along with one more were seen on the night of

occurrence at the place from where the dead bodies were later recovered is not proved beyond reasonable doubt. Both witnesses PW-7 Shabir Ahmed and PW-8 Mohd. Yousuf who claim to have seen two of the accused aforementioned near the place from where the dead bodies were recovered have unequivocally stated that they saw the two accused in the light of torch which they were carrying with them.

11. Admittedly, no such torch has been seized or proved during the course of trial. Otherwise also, the testimony of these two witnesses is not consistent rather contradictory to each other. PW-Shabir Ahmed in his deposition before the trial Court has stated that he saw three persons running away from the spot where the dead bodies were lying and one of them turned back. He could recognize that he was Mohd. Rafiq and two others could not be identified by him. PW-8 Mohd. Yousuf who was along with PW-7 Shabir Ahmed has stated that he did not recognize anybody other than Mir Hussain. He has not clarified as to how he could recognize only Mir Hussain and not the others. That apart, had PW-7 Shabir Ahmed and PW-8 Mohd. Yousuf seen three persons including the two identified by them near the place from where the dead bodies were recovered, they would not have kept quiet for two months and not disclosed this fact to the police more particularly when the dead bodies were recovered from the said place. The occurrence happened on the intervening night of 18th and 19th March, 2008 and statements of prosecution witnesses in particular PW-7 Shabir Ahmed and PW-8 Mohd. Yousuf were recorded on 28.05.2008, i.e. after more than two months of the crime. This puts the testimony of PW-7 and PW-8 in the realm of doubt, which renders the testimony of PW-7 and PW-8 unreliable.
12. Regarding the discovery statement and recovery made consequent thereupon, suffice it to say that PW-2 Bashir and PW-3 Shahab Din who were witnesses to the disclosure statement and the consequent recoveries made thereupon have proved their presence at the time of disclosure statement and the recoveries

made. They have even gone to the extent of deposing that the accused, in the custody of police, confessed to the police in their presence. Suffice it to say that any confession made to the police is hit by Section 25 of the Evidence Act and is not admissible in law. It is only in terms of Section 27 of the Evidence Act only that part of the incriminating statement made by a person accused of an offence in police custody as would lead to the discovery of a relevant fact can be proved.

13. In the instant case, even if we put strong reliance on testimony of PW-2 and PW-3, and hold that the recovery of weapons of offence stands proved, yet the proof of one of the circumstances is not sufficient to connect the accused with the commission of offence. As is rightly observed by the trial Court in the judgment impugned that with a view to proving a case based on circumstantial evidence, the prosecution should first establish fully all the circumstances and the circumstances so established must form an unbroken chain consistent only with the hypothesis of the guilt of the accused.
14. In the instant case, the circumstances relied upon by the prosecution are not firmly established nor do they form an unbroken chain of events leading to the only hypothesis consistent with the guilt of the accused. The circumstances like motive, the presence of two of the accused near the place from where the dead bodies were recovered and even the disclosure statements leading to the recovery of the weapon of offence also cannot be said to be firmly established though there has been some evidence led by the prosecution to prove the aforesaid circumstances.
15. Viewed from any angle, it cannot be said that in the instant case, the prosecution has been able to establish the case against the respondents by leading evidence beyond any reasonable doubt. Otherwise also, the jurisdiction of the appellate Court hearing an appeal against the acquittal is well circumscribed. Even if, on evaluation of evidence on record, a view other than

the view taken by the trial Court is plausible, the appellate Court would go by the view taken by the trial Court. Such being the extent of jurisdiction of the appellate Court, we find no material to interfere with the judgment of the acquittal passed by the trial Court.

16. For the foregoing reasons, we find no merit in this appeal and the same is, accordingly, dismissed.

(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

JAMMU
27.03.2025
Tarun

Whether the order is speaking?
Whether the order is reportable?

Yes/No
Yes/No

