

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

*Reserved on: 14.08.2025*

*Pronounced on: 19.08.2025*

CRAA No.74/2010

State of J&K

...Appellant(s)

Through:- Mr. Ravinder Gupta, AAG

**Versus**

Tarlok Chand Mahajan S/o Ved Parkash Mahajan  
R/o 514, UNO Lane, Talab Tillo, Jammu

...Respondent(s)

Through:- Mr. R.K.Kotwal, Advocate

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE**  
**HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

**JUDGMENT**

**Sanjeev Kumar “J”**

1. State of Jammu & Kashmir (now Union Territory of J&K) is in appeal against a judgment of acquittal dated 26<sup>th</sup> March, 2010 passed by 2<sup>nd</sup> Additional Sessions Judge, Jammu [“the trial Court”] in case titled State v. Tarlok Chand Mahajan, whereby the trial Court has acquitted the respondent of the charge under Section 302/452 RPC, 3/25 Arms Act.
2. The impugned judgment of acquittal is challenged by the appellant on the ground that the trial Court has not appreciated the evidence on record in correct perspective and has committed

grave error of law in passing the judgment impugned and giving the benefit of doubt to the respondent.

3. Before we advert to the singular ground of challenge urged by the learned counsel for the appellant, we deem it appropriate to take note of the prosecution story, as was put up before the trial Court. As per the prosecution story, PW-1 Rakesh Kumar accompanied by PW-2 Anurud Naik, made an oral report to the Police Station, Gangyal, Jammu on 27<sup>th</sup> September, 2000 that on the said day at 10.15 pm, the owner of the factory, namely Rahul Sharma was in his office. The respondent -Tarlok Chand came in his car and went inside the office of the factory. PW-Omkar Singh and PW- Akshay Kumar were also present there. The owner of the factory-Rahul Sharma asked PW-Omkar Singh to bring water inside the office. When Omkar Singh entered the office with water, he heard noise inside the office. The respondent threw the glass of water, dragged the owner out and brought out his pistol. The respondent kicked Mr. Rahul Sharma. Witnesses present there tried to rescue the deceased but the respondent threatened all of them that in case anyone comes in between, he would be killed.

4. Further story of the prosecution is that thereafter respondent fired two rounds one hit head and another chest of the deceased Rahul Sharma. He fell on the ground and that the injured was lying in a pool of blood. On this oral report, FIR No.485/2000

was registered at Police Station, Gandhi Nagar, Jammu for offence under Section 307/452 RPC and 3/25 Arms Act and investigation was entrusted to Sh. Kuldeep Khajuria, S.H.O. Police Station, Gangyal. The Investigating Officer swung into action, took the injured to the hospital, where he succumbed to his injuries. Accordingly, offence under Section 302 RPC was incorporated. Dead body was subjected to post-mortem and the wearing clothes of the deceased were seized. Two bullets were taken out from the body of the deceased by the doctors, which were sealed on spot. Other formalities including taking of blood samples were completed and the dead body was handed over to the family for last rites. The bullets seized were sent to FSL for examination. On the disclosure of the respondent, a revolver 32 bore, made in Germany, was recovered from the drawer of his bed in his bedroom. Statements of witnesses under Section 161 Cr.P.C were recorded by the police.

5. On completion of the investigation, Investigating Officer came to the conclusion that the deceased has been murdered by the respondent by use of revolver by causing bullet injuries on head and chest. Accordingly, challan for offence under Sections 302, 452 RPC and 3/25 Arms Act was laid before the trial Court. The charge was framed for the offence aforementioned and the same was put to the respondent. The respondent denied the charge, pleaded not guilty and claimed to be tried.

5. With a view to prove its case, the prosecution examined in as many as forty four (44) witnesses. PW-1 Rakesh Kumar, PW-2 Anurud, PW-3 Akshay Kumar and PW-4 Omkar Singh were cited as eye witnesses. The case was based, both, ocular as well as circumstantial evidence. So far as eye witnesses are concerned, they all turned hostile and despite being cross-examined by the PP, nothing incriminatory could be elicited from them. Prosecution also led evidence to prove 'Inkashaf' and recovery of the weapon of offence at the instance of the respondent to connect the respondent with the commission of offence.

6. The trial Court examined the entire evidence on record in the light of submissions made on both sides and came to the conclusion that the evidence on record was deficient to connect the respondent with the commission of offence he was charged with. Vide judgment of acquittal, the trial Court gave benefit of doubt to the respondent and acquitted him of the charge. It is this judgment of the trial Court, which is called in question by the appellant mainly on the ground that the trial Court has failed to appreciate substantial evidence that had come on record which was sufficient to connect the respondent unerringly to the offence with which he was charged.

7. Having heard learned counsel for the parties and perused the material on record, we are of the considered opinion that the

judgment of acquittal passed by the trial Court, in the face of the evidence on record, is perfectly legal and unquestionable.

8. As is rightly observed by the trial Court, the prosecution had sought to prove the charge against the respondent on the basis of ocular as well as circumstantial evidence. The prosecution cited and examined four eye witnesses i.e. PW-1 Rakesh Kumar, PW-2 Anurud, PW-3 Akshay Kumar and PW-4 Omkar Singh. All the four witnesses did not support the prosecution version at all and were, on the request of the PP, declared hostile. They were subjected to cross-examination by the PP but nothing incriminatory against the respondent could be elicited from them. We have gone through their testimonies and are of the considered opinion that the view taken by the trial Court on their testimonies is correct and unexceptionable.

9. The circumstances, relied upon by the prosecution, which were required to be proved, were as under:-

- i) Disclosure made by the respondent, which led to the recovery of weapon of offence;
- ii) Recovery of weapon of offence at the instance of the respondent;
- iii) The weapon recovered at the instance of the respondent and in pursuance to the disclosure statement made by him was the weapon actually used for committing the murder of deceased-Rahul Sharma.

10. Disclosure statement –EXPW RB, as per the challan, was made by the respondent in presence of PW-Rakesh Badgotra and Sanjay Nagpal. The disclosure statement is to the effect that the respondent had used 32 bore revolver made in Germany for commission of offence, which he had kept in his bedroom in the drawer of his bed and the respondent alone had the knowledge of the same and could be recovered on his identification. The disclosure is said to have been made on 12.10.2000. It is noteworthy that it is on 12.10.2000, the respondent was arrested. The disclosure statement and subsequent recovery of weapon of offence, on the basis of such disclosure statement, was also effected on the same day. PW-Rakesh Badgotra, who was one of the witnesses to the disclosure statement, explained his presence in the Police Station at the time of making of disclosure statement by the respondent, by stating that he accompanied his friend Sanjay Nagpal to the Police Station for obtaining a certificate. Contrary to the statement made by PW-Rakesh Badgotra, Sanjay Nagpal, the other witness to the disclosure statement, has nowhere stated that he ever went to the Police Station for collecting such certificate or that he ever asked PW-Rakesh Badgotra to accompany him. PW-Sanjay Nagpal, therefore, makes the presence of PW-Rakesh Badgotra doubtful. Statement of Sanjay Nagpal is to the extent that he was called to

the Police Station by S.H.O. and when he reached the Police Station, he was asked by the SHO to go to the first floor where Dy.S.P. was sitting but the accused was not there. On the asking of the Dy. S.P., he signed certain documents regarding death of Rahul Sharma. PW-Sanjay Nagpal has, thus, not supported the prosecution version and has not proved the disclosure statement EXPW-RB. He has also put the presence of PW-Rakesh Badgotra in serious doubt.

11. In the face of the aforesaid evidence, the trial Court has rightly concluded that even the disclosure statement has not been firmly proved. That apart, recovery of weapon of offence from the bedroom of the respondent from his house cannot be said to be the recovery of weapon of offence from a place which was known and accessible only to the respondent. It is not the case of the prosecution that the room was either closed and under the lock and key of the respondent or that nobody other than the respondent had access to that room. In such a situation, it is difficult to believe that the weapon of offence has been recovered at the instance of the respondent from a place which was only known to the respondent and was not accessible to any other person.
12. In the face of such a weak evidence brought on record by the prosecution, it cannot be said with certainty that the weapon of offence was kept in the drawer of the bed in the bedroom of the

respondent by the respondent was the weapon that was actually used for commission of murder of the deceased-Rahul Sharma.

13. Even the testimony of PW-28 S.H.Bukhari is not categorical and clear. He has, in his testimony, stated that the two bullets, which were found by PW-34 Dr. Bhupesh Khajuria, during post-mortem from the body of the deceased, were actually fired from the weapon of offence recovered at the instance of the respondent. He clarifies in his cross-examination that he has deliberately used the expression “may have been fired from the seized weapon of offence”. Therefore, his opinion is neither positive nor negative. In short, the testimony of PW-28 Dr. S.H.Bukhari is that he is not certain as to whether the two modified bullets that were found in the body of the deceased were actually fired from the weapon of offence recovered at the instance of the respondent and from no other weapon.
14. For all these reasons, the trial Court has found the charge not fully and firmly established and has given the benefit of doubt to the respondent. Despite great persuasion by the learned counsel appearing for the appellant, we could not persuade ourselves to take a view different from the one taken by the trial Court.
15. There is elaborate appreciation of evidence by the trial Court and all aspects of evidence ocular as well as circumstantial have been fully analyzed. It is not even the case of the appellant that the judgment of acquittal passed by the trial Court is perverse.

16. That being the position, even if we were of the opinion that, on basis of the evidence on record, a view different from the one taken by the trial Court may also be permissible, yet in view of the settled legal position, we are bound to take the view that supports the accused. Needless to say that an accused is presumed to be innocence till proven guilt and this presumption of innocence gets fortified by the judgment of acquittal earned by him from the trial Court. Unless a serious case of perversity is made out, Appellate Court, hearing an acquittal appeal, would be loath to interfere with the judgment of acquittal.
17. In view of the above, we find no merit in this appeal and the same is, accordingly, dismissed. Record be sent back to the trial Court.

**(Sanjay Parihar)**  
**Judge**

**(Sanjeev Kumar)**  
**Judge**

JAMMU  
19.08.2025  
Vinod,PS

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