

HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

CRA No. 31/2015 c/w

CONF No. 8/2015

Reserved on: 09.10.2025

Pronounced on: 27.11.2025

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Whether the operative part or
full judgment is pronounced? Full

Abdul Majeed**...Applicant(s)/Petitioner(s)**

Through: - Mr. Navyug Sethi, Advocate vice
Mr. Sunil Sethi, Sr. Advocate
Mr. Waheed Choudhary, Advocate

v/s

State of J&K and Anr.**...Respondent(s)**

Through:- Mr. Raman Sharma, Sr. Advocate (AAG) with
Ms. Saliqa Sheikh, Advocate

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

Sanjay Parihar-J

1. The appellant, Abdul Majeed, has preferred the present appeal against the judgment of conviction dated 01.09.2015 passed by the Principal Sessions Judge, Udhampur, in Sessions Trial No. 56 of 2011, (the Trial Court) whereby he has been held guilty for offences punishable under Sections 302, 307, 324, 326 and 120-B of the Ranbir Penal Code r.w Sec. 3 of the Explosive Substances Act and Sec. 16 and 18 of the Unlawful Activities (Prevention) Act and sentenced to undergo imprisonment for life and to pay a fine of ₹2,000, with all sentences directed to run concurrently.
2. The appellant challenges the said conviction on the ground that the entire investigation and prosecution case is the result of manipulation and a preconceived design to falsely implicate him as a scapegoat in the incident

dated 02.05.2011, without there being any legal evidence to show his complicity or conspiracy with the co-accused, Ghulam Sarvar, to commit any terrorist act. It is urged that the prosecution's case rests merely on the allegation that the appellant purchased a Maruti car bearing registration number DL3CF/8035 from Delhi and allegedly handed it over to the absconding co-accused, who later used the same to cause an explosion near Birma Bridge, Udhampur, resulting in the death of one person and injuries to several others. The co-accused, however, has remained untraced throughout the investigation and trial, and there is no direct or circumstantial evidence to establish any conspiracy or nexus between him and the appellant. It is further submitted that the prosecution's story regarding the recovery of a Tata Sumo vehicle with explosive substances is contradictory, as one set of evidence suggests that the recovery was made from Jogi Gate, Jammu, whereas another version states that the vehicle was taken from the residence of the co-accused. Such inconsistencies, according to the appellant, render the entire prosecution case doubtful. It is further contended that the learned trial court has proceeded more on moral conviction rather than legal proof, and the conviction is unsustainable in law.

3. As per the prosecution version, on 02.05.2011 at about 8:30 AM, an improvised explosive device planted in a Maruti car exploded near *Danuri*, close to Birma Bridge on the National Highway, Udhampur, allegedly targeting Major General D.S. Pathania's convoy. The blast resulted in the death of one civilian, Kuldeep Kumar, and injuries to six others, including army personnel. FIR No. 83/2011 was registered, and during the investigation, the police recovered the engine and chassis numbers of the

destroyed car, which were traced to a Maruti car with registration. No DL3CF/8035 purchased in Delhi on 06.04.2011 by the appellant, along with the co-accused, for ₹25,000. The prosecution claims that the appellant not only bought and delivered the said vehicle to Ghulam Sarvar, a Pakistani national allegedly sheltered by him, but also facilitated the purchase of another vehicle, a Tata Sumo bearing registration number JK08A/3878, through Majotra Finance Company, which was being used by the co-accused for carrying passengers.

4. According to the prosecution, the co-accused Ghulam Sarvar had married a girl known to the appellant and had been residing with her at various places, lastly at Sidhra, Jammu. It was alleged that in pursuance of a criminal conspiracy, the co-accused had loaded a Maruti car with RDX and parked it near Birma Bridge, Udhampur, on 02.05.2011, where he detonated it using a remote control, causing the explosion. After the blast, the co-accused absconded, and upon the appellant's arrest, his disclosure allegedly led to the recovery of a Tata Sumo vehicle JK08A/3878 from Jogi Gate, Jammu, which was found to contain explosive substances intended for use in further explosions. The appellant was charged under Sections 302, 307, 324, 326, and 120-B of the Ranbir Penal Code, read with Section 3 of the Explosive Substances Act and Sections 16 and 18 of the Unlawful Activities (Prevention) Act, for having conspired to cause an explosion with the intent to strike terror among the public, endanger lives, and cause death.

5. He was formally charged and put on trial, during which the prosecution examined 51 witnesses to prove the allegations, while the appellant examined five witnesses in his defence. The trial court framed five key

questions for determination 1. whether the appellant and the co-accused had entered into a criminal conspiracy to commit a terrorist act; 2. whether the appellant had gone to Delhi to purchase the Maruti car used in the explosion; 3. whether the recovery of the Tata Sumo vehicle carrying explosives was made at his behest; 4. whether his plea of alibi was credible, and 5. whether there existed a clear motive for the appellant to commit the offence.

6. In answering these questions, the trial court relied upon the testimonies of several prosecution witnesses, including PW-9 (wife of the co-accused), PW-11 SubashChander, and PW-13 Mohd. Iqbal, PW-18, Imtiyaz Ahmed, PW-22, Durga Das, PW-24, Kamal Jolly, PW-33, Suresh Kumar Majotra, and PW-42 Waqar Ahmed, all of whom deposed that they had seen the appellant and the co-accused together and were aware of their close acquaintance. The wife of the co-accused stated that in April 2011, the appellant had visited them frequently. PW-11 SubashChander testified that he sold vehicle No. JK08A/3878 (Tata Sumo) to the appellant, who said that it was required for his nephew, Ghulam Sarvar. PW-13 Mohd. Iqbal also deposed that the co-accused was residing near his house at Sidra and that the appellant would visit him regularly. Similarly, PW-22 Durga Dass and PW-24 Kamal Jolly stated that both the appellant and the co-accused had come to Delhi together to purchase the old Maruti car, which originally belonged to PW-23 Mohd. Usman, who sold it to Noor Alam, and later to Durga Dass and his son, Kamal Jolly, for resale.

7. Based on this evidence, the trial court found that there was a close relationship between the appellant and the co-accused and that the appellant was fully aware of the co-accused's activities, who, being a foreign national,

had been planted in Jammu & Kashmir for carrying out terrorist acts. The prosecution also relied upon the testimony of PW-14 Mohd. Yunus having stated that the appellant arranged for the daughter of the witness to be married to the co-accused, which, according to the court, was part of an effort to camouflage his identity. The court rejected the appellant's plea of alibi, which claimed he was not in Delhi on 06.04.2011, the date of the vehicle's purchase, holding that it lacked supporting evidence. It concluded that there was clear and credible proof that the appellant, along with the co-accused, had gone to Delhi, purchased the vehicle, and brought it to Jammu, where it was later used in the explosion on 02.05.2011.

8. The trial court further relied on forensic and expert evidence to conclude that the appellant had received delivery of the vehicle from Delhi, and that handwriting and fingerprint analyses corroborated the prosecution's case. The chain of circumstantial evidence, linking the appellant to the purchase, possession, and transfer of the vehicle used in the blast, was found complete. The court also accepted the prosecution's version that the appellant's disclosure led to the recovery of the Tata Sumo vehicle containing explosives, with supporting testimony from PW Padamdev Singh, PW Subash Chander, PW Sunil Thakur, and PW Suram Singh. The appellant's defence that the Tata Sumo had already been seized from the co-accused's residence was disbelieved. Finally, the court held that there was sufficient proof of motive and concluded that the appellant had entered into a criminal conspiracy with the co-accused to commit a terrorist act by detonating an IED-laden car in a public place, and accordingly convicted and sentenced him as above.

9. Ld. Counsel for the appellant, while assailing the judgment of the trial court, has invited attention to the entire evidence on record and highlighted several serious infirmities in the prosecution's case. It is contended that the prosecution has failed to establish the essential element of criminal conspiracy between the appellant and the co-accused, and has also failed to satisfactorily prove the alleged disclosure statement said to have led to the recovery of detonators, which the trial court treated as a major incriminating circumstance against the appellant. The counsel has further submitted that, as per the evidence on record, the appellant was discharging his official duties at Rajouri on the date of the alleged occurrence, and therefore, his presence anywhere near the scene of the crime at Udhampur stands completely ruled out.

10. It is also urged that even the factum of the arrest of the appellant has not been properly established. While the prosecution has shown in the charge-sheet that the appellant was arrested on 10.05.2011, the evidence on record clearly reveals that he had been taken into custody much earlier, on 04.05.2011, from Rajouri. This discrepancy, according to the appellant, goes to the very root of the matter and renders the alleged disclosure statement and the subsequent recovery doubtful, as the prosecution has failed to explain the intervening period or justify the manipulation in the date of arrest. He further pointed out that there exist two contradictory versions regarding the recovery of the Tata Sumo vehicle. On one hand, the wife of the co-accused has categorically deposed that the vehicle was recovered from her residence, and her version is corroborated by neighbouring witnesses; on the other hand, the prosecution has relied upon witnesses who

stated that the recovery was effected from Jogi Gate, Jammu, which version has not been proved beyond a reasonable doubt.

11. It is further submitted that none of the prosecution witnesses has credibly placed the appellant at or near the scene of the blast, yet the trial court has presumed his knowledge and involvement merely because of his acquaintance with the co-accused. Such presumption, according to the defence, is wholly unwarranted and unsupported by any cogent evidence. The learned counsel argued that the trial court, instead of basing its findings on legal proof, has been guided by moral conviction arising out of the gravity of the incident and has relied upon precedents which are factually and contextually distinguishable. The defence has also emphasised that there is no evidence whatsoever to prove that the co-accused was a militant or affiliated with any terrorist organisation. None of the prosecution witnesses has even remotely suggested that the co-accused had any connection with a particular militant group or had engaged in terrorist activities. Thus, the entire conviction, according to the appellant's counsel, rests on mere assumptions, presumptions, and conjectures, without any legally admissible or tangible evidence.

12. To arrive at a fair and just decision in this appeal, it is therefore necessary to briefly examine the testimonies of some of the crucial witnesses whose evidence bears directly upon the findings recorded by the trial court.

13. Summary of Prosecution Evidence.

Witnesses to the Scene and Incident

- PW-1 N.K. Ishwar Singh, PW-2 Madan Lal, and PW-3 Dr. Narinder Nargotra confirmed that a blast occurred targeting the General's vehicle. Though the General escaped unhurt, the driver and other civilians sustained serious injuries, and Kuldeep Kumar succumbed to injuries.
- PW-5 Sita Ram, PW-6 Kuldeep Kumar, and PW-7 Pawan Sharma also witnessed the explosion at Birma Bridge, confirming that the blast killed Kuldeep Kumar and that his body was seized for post-mortem examination.
- PW-20 Balwan Chand corroborated the occurrence, stating that a white car parked outside a tea stall exploded on that day.

14. Witnesses Linking the Accused with Co-accused and Vehicles

- PW-9 Shabana, wife of co-accused Ghulam Sarvar, stated that her husband owned a Tata Sumo JK08A/3878 and a truck JK02AE/4112, and that the appellant frequently visited her husband. She identified the appellant and claimed that both had gone to Delhi and purchased a white Maruti 800, later learned to have been used in the blast. After the incident, the police seized documents and vehicles from her house.
- PW-14 Mohd. Yunus corroborated the relationship, saying the appellant got his daughter married to Ghulam Sarvar by posing as his uncle, and confirmed that the Tata Sumo was purchased by Ghulam Sarvar.
- PW-17 Yassar Arafat and PW-18 Imtiaz Ahmed knew both accused; PW-17 recalled Ghulam Sarvar telling him before the incident that he

was going to Srinagar in the Tata Sumo and asking him to look after a white car (DL-8035) parked nearby.

15. Witnesses Regarding Recovery and Disclosure

- PW-10 Padamdev Singh deposed that the appellant disclosed to the police that a Tata Sumo JK08A/3878 was parked at Jogi Gate, Jammu, containing a remote control, batteries, and cells. The vehicle and items were recovered accordingly, and disclosure and seizure memos (EXTP-25/1 & 25/2) were prepared.
- PW-16 Sunil Thakur corroborated this recovery, stating that upon disclosure by the appellant, the Tata Sumo was recovered from Jogi Gate with explosives and documents beneath the dashboard. He also detailed the seizure of loan documents and specimen signatures of the appellant.
- PW-15 Skand Ali testified that five cells, wires, and a plastic case were seized in his presence on 03.05.2011.
- PW-32 Mohd. Farooq confirmed that the fingerprints of the appellant were taken, sealed, and sent to the FSL along with the delivery receipt bearing his fingerprints.

16. Witnesses Linking Vehicle Purchase and Financing

- PW-11 SubashChander stated that the appellant and co-accused purchased the Tata Sumo (JK08A/3878) for ₹3.10 lakh, partly financed (₹80,000) through Majotra Finance Company. Recovery of the same vehicle and its documents was later made in his presence.

- PW-33 Suresh Kumar Majotra, partner of Majotra Finance Company, corroborated this, confirming that the appellant arranged finance for the Tata Sumo in the name of Ghulam Sarvar.
- PW-22 DurgaDass (Krishna Motors, Delhi) and PW-24 Kamal Jolly described the purchase of a white Maruti 800 DL3CF/8035 by the appellant and Ghulam Sarvar in April 2011 for ₹25,000. They identified documents, photographs, and fingerprints related to the sale.
- PW-23 Mohd. Usman, the original owner of the Maruti car, confirmed that he had earlier sold it to Noor Alam, from whom it was later resold to Abdul Majeed.
- PW-25 Haji Bashir Mohd. Chowdhary and PW-26 Nanak Chand verified that Ghulam Sarvar possessed a ration card and driving licence, establishing his identity.

17. Investigating and Formal Witnesses

- PW-13 Mohd. Iqbal confirmed that Ghulam Sarvar was his tenant and drove a Tata Sumo; he identified both the accused and the seizure at Jogi Gate.
- PW-19 Basanti Bhatt (SHO Women Cell) corroborated that the appellant's fingerprints were taken and attested by Naib Tehsildar Udhampur.
- Several police witnesses corroborated seizure, attestation, and chain-of-custody of documents, explosives, and forensic samples.
- PW-S.L. Bhatt (FSL Expert, Jammu):

Conducted fingerprint examination comparing the specimen fingerprints and thumb impressions of the appellant with those appearing on a delivery receipt of the Delhi Pradesh Car Dealers Association. He found that the questioned and specimen impressions were of the same person. The impressions were normal and consistent, and the exhibits were received in sealed condition without tampering.

- PW-37 Masood Sadiq (Mechanical/Explosive Expert):

Examined the damaged engine recovered from the blast site. The metallic plate bearing the engine/chassis number was missing, but through chemical etching, he could restore the partial number “B1...56” and inscription “MAIL 2.6.95” on the base plate. He also examined five battery cells and other explosive materials, confirming they were in working condition. His report No. 60 dated 10.05.2011 was exhibited as EXTP-72.

- PW-R.K. Rathore (Naib Tehsildar, Udhampur):

Attested the specimen signatures (S1-S6) and thumb impressions (Exhibits 21-22) of the appellant at DPL Udhampur, confirming they were taken in his presence and properly attested. PW-Dr. Rohit Koul and PW-Rakesh Hangloo (FSL Experts):

Confirmed that the exhibits sent for forensic examination were received properly sealed, tested in due procedure, and showed no signs of tampering.

18. Defence Evidence

1. DW–Gulzar Ahmad (Brother of the Appellant):

Claimed that the appellant was taken into custody on 04.05.2011 by the Police Station Rajouri. He stated that the appellant had earlier given signed photographs and documents to one Ishtiaq Ul Haq for the purchase of a vehicle, and these documents were later misused by co-accused Ghulam Sarvar. He asserted that the appellant only provided documents for a driving licence (Forms 20, 28, 29) and had no role in any conspiracy.

2. DW–Mohd. Khan:

Supported the appellant's defence, stating that he worked in the Agriculture Department and had no contact with the co-accused. He said the appellant gave ₹10,000 and ID documents to Ishtiaq Ul Haq for purchasing a used vehicle, and that Ghulam Sarvar later used those documents.

3. DW–Shamsher Hussain:

Confirmed that the appellant was employed as an Agriculture Extension Officer (AEO). He discussed an attendance certificate issued in 2014, admitting he signed it in the absence of his senior, upon the request of the appellant's wife, but without a court's official seal. He admitted there was no official record of the appellant's arrest communicated to his office in May 2011, though the attendance register recorded his arrest.

4. DW–Ishtiaq Ul Haq:

Claimed that in 2009, the appellant had visited his shop to purchase an old vehicle and a driving licence. He took signatures, thumb impressions, and documents (ID, PRC, ration card, photos) of the appellant for the process, in the presence of Mohd. Khan, Ghulam Sarvar, and Gulzar Ahmad. He admitted that the forms (28, 29) on record bore appellant's genuine signatures but denied giving a false statement.

5. DW–Mohd. Yousuf:

Deposed similarly to Ishtiaq Ul Haq, supporting the defence version that the documents used for vehicle purchase were originally taken by Ishtiaq from the appellant for a legitimate purpose and later misused.

19. We have heard counsel for both sides and carefully perused the evidence adduced during the trial. Having regard to the background of the case, it is pertinent to note that the main accused has absconded, and the present appeal relates solely to the appellant, who has been charged with the allegation of having a close association with the co-accused, an active militant of the proscribed terrorist organisation *Lashkar-e-Taiba*, which is known for engaging in subversive activities in this region. The specific accusation against the appellant is that he facilitated the concealment of the co-accused's identity by planting him as a resident of Behrote, Rajouri, and procured fake identity documents in his name, including a driving licence and voter identification card. It is further alleged that the appellant purchased a second-hand Maruti car bearing registration number **DL3CF/8035** from Karol Bagh, New Delhi, and after taking its delivery and

possession, handed it over to the said absconding co-accused. In pursuance of the criminal conspiracy, the said vehicle was subsequently converted into an Improvised Explosive Device (IED) and detonated at the scene of the crime, resulting in the death of a pedestrian and injuries to several others. The explosion also caused damage to a car in which Major General D.S. Pathania was travelling.

20. The prosecution thus alleges that the appellant, in conspiracy with the co-accused, perpetrated a terrorist act resulting in the death of an innocent civilian and injuries to multiple persons. The incident occurred on 02.05.2011, at around 8:30 a.m., near *Danuri*, close to *Birma Bridge* on the National Highway, when the Maruti car bearing registration number DL3CF/8035, laden with explosives, was detonated through remote control, leading to a powerful explosion. On this basis, *FIR No. 83/2011* was registered. The explosion was of such magnitude that the vehicle was completely shattered. One Kuldeep Kumar, who happened to be within the radius of the blast, died instantaneously, while several others sustained injuries. The testimonies of PW-NK Ishwar Singh, Madan Lal, Sita Ram, Pawan Sharma, Sham Lal, Balwan Chand, and Dr Narendra Nargotra conclusively establish that an explosion indeed took place. As per the evidence of Dr Nargotra and Lt. Col. A.M. Luthra, the deceased succumbed to blast injuries caused by a metallic fragment that struck his abdomen, resulting in multiple organ damage.

21. PW-Harnam Singh deposed that burnt pieces of the car were recovered from the spot and seized vide *Exhibit P-9/1*, which were subsequently sent for forensic examination. PW-Mohd. Sadiq, *FSL Jammu*, testified that the

chassis of the vehicle had sustained extensive damage. By employing the chemical etching process, he was able to discern the characters “B1” and the last two digits “56” of the engine number, though the middle portion was irretrievably damaged. His report is exhibited as *Exhibit P-7/2*. Upon tallying the iron plate inspection with the available RTO data, the vehicle was found to bear engine number F8BIN1159556 and chassis number 769049, corresponding to a Maruti 800 car registered as DL3CF/8035.PW-Kapil Gupta further confirmed, on the basis of records obtained from the Delhi RTO through Inspector Raj Kumar of Delhi Police, that the registration certificate indeed pertained to a Maruti 800 car bearing number DL3CF/8035. From the cumulative evidence adduced during the trial, there remains no doubt that the explosion was caused using vehicle number DL3CF/8035.

22. The prosecution’s case primarily rested on the testimonies of PW-Kamal Jolly and PW-DurgaDass, who stated that the appellant had purchased the Maruti car in question and that, at the time of this transaction, he was accompanied by the co-accused. Both witnesses claimed that they were shown the appellant’s voter identity card and other documents during the deal. They further deposed that although the car was initially owned by PW-23 Mohd. Usman, it had been sold to one Noor Alam in 2010, and subsequently, Noor Alam handed over the car to them for resale. When the appellant and his associate approached them, they verified their credentials, checked their documents, and sold the vehicle for a consideration of ₹25,000, retaining photocopies for their satisfaction. Exhibit 17, which was seized during the investigation, included the photocopy of the driving license

of Ghulam Sarvar, the sale-purchase and transfer documents, and a delivery receipt bearing the appellant's thumb impression, signature, and photograph. Both PW-Kamal Jolly and PW-DurgaDass confirmed that these documents were the same as those handed over during the transaction.

23. The appellant, however, argued that these documents had been fabricated by the co-accused. He contended that he had approached DW-Ishtiaq Ul Haq to help him purchase a second-hand vehicle, to whom he had given ₹10,000 along with blank Form 28 and Form 30. According to the defence, DW-Ishtiaq Ul Haq subsequently handed over these documents to the co-accused, who then misused them. The appellant also disputed his presence in Delhi on 06.04.2011, the date when the car deal was allegedly concluded. We, however, reject this defence and hold that the prosecution's evidence was credible, because additionally, even the expert witnesses, PW-36 S.L. Bhatt and PW-50 Rakesh Hangloo, have conclusively opined that the thumb impressions and signatures on the delivery receipt matched those of the appellant. So, the finding of fact recorded by the trial court that it was the appellant who purchased and took delivery of the Maruti vehicle from Delhi cannot be faulted. During the hearing, the counsel for the appellant further argued that the testimony of PW-Kapil Gupta was inconsistent and unreliable. However, upon examination, we find that PW-29 Kapil Gupta had categorically stated that he had gone to Delhi to seize the relevant documents from Krishna Motors, Karol Bagh, and that the delivery receipt bore the appellant's signature, photograph, and fingerprints. The witness thus corroborated the evidence of PW-Kamal Jolly and PW-DurgaDass. Once the prosecution established that the vehicle used in the explosion was

purchased by the appellant and brought to Jammu, it became evident that the same car was later used by the co-accused in the blast on 02.05.2011.

24.The defence version that the appellant had never been to Delhi was contradicted not only by the testimony of the wife of the co-accused but also by other witnesses, including DW-Shamsher Hussain. Although the appellant tried to show through DW-3 Shamsher Hussain that he was on duty on 06.04.2011, the witness in fact confirmed that the appellant was on casual leave during that period. We find the story about the appellant giving blank documents to DW-Ishtiaq Ul Haq implausible and an afterthought. Being a public servant employed in the Agriculture Department, the appellant was not expected to hand over blank signed documents for another's use. Moreover, even if such a transaction did occur, there was no occasion for the appellant to provide blank forms since vehicle transfer documents are executed by the owner and not the purchaser. Hence, the defence version lost credibility.

25.The trial court concluded that the prosecution had sufficiently proved that the appellant purchased the Maruti car and later handed it over to co-accused Ghulam Sarvar, who used it in the criminal act. It then turned to the question of whether the appellant had knowledge of, or participated in, the conspiracy. The Trial Court held that there was proximity and familiarity between the appellant and Ghulam Sarvar, relying on the testimonies of several witnesses, including PW-Shabana, PW-SubashChander, and PW-Mohd. Iqbal, PW-Imtiyaz Ahmad, PW-DurgaDass, PW-Kamal Jolly, PW-Suresh Kumar Majotra, and PW-WaqarAhmad. Even the defence evidence showed that the appellant and co-accused knew each other well, and notably,

the appellant was instrumental in arranging the marriage of the co-accused with PW-9 Shabana. Thus, the Trial Court found that the prosecution had successfully established the appellant's connection with both the vehicle and the co-accused, rejecting the defence as a mere afterthought designed to evade responsibility.

26. According to the prosecution, the co-accused was a member of the banned outfit *Lashkar-e-Taiba* (LeT) and had links across the international border, having entered the then State of Jammu and Kashmir with the intent to disturb public tranquillity and spread terror. We have minutely perused the Trial Court record and the evidence adduced during the trial. However, there is not even an iota of credible evidence, whether in the form of reliable information or testimony of witnesses, to suggest that the co-accused was involved in any militant activities or engaged in spreading terror. On the contrary, from the testimonies of PW-SubashChander, PW-Mohd. Iqbal, PW-Imtiyaz Ahmad, and PW-Kamal Jolly, it has clearly transpired that the co-accused, Ghulam Sarvar, was a driver by profession who was commercially operating a Tata Sumo vehicle bearing registration No. JK08A/3878 and used to ply between Jammu city, Srinagar, and Rajouri.

27. Though the charge-sheet records that the co-accused was a foreign militant planted in the Union Territory of Jammu and Kashmir by the appellant, this assertion is strongly refuted by the defence. It is further alleged in the charge-sheet that the identity documents recovered from the co-accused, including his driving licence and voter identity card, were forged. However, the charge sheet itself reveals that the alleged fabrication of these documents

was never subjected to investigation. According to the Investigating Officer, since the purported preparation of such forged documents had taken place in Rajouri, while the investigation of the present case was undertaken by Police Station Udampur, no inquiry regarding their authenticity was carried out. Once this admitted position is acknowledged, the prosecution's bare assertion that the co-accused Ghulam Sarvar was a militant in possession of fake identity documents remains entirely unsubstantiated. The investigating agency has failed to gather any credible evidence in support of these allegations and appears to have proceeded merely on conjecture that the co-accused was a militant.

28. Proceeding further, the prosecution's case is that upon learning that the Maruti vehicle had been purchased by the appellant, he was arrested and, during investigation, made a disclosure statement to the effect that a Tata Sumo vehicle bearing registration No. JK08A/3878, parked at Jogi Gate, Jammu, contained articles capable of being used in the manufacture of an Improvised Explosive Device (IED). Pursuant to this disclosure, the vehicle was allegedly recovered, leading to the seizure of a remote control, three batteries, and six cells, which were seized vide seizure memo EXTP-25/1, attested by witnesses PW–Padamdev Singh, PW–Subash Chander, PW–Mohd. Iqbal, and PW–Yasir Arafat.

The appellant, however, has categorically disputed the entire recovery. It is contended that the prosecution has failed to establish the factum of recovery beyond a reasonable doubt, as the record discloses two conflicting versions, one suggesting that the vehicle was recovered from Jogi Gate, Jammu, and the other indicating that it had been towed from the

residence of the co-accused at Sidhra immediately after the incident dated 02.05.2011. The appellant has further questioned the veracity of his arrest record, asserting that he was actually taken into custody on 04.05.2011 from Rajouri, whereas the charge-sheet falsely records his arrest as having taken place on 10.05.2011. This discrepancy, according to the appellant, clearly demonstrates that the alleged disclosure statement and the consequent recoveries are fabricated and represent an afterthought on the part of the investigating agency, devised only to fill the evidentiary gaps in the absence of any material connecting the appellant with the alleged unlawful activities of the co-accused.

29. The prosecution claims to have recovered vehicle No. JK08A/3878 based on a disclosure allegedly made by the accused. Upon search, the vehicle was found to contain a remote control, three batteries, and six cells. The disclosure statement is exhibited as EXTP 25/1, while the seizure memo is exhibited as EXTP 25/2. Under Section 27 of the Indian Evidence Act, only that portion of a statement which distinctly relates to the discovery of a fact is admissible in evidence. To substantiate the recovery, the prosecution has relied upon the testimonies of PW-10 Padamdev Singh, PW-11 Subash Chander, PW-31 Sunil Thakur, and PW-51 Suram Singh, who deposed that the appellant led to the recovery of the said vehicle parked at Jogi Gate, Jammu. However, it is significant to note that the formal arrest of the appellant was recorded on 10.05.2011, whereas the appellant has consistently maintained that he was actually taken into custody by the Rajouri Police on 04.05.2011. This contention finds some support from the

Daily Diary Report (DD Report), which indicates that a police party from Police Station Udampur had proceeded to Rajouri to bring the accused.

Although the Investigating Officer denied that the appellant was detained on 04.05.2011, even assuming that the formal arrest took place on 10.05.2011, PW-51 Suram Singh candidly admitted that no civilian witness was present at the time of checking the Tata Sumo vehicle. This admission directly contradicts the prosecution's claim that four witnesses were associated during the said recovery, thereby casting serious doubt on the veracity of the police version.

30. PW-31 Sunil Thakur was not only associated with the disclosure but also with the alleged recovery of the Tata Sumo vehicle. According to his testimony, when the vehicle was identified, it was found locked, and the same was opened by the Investigating Officer. This gives rise to a pertinent question: if the vehicle was indeed discovered pursuant to the disclosure made by the appellant, the appellant must necessarily have had knowledge regarding the key. It is an admitted fact that, during the search conducted at the time of the appellant's arrest, one key was recovered from him. However, it is not discernible from the record whether that key was the same which was used by the Investigating Officer to open the vehicle. PW-11 Subash Chander stated that at the time of seizure of the vehicle, around five to ten civilians were present. However, he further admitted that he did not see the articles recovered from the vehicle and that his role was confined to the sale transaction of the Tata Sumo to co-accused Ghulam Sarvar, as well as handing over the relevant documents. This admission clearly indicates

that although he claimed to have been present during the recovery, he did not know what was contained inside the vehicle.

31. Further, PW-9 Shabana, the wife of the co-accused, categorically stated in her testimony that the Tata Sumo vehicle had been taken by the police from her residence, where it had been parked by her husband before leaving for Chandigarh. Being a natural witness, her testimony carries considerable probative value, and significantly, the prosecution did not impeach her credibility by declaring her hostile or seeking leave of the Court to cross-examine her. Even PW Mohd. Iqbal conceded in his cross-examination that the Tata Sumo vehicle used to be parked by the co-accused near his house at Sidhra, and that before it was allegedly recovered at the behest of the appellant, it had already been taken away by the police after learning of the co-accused's involvement in the incident dated 02.05.2011.

32. In view of this evidence, the defence contention that the recovery of the Tata Sumo vehicle is shrouded in suspicion appears well-founded. Two contradictory versions emerge, one that the vehicle was recovered pursuant to the disclosure of the appellant, and the other that it had already been taken by the police from the co-accused's residence. The latter version seems more plausible, since the evidence overwhelmingly establishes that the vehicle was being used solely by the co-accused for commercial purposes, ferrying passengers between Rajouri and Srinagar, and that the appellant had no dominion or control over it.

33. Though the prosecution alleged that the vehicle used in the blast had been purchased by the co-accused with the active assistance of the appellant, there

is no material to show that, after the purchase, the appellant had any physical control over it. Given the absence of credible evidence showing the appellant's physical involvement in the incident dated 02.05.2011, the inference is inevitable that the prosecution may have resorted to padding of evidence to falsely link the appellant to the incident. The introduction of the Tata Sumo vehicle, along with the alleged recovery of the remote control, three batteries, and six cells, appears to be a contrived attempt to strengthen the case through artificial corroboration. Consequently, the recovery of the vehicle and the articles therein stand tainted with suspicion and cannot be treated as legal evidence admissible against the appellant under Section 27 of the Indian Evidence Act.

34. Once the prosecution failed to lead any clinching evidence to establish that it was the appellant who procured or facilitated the preparation of fake identity cards for the co-accused, mere presence of the appellant at the time of purchase of the Maruti car at Delhi, or the fact that he assisted in its purchase on behalf of the co-accused, would not, by itself, justify an inference that the appellant possessed **requisite knowledge** of the co-accused's involvement in subversive or unlawful activities. This assumption becomes further untenable when viewed in light of the admitted position that the prosecution has not produced any credible evidence to show that the appellant was a foreign-trained militant, or that he had ever participated in or associated himself with any subversive or terrorist act. There is no material to suggest that his visit to this part of the country was animated by any design to cause violence or to indulge in unlawful activity.

35. The prosecution has attempted to project its case on the premise that, since the appellant shared a close acquaintance and frequent association with the co-accused, their relationship was of such a confidential and proximate nature that it implied a shared common intention to commit subversive acts. It is in this backdrop that the prosecution has invoked Section 120-B of the Indian Penal Code, alleging that the appellant was a party to the criminal conspiracy relating to the incident dated 02.05.2011, the alleged detonation of an improvised explosive device (IED). The prosecution narrative is that, in furtherance of this conspiracy, the appellant facilitated the purchase of the car bearing registration No. DL3CF/8035 at Delhi and handed it over to the co-accused, who subsequently detonated the same at a public place. However, in the absence of tangible and direct evidence linking the appellant with the planning or execution of the incident, or proving his conscious participation in the alleged conspiracy, the prosecution's case rests primarily on conjecture and proximity of association. Such circumstances, without corroboration through independent evidence, cannot sustain a conviction under Section 120-B IPC or under any of the provisions of the Unlawful Activities (Prevention) Act.

36. It is a settled principle of law that in cases of criminal conspiracy, direct evidence is seldom available. The essential ingredient of the offence is the existence of an agreement between two or more persons to do an illegal act, or to do by illegal means an act which may not be illegal in itself. The very essence of conspiracy lies in this agreement, and such an agreement may be proved either by direct or by circumstantial evidence, or by both. It is a matter of common judicial experience that conspiracies are usually hatched

in secrecy, and therefore, direct evidence is rarely forthcoming. Consequently, the circumstances that occurred before, during, and after the occurrence assume crucial significance in determining the complicity of the accused.

In this regard, reference may be made to the decision of the Hon'ble Supreme Court in *Noor Mohammad Yusuf Momin v. State of Maharashtra*, AIR 1971 SC 885, wherein it was held that:

“A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases, proof of conspiracy is largely inferential, though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact, because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence, then anything done by any one of them in reference to their common intention, after the same is entertained, becomes, according to the law of evidence, relevant for proving both the conspiracy and the offences committed pursuant thereto.”

37. A conspiracy, therefore, consists in a combination or agreement between two or more persons to do an unlawful act or to do a lawful act by unlawful

means. The existence of a conspiracy is an inference to be drawn from proved circumstances, and there doesn't always need to be direct evidence of such an agreement. The agreement may be inferred from the acts, statements, or conduct of the parties involved. When it is established that the accused pursued by their acts the same object, often employing the same means, each performing a part of the act to complete it with a view to attaining the common objective, the court may legitimately infer that they had conspired together to effect that object.

38. Applying the aforesaid principles to the facts of the present case, it becomes evident that the essential element of a *meeting of minds* between the appellant and the co-accused to commit the act dated 02.05.2011 is completely missing. The prosecution is right to the limited extent of contending that the purchase of vehicle No. **DL3CF/8035** at Delhi was within the knowledge and consent of the appellant. However, that circumstance alone merely indicates that, owing to their close acquaintance and the fact that the co-accused was a driver by profession who had been using the Tata Sumo vehicle for his work, he may have availed the good offices of the appellant, a public servant, for facilitating the purchase of the Maruticar. It is not the case of the prosecution that the explosives used in the said car were procured by the appellant or through his assistance by the co-accused. In fact, it has not been clearly established what kind of explosive substance was used in the blast of car No. **DL3CF/8035** at Udhampur. The material only suggests the use of an Improvised Explosive Device (IED). In the absence of any link between the appellant and the procurement or use of such explosives, the mere purchase and transfer of the car to the co-accused

cannot constitute clinching evidence connecting the appellant with the incident dated 02.05.2011.

39. This inference is further weakened by the prosecution's reliance on alleged recoveries from the Tata Sumo vehicle owned by the co-accused, which, as the evidence indicates, was never in the appellant's physical control. Such recovery appears to be a result of *padding* and embellishment of evidence rather than a genuine investigative finding. In these circumstances, the prosecution's assertion that the appellant had prior knowledge of the co-accused's involvement in subversive activities remains baseless. The fact that the co-accused absconded immediately after the incident and continues to remain untraced underscores lapses in investigation rather than the appellant's complicity. The prosecution owes an explanation as to how a person who was regularly operating a Tata Sumo vehicle for commercial purposes between Srinagar and Rajouri could vanish so completely.

40. Given the above, the charge of conspiracy against the appellant collapses within the realm of reasonable doubt. The prosecution has failed to produce any evidence showing that the appellant participated in procuring explosives or associated himself in any manner with the co-accused in orchestrating the blast. While it is true that conspiracy is a continuing offence, once a charge is laid, the burden rests squarely on the prosecution to establish foundational facts that could persuade the Court to believe that the accused performed acts indicative of direct or indirect participation. No such evidence is forthcoming in the present case. The object of the alleged conspiracy was the detonation of the Maruti car, and merely because the vehicle was purchased by the appellant and handed over to the co-accused cannot, by itself, justify

an inference that the appellant knew its intended use in the incident dated 02.05.2011.

41. The Trial Court observed that the appellant did not offer any explanation under Section 342 of the Code of Criminal Procedure and had simply stated that he was falsely implicated. However, the very object of Section 342 of the Code is to allow the accused to explain the incriminating circumstances appearing against him. Even if the accused elects to remain silent, such silence cannot, by any stretch, be treated as an admission of guilt. The settled principle of criminal jurisprudence places the entire burden upon the prosecution to establish the guilt of the accused beyond a reasonable doubt.

42. In the instant case, the prosecution has failed to establish either the existence of a conspiracy or the appellant's participation in any act of terrorism attributed to the co-accused, Ghulam Sarvar. The alleged recovery of the Tata Sumo vehicle and other incriminating articles, already found to be the result of evidentiary padding, cannot qualify as legal and admissible evidence. Further, there is no proof that the appellant was present anywhere near the scene of the incident on the date of the incident. On the contrary, evidence shows that he was at Rajouri on that day and was rounded up on 04.05.2011, with his formal arrest taking place on 10.05.2011 after the vehicle registration details were traced from Delhi.

43. The prosecution's version regarding the recovery of the Tata Sumo vehicle also appears doubtful. If, as claimed, the vehicle was towed away from the residence of the accused immediately after the incident, showing its recovery from Jogi Gate on 11.05.2011 appears to be a deliberate attempt to fabricate

a foolproofcase. The prosecution's evidence, therefore, falls woefully short of connecting the appellant with the commission of the offence. The overall evidentiary foundation is weak and unconvincing.

44. Another important aspect overlooked by the Trial Court is that the prosecution's case rests purely on circumstantial evidence. The motive suggested that the appellant had fabricated the identity of the co-accused by portraying him as a resident of Behrote, Rajouri, while he was allegedly a foreign militant, is not supported by any admissible or credible evidence. The prosecution itself admits that the authenticity of the co-accused's identity documents, such as the driving licence, voter ID card, and ration card, was never verified or investigated. Witnesses PW-Mohd. Razzaq and PW-Mohd. Bashir did not depose that such documents were false or fabricated. On the contrary, witnesses PW-Shabana, PW-Mohd. Younis, PW-Mohd. Iqbal, PW-Yasir Arafat and PW-Imtiyaz Ahmad all testified that they believed the co-accused to be a resident of Rajouri known to the appellant.

45. In these circumstances, the presumption must be that the co-accused's identity as a resident was genuinely believed by those around him. Coupled with the fact that his whereabouts remain untraced and the prosecution has failed to produce any direct evidence linking the appellant to the blast, it is impossible to infer that the appellant was aware of the co-accused's alleged subversive character or intended use of the vehicle for the incident. Accordingly, the charge of conspiracy against the appellant is shrouded with suspicion and unsupported by any cogent, reliable, or legal evidence.

46. The Trial Court, therefore, clearly erred in convicting the appellant by resorting to conjecture and presumption, thereby overlooking the foundational tenet of criminal jurisprudence, that an accused is presumed to be innocent until proven guilty by unimpeachable evidence. When the prosecution's case is found to rest upon padding and false embellishments, it cannot be said that the burden of proof has been satisfactorily discharged. The cumulative effect of the deficiencies discussed above leads to the irresistible conclusion that the conviction and findings recorded against the appellant cannot be sustained in law. Consequently, the appeal is allowed. The conviction and sentences imposed upon the appellant are set aside. The appellant, who has been in custody since the filing of the charge sheet, shall be released forthwith if not required in connection with any other case. Insofar as the co-accused is concerned, the prosecution shall take all necessary steps to bring him to justice. Since the appeal stands allowed, as a consequence the reference number 8/2015 for confirmation of sentence does not survive, is therefore declined and shall stand consigned to records. Copy of the judgment be notified to the Trial Court for taking sequential steps for its compliance.

47. *Disposed of* as such.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
27.11.2025
Akshil Dev

Whether the order is speaking? : Yes

Whether the order is reportable? : Yes