

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 25.08.2025
Pronounced on: 30.08.2025.

CrlA(AD) No.37/2022

U.T of Jammu and Kashmir
through S.H.O., Police Station, Doda

....Appellant(s)

Through:- Mr. Raman Sharma, AAG

Versus

Gul Mohd. Khan S/o Ahad Khan
R/o Chappnari, Ghanika Tehsil and District Doda.

...Respondent(s)

Through:- None

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

JUDGMENT

Sanjeev Kumar "J"

1. The Union Territory of Jammu & Kashmir is in appeal against a judgment dated 29th September 2021 passed by the learned Additional Sessions Judge, Doda ["trial Court"] in file No.52/Challan titled *State of J&K v. Gul Mohd. Khan*, whereby the trial Court has convicted the respondent for offences punishable under Section 304-II and acquitted him of the charge under Sections 302/201 RPC. The respondent has accepted the judgment and has reportedly undergone the sentence imposed upon him by the trial Court.
2. Briefly stated, the prosecution case is that on 24th March, 2012, an information from reliable sources was received in the Police

Post, Khellani that a Maruti Van bearing Regd. No.JK06-2352, driven by the respondent, was going from Doda to Jammu. The vehicle was carrying wife of the respondent, Mst. Rubina Begum and daughter Hiqra and one small baby girl. It was reported that the respondent was driving the vehicle rashly and negligently. When the vehicle reached at Reggy Nallah at 8 a.m., the respondent lost control of the vehicle, as a result whereof, it fell down about 600 feet down in the nallah. In the accident, Rubina Begum, Hiqra and one small baby girl died on spot. On this information, FIR No.50/2012 for offences under Section 304-A and 279 RPC was registered in the Police Station, Doda. Mr. Tariq Hussain Incharge Police Post, Khellani was entrusted the investigation. The Investigating Officer prepared the seizure memos of the dead bodies and their clothes. After subjecting the dead bodies to post-mortem, same were handed over to their next of kin for performing last rites.

3. Statements of witnesses under Sections 161 Cr.P.C and 164-A Cr.P.C were recorded. During investigation, the I.O. found that the respondent had entered into wedlock with Mst. Rubina Begum about four years ago, out of which two girl children were born. The respondent was offended because of Mst. Rubina Begum having given birth to two female children. The dispute was, at one point of time, sought to be resolved by the Birdari/Panchayat. The I.O. concluded that the relations between

the respondent and his wife were strained and, therefore, the respondent was looking for an opportunity to get rid of his wife and two female children. It was found that on the fateful day respondent along with his wife Rubina Begum and two minor girls were travelling in Maruti Van and at about 8 a.m., when they reached at Reggy Nullah, the respondent parked his vehicle at a place where it was likely to fall down in the gorge without there being any chance of survival of any of the passengers. It was, thus, concluded that the respondent with an intention to kill his wife and two minor daughters moved out of the vehicle and then pushed the vehicle into river Chenab, killing all the three passengers. Since the vehicle which had fallen in the Chenab could not be traced, as such, offence under Section 201 RPC was added. Investigation revealed that the respondent had committed the murder of his wife and daughters, therefore, offence under Section 302 was also found made out and the offence under Sections 304-A & 279 RPC were substituted in the FIR by Section 302 RPC. The respondent was arrested on 28th April, 2012 and lodged in Kishtwar Jail.

4. Upon completion of the investigation, final report was laid before the trial Court through the Court of Chief Judicial Magistrate, Doda on 30th May, 2012. Charge against the respondent under Section 302/201 RPC was framed by the trial

Court on 11th September, 2012. The respondent pleaded not guilty to the charge and claimed to be tried.

5. The prosecution commenced its evidence and examined in as many as twenty, out of twenty nine witnesses cited in the challan. PW-2 Sher Singh was, however, dropped. On conclusion of the prosecution evidence, statement of the respondent under Section 342 Cr.P.C. was recorded on 3rd May, 2016. The respondent denied all the incriminating circumstances and pleaded innocence. The respondent entered his defence and examined DW-1 Mohd. Maqbool Sheikh and DW-2 Mohd. Akhter Khan in his defence.

6. The trial Court having heard both the sides and gone through the evidence on record came to the conclusion that the prosecution had failed to prove charge under Section 302/201 RPC against the respondent but held charge under Section 304-II RPC proved. The judgment of the trial Court to the extent it acquits the respondent of the charge under Section 302/201 RPC is assailed by the appellant.

7. The judgment to the extent it is impugned in this appeal is challenged by the appellant on the ground that the trial Court has failed to appreciate that the evidence led by the prosecution had clearly established beyond any reasonable doubt the commission of murder of Rubina Begum and her two minor daughters by the

respondent. It is submitted that the prosecution had firmly established that the relations between the respondent and her wife were not cordial and that the respondent was unhappy because of Mst. Rubina Begum, his wife, giving birth to two female children. The trial Court did not appreciate that the strained relations between the respondent and his wife was the reason with the respondent for pushing the Van carrying Rubina Begum and two minor daughters down the hill in the river Chenab.

8. Having heard learned counsel for the appellant and perused the material on record, we are of the considered opinion that the judgment passed by the trial Court is completely in sync with the evidence on record.
9. PW-1, Niaz Ahmed, is a witness, who was present in the Doda Hospital at the time of post-mortem and in whose presence the seizure of the tyre, rod, jack and documents of the vehicle was effected. PW-2 Sher Singh is the witness to the seizure memo of the number plate and documents of the vehicle etc. PW-3 Riaz Ahmed, PW-8 Mohd. Shafi, PW-10 Manzoor Ahmed, father of the deceased Rubina Begum, PW-11 Abdul Rashid, PW-13 Gul Mohd. and PW-4 Ranjit Singh are the witnesses, who have stated in their deposition that at one point of time, relations between the respondent and his wife were not cordial and that a

Panchayat was held to sort out their differences. Statements of these witnesses, as is rightly noted by the trial Court, are full of contradictions and do not inspire confidence.

10. PW-6, Farooq Ahmed, is a neighbour of the respondent and has deposed that initially, after the marriage, relations between the respondent and his wife were cordial but thereafter respondent started beating the deceased for which a panchayat was convened and the matter was resolved. He has further stated that after the panchayat, the deceased Rubina Begum, who had gone to her parental house, was brought back by the respondent and thereafter their relations were cordial. Be that as it may, the witnesses examined by the prosecution to establish motive do not conclusively establish the fact that the relations between the respondent and his wife were so strained so as to derive the respondent to kill not only his wife but two minor children also. Statement of PW-Gul Mohd. is also on the similar lines.

11. PW-19 Om Parkash, who was cited as eye witness by the prosecution, in his deposition before the trial Court has stated that at about 8 a.m., he was coming towards Doda from his house on foot. From Ragi Nallah Pul, he saw a red colour Van standing on the road at a distance of half a kilometer. Front side of the vehicle was towards Batote. He has also stated that he saw the respondent standing close to the vehicle and pushing the

vehicle. The vehicle fell down into river Chenab. He has further stated that it took him 20 to 25 minutes to reach on the spot. There were number of vehicles standing there and he saw the respondent lying on the road. He heard the people saying that his wife and two children, who were in the vehicle, had rolled down and died. However, in the cross-examination, the witness has stated that since he was at a distance of half a kilometer, he could not identify either the vehicle number or the person, who was pushing it. The statement of this witness, who was claimably an eye witness, was however, recorded by the police after one month and four days without any explanation as to why the said witness had not come forward to depose or why the police could not record his statement for one month and four days of the occurrence. His statement was also found not contradicted by the statement recorded by the police under Section 161 Cr.P.C.

12. PW-26, Balwant Singh, is also one of the eye witnesses cited by the prosecution. In his deposition before the trial Court, the witness has clearly stated that on 24th March, 2012, he was going towards Doda from his house. After crossing the river Chenab on boat, he reached Lal Para Road point where he was waiting for the vehicle. He has further stated that he saw a Van parked on the other side of the road and a man coming out of it. The man went back side of the vehicle and brought out tools from the dicky and kept them on ground. He has categorically stated that

in the meanwhile, the Van rolled down from the spot into the river Chenab. This witness has clearly demolished the testimony of PW-Om Parkash, the other eye witness.

13. There is still another eye witness cited by the prosecution PW-21 Mohd. Abdullah but his testimony is only to the extent of relations between the respondent and his wife. He has also claimed to have attended the panchayat, which was held to sort out the matter between the two. He has further stated that after the panchayat, he never heard about any incident of physical violence by the respondent with the deceased- Rubina Begum.

14. The other witnesses are PW-27 Dr. Suman Gupta, who has conducted post-mortem of the three dead bodies and PW-28 Tariq Hussain Naik, who has investigated the case. Their testimonies do not, in any manner, lend credence to the story of the prosecution that the respondent committed the murder of his wife Mst. Rubina Begum and two minor daughters, rather it is established on record that it is because of gross and criminal negligence displayed by the respondent in parking the vehicle in which his wife and minor daughters were sitting at a place from where it was most likely to roll down and fall deep in the Chenab river. He knew the consequence of his act and yet took no care and precaution to prevent it.

15. In the statement of the respondent recorded under Section 342 Cr.P.C., he has admitted that the vehicle fell down after he parked it on the road side and had gone in search of a stone to be put beneath the tyre. Moreover the GREF authorities, who maintain the National Highway and prepared the site plan, were not cited as witness but the site plan annexed with the challan would show that the vehicle was parked by the respondent on the wrong side where, there was every possibility of the vehicle rolling down. Statement of the Investigating Officer further corroborates this fact and proves that the vehicle was parked on a sloppy place from where it was most likely to roll down into the river Chenab. There is, thus, sufficient evidence oral as well as circumstantial to prove beyond any reasonable doubt that the respondent had negligently and carelessly parked the vehicle at a place which was not at all safe for such parking. The respondent surely had the knowledge that his negligent and careless act could cause an accident and result into death of his wife and children. Needless to say that the act done with the knowledge that it is likely to cause death without any intention to cause death or such bodily injury as is likely to cause death falls within the purview of Section 304 RPC.
16. The trial Court after having held the respondent guilty of commission of offence punishable under Section 304 RPC has entered into meaningful discussion to find out as to whether the

case would fall under Section 304-I or 304-II. Having regard to the evidence on record, it is rightly concluded by the trial Court that there was no premeditated mind or intention to kill the deceased-wife and the children. The respondent, however, had sufficient knowledge that by parking the vehicle in the manner it was parked on the wrong side on a sloppy road, there was every likelihood of the vehicle rolling down and killing the passengers. We are, therefore, in agreement with the trial Court that the instant case clearly falls under Section 304-II. Otherwise also, conviction of the respondent under Section 304-II in terms of the impugned judgment and the order of sentence passed by the trial Court separately vide order on 30.09.2021 are not subject matter of challenge by the respondent before us. This appeal by the Union Territory is only to the extent of trial Court acquitting the respondent of the charge under Section 302/201 RPC.

17. We have examined the relevant evidence as also the appreciation entered into by the trial Court and are of the considered opinion that the prosecution has failed to lead any cogent evidence to prove beyond reasonable doubt that the respondent had murdered his wife and two children and, therefore, guilty of offence punishable under Section 302/201 RPC. The trial Court was, thus, right in acquitting the respondent of the charge under Section 302/201 RPC and instead convicting him for the commission of offence punishable under Section 304-II RPC.

18. In view of the aforesaid, this appeal is found devoid of any merit, the same is, accordingly, dismissed and the judgment of the trial Court is upheld.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
30.08.2025
Vinod,PS

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

