

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 139/2010

State of Jammu & Kashmir

.....Appellant(s)

Through :- Mr. Dewakar Sharma, Dy. AG.

v/s

Mohd. Afzal S/o Ghulam Rasool
R/o Kolsar Kheral Tehsil & District Reasi

.....Respondent(s)

Through :- Mr. Saddam Hussain, Advocate
vice Mr. Zulkar Nain Sheikh,
Advocate

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

JUDGMENT(ORAL)

07.08.2025

Sanjeev Kumar 'J'

1. This appeal by the State now Union Territory of Jammu & Kashmir is directed against the judgment of acquittal dated 7th August, 2010 passed by the learned Sessions Judge, Reasi [“trial Court”] in file No.50/Sessions titled State v. Mohd.Afzal, whereby the trial Court has acquitted the respondent of the charge under Section 302/342 RPC.
2. Briefly stated, prosecution case, as was projected before the trial Court, is that on 27th June, 2008 at 9 am, an information was received by the Police Station, Reasi from reliable sources that one Mst. Mumtaz Begum W/o Mohd. Afzal, R/o Kheral Tehsil

Reasi had died under suspicious circumstances. On this report, inquiry in terms of Section 174 Cr.P.C. was initiated by the Station House Officer concerned. The S.H.O. himself went on spot, found the dead body of the deceased lying on the cot and, accordingly, prepared the site plan. The dead body was referred to the hospital for postmortem. After completing the postmortem and other formalities, dead body was handed over to one Abdul Rashid for performing last rites. During the inquest proceedings, needle of suspicion came to be pointed towards the respondent. It also came to fore that the respondent had contracted marriage with the deceased six months ago and used to doubt her fidelity. On 24th June, 2008, he administered beating to the deceased with Danda and uniform shoes severely and wrongfully confined her in a room. The respondent also restrained his first wife from having any contact with the deceased or providing her any food. As a result of the injuries inflicted on the deceased by the respondent, the deceased succumbed to her injuries on 26th June, 2008.

3. In the inquiry, it was, thus, established that it was the respondent, who had committed the murder of the deceased. Accordingly, investigation proceeded and concluded in presentation of challan before the trial Court. The trial Court framed charge under Section 302/342 RPC against the

respondent. Charge was read over to the respondent, who denied the same and claimed trial. With a view to establish its case, the prosecution examined PWs-Shehnaz Begum, Mehnaz Akhtar, Salman Khan, Janam Begum, Nazia Akhtar, Jamshad Begum, Mohd. Rafiq, Abdul Rashid, Amar Nath, Abdul Rashid, Abdul Majid, Sakina Begum, Sham Lal, Sgct., Gangu Ram, Head Constable, Dr. Pooja Bhagat, Ashwani Kumar, Ghulam-Moh-ul-Din, Mohd. Bashir, Mohd. Shafi, Sher Mohd., Narain Dass, Sub-Inspector, Prem Singh, H.C., Showkat Ali, Madan Lal, Sub-Judge, Bhaderwah, Sudesh Sharma, Judicial Magistrate 1st Class, Reasi and Mohd. Rashid, Investigating Officer in the case.

4. On conclusion of the prosecution witnesses, the incriminating circumstances appearing in the prosecution evidence were put to the respondent and his statement under Section 342 Cr.P.C. was recorded. The respondent refuted all the circumstances, which were put to him and examined ASI Bhushan Lal, as his sole defence witness.
5. The trial Court, having heard the prosecution and the defence and gone through the evidence on record, came to the conclusion that the prosecution had miserably failed to prove the charge against the respondent beyond reasonable doubt.

Vide impugned judgment of acquittal, the trial Court acquitted the respondent of the charge framed against him.

6. The impugned judgment of acquittal is challenged by the appellant on the ground that the trial Court has failed to appreciate the evidence in correct perspective, in that, the trial Court has given undue importance to the minor contradictions and has ignored the cogent evidence demonstrating clearly that the deceased was murdered by the respondent and respondent alone.
7. Mr. Dewakar Sharma, learned Deputy Advocate General appearing for the appellant, took us through the entire evidence to bolster his argument that the overwhelming evidence connecting respondent with the commission of crime stood ignored by the trial Court.
8. 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 does not suffer from any legal infirmity and the view taken by the trial Court, on the evidence available on record, is unquestionable.
9. The star eye witnesses of the prosecution i.e. PW- Shahnaz Begum, the first wife of the respondent, PW-Mehnaz Akhtar, the daughter of the respondent and PW-Salman Khan, the son of

the respondent, who had, in their statements made under Sections 161 and 164 Cr.P.C., clearly implicated the respondent, ultimately turned hostile during trial. The prosecution cross-examined the aforesaid witnesses after seeking permission of the trial Court but could not elicit any incriminating material supporting the prosecution case. Similarly, other witnesses like PW-Janam Begum, PW-Nazia Akhtar, PW-Jamshad Begum, who were relatively independent witnesses, too, did not support the prosecution version and were declared hostile by the trial Court on the request of the prosecution. During their cross-examination also, no incriminating material has come out, which could support the prosecution version that the deceased was murdered by the respondent.

10. PW-Mohd. Rafiq, who is brother of the deceased, is neither an eye witness nor even a witness to any relevant circumstance. The prosecution, through the testimonies of PW-Mohd. Rafiq and PW-Sakina Begum, the mother of the deceased, has tried to prove the motive behind the crime. The other witnesses examined by the prosecution are formal witnesses with regard to the recovery of the apparels, dead body and other material from the site of occurrence and would not further the case of the prosecution in any manner. The defence through examination of

a defence witness before the trial Court has clearly brought the prosecution case in serious doubt. The plea put forth by the defence that the deceased suffered epilepsy attack while coming from water source to her house and died by a fall is even supported by other eye witnesses cited by the prosecution i.e. wife, son and daughter of the respondent. There is no other material or cogent evidence on record, which could unerringly connect the respondent with the commission of offence, he was charged with.

11. The recovery of weapons of offence, like *danda* and *boot*, at the instance of the respondent, even if taken to have been proved, is not sufficient enough to connect the accused with the commission of crime. It is trite that the suspicion, howsoever grave it might be, cannot be a substitute for proof. In the instant case, even if we elaborately evaluate the prosecution evidence, it could only bring the respondent in the zone of suspicion. That apart, it is also trite that while hearing an appeal against acquittal, the power and jurisdiction of the Appellate Court is little circumscribed. If, on evaluation of the evidence on record, the Appellate Court is of the opinion that two views are possible, yet the view which supports the accused is required to be adopted. It is not the case of the appellant that the evaluation

of the evidence by the trial Court suffers from perversity warranting interference by this Court.

12. In the premises, we find no merit in this appeal and the same is, accordingly, dismissed.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

JAMMU
07.08.2025
Vinod.

Whether order is reportable: Yes/No

