

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 28.08.2025
Pronounced on: 03.09.2025

CRAA No.143/2014

State of J&K through S.H.O., Police Station,
Mahore

....Appellant(s)

Through:- Mr. Dewakar Sharma, Dy. AG

Versus

1. Abdul Latif S/o Mohd. Yousaf R/o Chakras Jamsalan
Tehsil Mahore.
2. Ghulam Nabi S/o Mohd. Yousaf R/o Chakras Jamsalan
Tehsil Mahore.

...Respondent(s)

Through:- Ms. Radha Sharma, Advocate for
R-1

Mr. Altaf Hussain, Advocate for
R-2

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

JUDGMENT

Sanjeev Kumar J

1. The State of Jammu & Kashmir (now Union Territory of Jammu & Kashmir) is in appeal against a judgment of acquittal dated 26th December, 2013 passed by the learned Sessions Judge, Reasi ["trial Court"] in file No.95/Sessions titled *State v. Abdul latif and another*.
2. The impugned judgment of acquittal is challenged by the appellant on numerous grounds. However, before we proceed to consider the grounds of challenge urged by Mr. Dewakar Sharma, learned Deputy Advocate General appearing for the appellant, a brief look at the prosecution case, as was put up

before the trial Court against the respondents, would be worthwhile.

3. During investigation of a case FIR No.2/2006, Police Station, Mahore, respondent No.1, namely, Abdul Latif, who was also accused in the aforesaid FIR, made a disclosure statement during his interrogation that he had killed one Hameed S/o Mohd. Abdullah R/o Chakras by strangulation and had concealed his dead body under stones in a jungle. The disclosure statement of respondent No.1 was recorded and on the basis of the identification made by respondent No.1, skeleton of the deceased Hameed along with clothes was recovered. From the clothes on the skeleton, it was found that the dead body was that of Abdul Hameed, regarding whom a missing report stood lodged by one Mushtaq Ahmed in the Police Station on 27th November, 2002.

4. Upon this, FIR No.7/2006 for offences under Sections 302/201 RPC came to be registered in the Police Station, Mahore against the respondent No.1-Abdul Latif and his brother, who had helped respondent No.1 in destroying the evidence by burying the dead body of Abdul Hameed in the jungle. Investigation of the case was entrusted to Naresh Kumar, Dy. S.P., who, during the course of investigation, completed all the requisite formalities, seized the disclosure statement made by respondent No.1, prepared seizure memos of the human skeleton and the

clothes it was wearing etc etc. The bones from the skeleton were sent for forensic examination besides, statements of the witnesses under Sections 161 Cr.P.C and 164-A Cr.P.C. were also recorded/ got recorded.

5. The Investigating Officer finalized his investigation by concluding that Abdul Hameed, a surrendered militant of HM outfit, intended to marry Naseem Bano, daughter of his real uncle namely Mohd. Abdullah. Mohd. Abdullah was not willing to give his daughter in marriage to the deceased and, therefore, there was an old enmity between the deceased and the respondents. On 3rd September, 2002, respondents herein along with a militant of HM outfit, namely, Bahar Din kidnapped the deceased and took him to Chakras forest with criminal intention to kill him. They killed the deceased by strangulation and thereafter concealed the dead body under the stones in the jungle. These facts came to be divulged during investigation of another case i.e. FIR No.2/2006 in which respondent No.1 was also involved. On the basis of his conclusions, a challan was presented by the Investigating Officer against the respondents for commission of offences punishable under Sections 302/201 RPC.
6. On 12th February, 2009, the respondents were charged for the offences under Sections 364/302/201/34 RPC and the charges

were read over and explained to the respondents. Both of them pleaded not guilty and claimed trial. The prosecution was directed to commence its evidence.

7. With a view to prove its case, the prosecution examined twenty seven (27) witnesses. On conclusion of the prosecution evidence, the incriminating circumstances appearing therein were put to the respondents for their explanation. The respondents claimed to be innocent and stated that they were neither present on the spot nor did they commit any offence. Witnesses examined by the prosecution were police and security personnel and had made false statements against them to wrongly implicate them, stated the respondents in their statements recorded under Section 342 Cr.P.C.

8. The trial Court having heard the prosecution and the defence and having considered the entire evidence on record, came to the conclusion that the prosecution had miserably failed to prove its case against the respondents beyond any reasonable doubt. The trial Court, therefore, gave the benefit of doubt to the respondents and, accordingly, dismissed the challan. The respondents were acquitted of all the charges in terms of the judgment of acquittal, impugned in this appeal.

9. The impugned judgment is challenged by the appellant primarily on the ground that the trial Court has not appreciated the

evidence available on record and has mechanically extended the benefit of doubt to the respondents, even though, there was overwhelming evidence connecting the respondents with the commission of murder of Abdul Hameed and destruction of evidence by concealing his dead body in the jungle.

10. 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 is legally sound and is in tune with the evidence on record.

11. PW-17 Ghulam Mohd. is a person from whose house the deceased Abdul Hameed was allegedly kidnapped. Ghulam Mohd. is cited as eye witness in this case. The witness states that the deceased Abdul Hameed had come to his house and had dinner with him. The witness further states that he requested the deceased to stay back, on this, the deceased Abdul Hameed told him that some people, with whom he had some work, were coming to meet him, therefore, he would sleep outside. PW-17 thereafter feigned his ignorance as to where the deceased Abdul Hameed had gone from there.

12. PW-11 Mushtaq Ahmed, another eye witness cited by the prosecution in the case, in his testimony states that he and Rahim Saraj Din had, after taking meal, slept in the verandah of the house. He and Rahim were sleeping on one bed, whereas

deceased Abdul Hameed and Saraj Din were sleeping on the other bed. During the night militants came there and called Hameed. PW-Saraj Din went after him to save him. However, the militants slapped him and threatened that in case any of them would come out or inform anybody about the incident, they would be killed.

13. PW-16 Saraj Din puts up a different story in his deposition before the trial Court. He states that respondent No.1 and some militants had come to his house, taken meal and thereafter Hameed, the deceased, also accompanied them. He further states that the respondent-Latif even told them that the deceased Abdul Hameed was also a member of their outfit. He, therefore, in his testimony, suggests that Abdul Hameed, the deceased, had voluntarily accompanied the militants including the respondent-Latif as well.

14. PW-3 Bashir Ahmed is another eye witness, who, in his testimony states that in October, 2002 at about 11/12 p.m. he had gone out to urinate, he saw number of people taking Hameed along with them. On asking, respondent-Latif told him that they were taking him to the commander. The other witnesses PW-12 Naseem Bano, PW-14 Mohd. Abdullah and PW-15 Mohd. Ashraf have not supported the prosecution story either that in

October, 2002 alleged kidnapping of Abdul Hameed took place or there was any such occurrence having taken place.

15. PW-9 Tajo Begum, from whose house the deceased was allegedly kidnapped by the respondents and other militants, has stated that some unknown persons had taken Abdul Hameed from her house but she did not see them as she was inside her house and that the door was closed.
16. This, in a nutshell, is the prosecution evidence to prove the charge of kidnapping i.e. Section 364 RPC. The trial court has evaluated the statements of the eye witnesses recorded in the Court and has found serious contradictions in the testimonies of the witnesses cited as eye witnesses by the prosecution. Some witnesses, as discussed above, have feigned their ignorance about kidnapping of the deceased Abdul Hameed and some have stated that the deceased Abdul Hameed voluntarily accompanied the group of militants, which included the respondent No.1 as well and some have stated that he was taken away by the respondent-Latif for producing him before commander of the militants. Even the witnesses, who have stated that the deceased was taken by the respondent-Latif from the house of Ghulam Mohd., have contradicted themselves during cross-examination.
17. In such circumstances, the trial Court was left with no option but to disbelieve the statements of so called eye witnesses cited by

the prosecution. We have also gone through their testimonies and are of the considered opinion that the view taken on the evaluation of the statements of the eye witnesses by the trial Court is unexceptionable.

18. So far as confessional statement made by respondent No.1 in the custody of police that he had killed Abdul Hameed in October, 2002 is concerned, same is not admissible in evidence in view of the clear provisions of Section 25 of the Evidence Act. However, under Section 27 of the Evidence Act so much of the information disclosed by the accused in custody of police as would lead to discovery of a fact is alone admissible. That apart, the confessional statement made in the custody of police cannot be termed as extra-judicial confession for the reason that any confession made to the police, in terms of Section 25 of the Evidence Act, is not admissible.

19. Indisputably, in the instant case respondent No.1 made a disclosure statement while he was in custody of the police in FIR No.2/2006 registered in the Police Station, Mahore. As per the statement made by PW-5 Qamar Din, it has clearly come out that respondent No.1 confessed his guilt only when he was subjected to beating by the police. In view of the clear statement made by PW-5 Qamar Din, it is beyond any doubt that even the confessional statement made to the police was not voluntary one.

Even disclosure statement to the extent it led to the recovery of skeleton is not proved beyond any reasonable doubt. The prosecution has also failed to prove seizure of skeleton and clothes of the deceased at the instance of respondent No.1.

20. PW-1 Mohd. Qasim is witness to the recovery of skeleton and clothes. In his statement, the witness states that the skeleton was taken out from the soil in his presence and the skeleton and the clothes were seized by the police. He, however, shows his ignorance about his signatures, if any, made on the recovery memo. PW-2 Mushtaq Ahmed, son of the deceased, in his statement clearly states that after recovery of the skeleton, which was effected on 04.08.2006, he was called to the Police Station after 4/5 days and asked to sign some papers. Even statement of this witness was recorded by the police after six months of the recovery of the skeleton.

21. The testimonies of PW-1 Mohd. Qasim and PW-2 Mushtaq Ahmed also do not inspire any confidence. In the absence of any explanation as to why statement of PW-2 was recorded after six months after recovery of skeleton creates serious doubt about veracity of the prosecution case. None of the witnesses to the seizure memos have disclosed in their statements that when the skeleton was recovered it was with clothes. It is also to be seen as to whether the clothes worn by the deceased in the year 2002

would remain intact even after four years, more so, when the body inside it had been reduced to skeleton. There is also no explanation as to why the recovery memos/seizure memos were not prepared on spot and were instead prepared after 4/5 days in the Police Station.

22. The trial Court has, thus, rightly concluded that the prosecution had miserably failed to prove that the skeleton and the clothes were recovered pursuant to the disclosure statement made by and at the instance of respondent No.1-Abdul Latif. Admittedly, there are no eye witnesses to the commission of murder and the entire prosecution case put up against the respondents was rested on circumstantial evidence. Where there are no eye witnesses to the crime, it is incumbent upon the prosecution to establish all the circumstances firmly and to demonstrate that the established circumstances form a chain complete in itself pointing unerringly to the guilt of the accused.

23. The only circumstances in this case, which are relied upon by the prosecution are disclosure statement made by Abdul Latif and recovery of the skeleton and clothes from the jungle and the incident of kidnapping of the deceased from the house of PW-Ghulam Mohd. All these circumstances, in view of the discussion made above, were not firmly established nor do they form a chain of facts, which led to a hypothesis inconsistent with

the innocence of the accused. Failure of forensic lab to conduct DNA profiling has led to failure of prosecution to prove that the human skeleton recovered was of the dead body of the deceased -Hameed.

24. For the foregoing reasons and for the detailed discussion made by the trial Court in the impugned judgment, we are not inclined to interfere with the impugned judgment of acquittal. Otherwise also, the scope of interference in the acquittal appeal by the Appellate Court is limited and well circumscribed. Where the Appellate Court, on evaluation of evidence on record, is of the opinion that a view different from the one taken by the trial Court is also permissible, the Appellate Court would affirm the view taken by the trial Court. Needless to say that the accused is presumed to be innocent till proven guilty and this presumption of innocence gets fortified by his acquittal by the trial Court.

25. For all these reasons, 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
03.09.2025
Vinod, PS

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