

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

CRAA 8/2005

State of J&K Through S.S.P. Sgr.

...APPELLANT(S)

Through: - Mr. Alla-ud-Din Ganai, AAG with
Ms. Shaila Shameem, Advocate

Vs.

**Rayees Ahmad Sofi
S/O Mohammad Abdullah Sofi
R/O: Yaripora, Kulgam**

...RESPONDENT(S)

Through:- Mr. Mir Manzoor, Advocate

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE**

**JUDGMENT(ORAL)
24.04.2025**

Per Sanjeev Kumar 'J'

1) The State of Jammu and Kashmir (now the Union Territory of Jammu and Kashmir), is in appeal against a judgment of acquittal dated 4th June, 2005, passed by the Court of learned Sessions Judge, Anantnag [for short "the Trial Court"] in appeal No. 27-A/Sessions titled "**State Vs. Rayees Ahmad Sofi**".

2) The impugned judgment is assailed by the appellant on various grounds. However, before we advert to the grounds of challenge urged by learned counsel for the appellant, we deem it appropriate to narrate briefly the prosecution case as was put up before the Trial Court.

3) On the morning of 9th July, 2003, beheaded dead body of ASI Ghulam Hassan was found in the courtyard of Boys Higher Secondary School, Yaripora, which made the Police Station Kulgam to swing into action and register FIR No. 150/03 at Police Station, Kulgam. The investigation was taken up and during the course of investigation it came to fore that the deceased Police Officer had two wives. The second wife of the deceased PW13-Mst. Nasreena, a police constable, used to visit Yaripora and during her visits was staying in the house of a friend of her deceased husband. This friend of the deceased husband was none other than the respondent herein.

4) It was also found during the investigation that the deceased and the respondent were so close friends that on one occasion the deceased along with his wife and respondent had together gone to Pahalgam on a picnic. The police thus concluded that it was the respondent herein who had taken the deceased from the Police Post on the evening of 8th July, 2003, on the pretext that his second wife had come to his place. The respondent took the deceased alongwith him and handed him over to the militants pursuant to a conspiracy hatched by him with the militants at the residence of Prince Abdali.

5) The militants took the deceased to the nearby Boys Higher Secondary School, Yaripora, and slaughtered him

during the intervening night of 8th and 9th July, 2003. On the basis of the statements of various witnesses recorded under Section 161 Cr.P.C., a final report establishing the guilt of the respondent qua the murder of the deceased was prepared and presented before the competent court of law. On 7th February, 2004, the Trial Court, on the basis of the material placed before it in the shape of a final report, framed the charges against the respondent. The respondent pleaded not guilty and claimed to be tried.

6) The prosecution was directed to lead evidence. The prosecution produced all the sixteen listed witnesses and the prosecution evidence was closed on 15.02.2005. Upon conclusion of the prosecution evidence, the incriminating circumstances appearing therein were put to the respondent and his statement in terms of Section 342 Cr.P.C was recorded on 02.04.2005. The respondent denied his complicity in the crime. He, however, chose not to lead any evidence in defence.

7) The Trial Court after hearing the learned Public Prosecutor and the defence counsel and having gone through the entire prosecution evidence came to the conclusion that all the entire case was rested on circumstantial evidence and that the prosecution had miserably failed to establish any of the circumstances sought to be projected in the prosecution evidence. The Trial

Court thus concluded that the prosecution had miserably failed to connect the respondent with the commission of offence and thus acquitted him of all the charges vide judgment of acquittal impugned in this appeal.

8) The impugned judgment is challenged by the appellant primarily on the ground that the Trial Court has failed to appreciate the evidence on record, in particular, the testimony of PW5-Abdul Hamid Munshi and PW13-Mst. Nasreena which unequivocally proves that it was the respondent and respondent alone who had taken the deceased with him from Police Post Yaripora on the evening of 8th July, 2003, and thereafter his dead body was found in the Boys Higher Secondary School, Yaripora.

9) Learned counsel for the appellant would argue that even in the statement of the respondent recorded under Section 342 Cr.P.C, the respondent has not explained the incriminating circumstances that had come in the statements of PW5 and PW13 recorded before the Trial Court. The judgment impugned is also assailed by the appellant on the ground that though the deceased was killed by two unknown gunman alongwith one surrendered militant Ali Kachwa pursuant to a conspiracy hatched in the house of Prince Abdali, in which the respondent too had participated, yet the Trial Court on the basis of minor contradictions discarded the prosecution evidence proving

the factum of conspiracy having been hatched by the respondent along with others in the house of Prince Abdali on 08.07.2003.

10) *Per Contra*, learned counsel appearing for the respondent would support the judgment of the Trial Court and would submit that the prosecution has failed to lead any cogent evidence to prove that any conspiracy was hatched by the respondent alongwith others at the house of Prince Abdali on 08.07.2003. He would argue that the owner of the house i.e., Prince Abdali, who could have been the best witness was neither cited as a prosecution witness nor his statement was recorded before the Trial Court. He submits that the circumstances projected by the prosecution were not firmly established and, therefore, there was no material before the Trial Court to connect the respondent with the commission of offence he was charged with.

11) Having heard learned counsel appearing for the parties and perused the material on record, we are of the considered view that the judgment passed by the Trial Court is well reasoned and in consonance with the prosecution evidence on record. Indisputably, the entire prosecution case rests on circumstantial evidence and the circumstances which the prosecution tried to prove before the Trial Court are as follows:-

- (i) That the deceased was killed by two unknown militants alongwith one surrendered militant Ali Kachwa on the intervening night of 8th and 9th July, 2002, in the Boys Higher Secondary School, Yaripora, pursuant to a conspiracy hatched in the evening of 8th July, 2003, in the house of Prince Abdali.
- (ii) That on the evening of 8th July, 2003, the deceased had visited Police Post Yaripora and took alongwith him the deceased on the pretext that the latter's family had come from Srinagar and was staying at his residence.
- (iii) That the respondent was not having good relations with the deceased as the latter in his capacity as Police Officer was interfering in his business of sale of diesel, petrol and kerosene oil etc and, therefore, the motive.

12) The Trial Court has discussed all the aforementioned three circumstances alongwith other circumstances sought to be projected during the course of arguments and rightly concluded that the same have not been firmly established to connect the respondent with the commission of offence.

13) We have gone through the prosecution evidence and we find that the three important circumstances which were

sought to be projected by the prosecution during the trial have not been firmly established nor do they form unbroken chain so as to lead to the hypothesis inconsistent with the innocence of the respondent. It is not the prosecution case that the deceased was killed by the respondent. The respondent has been roped in the commission of offence by the aid of Section 120-B of IPC. So far as the conspiracy is concerned, as is rightly held by the Trial Court, the same has not been proved by leading any cogent evidence. The most important witnesses i.e., Prince Abdali in whose house the conspiracy is alleged to have been hatched is interestingly not a prosecution witness. There is no other independent witness examined by the prosecution during investigation to establish that on the intervening night the respondent had visited the house of Prince Abdali. Once the charge of conspiracy fails, the implication of the respondent with the commission of murder by two unknown militants alongwith surrendered militant Ali Kachwa automatically falls flat.

14) So far as motive is concerned, we find enough evidence on record to show that the respondent and the deceased were very good friends and as a matter of fact this good friendship between the two, as per the prosecution, lead the respondent to visit the Police Post Yaripora in the evening of 08.07.2003 to take alongwith him the deceased to his

house. It is because of good relations between the two, as is projected by the prosecution, second wife of the deceased namely PW13- Nasreena had come from Srinagar and was staying in the house of the respondent. The evidence to show that there was some misunderstanding between the two at one point of time does not establish the motive for committing the murder of the deceased by the respondent.

15) Another circumstance which is strongly relied upon by the learned counsel for the appellant is that on the evening of 08.07.2003, the respondent had visited the Police Station Yaripora and took alongwith him the deceased on the pretext that the deceased's family had come to his residence. It is true that in the testimony of PW5, this fact has come in evidence and the same is also to some extent corroborated by PW-13 in her statement recorded before the Trial Court. This fact alone, even if it is presumed to have been established, is not sufficient to arrive at a conclusion that it was the respondent and the respondent alone who was responsible for the murder of the deceased. Otherwise also, the statement of PW5- Abdul Hamid at the Police Post Yaripora was recorded on 09.07.2003, whereas the statement of PW13- Mst. Nasreena was recorded on 29.07.2003, that is twenty days after recording the statement of PW5 by the Police under Section 161 Cr.P.C.

16) It is not the case of the prosecution that PW13-Mst Nasreena, who is second wife of the deceased was not available. Rather it has come in the statement of PW13-Mst. Nasreena itself that she came to Yaripora on 09.07.2003 after hearing the news of murder of her husband.

17) From the aforesaid circumstances, it is clearly inferable from the statement of PW13-Mst. Nasreena who was otherwise not a witness connected with the occurrence in any manner was recorded on 19.07.2003 to give credence to the statement of PW5 recorded on 09.07.2003. Statements of PW5 and PW13 were put to the respondent and his statement was recorded under Section 342 Cr.P.C. On being pointedly asked about what was deposed by PW5 that on 08.07.2003 he had visited the Police Post Yaripora to take alongwith him the deceased, a categoric reply was given by the respondent that on the said date he had not visited the Police Post. In view of the aforesaid evidence on record, it cannot be said that even this circumstance was firmly established.

18) There are other circumstances which were sought to be projected by the prosecution during the course of the arguments before the Trial Court, but the same have been very correctly dealt with and discarded by the Trial Court. We do not wish to go into these aspects yet again. Suffice it

to say that the Trial Court has held rightly that the evidence

brought on record by the prosecution is not sufficient to connect the accused with the commission of offence he was charged with. Otherwise also, the scope of interference with the judgment of acquittal is limited and well circumscribed. Even if, on re-evaluation of evidence on record the Appellate Court is of the opinion that the view other than the view taken by the Trial Court is possible yet the Appellate Court would go by and adopt the view taken by the Trial Court.

19) For all these reasons, we find no merit in this appeal and the same is, accordingly, **dismissed**.

(MOHD. YOUSUF WANI)
JUDGE

(SANJEEV KUMAR)
JUDGE

Srinagar,
24.04.2025
"Mir Arif"

Whether the JUDGMENT is reportable: **Yes/No**