

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

CRAA 26/2011

Reserved on : 13.11.2025

Pronounced on : 27.11.2025

Uploaded on : 27.11.2025

**Whether the operative part or full
judgment is pronounced: "Full"**

**STATE OF J AND K THROUGH GOVT ADVOCATE
SRINAGAR**

...Appellant(s)/Petitioner(s)

Through: Mr. Alla Ud Din Ganai, AAG.

Vs.

**1. Muzaffar Ahmad Malik S/O Gh. Hassan
R/O Arpora Nagbal, Shopian.**

...Respondent(s)

**2. Mohammad Ishaq Paul S/O Gh. Rasool
Paul Aaloor Shopian**

Through: Ms Nida Nazir, Advocate vice
Mr S.T. Hussain, Sr. Advocate for R-1
Mr Shahbaz Sikander, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

J U D G M E N T

PER SANJAY PARIHAR-J:

1. By this acquittal appeal, the appellants call in question the judgment and order passed by the Id. Sessions Judge, Shopian, in File No. 39/Session, arising out of FIR No. 102/2006 of Police Station Zainapora, for offences under Sections 302/201 RPC and Section 7/27 of the Arms Act. By the impugned judgment, the respondents, who were facing trial for the aforesaid offences, stand acquitted. The appellants contend that the prosecution had proved its case beyond a reasonable doubt, which is clearly borne out from the evidence brought on record during the trial, and that the trial court has erred in discarding such material.

2. It is urged that the impugned judgment is contrary to the record and suffers from patent illegality, as the trial court has misappreciated the

evidence. According to the appellants, the prosecution successfully established that the accused had fired upon the deceased on account of past enmity. The deceased had earlier married one Mst. Saja, the marriage having remained childless. Respondent Muzaffar Ahmad Malik, alleged to be a militant and a close relative of Mst. Saja was infuriated when the deceased contracted a second marriage, and on account of this grudge, the accused killed the deceased. It is alleged that on 24.09.2006, the accused entered the deceased's house, called him outside, and fired upon him with an automatic weapon, causing grievous injuries, whereafter he was shifted to Zainapora hospital for first aid but succumbed to his injuries.

3. As per the prosecution case, on 24.09.2006, an FIR was initially registered for offences under Section 307 RPC and Section 7/27 of the Arms Act, upon receipt of information from reliable sources that some unidentified gunmen armed with automatic weapons had fired upon Nazir Ahmad Wani, S/o Mohd. Ismail Wani, a resident of Hushanpora within the jurisdiction of Police Station Zainapora, caused serious injuries. The injured was shifted to the hospital, where he later expired, and the offence was converted from Section 307 RPC to Section 302 RPC.

4. During the investigation, three AK-47 cartridge cases were recovered from the scene of the occurrence and were seized as incriminating evidence. The accused were subsequently arrested and are stated to have admitted their involvement in the killing of the deceased; however, the weapon of offence could not be recovered as it had been destroyed. Upon completion of the investigation, the accused were charge-sheeted for offences punishable under Sections 302 and 201 of the RPC, read with Section 7/27 of the Arms Act.

5. The prosecution, in support of its case, cited 18 witnesses, including PW-1 Farooq Ahmad Wani, the brother of the deceased, PW-7 Mst. Saja, the widow of the deceased, and sixteen other witnesses. The trial court recorded a finding that the death of the deceased was caused by firing by unknown terrorists. On this basis, the Superintendent of Police, Pulwama, processed a report recommending the grant of ex-gratia relief to the family of the deceased, which proceedings concluded within three months of the occurrence. The court noted that most of the material witnesses, including the widow of the deceased, had turned hostile, and in the absence of any independent corroboration pointing directly to the involvement of the accused, the prosecution could not be said to have proved its case. The court further observed that the testimony of PW-1 Farooq Ahmad Wani was self-contradictory. While he at one stage claimed to be an eye-witness to the firing by respondent No.1, he elsewhere admitted that at the time of the incident, he was inside a room along with other witnesses. On this reasoning, the court proceeded to acquit the respondents.

6. Ld. counsel for the appellant, after taking the Court through the evidence, contended that the trial court failed to appreciate the material on record in its correct perspective, resulting in the acquittal of the accused despite what was, according to him, a fool-proof prosecution case. It was submitted that immediately after sustaining bullet injuries at the hands of respondent No.1, the deceased, while being taken to the hospital, repeatedly stated to the witnesses as to “what wrong he had done to respondent No.1,” which, according to counsel, clearly implicated respondent No.1. However, learned counsel fairly conceded that insofar as

respondent No.2 is concerned, there is no evidence against him.

7. Per contra, the counsel for the respondents argued that the entire prosecution story was fabricated, and that the respondents had been falsely implicated in an incident in which they had no role. The weapon of offence was never recovered, nor does the trial record indicate who actually fired upon the deceased. Most of the prosecution's witnesses deposed against the prosecution's case, including the wife of the deceased, who was its star witness. In such circumstances, there being absolutely no incriminating evidence against the respondents, the trial court was fully justified in dismissing the charge-sheet.

8. We have heard the counsel for the parties and perused the record. In *State of Rajasthan v. Shera Ram*, (2021) 1 SCC 602, the Supreme Court reiterated that a judgment of acquittal reinforces the presumption of innocence in favour of the accused, and the appellate court must be slow to interfere unless the judgment is contrary to evidence, palpably erroneous, or reflects a view that could not reasonably have been taken by the trial court. If two views are possible on the evidence, the one favouring the accused must be adopted. At the same time, the Court has also observed that where an acquittal is based on misappreciation of evidence, the appellate court is competent to correct such an error.

9. Keeping these principles in mind, we proceed to consider the rival submissions. The FIR was indeed registered against unknown persons. According to PW-1 Farooq Ahmad Wani, while he was attending Isha prayers, respondent No.1 knocked on the door of the deceased, asked him to step outside, stating that he needed to discuss a matter, and thereafter

took him away. If this version is accepted and the incident occurred on 24.09.2006, the immediate lodging of an FIR under Section 307 RPC on the same night, without disclosure of the identity of respondent No.1 as the assailant, raises a serious doubt on the veracity of PW-1's testimony. If PW-1 truly knew and had identified the assailant, it would have been natural for him to disclose this to the police at the earliest opportunity, which did not happen.

10. The trial court record further reveals that respondent No.1 was arrested on 19.05.2007 and respondent No.2 on 29.05.2007, both having been remanded in custody in connection with other FIRs. Even after their arrest, no recovery, not even of the alleged weapon of offence, the AK-47 rifle, was effected. Given that the FIR was lodged against unknown persons and that a considerable time had elapsed between the occurrence and the arrests, there appears to have been no material before the investigating agency pointing to the weapon used. The subsequent introduction of Section 201 RPC, on the allegation that the weapon had been destroyed, appears to have been invoked only to explain the absence of recovery. Although the prosecution evidence may suggest that the respondents were, at some earlier point, militants, a fact denied by them, such an inference, even if plausible, does not by itself establish their involvement in the present offence. Most witnesses merely stated that they heard firing, which caused injuries to the deceased, who succumbed while being transported to the hospital. The appellant has relied on the alleged dying declaration that the deceased questioned "what harm he had done to respondent No.1," but this circumstance is not conclusively proved.

11. Upon analysing the testimonies, it emerges that PW-1, PW-6, PW-11 and PW-14 expressly denied any knowledge of the occurrence. The remaining witnesses, though closely related to or acquainted with the deceased, admitted that the police had reached the spot shortly after the incident. Yet, none offered any explanation as to why the name of Respondent No.1 did not find mention in the First Information Report, despite the later allegation that he was the assailant.

12. PW-3, an independent witness with no relation to the deceased, stated that he was in the mosque at the time of the incident; after hearing gunshots, he stepped outside and saw the deceased lying dead. PW-12, Gh. Hussain Sheikh categorically denied that the deceased, Nazir Ahmad Wani, had been killed by Respondent No.1. The investigation indicates that three pellets of an AK-47 rifle were seized on 25.09.2006. PW-1 stated that the pellets were seized in his presence (EXPW-1), and the memo was purportedly witnessed by PW-4, PW-5, PW-2 and PW-3. However, at trial, four of these witnesses did not support the alleged seizure memo prepared by the Investigating Officer. The Investigating Officer asserted that PW-1 had collected the pellets and handed them over to the police. It is admitted that the pellets were never sent to the Forensic Science Laboratory. The Investigating Officer alone stated that they were from an AK-47 rifle, without any corroborating expert evidence.

13. According to some prosecution witnesses, the injured allegedly cried out that he had been fired upon by Respondent No.1. However, this purported dying declaration is unsupported by the Investigating Officer and is uncorroborated by any independent evidence. The respondents, on the other hand, produced defence evidence showing that after the death of the

deceased, his legal heirs applied for ex gratia relief before the Deputy Commissioner, Pulwama. For this purpose, the Senior Superintendent of Police, Pulwama, was directed to verify the circumstances of the death. After conducting verification, the SSP reported that the deceased had been killed by unknown militants. This report was submitted within three months of the incident. The timeline makes it clear that the occurrence took place on 24.09.2006, while the respondents were arrested only in May 2007.

14. From the cumulative testimony on record, the case appears to be one where the deceased was killed by militants. Concerning Respondent No.2, no witness identified him as an assailant or made any incriminating statement against him. He appears to have been arrested on 29.05.2007 in the present FIR, although he was already in custody in another case. As regards Respondent No.1, the prosecution asserts that he was a militant and that the alleged motive stemmed from the deceased's second marriage, which purportedly enraged his first wife and her paternal relatives, including Respondent No.1. However, there is no reliable evidence proving such a motive. The key prosecution witness, PW-7 Mst. Saja, the widow of the deceased and initially projected as an eyewitness, did not support the prosecution's case. Even assuming the motive to be true, PW-7's testimony contradicting the prosecution's version would, if anything, be attributable to her alleged annoyance over the deceased's second marriage, thereby rendering her evidence unreliable.

15. Consequently, the prosecution's case must rest on the remaining witnesses, PW-1, PW-4, PW-5, PW-6, PW-11, PW-13, PW-14, PW-15, PW-16 and PW-17, all of whom are close relatives of the deceased. While

their relationship to the deceased does not by itself render their evidence untrustworthy, the trial court, after a detailed analysis, found that none of them made any statement at the relevant time implicating Respondent No.1. Their allegations surfaced only much later, particularly after an initial consensus in the village that the deceased had been killed by militants.

16. From the evidence brought on record, it emerges that the prosecution witnesses have rendered inconsistent and mutually contradictory statements. While some witnesses deposed that they merely heard gunshots and thereafter found the deceased lying injured, others claimed to have seen Respondent No.1 taking the deceased away before the incident. Even if the act of taking the deceased along is viewed with suspicion, it stands admitted that the assailants were wearing *pherans* and that the incident occurred during hours of darkness. In the absence of any Test Identification Parade, the claimed identification of Respondent No.1 becomes doubtful. The fact also remains that no weapon of offence has been recovered in this case, nor has the prosecution established, through expert evidence, the nature of the weapon used in the killing. Although an AK-47 rifle is alleged to have been used, its non-recovery despite the arrest and interrogation of Respondent No.1 materially dents the prosecution's case. The Investigating Officer has not provided any cogent proof connecting the alleged weapon with the offence, nor were the seized pellets forwarded to the Forensic Science Laboratory for ballistic examination. His bare assertion that the pellets were from an AK-47 rifle, unsupported by expert testimony, cannot be accepted.

17. The entire chain of circumstances, as it stands, points towards the

deceased having been killed by unknown militants. The record further reflects that there was discussion within the village regarding whether the deceased had been killed by militants or by security forces. The investigation conducted also appears tainted with doubt. Despite the police reaching the hospital upon receipt of information, the FIR does not record the name of any accused, which is contrary to the prosecution's later claim that the assailant was known to PW-1 and others. The defence version stands fortified by the report submitted during the ex-gratia relief verification process, wherein the Senior Superintendent of Police, Pulwama, categorically concluded that the deceased was killed by militants. This report was furnished within three months of the incident.

18. It further appears that after the killing of the deceased in September 2006 and the subsequent arrest of Respondent No.1 in connection with another FIR, certain statements may have been made by him which led the investigating agency to suspect his involvement in the present case. However, the alleged motive has not been proved and finds no reliable support from the evidence on record. The evidentiary links sought to be established by the prosecution thus remain wholly unsubstantiated. The trial court has meticulously examined the prosecution's evidence and, upon a well-reasoned appraisal, concluded that the case against Respondent No.1 is not based on trustworthy or reliable material. Suspicion, however strong, cannot take the place of proof. When the prosecution's evidence is shaky, contradictory, and unreliable, the defence version necessarily gains strength. We find no infirmity in the conclusion of the trial court that the prosecution has failed to prove its case beyond a reasonable doubt.

19. In view of the foregoing discussion, we find no merit in this appeal. The judgment of acquittal recorded by the trial court does not suffer from perversity or legal infirmity warranting interference. The appeal is accordingly **dismissed**.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Srinagar
27.11.2025
“Shaista-PS”

- ❖ Whether the Judgment is Reportable?

No.
- ❖ Whether the Judgment is Speaking?

Yes

