

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Case No. CrlA(D) No. 18/2021

C/w

Crl Ref (L) No. 03/2021

Reserved on:- 11.12.2025

Pronounced on:- 30.12.2025

Uploaded on:- 30.12.2025

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

Shahijahan Padder @ Shah Lal Padder, Aged 40 Years
S/o Ghلام Hassan Padder
R/o Mirhama, Kulgam, District Kulgam.

Through:- Mr. S. M. Ayoub, Advocate

V/s

State of J&K, through SHO Police Station, Kulgam,
District Kulgam.

Through:- Mr. Mohd Younis Hazif Assisting
Mr. Mohsin Qadri, Sr. AAG

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

JUDGMENT

Per: - Sanjay Parihar-J

01. The appellant seeks setting aside of the conviction and sentence recorded against him by the learned Sessions Judge, Kulgam (hereinafter referred to as the trial Court), whereby he was held guilty of offences

punishable under Sections 364, 302 and 201 of the Ranbir Penal Code (RPC), vide judgment dated 30.09.2021. Under the impugned judgment, the appellant was sentenced to life imprisonment with a fine of ₹10,000/- for the offence under Section 302 RPC; rigorous imprisonment for ten years with a fine of ₹5,000/- for the offence under Section 364 RPC; and rigorous imprisonment for three years with a fine of ₹5,000/- for the offence under Section 201 RPC, in case titled *State through Police Station Kulgam v. Shahjahan Padder @ Shah Lal Padder*, File No. 163-B, arising out of FIR No. 96/2010 of Police Station Kulgam.

02. The prosecution, in order to prove its case, examined 29 out of 30 listed witnesses, whereas the appellant, in his defence, examined two witnesses. The impugned judgment has been assailed primarily on the ground that it is a case of no evidence, yet the trial Court erroneously recorded a finding of guilt against the appellant. It is contended that a material witness, namely PW-Mst. Banoo, a close relative of PW-2 (mother of the deceased), who, according to the prosecution itself, was staying in the complainant's house on the relevant night and was a natural witness, was deliberately withheld by the prosecution. Similarly, one Gull Bhat alias Woddu, from whose house the complainant allegedly received a phone call from the deceased, was neither cited nor examined as a witness. These lapses, it is argued, go to the root of the prosecution case and have been completely overlooked by the trial Court, resulting in grave miscarriage of justice.

03. It is further argued that the evidence of PW-2 (mother of the deceased) and PW-1 (wife of the deceased), who claim to have last seen the deceased in the company of the appellant, is mutually contradictory and therefore unreliable. Once the “last seen together” evidence is found to be shaky and untrustworthy, there was no justification for the trial Court to rely upon the alleged recovery of the weapon of offence (Axe), particularly when the said weapon was admittedly not connected with the crime through any forensic or scientific evidence.

04. The appellant further contends that the prosecution claims to have recorded a disclosure-cum-confession of the accused immediately after his arrest, wherein he allegedly admitted to having washed the weapon of offence to remove blood stains. However, the prosecution witnesses have simultaneously stated that the recovered weapon contained blood stains. This contradiction, according to the appellant, raises a strong probability of manipulation and padding of evidence. It is also argued that the blood group of the deceased was never scientifically determined, nor was it matched with the alleged blood stains on the recovered articles.

05. It has further come on record that a blood-stained wooden Danda and a blood-stained trouser were recovered on 29.04.2010 from the house of Ayoub Magarey and Suhail Magrey, and these articles were sent for forensic examination. However, the prosecution has failed to explain the relevance of these recoveries or their connection with the appellant. Likewise, although the prosecution alleges recovery of a Nokia mobile phone from the possession of the appellant, purportedly belonging to the

wife of the deceased, there is no scientific or corroborative evidence to substantiate this claim. In essence, the appellant submits that the entire prosecution case is riddled with contradictions, inconsistencies, and unexplained circumstances, and therefore the conviction recorded by the trial Court is unsustainable in law.

06. Per contra, the learned counsel for the U T has supported the impugned judgment, contending that the same is well-reasoned and based on proper appreciation of evidence. It is argued that all the grounds now raised in the memo of appeal were duly considered and rejected by the trial Court. According to the prosecution, the evidence of “last seen together” was found to be credible and trustworthy, and the dead body of the deceased was recovered immediately thereafter. The recoveries effected at the instance of the appellant were legally admissible under Section 27 of the Evidence Act, and therefore no fault can be found with the judgment of conviction. It is further contended that the trial Court rightly invoked Section 106 of the Evidence Act, as the appellant failed to explain the circumstances under which the deceased, who was last seen in his company, was found dead the next morning.

07. Briefly stated, the prosecution case is that on 26.04.2010, the complainant (PW-1) lodged a written report at Police Station Kulgam alleging that her husband had a dispute with his father, PW-Ali Mohammad Padder, and that on 25.04.2010 at about 7:30 PM, the deceased had gone with the appellant and thereafter went missing. She suspected that the appellant had abducted him with the intention to kill

him. On receipt of this report, FIR No. 96/2010 under Section 364 RPC was registered and investigation commenced.

08. During the investigation, Police Station D H Pora, informed Police Station Kulgam through wireless that a dead body was lying in a garden adjacent to village Adijan. The body, found in the garden of PW-Ahad Bhat, was identified by Khazir Bhat as that of the deceased. The body was taken into custody and sent for autopsy. Two empty Cavander Filter cigarette packets were recovered from the spot. After post-mortem examination, the body was handed over to the in-laws of the deceased. Considering the nature of injuries, the case was converted into one of homicide and Section 302 RPC was added.

09. During further investigation, the appellant, along with Ayoub Magrey and Suhail Magarey and father of deceased were taken into custody on suspicion. It is alleged that during interrogation, the appellant disclosed that he had killed the deceased with an Axe and, pursuant thereto, the Axe and a mobile phone were recovered from his residential house and cowshed respectively. The Axe was stated to be blood-stained. It is further alleged that the appellant destroyed the identity card of the deceased by burning it near a nallah, and burnt pieces were recovered.

10. The prosecution further alleges that due to strained relations between the deceased and his father, the deceased was living separately with his wife and mother at Mirhama. Prior to the occurrence, the deceased had sold trees for ₹50,000/-, which angered his father. Although

a settlement later took place, it is alleged that the deceased had earlier paid ₹50,000/- to the appellant as supari to kill his father, and upon settlement demanded return of the amount. When the appellant refused, he allegedly abducted and murdered the deceased and destroyed his identity card to screen himself from punishment.

11. We heard both counsels and examined the record of trial court. The prosecution case rests primarily on circumstantial evidence and alleged disclosures attributed to the appellant and trial court has relied on such evidence so as to fasten liability on the appellant. In order to have ourselves examine the evidence lead in trial we like to place on record a brief resume of the witness testimonies.

12. PW-1, the wife of the deceased, admitted that there was a serious dispute between the deceased and his father regarding property and felling of trees, owing to which they were living separately. She further admitted that her father-in-law had expelled his wife from the matrimonial home and that her mother-in-law was residing with them. According to her, the deceased was called through the appellant on the pretext of settlement by his father to the house of Gull Bhat @ Wado. She admitted that villagers believed the deceased was killed by his father. She also made contradictory statements regarding the recovery of the deceased's Mobile Phone, first stating it was recovered from the appellant's house and later stating that it was recovered from his cowshed. She admitted that despite alleging that the deceased was called to the house of Gull Bhat, she never visited that house to verify his whereabouts. She also admitted the

presence of a guest, Mst. Banoo, in the house on the relevant night, whose statement was never recorded by the police. According to her by the time she came back home she did not see the appellant and deceased and when enquired from her mother-in-law regarding them who told her having not seen them.

13. PW-Mst. Haseena, mother of the deceased, deposed that the appellant took her son with him despite her objection. However, she admitted that there was a strong property dispute between the deceased and his father, that the villagers suspected the father of the deceased, and that several persons including Ali Mohammad Padder (father of the deceased), Ayoub Magrey and Suhail Magarey were detained by the police on suspicion. She admitted that the appellant and deceased had friendly relations and expressed ignorance as to why other suspects were released.

14. Independent witnesses including PW-Ghulam Mohi-ud-Din Itoo, PW-Ahad Bhat, PW-Abdul Rashid Wani, PW-Ali Mohammad Wagay and PW-Abdul Rashid Wani mainly speak about the recovery and identification of the dead body and do not connect the appellant with the occurrence. PW-Ahad Bhat, in whose orchard the dead body was found, deposed that villagers identified the body and that there were visible head injuries. Several witnesses, including PW-Ghulam Mohi-ud-Din Itoo and PW-Ghulam Qadir Lone (Numberdar), consistently stated that villagers believed the deceased was killed by his father due to the ongoing dispute.

15. PW-Abdul Rashid Wani, PW-Ghulam Qadir Lone and PW-Ghulam Nabi Bhat stated that the Axe and Mobile Phone were recovered at the instance of the appellant; however, they admitted that the Axe was a common household article, bore no seal, and that they could not definitively identify the Mobile Phone as the same allegedly recovered. PW-Ghulam Nabi Bhat further admitted that no seal was affixed on the seized articles and that he merely signed papers without full knowledge of the proceedings. Contradictions also exist regarding the exact place of concealment of the Axe and Mobile Phone.

16. PW-17, Mst. Rukhsana, introduced a new circumstance by stating that the deceased spoke to her late at night and told her he was at village Achathal and had taken meals, a fact not investigated by the police. Her statement was recorded after a delay of 33 days without explanation.

17. Several witnesses including PW-Mohammad Amin Padder, PW-Ghulam Nabi Najar and PW-Kanaya Lal proved recovery of blood-stained articles from the house of Ayoub Magrey, though Ayoub Magrey and Suhail Magarey were already detained at the time, and no investigation was conducted to establish who placed those articles there or whose blood they bore.

18. The father of the deceased, PW-Ali Mohammad Padder, made highly inconsistent and hearsay statements, admitting that he had no personal knowledge of the killing, that he himself was detained as a

suspect, and that his allegations against the appellant were based on what police officers allegedly told him.

19. The medical evidence establishes homicidal death due to severe head injuries caused by a sharp weapon, and the doctor opined that the Axe produced could cause such injuries. However, the forensic evidence suffers from serious infirmities as articles were received unsealed and no clear serological linkage between the appellant, weapon, and deceased was established.

20. Most crucially, the Investigating Officer admitted in cross-examination that there was no evidence against the appellant except the alleged disclosure statement, that several key witnesses were not examined, that other suspects were neither properly investigated nor ruled out, and that no blood-stained clothes of the appellant were seized.

21. The defence evidence, through DW-1 and DW-2, suggested illegal detention and torture of the appellant and the existence of multiple suspects, reinforcing the inconsistencies and gaps in the prosecution case.

22. The Trial Court returned findings primarily on two counts: first, that the deceased was lastly seen in the company of the appellant, and second, that immediately thereafter, on the very next morning, the dead body of the deceased was recovered from an orchard, which recovery was witnessed by a particular prosecution witness. The Trial Court also placed reliance upon the recovery effected pursuant to the disclosure made by the appellant. In *Shivaji Saheb Rao Bobade and another v. State of*

Maharashtra, 1973 SCC (Cri) 1033, the Hon'ble Supreme Court laid down the settled principles governing cases based on circumstantial evidence, holding that the circumstances must be established and not merely may be established. The Court enumerated five golden principles, namely, that the accused must be proved to be guilty beyond doubt; that the facts so established should be consistent only with the hypothesis of the guilt of the accused; that the circumstances should be of a conclusive nature; that they should exclude every possible hypothesis except the one to be proved; and that the chain of evidence must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. These principles have attained finality and continue to guide courts while appreciating circumstantial evidence.

23. It is also well settled that suspicion, however strong, cannot take the place of proof beyond reasonable doubt. An accused cannot be convicted merely on suspicion, as the presumption of innocence continues to operate until guilt is proved beyond reasonable doubt, as reiterated in *Ram Nivas v. State of Haryana*, Criminal Appeal No. 25 of 2012 decided on 11.08.2022. So far as the theory of "last seen together" is concerned, the law mandates that the time gap between the accused and deceased being last seen together and the recovery of the dead body must be so minimal as to rule out the possibility of third-party intervention.

24. The Hon'ble Supreme Court in its recent pronouncement reported as 2025 INSC 1466 has reiterated that the evidence of last seen together is a weak piece of circumstantial evidence and cannot, by itself, form the

basis of conviction unless the time gap between the last seen and death is so small as to rule out any other possibility. Even in such circumstances, the prosecution is required to establish a complete and unbroken chain of circumstances. Since the appellate Court is examining both the challenge to conviction and the reference made by the Trial Court for confirmation of sentence, it is required to examine the evidence in its entirety to determine whether the view taken by the Trial Court was the only possible conclusion.

25. PW-1, the wife of the deceased, Mst. Zareena, stated that the appellant had come to their house to convey a message to her husband that his father had arranged a meeting at the house of Gull Wavdu. However, she did not depose that she saw the appellant and the deceased leaving the house together. According to her, after offering them hookah, she left to fetch eggs, and by the time she returned, both were not present. When she enquired from her mother-in-law PW-2, she expressed ignorance. Thus, from the testimony of PW-1, it is evident that although the appellant had come to the house, there is no categorical assertion that both left together. PW-2, on the other hand, in her statement under Section 161 CrPC, claimed that she saw them together, whereas PW-1 stated that PW-2 was not present at that time. PW-2 further stated that she returned at about 6:30 p.m. and saw the deceased leaving with the appellant and that she had rebuked her son for doing so, a fact not stated in her earlier statement, thereby amounting to an improvement. The testimonies of PW-1 and PW-2 are thus inconsistent, and the presence of another lady, Mst. Banoo, who

was admittedly in the house but not examined, further weakens the prosecution version.

26. Both witnesses admitted that when the deceased did not return, they went to the house of the appellant the next morning, where he stated that they were not together. Even if PW-2's version is accepted, her improvements cast serious doubt. PW-1 further stated that she had spoken to her husband on the phone and was informed that he was with three to four persons. PW-17, the sister of the deceased, corroborated this by stating that the deceased told her he was at village Achathal and had already taken meals. The Investigating Officer professed ignorance regarding these facts. Defence witness DW-Shabir Ahmad stated that the deceased remained at the house of Gull Wado with Ayoub Magrey and Suhail Magrey after a meeting, a fact again ignored by the Investigating Officer.

27. Evidence further shows that a blood-stained trouser and Danda were recovered from the house of Ayoub Magrey, yet neither the blood group nor its linkage with the deceased was established. Several persons including the father of the deceased and Ayoub Magrey were taken into custody on suspicion and later released. The Investigating Officer was unable to explain at whose behest recoveries were made. When the evidence is evaluated cumulatively, it creates a probability that the deceased was not conclusively proved to be in the company of the appellant throughout the relevant period.

28. The prosecution's motive theory regarding payment of ₹50,000/- is inconsistent and unsupported. The wife initially stated the amount was for employment, whereas later it was alleged to be a supari amount to kill the father of the deceased, a theory unsupported by evidence and inherently improbable given the illiteracy of both the deceased and the appellant. Medical evidence further indicated that death occurred around midnight, whereas telephonic evidence showed the deceased was alive during that time. The nature of injuries and the alleged weapon were also not conclusively linked.

29. The disclosure statement and recoveries suffer from serious contradictions regarding place and manner. The alleged recovery of a blood-stained axe after the appellant claimed to have washed it renders the prosecution version improbable and suggestive of padding. Once the theories of last seen and recovery are doubtful, the chain of circumstances is incomplete. Motive remains unproven, and reliance on Section 106 of the Evidence Act was misplaced, as admitted by the Investigating Officer himself.

30. The Hon'ble Supreme Court in *State of Rajasthan v. Kashi Ram*, (2006) 12 SCC 254, held that Section 106 of Evidence Act does not shift the burden of proof and can only supplement a chain already proved beyond doubt. In the present case, the accused offered an explanation which the prosecution failed to disprove. The investigation failed to explore alternate possibilities and was conducted in a perfunctory manner.

31. For these reasons, the conviction recorded by the Trial Court is found to be perverse and unsustainable. Consequently, the appeal is allowed, the conviction and sentences recorded against appellant are set aside, the appellant is acquitted of all charges. As a consequence thereto reference of confirmation made by the trial Court is declined. Appellant shall stand relieved of the bail bonds. Record be sent back along with copy of Judgment.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR
30.12.2025
"Mohammad Yasin Dar"

Whether the order is speaking: Yes
Whether the order is reportable: Yes

