

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

...

CrIA (AD) No. 8/2019

Reserved on: 03.07.2025

Pronounced on: 25.07.2025

State of J&K Through SHO P/S Pahalgam

...Appellant(s)

Through: Mr. A. R. Malik, Sr.AAG.

VERSUS

1. Fayaz Ahmad Bajad
2. Mohammad Iqbal Bajad
Sons of Ali Bajad

3. Ali Jan Bajad
S/o Khazan Bajad

Residents of Thehru Tehsil Pooni, District Reasi.

...Respondent(s)

Through: Mr. Mir Reyaz, Advocate.

CORAM:

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

JUDGMENT

Sanjay Parihar, J:

1. Impugned in this appeal by the State is the judgment dated 06.11.2018 passed by the learned Additional Sessions Judge, Anantnag, ('the Trial Court') in case titled '*State Vs. Fayaz Ahmad Bajad & Ors.*', FIR No.08/2016 Police Station, Pahalgam for the commission of offences

punishable under Sections 376/511, 451, 34, 302 RPC, by virtue of which the respondents herein have earned acquittal.

2. Before we deal with the grounds of challenge urged by the appellant in support of the appeal, it is necessary to notice the prosecution case in short.

3. An application was received by SHO Pahalgam from SDPO Pahalgam, wherein the complainant has stated that on 24.06.2015 the deceased Altaf Bajad entered into his own tent at Aadu at 1:00 PM where he saw his wife (XXX) in a compromising position with the accused No. 1, resulting in the quarrel between the deceased and accused No. 1. The accused No. 1 with the help of his family members had killed the deceased and then spread the rumour that the deceased had died due to fall from the tree. The accused persons have also threatened the prosecution witness No. 2 (XXX), who happens to be the wife of the deceased, and that was the reason that she did not narrate her vows before any person. Earlier, one more application was moved by the complainant on 30.06.2015, where proceedings under Section 174 Cr.PC were initiated by the Executive Magistrate from 30th July 2015 and during inquest proceedings the statement of the witnesses were recorded and then the deceased was again buried. As per the documents in the form of affidavit and as per the report of the doctors, the death of the deceased was not natural and also was not due to fall from the tree but actually the deceased was killed by the accused persons who were also residing near

the tent of the deceased. FIR No. 08/2016, in this regard, for the commission of offences punishable under Sections 376/511, 302 RPC was registered and during investigation the statement of the witnesses were recorded under Section 161 Cr.PC and statements of some of the witnesses were also recorded u/s 164-A Cr.PC. The site map was prepared and accordingly the charge sheet was presented before the court of Judicial Magistrate 1st Class, Aishmuqam against the accused persons under Sections 376/511, 451, 302/34 RPC. The case was committed to the court of learned Principal Sessions Judge, Anantnag who assigned the case to the learned Additional Sessions Judge, Anantnag for trial.

4. The trial court framed charges against the accused-respondents for offence under Sections 376/511, 451, 302/34 RPC. The respondents denied the charges framed against them and claimed to be tried. The prosecution was allowed to produce its evidence and the evidence was closed on 30-06-2018 when the prosecution failed to produce its witness Nos. 6, 9, 12, 13, 21 and 22 despite repeated directions in this regard. The incriminating circumstances appearing in the prosecution evidence were put to the accused-respondents and their statements under Section 342 CrPC were recorded. They denied the allegations levelled against them as also the incriminating circumstances appearing in the prosecution evidence against them.

5. Based on the evidence produced by the prosecution, the trial court found that the prosecution had desperately failed to produce the clinching

and trustworthy evidence against the accused persons and, as such, the prosecution has failed to prove the case against the accused persons beyond reasonable doubt. Accordingly, the case was dismissed and the accused persons were acquitted from the charges levelled against them.

6. We have heard the learned counsel for both the sides and perused the record available on file.

7. Learned counsel for the appellant, during the course of arguments, has laid emphasis on the argument which has also been taken before the trial court that, the trial court had not appreciated the evidence of prosecution witness No.2, who happens to be the wife of deceased and who stated that she was alone in the tent when accused No.1 entered into her bedding, removed her trousers and had sexual intercourse with her, in the meantime her husband (the deceased) came there and as soon as he saw the accused No.1 quarrel started between them, and during the quarrel other two accused persons entered into the tent and started thrashing the deceased by fists and also caught hold of his neck. The said witness categorically stated that due to beating the deceased died. That, the trial court has not applied its judicial mind while considering the prosecution evidence and has, thus, adopted a hyper technical view while disbelieving the case of the prosecution; another limb of the argument raised by the learned counsel for the appellant is relatable to the affidavit executed by the accused persons before the 'Baradari' wherein the accused have confessed that they have committed the offence. It is argued that in case the accused persons would

not have committed the offence of murder then they would not have promised to pay an amount of Rs.4.00 lacs as compensation towards the complainant, but such important piece of evidence has not been appreciated by the learned trial court. Further submission of learned counsel for the appellant is that as per the settled position of law, the trial court was duty bound to take coercive measures so as to ensure attendance of prosecution witnesses if the learned trial court has found that the prosecution has failed to produce witnesses for recording their evidence, but without doing so the learned trial court cannot arrive at a finding that the prosecution has not produced other witnesses and that the prosecution had failed to examine all the witnesses. The further ground of challenge to the judgment of acquittal is that, the impugned judgment has been delivered on technical grounds. The larger picture whether the ingredients of the offence were fulfilled by the evidence led by the prosecution has been ignored in toto by the trial court. When the evidence led by the prosecution before the trial court is perused it inspires confidence that the accused persons have committed the crime for which they deserve to be convicted. That, the prosecution has proved the guilt of the respondents-accused beyond any reasonable doubt by leading cogent and trustworthy evidence during the course of trial. There is a settled position of law that the standard of proof as epitomized by the phrase 'beyond any reasonable doubt' need not to be over- stretched. It has been laid down in various judgments of the Hon'ble Supreme Court that while returning a finding as to whether a particular fact stands proved,

disproved or not proved, the courts are required to apply the test of man of ordinary prudence as envisaged under Section-3 of the Evidence Act. But the trial court has completely failed to appreciate the said mandate of law and has grossly erred in law while rendering the impugned judgment and that, the prosecution has succeeded to prove its case against the respondents for having murdered the deceased Altaf Bajad and that, the medical opinion of the doctor brought on record link the accused with the commission of offence. The statement of the witnesses coupled with other evidence also shows that the prosecution has been able to prove its case against the accused persons beyond any shadow of doubt; that, the impugned judgment is not sustainable for the reason that the trial court has not rightly appreciated the evidence, which was brought on record by the prosecution during the trial of the case. Lastly it was submitted that the evidence and material produced by the prosecution has proven the guilt of the accused persons beyond any shadow of doubt. Therefore, there was no option left to the learned trial court but to record conviction, however, instead the accused-respondents have been acquitted of heinous charge leveled against them.

8. After going through the evidence on record and also having taken care to peruse the explanation tendered by the respondents (accused) to the incriminating material to which they have tendered explanation in terms of Section 342 Cr.PC, wherein they are found stating that though the case against them is false and that they were made to sign an affidavit, but no-

where in the said the affidavit they had admitted their involvement in the incident. That, under the influence of police, the complainant party got the affidavit executed from them in order to extract monetary consideration from the respondents which they refused to accede and that the deceased, as per the version of his wife, had fallen from the tree and the respondents had nothing to do with the incident. The respondent-Fayaz Ahmad Bajad had also denied having any intimacy with the wife of the deceased (PW-2) and also denied having done any untoward incident with her. So, all the respondents-accused have tendered explanation that they did not admit their involvement in the incident before the “Baradari”, as is being projected.

9. We had an occasion to examine the said affidavit, which is recorded as EXPW-II and bears thumb impression of the respondents and appears to have been executed by accused-Ali Jan and Fayaz Ahmad Bajad claiming to have been negligent and for that negligent act would be compensating the complainant party by paying Rs.4.00 lacs. The said affidavit is claimed to have been executed in presence of Chowdhary Abdul Majid Bajad, Haji Gull and Ghulam Rasool.

10. On close scrutiny of EXPW-II, it reveals that there is not even a whisper of the respondents to have admitted their involvement in the incident dated 24.06.2015.

11. Be that as it is, the issue of this document stated to be in the nature of extra judicial confession, as claimed by the prosecution, would be dealt at an appropriate stage.

12. During the course of hearing, the appellants were fair enough to concede that it is PW-2 who is a star witness and the trial court has failed to appreciate her testimony in its appropriate perspective and has also not been able to appreciate that she was under threat of the respondents that prevented her from divulging the incident to PW-1 when he came to know of the death of the deceased.

13. Given the incident, the prosecution case is that it was respondent-Fayaz Ahmad Bajad, who, with an intention to commit illegal sexual intercourse on PW-2, forced his entry in the premises/tent of the deceased where his wife (XXX) was alone, who subjected her to forcible sexual intercourse and it was in that incident her husband suddenly came in the tent that resulted in the fight between accused No.1 and deceased and former was joined by other accused also who thereafter inflicted murderous assault on the deceased thereby killing him and thereafter placed his body underneath a tree and then spread a rumor that he died due to fall.

14. This in a nutshell is the prosecution case and the manner in which the said incident took place. Examination of the evidence would show that except PW-2 there is no other eye witness to the incident.

15. PW-Manzoor Ahmad Bajad, the informant and the brother of the deceased, who had fairly conceded that he came on spot only after the deceased had expired and on enquiry he was told by accused No.3 that the deceased has been killed by one Wazir, who was the paramour of PW-2-wife of the deceased. When he enquired from the wife of the deceased, she

told him that the deceased died because of fall but after she went to her parental house, there she told him that it was the accused No.1 who had killed the deceased. On that basis he lodged a report. He fairly concedes that the wife of the deceased has given the contradictory version and also is found stating that the wife of the deceased was threatened by the accused of dire consequences.

16. PW-Abdul Aziz Bajad, Gul Mohammad Darsaroo, Ghulam Rasool Ganai, too are not witness to the incident rather have been informed of the death of the deceased by PW-1 and thereafter they came on spot.

17. So, from the testimony of aforesaid witnesses it is absolutely clear that none of the aforesaid have witnessed the incident and even if they are found narrating that the accused persons have any role to play in the death of the deceased that was on the strength of hearsay and nothing else. To that extent, their evidence becomes unreliable.

18. Having said so, we now turn to the statement of PW-2 as the appellant has vehemently contested the acquittal of accused on the strength of the finding being perverse.

19. PW 2-(XXX) in her statement, on the one hand says that it was between 11 AM to 12 noon when she was in her tent and that it was accused No.1 who entered there and committed forcible sexual intercourse with her, meanwhile, her husband returned back and on seeing her in compromising position, the two had a fight which was joined by other accused later on. She also claims that even the wives of accused Nos.2 and

3 later also joined and that due to thrashing and beating by accused, her husband died. She admits that she did not divulge the above narration to the brother of the deceased or to the police after the later had come on spot to enquire. It is relevant to state here that PW-1 on noticing about the death of the deceased and also the narration of this witness believed that the deceased may have died because of fall, therefore, he was buried. Later on he states to have been told by PW-2 that it was accused No.1 who committed the incident. In-fact what transpires is that PW-Manzoor Ahmad Bajad had filed back to back complaints i.e., on 30.06.2015, 29.07.2015 as well as on 30.07.2015 requesting the police agency to investigate the suspicious death of his brother, meaning thereby that initially complainant (PW-1) had believed the version of the wife of the deceased that deceased had died because of fall. She claimed that after the incident of death of the deceased she was handed over by her in-laws and send to the parental house, and it was there she told to her parents about the incident dated 24.06.2015. None of her parents have been examined as witness.

20. PW-3 Abdul Aziz Bajad had been found narrating that the wife of the deceased is an untruthful witness who was never under any kind of threat or coercion and that she had changed her version a number of times.

21. On going through the testimony of PW-2, we could find that the witness in her testimony is not consistent and it is highly unlikely that she would have remained a mute spectator to an incident involving not only an act of forcible sexual assault upon her but followed by murderous assault on

her husband. She choose not to implicate the accused immediately after the incident, even after the burial of deceased she remained silent. She was examined during inquest proceedings on 31-08-2015 wherein she is categorically found narrating that while it was raining her husband had gone out carrying an axe along; she after washing the utensils had ventured out of the tent when she saw her husband lying unconscious underneath a tree, she raised hue and cry that attracted the other people who took him to the tent. There she reiterated that the deceased died because of fall. As per PW-1, the exhumation of the body of deceased, under the orders of District Magistrate Anantnag dated 17.08.2015, was conducted on 26.08.2015. Until that time there was nothing on the part of PW-2 to have disclosed that the accused persons were the perpetrators of the incident. She is found to be implicating the accused for the first time on 19.02.2016 when she was produced before JMIC, Anantnag for making of statement under Section 164-A Cr.P.C. She categorically admits that the statement she has made during the inquest proceedings is false and was wrongly recorded, she also claimed that on one more occasion she was examined by the police, there also her statement has been wrongly recorded, and that the true statement is the one which she is giving in the court.

22. No-where in her testimony, we are able to find even a whisper as to what kind of threat had been extended to her by the accused persons, rather on going through the charge-sheet and the evidence, it transpires that even the PW-2 is also alleged to have sworn an affidavit before the 'Baradari' on

28.06.2015 to the effect that the accused No.1 had forcibly entered into her premises and subjected her to forcible sexual intercourse and when the deceased noticed that incident he and the accused No.1 had a fight which was joined by others. In case the said affidavit is based on truth and the incident having taken place on 24-06-2015 there was no occasion for PW-2 to have not given the true statement of account during the inquest proceedings. When confronted with the allegation that she was having illicit relation with accused No.1, she had flatly denied the same. At the cost of repetition if she was the only person having the knowledge of the incident then she would not have remained silent for such a long time. The narration of events appears to have been twisted in such a way to make up a case against the respondents, rather the alleged incident of PW-2 being subjected to forcible sexual act, is a narration that has been cooked up later on. When suggested by the defence that whether she had killed her husband, she reverted that it was the accused who murdered her husband. When asked whether she had executed an affidavit implicating the accused in the incident, she flatly denied having executed such an affidavit and also went on to say that the said affidavit was forcibly obtained from her, so it was without her consent. She denied having illegal sexual relations with accused No.1.

23. On overall scrutiny of her testimony, when examined with the medical evidence, goes on to show that though she claimed that the accused gave such a beating to her husband that resulted into his death, whereas the

medical examination only speaks that there were no external and internal injuries except that the neck bone of the deceased had got broken. PW-1 had fairly conceded that when the deceased was made to burial they did not come across or noticed any marks of violence on the body of the deceased and that belied the version given by PW-2 that the deceased died because of fall.

24. Assuming for the sake of arguments that the deceased got furious on seeing his wife in compromising position with accused No.1 and resultantly there was a fight, then the accused being four in number and all were able bodied who in case had subjected the deceased to such type of assault resulting into his death, then the nature of injuries on his body would be apparent which is not the case which belies the version of the PW-2 that it was accused who had given beating to the deceased. Since, PW 2 had changed her statement from time to time, her version cannot be believed and her testimony falls in the category of a witness who is neither reliable nor unreliable.

25. Hon'ble Apex Court in a case titled **"Sampath Kumar Vs. Inspector of Police Krishnagiri"** reported in (2012) 4 SCC 124, has observed that the discrepancies in testimony of a witness cause by memory lapses are acceptable, but is unsafe to rely upon a version with material improvement unless it is corroborated by some other independent evidence that may probabilise the testimony. The Court has held as under:-

"...28. In the present case the testimony cannot be wholly reliable or wholly unreliable. He is not a chance witness

who had no reason to be found near the deceased at the time of the occurrence. There is evidence to show that Palani (PW 7) used to sleep with the deceased Senthil in the verandah of the house. What makes it suspect is that the witness has, despite being a natural witness, made a substantial improvement in the version without there being any acceptable explanation for his silence in regard to the fact and matters which were in his knowledge and which would make all the difference in the case. The Court would, therefore, look for independent corroboration to his version, which corroboration is not forthcoming. All that is brought on record by the prosecution is the presence of a strong motive but that by itself is not enough to support a conviction especially in a case where the sentence can be capital punishment.”

26. In “**Mahavir Singh Vs. State of Madhya Pradesh**” reported in (2016) 10 SCC 220, the Hon’ble Supreme Court has observed that a contradicted testimony of an interested witness cannot be usually treated as conclusive and has held thus :-

“...22.The position of law in cases where there is a contradiction between medical evidence and ocular evidence can be crystallized to the effect that though the ocular testimony of a witness has greater evidentiary value vis-à-vis medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved.”

27. Hon’ble Supreme Court in “**Kirpal Singh Vs. State of Punjab**” reported in 2024 SCC OnLine 549, while directing acquittal of appellant

therein by giving him the benefit of doubt, has observed that *‘the inherent improbabilities and loopholes in the evidence completely destroy the fabric of the prosecution case which is full of holes and holes which are impossible to be stitched together’*.

28. The trial Court has thoroughly discussed the statement of PW-2 and found that in case PW-2 is found to have given true statement of account, then there would have been marks of injury on the body of the deceased, even the alleged use of ‘pheran’ in affecting strangulation of the deceased that too would have resulted into laying of a ligature mark around his neck, whereas the medical examination of the deceased clearly reveals that there was no ligature mark present on the neck of the deceased. The trial court has also found that the beating would have resulted in injuries to abdomen or other vital parts of the body, however, that aspect also is negated from the medical evidence.

29. We agree with the finding returned by the trial court that given the nature of the testimony of PW-2, the same was not only shaky but full of inconsistencies, wherein the witness has changed her narration from time to time, thereby making her an untruthful witness which cannot be believed on its intrinsic character that too in a case involving an offence of murder.

30. It was pointed out by the appellant that the respondents have executed affidavit admitting their involvement in the incident. In this regard we have already observed in the aforesaid paras that the document (EXPW-II) no-where shows or depicts that the respondents have made any

inculpatory statement against them admitting their involvement in the incident.

31. The learned counsel appearing for the respondents, during the course of arguments has submitted that the evidence led in this regard is also shaky because neither PW-Ghulam Muhammad Darsaroo nor PW-Ghulam Rasool Ganai have supported the prosecution in the context of respondents having admitted or made any kind of extra judicial confession. He further contends that even on the face of it the said document only speaks of that the respondents claimed to be admitting some act of carelessness to which they have been asked to compensate the complainant. In the statement recorded under Section 342 Cr.P.C also, the respondents have reiterated that they were forced to sign the document under the 'Baradari' pressure. During the investigation, no evidence has been collected as to when in-fact such an extra judicial confession was made, whether during the course of inquest proceedings or immediately thereafter.

32. Be that as it is, since, PW-2 has alleged that she had been subjected to forcible sexual intercourse, there was every probability that the respondents were apprehending that they may be falsely implicated by her. There is also probability that PW-2 might have been having any kind of intimacy with accused No.1, which we find to be premise from her own version because she no-where is found narrating that she offered any kind of resistance to accused No.1 when he was forcing himself upon her to subject her to forcible sexual intercourse. In-fact what is gathered from the

police case is that she was found in a compromising position with accused No.1 which had infuriated the deceased. In that background where the respondents have no-where in the said document admitted their involvement in the incident merely because they are found admitting to be paying some amount for damages or compensation to the complainant, that all could have been for the reason that they apprehended false implication from PW-2 that is why in order to save themselves such an affidavit might have been got executed by them.

33. The testimony of PW-2, has been found to be unreliable and given the medical evidence when the deceased was laid to burial none of the witnesses including the brother of the deceased (PW-1) were found narrating to have observed any kind of injury. According to medical opinion, which only noticed dislocation of atlanto-axial joint (neck joint) which the medical expert claim to have been also possible on account of fall as well. It is difficult to believe the narration of PW-2 that the deceased had been subjected to murderous assault by the accused when the former found her in compromising position with accused No.1.

34. No doubt, it is trite law that a reasonable doubt is essentially a serious doubt in the case of the prosecution and minor inconsistencies are not to be elevated to the status of a reasonable doubt. A reasonable doubt is one which renders the possibility of guilt as highly doubtful. It is also noteworthy that the purpose of criminal trial is not only to ensure that an innocent person is not punished, but it is also to ensure that the guilty does not escape

unpunished. Every case, wherein a guilty person goes unpunished due to any lacuna on the part of the investigating agency, prosecution or otherwise, shakes the conscience of the society at large and diminishes the value of the rule of law.

35. It is no more *res-integra* that an extra judicial confession must be accepted with great care and caution. If it is not supported by other evidence on record, it fails to inspire confidence and in such a case, it shall not be treated as a strong piece of evidence for the purpose of arriving at the conclusion of guilt. Furthermore, the extent of acceptability of an extra judicial confession depends on the trustworthiness of the witness before whom it is given and the circumstances in which it was given. The prosecution must establish that a confession was indeed made by the accused, that it was voluntary in nature and that the contents of the confession were true. The standard required for proving an extra judicial confession to the satisfaction of the Court is on the higher side and these essential ingredients must be established beyond any reasonable doubt. The standard becomes even higher when the entire case of the prosecution necessarily rests on the extra judicial confession.

36. In “**Chandrapal v. State of Chattisgarh**” reported in (2022) SCC OnLine 705 , Hon’ble the Supreme Court has reiterated the evidentiary value of an extra judicial confession in the following manner:-

“11. At this juncture, it may be noted that as per Section 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into

consideration such confession as against such other person as well as against the person who makes such confession. However, this court has consistently held that an extra judicial confession is a weak kind of evidence and unless it inspires confidence or is fully corroborated by some other evidence of clinching nature, ordinarily conviction for the offence of murder should not be made only on the evidence of extra judicial confession. As held in case of State of M.P. Through CBI v. Paltan Mallah, the extra judicial confession made by the co-accused could be admitted in evidence only as a corroborative piece of evidence. In absence of any substantive evidence against the accused, the extra judicial confession allegedly made by the co-accused loses its significance and there cannot be any conviction based on such extra judicial confession of the co accused.”

37. Again in ‘**Subramanya Vs. State of Karnataka**’ (2023) 11 SCC 255, the Hon’ble Apex Court had made the observation that conviction can be based on a voluntary confession, but the rule of prudence requires that wherever possible it should be corroborated by independent evidence, however, extra judicial confession of accused need not in all cases be corroborated. The Court has held that :-

“52. An extra judicial confession, if voluntary and true and made in a fit state of mind, can be relied upon by the Court. The confession will have to be proved like any other fact. The value of the evidence as to confession, like any other evidence, depends upon the veracity of the witness to whom it has been made. The value of the evidence as to the confession depends on the reliability of the witness who gives the evidence. It is not open to any court to start with a presumption that extra judicial confession is a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession was made and the credibility of the witnesses who speak to such a confession. Such a confession can be relied upon and conviction can be founded thereon if the evidence about the confession comes from the mouth of witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an untruthful statement to the accused, the words spoken to by the witness are clear, unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it. After subjecting

the evidence of the witness to a rigorous test on the touchstone of credibility, the extra judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.

53. Extra judicial confession is a weak piece of evidence and the court must ensure that the same inspires confidence and is corroborated by other prosecution evidence. It is considered to be a weak piece of evidence as it can be easily procured whenever direct evidence is not available. In order to accept extra judicial confession, it must be voluntary and must inspire confidence. If the court is satisfied that the extra judicial confession is voluntary, it can be acted upon to base the conviction.

55. It is well settled that conviction can be based on a voluntarily confession but the rule of prudence requires that wherever possible it should be corroborated by independent evidence. Extra judicial confession of accused need not in all cases be corroborated. In [Madan Gopal Kakkad v. Naval Dubey and Another](#), (1992) 3 SCC 204, this Court after referring to [Piara Singh and Others v. State of Punjab](#), (1977) 4 SCC 452, held that the law does not require that the evidence of an extra judicial confession should in all cases be corroborated. The rule of prudence does not require that each and every circumstance mentioned in the confession must be separately and independently corroborated.”

38. The appellant, during the course of hearing, is found conceding that there were variations in the statement given by the witnesses, and that such variations were natural to occur with the passage of time. We do not see such a thing in this case because the star witness of the prosecution (PW-2) has faired badly before the trial court, therefore, is highly unreliable witness, and once her testimony is taken out of the prosecution case, its whole edifice laid against the accused, crumbles like pack of cards.

39. We have examined the detailed judgement of the trial court and find that it has thoroughly appreciated the testimony of all the witnesses including that of PW-2 and has reached to the only conclusion regarding non-culpability of the respondents. The set of witnesses laid against the

respondents, was not only weak but inherently lacking the credibility and the appellant has not been able to point out any perversity in the judgement impugned. The evidence led by the prosecution on the touchstone of reliance on the statement of PW-2 and so-called extra judicial confession, as being claimed before the 'Baradari', both suffer from inherent weak probability, thus, do not inspire confidence. The trial court has examined the evidence in detail. The respondents herein are presumed to be innocent until they are convicted by the competent court after full-fledged trial. Here the trial has ended into acquittal. Though the appellate court has a power to review, re-appreciate and re-consider the evidence, both on facts and law, upon which the order of acquittal is passed but the appellate court has to be very cautious in interfering with the order of acquittal unless there are compelling and substantial grounds of interference with the order of acquittal. There cannot be a straightjacket formula as to under what circumstances the appellate court can interfere, and here we have thoroughly examined the record of the trial court and we are persuaded to take only view which the trial court has taken. We find that the appellant has not been able to point out any kind of perversity in the impugned judgment. The prosecution has miserably failed in proving the charge against the respondents.

40. On the conspectus of evidence and material on record, we are of the considered opinion that the judgment of acquittal impugned in this appeal is perfectly legal and valid and, thus does not call for any interference.

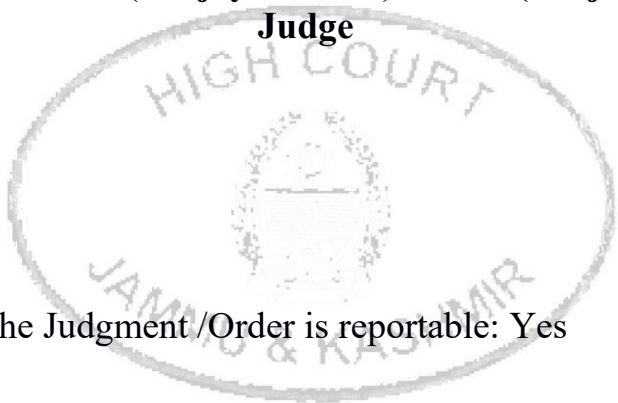
Otherwise also, the jurisdiction of the appellate Court hearing an acquittal appeal is well circumscribed and where on evaluation of evidence and material on record, two views are possible, the view which favour the accused has to be preferred.

41. As a result of above discussion, we see no reason to interfere with the finding of the trial court. Consequently the appeal does not succeed and, is, accordingly, **dismissed**. The impugned judgment and order of acquittal is hereby confirmed.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:
25.07.2025
Muzammil. Q



Whether the Judgment /Order is reportable: Yes