

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

CRAA No. 15/2013

Date of pronouncement: 05.02.2026.
Date of uploading 06.02.2026

State of J & K through Police Station, Poonch

.....Applicant(s)/Appellant(s)

Through :- Mr. Dewakar Sharma, Dy. AG

v/s

1. Sawaria S/o Azeem (Dead)
2. Azar Din S/o Swaria, caste Gujjar
Both residents of Village Mehrote, Tehsil
Surankote, District Poonch

.....Respondent(s)

Through :- None

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

ORDER (ORAL)

1. Impugned in this appeal, filed by the State of Jammu and Kashmir now the Union Territory, is a judgment of acquittal dated 13.10.2012 passed by the learned Sessions Judge, Poonch [**“the trial Court”**] in file no. 17/Sessions titled State of J & K vs. Azar Din, whereby the trial Court has acquitted the respondent of the offences under Sections 307/323/324/34 RPC.
2. Briefly stated, the prosecution case, as was laid before the trial Court, is that on 22.06.2005, one Faqar Din lodged a written complaint in Police Station, Surunkote alleging therein that respondent no. 2 and the deceased respondent no. 1-Sawaria, who had previous enmity

towards the complainant Faqar Din and his brother over a land dispute, killed his brother, namely, Mohd. Hussain when he was returning to his house.

3. It was alleged by the complainant that his brother was attacked with axe and lathi inflicting injuries on his head. The deceased-accused Sawaria attacked on the head of his brother with axe whereas the respondent herein attacked him with lathi. On receipt of this report, Police Station Surankote registered a case FIR No. 92/2005 under Sections 307/341/34 RPC and set in motion the investigation by appointing ASI Pritam Das, as the Investigating Officer.
4. The IO completed the requisite formalities like preparation of site map, seizure memos of the weapons of offence, i.e., axe and lathi recovered from the accused persons, recorded the statement of witnesses under Section 161 Cr.P.C, obtained the revenue record of the place of offence from Patwari halqa, etc. The IO also got the injured medically examined and obtained the requisite medical certificate from the concerned doctor about the injuries received by him. The IO, upon completion of the investigation, concluded that offences under Sections 324/307/323/341/34 RPC were made out against the accused persons and, accordingly, presented the challan before the competent Court of law.
5. The Trial Court framed charges, against the accused persons, for offences under Sections 341/307/323/34 RPC on 19.04.2006. The accused including the respondent herein denied the

allegations/charges and claimed to be tried. The trial commenced with a direction to the prosecution to produce its witnesses.

6. In support of its case, the prosecution examined PW1 Faqar Din, PW2 Mohd. Hussain, PW3 Nek Mohd., PW4 Mst. Sharifa Bi, PW5 Mst. Shaheen Akhter, PW6 Gulzar Hussain, PW7 Munshi, PW8 Dr. Mohd. Sharief, PW9 ASI Pritam Das and PW10 Harbans Lal, Inspector. On the conclusion of the prosecution evidence, the incriminating evidence appearing therein was put to the respondent, who denied the allegations, but chose not to lead any evidence in defence.
7. The trial Court, having considered the entire evidence on record, came to the conclusion that the prosecution had miserably failed to prove, by leading cogent evidence beyond reasonable doubt, the complicity of the respondent in causing injuries to Mohd. Hussain, the injured and accordingly acquitted both the accused of charges framed against them.
8. Respondent no. 1 who had allegedly inflicted injuries with a sharp edged weapon, i.e., axe, on the head of injured, has died and the appeal as against him already stands awaited. The allegation against the respondent herein was only to the extent that he had beaten the injured with lathi.
9. The prosecution witnesses, i.e., PW1 Faqar Din, PW2 Mohd. Hussain, PW3 Nek Mohd and PW4 Mst. Sharifa, etc., though, the close relatives of the injured, have not supported the prosecution case. Their evidence has been elaborately reproduced and examined in the impugned judgment by the trial Court.

10. There is only a testimony of PW5-Mst. Shaheen Akhter, the wife of the injured, whose testimony has not been corroborated by any independent evidence on record. The trial Court has rightly taken note of the fact that, though, the alleged occurrence happened in presence of so many independent persons, but not even a single independent witness was either cited or examined by the prosecution to substantiate its case. Even the medical evidence on record in the form of statement of PW8 Dr. Mohd. Sharief clearly indicates that the injuries received by the injured were simple in nature implying that there was no intention on the part of the accused to kill the injured attracting Section 307 RPC.
11. Viewed from any angle, the evidence on record is not sufficient to conclude with certainty and beyond any reasonable doubt that the injuries suffered by the injured were actually caused by the respondent herein.
12. The statement of PW2-Mohd. Hussain, who was allegedly injured in the occurrence also does not inspire much confidence, insofar as respondent herein is concerned. It is, however, true that he has stated in his deposition that when he was returning from the village to his home, the respondent herein along with Sawaria, who were sitting behind his house, attacked him. The deceased accused Sawaria attacked him on his head with axe twice whereas the respondent herein attacked him with lathi. He has, however, not deposed anything as to whether the two had common intentions to kill him. There are

other serious contradictions in his statement as noted by the trial Court which make his testimony doubtful and unworthy of credence.

13. For the foregoing reasons, we do not find any justification to differ with the view taken by the trial Court upon correct appreciation of evidence on record. It needs no reiteration that the scope of interference by the appellate Court with the judgment of acquittal recorded by the trial Court is well circumscribed. Upon evaluation of evidence on record, if the appellate Court is of the opinion that a second view is also possible, the appellate Court shall adopt the view which favours the accused. This is so because it is a cardinal principal of law that the accused is presumed to be innocent till proven guilty and this presumption gets fortified once he is acquitted by the trial Court.
14. Viewed thus, we do not see any good reason or justification to interfere with the judgment of acquittal recorded by the trial Court.
15. The appeal is found devoid of merit and is, accordingly, dismissed.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
05.02.2026
Manik

Whether this order is reportable: Yes/No

Whether this order is speaking: Yes/No

