

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Crl A(D) No. 20/2020

c/w

Conf. No. 11/2015

Reserved on : 12.02.2026

Pronounced on : 26.02.2026

Uploaded on : 27.02.2026

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

Shonku Ram S/o Sh. Kundi Ram
R/o Kail, Tehsil Majalta,
District Udhampur

.... Appellant(s)

Through: - Mr. A. K. Shan, Advocate

V/s

State through Police Station
Majalta, District Udhampur

.....Respondent(s)

Through: - Mr. Raman Sharma, AAG (Sr.
Advocate) with Ms. Saliqa Sheikh,
Advocate

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

JUDGMENT

Per : Parihar-J

1. The present appeal arises out of the judgment dated 14.11.2015 rendered by the learned Principal Sessions Judge, Udhampur, the “trial Court” whereby the appellant came to be convicted for the offence punishable under Section 302 RPC in connection with FIR No. 76/2010 of Police Station Majalta and sentenced to imprisonment for life along with fine. The appeal, being one against conviction for a grave offence, obligates this Court to independently re-appreciate the entire evidence on record and to satisfy itself as to whether the prosecution has succeeded in proving the charge beyond reasonable doubt. It is equally settled that in a

reference for confirmation of sentence, the appellate Court must scrutinize the record in its entirety and arrive at its own conclusions on facts and law.

2. The prosecution case, in brief, is that on 22.11.2010 information was received at Police Station Majalta that at about 6.45 A.M. that the appellant, on account of previous enmity over landed property, had inflicted a grievous injury upon Jalla Ram with a drat. An FIR under Section 307 RPC was registered, which later stood converted to one under Section 302 RPC upon the death of the injured on the following day. It is further the case of the prosecution that the appellant was arrested and allegedly made a disclosure statement leading to recovery of the weapon of offence from beneath his cart at his house. The prosecution examined several witnesses including PW-3 Ram Dass, PW-7 Krishan Kumar, PW-10 Bansi Lal and PW-12 Gharu Ram as eye-witnesses, besides medical and formal witnesses.

3. The impugned judgment has been assailed primarily on the ground that, the trial Court gravely erred in recording conviction of the appellant despite the prosecution evidence being wholly unreliable and legally insufficient. It is contended that the majority of the prosecution witnesses have deposed on the basis of hearsay information and not on the strength of direct knowledge of the occurrence. Their testimonies, therefore, lack evidentiary value in view of the settled principle that hearsay evidence is inadmissible unless it falls within recognized exceptions. It is further urged that several witnesses examined by the prosecution are closely related to the deceased and are, thus, interested witnesses. While the testimony of

related witnesses cannot be discarded merely on that ground, it requires careful scrutiny and cautious evaluation.

4. We have heard the respective counsels besides minutely assessed the evidence lead in trial of the appellant.

5. The medical evidence, as deposed by Dr. Anil Mahajan, who proved the post-mortem report Ext. P-15, establishes that the deceased had sustained two incised wounds on the left temporal region and above the left ear, along with multiple bruises and underlying scalp muscle bruising. According to the medical opinion, Injury Nos. 1 and 2 were sufficient in the ordinary course of nature to cause death and were caused by a sharp-edged weapon. The homicidal nature of death is, therefore, clearly established. However, it is trite that medical evidence, while proving the cause of death, does not by itself establish the identity of the assailant. The prosecution must independently connect the accused with the crime through cogent and reliable evidence.

6. On a careful examination of the testimony of PW-3 Ram Dass, it emerges that he did not witness the actual assault. He stated that upon hearing a hue and cry, he proceeded to the spot and found the deceased lying on ground with face down while the accused was standing about ten feet away holding a drat. In cross-examination he admitted omissions in his earlier statement under Section 161 Cr.P.C., and also stated that several villagers had gathered at the spot. His evidence, thus, establishes his arrival at the scene after the occurrence and not the commission of the actual assault itself.

7. Similarly, PW-7 Krishan Kumar deposed that he reached the spot after Bansi Lal raised alarm and saw the deceased lying in a pool of blood while the accused was going towards Bhardai carrying a blood-stained drat. He admitted that in his earlier statement under Section 164-A Cr.P.C., he had not mentioned certain material particulars. He too did not depose to having seen the accused inflicting the blow. His testimony is confined to the presence of the accused in the vicinity with a weapon after the deceased had already fallen injured.

8. PW-10 Bansi Lal stated that he heard hue and cry and saw the accused holding a drat and the deceased lying on the ground with blood oozing near his ear. He informed Krishan Kumar and Ram Dass. He also proved seizure memos relating to blood-stained and plain earth. However, like the other two witnesses, he did not claim to have seen the actual infliction of injury. Thus, from the cumulative reading of the testimony of PW-3, PW-7 and PW-10, it becomes evident that none of them are direct eye-witnesses to the assault. Their evidence only establishes the presence of the accused near the scene holding a drat after the deceased had fallen.

9. The prosecution case rests substantially upon the testimony of PW-12 Gharu Ram, who deposed that he witnessed a scuffle between the accused and the deceased, wherein the accused allegedly first delivered a fist blow and thereafter struck the deceased on the head with a *drat*. In his cross-examination, however, he candidly admitted that the son of the deceased is his son-in-law, thereby establishing a close relationship with the family of the deceased. It is trite that the evidence of a related or interested witness cannot be discarded solely on the ground of relationship;

nevertheless, such testimony must be subjected to careful scrutiny and evaluated with circumspection. In **Javed Masood v. State of Rajasthan, AIR 2010 SC 979** the Hon'ble Supreme Court held that the testimony of an interested witness requires cautious examination and must inspire confidence before being relied upon. Similarly, in **Dalip Singh v. State of Punjab, AIR 1953 SC 364**, the Apex Court observed that while related witnesses are not necessarily unreliable, their evidence must be scrutinized with greater care and caution.

10. In the present case, the learned Trial Court appears to have accepted the testimony of PW-12 without undertaking the degree of careful evaluation mandated by the aforesaid settled principles of law because his presence at crime scene is not described by any other witness, he resides 5 Km away from that place and is not proved to be a chance witness. Moreover, the other witnesses indicated that the accused was seen moving towards Bhardai, whereas PW-12 stated that the accused fled immediately after the assault. The possibility of embellishment or exaggeration, particularly in the backdrop of admitted relationship, was neither addressed nor tested against surrounding circumstances and independent corroboration.

11. Equally significant is the conduct of PW-3, PW-7 and PW-10. During investigation, these witnesses had reportedly stated that they had actually seen the appellant committing the murderous assault upon the deceased. However, when examined at trial, they materially deviated from their earlier version and merely stated that they reached the spot after the occurrence had concluded. Notably, despite this substantial departure from

their previous statements, they were not declared hostile by the prosecution. In such circumstances, the prosecution is bound by the version deposed by them in Court, and their evidence must be appreciated in the manner stated during trial. The earlier statements made under Section 161 Cr.P.C. cannot be treated as substantive evidence and can only be used for the purpose of contradiction.

12. Therefore, the cumulative effect of (i) reliance on a closely related witness without adequate caution, and (ii) the material improvement and dilution in the testimonies of PW-3, PW-7 and PW-10, creates a serious dent in the prosecution version. The learned Trial Court, by failing to reconcile these inconsistencies and by not appreciating the evidentiary limitations in their proper legal perspective, has fallen into error warranting appellate interference.

13. Another aspect which casts doubt upon the prosecution case is the discrepancy regarding the timing of the incident. The FIR records that information was received at 6.45 A.M., whereas the eye-witnesses consistently stated that the occurrence took place between 8.00 and 8.30 A.M, such variation in timing assumes significance, particularly when the FIR is stated to have been based on information from reliable sources. The inconsistency remains unexplained and affects the credibility of the prosecution version.

14. As regards the recovery of the weapon of offence, though the prosecution examined witnesses to the disclosure and recovery, the fact remains that the accused was already seen at the spot allegedly holding a drat. The recovery does not materially advance the prosecution case in the

absence of unimpeachable evidence connecting the recovered weapon to the fatal injuries beyond doubt, this is because the eye witness account is that the weapon was oozed with blood but when the weapon was shown to them in trial, they admit of there being not any dried blood stains over it. The evidence relating to recovery, therefore, does not cure the infirmities in the prosecution case regarding the actual assault.

15. The plea of insanity under Section 84 IPC read with Section 105 of the Evidence Act was raised during trial but fairly not pressed before this Court. The Hon'ble Supreme Court in **Dahya Bhai Chimanbhai Thakkar v. State of Gujarat, AIR 1964 SC 1563**, held that if the accused succeeds in creating reasonable doubt regarding his mental incapacity at the relevant time, he is entitled to the benefit of Section 84 IPC. The record reveals that the appellant was, at one stage, kept under observation for psychiatric issues and the trial was suspended. However, after being declared fit to stand trial, proceedings were resumed. There is no material to indicate that at the time of commission of the offence, the appellant was incapable of knowing the nature of his act.

16. In criminal jurisprudence, the prosecution must establish its case beyond reasonable doubt, and where two views are possible, the one favourable to the accused must be adopted. Suspicion, however strong, cannot take the place of proof. The principles laid down by the Hon'ble Supreme Court in **Munna Pandey v. State of Bihar 2023 (11) SCR 1005** and **Javed Masood v. State of Rajasthan AIR 2010 SC 979** reiterate that conviction cannot be sustained on conjectures or on evidence which does not form a complete and unbroken chain pointing only towards the guilt of

the accused. In the present case, though homicidal death is proved and motive of land dispute is suggested, the prosecution has failed to establish beyond reasonable doubt that it was the appellant, who inflicted the fatal injuries. The principal witnesses did not see the assault; the solitary witness who claims to have seen it is closely related and his testimony is not corroborated on material aspects; discrepancies exist regarding timing and manner of occurrence; and the chain of circumstances is not complete. In such circumstances, the appellant is entitled to the benefit of doubt.

17. Accordingly, the conviction and sentence recorded by the trial Court under Section 302 RPC cannot be sustained. The appeal is allowed. The judgment of conviction and order of sentence dated 14.11.2015 are set aside and as a consequence thereof, reference made by the trial Court is declined and shall form part of the record. The appellant is acquitted of the charge and shall be released forthwith, if in custody and not required in any other case. Copy of the judgment shall be notified to the trial Court along with the record for further sequential steps.

(SANJAY PARIHAR)

Judge

(SANJEEV KUMAR)

Judge

JAMMU

RAM MURTI

26.02.2026

Whether the order is speaking?: Yes

Whether the order is reportable?: Yes