

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 26/2018

Date of pronouncement: **29.01.2026**

Date of uploading: 30.01.2026

State of J&K through SSP, Reasi

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

Through: Mr. Dewakar Sharma, Dy. AG

vs

1. Mohd. Rafiq @ Basharat S/o Rehman
Sheikh
R/o Neoch, Tehsil Mahore District Reasi
2. Mohd. Ashraf @ Abu Ibrar S/o Bashir
Ahmed
R/o Angralla Tehsil Mahore District Reasi

..... Respondent(s)

Through: Mr. Anies Mohd. Malik, Advocate

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

ORDER (ORAL)

Sanjeev Kumar 'J'

1. This acquittal appeal, by the then State of J&K now the UT of J&K, is directed against a judgment of acquittal dated 31.08.2015 rendered by the Sessions Judge, Reasi [“the **Trial Court**”] in file No. 43/Sessions (FIR No. 83/2008), Police Station, Mahore for offences under Sections 307/120-B/121/122 RPC & 7/27 Arms Act titled “*State of J&K Vs. Mohd Rafiq & another.*”
2. Briefly stating, the prosecution story, as was projected in the final report presented before the Trial Court, is that on 10.08.2005 at 0850 hours, an information was received by the Police Station, Reasi from reliable source that an encounter had ensued between the security forces and heavily armed terrorists at Ladhore Morah, Gajantop. On

receipt of information, FIR No. 83/2009 for various offences, including the offence under Section 307 came to be registered in the Police Station, Reasi. The investigation was entrusted to Sub-Inspector Irfan Parvez, who immediately proceeded to the scene of occurrence, prepared the site plan and recovered three dead bodies of terrorists namely Ahmed Din @ Khalid S/o Jamal Din, Mohd Rafiq S/o Abdullah Sheikh and Bashir Ahmed @ Muzafar S/o Ghulam Mohd. @ Nakudoo from the scene of occurrence. The dead bodies were shifted to Government Hospital, Mahore for post-mortem and upon post-mortem, handed over to their next of kins. The I.O. also recovered the weapons, used in the encounter. The statement of witnesses under Section 161-A and 164-A CrPC were recorded and it was established that on 10.08.2003, the army personnel of 56 RR, IPARA were on search operation in Ladhore Morah, Gajanitop and were confronted by the heavily armed militants during the said operation. The encounter ensued and during the operation, three militants named above were killed, whereas two militants namely Mohd. Rafiq @ Bashrat S/o Rehman Sheikh and Mohd. Ashraf @ Abu Ibrar S/o Bashir Ahmed, the respondents herein managed to escape, taking the advantage of thick forest area. The I.O. established a case against the respondents herein for commission of offences under Section 307/120-B/121/122 RPC & 7/27 Arms Act against the respondents and, accordingly, presented the challan before the competent Court against the respondents *in absentia*. The respondents were proceeded under Section 512 CrPC.

3. The charges for the aforesaid offences were framed by the Trial Court and the prosecution was called upon to lead its evidence. During the course of trial, the prosecution examined PW- Mohd. Latif, PW- Bashir Ahmed, PW- Jarnail Singh, PW- Farid Ahmed, PW-Abdul Gani S/o Abdul Hamid and PW-Abdul Gani S/o Abdul Aziz in support of its case. The respondent No. 1 namely, Mohd. Rafiq was later arrested and produced in the Court on 04.04.2012 and was, accordingly, charged for commission of offences under Sections 307/120-B RPC and 7/27 Arms Act. The respondent No. 1-Mohd. Rafiq did not opt to recall the prosecution witnesses examined in his absence for cross-examination. The prosecution, however, examined some more witnesses in his presence and concluded its evidence. On the closure of evidence by the prosecution, the incriminating circumstances emerging therein were put to the respondents and their statement under Section 342 CrPC was recorded. The respondents denied their complicity in the alleged crime. Since the Trial Court did not find them entitled to acquittal at the stage of Section 273 CrPC and, therefore, they were given the right to enter the defence to lead the defence evidence. Both the respondents chose not to lead any evidence in defence and, accordingly, the matter was considered by the Trial Court on the basis of the evidence brought on record by the prosecution. The Trial Court having considered the evidence and material on record came to the conclusion that the prosecution had miserably failed to connect the respondents with the commission of offences for which they had been charged.

4. The Trial Court carefully evaluated and examined the statements of the prosecution witnesses and came to the conclusion that none of the witnesses had either identified the respondents to be present along with killed militants nor was there any evidence that they had fired any shot, injuring any security personnel engaged in the encounter on the fateful day. The Trial Court has reproduced the testimonies of PW- Mohd Latif, PW-Bashir Ahmed, PW-Jarnail Singh, PW- Krishan Singh, PW- Romal Singh, PW- Mohd. Rafiq, etc. and has concluded that none of the witnesses have pin pointed with certainty that the respondents were the persons, who were accompanying the militants, who had opened firing on the security personnel at Ladhora Morah, Gajantop forest, in which three of the militants were killed. The respondents were not even identified by the witnesses in the Court.
5. In view of the nature of evidence on record, which was not sufficient to connect the respondents with the commission of offences, they were charged with, the Trial Court acquitted both of them.
6. We have heard learned counsel for the appellant at length and gone through the entire judgment and the evidence led by the prosecution and are convinced that the evidence led by the prosecution is not sufficient to arrive at a conclusion that the respondents were part of the group of militants, who had engaged in an encounter with the security forces on the fateful day at Ladhora Morah Gajantop, in which three of the militants were killed. Neither the respondents have been identified by the witnesses nor there is any evidence to show that they were

armed and fired at any of the security personnel with an intention to kill him/them.

7. In the absence of any cogent evidence on record, we are not inclined to take a view, contrary to the one taken by the Trial Court. That apart, the scope of interference by the Appellate Court in a judgment of acquittal rendered by the Trial Court, is well circumscribed. Even if, on evaluation, the two views are possible, the view, which favours the accused, has to be adopted. Needless to say that it is a cardinal principle of criminal jurisprudence that accused is presumed to be innocent until proven guilty and this presumption gets fortified when he earns acquittal from the Trial Court.
8. Viewed from any angle, we do not find any merit in this case and the same is, accordingly, **dismissed**.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Jammu
29.01.2026
Vishal Sharma

Whether the order is reportable?	Yes/No
Whether the order is speaking?	Yes/No