

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No: - CRAA No. 76/2011

Reserved on:- 05.02.2026

Pronounced on:-12.02.2026

Uploaded on:- 13.02.2026

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

State of Jammu & Kashmir

.... Appellant(s)

Through: - Mr. Dewakar Sharma, Dy. AG

V/s

1. Gulzar Hussain Shah @ Gazi
S/o Rafeeq Hussain Shah,
SPO No. 498.

....Respondent(s)

2. Waras Hussain Shah
S/o Nazak SPO No. 167/SPO Hussain Shah,
both residents of Village Sangla Surankote-Poonch.

Through: - Ms. Mandeep Reen, Advocate

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

J U D G M E N T

Per: Sanjay Parihar-J

1. The present appeal has been preferred by the appellant–State now UT of J&K, against the judgment dated 27.05.2011 of Principal Sessions Judge, Poonch (*hereinafter referred to as “the Trial Court”*) in a case arising out of FIR No. 184/2003 registered at Police Station Surankote for offences under Sections 302/34 RPC, whereby the respondents have been acquitted of the charges framed against them. By way of this appeal, the State seeks reversal of the acquittal and conviction of the respondents for the offence of murder with the aid of common intention.

2. The prosecution case, as projected in the complaint lodged by PW-3 Ahad Joo on 25.10.2003, is that on 24.10.2003 at about 6:00 PM, the respondents along with another person, allegedly dressed in uniform and armed with rifles, came to the complainant's house and forcibly took away his son Abdul Qayoom after bolting the complainant inside the house from outside. It was alleged that the deceased was taken to a distance of about 150–200 yards and shot, as a result of which he sustained bullet injuries and later succumbed to the same while being shifted to hospital. On the basis of the said complaint, FIR No. 184/2003 came to be registered.
3. During investigation, however, it surfaced that the respondents were working as Special Police Officers (SPOs) with Special Operation Group of J&K Police Poonch, and were part of a search operation conducted under orders of superior officers in an area then affected by militancy. It was found that the deceased was accompanying the police party, allegedly as a guide. According to the investigation, firing took place during the operation with the militants in which deceased received bullet injuries from the fire that emanated from the respondents. Initially, a charge-sheet under Section 304-A RPC was filed before the learned Sub-Judge (Judicial Magistrate 1st Class), Surankote, and vide order dated 20.02.2004 charges under Section 304-A RPC were framed. However, upon recording certain statements alleging intentional killing, the learned Magistrate committed the case to the Court of Sessions under Section 347 CrPC, holding that the matter was exclusively triable by the Sessions Court. The learned Sessions Judge, Poonch framed charges under Sections

302/34 RPC on 29.03.2005, to which the respondents pleaded not guilty.

4. The prosecution examined as many as 27 witnesses including the complainant, relatives of the deceased, police personnel forming part of the search party, the ballistic expert, the medical officer who conducted the post-mortem, and the Investigating Officer. The respondents examined three defence witnesses and, in their statements under Section 342 CrPC, denied the allegations and claimed false implication, asserting that the occurrence was a result of cross-firing during a search operation that was conducted to track down militants.
5. Upon appreciation of the entire evidence, the Trial Court recorded a finding that there was no reliable eye-witness to the occurrence. The complainant himself admitted that after his son was taken away, he was bolted inside the house and only heard gunshots from a distance. He did not witness the actual firing. The uncles and relatives of the deceased either admitted that they had not seen the occurrence or their testimony was based on what they were allegedly told by others. One witness, who attempted to project himself as an eye-witness, was not cited as such in the charge-sheet and his presence at the scene was found doubtful.
6. The SPOs who were part of the police party, namely PW-Abdul Qayoom and PW-Mohd. Yousaf, did not support the prosecution version and were declared hostile. They denied that the respondents had forcibly taken the deceased from his house or intentionally fired upon him. Their testimony indicated that firing had occurred during the search operation. The Investigating Officer categorically stated

that during investigation it was found to be a case of accidental firing and that no evidence of forcible abduction or intentional murder had surfaced.

7. The scientific evidence also did not conclusively connect the respondents with the fatal injuries. The ballistic expert admitted that the rifles were not properly sealed when examined and that no opinion could be formed regarding the range of fire as the clothes of the deceased and relevant materials were not provided. The bullet that passed through the body of the deceased was not examined. The medical officer opined that the injuries were consistent with gunshot wounds and that the minimum distance of firing could not be less than 100 feet, and that such injuries could possibly be caused by more than one person. However, no conclusive nexus was established between the fatal injury and the weapon carried by either respondent.
8. The Trial Court also noticed the absence of any motive or prior enmity between the parties. It was admitted that the respondents were engaged in anti-militancy operations during a period when militancy was prevalent in the area. On overall appreciation of the evidence, the Trial Court concluded that the prosecution had failed to establish the guilt of the respondents beyond reasonable doubt and accordingly acquitted them.
9. Learned counsel for the appellant-State has argued that the Trial Court mis appreciated the evidence and failed to properly evaluate the testimonies of prosecution witnesses. It is contended that the respondents having taken the deceased from his house stands proved and that the chain of circumstances clearly indicates their culpability.

On the other hand, learned counsel for the respondents has supported the impugned judgment and submitted that the prosecution case is riddled with contradictions, that the witnesses are either interested or hearsay witnesses, that the independent police witnesses did not support the prosecution, and that the view taken by the Trial Court is a plausible and reasonable view.

- 10.** We have heard both counsels besides examined the evidence lead in trial. It is well settled that in an appeal against acquittal, the presumption of innocence stands reinforced by the order of acquittal. Though the appellate court has the power to reappreciate the evidence, interference is warranted only when the judgment under challenge is perverse, manifestly illegal, or based on misreading of evidence.
- 11.** In the present case, the prosecution has failed to establish, beyond reasonable doubt, that the respondents had the intention or common intention to commit the murder of the deceased. The star witness, namely the father of the deceased (PW-Ahad Joo), is admittedly not an eye-witness to the actual occurrence. His testimony, at best, establishes that the deceased was taken away by the respondents and that he later heard gunshots. The actual firing was not witnessed by him. The other witnesses, who are closely related to the deceased, have either deposed on the basis of hearsay or attempted to improve their version during trial. Their testimonies, as rightly appreciated by the Trial Court, do not inspire confidence.
- 12.** The two SPOs, namely PW-Abdul Qayoom and PW-Mohd. Yousaf, who were part of the police party on the night of occurrence, have not supported the prosecution case. Though declared hostile, nothing

substantial could be elicited from them in cross-examination to implicate the respondents. On the contrary, their version supports the defence plea that firing had taken place during the course of search operation.

- 13.** The medical and ballistic evidence also does not conclusively connect the respondents with the fatal injuries. The ballistic expert has admitted serious lapses in the manner in which the weapons were produced and examined. The clothes of the deceased were not sent for forensic examination, the bullet was not examined, and even the post-mortem report was not provided to the expert for proper evaluation. In such circumstances, the prosecution has failed to establish the necessary nexus between the injuries sustained by the deceased and the weapons allegedly used by the respondents.
- 14.** The Investigating Officer himself has deposed that during investigation; no material was found to substantiate the allegation of forcible abduction or intentional killing. Rather, his conclusion was that the deceased had been accompanying the police party and might have been hit during firing. This materially weakens the prosecution case and creates a reasonable doubt as to the manner in which the incident occurred.
- 15.** It is a settled proposition that suspicion, however grave, cannot substitute proof. Where two views are reasonably possible on the evidence on record, the one favourable to the accused must be adopted. In the present case, the view taken by the Trial Court is a plausible and reasonable view based on appreciation of the evidence. Merely because another view may be possible is not a ground to reverse an order of acquittal.

16. The prosecution, in the memo of appeal, has sought conviction of the respondents for culpable homicide amounting to murder. However, such a stand is wholly inconsistent with the narration of the Investigating Officer, who has categorically stated that there is no evidence of any intentional firing by the two respondents and that the incident, at best, reflects death caused by negligence. Even with regard to the offence under Section 304-A IPC, the evidence on record is conspicuously deficient. The two police officials, who were cited as accomplice witnesses to the respondents, did not support the prosecution case and the later failed to elicit any material from their cross-examination which could be construed as substantive evidence against the respondents.
17. In these circumstances, the view taken by the learned Trial Court cannot be said to be perverse, unreasonable, or contrary to the evidence on record. The appellant has not been able to demonstrate any material illegality, perversity, or misappreciation of evidence warranting interference by this Court in an appeal against acquittal. Accordingly, the appeal is *dismissed* by affirming the judgement of trial court.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
12.02.2026
Diksha

Whether the order is speaking:	Yes
Whether the order is reportable:	No