

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No.: CRA No. 15/2010 c/w
CONF No. 7/2010

Reserved on: 19.02.2026
Pronounced on: 12.03.2026
Uploaded on: 12.03.2026
*Whether the operative part or full
judgment is pronounced:- Full*

Fazal Hussain S/o Sh. Noor Mohd.
R/o Gundi, Tehsil Budhal, District
Rajouri

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

Through: Ms. Deepika Mahajan, Sr. Advocate with
Mr. Atharav Mahajan, Advocate

vs

State of Jammu and Kashmir

..... Respondent(s)

Through: Mr. Ravinder Gupta, AAG

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

JUDGMENT

Per Sanjay Parihar 'J'

1. The present appeal has been preferred by the appellant challenging the judgment of conviction and order of sentence passed by the learned Trial Court whereby the appellant has been convicted for the offence punishable under Section 302 of the Ranbir Penal Code and sentenced to undergo imprisonment for life along with a fine of ₹5,000/-The appellant has questioned the legality and correctness of the impugned judgment primarily on the ground that the conviction has been recorded mainly on the basis of the testimony of PW-2 Shah Begum, the minor daughter of the deceased, who has been projected as the sole eye-witness to the occurrence. It is contended that the Trial Court misdirected itself in placing reliance upon

the testimony of a child witness without properly appreciating the contradictions appearing in her statement and without testing her testimony against the surrounding circumstances of the case.

2. The prosecution case, in brief, is that on 30.05.2002 at about 06:45 a.m., PW-1 Bagh Hussain produced the injured Wazir Mohammad in an unconscious condition and informed that the deceased and the appellant were sharing a common room at Roop Nagar, Jammu. According to the prosecution, the appellant suspected that the deceased had developed illicit relations with his wife and on that account, bitterness had arisen between the two. On the date of occurrence, at about 06:00 a.m., the appellant allegedly assaulted the deceased with a “gainti”, causing grievous head injuries which rendered him unconscious. The information was recorded at Police Post Chinore vide DD No. 24 dated 30.05.2002 which ultimately led to registration of FIR under Section 307 RPC. The injured was taken to GMC Jammu for treatment. During investigation the appellant was arrested and is stated to have made a disclosure statement leading to the recovery of the alleged weapon of offence, namely a gainti, from the bushes near the place of occurrence. The deceased later succumbed to the injuries in the hospital and consequently the offence was converted into one under Section 302 RPC, whereafter the appellant came to be charge-sheeted and tried.
3. In order to prove its case, the prosecution examined several witnesses including PW-1 Bagh Hussain, PW-2 Shah Begum, the minor daughter of the deceased, PW-3 Baldev Raj (Constable), PW-4 Sudesh Kumar, PW-5 Rattan Singh, PW-6 Khan Mohammad, PW-7 Zakir Hussain, PW-8 Piyare Lal, PW-9 Jagbir Singh (Naib Tehsildar), PW-10 Farooq Iqbal (Patwari

Halqa), PW-11 Dr. Manju Tickoo and PW-14 Sub-Inspector Bhupinder Singh, the Investigating Officer of the case. After the closure of the prosecution evidence, the appellant was examined under Section 342 RPC to explain the incriminating circumstances appearing against him. The appellant denied the prosecution case in its entirety and pleaded that he had never shared a common room with the deceased. He also denied having any dispute with the deceased relating to accounts and asserted that he had vacated the room much prior to his arrest and had been residing with his wife at Roop Nagar. The appellant also denied making any disclosure statement leading to the recovery of the alleged weapon of offence and claimed that he had been falsely implicated.

4. The learned Trial Court, upon appreciation of the evidence on record, concluded that the deceased had suffered a homicidal death and that the weapon of offence was a gainti. The Court relied upon the disclosure statement allegedly made by the appellant and the recovery of the said weapon at his instance. The Trial Court further placed considerable reliance upon the testimony of PW-2 Shah Begum and held that she was a natural witness who had no reason to falsely implicate the appellant. The Court also observed that minor inconsistencies appearing in her testimony did not affect the core of the prosecution case and, on that basis, the appellant was found guilty and convicted for the offence punishable under Section 302 RPC.
5. Learned counsel appearing for the appellant has contended that the conviction recorded by the Trial Court is unsustainable in law as the entire prosecution case rests upon the testimony of a child witness which, in the

absence of corroboration, cannot safely be relied upon. It is further submitted that the statement of PW-2 was recorded after a considerable lapse of time and therefore the possibility of tutoring cannot be ruled out. It is also argued that the testimony of PW-2 suffers from material contradictions with her statement recorded under Section 161 Cr.P.C. and that the alleged recovery of the weapon of offence is doubtful as the independent witnesses to the recovery have not supported the prosecution case. It is also urged that the prosecution has failed to prove the alleged motive of illicit relations between the deceased and the wife of the appellant.

6. Per contra, learned counsel appearing for the respondent has supported the judgment of conviction and submitted that merely because PW-2 is a child witness, her testimony cannot be discarded if it inspires confidence. According to the respondent, the Trial Court has rightly appreciated the evidence on record and has correctly relied upon the testimony of PW-2 which clearly establishes the involvement of the appellant in the commission of the offence.
7. Before examining the evidence on record, it would be appropriate to notice the settled legal position regarding the evidentiary value of the testimony of a child witness. In *Rameshwar vs. State of Rajasthan AIR 1952 SC 54*, the Supreme Court held that the testimony of a child witness cannot be rejected merely on the ground of age, although as a rule of prudence courts generally seek corroboration. The same principle was reiterated in *Panchhi vs. State of U.P 1998 7 SCC 177*, where it was observed that the evidence of a child witness must be scrutinized carefully as children are susceptible

to tutoring. Similarly, in *Dattu Ramrao Sakhare vs. State of Maharashtra 1997 5 SCC 341*, the Supreme Court held that a child witness, if found competent and reliable, can form the basis of conviction, but the court must be satisfied that the testimony is free from tutoring. The principle was again reiterated in *State of U.P. v. Krishna Master AIR 2010 SC 3071*, wherein it was held that the testimony of a child witness should be evaluated with caution and careful scrutiny.

8. Another aspect which assumes importance in the present case relates to the testimony of witnesses who have not supported the prosecution case. The legal position regarding hostile witnesses is also well settled. In *Sat Paul v. Delhi Administration AIR 1976 SC 294*, the Supreme Court held that the evidence of a hostile witness is not to be discarded in its entirety and the court can rely upon that part of the testimony which is found to be credible. In *Koli Lakhmanbhai Chanabhai vs. State of Gujarat AIR 2000 SC 210*, it was reiterated that even if a witness is declared hostile, the portion of his testimony which supports the prosecution case may still be relied upon. However, in *State of Rajasthan v. BhawaniCr Appeal no. 421 of 1996*(D.O.D 31.07.2003), the Supreme Court observed that where material witnesses turn hostile and their earlier statements are not properly proved, the prosecution case becomes doubtful.
9. In the present case, PW-1 Bagh Hussain, who had taken the injured to the hospital and was the first person present at the scene of occurrence, has not supported the prosecution case and was declared hostile. Similarly, the independent witnesses to the alleged recovery of the weapon of offence, namely PW-4 Sudesh Kumar and PW-5 Rattan Singh, have also not

supported the prosecution case regarding the disclosure statement and recovery of the gainti. Thus, the entire prosecution case substantially hinges upon the testimony of PW-2 Shah Begum, the minor daughter of the deceased.

10. Upon hearing learned counsel for the parties and perusing the record of the case, the core question that arises for consideration is whether the prosecution has been able to establish the guilt of the appellant beyond reasonable doubt. The entire edifice of the prosecution case substantially rests upon the testimony of PW-2 Shah Begum, the minor daughter of the deceased, who has been projected as the sole eye-witness to the occurrence. Therefore, the reliability, credibility and evidentiary worth of her testimony assume pivotal importance for determination of the present appeal.

11. Examining the testimony of PW-2 Shah Begum in the light of the aforesaid principles, it is noticed that her version does not find adequate corroboration from other material witnesses. PW-1 Bagh Hussain, who had accompanied the deceased and was the first person to remove the injured to the hospital, has not supported the prosecution case and was declared hostile. His testimony, far from strengthening the prosecution case, merely establishes that the deceased was found lying injured and that he had taken him to the hospital. He categorically denied having witnessed the appellant assaulting the deceased. Thus, the prosecution has been deprived of an important link in the chain of events which could have otherwise lent assurance to the version of the alleged eye-witness.

12. Equally significant is the circumstance that the independent witnesses associated with the alleged recovery of the weapon of offence have also not

supported the prosecution. PW-4 Sudesh Kumar and PW-5 Rattan Singh, who were cited as witnesses to the disclosure statement and recovery of the gainti, have not affirmed the prosecution version regarding such recovery. In fact, the testimony of PW-5 suggests that the alleged weapon was lying in the police station and that the documents relating to its seizure were prepared there. In these circumstances, the recovery of the weapon of offence becomes highly doubtful and does not inspire confidence.

13. The legal position regarding hostile witnesses is well settled. In *Sat Paul* (supra) the Supreme Court held that the testimony of a hostile witness is not to be rejected in toto and the Court may rely upon that part of the testimony which is found to be credible. However, in the present case, the portions of testimony of the hostile witnesses which remain on record do not materially advance the prosecution case. On the contrary, their statements create doubt regarding the manner in which the investigation was conducted and the circumstances under which the alleged recovery was effected.

14. Another aspect which weakens the prosecution case is the failure to establish the alleged motive. The prosecution had sought to attribute motive to the appellant on the ground that he suspected the deceased of having illicit relations with his wife. However, none of the witnesses examined by the prosecution have substantiated this allegation. Even PW-1 Bagh Hussain, who was acquainted with both the parties, has not stated anything suggestive of such relationship. In the absence of any cogent material establishing motive, the prosecution case loses an important supporting circumstance, particularly when the case rests upon the testimony of a single witness.

15. Further scrutiny of the testimony of PW-2 Shah Begum reveals certain material discrepancies between her statement recorded during investigation under Section 161 Cr.P.C. and her deposition before the Court. In her earlier statement she had stated that she along with her father had gone to the appellant for settlement of accounts and that the appellant assaulted the deceased at that time. However, in her deposition before the Court she introduced a different version by stating that the deceased was washing clothes outside the room when the appellant came from behind and assaulted him with a gainti. This variation is not merely a minor inconsistency but goes to the root of the prosecution story regarding the manner in which the occurrence had taken place.

16. It is well settled that while minor discrepancies in the testimony of witnesses may not affect the prosecution case, contradictions which materially alter the prosecution version cannot be lightly ignored. In *State of Rajasthan v. Bhawani* (supra), the Supreme Court observed that when material contradictions appear in the testimony of crucial witnesses and such contradictions remain unexplained, the Court must exercise caution in placing reliance upon such evidence.

17. The medical evidence, though indicating that the death of the deceased was homicidal, does not conclusively connect the appellant with the commission of the offence. The medical expert has opined that the injuries could have been caused by a blunt object and could also occur by fall on a hard surface. Therefore, the medical evidence does not conclusively support the prosecution version regarding the use of the alleged weapon of offence.

18. In criminal jurisprudence, it is a cardinal principle that the prosecution must prove its case beyond reasonable doubt and the burden of proof never shifts. Where the evidence on record gives rise to two possible views, the one favourable to the accused must be adopted. In *Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622*, the Supreme Court reiterated that suspicion, however strong, cannot take the place of proof.
19. Applying these principles to the present case, the cumulative effect of the circumstances discussed above clearly indicates that the prosecution has not been able to establish the guilt of the appellant beyond reasonable doubt. The testimony of the sole eye-witness suffers from material inconsistencies, the independent witnesses have not supported the prosecution regarding the recovery of the weapon, and the alleged motive has remained unproved. These circumstances create a reasonable doubt regarding the prosecution version. In such a situation, the appellant is entitled to the benefit of doubt, which is a fundamental principle of criminal law and an essential safeguard against wrongful conviction.
20. For the foregoing reasons, this Court is persuaded to agree with the submissions advanced on behalf of the appellant that the finding of conviction recorded by the learned Trial Court has been arrived at without a proper and holistic appreciation of the evidence on record. The material contradictions and inconsistencies appearing in the testimonies of the prosecution witnesses have not been adequately considered, nor have the surrounding circumstances been examined in their correct perspective. The cumulative effect of these deficiencies renders the impugned judgment of conviction and the consequent sentence legally unsustainable and perverse.

21. Accordingly, the appeal is *allowed*. The judgment of conviction and order of sentence passed by the learned Trial Court against the appellant are set aside. The appellant is acquitted of the charge under Section 302 RPC. He shall stand discharged from the bail bonds furnished by him. The record of the Trial Court be returned forthwith along with a copy of this judgment. In view of the acceptance of the appeal and the acquittal of the appellant, Reference for confirmation of sentence No. 7/2010 also stands declined.

(Sanjay Parihar) (Sanjeev Kumar)
Judge Judge

Jammu
12.03.2026
Vishal Sharma

