

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

CRAA 6/2011

Reserved on: 07.05.2026
Pronounced on: 21.05.2026
Uploaded on: 22.05.2026

Whether the operative part or
full judgment is pronounced: "FULL"

**State of J&K through Addl. Advocate General
Srinagar.**

...Applicant(s)/Petitioner(s)

Through: - Mr. Alla Ud Din Ganai, AAG

v/s

- 1. Abdul Aziz Bhat son of Gani Bhat**
- 2. Ruhal-Amin Bhat son Alias Zahoor Bhat**
- 3. Zahid Irfan Bhat**
- 4. Hujatul Islam Bhat son of Aziz Bhat**
- 5. Mst. Shahmali W/o Aziz Bhat (Deleted)**

...Respondent(s)

All the residents of Tachloo Shopian

Through:- Mr. S.T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate
Mr. Z.A. Qureshi, Sr. Advocate with
Ms. Rehana, Advocate

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

J U D G M E N T

Sanjay Parihar-J

1. Having heard learned counsel for the parties, perused the record and considered the evidence led before the Trial Court, we find that it is well settled principle of criminal jurisprudence that an order of acquittal strengthens the presumption of innocence in favour of the accused and unless the view taken by the Trial Court is wholly unreasonable or impossible on the evidence available on record, the Appellate Court

would be slow in reversing such acquittal. The Hon'ble Supreme Court in *Chandrappa v. State of Karnataka, 2007 4 SCC 415*, held that though the Appellate Court possesses full power to reappreciate evidence in an appeal against acquittal, yet where two views are possible, the one favouring the accused must ordinarily prevail. Similar principles were reiterated in *Ghurey Lal v. State of Uttar Pradesh, 2008 10 SCC 450*, it was held that interference with acquittal is permissible only when the findings recorded by the Trial Court are manifestly illegal or grossly unjust.

2. The prosecution case before the learned Trial Court, in essence, was that a land dispute existed between the complainant party and the respondents. It was alleged that on the morning of 09.05.2007, when the complainant along with his brothers and labourers proceeded towards Khah Nar for spraying pesticides on fruit growing trees, the respondents, having already concealed themselves behind bushes and armed with Dandas and sticks, unlawfully entered the orchard of the complainant in furtherance of their common object and launched an assault upon the complainant and his brothers, namely Fayaz Ahmad Bhat, Nisar Ahmad Bhat and Ghulam Rasool Bhat. According to the prosecution, respondent No.2, Ruhul-Amin Bhat, inflicted a Danda blow on the back of deceased Fayaz Ahmad Bhat, while the remaining respondents also participated in the assault. It was alleged that due to the said blow, the deceased sustained serious internal injuries, fell unconscious on the spot and later succumbed to the injuries at SKIMS, Soura, where he had been referred for treatment.

3. The prosecution further alleged that PW-Nisar Ahmad Bhat and PW-5 Ghulam Rasool Bhat also sustained injuries during the occurrence. It was stated that the complainant managed to snatch the sticks from the respondents and retained possession thereof before shifting the injured to the hospital. During investigation, the dead body of the deceased was subjected to post-mortem examination, which revealed rupture of spleen as the cause leading to death. The prosecution also asserted that the weapon of offence, namely a blood-stained “Kikar Danda” produced by the complainant, was seized by the investigating agency. Consequently, offences under Sections 302, 323 and 325 RPC were found established against respondents 1 to 4, whereas respondent No.5 was shown as absconding. However, the learned Trial Court, after appreciation of the evidence, came to the conclusion that PW-3 and PW-5 were interested witnesses and that despite the availability of independent witnesses, none had been examined by the prosecution. Holding that the prosecution had failed to establish the guilt of the accused beyond reasonable doubt, the Trial Court recorded an order of acquittal.
4. The appellant has assailed the aforesaid judgment primarily on the ground that the learned Trial Court gravely erred in disbelieving the testimony of PW-3 and PW-5, who were not only eye-witnesses to the occurrence but were themselves injured witnesses whose presence at the scene could not be doubted. It has been contended that the Trial Court, while discarding the ocular account of the injured eye-witnesses, erroneously relied upon the testimony of PW-6 Bilal Ahmad Wagay, who admittedly had reached the spot after the incident had concluded

and was not an eye-witness to the occurrence. According to the prosecution, the testimony of injured witnesses carries greater evidentiary value and ordinarily commands implicit reliance unless compelling reasons exist for its rejection. Reliance in this regard was placed upon the law laid down by the Hon'ble Supreme Court in *State of U.P. v. Naresh*, wherein it was held that the testimony of an injured witness stands on a higher pedestal of credibility as his presence at the scene of occurrence is established by the injuries sustained by him. It is further urged that the Trial Court misdirected itself in rejecting the medical evidence despite the prosecution having established that the deceased had sustained fatal internal injuries resulting in rupture of spleen. The prosecution submits that once the ocular account stood corroborated by medical evidence and the recovery of the blood-stained weapon of offence, there existed no lawful basis for discarding the prosecution case. It is thus argued that the findings recorded by the Trial Court suffer from patent perversity and misappreciation of evidence, rendering the impugned judgment unsustainable in law.

5. Per contra, learned counsel appearing for the respondents contended that the judgment of acquittal passed by the Trial Court is based upon a plausible and reasonable appreciation of evidence and, therefore, does not warrant interference in appeal. It was argued that once an order of acquittal has been recorded, the presumption of innocence in favour of the accused stands reinforced and unless the findings are shown to be manifestly illegal or perverse, the appellate court ought not to substitute its own view merely because another view is possible. Reliance in this

regard may be placed upon the principles enunciated by the Hon'ble Supreme Court in *Chandrappa v. State of Karnataka* (supra) wherein it was held that if two views are possible on the evidence available on record, the view favourable to the accused must prevail. The respondents further contended that the testimonies of the alleged eye-witnesses suffer from material contradictions and inconsistencies and, therefore, could not have been safely relied upon. It was also argued that although the complainant claimed to have sustained injuries, no injury report pertaining to him was placed on record. Learned counsel further submitted that prosecution witness Bilal Ahmad Wagay (PW-6) had not supported the prosecution version and yet was not declared hostile, thereby rendering his testimony binding upon the prosecution. It was additionally urged that the seizure of the alleged weapon of offence itself becomes doubtful in view of the admission of the complainant that the Danda had been snatched by him from the hands of the respondents. According to the respondents, in the absence of visible external injuries upon the deceased, the prosecution story regarding blood stains on the weapon appears inherently improbable. The defence further sought to attribute the death of the deceased to cardiac respiratory arrest and heart failure, relying upon the testimony of DW-Dr. Mohd. Ayoub. It was also contended that respondent No.5, who was initially shown as absconding and later acquitted upon joining trial, has not been challenged by the prosecution in appeal, thereby indicating selective prosecution and cherry-picking by the investigating agency. On these grounds, it has been argued that the learned Trial Court rightly

appreciated the evidence in its proper perspective and no interference with the acquittal is called for.

6. We have examined the record of Trial Court and we find that the prosecution rested primarily upon the testimony of PW-Nisar Ahmad Bhat and PW-5 Ghulam Rasool Bhat, both closely related to the deceased. Though it is equally settled that evidence of related witnesses cannot be discarded merely on the ground of relationship, yet such evidence is required to be scrutinized with greater caution, particularly where prior enmity between the parties is admitted. In *Dalip Singh v. State of Punjab, 1954 SCR 145* and *State of Rajasthan v. Kalki, 1981 2 SCC 752*, the Hon'ble Supreme Court observed that relationship by itself is not a ground to discard testimony, however, the Court must carefully examine whether the evidence inspires confidence and is free from embellishment or exaggeration. In the case at hand, the record clearly demonstrates longstanding hostility between the parties arising out of dispute regarding the estate of late Salam Bhat, thereby furnishing a strong motive for false implication and exaggeration of the occurrence.

7. The Trial Court, after appreciating the evidence in detail, found material contradictions in the ocular version of the prosecution witnesses. The complainant himself stated that during the scuffle the deceased slipped and fell down, whereas PW-Nisar Ahmad Bhat alleged that respondent No.2 inflicted a Danda blow on the back of the deceased. PW-5 Ghulam Rasool Bhat gave yet another version regarding the manner and place of occurrence. Their statements were inconsistent on vital particulars

including the exact place of occurrence, the sequence of events and the manner in which the deceased sustained injuries. Such contradictions go to the root of the prosecution case and materially affect its credibility.

8. More importantly, the medical evidence does not lend assurance to the prosecution version. The prosecution alleged that a Danda blow of such force was inflicted upon the deceased that it resulted in rupture of spleen, yet admittedly no external injury, abrasion, contusion or bluish mark was found on the body of the deceased. The medical expert admitted that rupture of spleen could also occur due to fall on a hard surface. This circumstance substantially probabalizes the defence version that the deceased suffered internal injury because of a fall during the scuffle rather than due to any intentional assault. It is well settled that where ocular evidence is inconsistent with medical evidence on material particulars, the prosecution case becomes doubtful. Reference in this regard may be made to *Thaman Kumar v. State of Union Territory of Chandigarh*, AIR 2003 SC 3957.
9. The Trial Court has also rightly attached significance to the testimony of PW-6 Bilal Ahmad Wagay, an independent witness whose presence at the spot stood admitted by both sides as he had been engaged as labourer by complainant for spraying pesticides. The said witness did not support the prosecution allegation that the respondents were armed with Dandas or that any specific blow was inflicted upon the deceased. Rather, his testimony indicated that the deceased suddenly fell during the course of the scuffle. The prosecution neither declared him hostile nor succeeded in discrediting his testimony in cross-examination.

Consequently, the Trial Court was justified in relying upon his independent account.

10. Equally significant is the doubtful recovery of the alleged weapon of offence. The complainant claimed to have snatched the Danda from the respondents and retained it, whereas the Investigating Officer stated that the weapon was recovered from the spot on the following day. The unexplained discrepancy regarding custody and recovery of the weapon, coupled with the absence of external injuries on the deceased, rendered the seizure highly doubtful. The Trial Court therefore rightly held that the prosecution failed to establish a credible nexus between the alleged weapon and the injuries sustained by the deceased.

11. The cumulative effect of the evidence on record clearly demonstrates that the prosecution failed to prove beyond reasonable doubt that the respondents intentionally caused the fatal injury to the deceased. The possibility that the deceased suffered rupture of spleen due to accidental fall during the scuffle has not been excluded. In criminal law, suspicion, however grave, cannot take the place of proof. The prosecution is required to stand on its own legs and establish guilt beyond reasonable doubt. Reference may be made to *Sharad Birdhichand Sarda v. State of Maharashtra, 1984 4 SCC 116* and *Kali Ram v. State of Himachal Pradesh, AIR 1973 SC 2773*.

12. Accordingly, we are of the considered opinion that the view taken by the Trial Court is a plausible and legally sustainable view based upon proper appreciation of evidence. Merely because another view may also be possible would not justify interference with the judgment of

acquittal. The appeal, being devoid of merit, is therefore, *dismissed* and the judgment of acquittal passed by the Trial Court is affirmed.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR

21.05.2026

Akshil Dev

Whether the order is speaking? : Yes

Whether the order is reportable? : Yes

