

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

...
CRA no.01/2007
c/w CRAA no.02/2007

Reserved on: 10.09.2026
Pronounced on: 28 .09.2026
Uploaded on: 29.09.2026
*Whether the operative part or
full judgment is pronounced: Full*

CRA no.01/2007:

1. Shakeel Ahmad Hajam
2. Khurshid Ahmad Hajam
Sons of Abdul Gani Hajam
Residents of Padpawan Shopian

.....Appellant(s)

Through: Mr. S.T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate

Versus

1. State of J&K through Financial Commissioner, Home Department,
Civil Secretariat, Jammu/Srinagar
2. Superintendent of Police, Central Jail, Srinagar
3. Station House Officer (SHO) Police Station Shopian

.....Respondent(s)

Through: Mr Alla ud din Ganai, AAG

CRAA no.02/2007:

State of J&K through SHO Police Station Shopian

.....Appellant(s)

Through: Mr Alla ud din Ganai, AAG

Versus

1. Shakeel Ahmad Hajam
2. Khurshid Ahmad Hajam
Sons of Abdul Gani Hajam
3. Muzaffar Ahmad Thoker
4. Imtiyaz Ahmad Thoker
Sons of Bashir Ahamd Thoker
All residents of Padpawan
5. Mst. Shabnam Akhter W/o Shakeel Ahmad Thokar R/o Padpawan
Shopian
6. Mst. Kulsuma Bano W/o Gh. Nabi Thokar R/o Padpawan Shopian

7. Shamim Ahmad Hajam S/o Abdul Gani Hajam R/o Padpawan
Shopian

.....Respondent(s)

Through: Mr. S.T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate

CORAM:

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE**

JUDGEMENT

Sanjeev Kumar J

1. Judgment of conviction dated 20th January 2007 and Order of sentence dated 24th January 2007, passed by the Court of learned Sessions Judge, Pulwama [*“Trial Court”*] in File no.13/Sessions titled *State v. Shakeel Ahmad Hajam and others*, are subject-matter of challenge in these two appeals, i.e., CRA no.01/2007 filed by convicts, *Shakeel Ahmad Hajam and Khurshid Ahmad Hajam*, and CRAA no.02/2007 filed by the State of J&K.
2. In terms of the impugned judgment, the Trial Court has acquitted the accused, namely, Muzaffar Ahmad, Imtiyaz Ahmad, Mst. Shabnum Akhter and Mst. Kulsuma Bano, respondents 3 to 6 in Criminal Acquittal Appeal no.02/2007, and has convicted Shakeel Ahmad Hajam and Khursheed Ahmad Hajam, for commission of offence punishable under Sections 447/304 (II) of Ranbir Penal Code (RPC) and under Sections 447/325 RPC respectively. The two have filed the Criminal Appeal no.01/2007. The accused, Shamim Ahmad Hajam, too has been convicted for commission of offence punishable under Sections 447 and 325 RPC. The appellants 1&2 and accused, Shamim Ahmad Hajam, have, thus, been acquitted of the charge under Section 302 RPC.

3. The Criminal Acquittal Appeal no.02/2007 as against convicts, Shakeel Ahmad Hajam, Khurshid Ahmad Hajam, and Shamim Ahmad Hajam, is only to the extent of their acquittal under Section 302 RPC, albeit they have been convicted for lesser offences.

CRA no.01/2007

4. Before we advert to the grounds of challenge exhorted by Mr. S. T. Hussain, learned senior counsel appearing for appellants, to assail the judgment impugned, we deem it appropriate to set out briefly the prosecution case as was put up before the Trial Court.
5. On 26th August 2001, Police Station, Shopian received a complaint in writing from one, Mushtaq Ahmad Lone, alleging therein that at about 10.00 AM, the accused persons, seven in number, who were armed with *lathis*, *axes*, *spade* and *dajee*, trespassed into the compound of the complainant after dismantling the *pacharbandi* and in pursuit of common object, administered beating to Gull Lone, father of complainant; Mst. Khatiji, mother; and Ali Mohd Dar, maternal uncle and caused them serious injuries. The accused, Shakeel Ahmad Hajam, with an intention to kill his father, Gull Lone, gave an axe blow on his head, causing him serious injury. The condition of Gull Lone worsened and he fell unconscious. The uncle, Ali Mohd. Dar, was inflicted a *bailcha* blow on his nose and that three teeth of mother of complainant were also broken in the scuffle. It was also alleged that other family members of the complainant, namely, Mst. Ruqaya, Mst. Rafiq and Mst. Hajra, were also given beating and their modesty outraged. The accused also hurled stones

on the complainant party. As a result of this written information, the police registered a case under Section 307, 148, 447, 427 RPC. The investigation was entrusted to PW Ab. Rashid Head Constable. The injured were rescued to Shopian Hospital wherefrom father of complainant, Gull Lone, was referred to Soura Hospital for further treatment. Later, Gull Lone succumbed to his injuries in Soura Institute. The postmortem of deceased was conducted. The weapons of offence were seized and sent to FSL for examination. Thereafter, the investigation was also conducted by SHO and PSI, Shabir Ahmad Dar.

6. Upon completion of investigation, the police presented the final report in the Court of Chief Judicial Magistrate, Shopian, alleging all the accused guilty of offences punishable under Sections 307, 302, 148, 149, 447 427, 336, 354, 325 RPC. One of the accused, Shamim Ahmad Hajam, was absconding and could not be arrested by the police, and therefore, a prayer was made to the Court to initiate proceedings under Section 512 of the Code of Criminal Procedure (Cr.P.C.) against him. The Chief Judicial Magistrate, Shopian, after initiation of proceedings under Section 512 Cr.P.C. against accused, Shamim Ahmad Hajam, committed the case to the Trial Court.
7. The Trial Court, after hearing the prosecution and defence and having gone through the final report/challan, vide its order dated 2nd April 2002, framed the charge against all the accused under Section 302, 307, 325, 148, 447, 354, 149 RPC. The charge was denied by the accused. They pleaded not guilty and claimed trial. With a view to

bring home the charge against the accused, the prosecution examined thirteen out of sixteen listed prosecution witnesses, i.e., PW1 Mushtaq Ahmad Lone, complainant; PW2 Mst. Khatji; PW3 Ali Mohammad Dar; PW4 Ghulam Qadir Najar; PW5 Manzoor Ahmad Bhat; PW6 Mohd Aslam Khan; PW7 Shabir Ahmad Wani; PW8 Dr. Abdul Rashid; PW9 Dr. Nazir Ahmad Bhat; PW10 Dr. Suhail Ahmad Kanth, Scientific Assistant Serology FSL; PW11 Abdul Rashid; PW12 Feroz Ahmad Qadri, Inspector/IO; PW13 Shabir Ahmad Dar, Sub Inspector.

8. On conclusion, all the incriminating circumstances and evidence was put to the accused. Their statement was recorded under Section 342 Cr.P.C., in which they stated that the witnesses examined by prosecution were all related to complainant and that they had been falsely implicated in the case due to enmity. The accused, Shakeel Ahmad Hajam, appellant no.1, however, further stated that deceased, Gull Lone, had a property dispute with him and was, with the help of his family members, forcibly constructing bathroom on the disputed site, which resulted in heated exchange of words between the parties. He further stated that the complainant and his family members pelted stones, as a result of which, the deceased, Gull Lone, sustained fatal injury. He stated that he too received an injury in the fight. He also stated that since his right hand was incapacitated due to bullet shot, the allegation of hurling of an axe blow on deceased was totally false and baseless.

9. The accused no.2, Khurshid Ahmad Hajam, i.e., appellant no.2 herein, and Imtiyaz Ahmad pleaded *alibi*, and stated that they were not at the place of occurrence and were arrested in the next morning by the police without any reason. The defence also led its evidence and examined DW1 Bashir Ahmad Wagay, DW2 Mohd Lateef Malik. The statement of DW3, namely, Dr.Wali Mohd was partly recorded and his evidence was closed at the request of defence.
10. The Trial Court, having considered the rival contentions and evidence brought on record by prosecution and defence, came to the conclusion that the charge against the accused for heinous offence punishable under Section 302 RPC was not made out and, thus, acquitted them of the said charge. The Trial Court also gave benefit of doubt to accused, namely, Muzaffar Ahmad, Imtiyaz Ahmad, Mst. Shabnum Akhter and Mst. Kulsuma Bano, and they were, accordingly, acquitted of all the charges. The charge under section 447 and 304 (II) RPC was, however, held proved beyond reasonable doubt against accused, Shakeel Ahmad Hajam, appellant no.1 herein, and he was sentenced to simple imprisonment of ten years and fine of Rs.20,000/- with a further stipulation that in the event of default in payment of fine, he shall undergo further imprisonment of six months. Appellant no.2, Khurshid Ahmad Hajam, was convicted for commission of offence punishable under Section 325 and 447 RPC and was sentenced to undergo simple imprisonment of five years with fine of Rs.500/- and two months respectively. It was also stipulated that in default of

payment of fine, he would undergo further imprisonment of fifteen days and the punishment would run concurrently.

11. Feeling dissatisfied and aggrieved by their conviction and sentence handed down by the Trial Court in terms of impugned judgment/order, the appellants are before us in this Criminal Appeal.

12. Impugned judgment of conviction and order of sentence are challenged by appellants primarily on the following grounds:

- (i) That even if entire prosecution story is accepted on its face value, yet the charge under Section 304 (II) RPC cannot be said to have been made out against them. It is urged that medical evidence does not support the charge, in that, PW Dr. Abdul Rashid in his report, Exhibit EXPW 9/4, has clearly certified that the fatal injury on the deceased could have been caused by the blunt side of axe. It is, thus, argued that having regard to the make of weapon, the force used, the target chosen and the nature of injury inflicted, it cannot be said that the blow from the blunt side of axe allegedly inflicted on deceased was with an intention to cause death or with a knowledge that such injury was likely to cause death. It is, therefore, argued that the learned Trial Court has misdirected itself in appreciating the evidence on record and erroneously come to the conclusion that offence punishable under Section 304 (II) RPC was made out.
- (ii) That the Trial Court has not appreciated that when, on the basis of a set of evidence before it, it had given the benefit of doubt to accused, Muzaffar Ahmad, Imtiyaz Ahmad, Mst. Shabnam

Akhtar, and Mst. Kulsuma Bano, it was not legally permissible to convict the appellants on the basis of the same evidence more particularly when the charge was common, evidence was common and sequence of prosecution case was common. It is, thus, argued that if evidence was not found acceptable against four acquitted accused, it ought to have been rejected vis-à-vis appellants also.

- (iii) That the medical evidence did not prove that the alleged fatal injury caused on the head of deceased was such as was likely to cause death. It was, thus, urged that even if entire prosecution case were to be accepted, at best an offence under Section 324 RPC could be said to be made out and appellants have already undergone punishment more than prescribed under Section 324 RPC and they are, thus, entitled to be let off.

13. *Per contra*, Mr. Alla ud din Ganai, learned Dy.AG, would argue that though Trial Court has discussed the evidence in detail and held appellants guilty of commission of offence punishable under Section 304 (II)/447 RPC and under Section 325/447 RPC respectively, yet the Trial Court has not appreciated the conduct of appellants post-commission of offence which unequivocally proves that the intent with which the injury was inflicted was only to kill the deceased. He would submit that it has amply come in the evidence of prosecution that appellants, after inflicting injury on the deceased and others, did not allow complainant party to shift the injured, in particular Gull

Lone, to the hospital so that he succumbed to injuries without receiving medical intervention.

14. Having heard learned counsel for parties and perused the material on record, we are of the considered opinion that the impugned judgment of conviction and order of sentence passed by the Trial Court are perfectly in consonance with law and compatible with the evidence on record. Indubitably, the occurrence has taken place due to a property dispute between complainant party and accused. During exchange of stones, which were seemingly pelted from both sides, appellant no.1, Shakeel Ahmad Hajam, who was carrying an axe, hit on the head of deceased Gull Lone. He had an opportunity to hit deceased on his head by using the sharp edge of axe but instead he hit him on head by using its blunt side. As is evident from medical evidence, deceased received only single injury that too an internal one. The skull was not fractured nor was there any laceration wound on head. The medical report reveals that only some blood had oozed out of the ear of the deceased. In these circumstances, it is very difficult to conclude with certainty that appellant no.1, who was armed with an axe and caused injury to deceased by using blunt side of it, had an intention to cause death or a bodily injury as would be sufficient in the ordinary course of nature to cause death. There is, however, ample evidence to show that appellant no.1, when inflicted an injury on the head of deceased by using blunt side of the axe, had knowledge that the injury, he was causing, was likely to cause death but without any intention to cause death or to cause such bodily injury

as is likely to cause death. It is amply proved that the scuffle between two parties took place due to land dispute which got escalated and resulted in appellant no.1 causing a blunt blow of axe on deceased. It is also evident that appellant no.1, who had an opportunity to use sharp edge of axe to inflict injury on deceased and even to repeat the blow, but he did not do so. It is, however, a different matter that the injury which was not intended to cause death, ultimately led to death of deceased. The nature of weapon used, the nature of injury caused, the impact of injury, infliction of single blow and the circumstances preceding such blow clearly indicate absence of intention on the part of appellant no.1 to cause death or such bodily injury as is likely to cause death of deceased.

15. Section 300 RPC defines “Murder”, whereas Section 304 RPC deals with punishment for culpable homicide not amounting to murder.

Both the provisions are set out below for ready reference:

“300. Murder.- Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or-
Secondly. - If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or-
Thirdly. - If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-
Fourthly. - If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations

- (a) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.
- (b) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily

injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause death or such bodily injury as in the ordinary course of nature would cause death.

(c) A intentionally gives Z a sword-cut or club wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(d) A without any excuse fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

Exception. 1. - When culpable homicide is not murder. - Culpable is not murder if the offender, whilst deprived of the power of self control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos. -First. - That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly. - That the provocation is not given by anything done in obedience to the law or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly. - That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation. - Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Illustration

- (a) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.
- (b) Y gives grave and sudden provocation to A. A, on this provocation fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of

sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

- (c) A, is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.
- (d) A appears as a witness before Z, Magistrate. Z, says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.
- (e) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.
- (f) Z strikes B. B is by this provocation excited to violent rage, A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B, kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

Exception 2. - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration

Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. Z draws out a pistol. A persists in the assault. A, Believing in good faith that he can by no other means prevent himself from being horse whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

Exception 3. - Culpable homicide is not murder if the offender being a public servant or aiding a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill will towards the person whose death is caused.

Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the

offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 3. - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

Illustration

A, by instigation, voluntarily causes Z, a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

.....
.....
“304.Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.”

16. Section 300 RPC defines “murder” and prescribes that except in the cases excepted in the section it is a culpable homicide if the act by which death is caused is done with an intention of causing death or if it is done with the intention of causing such bodily injury as offender knows to be likely to cause death of the person to whom the harm is caused or if it is done with an intention of causing bodily injury to any person and such bodily injury inflicted is sufficient in the ordinary course of nature to cause death or if the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death, or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid. There are, however, in as

many as five exceptions to this, whereas the culpable homicide shall not amount to murder viz. act committed under sudden provocation, self defence, public servant exceeding powers given to him under law etc etc. Amongst these Exceptions, Exception no.4, which is relevant for the purposes reads as under:

“Exception 4. - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Explanation. - It is immaterial in such cases which party offers the provocation or commits the first assault.”

17. Section 304 RPC prescribes punishment for culpable homicide not amounting to murder. The culpable homicide, not amounting to murder, is punishable with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, if the act by which death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, that is called Part-I of Section 304. However, the Part II of Section 304 prescribes that the punishment for culpable homicide not amounting to murder would be imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

This we call Part-II of Section 304 RPC, for which appellant no.1, Shakeel Ahmad Hajam, has been convicted and sentenced by the Trial Court.

18. When we examine the evidence on record and undisputed findings of fact returned by the Trial Court, it is clearly borne out that undoubtedly the death of deceased was as a result of a single blow inflicted by appellant no.1 by using blunt side of the axe during a scuffle which took place on a property dispute.

19. As is discussed above, the nature of injury caused, the type of weapon used, and the fact that it was only single injury by a blunt object on the head and that it followed a free fight between two sides, it can reasonably be inferred that injury inflicted by appellant no.1 was not with an intention of causing death or causing such bodily injury as was likely to cause death, rather it can be inferred from the evidence that appellant no.1 inflicted axe blow on the deceased with the knowledge that such blow inflicted on the head was likely to cause death or at least cause such a bodily injury as was likely to cause death but there is no evidence to conclude that appellant no.1 had an intention to cause death or such bodily injury as was likely to cause death.

20. Indisputably, the evidence on record is clear and incontrovertible that the death of deceased was caused by appellant no.1 by inflicting axe blow on his head but this act was not premeditated and happened in a sudden fight in the heat of passion upon a sudden quarrel. Appellant no.1, despite having axe in his hand, did not take undue advantage or acted in cruel or unusual manner. He inflicted injury from the blunt side of axe by causing a single blow and did not even repeat the blow that clearly indicates and proves that there was no premeditation or

intention to cause death or bodily injury as is sufficient in the ordinary course of nature to cause death etc. etc. Though the knowledge could be attributed to appellant no.1 to the extent that the blow he was inflicting could cause death or was likely to cause death.

21. Viewed from any angle, we do not find it a case sufficiently proved by the prosecution as would warrant the conviction of appellants or any other accused for commission of offence punishable under Section 302 RPC. Appellant no.1 has, therefore, rightly been convicted for commission of offence punishable under Section 447 and 304 (II) RPC.

22. The contention of Mr. S. T. Hussain, learned senior counsel appearing for appellants, that most of the witnesses examined were the related witnesses and, therefore, their testimony ought to have been discarded by the Trial Court, is without any substance and cannot be accepted. It is trite law that merely because the witnesses are related or known to the deceased would not be a ground to discard their evidence. The only caution the Trial Court is to observe is to carefully scrutinize such evidence and find out if there is a scope for taking a view about false implication.

23. It is a settled position of law that the Court cannot ignore the testimony of witnesses only because they are close relatives of the victim. A Three-Judge Bench of the Hon'ble Supreme Court in ***Jaikam Khan v. State of U.P. (2021) 13 SCC 716*** notes:

“28...No doubt that, merely because the witnesses are interested and related witnesses, it cannot be a ground to disbelieve their testimony. However, the testimony of such witnesses has to be scrutinized with due care and caution. Upon scrutiny of the evidence of such witnesses, if the court is satisfied that the evidence is

creditworthy, then there is no bar on the court in relying on such evidence.”

24. In cases where the crime is committed at or near the place of residence of the deceased, it is the close relatives who are likely to be present to witness. They are natural witnesses. The Hon’ble Supreme Court in ***State of A.P. v. S. Rayappa, (2006) 4 SCC 512***, while noting the difference between interested witness and related witness, observed as follows:

“6...By now it is a well-established principle of law that testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he being a relation of the deceased is an interested witness. A close relative who is a very natural witness cannot be termed as an interested witness. The term interested postulates that the person concerned must have some direct interest in seeing the accused person being convicted somehow or the other either because of animosity or some other reasons.

7. On the contrary it has now almost become a fashion that the public is reluctant to appear and depose before the court especially in criminal case because of varied reasons. Criminal cases are kept dragging for years to come and the witnesses are harassed a lot. They are being threatened, intimidated and at the top of all they are subjected to lengthy cross-examination. In such a situation, the only natural witness available to the prosecution would be the relative witness. The relative witness is not necessarily an interested witness. On the other hand, being a close relation to the deceased they will try to prosecute the real culprit by stating the truth. There is no reason as to why a close relative will implicate and depose falsely against somebody and screen the real culprit to escape unpunished. The only requirement is that the testimony of the relative witnesses should be examined cautiously...”

25. In the instant case, as sequence of occurrence reveals, there was a free fight between two groups, i.e., complainant party and accused, over a piece of land and, therefore, the natural witnesses present on the spot were the members of the complainant party and obviously related to deceased member of such party. The presence of persons and the related witnesses at the occurrence, in the given facts and circumstances, is thus natural; simply because they are related

witnesses, their consistent testimony tested on cross-examination cannot be discarded. The Trial Court has very cautiously and with circumspection evaluated the evidence and come to the conclusion that infliction of injury by appellant no.1 by use of axe on the head of the deceased is amply proved. There was trespass on the property of the complainant party which fact is also proved by the prosecution evidence and even learned senior counsel appearing for appellants does not dispute the said fact. The fight between the two groups over a piece of land is even admitted by appellant no.1 in his statement under Section 342 Cr.P.C.

26.This brings us to the argument of Mr. Alla ud din Ganai, learned AAG, appearing for the State, to the extent that the Trial Court has not appreciated the post occurrence conduct of appellant, Shakeel Ahmad Hajam, in that, he prevented shifting of the injured to the hospital in time. Such conduct, he argues, reflects clearly that the intention of appellant no.1 was only to cause death of deceased and nothing more and nothing less.

27.We have given our thoughtful consideration to this aspect of the matter and gone through the statement of witnesses, i.e., PW1, the complainant, Mushtaq Ahmad Lone; and PW2 Mst. Khatji, in which it has come that there was some resistance offered by the appellant, Shakeel Ahmad Hajam, and others, to the shifting of deceased Gull Lone to the hospital. The Trial Court has considered the evidence on record and has come to the conclusion that the resistance offered by

the accused did not lead to such delay in shifting deceased to the hospital as could be held to be the cause of death of deceased.

28. It is trite law that post-occurrence conduct is primarily relevant to the inference of intention or knowledge, but it does not alter the ingredients of Section 300 RPC, once those ingredients are otherwise established. The post-occurrence conduct can be a relevant circumstance from which intention and knowledge could be inferred, including conduct by which an injured person is prevented from being taken to the hospital; but it is not in itself a sufficient ground to infer intention to cause death. We understand that the conduct of the accused subsequent to the occurrence is not completely irrelevant. Where the evidence shows that the accused prevented the injured from being moved to a hospital or receiving medical assistance, cogent and material inferences can legitimately be drawn regarding their knowledge of the gravity of the injury and their desire that the victim should not survive. Such subsequent conduct, however, cannot by itself be the sole foundation for a conviction for murder. It has to be established cumulatively alongside the nature and size of the injuries, the weapon employed, the locality of the body targeted, the surrounding circumstances, and the medical evidence. Where the injured ultimately dies because timely treatment was deliberately prevented, the post-occurrence conduct may establish the connection between the assault and the death, provided the prosecution proves this through clear legal and factual evidence.

29. In the instant case, there is nothing in the medical evidence to suggest that the death of deceased occurred due to late arrival in the hospital. There is also lack of convincing evidence on record to show that resistance offered by appellants and other accused actually delayed the shifting of the deceased to the hospital to his detriment.

30. We have already deliberated in detail herein above the circumstances beginning from the fight that ensued between the two sides on account of a land dispute to the causing of fatal injury on the head of deceased Gull Lone and concurred with the view taken by the Trial Court that the occurrence, in particular inflicting injury on the head of the deceased Gull Lone, was not premeditated, rather was a result of sudden fight that ensued between the parties. The injury was inflicted in the heat of passion and thus, was the case of culpable homicide not amounting to murder. From the nature of injury, it was rightly inferred by the Trial Court that there was no intention on the part of appellants to cause death yet there was an ample evidence to indicate that appellant no.1 had the knowledge that the injury he was inflicting was likely to cause death, as such, the Trial Court has rightly convicted appellant no.1 for commission of offence punishable under Section 304(II) and 447 RPC. Similarly, role of appellant no.2 is amply proved and the same was not disputed by the learned senior counsel appearing for him. He, too, has been correctly convicted for commission of offences punishable under Section 325 and 447 RPC. The sentences imposed are neither disproportionate to the offences committed nor can be said to be arbitrary or irrational in any manner.

31. We have deliberately not extracted and/or sifted through the evidence recorded by the Trial Court because Mr. S. T. Hussain, learned senior counsel, appearing for appellants, did not dispute the findings of fact recorded by the Trial Court rather stressed more upon the legal arguments he raised during the course of his arguments.
32. From the foregoing discussion, we find no merit in this appeal and the same is, accordingly, **dismissed**.

CRAA no.02/2007

33. In view of aforesaid discussion made, no case is made out for interfering with the impugned judgment of acquittal recorded against respondents 3 to 6.
33. As elaborately discussed above, the offence under Section 302 RPC was not established during trial against any of the accused, and they were, thus, rightly acquitted by the Trial Court. The conviction of respondent No.1, Shakeel Ahmad Hajam, under Section 304 (II)/447 RPC and respondent No.2, Khurshid Ahmad Hajam, under Section 325/447 RPC, has already been upheld in CRA No. 01/2007, therefore, no fresh deliberation on this aspect of the matter is called for. Otherwise also, the scope of interference by the Appellate Court in a judgment of acquittal is limited and circumscribed. If, on a given set of evidence, two views are possible, the Appellate Court must take the view that benefits the accused. It is a cardinal principle of criminal jurisprudence that an accused is presumed innocent until proven guilty, and this presumption gets fortified by the judgment of acquittal recorded by the trial Court.

34. Viewed thus, we do not find it a fit case to interfere with the judgment of acquittal recorded by the Trial Court. The instant appeal is without any merit and is, accordingly, **dismissed**.

(Sanjeev Kumar)
Judge

(Dr. Pushpendra Singh Bhati)
Chief Justice

Srinagar

28.09.2026

Ajaz Ahmad, Secy

Whether approved for reporting? Yes

