IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKHAT JAMMU

Reserved on: 08.10.2024
Pronounced on: 18.10.2024

CRAA No.33/2012

State of J&K th. SHO P/S, Kala Kote Rajouri
... **Appellant**

Through: - Mr.P.D.Singh Dy.AG

Vs.

Pawan Kumar son of Sukh Ram caste Brahmin resident of Kurlian Tehsil and District Rajouri.

…respondents

Through: - Mr. Moti Sharma, Advocate

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

JUDGMENT

Sanjay Dhar,J

1 The appellant-State has challenged the judgment of acquittal dated 22.11.2011 passed by learned Principal Sessions Judge, Rajouri, (hereinafter referred to as the "trial Court") whereby the respondent has been acquitted of the charges for offence under Section 302 RPC arising out of FIR No.61/2005 registered with Police Station, Kalakote, Rajouri.

2 It appears that on 20.12.2005 PW-3 Ram Krishan lodged a verbal report that deceased Raja Ram, who had gone to Tehsil Office, Kalakote on 19.12.2005 to deposit the land revenue, did not

return to his home. It was further reported that on 20.12.2005, during search of the deceased, it was noticed that his dead body was lying in a deserted Nallah. The informant suspected that someone had inflicted fatal injuries upon the deceased and left his dead body at a deserted place. FIR No. 61/2005 for offence under Section 302 RPC came to be registered with Police Station, Kalakote and investigation of the case was started. During investigation of the case, the dead body of the deceased was subjected to post-mortem, the statements of witnesses under Section 161 Cr.PC were recorded, on the basis of disclosure made by the respondent under Section 27 of the Evidence Act, the weapon of offence(two blood stained stones) was recovered, the blood sustained clothes of the deceased were seized, blood sample of the deceased was also seized and the report of the FSL was procured.

3 After investigation of the case, it was found that there was previous enmity between the deceased and the respondent/accused on account of a land dispute and on the day of the occurrence, the respondent/accused waited at village Kurlian for the deceased to come back from Tehsil Office. While the deceased was proceeding towards the house of one of his relatives, the respondent/accused followed him and attacked him with stones at an isolated place. It was also found that, after committing murder of the deceased, the respondent/accused removed dead body of the deceased to another place and crushed his arms with stones repeatedly leaving his left hand amputated. It was further found that the respondent/accused crushed head of the deceased with stones.

Accordingly, offence under Section 302 RPC was found established against the respondent/accused and the charge-sheet was laid before the trial Court.

4 Vide order dated 11.03.2006, the learned trial Court framed charge for offence under Section 302 RPC against the respondent/accused and his plea was recorded. The respondent denied the charge and claimed to be tried. Accordingly, the prosecution was directed to produce evidence in support of its case. As many as (36) witnesses have been cited in the challan, out of which,(29) witnesses were examined by the prosecution during trial of the case. After completion of trial of the case, the statement of the respondent under Section 342 of J&K Cr.P.C was recorded in which he claimed that a false case has been foisted upon him and that investigation of the case has not been conducted properly. The respondent did not enter his defence and he did not lead any evidence.

5 The learned trial Court, after hearing the parties and after appreciation of the evidence on record, came to the conclusion that the charge against the respondent/accused is not proved. In fact, the trial Court has observed that there is absolutely no evidence on record to connect the respondent/accused with the alleged crime.

6 The appellant/State has called in question the judgment of acquittal passed by the learned trial Court on the ground that it has not appreciated the law and the facts properly. It has been contended that the learned trial Court has taken a hyper-technical approach and ignored direct and circumstantial evidence on record.

7 We have heard learned counsel for the parties and perused the impugned judgment, grounds of challenge and the trial Court record including the evidence led by the prosecution.

8 The charge against the respondent is that on 19.12.2005 while deceased Raja Ram, after depositing land revenue in Tehsil Office, Kalakote, was coming back to his home, the respondent, who was harbouring a long standing enmity with the deceased, waited for him at an isolated place and when it was dark in the evening, the respondent/accused attacked the deceased with stones with an intention to kill him, where-after, he amputated his left arm with a sharp edged stone and threw away the dead body into a Nallah. It is to be noted that there is no eye witness to the alleged occurrence and the whole case of the prosecution is based upon circumstantial evidence. The circumstances from which the prosecution intended to bring home the guilt of the respondent/accused are as under:

(i)Previous enmity between the respondent and the deceased;

(ii) Disclosure statement made by the respondent under Section 27 of the Evidence Act and recovery of weapon of offence (stones) pursuant thereto;

(iii) Homicidal death of the deceased; and,

(iv) Presence of the respondent/accused near the place of occurrence on the day of occurrence.

(v)The hair stands found in the nails of the deceased were bearing similarity to the sample of hair strands taken from the respondent and similarly, the blood stains found on the seized clothes of the responded matched with the sample of blood of the deceased.

9 Before determining the issue as to whether or not, the aforesaid circumstances, that have beenreliedupon by the prosecution for proving guilt of the respondent, have been established from the evidence on record, it is required to be borne in mind that in a case based upon circumstantial evidence, the circumstances from which the conclusion of guilt is drawn, should be fully proved and such circumstances must be conclusive in nature. It has also to be established that all the circumstances are complete and there should be no gap left in the chain of evidence. With this legal position in mind, let us now discuss, whether the circumstances enumerated hereinbefore, are established from the evidence on record.

10 As has been recorded by the trial Court in the impugned judgment, one set of witnesses is the close relatives of the deceased which include his sons, daughters and daughters-in-law.These witnesses include PWs Vijay Kumar Kanchan Bala, Bimla Devi, Joginder Pal, Ram Pal, Kanchan Devi and Swarna Devi. None of these witnesses has seen the occurrence, nor any of them was present in or around the place of occurrence at the relevant time. These witnesses have simply stated that the respondent/accused is responsible for murder of deceased Raja Ram. This assertion of the aforesaid witness is based upon their perception that the respondent/accused was harbouring a long standing enmity with the deceased. None of these witnesses has personal knowledge about the actual occurrence, nor they have seen the deceased in company with the respondent immediately before his death. The statements of these witnesses only establish one fact that there was a long standing enmity

between the deceased and the respondent. The learned trial Court has rightly concluded that the assertion of these witnesses about involvement of the respondent in murder of the deceased is only based upon their suspicion. The only fact that is proved from the statements of the aforesaid witnesses is that there was previous enmity between the respondent and the deceased.

11 So far as the circumstance relating to disclosure statement of the respondent/accused under Section 27 of the Evidence Act and the recovery of weapon of offence (stones) pursuant thereto is concerned, PWs Maqdoom Shah and Mohd Maqbool Head Constables happen to be the witnesses to the disclosure statement EXPW-M/1, whereas PWs Rakesh Kumar and Taj Ram happen to be the witnesses to the memo of recovery EXPW-TR.

12 As per the disclosure statement EXPW-M/1, the respondent is alleged to have disclosed that he had concealed two stones at Sadoon Nallah in between Nallah and the road underneath the bushes. PW Maqdoom Shah, a witness to the disclosure memo EXPW-M/1, has stated that the respondent/accused made a confession that he killed the deceased with two stones which he had hidden underneath the bushes near the roadside. PW Mohd Maqbool, the other witness to the memo of disclosure, has stated that the respondent/accused made a statement that he killed the deceased with a stone which he had hidden near the place of occurrence.

13 The first part of the statements of aforesaid two witnesses, which relates to the admission of guilt by the respondent, is

not admissible in evidence and, even otherwise, the memo of disclosure EXPW-M/1 does not bear any reference with regard to the admission of guilt by the respondent. Thus, both these witnesses have made improvements in their statements before the Court on material aspects of the case which amounts to a contradiction.

14 In the face of aforesaid contradictions, it would be hazardous to place reliance upon the uncorroborated testimony of these two witnesses who happen to be the police officials. There is yet another contradiction between the statements of the two witnesses. According to PW Maqdoom Shah, the respondent/accused had disclosed that he had concealed the stones near roadside underneath the bushes, whereas PW Mohd Maqboool has stated that the respondent/accused disclosed that he had hidden the stone near the place of occurrence. It is pertinent to mention here that as per evidence on record, the place of occurrence is not adjacent to the road, but is in between the road and the Nallah. We are conscious of the legal position that any statement made in terms of Section 27 of the Evidence Act cannot be discarded only on the ground that it was made by the police officials, but before placing reliance upon the statements of police witnesses relating to disclosure statement of an accused, the Court has to ensure the credibility of the evidence because the provision is vulnerable to abuse. In the instant case, as already stated, the statements of two police officials, who have been cited as witnesses to the disclosure memo EXPW-M/1 are contradictory and the same are full of exaggerations, as such, the same cannot be relied upon.

15 That takes us to the recovery memo EXPW-TR. As already stated, PWs Rakesh Kumar and Tilak Raj are witnesses to the recovery memo. PW Rakesh Kumar has stated that two stones were seized in his presence. He has nowhere stated that these two stones were recovered on the basis of identification and demarcation made by the respondent/accused. The other witness to the seizure memo PW Taj Ram has stated that, upon returning from 4th day death ceremony of deceased Raj Ram, he saw a police vehicle on the road side in which the respondent/accused was seated. He further stated that the respondent/accused narrated that he had committed the murder of deceased, where-after, he demarcated and identified the stones with which he had committed murder of the deceased. In his cross-examination, he stated that two stones were found at the place where the dead body of the deceased was lying and clarified that the recovered stones were lying underneath the dead body of the deceased.

16 From the statement of PW Tej Ram, it comes to fore that the place of recovery of the stones (weapon of offence) is the place where the dead body of the deceased was lying. It has come in the evidence on record that the dead body of the deceased was recovered downhill near the Nallah, whereas as per the memo of recovery EXPW-TR, the stones were recovered from a place in between road and Nallah. Thus, there is contradiction in the evidence on record as regards the place of recovery of weapon of offence (stones). This has been noted by the trial Court in the impugned judgment while appreciating the evidence on record. Once the place of recovery of

weapon of offence pursuant to the disclosure made by an accused becomes doubtful, it cannot be stated that the prosecution has been able to prove recovery of weapon of offence pursuant to the disclosure made by the accused. The whole evidence relating to disclosure and recovery of a fact pursuant thereto becomes unreliable. Therefore, the learned trial Court has rightly come to a conclusion that the circumstance relates to disclosure and recovery of weapon of offence has not been established by the prosecution in the instant case. In order to prove the circumstance relating to death of the deceased, the prosecution has relied upon the post-mortem report EXPW-M. As per the said document, death of the deceased has taken place as a result of injuries to his head which led to injuries to brain substance and brain hemorrhage. Therefore, the prosecution has clearly succeeded in proving that the death of deceased is homicidal in nature and the same is neither suicidal, nor natural.

17 The next circumstance, upon which the prosecutions has rested its case, is that the respondent/accused was found loitering near the place of occurrence at the relevant time. This circumstance by itself does not connect the respondent/accused with the alleged crime. Even otherwise, the said circumstance has not been proved from the evidence on record. In order to prove this circumstance, the prosecution has relied upon the statements of PWs Puran Chand and Rattan Lal. PW Puran Chand has stated that the respondent had gone to Kalakote and he came back in a vehicle at 4.00 pm, where-after, he got down in front of his shop. He further stated that the respondent/accused was drunk and was hurling abuses upon the

people including the deceased. PW Rattan Lal has stated that around the date of occurrence, the deceased got down from a vehicle at Bazighar Mohalla. He further stated that the respondent came in another vehicle and gown down at the same place. On the next day, he heard that the deceased had died and his dead body was lying in a Nallah.

18 From the statements of aforesaid witnesses, it is not established that the respondent was present at the place of occurrence when the death of the deceased took place. What is established from the statements of these two witnesses is that the respondent/accused had got down from the vehicle at the same place where the deceased had got down from another vehicle while coming from Kalakote.The evidence on record shows that the respondent/accused and the deceased did not board the same vehicle, but travelled in two different vehicles. Therefore, merely because the deceased and the respondent/accused got down from their respective vehicles at the same place does not prove anything incriminating against the respondents/accused.

19 The fourth and final circumstance, that has been relied upon by the prosecution, is that the hair strands found in the nails of the deceased were similar to the sample of hair strands taken from the respondent/accused, and that the blood stains found on the seized clothes of the respondent matched with the sample of blood of the deceased. During the course of investigation, hair strands were recovered from the nails of the deceased and were seized vide memo EXTP-33/4. A sample of hair of the accused was also taken and

seized vide memo EXPW-M/2. Both these samples were sent to FSL for chemical examination. Similarly, the clothes of the accused, bearing blood stains, were seized vide seizure memo EXTP-33/5, and the blood sample of the deceased was also seized. These samples were also sent o FSL for chemical examination. However, two reports submitted by the Scientific Assistant, Serology, FSL, Srinagar, although on record of the trial Court file, have not been proved, because authors of these report have not been examined as witnesses. In the absence of proof of these reports by the concerned In-charge Scientific Officer Biology/Serology, the same cannot be relied upon. Thus, this circumstance has also not been established by the prosecution.

20 From the foregoing discussion, it is clear that the prosecution, in the present case, has been unable to connect the respondent/accused with the death of the deceased. In fact, there is no evidence on record to even remotely connect the respondent with the alleged crime. Merely because, from the evidence on record, it is established that there was previous enmity between the deceased and the respondent/accused and that the death of the deceased was homicidal in nature, does not prove the charge against the respondent. We are of the view that the learned trial Court has meticulously examined and analyzed the evidence on record and has rightly come to the conclusion that the charge against the respondent/accused is not established. Thus, we do not find any ground to interfere with the impugned judgment of acquittal recorded by the trial Court.

21 For the foregoing reasons, there is no merit in the appeal and the same is, accordingly, dismissed. The trial court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

(Sanjeev Kumar)
Judge

Jammu
18.10.2024
"Sanjeev

Whether the order is speaking: ***Yes***
Whether the order is reportable: ***Yes***

Sanjeev Kumar
2024.10.22 11:08
I attest to the accuracy and
integrity of this document