HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 53/2011

Reserved on: 15.10.2026
Pronounced on: 29.10.2026
Uploaded on: 29.10.2026
Operative part or full judgment - Full

State of Jammu & Kashmir

…Appellant(s)

Through: Mr. Raman Sharma, AAG with
Ms. Shaliqa Sheikh, Adv &
Mr. Kartikay Sharma, Adv.

Vs.

1. **Shakeel Ahmad @ Khateeb Ansari (Dead)**
   S/O Zulfikar Ali Bhat
   R/O Bhain Tehsil Chenani
2. Musthaq Ahmed @ Bittu
   S/O Sher Mohammad
   R/O Krawa
   Teshil Ramnagar
3. Mohammad Hussain,
   S/O Gh. Qadir
   R/O Mong
   Tehsil Ramanagar
4. Gul Mohammad
   S/O Alim Din
   R/O Punara
5. Mohammad Abass (**512 CrPC)**
   S/O Abdullah, R/O Mong
   Tehsil Ramanagar
6. Mohammad Abass **(Dead)**
   S/O Gh. Qadir Wani
   R/O Punara
   Tehsil Ramnagar
7. Irfan S/O Khursheed **(512 CrPC)**
   R/O Bast, at present Latti,
   Tehsil Chenani.

…Respondent(s)

Through: Mr. M A Bhat, Advocate with
Mr. Tauqir Mustafa Khan, Adv.

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE M. A.CHOWDHARY, JUDGE

JUDGMENT

PER M A CHOWDHARY-J

1. Through the medium of this Criminal Acquittal Appeal, the appellant-State (now UT) of Jammu & Kashmir challenged the judgment dated **30.10.2010** passed in Sessions case No.15/2001/2005, titled ***'State v. Shakeel Ahmed @ Khateeb Ansari & Ors'***, whereby, the respondent nos.2 to 4 namely Mushtaq Ahmed, Mohammad Hussain and Gul Mohammad respectively, were acquitted of all the charges framed against them in the case arising out of FIR No. 4/1999, for the commission of offences, punishable U/Ss 364, 302, 124-A RPC and 3/25 Arms Act registered at P/S Basantgarh, extending them the benefit of doubt.

2. The impugned judgment has been assailed on the ground that the same is misconceived against the law and facts of the case; that there was sufficient material on record to convict them for commission of crime; that they had committed heinous crimes and deserve no leniency/concession. It was prayed that the impugned judgment be set-aside and the respondent nos.2 to 4, be convicted and sentenced to exemplary punishment.

3. Briefly stated the facts of the case are that on 18.04.1999, Ct. Mohd Shafi, In charge local Police Picket, based on reliable source, transmitted information to P/S Basantgarh that in the intervening night of 17th and 18th of April 1999, accused Shakeel Ahmed @ Khateeb Ansari, Mushtaq Ahmed, Gul Mohammad, Mohammad Hussain, Mohammad Abass accompanied by other 5/6 unknown terrorists armed with automatic weapons entered into the residential house of SPO Mohammad Farooq S/O Abdul Gani R/O Morha Gond, Tehsil Ramnagar and kidnapped him at gun-point, with intention to kill him; that he was taken to the bank of river Ujh, where he was killed and his dead body was lying on spot.

4. Based on this information, a case was registered vide FIR No. 4/1999 at P/S Basantgarh for the commission of offences punishable under Sections 302/364/124-A RPC and 3/25 Arms Act and investigation was commenced. After investigation of the case, the police concluded that the deceased SPO Farooq, was abducted at gun-point from his house with an intention to kill him by Shakeel Ahmed @ Khateeb Ansari R/O Bhain Chenani; Mushtaq Ahmed @ Bittu R/O Krawa, Mohammad Hussain R/O Mong, Tehsil Ramnagar; Gul Mohammad R/O Punara, Mohammad Abass S/O Abdullah R/O Mong, Mohd Abass S/O Ghulam Qadir

Wani R/O Punara and Irfan R/O Basht, at present Latti, Tehsil Chenani and chargesheet was laid before the court of law for the commission of aforementioned offences, in absence of the accused, who had been absconding.

5. Mr. Raman Sharma, learned AAG, appearing for the appellant, submits that the prosecution had succeeded to lead sufficient and credible evidence, so as to connect the respondents with the commission of the charge; that the respondents had committed heinous offences of kidnapping a Special Police Officer, with an intention to kill him from his house and was slaughtered at bank of River Ujh, wherefrom his dead body was recovered. The prosecution had examined eye-witnesses as well as led circumstantial evidence, which were sufficient in the ordinary course of law to connect the respondents with the commission of the offences and it was foolproof case to record their conviction. He further argued that the Trial Court had misdirected itself, not to appreciate the evidence in proper perspective and recorded acquittal of the respondents on flimsy ground and prayed that appeal be allowed and the respondents be convicted and sentenced to exemplary punishment.

6. Learned counsel for the respondents nos. 2 to 4, ex adverso, argued that the seriousness of the allegations is beyond dispute yet the gravity of an accusation

cannot take the place of legally admissible and reliable evidence establishing the guilt of the respondents-accused beyond reasonable doubt; that the prosecution was required to establish through reliable evidence, the occurrence of the alleged offences and the involvement of each accused in the commission thereof; that mere registration of an FIR and the allegations contained therein could not, by themselves, constitute proof of the guilt of the respondents-accused; that a general assertion that the evidence has not been appreciated correctly is not, by itself, sufficient to warrant reversal of an acquittal; that the appellant must demonstrate, with reference to the evidence on record and the findings recorded by the trial Court, the particular material which has been overlooked, misread or incorrectly assessed and the manner in which such error has affected the ultimate conclusion; that the appeal cannot be allowed merely on the basis of the grounds couched in general terms, without demonstrating a material error in the impugned judgment.

7. Further, it is argued that the prosecution case rests solely on alleged eyewitness identification, but the identity of the accused at the place of occurrence has not been proved beyond reasonable doubt; that the impugned judgment is passed after proper and meticulous appreciation of the entire prosecution

evidence; that the prosecution evidence regarding FIR itself creates the defence rather than the prosecution; that the medical and forensic evidence proves the homicidal death, but does not establish the identity of the perpetrators; that the prosecution thus failed to establish the most fundamental link in the chain – presence and identity of the respondents at the place of occurrence; that the contradictions are not minor discrepancies attributable to lapse of memory; that the prosecution cannot seek reversal of the acquittal merely by pointing to the seriousness of the offence or by relying upon the general allegation that the deceased was killed by militants; that the gravity of the offence cannot substitute proof of the identity and participation of the accused. Lastly, it is prayed that the criminal acquittal appeal be dismissed.

8. Heard learned counsel for the parties and perused the material available on record.

9. Accused Shakeel Ahmed @ Khateeb Ansari and Mohammad Abass S/O Ghulam Qadir Wani expired and two of the accused Mohd. Abass S/O Abdullah and Irfan were proceeded against in terms of Section 512 of CrPC declaring them as absconders. As a result, the Trial Court vide order dated 29.06.2005 chargesheeted respondent nos. 2 to 4 Mushtaq Ahmed @ Bittu, Mohd Hussain and Gul Mohammad, for the commission of

offences punishable U/Ss 302/148/149/124-A/458/364/114 RPC and 7/27 Arms Act, with the accusation that in the intervening night of 17/18th of April 1999, all of them, with common intention in association with other accused, armed with automatic weapons, entered into the residential house of SPO Mohd Farooq at Lodhra Gund Tehsil Ramnagar and kidnapped him with an intention to kill him; that he was taken to the bank of river Ujh, where he was slaughtered by accused Mohd. Abass with 'Khokri' at the instance of accused Shakeel Ahmed.

10. The prosecution, in order to prove its case to bring home the charge against the accused examined Mohd. Sharif, Shamshad Begum, Javed Iqbal, Parveen Begum, Mohammad Fareed, Suram Chand, Mohammad Latief, Nasreen Begum, Rafiq Ahmed, Mohammad Shafi, Shahnaz, Ghulam Nabi, H C Bhagat, I M Malik and Dr. Zakir Hussain as its witnesses.

11. The prosecution case was mainly based upon direct evidence, as many of the witnesses had been cited as eye witnesses to the occurrence, besides, some official witnesses associated with the investigation of the case like Patwari, Naib Tehsildar, Doctors and Investigating Officers, PW-Mohammad Sharief, Shamshad Begum, Javed Iqbal, Parveen Akhtar, Mohd. Fareed, Mohd

Latief, Nasreen Begum and Shahnaz Begum have been cited as eye witnesses, as per the prosecution case.

12. PW-Mohd Sharief is stated to be paternal uncle of the deceased SPO Mohd Farooq and that residing at a distance of one kilometer from the place of occurrence deposed that he was informed about the occurrence by PW Mohd Latief and Mohd Fareed, and reached on spot when the occurrence had already taken place, therefore, he cannot be said to have seen the occurrence, involving the accused in the commission of crime, charged against them. PW-Shamshad Begum, as per the prosecution case, is the star witness, stated to be present at the place of occurrence, being wife of deceased Mohd Farooq, deposed that in the darkness of night, two persons, one of whom was identified as Mohd. Hussain entered into their room; that the militants were wearing masks on their faces and they were numbered 15/20. She, however, resiled from her earlier statement made to the police, during investigation and was declared hostile by the prosecution. According to her, occurrence had been witnessed by Shahnaz Begum, Mohd Latief and Parveen Begum only.

13. PW-Javed Iqbal is the real brother of the deceased and was stated to be present, on spot, along with his wife, at the time of occurrence. He deposed that he was pushed

and confined inside a room by militants. He, however, managed to escape from the room through a window and chased the accused, who were not wearing masks on their faces. He, however, admitted that there was no electric light at the time of occurrence. PW-Nasreen Begum, wife of PW-Javed Iqbal deposed that accused were chased by Latief, Fareed and Shamshad Begum. She also resiled from her earlier statement made to the police, during investigation and, as such, was declared hostile; on her cross examination by the prosecution, she deposed that at the time of occurrence, she along with her husband PW-Javed Iqbal was at their residence situated at Village Rai Chak, which was at a distance of about 10 to 15 Kms, from the place of occurrence.

14. PW-Parveen Begum, sister of the deceased stated that she, along with her husband, had gone to her parental house on the day of occurrence and at mid-night, she heard a knock at the door of the room of her brother Mohd Farooq who opened the door and militants entered into his room, took him out of the wooden box; that besides her, the occurrence had been witnessed by her husband and PW-Shamshad only; that it was dark night and all the militants were wearing masks on their faces. The accused militants were chased by her husband and her uncle, PW-Mohd Farooq, husband of PW-Parveen Begum. She saw two militants were

standing in the lawn of the house, but he could not identify them; he has not supported the prosecution story and has not stated anything incriminating the accused. PW-Mohd Latief stated that accused Mushtaq and Mohd Hussain knocked the door of room of Shamshad Begum, and Mohd Farooq was brought out of the box by them, while the other accused were standing in the Verandah of the house. The deceased was subjected to physical torture and was taken away, with them. He deposed that none of the accused was wearing masks; he denied the correctness of his statement, recorded by the police in which he had named accused as Mohd. Hussain, Mushtaq Ahmed, Liaqat Ali, Riaz Ahmed, Shakeel Ahmed, Akhtar Hussain, Mohd Irfan and Mohd Abass were standing in the Verandah and he also claimed to have chased the accused persons.

15. PW-Shanaz Begum, another sister of the deceased, also reached spot after hearing the noise. She resiled from her earlier statement recorded by the police, in which, she had named Mohd Abass, Liaqat, Gul Mohd, to have entered into the room of Mohd Farooq and that he (witness) was allegedly confined inside the room by the militants.

16. Besides the above eye witnesses examined by the prosecution, another set of prosecution witnesses

comprised of Suram Chand Naib Tehsildar, Mohd Rafiq, H C Bhagat, I M Malik and Dr. Zakir Hussain. PW-Rafiq prepared the copy of khasra Girdwari of the place of occurrence, PW-Suram Chand, Naib Tehsildar resealed and dispatched the sealed items to FSL for chemical analysis, PW- H C Bhagat and I M Malik have chemically examined the seized articles and have given their opinion, Dr. Zakir Hussain had conducted post-mortem on the dead body of the deceased. PW-Mohd Shafi, Incharge STF Picket Punara, had stated to have allowed deceased Mohd Farooq to visit his home on the relevant day and on the very next day, he heard that the deceased was killed by militants. He accordingly, informed SHO P/S Basantgarh through wireless message, about the death of the deceased by militant group of Shakeel Ansari.

17. PW-Inspector Gh. Nabi Mir had conducted the investigation of the case, recorded the statement of the witnesses, prepared the seizure memos and completed the investigation. He deposed that he had received the information from PW-Mohd Shafi regarding the occurrence, through wireless at about 7.30 on 18.04.1999. Site plan was prepared by him on the identification of PW-Shamshad Bano and other relatives of the deceased; that houses of Zahoor Ahmed and Qamar Din are situated near the place of occurrence

but none of them was cited as prosecution witnesses; that the militants were not wearing any masks, electric supply and there was no electric light at the time of the occurrence, as it generally remained disrupted in the area.

18. On a keen perusal of the statements of those prosecution witnesses, who have been cited as eye witnesses, it is apparent that there are material contradictions not only in their testimonies during the investigation and later during trial but also inter se witnesses with regard to the identity of the assailants/accused, their number, wearing or not wearing of masks at the time of occurrence, particularly, when there was no light about the identification of the any of the witnesses. The testimonies of the eye witnesses to the occurrence must be natural, reliable, unimpeachable, trustworthy and inspiring confidence in them, as basic principle of criminal jurisprudence is that in order to bring home the guilt of the accused, the prosecution is under an obligation to prove the charges against the accused beyond any shadow of doubt. However, in a case based on circumstantial evidence of commission of crime, the chain of circumstances should be so compatible with the commission of offence that it should irresistibly point out the guilt of the accused only. We are aware of the legal position as is an

established principle of law, that the testimony of interested/related witnesses cannot be discarded out-rightly, however, testimonies are required to be closely and critically analyzed with their earlier statements, other surrounding circumstances while appreciating their evidentiary value.

19. PW-Mohd Sharief, though has been styled as eye witness in the challan stated that he was informed about the occurrence by PW-Mohd Latief and Mohd Fareed and that he had reached the place of occurrence when the militants had left the place of occurrence. He has, however, stated that he saw the accused fleeing from the place of occurrence though it was darkness of night and there being no arrangement of light. The version of this witness is highly improbable in the given facts and circumstances of the case and the possibility of witnessing the occurrence by him is to be thus ruled out. His presence on spot has also not been confirmed by PWs- Shamshad Begum and Shahnaz Bano, as such, his deposition cannot be stated to be reliable and worth of any credence.

20. PW-Shamshad Begum, wife of deceased, who was stated to be present at the place of occurrence along with deceased in their room, wherefrom, he was alleged to have been abducted while materially contradicting with the prosecution case denying taking place of occurrence

in the manner she has disclosed to the IO on the very next day of occurrence shows the involvement of other accused persons in the commission of crime. Though she had named Shakeel Ahmed, Mushtaq Ahmed, Mohd Hussain, Mohd Abass, Irfan and Riaz Ahmad, present in the Verandah of her house, therefore, improvement in her statement during trial from that made at the time of investigation makes her testimony unreliable and untrustworthy of any credence. Even the prosecution itself has not relied upon her version as she was declared hostile and subjected to cross examination, wherein, she had totally denied and contradicted materially in the mode and manner of the incident as alleged in the prosecution case; that her husband was taken out of the room by the militants and killed in the lawn of the house, whereas other witnesses stated and rightly so that he was killed somewhere on the bank of river Ujh, wherefrom his dead body was recovered which was situated at a considerable distance from the house of the deceased; that about recognizing/identifying the accused persons on spot again appears to be highly improbable and unbelievable on her part when she states that it was pitch dark night and militants were wearing masks on their faces contrary to her statement made in the court where she stated to the police during investigation that accused Gul Mohd, Akhtar Hussain,

Liaqat Ali and Mohd Abass had forcibly entered into her room while enquiring about her husband. In view of the aforesaid infirmities and material contradictions in her statement, the testimony of this claimed star prosecution witness also cannot be relied upon.

21. PW-Javed Iqbal and his wife PW-Nasreen Begum have also been cited as eyewitnesses but their presence on spot had been completely ruled out by all other witnesses. PW-Nasreen Begum had admitted in her cross examination that she along with her husband PW-Javed Iqbal was at her house situated at Village Rai Chak at a distance of about 15 Kms from the place of occurrence. PW-Shamshad Begum, Parveen Begum and Shahnaz Bano had also admitted in her statement that Javed Iqbal and his wife were not present, at the place of occurrence at the relevant time. PW-Javed Iqbal and his wife PW-Nasreen Bano were thus not present at the place of occurrence, and their version again is improbable when they stated they were pushed and confined inside the room from where PW-Javed Iqbal managed to get out of the room through a window to chase the accused persons upto the watermill (Gharat), as the perusal of the site plan does not show existence of any window in either of the rooms of the house. The IO PW-Gh. Nabi Mir had not shown any window or ventilator in any of the rooms in the site plan prepared

during investigation, as such, this is also a serious infirmity in view of law laid down by the Apex Court in **AIR 2003 SC 2098**, wherein it had been held that the preparation of a site plan is not a mere formality but is an essential feature in order to reach to a firm conclusion in order to ascertain whether the offence has been committed by accused or not. In this backdrop, the statements of PWs-Javed Iqbal and Nasreen Begum are not found credible to be accepted as there is a great doubt about their very presence on spot, at the relevant time.

22. PW-Parveen Begum and PW-Mohd Fareed are residence of Village Lodara and claimed to have visited the house of the deceased Mohd Farooq, therefore, their presence on spot is highly suspicious and it appears that they had been implanted as prosecution witnesses, being close relatives of the deceased.

23. PW-Mohd Latief claimed to have reached the place of occurrence on hearing noise; that the deceased was brought out of the wooden box by the accused and at that time, he was standing in the Verandah, that the militants were wearing army uniforms and that their faces were not covered and he named two of them, however, police has wrongly recorded, of its own, in his statement U/S 161 CrPC that he had seen Mohd Hussain, Mushtaq Ahmed, Liaqat Ali, Riaz Ahmed,

Shakeel Ahmed, Akhtar Hussain, Mohd Irfan and Mohd Abass standing in the Verandah, when he reached on spot. He in his cross examination however denied his earlier statement recorded by police to the extent that Gul Mohd and Mohd Hussain were knocking the door of the deceased, as such, materially denying his earlier statement.

24. PW-Shanaz Begum, real sister of the deceased, also stated that she had seen 5/6 militants standing inside the Verandah of their house when she came out of the room; that all the accused were wearing masks on their faces except accused Mohd Hussain and Mushtaq Ahmed and it was pitch dark night when the accused entered inside the room of Mohd Farooq; she was also pushed inside the room by the accused persons and later on rescued by PW Shamshad Begum. The version of this witness is materially contrary to the prosecution version, as such, the same is devoid of any reliance.

25. PW-Javed Iqbal had stated that the place of occurrence was surrounded by residential houses of Nizam Din, Mohd Hussain, Zahoor Ahmed, Qamar Din, Angrez Singh, Badri Nath and Thakur Dass and IO had also admitted in his statement that houses of Zahoor Ahmed and Qamar Din were situated near the house of the deceased Mohd Farooq; that no reason has been assigned for not citing the immediate neighbours as

prosecution witnesses in the charge sheet nor they have been associated with the investigation of the case, though it was obligatory on the IO to examine the independent witnesses but they were deliberately dropped and only close relatives of the deceased had been cited/examined in support of the prosecution case which gives rise to the reasonable doubt about the occurrence and non examination of the independent witnesses causes a serious blow to the prosecution case and the veracity of its story.

26. Having regard to the evidence brought on record before the Trial Court by the prosecution and as discussed hereinabove, it appear that the statements of the eye witnesses suffer from material contradictions and inherent infirmities as all the eye witnesses, while making material contradictions in their statements recorded by the police, have improved on their statements to be tailored with a different version of facts while making depositions during trial of the case which casts a serious doubt upon their credibility rendering their depositions totally unsafe to accept as they do not inspire any confidence.

27. It appears that in those days, a militant group led by Khateeb Ansari was active in Basantgarh area when the occurrence had taken place; the information had been received at the Police Station Basantgarh through

Incharge local STF Picket, that the deceased SPO was kidnapped and killed by that group; that during investigation, no accused was apprehended and the charge sheet was produced in their absence. Later, on apprehension of respondents no. 2 to 4 Mohd Hussain, Mushtaq Ahmed and Gul Mohd, three of the accused the trial against them commenced.

28. It was highly improbable to identify a person during night when the arrangement of any light especially when the accused persons were stated to have hidden their faces by face masks. The two of the witnesses Mohd Latief and Parveen Begum, whose, presence at the place of occurrence as already pointed was doubtful had stated that they had identified the accused in the light of the torch and earthen lamp, respectively but none of these equipments were seized during investigation, so as to substantiate that fact.

29. The prosecution had not succeeded to lead credible and inspiring evidence so as to record conviction of the accused, who were charge sheeted, as whole of the prosecution case was based upon shaky evidence, suffering from inherent infirmities and material contradictions. The depositions of the prosecution witnesses, particularly, eye witnesses had not appeared to be natural and trustworthy, so as to be relied upon to record conviction. The Trial Court has, thus, rightly held

that the prosecution had failed to bring home any of the charge against any of the accused namely, Mushtaq Ahmed, Mohd Hussain and Gul Mohd, who were acquitted and ordered to be released.

30. An accused is under a legal presumption to be innocent till held guilty. An acquittal reinforces the presumption of innocence. The Appellate Court may interfere only, if the view taken by the Trial Court is perverse or impossible. There is a limited scope of interference in an appeal against acquittal by this court; that an appellate court may interfere only if the view taken by the trial court is perverse or impossible as the Hon'ble Supreme Court in 'Chandrappa V. State of Karnataka', reported as **(2007) 4 SCC 415**, 'Murlidhar @ Gidda V. State of Karnataka', reported as **(2014) 5 SCC 730** and 'Sampat Babso Kale v. State of Maharahstra' reported as **(2019) 4 SCC 739** held that where two reasonable views are available, the one favouring the accused must prevail and the appellate court cannot substitute its own view because another view is possible. Though the respondents had been acquitted of the serious offences, however, the acquittal cannot be overturned in view of the seriousness of the offences, merely, relying upon the general allegations that the deceased was killed by them. Gravity of the offences cannot substitute poof of

identity and participation of the accused, as suspicion, however, grave cannot take place of legal proof.

31. The Trial Court vide impugned judgment had recorded acquittal of the respondents by a reasoned judgment, which in our considered opinion, does not call for any interference by this court, while exercising appellate jurisdiction. The prosecution case based on shaky evidence suffering from inherent infirmities, material contradictions and failing to establish the guilt of the accused beyond reasonable doubt, the Trial Court has rightly concluded the case into an acquittal.

32. Viewed thus, the appeal, in hand, is found to be bereft of any merit and substance, and is hereby **dismissed**.

33. Trial Court record be sent down forthwith, along with copy of this judgment, for information and record.

34. CRAA No. 53/2011 is, accordingly, disposed of.

(M.A.CHOWDHARY)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
29.10.2026
Raj kumar

Whether the order is reportable: *Yes*

Raj Kumar
2026.10.29 16:23
I attest to the accuracy and
integrity of this document