

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

Pronounced on: 07.08.2024

**Case No. : CRA No. 22/2018
c/w
CONF No. 6/2018**

Abdul Rashid S/o Sain Mohd.
R/o Seora Tehsil and District Jammu
Age 61 years.

...Appellant..

Through: - Mr. A.P.Singh, Advocate with
Mr. Nikhil Verma, Advocate.

V/s

State of J&K through
Advocate General J&K State

... Respondent..

Through: - Mr. Dewakar Sharma, Dy.A.G.
Ms. Chetna Manhas, Assisting
counsel vice Mr. Amit Gupta, AAG.

**CORAM: HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE**

JUDGMENT

PER PUNEET GUPTA-J:

1. The appellant has been convicted by the Court of learned Principal Sessions Judge, Jammu for offences under Section 302 RPC and 307 RPC vide judgment dated 27.03.2018. The court vide order dated 27.03.2018 passed sentence of imprisonment for life and fine of Rs.20,000/- and in case of default in payment of fine the appellant was to undergo further imprisonment for a period of three months for offence under Section 302 RPC. The appellant was also sentenced to undergo imprisonment for a period of ten years and a fine of Rs.5000/- and in default in payment of fine he is to undergo further imprisonment for a term of one month for offence under

Section 307 RPC. Both the substantive sentences of the imprisonment are to run concurrently.

2. The appellant has filed the appeal against the judgment and order for setting aside the same on the ground that the same is not as per facts and law. The court has not taken care of the defence pleaded by him while passing the impugned judgment. As the appellant has been convicted and sentenced to life imprisonment the reference has been made by the learned trial court in terms of Section 374 of the Code of Criminal Procedure. The appellant-convict is referred to as 'accused' in the judgment for the purposes of discussion.
3. The case set up against the accused is that on a statement of PW-Sain Mohd., father of the accused, marked as MarkA-Mark A1, recorded by the Incharge Police Station, Satwari on 09.02.1993, FIR No. 22/1993 was registered with Police Station, Satwari for offence under Sections 302/307 RPC read with Section 3/27 Indian Arms Act. It was stated by PW-Sain Mohd. that he is residing at Seora with his family. On 09.02.1993 at about 2 AM when he was in verandah for urination, a fire from the gun came upon him and one splinter hit on the left side of his head. He found his son Abdul Rashid on the roof of his house and armed with double barrel gun and also having cartridges belt around his neck. Two bulbs were lighting and it was also moon light night. He rushed towards his room due to fear. The son with intention to kill him fired again upon him which hit the left side of his shoulder. He went inside the room and closed the door. The accused broke open the door of the room and again fired four shots out of which two fire shots hit his daughter-in-law Arshad Bibi W/o Munir Ahmed and other two shots hit the wall. The child aged one year of Arshad Bibi also received splinters on the left foot and was in the lap of her mother at that time. His son Munir aged about 25 years also came there who was also fired upon by the accused causing him serious injuries.

Thereafter the accused went towards the other side of the compound and Mst. Fatima Bibi who came out of the room on hearing the noise was also fired upon by the accused as a result she died. His brother-in-law who was also sleeping in the compound was also injured by the gun fire caused by the accused. Mohd. Sharif saved his life by taking shelter in the wheat field. There were other three four persons with the accused but he does not know them nor can recognize them. The accused is from his second wife and bore enmity for a long time. The investigation took place on the registration of the FIR and after investigation the offences under Section 302/307 were established against the accused. The offence under Arms Act was not established against the accused.

4. The charges were framed against the accused under Sections 302/307 RPC after the case was committed to the Sessions Court by the court of learned Chief Judicial Magistrate, Jammu. The accused denied the charges and claimed trial. The prosecution produced evidenced in support of its case. On closure of the prosecution evidence, the statement of accused under Section 342 Cr.P.C was recorded and the incriminating circumstances appearing in the prosecution evidence were stated to him. The accused denied the same. The accused did not produce any evidence in defence. The statements of prosecution witnesses are as under:-
5. PW-1 Sain Mohd., complainant, partially sticks to the statement recorded before the police which resulted into registration of FIR against the accused. He has stated that on 09.02.1993 at about 2 AM he had received splinters on his head while he was urinating. He did not acknowledge that the fire was shot by the accused. The witness was declared hostile and on being examined by the prosecution denies that he had given the statement marked as Mark A-Mark A1 before the police or that he had seen his son having fired upon him or that the police had taken him to hospital in an

injured condition. The witness cannot say who had shot the other members of his family of which the mention is made in the initial statement purportedly recorded by him before the police. The witness has also denied having made statement under Section 161 Cr.P.C marked as B to B1. As per the witness, accused is from his first wife whereas son Munir is from his second wife. The witness goes to the extent of stating that his relations with the accused are cordial. He is witness to the seizure memo of his blood stained shirt which is exhibited as EXPW-SN. The witness was not cross-examined by the defence.

6. PW-2 Munir Ahmed has stated that on 09.02.1993 he was sleeping in his compound. It was moon lit night. At about 2 AM the bullet hit his left hand and another one hit his hip and the third bullet hit his other hip and the splinter of fourth bullet hit his face. He had seen the accused firing the shots. He pleaded with the accused not to kill him. The witness has further deposed that the accused went towards the other side of the house and fired a bullet upon his phuphi (paternal aunt) as a resulted she died. The accused broke open the door of his house and was having axe with him and the accused also shot his wife Arshad Bibi, who was having a child in her lap at that time. The child also received the bullet on the foot. The accused also went on the roof of the house of his maternal uncle and fired from there. The police came on spot after the incident was brought to the knowledge of the police and the police brought Mst. Fatima to hospital. He was unconscious while he was hospitalized. The witness is also witness to the seizure memo of his pant and quilt (riazi) which is exhibited as EXPW-MA. The accused was on talking terms with accused and he had no idea that the accused will fire upon them. On cross-examination, the witness has denied the suggestion that there is any dispute with regard to the land with the accused. The distance between his house and that of

accused is forty yards. He became unconscious after he received first bullet on his leg and as such could not say who was firing upon him. He re-gained consciousness after 11 days in the hospital. He had seen the accused when he had fired the first shot. He narrated the incident to the police on 11th February after he regained consciousness. The accused fired till morning hours and was informed of this fact by Dharmu, Qadir and Majid. The witness has further deposed that he remained admitted in the hospital for two months and his statement was not recorded after he came back to his house. He does not know who had informed Lambardar or Chairman as he was unconscious at that time.

7. PW-3 Arshad Bibi has also deposed of the occurrence having taken place on 09.02.1993 at about 2 AM. The witness came out of her room after hearing the noise of fire and saw the accused with a double barrel rifle and belt with cartridges on his back and was also having axe with him. She witnessed the accused firing upon her father-in-law PW-Sain Mohd. and the shots hitting the head and the shoulder of PW-Sain Mohd. The witness has further stated that the accused broke open the door of the room with an axe after her father-in-law and she came to the room. The accused fired in the room also which hit her and her child. Her husband was also fired upon by the accused who was sleeping in the compound and was hit on the fingers of his left hand. The accused then went to the roof of the house where her maternal father-in-law and mother-in-law are residing and the accused also fired upon her father-in-law the splinters of which hit on his back and when her maternal mother-in-law came outside the accused again fired upon her as a result she died on spot. The accused had fled from the spot. The accused is her step brother-in-law. In cross-examination, the witness has stated that she and her sons and brother were sleeping in the room and that her father-in-law was sleeping in other room and so were her

mother-in-law and younger son. Her husband is from first marriage whereas as Yaqoob Mohd. is from second marriage. Mohd. Yaqoob and mother-in-law did not come out on hearing the fire. She came out after she heard the noise of her father-in-law. The firing stopped as she came out of her room. Her husband and father-in-law did not receive injury in her presence. The father-in-law received bullet shot on his head and shoulder. Her husband had also become unconscious. The accused had broken the door with axe and thereafter fired from 18/20 feet with double barrel gun upon her and her child who was in her lap. She became unconscious after she got injured. She could hear the voice of accused but could not see him. She was informed by Mohd. Aslam and his wife that her paternal mother-in-law had expired. She had heard the voice of 50/60 shots after the accused went to the house of her maternal father-in-law. The injured had reached the hospital at 10 AM and by that time the police also came on spot. The police had seized the blood stained clothes on 11th. Her husband and father-in-law regained consciousness three days after the occurrence. She remained in the hospital for 15-16 days and her husband remained in the hospital for about one month. Her husband had received bullet injuries on his head, face and back. She cannot say how her paternal mother-in-law had died as she had not seen her in an injured condition. Mohd. Aslam and his wife were the only one from the adjoining houses who came on spot. The bulbs were lighting and it was moon lit night. She cannot say for how long the accused is on support of clutches or how the accused sustained leg injury. However, she cannot say if police had cause injury to the accused.

8. PW-Mohd. Sharief has also deposed that he was informed by his wife that someone is on the roof. He saw the accused standing on the roof when he woke up and the accused was armed with a rifle and having belt of cartridges. His wife died due to the fire shot by

the accused. A splinter had also hit his left leg. PWs-Sain, Munir, daughter-in-law and Arshad Bibi had also received bullet injuries. The accused fled from the spot in a vehicle. On cross-examination the witness has deposed that the distance between the house of the accused and his house is 150 yards. At the time of occurrence, there was electricity. The houses of Tara Chand, Girdhari Lal, Bihari and Sham Singh are adjoining to his house. He was sleeping in the compound whereas the wife was sleeping inside the room. His statement was recorded by the police.

9. PW-Mohd. Sakhi, Patwari, has prepared the site plan EXPW-MS.
10. PW-Santok Ram is Lambardar of village Sehora and has denied that any proceedings were conducted in his presence. The witness has denied the contents of various seizure memos though admitting his signatures on the memos when cross-examined by the prosecution after being declared hostile.
11. PW-Subash Chander is photographer from Crime Branch and has clicked the photographs exhibited as EXPW-SC1 to EXPW-SC23.
12. PW-N.D.Sharma, Executive Magistrate, Ist Class, resealed seven packets produced before him by Head Constable Kuldeep Singh and issued the certificate exhibited as EXPW-ND.
13. PW-Sardar Khan has stated that after hearing the noise he along with his party reached the village and recorded the statement of PW-Sain Mohd. at about 2 AM. The witness related part of the statement given by PW-Sain Mohd. when his statement was deferred. His statement was not thereafter recorded in the court. He had died before his statement could be again recorded.
14. PW-Dr. Anayat Ullah Sheikh has conducted the post-mortem of Fatima Bibi. His statement shall be referred to at appropriate stage of discussion.
15. PW-Rajinder Singh Jamwal is from FSL and has examined the 12 bore DBBL gun marked as F-84/94 along with other material for

examination. His statement shall also be referred to at appropriate stage.

16. PW-Dr. Suresh Bhagat has examined the injured persons.
17. The accused has not produced any evidence in defence.
18. Learned counsel appearing for the appellant-convict has argued that the statements of prosecution witnesses and particularly the eye witnesses whose statements have been recorded in the court do not inspire confidence and are inconsistent. The eye witnesses having witnessed the occurrence is not proved cogently by the prosecution though the learned trial court has relied upon the statements while convicting the accused. The seizures effected during the course of investigation are not reliable and particularly the seizure of the gun which is allegedly used in the crime as the same has been seized in the absence of the accused. The investigating officer has not been examined which is fatal for the prosecution is also the argument raised on behalf of the accused.
19. Learned counsel for the respondent has argued that the trial court has examined the prosecution evidence minutely and after being satisfied that the accused has committed the offences for which he has been prosecuted held the accused guilty and convicted him for the offences. The eye witnesses have supported the prosecution case to prove the complicity of the accused in the commission of offence. The medical as well as the forensic report also support the prosecution. The appeal is required to be dismissed having no merit in the same.
20. The occurrence of 09.02.1993 at 2 AM which resulted into the death of one person, namely, Fatima Bibi and injuries to other persons due to gunshots resulted into registration of the FIR with Police Station, Satwari and consequently the investigation in the case led to presentation of challan against the accused in the court of law. The prosecution has cited number of eye witnesses as is

revealed from the challan and most of those witnesses have been produced during trial.

- 21.** PW-Sain Mohd. is father of the accused and on his statement the investigation was set in motion after registration of case against the accused. The said witness has turned hostile while recording statement before the court. He has stated before the court that the statement attributed to him and marked as Mark A to A1 which pertains to identity of the accused and details of the occurrence is not given by him. The witness has, however, stated that on 09.02.1993 at 2 AM when he went for urinating bullet passed over his head and the splinters of the same had hit him. He had also stated that he fled to the room and bolted the door from inside. What is atleast borne out from the statement of the said witness is that he had received injury and had even hid himself in the room and had bolted the door of the room. How much the statement of this witness recorded in the court can be considered is required to be seen. It requires no reiteration that the statement of the hostile witness is not to be wiped out completely and can be taken into consideration to the extent it is relevant to the case. The part of the statement of such witness can be examined in spite of the witness being hostile in his part deposition before the court. The appellant did not opt to examine PW-Sain Mohd. and submits that the statement recorded of this witness is of no value to the prosecution yet the court is of the view that the court can consider that part of statement which is relevant in the facts and circumstances of the case. The reliance by the trial court on part statement of the witness for corroboration purposes cannot be faulted with by this court.
- 22.** The next important witness is PW-Munir Ahmed who is son of PW-Sain Mohd. and brother of accused. The witness has stated that the occurrence took place on 09.02.1993 at about 2 AM and the accused was perpetrator of the crime. The witness has specifically

mentioned that he saw the accused firing shots from his gun which hit him on his left hand, both the hips and the splinter of another bullet hit his face. He even pleaded with the accused to spare him during course of the occurrence. The accused had broken the door and even shot his wife-Arshad Bibi and a child who was in the lap of the mother. The accused also killed his phuphi is also recorded by him during the course of examination in the court. The witness also deposed during cross-examination that after he was hit by the first bullet he became unconscious and could not say as to who was firing upon him and further that he had regained consciousness in the hospital after eleven days and after that he had recorded his statement before the police. It is submitted on behalf of the accused that the very fact that the accused had mentioned in his statement that he had become unconscious after he received the first bullet and also deposed that he had regained consciousness after eleven days itself reveals that the said witness had not seen the accused causing any injury to the family members of PW-Sain Mohd. including deceased Mst. Fatima and, therefore, his statement cannot be believed that he had seen the accused causing gun injuries to the victim which resulted into the death of Fatima Bibi. It is pertinent to note herein that the said witness has been examined by the doctor on the day of occurrence itself and also discharged from the hospital on the next day. It is nowhere recorded in the medical certificate issued of the said witness that the witness was brought to the hospital in unconscious condition. Had it been so, the medical record of the said witness would have revealed the same. It is not uncommon that the witness while deposing before the court at times goes extra mile and deposes in the manner he should not have deposed ordinarily just in order to cement the case of the prosecution. Every exaggeration by the witness while recording the statement is not to be considered as fatal for the prosecution. Some

improvements and embellishments can occur in the statement of the witness during trial, may be with a mind just to boost his version. Does it mean that any diversion from the case set up by the prosecution is bound to discredit the witness? The court is of the view that it cannot. The accused cannot take any benefit of the plea of the witness Munir Ahmed having not seen the occurrence as argued by the counsel for the accused. The court is not to confine itself to a particular part of statement but the statement in the whole is required to be examined by the court while analysing the statement of a witness in the case. The court is not in agreement with the argument vigorously raised by the appellant that the aforesaid PW would not have seen the accused firing shot at Fatima Bibi causing injuries to which she succumbed on the spot. The court cannot overlook the fact that the witness is also a victim in the case. PW-Arshad Bibi is the wife of PW-Munir Ahmed, who too has deposed of the occurrence almost in the same terms as deposed by her husband Munir Ahmed. She has categorically stated that on hearing the noise of fire she came out of room and saw the accused having been armed with double barrel rifle in his hand and belt of cartridges and the accused having fired upon PW-Sain Mohd. who is her father-in-law and the said Sain Mohd. having been hit on his head and shoulder. The witness has also stated in tune with the statement of even hostile witness PW-Sain Mohd. who had deposed that after he received splinters on his head he rushed towards the room and bolted the room from inside. The accused was armed with an axe and this fact has also been corroborated by the statement of PW-Munir Ahmed. The accused broke the door and fired in the room causing injuries to the witness and her child stands further corroborated by the statement of PW-Munir Ahmed. She also states that her husband fell unconscious on the spot and so was she after she sustained bullet injury. So far as

the description regarding the accused having fired upon PW-Sain Mohd., PW-Munir Ahmed and PW-Arshad Bibi is concerned, the Court is of the view that the evidence produced by the prosecution in unmistakable terms proves the accused having injured all the above said persons and even the child of PW-Arshad Bibi. The statement to the extent of this witness stating of having fallen unconscious does not in any way support the plea of the accused that she could not be witness to the alleged injury having been caused by the accused from gun which resulted into the death of the said victim. The same reason as given by this court will apply to the part of statement of the witness qua her being unconscious as applied to the statement of PW-Munir Ahmed.

- 23.** PW-Mohd. Sharief is another important witness in the case who is also cited as an eye witness to the occurrence. This witness has seen the accused from his house and present on the roof with rifle and cartridges after he was informed by his wife that someone is present on the roof. The witness is the husband of deceased Fatima Bibi and has deposed that his wife died as the accused had fired upon her during the course of occurrence. The witness has also deposed that a splinter had hit his left leg. The witness is the other son of PW-Sain Mohd. The witness has further deposed of his father PW-Sain Mohd., PW-Munir Ahmed and PW-Arshad Bibi having sustained bullet injuries during the course of occurrence. In cross-examination, the witness has specifically maintained that there was electricity at the time of occurrence. There is no reason to doubt the statement of this witness also as his statement is in line with the statement of PW-Munir Ahmed and PW-Arshad Bibi. There is no reason to view with suspicion the statement of this witness who lost his wife as a result of gunfire more so when there is nothing to suggest that the witness bore enmity with the accused prior to the occurrence which would have prompted the witness to depose

against the accused. The witness will not normally depose against the one except the crime-doer more so when a very close one of the person deposing has died in the occurrence. It is pertinent to point out that this witness has deposed qua that part of occurrence which related to him and his deceased wife. The cumulative effect of the statements of aforesaid witnesses except PW-Sain Mohd. is that the version put by the witnesses is found to be cohesive, trustworthy and supporting one another. There is no major discrepancy in their statements which can discredit them.

24. Learned counsel for the appellant has strenuously argued that the gun purportedly seized by the police during investigation from the house of the accused in his absence has been re-sealed after one year of its seizure which casts doubt on the prosecution case. PW-N.D.Sharma is the witness who has re-sealed the articles brought before him by the police on 09.02.1994 that is after one year of the alleged occurrence. The re-sealing includes 12 bore gun which according to the prosecution has been used by the accused during the course of occurrence. Of course there is no explanation on record as to why it took one year for the investigating officer to send the articles seized during investigation to the Executive Magistrate for re-sealing. The investigating officer has died during the course of trial who could otherwise give explanation as to why it took one long year to send the seized articles for re-sealing. The inordinate delay in sending the gun for re-sealing affects the credibility of the seizure of the gun. The report from the FSL by PW-Rajinder Singh Jamwal, therefore, will not be germane for the prosecution though the report EXPW-RS speaks of wads and pellets seized belong to 12 bore cartridge case and fired cartridges were fired through gun.
25. The court is of the view that where the account of eye witnesses qua the occurrence is held to be trustworthy and unblemished, the

accused can still be held guilty for the offences in which he is facing trial. If the court finds credibility of the seizure of the gun and the report of the FSL as positive then it would be relevant piece of evidence qua the occurrence and can be taken into consideration by the court. The court has held in the present case that the recovery of gun becomes doubtful in view of its late sending for re-sealing. However, it does not and cannot wipe-out the other evidence that has come on record qua the accused. At the cost of repetition, the court does not find fault with the account of the eye witnesses examined in the case in material respects and to hold that they are witness to the occurrence and that it was the accused who had carried out the unholy act. Even if the gun purported to have been used in the occurrence is not proved in a given case or where the weapon of offence is itself not found it does not mean that the prosecution case is to be viewed with suspicion in all circumstances.

26. In '**Ram Singh Vs. The State of U.P**' (Criminal Appeal No. 206 of 2024 decided on 21.02.2024), the Hon'ble Supreme Court held that it is not that in every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and examined. When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case. The court further held that where the eye witness account does not inspire confidence in that case the non-examination of the ballistic expert may prove fatal for the prosecution case.
27. In '**State through the Inspector of Police Vs. Laly @ Manikandan & another Etc.**' (Criminal Appeal No. 1750-1751 of 2022 decided on 14.10.2022), the Hon'ble Supreme Court held that where the recovery of the weapon used is not established or proved

the same cannot be ground to acquit the accused when there is a direct evidence of the eye witnesses. The court further held that recovery of weapon used in the commission of the offence is not a sine qua non to convict the accused.

28. At this juncture, it is also profitable to take note of the medical evidence that has come on record.
29. The victim, Fatima Bibi, who lost her life during the course of occurrence itself, was taken to hospital and the post-mortem was conducted of the victim.
30. PW-Dr. Anayat Ullah Sheikh has conducted the post mortem examination of Fatima Bibi on 09.02.1993 and a certificate was issued by the said witness which is exhibited as EXPWAU. As per the statement of the doctor the deceased Fatima Bibi had (1) a lacerated punctured wound-fire arm entrance wound-in front of left side five inches above the knee, one inch in dia and 22 inches from ground. (2) Multiple pallet injuries dispersed over left lateral aspect of thigh and hip over an area of 15" x 20" were also found by the doctor. (3) Exit fire-arm wound 4 inch below and medial to entry 18" x 2". Under it there was laceration of femoral vessels and muscles. (4) Abrasion on right breast 15" in dia. In the opinion of the doctor, the cause of death was haemorrhage and shock due to femoral vessels injury as a result of smooth bored fire arm and the time since death was about 6 hours. In cross-examination, the witness has stated that none of the injuries were on the vital parts of the body like brain, heart, lungs etc. The range of the fire arm injury in this case was about 30 cm.
31. The medical examination of other injured victims has also taken place on 09.02.1993. PW-Dr. Suresh Bhagat who was posted as CMO in Government Medical College, Jammu has examined Mohd. Sharief, Munir Ahmed, Arshad Bibi, Master Baby and Sain Mohd. on 09.02.1993 and issued certificates which are duly

exhibited as EXPW-SB, EXPW-SB1, EXPW-SB2, EXPW-SB3 and EXPW-SB4. As per the statement of the doctor and the injuries recorded in the certificates given by him, all the victims including the child had injuries by fire arm. Mohd. Sharief had injuries on left knee joint, left side of chest and on the left leg, Munir Ahmed had injuries on left gluetal region and on the left hand index, middle and ring finger. Arshad Bibi W/o Munir Ahmed had injuries on the lateral side right thigh and right lower part of abdomen. The child son of Munir Ahmed had wound on the right ankle joint and Sain Mohd. had multiple lacerated punctured wounds on the left side of the chest and on the right side of forehead and skull. As per the witness, the fire arm was probably fired from a distance of 10 feet. The injuries mentioned in the certificates issued by the doctors qua the aforesaid victims are in tune with the injuries deposed by them during their examination in the court. It cannot be doubted that the victims had received injuries through fire arm during the course of occurrence. It is not that the injuries were self inflicted or had been caused by any other weapon other than the fire arm. Of course, the injury received by the child is also from the fire arm and the medical evidence is more than evident. It is particularly mentioned herein that the mother of the child had also stated in the court that the child had received gunshot injury on the foot. The medical evidence leaves no doubt in the mind of the court that the same proves that the aforesaid victims had received gun injuries. The statements of injured victims except PW-Sain Mohd prove that the injuries were inflicted by the accused using fire arm-gun.

- 32.** Learned counsel for the appellant has referred to **2006 (3) JKJ 32** titled '**Mohd. Yaqoob Vs. State of J&K**' wherein the court on facts held the appellant-accused not guilty of commission of offence under Section 302 RPC. The case was essentially based upon circumstantial evidence.

33. In AIR 2023 SC, 634 titled '**Munna Lal Vs. The State of Uttar Pradesh**' the Hon'ble Supreme Court on facts did not believe the testimony of eye witnesses and held non-examination of the Investigating Officer as fatal for the prosecution.
34. In AIR 1980 SC, 1873 titled '**Purshottam and another Vs. State of M.P**' the Hon'ble Supreme Court disbelieved the version of the eye witness qua the injuries received by the victim. The accused was acquitted by the court.
35. In AIR 1991 SC, 31 titled '**Baldev Singh Vs. State of Punjab**', the Hon'ble Court set aside the conviction of the appellant on the ground that the eye witnesses did not identify the accused due to darkness and further the recovery of the cartridges from the crime scene were disbelieved due to delay in sending the articles to the FSL.
36. The authorities produced by the learned counsel for the appellant do not come to his aid for the reason that this court has believed the version of the eye witnesses who are victims also. The delay in sending the seized articles including the gun is not fatal for the prosecution case. Non-examination of I.O is also not fatal. The I.O had died during the course of trial.
37. It is pleaded on behalf of the appellant that there was no motive for the appellant-accused to kill Fatima Bibi or attempt to kill other persons. The motive, if any, of the accused to do the act of which he has been accused of is not of much relevance once there is direct evidence to support that the accused participated in the crime.
38. The eye witnesses produced by the prosecution though are from the same family they cannot be held to be interested witnesses. The reason is simple. The eye witnesses are themselves victims in the occurrence and have received gunshot injuries. There was no reason for them to implicate the accused in the case. Otherwise also, there is nothing on record to suggest that the eye witnesses would spare

someone else and rope in the accused for the occurrence which even took away the life of Fatima Bibi. Last but not the least, it is pleaded in the appeal feebly of the medical condition of the appellant-accused to canvas that the accused could not carry out the act of which he has been held guilty by the trial court. The ground taken is without any substance and has been dealt with by the trial court.

- 39.** From the discussion made above, circumstances that appear against the accused person are the statements of the prosecution witnesses of which the detailed analysis has been made above and the medical evidence that has come on record. What is not proved by the prosecution is the gun which has been purportedly seized from the house of the accused for the reason that the same has been re-sealed after an year of its recovery.
- 40.** The Court is of the view that these two circumstances are sufficient to hold that the accused was the perpetrator of the crime committed during the course of occurrence. The act of the accused was premeditated. The evidence produced by the prosecution is direct and it can be gathered from the same that the accused intended to kill the victims or cause such bodily injury as he knew is likely to cause death or cause such injury which is sufficient in ordinary course to cause death. Mst. Fatima Bibi had lost her life as she has received bullet injuries resulting into her instant death whereas the other victims including a minor child had received gunshot injuries and lucky to survive the death. Some of the victims have suffered grievous injuries from the gunshot fire by the accused is also revealed from the medical record. The trial court has given valid reasons for holding the accused guilty of offence under Section 302 read with Section 307 RPC and this court finds no fault in the said finding of the trial court.

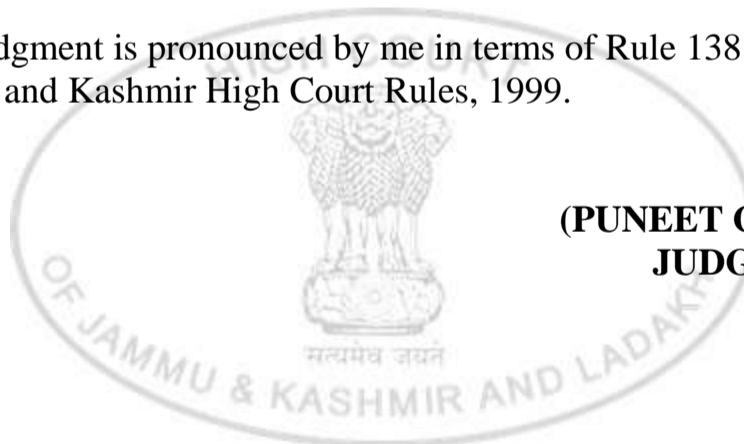
41. For the reasons stated above, the Court is of the view that the prosecution was able to prove the case against the appellant herein beyond shadow of doubt. The Court finds no error in the judgment and order of the learned trial court in holding the accused guilty of commission of offence under Sections 302/307 RPC and convicting him for the same.
42. The appeal is without merit and is, accordingly, dismissed. The reference made by the trial court is accepted.
43. The trial court record be sent back.

(PUNEET GUPTA) **(TASHI RABSTAN)**
JUDGE **CHIEF JUSTICE (ACTING)**

JAMMU:
07.08.2024
Pawan Chopra

Whether the Judgment is speaking? Yes
Whether the Judgment is reportable? Yes/No

This judgment is pronounced by me in terms of Rule 138 (4) of the Jammu and Kashmir High Court Rules, 1999.



(PUNEET GUPTA)
JUDGE