

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

CRAA No.34/2012

Reserved on: 10.10.2024

Pronounced on: 11.11.2024

STATE OF J&K

... APPELLANT(S)

Through: - Mr. Amit Gupta AAG

Vs.

1. Showkat Ali son of Reham Din resident of Gujjar Nagar Jammu
2. Mohd Rafiq son of Reham Din resident of Raika Tehsil Jammu
3. Mohi-ud-Din son of Siraj Din resident of Gujjar Nagar, Jammu

...RESPONDENT(S)

Through: - Mr. S.M.Chowdhary Advocate

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

Sanjay Dhar, J

1) The appellant/State has challenged judgment dated 07.01.2012 passed by the learned 2nd Additional Sessions Judge, Jammu (hereinafter referred to as the "trial Court") whereby, in a case arising out of FIR No. 116/2000 for offences under Sections 307/324/326/336/337 RPC registered with Police Station, Bagh-e- Bahu, Jammu, the respondents/accused have been acquitted of the charges.

2) The facts, leading to filing of this appeal, are that on 05.04.2000, PW Mohd Ashraf while undergoing treatment in

Government Medical College Hospital, Jammu for the injury received by him, made a statement before the police that on the aforesaid date at about 10.30 am when he reached his in-laws' house at Raika, he saw a number of people having gathered over there. He further stated that his father-in-law Siraj Din and respondent No.1/accused were having a long standing land dispute going on between them. On account of this, the respondents/accused along with 8/10 more persons had come on spot. It was further stated that the respondent No.1/accused Showkat Ali with an intention to commit murder of PW Mohd Ashraf launched a murderous attack on him with a *Pathi* on left side of his head which resulted in grievous injury to him. It was also alleged that the other respondents/accused were carrying clubs and axes in their hands, but they did not launch any attack upon him. When some people came on spot, the respondents/accused fled away from the spot and PW Mohd Ashraf fell down unconscious.

3) On the basis of the aforesaid statement of PW Mohd Ashraf (EXPW-MA), an FIR came to be registered and the investigation was set into motion. During the course of investigation, the statements of witnesses under Section 161 of the Cr.P.C were recorded and other evidence including revenue record pertaining to the place of occurrence was collected. The weapon of offence was seized based on the disclosure made by respondent No.1/accused. The injured PWs Mohd Ashraf, Mst. Fimo Bibi, Showkat Ali and Sheeda Bano were subjected to medical examination and the reports in this regard were obtained. After investigation of the case, offences under Sections

307/326/324/336/337/447/448 RPC were found established against the respondents/accused and the charge-sheet was laid before the learned trial Court.

4) On 11.02.2003, the learned trial Court framed charges for offences under Sections 307/448/336/337/326/34 RPC against the respondents/accused and their pleas were recorded. The respondents/accused denied the charges and claimed to be tried. Accordingly, the prosecution was directed to lead evidence in support of its case. In order to prove the charges against the respondents/accused, the prosecution examined as many as (08) out of (12) witnesses, cited in the challan. After completion of prosecution evidence, the incriminating circumstances, appearing in the prosecution evidence, were put to the respondents/accused and their statements under Section 342 of J&K CrPC were recorded. The respondents/accused claimed that a false case has been lodged against them on account of previous enmity between them and the complainant party. The respondents/accused did not lead any evidence in defence.

5) The learned trial Court, after hearing the parties and after appreciating the evidence led by the prosecution, came to the conclusion that the testimony of prosecution witnesses is unreliable being contradictory in nature. Accordingly, by virtue of the impugned judgment, the respondents/accused have been acquitted of the charges.

6) The appellant/State has called in question the impugned judgment of acquittal passed by the trial Court, primarily, on the

ground that the trial Court has failed to appreciate the prosecution evidence in its proper perspective. It has been contended that the trial Court has rejected the testimony of the prosecution witnesses on flimsy grounds and, even though there was sufficient evidence on record to convict the respondents, the trial Court has based its conclusions on surmises and conjectures.

7) We have heard learned AAG appearing for the appellant/State and Mr. S.M.Chowdhary Advocate appearing for the respondents/accused. We have also gone through the impugned judgment, the grounds of appeal and the trial Court record including the evidence led by the prosecution.

8) As already noted, the charge against the respondents is that on the day of occurrence, they trespassed into the land of PW Showkat Ali, whereafter, respondent No.1/accused Showkat Ali launched a murderous attack with a 'Pathi' upon PW Mohd Ashraf who was present on spot. As a result of this assault, PW Mohd Ashraf is stated to have received grievous injury on left side of his head. It is also case of the prosecution that respondents/accused pelted stones on other injured viz., PWs Showkat Ali, Mst Fimu Bibi and Mst Sheeda resulting in injuries to them. Thus, the most crucial witnesses for proving the charges against the respondents/accused are PWs Showkat Ali, Mohd Ashraf, Mst Fimu Bibi and Mst Sheeda.

9) PW Mohd Ashraf, who is stated to have received grievous injury during the concurrence has stated that on 04.05.2000 at about 10.30 am, he went to his in-laws' house at Raika where he found that

a number of people had gathered. He further stated that respondent No. 2/accused Rafi was carrying a small axe in his hand and the other persons, whom he does not know, were carrying clubs with them. He also stated that the respondents/accused were having a land dispute with his in-laws and, in this regard, a case was going on between the parties before the Court of learned Munsiff. He went on to state that when he reached the spot, he tried to intervene, but respondent No.1/accused Showkat Ali, who was carrying a 'Pathi' gave a blow of the said 'Pathi' on the left side of his ear, as a result of which, he started bleeding and went unconscious, whereafter, he was taken to the Hospital. He further stated that he made a statement EXPW- MA before the police in the Hospital.

10) In his cross-examination, he stated that he only knew respondents No. 1 and 2 and the other persons present on spot are not known to him. He clarified that it is only respondent No.1/accused Showkat Ali who attacked him. No other person attacked him. He further stated that respondent No.2/accused Rafi caught hold of him.

11) The other eye witnesses to the occurrence, namely PWs Showkat Ali, Mst Fimu Bibi, Mst Safira Begum and Sheeda Bano have also corroborated the fact that PW Mohd Ashraf was attacked with a 'Pathi' by respondent No.1/accused Showkat Ali on the left side of his head which resulted in injury to him and his consequent hospitalization. However, these witnesses have further stated about the injuries inflicted upon them by respondent No.1/accused Showkat Ali and respondent No.2/accused Mohd Rafi by pelting stones upon

them. They have further stated that even axes and clubs were used by the afore-named respondents/accused while attacking them.

12) Besides the aforesaid oral testimony, we have on record the medical report of injured PW Mohd Ashraf EXPW-RK, according to which, he had received incised wound on left temporal region in front of ear and another incised wound at upper margin of left pinna. He had also received fracture in his occipital bone. As per the medical report EXPW- RK which has been proved by the statement of Dr. PW R.K. Tamiri, the injury received by PW Mohd Ashraf on his left temporal region in front of the ear is grievous in nature, whereas the other injury is simple in nature and both these injuries are possible by a sharp object. The injury certificates in respect of PWs Fimu Bibi, Showkat Ali and Shidan Bano have not been proved as the Doctor who has issued these certificates has not been examined as a witness by the prosecution.

13) Another piece of evidence, that has been relied upon by the prosecution, is the disclosure statement of respondent No.1/accused Showkat Ali (Ext.-P/3) pursuant whereunto weapon of offence 'Pathi' has been recovered vide memo Ext.-P/4. However, the prosecution has not examined the witnesses to these documents (Ext.-P/3 and Ext.-P/4). Only the investigating Officer PW Magar Singh has been examined to prove these documents. He has admitted in his cross-examination that, at the time of recovery of weapon of offence, a number of people had gathered on spot which included

Numberdar and Chowkidar, but they have not been cited as witnesses to these memos.

14) So far as the conclusion drawn by the learned trial Court that the occurrence to the extent of injuries having been received by PWs Showkat Ali, Fimu Bibi and Sheeda Bano is not established, is concerned, we do not find any perversity in the said finding of the trial Court. This is so because there are serious contradictions in the statements of these three witnesses as also the other eye witnesses i.e the injured PW Mohd Ashraf and PW Safira Begum as regards the nature of injuries suffered by these three witnesses and the weapon/instrument allegedly used by the assailants while inflicting these injuries upon them. Even the injury certificates issued in respect of PWs Showkat Ali Fimu Bibi and Shidan Bano have not been proved so as to lend corroboration to their statements to this extent. On top of it, PW Mohd Ashraf has not stated anything about the launching of attack by the assailants upon PWs Showkat Ali, Fimu Begum and Sheeda Bano.

15) We are conscious of the fact that the statement of an injured has to be given due credence while appreciating the evidence and reaching a particular conclusion, but then, when there are material contradictions in the statements of the injured and it is proved that there was previous enmity between the injured and the alleged assailants, the Court has to carefully scrutinize the statements of injured in such type of cases. In the instant case, as already stated, there was previous enmity between the injured and the respondents/

accused and the statements of the injured relating to essential aspects of the occurrence are contradictory to each other, as such, in the absence of corroboration from the medial report, it would be extremely hazardous to place reliance upon the statements of prosecution witnesses so far as the same relate to infliction of injuries by respondents/accused upon PWs Showkat Ali, Fimu Bibi and Sheeda Bano. We, therefore, do not find any ground to interfere with the finding of the trial Court to this extent.

16) However, so far as the allegation of assault launched upon PW Mohd. Ashraf by respondent No.1/accused Showkat Ali is concerned, the same is clearly established from the evidence on record. PW Mohd Ashraf has, while making his statement to the police in the Hospital EXPW-MA clearly stated that he was attacked by respondent No.1 Showkat Ali with a 'Pathi' on the left side of his ear which caused bleeding to him and he went unconscious, whereafter, he was admitted to the Hospital. In his statement EXPW-MA, the correctness whereof has been confirmed by him while making his statement during trial of the case, PW Mohd Ashraf has clearly exonerated all the respondents/accused excepting respondent No.1/accused Showkat Ali by stating that no one other than respondent No.1 Showkat Ali attacked him. He has reiterated and repeated the same while making his statement during trial of the case. Although, in the cross-examination he has stated that respondent No.2/accused Mohd Rafi caught hold of him, yet he has clarified that excepting respondent No.1/accused Showkat Ali, no other accused attacked him.

17) The aforesaid statement of PW Mohd Ashraf finds corroboration from the medical evidence on record. As per the medical report EXPW-RK, PW Mohd Ashraf had received two injuries, one on left temporal region in front of the ear and, other on upper margin of left pinna. The first injury has resulted in fracture of occipital bone, as such, the same has been labeled as 'grievous injury' by the Medical Officer. The medical report, therefore, clearly corroborates the statement of injured PW Mohd Ashraf. Even other eye witnesses PWs Showkat Ali, Fimu Bibi, Safira Begum and Sheeda Bano have consistently stated that respondent No.1/accused Showkat Ali gave a blow with a 'Pathi' upon head of PW Mohd Ashraf. Thus, there is no doubt in concluding that respondent No.1/accused Showkat Ali is the author of the grievous injury which PW Mohd Ashraf has received near his left ear.

18) The learned trial Court has disbelieved the testimony of all the prosecution witnesses as a whole on the reasoning that their statements are contradictory on essential aspects of the case, inasmuch as, they have exaggerated the circumstances and claimed that even PWs Showkat Ali, Fimu Bibi and Sheeda Bano were injured during the occurrence, which is not established from the evidence on record. By disbelieving the whole testimony of these witnesses and ignoring the testimony of PW Mohd Ashraf, which is corroborated by the medical report EXPW-RK, the learned trial Court has fallen into a grave error.

19) The principle governing "*falsus in uno, falsus in omnibus*" has no application to the Courts in India. Therefore, it is the duty of the Court to remove the chaff from the grain in its pursuit for truth. It was not open to the trial Court to throw out the entire prosecution evidence just because it was contradictory on certain aspects of the case. It is quite probable that due to previous enmity between the complainant party and the accused, the eye witnesses to the occurrence may have resorted to exaggeration by implicating even those persons who were not involved in the occurrence and by stating that even those persons, who were not injured, had received the injuries. The job of the Court is to discard that portion of the evidence which appears to be unreliable and while doing so, that part of testimony of the witnesses, which is reliable and is corroborated by other circumstances in the case, has to be relied upon. When we adopt the said approach to the instant case, we have no manner of doubt in holding that the prosecution has succeeded in proving beyond reasonable doubt that respondent No.1/Accused Showkat Ali did launch an attack upon the injured PW Mohd Ashraf which resulted in grievous injury to him.

20) In the present case, as already stated, the prosecution has not been able to prove the disclosure statement of respondent No.1/accused Showkat Ali and the recovery of weapon of offence pursuant thereto, because, neither the witnesses to the disclosure memo, nor the witnesses to the recovery memo, have been examined by the prosecution. Even though, the Investigating Officer has deposed about the said documents, yet he has clearly stated that

despite presence of civil witnesses on spot including Numberdar and Chowkidar, none of them was associated in the process. This makes the disclosure statement and the recovery of weapon of offence 'Pathi' highly unreliable. In the absence of recovery of weapon of offence, the prosecution has failed to prove that the grievous injury' that was sustained by PW Mohd Ashraf, was caused by a 'Pathi' which is definitely a dangerous weapon. Thus, charge for offence under Section 326 RPC is not established against respondent No.1/accused Showkat Ali. However, because the prosecution has succeeded in proving that PW Mohd Ashraf received grievous injury on account of attack launched upon him by respondent No.1, as such, charge for offence under Section 325 RPC stands established against him beyond any reasonable doubt.

21) So far as the charge for offence under Section 307 RPC is concerned, the same is also not proved against respondent No.1/accused Showkat Ali because the location of the grievous injury which PW Mohd Ashraf has suffered is near the left ear and not on vital part of the head. It is not the case of PW Mohd Ashraf that he had moved himself in any direction so as to evade the blow that was being launched on vital part of his head. Therefore, it can safely be stated that respondent No.1/accused Showkat Ali did not intend to commit murder of PW Mohd Ashraf. The charge for offence under Section 307 RPC is, therefore, not established against respondent No.1/accused Showkat Ali.

22) That takes us to the charge for offence under Section 448 RPC.

In this regard, it is to be noted that, though the prosecution witnesses belonging to the complainant party, have consistently stated that the assailants trespassed into their land, yet PW Magar Singh, the Investigating Officer, has clearly stated that dispute between the parties was with regard to the land which belongs to Forest Department and both the parties intended to encroach upon the said Forest land. Thus, the place of occurrence belongs to none of the parties, as such, it cannot be stated that it was a case of criminal trespass. We are in complete agreement with the finding of the trial Court that offence of criminal trespass is not made out against any of the respondents/accused.

23) For the foregoing reasons, we allow the appeal of the appellant/State party and hold respondent No.1/accused Showkat Ali guilty of offence under Section 325 of RPC.

24) The only aspect before this Court, that remains to be determined, is with regard to the quantum of sentence. In the present case, the trial against the respondents/accused continued for about (12) years and the present appeal has been pending before this Court for the last about (12) years, meaning thereby that respondent No.1/accused Showkat Ali has been facing prosecution before the trial Court/appellate Court for the last about (24) years. Therefore, in the interest of justice, we feel that a lenient view is required to be taken while imposing sentence upon respondent No.1/accused Showkat Ali.

25) Accordingly, in proof of offence under Section 325 RPC, respondent No.1/accused Showkat Ali is sentenced to suffer rigorous imprisonment for a period of one month and to pay a fine of Rs.10,000 which shall be paid to the injured complainant PW Mohd Ashraf and if he is no longer alive, to his next of kin. The amount of fine shall be deposited before the trial Court which shall issue notice to PW Mohd Ashraf, the injured/ complainant or next of kin and release the same in his favour. In default of payment of fine, respondent No.1 Showkat Ali shall undergo further imprisonment of similar description for a period of ten days. The period of custody undergone by respondent No.1 during investigation/trial of the case shall be set off against the sentence of imprisonment.

26) Respondent No.1 Showkat Ali shall surrender before the trial Court within a period of one month from today and in case the same is not done, the trial Court shall issue warrant of arrest to secure his custody and thereafter he shall be sent to prison for completing the sentence.

The trial court record along with a copy of this judgment be sent back.

(Sanjay Dhar)
Judge

(Rajnish Oswal)
Judge

Jammu
11.11.2024
"Sanjeev"

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