

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 22/2011

Reserved on: 29.01.2026

Pronounced on:07.02.2026

Uploaded on: 9.02.2026

**Whether the operative part or full
judgment is pronounced: Full**

State of Jammu & Kashmir

.... Petitioner/Appellant(s)

Through: - Mr. Pawan Dev Singh, Dy.AG

V/s

1. Daleep Singh S/o Gain ChandRespondent(s)
2. Som Raj S/o Thakur Dass R/o
Godhar Tehsil & District
Rajouri
3. Kanchan Bala W/o Amar Singh
R/o Narsingh-pura, Tehsil
Rajouri

Through: - Mr. P. N. Raina, Sr. Advocate with
Ms. Deeksha Handoo and Mr. J. A. Hamal,
Advocates

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

JUDGMENT

Per:Parihar-J

01. We have heard counsels for the parties at length and have carefully perused the evidence led during trial. The present appeal assails the judgment of acquittal passed by the Trial Court in FIR No. 100 of 2005 relating to offences punishable under Sections 302/120-B RPC, whereby the accused-respondents stood acquitted. It is well settled that in an appeal against acquittal, the presumption of innocence in favour of the accused stands further reinforced by the judgment of the Trial Court. Interference is warranted only when the findings recorded are perverse, manifestly illegal, or based on a complete misappreciation of material evidence.

Where two views are reasonably possible on the evidence, the view favourable to the accused must ordinarily be adopted.

02. The prosecution case rests mainly on three circumstances: (i) the alleged extra-judicial confession of respondent No. 3 before a Panchayat; (ii) the ocular testimony of PW-Anju Bala as an eye-witness; and (iii) the alleged recoveries of weapons at the instance of the accused. Upon appreciation of evidence, the Trial Court found all these circumstances to be doubtful.

03. With regard to the alleged Panchayat confession, the Trial Court noticed material inconsistencies. Different witnesses attributed different versions to the statement allegedly made by respondent No. 3, Kanchan Bala. In substance, she was alleged to have implicated the other accused rather than confessing her own guilt. Such a statement does not amount to a voluntary and unambiguous confession in the eye of law and, in any event, could not be used as substantive evidence against the co-accused. The delay of more than one month in convening the Panchayat and allegations of police influence further eroded its evidentiary value.

04. As regards the testimony of PW-Anju Bala, the Trial Court found serious infirmities. Her statement was recorded after considerable and unexplained delay, creating scope for tutoring, particularly when she remained in the custody of PW-Kashmir Singh, a police official related to the deceased. She admitted that it was pitch dark at the time of occurrence, making identification of the assailants doubtful. Her narration

that the deceased was attacked while unconscious and only on the head was inconsistent with the post-mortem report, which recorded multiple injuries on different parts of the body and ruled out strangulation. These contradictions between ocular and medical evidence rendered her testimony unsafe without independent corroboration.

05. The prosecution further failed to examine Rakesh Kumar, another natural witness cited as having witnessed the occurrence. His non-examination, without any satisfactory explanation, warranted an adverse inference against the prosecution. Similarly, the alleged recoveries of weapons were not proved in accordance with law, as the independent witness to the recovery was not examined and another witness turned hostile. Consequently, this incriminating circumstance also failed.

06. On the other hand, the defence challenged the genuineness of the Panchayat proceedings and led evidence suggesting that the case was falsely foisted. It was contended that the alleged confession was extracted under police pressure and that there was no reliable evidence of motive or of the presence of the accused at the scene of crime. These submissions found favour with the Trial Court, which concluded that the prosecution had failed to establish the chain of circumstances beyond reasonable doubt.

07. A confessional statement is not admissible unless made before a Magistrate, as mandated under Section 25 of the Evidence Act. Under Section 30 of the Evidence Act, before a confession can be used against a

co-accused, it must be strictly proved. What must be before the Court is a confession proper and not a mere incriminating circumstance or information. Further, such a confession is not evidence within the meaning of Section 3 of the Evidence Act against the non-maker and can be used only as a corroborative piece of evidence when other independent evidence connects the co-accused with the crime. In the present case, respondent No. 3 did not make any inculpatory statement; rather, her alleged version before the Panchayat is exculpatory. Even if relevant, it could not form the sole basis for conviction in the absence of corroborative evidence.

08. In *(2001) 9 SCC 129*, the Hon'ble Supreme Court, while dealing with the testimony of a child witness, held that such evidence cannot be rejected per se but must be scrutinized with care and caution. Conviction can be based on the testimony of a child witness if it inspires confidence and is free from tutoring. Corroboration is not a rule of law but a rule of prudence.

09. Learned counsel for the appellant contended that the testimony of PW-Anju Bala was natural, cogent, and trustworthy, and that the delay in recording her statement stood explained due to trauma caused by the murder of her father and the custody of her mother. It was further argued that motive was established and that witnesses to the Panchayat proceedings consistently stated that the deceased was murdered pursuant to a criminal conspiracy. It was urged that the Trial Court erred in disbelieving the prosecution case.

10. Per contra, learned senior counsel for the respondents supported the judgment of acquittal, submitting that the Panchayat Nama dated 07.05.2005 came into existence more than a month after the incident and was highly suspicious. It was argued that respondent No. 3 attributed the act of killing to other accused and not to herself, rendering the alleged confession inadmissible against the co-accused.

11. Upon re-appreciation of the evidence, the prosecution case before the trial court was that respondent No.1 was allegedly having illicit relations with the sister of respondent No.3, which were not approved by the deceased. This allegedly led to misgivings between the deceased and his wife, respondent No.1. It was further alleged that respondent No.1 later confided with the co-accused regarding the conduct of the deceased and, in order to eliminate him, entered into a criminal conspiracy to affect his killing. In pursuance of the said conspiracy, during the intervening night of 30th and 31st March, 2005, while the deceased was sleeping in his kitchen, he was done to death by the accused by inflicting injuries with sharp and blunt weapons. PW Anju Bala and PW Rakesh Kumar the minor children of the deceased were stated to have witnessed his killing.

However, it emerges from the record that PW-Anju Bala was kept on *suparadnama* of PW-Kashmir Singh, a police official who was related to the deceased, without any cogent justification, despite the availability of other close relatives. This circumstance lends credence to the defence contention that the said witness was susceptible to tutoring.

12. PW-Anju Bala admitted that it was pitch dark and that she was in another room with her mother, while the deceased was in the kitchen. Her version of having witnessed the assault, including strangulation, stands contradicted by medical evidence, which records multiple injuries and rules out strangulation.

13. Significantly, PW-Anju Bala disclosed for the first time, after twenty-two days of the incident that she had witnessed the occurrence, despite having informed her uncle PW Krishan Lal on the very next morning that the deceased had been killed by someone. During this intervening period, she remained in the company of PW-Kashmir Singh. No explanation has been offered for such delay. The non-examination of PW-Rakesh Kumar, allegedly another eye-witness, further weakens the prosecution case.

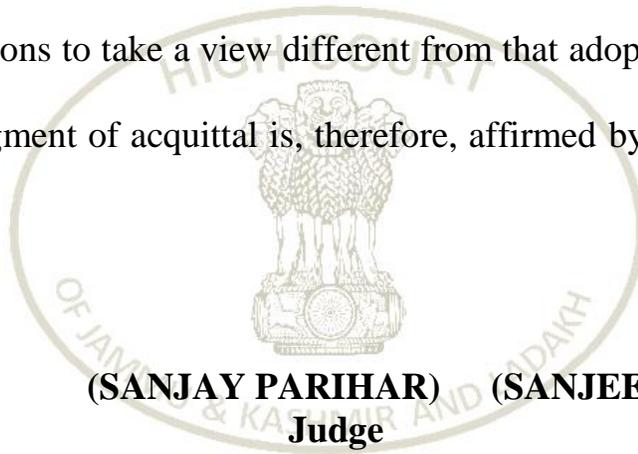
14. Once the testimony of PW-Anju Bala is found unreliable, the prosecution case collapses, as the alleged disclosures and recoveries have not been proved. Though the deceased died due to multiple injuries during the intervening night of 30-31 March 2005, the prosecution failed to establish that the respondents were responsible for causing those injuries.

15. The alleged motive is equally untenable. It surfaced for the first time in the Panchayat Nama dated 07.05.2005 and finds no independent corroboration. There is no reliable evidence of animosity between the deceased and respondent No. 1. The Trial Court rightly disbelieved the

Panchayat Nama due to inconsistencies in the testimonies of the witnesses supporting it.

16. In view of the glaring contradictions in the prosecution evidence and the absence of proof regarding the complicity of the respondents, the Trial Court has rightly concluded that the prosecution failed to establish its case beyond reasonable doubt. The findings are based on proper appreciation of evidence and settled principles of criminal jurisprudence.

17. We find no perversity or illegality in the impugned judgment warranting interference. The appellant has failed to demonstrate any compelling reasons to take a view different from that adopted by the Trial Court. The judgment of acquittal is, therefore, affirmed by dismissing the appeal.



(SANJAY PARIHAR) (SANJEEV KUMAR)
Judge Judge

JAMMU
RAM MURTI
07.02.2026