

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 95/2012

Reserved on: 23.04.2026

Pronounced on: 30.05.2026

Uploaded on: 30.05.2026

Whether the operative part or full judgment is pronounced:

State of J&K through Senior Superintendent of Police, Kathua

.... Petitioner(s)

Through:- Ms. Mehar Bali, Advocate
vice
Mr. Ravinder Gupta, AAG

Vs.

**Balwinder Kumar Alias Bittu
S/o Karan Singh R/o Badala,
Kathua**

.....Respondent(s)

Through:- Mr. Mayank Gupta,
Advocate.

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

SHAHZAD AZEEM-J

1. This acquittal appeal is directed against the judgment dated 07 August 2012 passed by the learned Additional Sessions Judge, Kathua ("the trial Court") in File No. 76/Session titled State Vs. Balwinder Kumar alias Bittu, whereby the trial Court has acquitted the respondent-

accused, Balwinder Kumar of the offences punishable under Sections 302/341 RPC read with Section 4/25 of Arms Act.

PROSECUTION CASE

2. The prosecution case, in brief, is that accused was sent up for trial on the accusation that, owing to a long-standing enmity, on 19 July 2002 at 6:30 PM, when Nasib Chand (deceased) was returning home after irrigating his fields and had reached near the house of Karan Singh S/o Vakilu Ram R/o Badala, the accused stabbed the deceased in the back with a Kirch (sharp-edged weapon). The occurrence stated to have taken place in a lane (Gali) of the village following a daytime quarrel.

3. The deceased had died enroute to the hospital. PW-1 Gulshan Kumar is said to have lodged a report on 19 July 2002 at 7:50 PM.

4. During investigation, all the codal formalities were completed, including recovery of alleged weapon of offence pursuant to the disclosure made by the accused.

5. It is noteworthy that, on completion of investigation, the police presented the challan only against the accused, though investigation into the alleged occurrence had also

been conducted against his two brothers, namely, Sohan Lal and Raj Kumar, respectively.

FINDINGS OF THE TRIAL COURT

6. While recording the judgment of acquittal, the trial Court took into consideration the contradictions regarding who reached the spot first and where witnesses were at the time of occurrence. Although independent witnesses were available, only PW-8 Kiran Jyoti was cited as one; she too turned hostile. The injuries sustained by the accused were omitted from the statements recorded under Section 161 Cr.PC, according to the trial Court, this omission amounted to an improvement that cast doubt on the prosecution story. The recovery of weapon of offence was not proved. Learned trial Court further held that the medical and other evidence was insufficient. Accordingly, while granting benefit of doubt, the accused was acquitted.

GROUND OF CHALLENGE AND SUBMISSIONS

7. The judgment of acquittal is challenged on the ground that the statements of material eye-witnesses, namely, PW-2 Kanta Devi, and PW-3 Chaya Devi, have been discarded by the trial Court without any justifiable reason. It is further contended that the prosecution proved that the occurrence

took place following a daytime altercation, yet the trial Court discarded the testimonies of the prosecution witnesses, who happen to be the relatives of the deceased, contrary to settled principles of law.

8. It is also urged that non-examination of independent witnesses, did not render the prosecution case unbelievable, particularly when it is supported by medical evidence showing that the deceased was done to death by stabbing. The petitioner, therefore, prays that the impugned judgment be set aside.

9. *Ex Adverso*, learned counsel for the respondent has argued in line with the reasoning given by the trial Court in the judgment under challenge. The same shall be taken note of at the appropriate stage.

ANALYSIS

10. The respondent earned the judgment of acquittal by deriving benefit of doubt. The trial Court reached this conclusion on the basis of: (i) contradictions appearing in the testimonies of the eye-witnesses; (ii) absence of independent witnesses; (iii) failed to explain the injuries sustained by the accused; (iv) non-recovery of weapon of

offence; and (v) the medical and other evidence being insufficient to bring home the guilt against the accused.

11. On a perusal of the record, it is seen that the prosecution case is based on direct evidence supplied by the widow, daughters and sons of the deceased.

12. Prosecution has heavily relied upon; PW-1 Gulshan Kumar, (accuser/son), PW-2 Kanta Devi (Widow), PW-3 Chaya Devi (daughter), PW-4 Mamta Devi (daughter), PW-7 Rakesh Kumar (son) and PW-8 Kiran Jyoti (only independent witness). Out of these, PW-4 Mamta Devi was not examined, and PW-8 Kiran Jyoti, though the solitary independent witness, turned hostile. During her cross-examination, nothing incriminating against the accused could be elicited.

DISCLOSURE AND RECOVERY

13. The accused was charged with murdering the deceased by stabbing him in the back with a Kirch. According to prosecution, the weapon of offence was recovered on the disclosure of the accused. To prove the recovery, the prosecution relied upon PW-6 Battu Ram and PW-9, Raj Kumar respectively, both brothers-in-law of the deceased.

14. PW-6 Battu Ram was not examined by the prosecution. PW-9 Raj Kumar turned hostile, and during his cross-

examination, nothing incriminating against the accused could be elicited. Consequently, neither the disclosure nor the recovery of the weapon of the offence was proved.

15. We are, therefore, left with the direct evidence supplied by sons, daughters and widow of the deceased. In order ascertain whether there is any inconsistency, contradiction, omission or improvement in their testimonies as held by the trial Court, we proceed to examine the matter.

PRESENCE OF EYE WITNESSES

16. PW-1 Gulshan Kumar, besides being an eye witness, was also the accuser. He deposed that he and his brother PW-7 Rakesh Kumar were cutting grass in their fields when they heard the cries "Bachao, Bachao, Maardiya." They rushed to the spot and arrived after their mother and sisters. The witness deposed that he saw the accused stabbing the victim and then fleeing from the place of occurrence.

17. In contrast, PW-2 Kanta Devi deposed that at the time of occurrence she, along with her daughters only, rushed to the spot. The deceased was evacuated on a cot with the help of her daughters and then shifted to Kathua Hospital on a horse cart. This witness completely negated the presence of

PW-1 and PW-7 at the time of occurrence. PW-3 Chaya Devi deposed, inter-alia that her uncle PW-5 Dev Raj had also accompanied them to the place of occurrence. However, PW-5 Dev Raj, despite being brother of the deceased was neither cited as an eye-witness nor did he depose that that he had accompanied the family members of the deceased at the time of the occurrence. Thus, the eye-witnesses have given mutually contradictory statements regarding their presence at the time of occurrence, and their credibility on this point is sufficiently eroded.

NON-EXAMINATION OF INDEPENDENT WITNESSES

18. PW-3 Chaya Devi deposed that 15-20 villagers were present at the time of occurrence, whereas PW-7 Rakesh Kumar claimed that 40-50 persons were present on the spot. If testimonies of these witnesses are to be believed, villagers were present; however, the prosecution examined only one independent witness, PW-8 Kiran Jyoti who was declared hostile.

19. There is ample evidence on record to show that alleged occurrence took place in a bustling village lane flanked by a good number of houses. Nevertheless, the prosecution failed to examine independent witnesses, though they were

present. This omission casts serious doubt on the prosecution story and the manner in which the occurrence is alleged to have taken place.

TESTIMONY OF HOSTILE WITNESS

20. Surprisingly, PW-8 Kiran Jyoti, though declared hostile and cross-examined by the prosecution, deposed during her cross-examination by the defence counsel that after hearing the noise she remained there for a minute but did not see PW-7 Rakesh Kumar, PW-1 Gulshan Kumar, PW-2 Kanta Devi, PW-3 Chaya Devi or PW-4 Mamta Devi or the accused-Balwinder Kumar. Despite completely negating the presence of these eye witnesses and the accused at the time of occurrence, she was not re-examined by the prosecution to clarify the presence of accused, the deceased or the eye witness. Therefore, in view of the law laid down by Hon'ble Supreme Court in ***Talari Naresh Vs. The State of Telangana; 2026 SCC OnLine SC 852*** the testimony of the hostile witness cannot be brushed aside. Paragraph 9 of the judgment assumes importance, which reads thus:-

“9. Therefore, when the testimony of a hostile witness is admissible subject to be feeded by corroboration and the conviction on that basis could be arrived at, the reverse is also true as a canon of appreciation of evidence. What

necessarily implies is that as the evidence of a hostile witness can be used for convicting the accused, such evidence could indeed be applied and utilised also for the purpose of acquitting the accused, when what is testified by the hostile witness inspires credibility, when read with the other evidence on record, either ocular or documentary. The dictum would be that the testimony of a hostile witness or statement in the deposition of hostile witness could be properly employed to discredit the prosecution case and a conclusion of acquittal could well be supported through it and could be founded therein.”

21. It has been held that if the evidence of a hostile witness can be used for convicting the accused, such evidence can indeed be applied and utilized also for the purpose of acquitting the accused, provided, the testimony inspires credibility, when read with the other evidence on record, whether ocular or documentary.

22. As already noted, the presence of eye-witnesses stands sufficiently corroded by their mutually contradictory statements given by none other than sons, daughters and widow of the deceased. When the testimony of the hostile witness is tested on the anvil of law, it lends credence to the findings returned by the trial Court regarding the absence of eye-witnesses at the time of the occurrence.

Such omission assumes great significance, particularly when evidence consists of interested or related witnesses.

25. In *Nand Lal and Ors. Vs. The State of Chhattisgarh; (2023) 10 SCC 470* it was held that in a murder case the non-explanation of injuries sustained by the accused at about the time of the occurrence or in the course of altercation is a very important circumstance from which the Court can draw an inference that the prosecution has suppressed the genesis and origin of the occurrence and has not presented the true version. It was further held that witnesses who have denied the presence of injuries on the person of the accused are lying on a most material point and, therefore, their evidence is unreliable. This dictum assumes even greater importance when the prosecution witnesses are interested parties or relatives of the deceased. Thus, this is another circumstance which discredits the prosecution case.

ANTE-DATED FIR

26. The occurrence is alleged to have taken place on 19 July 2002 at 6.30 PM and the FIR is stated to have been lodged at 7.50PM on the same day. PW-1 Gulshan Kumar the accuser and son of the deceased, stated in his cross-examination that he and his brother had gone to the police

station the next day at 7 AM to lodge the report. However, the FIR shows the reporting date as 19 July 2002 at 7:50 PM i.e. about 01 hour 20 minutes after the occurrence. This is another circumstance that casts serious doubt on the prosecution story and the manner in which it is sought to be projected.

27. Once, it is shown, as per the version of informant, that the FIR is ante-dated and was not lodged at the time it was reported, the necessary inference is that the Investigating Officer deliberately failed to record the first information report on receipt of information of the cognizable offence and prepared it after due deliberation. This renders the investigation tainted, and it would be unsafe to rely upon such a tainted investigation.

28. This discrepancy raises serious doubt regarding the genuineness and spontaneity of the FIR. If it appears to be back-dated (ante-dated), Court views it as evidence of possible manipulation, either by the police to make the case appear prompt or by the informant to fill gaps after consultation. This further casts doubt viz-a-viz the credibility of the informant and the first information report that led to the investigation and the trial of the accused. Our view is fortified by the fact that two brothers of the

accused, Sohan Lal and Raj Kumar did not face the trial as the challan was restricted only to the accused.

FINDING AND CONCLUSION

29. We have noticed major contradictions among the eye-witnesses on the point of their location at the time of the alleged occurrence, (whether in the fields or in the house) and the sequence in which they reached the spot. **Secondly**; despite the presence of villagers at the time of the occurrence, no independent witness was examined; only one independent witness, PW-8 Kiran Jyoti, was cited who turned hostile. **Thirdly**; the prosecution failed to explain the injuries sustained by the accused in the occurrence, which shows that the prosecution suppressed the genesis of the crime. Besides this, the prosecution miserably failed to prove the disclosure and recovery of the weapon of offence. The case is also marred by material omissions and improvements.

30. We, therefore, find no reason to interfere with the judgment of the trial Court nor do we find any illegality, either on facts or in law, committed by the trial Court while acquitting the accused by granting him the benefit of doubt.

31. Lastly, we also endorse the cardinal principle of criminal law reiterated time and again that if two reasonable

views are possible on the evidence, one pointing to guilt and other to innocence, the Court must adopt the view that favours the accused. Even a small, material improbability in the prosecution's story can shatter its consistency and create a reasonable doubt.

32. Accordingly, while concurring with the judgment of the trial Court, the instant appeal is **dismissed** being devoid of merit.

33. Record be sent back to the trial Court with due dispatch.

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

Jammu:

30.05.2026

Tarun/PS

Whether approved for reporting : *Yes/No*
Whether the order is speaking : *Yes/No*