S. No. 76

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

Reserved on: 12.11.2026
Pronounced on:17.11.2026

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

CRA No. 17/2017 CrlM No.1500/2022

MOHAMMAD LATIEF KHAN AND OTHERS …Petitioner/Appellant(s)

Through: Mr. Nisar Ahmad Bhat, Advocate.

Vs.

STATE OF J&K THROUGH POLICE STATION PANZALLA ...Respondent(s)

Through: Mr. Jahingeer Ahmad Dar, GA.

CORAM:

HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

1. This appeal is directed against the judgment of conviction and order of sentence dated 15.11.2017 and 22.11.2017 passed by the learned Additional Sessions Judge, Sopore ('the Trial Court'), whereby appellant No.1 was convicted and sentenced to undergo rigorous imprisonment for a period of 18 months for the commission of an offence under Sections 325 of the Ranbir Panel Code (RPC) and a fine of ₹2,000/-, and for the commission of an offence under Section 6 of the Jammu and Kashmir Forest Act, 1987 (for short 'the Act of 1987'), to undergo simple imprisonment of three months and a fine of ₹1,000/-. Further, appellants No. 2 and 3 were convicted and sentenced to undergo simple imprisonment for a period of three months and a fine of ₹1,000/- each for the commission of offence under Section 6 of the Act of 1987.

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26

FACTUAL MATRIX:

2. The brief case of the prosecution is that on 20.06.2006, PW-1 Ghulam Qadir Lone, posted as Forest Guard in Rafiabad in compartment No.21, along with his helper Harvinder Singh (PW-2) was on patrolling duty. During the course of patrolling, they saw a few persons cutting down a kail tree in the said compartment. Upon objection by the forest officials, the accused persons mounted a murderous assault on the officials. PW-1 was allegedly inflicted a blow on his head and palm, sustaining grievous injuries, while PW-2 sustained simple injuries. The accused thereafter fled from the spot.

3. On the basis of a written report lodged by PW-1, accompanied by the injured PW-2, FIR No.29 of 2006 was registered at Police Station, Panzalla for the commission of offences under Sections 307, 379 and 332 RPC, and Section 6 of the Act of 1987. However, during investigation, on the basis of medical opinion, offences under Sections 325 and 323 RPC were added.

4. Upon completion of the investigation by PW-5 Sh. Mohd Younis, the challan was presented before the competent Court of law.

5. Since the accused pleaded innocence, therefore, trial commenced. The prosecution examined only two out of the five listed witnesses, namely PW-1 Ghulam Qadir Lone (injured complainant/Forest Guard) and PW-4 Dr. Mohd Shafi (the Medical Officer). The Investigating Officer (PW-5) and other injured person PW-2 Harvinder Singh were not examined. In defence the accused examined one witness, DW-Fateh Mohammad Khan.

FINDINGS OF THE TRIAL COURT:

6. While convicting the appellants, the Trial Court primarily relied upon the solitary testimony of PW-1, the injured complainant, observing that his

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26

deposition inspired confidence; that he had withstood cross examination, and that the medical evidence of PW-4 corroborated the nature of injuries sustained by him as grievous under clause eighth of Section 320 RPC. The Trial Court was of the view that conviction can be based upon the testimony of a solitary injured witness, if it is reliable and trustworthy. Non-examination of Investigating Officer and other witnesses was held not to be fatal to the prosecution case. Most importantly, while convicting the appellants, the Trial Court was influenced by the fact that the accused had not offered any plausible explanation under Section 342 CrPC as to why the prosecution witness would falsely implicate them in the absence of enmity.

GROUNDS OF APPEAL AND SUBMISSIONS:

7. The appellants have assailed the impugned judgment and sentence on multiple grounds. The principal grounds, as set out in the memorandum of appeal, are summarized as under: -

i. that the prosecution story is inherently doubtful as the conviction has been based solely upon the testimony of PW-1, an interested witness being the complainant himself, without any independent corroboration. No other independent witness was examined and Investigating Officer was not produced;

ii. That the statement of PW-1 is self-contradictory. PW-1 claimed knowledge of the residence of the accused prior to the occurrence, which raised suspicion;

iii. PW-1 in one breath stated that appellant No.1 gave him a blow, and in other stated that he was caught hold by

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26

appellant Nos. 1 and 2. Such contradiction goes to the root of identification of the assailants. The Investigating Officer, being the author of the charge-sheet and a star witness to explain the investigation, the recoveries and contradictions, was not examined. Therefore, non-examination of the Investigating Officer is particular material when there are contradictions in the ocular evidence;

iv. PW-1 failed to prove the complaint and even was not sure as to who had scribed the written complaint lodged with the Police;

v. The impugned judgment and order of sentence is also questioned on the ground that once appellants have earned acquittal of charges under Sections 307, 332, 379 and 323 RPC, there was no occasion to convict them under the remaining offences on the same set of facts.

8. *Ex-adverso*, while defending the impugned judgment and order of sentence, learned counsel for the respondents contended that it is the quality of the evidence and not the number of witnesses that is required to prove a fact. He submits that PW-1 is not an ordinary witness but an injured witness, who had deposed with all precision, therefore, his testimony being of sterling quality is sufficient to bring home the charges. Thus, the Trial Court rightly, while convicting the appellants, had given due weightage to the testimony of PW-1 and passed the judgment of conviction and order of sentence. Learned

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26

counsel for the respondents, therefore, prays for upholding the judgment under challenge and dismissal of the appeal.

ANALYSIS:

9. Heard learned counsel for the parties and perused the record.

10. The legality of the conviction and sentence requires careful examination in light of well settled principles of criminal jurisprudence, particularly the requirement of proof beyond reasonable doubt, the quality of evidence, and most importantly, the effect of non-examination of the material witnesses.

11. It is settled law that conviction can be based upon the testimony of a solitary witness, including an injured witness, provided the testimony is wholly reliable, inspires confidence and is free from the material contradictions or improvements. The maxim "falsus in uno, falsus in omnibus" is not applicable in India; the Court is required to separate the grain from the chaff. However, where the sole witness is an interested witness and the case rests on his uncorroborated testimony in the face of material omissions and contradictions, the Court is required to exercise greater caution.

12. In the present case, several features undermine the reliability of the prosecution version. First; the non-examination of the other injured person, PW-2 Harvinder Singh, who was present at the spot and stated to have himself sustained injuries, is significant. PW-2 was the natural and material witness whose testimony could have corroborated or contradicted PW-1 on the crucial aspects of the presence of accused, the manner of assault, and the weapon used. No explanation has been offered for his non-examination.

13. Similarly, the non-examination of PW-5-Investigating Officer, though not invariably fatal, assumes importance when the written complaint has not

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26

been properly proved and exhibited, when PW-1 was uncertain about the scribe of the complaint, and when recoveries, particularly those of timber and axe need to be explained in the context of the site plan and sequence of events. In the given facts and circumstances, the Investigating Officer was the best person to clarify the investigation process, the manner of recording the statement of the complainant, the seizure from the spot or subsequent production.

14. The medical evidence, while corroborating the existence of injuries, does not advance the prosecution case on the identity of the assailant or the manner of causation. The Trial Court appears to have treated the medical evidence as providing substantive corroboration on the question of assault, which it does not. The appellants have suffered conviction for commission of offences under Section 325 of the RPC and Section 6 of the Act of 1987, though the charges were framed against the accused for commission of offences under Sections 307, 323, 325, 379 and 332 of the RPC and Section 6 of the Act of 1987. If the basic fact of cutting the tree and the subsequent assault is not proved to the standard required for the more serious charges, the foundation for the remaining charges also becomes shaky, particularly in the absence of independent evidence of tree felling. The reliance upon the solitary testimony of the interested forest official, recorded after the gap of nearly seven years, with acknowledged discrepancies and without supporting testimony of the co-injured or the Investigating Officer, raises a substantial question as to whether the prosecution has discharged the burden of proving the guilt beyond reasonable doubt.

HIGH COURT JAMMU & KASHMIR AND LADAKH

Isaq Hameed Bhat
I attest to the accuracy and authenticity of this document
17.11.26

15. In the present case, the written complaint/application on the basis of which the FIR was registered was not exhibited in the manner required. PW-1 admitted that he did not know who had written the application; the scribe read it out to him and he affixed his signature. The Investigating Officer, under these circumstances, was the proper witness to prove the complaint, the manner in which it was recorded, the investigation conducted at the spot, the preparation of site plan, injury memos and seizure memos, and to explain any discrepancies that have surfaced between version in the complaint and the subsequent statements. A cursory look to the statement of PW-1 shows that there are material improvements in his statement which is in direct contradiction to the complaint lodged by PW-1, as also the prosecution case itself. It has come in the testimony of PW-1 that when accused spotted the forest officials, they fled, whereafter officials have picked up the left-over articles; in the meanwhile, accused again returned and mounted an attack on the forest officials. However, theory of fleeing from the spot and their returning after some time is in conflict with the prosecution case.

16. On the point of identification of the accused, at first place it has come in the testimony of PW-1 that names of accused were disclosed by accused Farooq Ahmad and again he replied in the affirmative to the suggestion that the names of the accused were disclosed by one Khursheed. However, the prosecution neither examined the said Farooq Ahmad nor Khursheed as witnesses; moreover, accused Farooq Ahmad also did not figure in the column of accused in the challan.

17. Consequently, the circumstances which required clarification by the Investigating Officer, such as the exact sequence of events, the weapon used

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26

for the assault as distinguished from the seized axe, the place from where the axe was recovered, the presence or absence of independent witnesses at the spot, and the authenticity and authorship of the written complaint remained unclarified. This materially affects the quality of the evidence and renders the prosecution version doubtful. The benefit of such doubt must go to the accused.

18. If material witnesses, who would unfold the genesis of the incident, are an essential part of the prosecution case and are not convincingly brought to the fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining the witnesses who, though available were not examined, the prosecution case can be termed as suffering from a deficiency, and withholding of such a material witness would oblige the Court to draw an adverse inference against the prosecution by holding that if the witness would have been examined, it would not have supported the prosecution case. A reference in this regard can be made to the judgment of the Hon'ble Supreme Court in **"Takhaji Hiraji V. Thakore Kubersing, Chamansing, (2001) 6 SCC 145"**.

19. It is noteworthy that the Trial Court did not delve into the issue of non-examination of the Investigating Officer, despite the improvements, discrepancies, contradictions and omission to examine the star witnesses requiring explanation, but the same is wanting.

20. The Trial Court's reliance on the accused not offering a plausible explanation under Section 342 CrPC as to why the witness would depose against them is illegal, impermissible and amounts to a reversal of burden of proof. Section 342 CrPC merely offers an opportunity to the accused to

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26

explain circumstances appearing in the evidence against him. It does not cast any burden upon the accused to prove his innocence or to explain the motive of a prosecution witness. The presumption of innocence continues until the prosecution establishes the guilt beyond reasonable doubt. The statement under Section342 CrPC is not substantive evidence and silence or absence of an explanation cannot be used to fill gaps in a weak or doubtful prosecution case, nor can any adverse inference be drawn therefrom when the prosecution evidence itself suffers from material contradictions. In the facts of the present case, where the prosecution has failed to prove its case to the required standard, the Trial Court erred in treating the absence of an explanation under Section 342 CrPC as a circumstance supporting conviction.

FINDINGS AND CONCLUSION:

21. In the backdrop of the foregoing analysis, the conviction of the appellants appears to rest on a slippery foundation. The uncorroborated testimony of the solitary interested witnesses recorded after a long lapse of time, in the face of material contradictions, improvements, omissions, non-examination of the co-injured and the investigating Officer, non-exhibition of the complaint, and the Doctor's evidence which does not exclude alternative cause of injuries, coupled with the Trial Court's erroneous approach of treating an adverse inference from the absence of an explanation under Section 342 CrPC, cannot sustain a conviction. While the Trial Court applied certain settled principles regarding solitary witness and non-examination of the Investigating Officer, the application of those principles to the peculiar facts of the present case, particularly the absence of

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26

independent corroboration in a case involving allegation of forest offences coupled with the assault and the impermissible reversal of the burden of proof, warrants the conclusion that the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt.

22. For what has been discussed and observed, this Court is of the considered view that in view of the material lapses of the prosecution case, the conviction and sentence does not sustain the requirement of proving the offence beyond reasonable doubt. The benefit of such material lapses must go to the accused. Accordingly, the impugned judgement of conviction dated 15.11.2017 and order of sentence dated 22.11.2017 passed by the learned Additional Sessions Judge, Sopore, is set aside and, as a consequence whereof, the appellants are acquitted of the charges for the offences under Section 325 RPC and Section 6 of the Act of 1987. The appellants are relieved of their bail bonds.

23. The appeal is **disposed of** on the above terms.

24. Record along with copy of this judgment be send down to the Trial Court, for information and compliance.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
17.11.2026
Ishaq

Whether the judgement is speaking? Yes
Whether the judgement is reportable? Yes

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
17.11.26