

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 01/2016

Reserved on: 04.02.2022
Pronounced on: 15.02.2022

State of Jammu & Kashmir through Police Station Gandoh (**Appellant**)

Through:- Mr. Suneel Malhotra, GA

Versus

1. Swarn Singh @ Titti S/O Daleep Singh R/O Kasban W. NO. 11 Poonch;
2. Raj Singh S/O Tara Chand R/O Kandote Tehsil Thathri. (**Respondents**)

Through:- Sh. Himanshu Beotra, Advocate for R-1

Through:- Sh. Zulkarnain Sheikh, Advocate, for R-2

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MOHAN LAL, JUDGE

J U D G M E N T
15.02.2022

1. Instant Criminal Acquittal Appeal is directed against the judgment and order dated 28.08.2015 rendered by Ld. Sessions Judge Baderwah in case File No. 09/Sessions titled State of J&K **Versus** Swarn Singh @ Titti and another, whereby, respondents (accused) have been acquitted of the charges leveled against them in FIR No 05/2002 of police station Gandoh for commission of offences U/Ss 302/34 RPC.
2. Aggrieved of and feeling dissatisfied with the impugned judgment and order dated 28-08-2015, appellant State of J&K has questioned it's legality, propriety and correctness, and has sought it's setting aside/quashment on the following grounds;
 - (i) that the judgment impugned is contrary to law and facts which has been passed by the Trial Court in a mechanical manner without appreciating the circumstantial and other evidences available on record;
 - (ii) that the Trial Court has failed to appreciate the prosecution evidence and the conclusion drawn by the trial court is against the weight of evidence, whereas, the occurrence has been proved by the prosecution;
 - (iii) that the Trial Court has rendered acquittal in favour of respondents/accused which is bad in the eyes of law, the important piece of evidence has been ignored by the Trial Court, the circumstances have been corroborated by medical report which are sufficient to prove the

involvement of accused persons in the crime, in as much as, the impugned judgment is based on surmises and conjectures and deserves to be set aside.

- 3.** Alongwith the main acquittal appeal, appellant preferred an application for condonation of two (2) days delay in filing appeal, wherein, the appellant specifically contended that a strong prima facie case exists in favour of appellant which is sure to succeed on merits, the sanction for filling of appeal was granted by the Department of Law, Justice and Parliamentary Affairs vide Government Order No. 4014-LD (ACQ) of 2015 dated 13.10.2015, the delay of two days in filing appeal is neither intentional nor deliberate but due to the facts narrated above. In terms of order of this Court dated 22.10.2015, two (2) days delay in filing the acquittal appeal was condoned and the appeal was admitted for hearing.
- 4.** Sh. Suneel Malhotra Ld. GA appearing on behalf of State, has vehemently submitted, that in the facts and circumstances of the case and the evidence available on record, the court of Pr. Sessions Judge Bhaderwah has committed a grave error in acquitting the accused persons for commission of serious offence u/s 302 r/w Sec. 34 of IPC. It is argued, that the trial court ought to have relied upon and considered the evidence of eyewitnesses and circumstantial witnesses who have led cogent, credible and trustworthy evidence against the accused persons, the reasons given by the trial court on appreciation of evidence do not inspire any confidence, the trial court has erred in not relying upon the medical evidence, and if in the right perspective the trial court would have appreciated the evidence it could have recorded finding of conviction against the accused persons.
- 5.** Ld. Counsel for respondents/accused persons, while supporting the impugned judgment of the trial court, have strenuously argued, that the trial court has rightly appreciated the evidence on record and has rightly come to the conclusion that offence of murder u/s 302 RPC has not been proved against the accused persons as all the eyewitnesses have turned hostile, in much as, the circumstantial witnesses have also not led cogent, trustworthy and reliable evidence. It is vehemently argued, that the judgment impugned acquitting the accused persons does not suffer from any perversity, impropriety or illegality and the same does not call any interference by the appellate court, prayer has been made for dismissal of the appeal.

6. We have heard Sh. Suneel Malhotra, Ld. GA for the State and Ld. Counsel for accused. The facts germane to the filing of instant acquittal appeal are narrated as under:-

“that FIR No. 05/2002 of P/s Gandoh for commission of offences U/Ss 302/34 RPC was registered on the directions given by the Hon’ble High Court of J&K on 12/11/2001 in OWP No. 961/2001 preferred by one Shamima Begum (PW-21) against the State of J&K and others, wherein, the petitioner Shamima Begum alleged that her husband namely Ziaullah died in an action taken by police party of Special Task Force (STF) Camp Barthi which raided the house of one Sakina Begum (PW-20) on 29.09.2001 at about 8/9 P.M, took away the deceased alongwith them, who was severely tortured during illegal detention which resulted in his death in custody in that STF Camp, thereafter the dead body of the deceased was kept in Gandoh Hospital. Hon’ble High Court in the aforesaid Writ Petition also directed that the investigation be got conducted by the Police Officer who is not connected with the case. In compliance to the directions of the Hon’ble High Court, the above FIR U/Ss 302/34 RPC was registered and investigation was entrusted to the then Additional Superintendent of Police Kishtwar namely Sh. Viplav Kumar who during the course of investigation recorded the statements of witnesses under Section 161 Cr.P.C., but the said officer got transferred, whereafter, the investigation was entrusted to Sh. Sunil Kumar the then Additional Superintendent of Police Kishtwar who visited the place of occurrence and prepared the site plan, besides this, he recorded the statements of some other witnesses conversant with the facts of the case under Section 161 Cr.p.c. After the transfer of aforesaid IO the investigation of the case was again entrusted to Sh. Pankaj Magoo the then ASP Kishtwar, but before he could proceed with the matter, the investigation of the case was handed over to Crime Branch Jammu by the PHQ on 20.01.2005 whereby one Mushtaq Ahmed Goni Dy.SP (PW-27) was entrusted with the job of Investigating Officer, who summoned the relevant witnesses having knowledge of crime and recorded all their statements under Section 161 Cr.P.C, after which he summoned the officials of STF posted at Barthi Camp who were orally examined about the incident. During the course of investigation, it came to light that about 52/54 personnel were posted at STF Post Barthi and majority of them were SPOs. On 29.09.2001 some personnel of STF visited the house of deceased who was brought to Police Post Barthi for interrogation, during the course of which deceased was beaten up, on the same day in the evening the father of the deceased alongwith some other persons went to the STF Post but as the STF personnel fired in the air, they got scared and were forced to retreat back, on 30.09.2001 father of the deceased with some other persons visited the STF Camp where accused No. 1 (Swarn Singh) In-charge STF met with them and told that the deceased will be taken to STF Camp Gandoh who will be let off in the evening, but in that evening the deceased was brought to the house of his father-in-law at Barthi which was searched by all the STF personnel, deceased was handcuffed and was in Police Uniform and succeeded in giving a slip to SPO who was keeping

watch on him and the deceased fled away from the spot resulting in registration of case FIR No. 76/2001 against him. It is the further case of prosecution, that on 01.10.2001 STF personnel of Police Post Barthi and Gandoh called the father, wife and brother of the deceased to the STF Camp Barthi where they were beaten up, and it was admitted by the wife of the deceased that a wireless set had been kept hidden by the deceased in her parental house which was searched by the STF personnel but could not be recovered. That on 07.10.2001 STF party comprising of 8/9 police personnel led by accused No. 2 (Raj Singh) conducted a search at Village Kako and in the house of Juma Sheikh where the deceased was found, he was interrogated and at his instance a set of handcuff and police uniform was recovered, and later on another party of STF personnel of Post Barthi headed by accused No. 1 (Swarn Singh) came on spot which ransacked the house of Juma Sheikh and took the deceased alongwith them back to Village Barthi where he was severely beaten up due to which deceased confessed at gun point that a gun has been given to him by a militant which has been hidden by him in an almirah of his house. On the confessional statement of the deceased, police party on the same day in morning at 10/11 a.m headed by both the accused persons comprising of other SPOs namely Sham Singh, Suresh Kumar, Bhagwan Chand and some others took the deceased towards his house from a forest area, accused No. 1 Swarn Singh was carrying a AK-56 rifle while accused No. 2 Raj Singh was armed with an Insas gun, after travelling for about half an hour, they reached in a dense forest, accused No. 1 Swarn Singh started dragging the deceased whose hands were tied with a rope which was removed and he was asked to run away from the spot and when the deceased started running, both the accused persons with a criminal intention starting firing indiscriminately on the deceased which continued for some more time in order to show that some encounter was going on between STF Party and militants, whereby, deceased lost his life in the said firing and the STF conducted search of the house of the deceased from where a Pika Gun alongwith some rounds were recovered, the body of the deceased and seized weapon were brought to STF Post Barthi in order to justify the killing of deceased in a fake encounter, whereby, FIR No. 76/2001 was registered in P/s Gandoh. The post-mortem of the deceased was got conducted whereafter his dead body was handed over to his legal heirs, the documentary record pertaining to issuance of aforesaid weapons to the accused persons were obtained, the accused persons were arrested and their complicity in the crime was established, whereby, the challan/charge-sheet was laid in the Court of Ld. Munsiff JMIC Gandoh on 06.03.2006, who committed the challan to the Court of Ld. Sessions Judge Bhaderwah for trial”.

7. Ld. Sessions Judge Bhaderwah vide his order dated 31-05-2006 framed charges against the accused for commission of offences u/ss 302/34 RPC. Charges were read over and explained to the accused who denied the charges and claimed trial. In the trial court, out of total listed 33 witnesses in the challan, prosecution examined as many as 27 witnesses to prove the guilt of the accused persons. In

their statements recorded under Section 342 Cr.P.C, accused persons denied all the incriminating evidence against them, pleaded innocence and their false implication in the case. Accused persons did not prefer to examine any witness in their defence.

8. The prosecution to prove the charges against the accused persons, has relied upon (i) the **direct evidence of eyewitnesses** viz; PW-1 Vikram Singh SPO, PW-2 Narinder Singh Constable, PW-3 Suresh Kumar SPO, PW-4 Shah Arab SPO, PW-5 Sham Singh SPO, PW-6 Mukhtiar Ahmed SPO & PW-7 Dayal Chand SPO and (ii) the **circumstantial evidence** of circumstantial witnesses viz; PW-8 Javed Iqbal (uncle of deceased), PW-9 Abdul Majid, PW-10 Mohd. Sharief (Numberdar), PW-11 Ghulam Hussain, PW-12 Amar Chand, PW-13 Mohd. Shafi, PW-14 Mohd. Shaffi (S/o Rusla), PW-15 Haji Gulam Mohd, PW-16 Anayat-Ullah Wani (f/o deceased), PW-17 Ghulam Nabi (brother -in-law of the deceased), PW-18 Ghulam Qadir (teacher), PW-19 Jan Mohd., PW-20 Sakina Begum (mother-in-law of the deceased), PW-21 Shamima Begum (w/o deceased), PW-22 Satish Kumar SGCT, PW-23 Kashmir Singh Moharar P/S Gandoh, PW-24 Dr. Nizam Din Dar (MO SDH Gandoh), PW-25 Viplav Kumar DIG (IO), PW-26 Sunil Kumar IG (IO) & PW-27 Mushtaq Ahmed Goni (Retd. SP) and the IO who completed the investigation and submitted the chargesheet in the court.
9. The 1st set of evidence adduced by the prosecution to prove the guilt of accused persons is, the “evidence of eyewitnesses”. PW-1 Vikram Singh SPO (eyewitness) in the trial court has testified that the deceased was killed in an encounter in which he had participated, and the team was headed by accused Swarn Singh, and in the said encounter accused Raj Singh had not participated. He has been declared hostile by the prosecution and in cross-examination has categorically deposed that the deceased was a hardcore militant and was killed in an encounter and besides the dead body of the deceased, one Pika Gun and a bag containing police uniform and a set of handcuff were recovered. PW-2 Narinder Singh Constable (eyewitness) has putforth evidence that in the year 2001, he was posted at Police Post Barthi, and an encounter took place with militants near police post in which officials of 26/RR, ITBP and STF participated, and after the encounter was over, dead body of the deceased alongwith Pika Gun and 350 rounds were recovered, but in the same breath, deposes that he was not present at the said encounter. This witness has been declared hostile by the prosecution and

in cross-examination, has stated that accused who are present at STF post Barthi had not gunned down the deceased. PW-3 Suresh Kumar SPO (eyewitness) has led evidence to the fact that in the year 2001, he was posted at Police Post Barthi, police had received information about presence of Ziaullah in village Barthi, deceased was brought in Police Post Barthi in handcuff, but he hit a SPO with the handcuff and fled away from the custody, after 4/5 days, an information was received that the deceased was present in a nearby forest and the search party alongwith ITBP team and army went there where encounter took place for 2/3 hours in which deceased was killed and from his possession one Pika gun and 300 rounds were recovered, he had not given statement to the police that deceased was killed by the accused. PW-4 Shah Arab SPO (eyewitness) has given evidence to the extent that in the year 2001, in the month of September/October, he was posted at Barthi police post, deceased was militant and succeeded in giving a slip to the police, but was later on killed in separate encounter. This witness has been declared as hostile by the prosecution, and in cross-examination by the PP, he has categorically denied that deceased or his parents as well as wife were taken to custody by Police Post Barthi, and it has been wrongly scribed in his statement u/s 161 Cr.P.C that accused had killed the deceased in a fake encounter. PW-5 Sham Singh SPO (eyewitness) has put forth evidence that he does not know the deceased nor he has knowledge of the case. He has been declared hostile and in cross-examination has not supported the case of prosecution but has gone to the extent of deposing that his statement recorded by police u/s 161 Cr.P.C is not correct. PW-6 Mukhtiyar Ahmed (Private Teacher) at the relevant time of occurrence was posted at Barthi, and has deposed that deceased was known to him, but he has no knowledge of occurrence as how the deceased died. This witness has been declared hostile by the prosecution and in cross-examination has not supported the prosecution version. PW-7 Dayal Chand SPO (eyewitness) has deposed that in the year 2001 he was posted at Police Post Barthi, and In-charge of Police Post was one Naresh Kumar. He has been declared hostile by the prosecution.

- 10.** The 2nd set of evidence relied upon the prosecution to link the chain of circumstances pointing to the guilt of accused persons is the evidence of “circumstantial witnesses”. PW-8 Javed Iqbal (uncle of deceased) has led evidence to the effect that he had heard that deceased was killed by STF. PW-9 Abdul Majid has led evidence before the trial court to the extent that on 07.10.2001, he heard sound of firing in the forest where he had gone to cut the

grass and in the meantime, In-charge Police Post Jhalo, namely Shabir Ahmed met him and told him that STF personnel of Barthi had killed an Afghan militant. In cross-examination, he has deposed that the face of the deceased was seen by him from a hole in a gunny bag. PW-10 Mohd. Sharif, Numberdar has stated that deceased was son of his brother-in-law and was working in PHE department, on 07.10.2001 firing took place in Barthi Post and where deceased was killed in an encounter. PW-11 Ghulam Hussain, has stated that he had heard that the deceased had died in custody of accused. PW-12 Amar Chand has denied the knowledge of occurrence and has been declared hostile by the prosecution. PW-13 Mohd. Shafi, has deposed, that on 07.10.2001, body of the deceased was brought in village where he was buried, but he has no knowledge that the firing took place with the police. PW-14 Mohd. Shaffi S/o Rusla an adhoc employee of PHE has deposed, that deceased was taken by STF to police post on the suspicion that deceased was a militant, however, he does not know whether deceased fled away from the Police Station Gandoh or not. PW-15 Haji Gulam Mohd. is heresy witness and was only heard that deceased was murdered and his dead body was brought from Barthi to Gandoh. PW-16 Anayat-Ullah Wani (f/o deceased) has led evidence to the extent that on 29.09.2001 at 08 p.m, STF Jawans of Barthi Post took his son to the post, deceased was lying in semi dead condition inside room in the post, he did not inform Tehsildar or SHO about this and also did not approach DG or DIG with any written report. He has further gone to the extent of deposing that it is wrongly written in his statement recorded by police that accused had caught the deceased from the house of one Juma Sheikh at village Kako. PW-17 Ghulam Nabi (brother-in-law of the deceased), has led evidence is to the extent that he had only seen accused taking the deceased in their camp, but he did not lodge any report to DC or SSP about incident. PW-18 Ghulam Qadir at the relevant time of occurrence was a teacher in Government Middle School Barthi where STF Post was existed, but has stated that he has no knowledge of occurrence. PW-19 Jan Mohd. has stated that he does not know the name of STF In-charge. PW-20 Sakina Begum (mother-in-law of the deceased) in her cross-examination has categorically deposed that deceased was not killed in her presence. PW-21 Shamima Begum (w/o deceased) in her evidence has stated that she heard about killing of the deceased by the accused in the hospital itself, but before her return to the village, the deceased was buried, and when she went in Police Post Barthi, she saw deceased in a room having marks of rope around his neck who was not in a condition to talk because he was

given severe beatings. In her cross-examination, she has categorically stated that it is wrong that deceased was caught in the house of Juma Sheikh as this fact has been wrongly written in her statement u/s 161 Cr.P.C that accused was caught from the house of Mohd. Sheikh at village Kako. PW-22 Satish Kumar SGCT is a witness regarding handing over of Roznamcha to the officials of Crime Branch. His evidence by no stretch of imagination can link the accused with the crime. PW-23 Kashmir Singh is a witness to the seizure of Roznamcha from Police Station Gandoh and as per his evidence in the year 2001 FIR No. 74 was registered against the deceased for commission of offence U/Ss 382/147/323/336 RPC & 4/5 Explosive Act in which search party of STF Barthi and 26 RR was fired upon wherein one militant Sanaullah was killed. PW-24 Dr. Nizam Din Dar (MO SDH Gandoh) has conducted the post mortem of the deceased on 07.10.2001 and has found bullet injuries, bruises and abrasions over the body of the deceased, and has opinion that death of the deceased was due to hemorrhagic shock due to multiple bullet injuries from a close distance, physical torture and multiple cut injuries by sharp edged weapon. PW-25 Viplav Kumar DIG at the relevant time of occurrence was posted as Additional SP at Kishtwar in the year 2001. His evidence is to the fact that investigation of the case FIR No. 5/2002 was entrusted to him by SSP Doda and during the course of investigation, statements of the close relatives of the deceased namely Shamima Begum, Annayat-ulaah Wani, Ahmed-ullah Wani, Mohd. Sharief, Abdul Karim and Javed Iqbal were recorded by him under Section 161 Cr.P.C, the accused were not named in the FIR, however, after recording the statements of Shamima Begum and Annayat-Ullah, the involvement of the accused surfaced in the crime, the investigation of the case remained with him from 17.01.2002 to 30.12.2002 and thereafter he was transferred. This witness in the same breath in the cross-examination has categorically putforth evidence that names of the accused were not given in the statement of Shamima Begum and nor in his investigation any offence was made out against the accused. PW-26 Sunil Kumar IG Armed Police Kashmir, at the relevant time in the year 2003 was posted as Additional SP Kishtwar who took over the investigation of the case from PW-25 Viplav Kumar (DIG on his transfer). His evidence is to the effect that during investigation he prepared site plan, recorded statements of some of the prosecution witness, collected copies of documents of case FIR No. 76/2000 but got transferred in the month of August 2003. This witness in the same breath in his cross-examination has deposed that he recorded statement of Shamima Begum (wife of the

deceased) on 23.06.2003 but it could not be established in his investigation about the names of STF personnel's who had lifted the deceased. PW-27 Mushtaq Ahmed Goni (Retd. SP) who at the relevant time of the investigation of the case was posted as Dy.SP Crime Branch Jammu, had concluded the investigation of the case on the directions of the SSP Crime Branch and had laid challan in the court. His evidence is to the effect that during the course of investigation, he recorded the statements of eye witnesses, thereafter, accused were arrested by him as complicity of the accused was established for commission of offence under Section 302/34 RPC in regard to murder of deceased. This witness in his cross-examination has taken a summersault, and has hugely contradicted the prosecution version by testifying that P/S Gandoh had registered a case FIR No. 76/2001 in regard to killing of the deceased in an encounter and the said case was not investigated by him, Shamima Begum wife of the deceased in her statement recorded under Section 161 Cr.P.C had not named the STF personnel who had took the deceased from his house, and in his investigation not a single witness had stated before him that accused had killed the deceased in their presence.

- 11.** The eye witnesses to the occurrence have resiled from their testimonies recorded before the police during investigation u/s 161 Cr.pc and have been declared hostile by the prosecution. The critical analysis of the evidence of eyewitness to the occurrence depict, that they were subjected to the grueling cross-examination by the defence, and all of them do not claim to have personally seen the accused persons committing the murder of the deceased. The evidence of the eyewitness when tested and evaluated in it's entirety makes it abundantly clear, that they have not witnessed the occurrence of killing of the deceased by the accused persons. There is no credible evidence to prove that deceased was taken/kidnapped by the accused persons and lateron killed in their captivity. The evidence of star eyewitness of the prosecution is, therefore, not trustworthy, reliable and admissible in evidence, and thus the probability of any other person coming in contact in the company of deceased cannot be ruled out. The evidence of close relatives of the deceased namely, PW-8 Javed Iqbal (uncle of the deceased), PW-10 Mohd. Sharief (Numberdar and cousin father-in-law of the deceased), PW-16 Anayat-Ullah Wani (father of the deceased), PW-17 Ghulam Nabi (brother-in-law of the deceased), PW-20 Sakina Begum (mother-in-law of the deceased), PW-21 Shamima Begum (wife of the deceased) recorded before the trial court do not prove that they have seen the accused persons killing the deceased. It is to be borne in mind, that when the relatives are cited by the

prosecution as witness, they are the interesting witnesses and their evidence has to be scrutinized with care, caution and circumspection. The Court should be on its guard while evaluating the truthfulness or the creditworthiness of the testimonies of such interested witnesses. Hon'ble Apex Court in the case of **Rai Sandeep @ Deepu vs. State of NCT of Delhi, AIR 2012 SC 3157** has observed, that the evidence of a sterling witness should be of a very high quality and caliber and their versions should be unassailable. Curiously, none of the prosecution witnesses viz; "eye witnesses" or the "circumstantial witnesses" have led cogent, reliable, credible, trustworthy and unimpeachable evidence to prove that the deceased was killed by the accused persons in fake encounter.

12. It is unambiguously reiterated here, that the writ petition filed by PW-21 (Shamima Begum, w/o deceased) on 09.11.2001 does not mention the names of respondents/accused persons that killed the deceased. Hon'ble Supreme Court of India in a case law reported in **AIR SCW 2804 (State vs. Sait)** has held, that in a case where the complainant in the FIR or the witness in his statement under Section 161 Cr.P.C has not disclosed certain facts but tried to improve their version first time before the Court in order to project the complicity of the accused, such version lacks credence and is liable to be discarded. Ld. GA, Sh. Suneel Malhotra for the State has urged, that the body of deceased was having gunshot injuries and torture, at the first blush appear to be attractive, but is devoid of any legal force for the reasons that none of the prosecution witnesses examined have shown the involvement/complicity of the accused persons in the crime of killing of the deceased. The evidence of post-mortem report by no stretch of imagination can be made the sole basis for the conviction of the accused in absence of legal proof against them. In a criminal trial, it is the duty of the court to ensure that mere conjectures or suspicion do not take the place of legal proof. Suspicion, however strong or probable it may be, is not a substitute for the legal proof required to substantiate the charges against the accused for commission of crime. It would be travesty of justice to rely upon the suspicion/conjectures as adduced by the prosecution in a criminal case as the case in hand. From the prosecution witness, it is not clearly established that deceased was killed by the accused persons.

13. On the basis of the aforesaid evidence adduced by the prosecution, we hold that there is no legal evidence on record to prove that accused persons are the mastermind of the murder of deceased/Ziaullah. The direct evidence of the

eyewitnesses as well as the circumstantial evidence relied upon by the prosecution are not strong enough indicating the involvement of the accused persons in the commission of crime, and the circumstantial evidence is not compatible with the possibility of guilt of accused persons. The witnesses examined by the prosecution have not been able to put forth in their evidence a ring of truth so as to inspire confidence in this court. Evidence of prosecution witnesses is, therefore, qualitatively and quantitatively insufficient to bring nexus between the accused persons and commission of the offences indicted against them. This renders the entire story of the prosecution as incredible and unbelievable in the manner projected. On proper assessment, evaluation and estimation of the evidence adduced by the prosecution, the evidence appears to be weak, fragile, lacking credibility, does not prove the connecting link between the accused persons and the commission of offences indicted against them, and is based on surmises and conjectures. It would be highly dangerous and hazardous to hold the accused persons guilty of offences alleged against them on the basis of weak, shaky and unacceptable evidence. The whole case of the prosecution, therefore, becomes doubtful. For the foregoing reasons and discussion, the prosecution has miserably failed to prove the guilt of accused persons beyond reasonable doubt for commission of offences under Section 302/34 RPC. We do not find any merit in the appeal. The trial court of Ld. Sessions Judge Baderwah has rendered a reasoned judgment of clean acquittal dated 28-08-2015 against respondents/accused, same does not suffer from any legal infirmity or impropriety and does not call any interference from this court, accordingly, the judgment impugned is upheld. Resultantly, the appeal is found meritless, the same is disallowed, rejected & dismissed. Record of the trial court be sent back forthwith under proper receipt. Acquittal appeal is disposed off and after due compilation under rules, shall be consigned to records.

Jammu
15.02.2022
Vijay

(Mohan Lal)
Judge

(Sanjeev Kumar)
Judge