

(2014) 10 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : SLAA No. 81 Of 2013 and Cr. Acq. Appeal No. 162 Of 2013

State of J&K

APPELLANT

Vs

Manzoor Ahmed and Others

RESPONDENT

Date of Decision : 29-10-2014

Acts Referred:

Citation : (2014) 4 JKJ 540

Hon'ble Judges : Dhiraj Singh Thakur, J;Bansi Lal Bhat, J

Bench : Division Bench

Advocate : Monish Chopra, GA, Advocates for the Appellant; P.N. Bhat, Advocates for the Respondent

Judgement

Bansi Lal Bhat, J.—State seeks leave to file appeal against the judgment dated 16.01.2013 passed by the Principal Sessions Judge,

Ramban by virtue whereof respondents (hereinafter referred to as 'accused') were acquitted of charges framed against them for offence under

Sections 364/382/323/342/324 RPC and 4/5 Explosive Sub-stances Act, on the ground that the prosecution had failed to connect the accused

with the commission of alleged offences. The case has been registered on the basis of a written complaint filed by Bashir Ahmad and others

alleging therein that on 26.07.2007 at 6:00 PM two militants, namely, Furkan and Nasarullah Gazi came across them at Gujjargali, took them to

the house of Mohd. Ayoob on gun point, where Mohd. Ayoob and Gulzar sons of Gul Mohd. were told that 2IC of Army had called them to

Bhimdasan and from Bhimdasan they were taken to a house where Raj Begum w/o Furkan and some other persons assaulted them and snatched

their Cell Phones. They were tied after being subjected to beating. However, they managed to escape while militants were taking meals in the

house.

2. Case under FIR No. 49/2007 came to be registered at police station, Gool on the basis of the written complaint. Investigation culminated in

filing of charge-sheet against the accused for aforesaid offences, to which the accused pleaded not guilty. Prosecution led evidence to establish

complicity of accused in the alleged crime. On consideration of the evidence brought on record at the trial, learned Sessions Judge recorded the

judgment of acquittal which is sought to be assailed in appeal before this Court.

3. Heard and perused the record.

4. It appears that prosecution has examined Khurshida Begum, Bashir Ahmed, Gulzar Ahmad, Nazir Ahmed, Mohd Yaqoob, Wazir Mohd, HC

Wazir Mohd and HC Bharat Singh as its witnesses at the trial. However, Mohd. Ayooob and his father Gul Mohd who were the star witnesses of

prosecution were not examined at the trial. Even the Doctor who is said to have examined the injured and the investigating officer who concluded

the investigation, have not been produced in the witness box. PW Khurshida Begum-mother of Mohd Ayooob did not identify the accused as the

assailants. According to her account the assailants were wearing Army uniforms. She claimed that her son was not assaulted in her presence. PW

Bashir Ahmad and Gulzar Ahmad deposed that they were taken alongwith Mohd Ayooob to Bhimdasan where they were subjected to beating in a

house on the allegation of being informers. PW Nazir Ahmad is witness to the disclosure memo attributed to accused Feroz Din and PW Mohd

Yaqoob SPO is witness to the recovery memo. PW Wazir Mohd is a witness to the recovery of articles including two live rounds recovered from

a hideout in a jungle. The witness claimed that the abductees had been kept at a hideout. This version is different from the version of abductees

who claimed to have been kept in the village and tied with a rope after being subjected to assault. Some recovered articles appear to have been

destroyed without any explanation with respect to the orders of disposal regarding the same. Since the investigating officer who concluded the

investigation has not been examined at the trial, the mode of proof by way of establishing recovery of arms and ammunition in pursuance to

disclosure statements made by the accused does not stand discharged. It appears that the material witnesses in the case have been withheld

without any plausible explanation being offered in regard to their non-production. In a case like the instant one non-examination of investigating

officers is fatal to prosecution as the case rests upon recovery of incriminating articles including arms and ammunitions at the instance of accused.

Unfortunately, testimonies of Bashir Ahmad and Gulzar Ahmad have not been corroborated in material particulars even by Khurshida Begum who

happens to be the mother of one of the victims, namely, Mohd Ayoob.

5. Viewed in the overall context of what has been stated hereinabove, it appears to be a case which does not satisfy the standard of proof required

to prove a criminal charge. The evidence adduced is insufficient and uncorroborated in material particulars and mode of proof in the form of

confirmation of disclosure statement by subsequent recovery of arms and ammunitions at the instance of accused is woefully lacking.

6. We, accordingly, record our agreement with the conclusions arrived at by the learned Trial Court. We find no hesitation in holding that the case

has rightly been dismissed for want of legal proof. There being no substantial and compelling reasons to take a divergent view on reappraisal of

evidence, intervention in the impugned judgment is not warranted. SLAA is, accordingly, declined. Consequently, appeal also fails and is hereby

dismissed.