

(2025) 08 J&K CK 0361
In the Jammu And Kashmir High Court
Case No : CrIA (AS) No. 39 Of 2021

State of J&K

APPELLANT

Vs

Mohd. Dawood and Anr

RESPONDENT

Date of Decision : 14-08-2025

Acts Referred:

Ranbir Penal Code, 1932 — Section 147, 148, 323, 366, 458, 511
Arms Act, 1959 — Section 4, 25
Code Of Criminal Procedure, 1973 — Section 342

Citation : (2025) 08 J&K CK 0361

Hon'ble Judges : Rajesh Sekhri, J

Bench : Single Bench

Advocate : Bhanu Jasrotia, Arshid Pervaiz Malik

Final Decision : Disposed Of

Judgement

Rajesh Sekhri, J

1. This appeal has been directed against the judgment dated 23.01.2016, prepounded by learned Principal Sessions Judge, Rajouri [“the trial Court”] in case titled “State v. Mohd. Dawood and Ors.”, vide which respondents came to be acquitted of the charge, for offences under Sections 147/148/458/323/366/511 RPC and 4/25 of the Indians Arms Act.

2. As factual narration of the present case would unfurl, on 04.02.2007, incharge Police Station, Kalakote during patrol duty received a source information that in the intervening night of 4th and 5th of February 2007, respondents, in furtherance of common criminal intention entered into the house of one Zakir Hussain, thrashed him and apprehended his family.

3. On the receipt of this report, a docket was flashed to Police Station, Kalakote and FIR No. 12/2007 came to be registered. The investigation culminated in a final report against the respondents. The respondents came to be charged for the aforesaid offences whereby, they pleaded innocence and claimed trial, prompting

the trial Court to ask for the prosecution evidence. The prosecution examined almost all the witnesses including the complainant.

4. On culmination of the prosecution evidence, the incriminating imputations were put to the respondents under Section 342 Cr. P. C., whereby, they denied the allegations and preferred not to enter the defence.

5. Learned trial Court on critical analysis of the prosecution evidence, has come to the conclusion that prosecution failed to bring home guilt of the respondents beyond reasonable shadow of doubt, as a result, they came to be acquitted.

6. The appellant state is aggrieved of the impugned judgment, primarily on the ground that learned trial Court has failed to appreciate the prosecution evidence in the correct perspective and respondents have been acquitted of the charge despite availability of sufficient material against them to sustain the conviction.

7. Having heard the rival contentions, I have carefully gone through the record.

8. It is the prosecution story that respondents barged into the house of Zakir Hussain, severely thrashed him and apprehended his family.

9. PW Zakir Hussain in his testimony in the trial Court has stated that he was called out by the respondents, who were masked at the time of occurrence. He was thrashed and while dragging him an attempt was made to take away his daughter and daughter-in-law. Some people assembled on the spot and accused fled away. Pertinently, PW Zakir Hussain in cross-examination admitted, without mincing words, that he failed to identify the assailants in the night. PW Tasvir Fatima is another eye witness. She has also stated that some people came to their house, they were masked and due to darkness, she could not identify them. PW Shabeena Kousar has also made a similar statement by stating that respondents on 02.02.2007 at around 12:00 pm entered into their house however, she could not identify them.

10. PW Jamshed Begum is wife of Zakir Hussain. Though in chief examination, she has testified that respondents attacked their house, thrashed her husband and tried to kidnap Shabeena Kousar and Tasvir Fatima, who were rescued by the people assembled on the spot but in cross-examination, she has stated that around 40-50 people had entered into their house and she could not make out as to who had attacked their house. PW Saif Din, also cited as an eye witness by the prosecution has not deposed anything incriminating against the respondents. PW Mohd. Yakoob turned hostile to the prosecution. Rest of the prosecution witness are formal to the seizure memos or the investigating officer.

11. It is evident from the testimony of the aforesaid prosecution witnesses that it is only PW Jamshed Begum, who somehow made an endeavour to connect the respondents with the commission of the crime, however, in cross-examination she also stated that about 40-50 people entered into their house but she could not make out as to who attacked their house. Her testimony that it was the respondents-accused who attacked their house is falsified by the testimony of

her husband, PW Zakir Hussain alleged to have been thrashed by the respondents at the relevant point of time. PW Zakir Hussain has clearly stated that since it was dark they could not identify the masked assailants due to darkness.

12. The upshot of the aforesaid evaluation of the prosecution evidence is that learned trial Court has appreciated the prosecution evidence in the correct perspective and has rightly concluded that prosecution badly failed to establish guilt of the respondents beyond reasonable shadow of doubt.

13. For the foregoing reasons, the present appeal is bereft of any merit hence, dismissed and the impugned judgment is upheld.

14. Disposed of.