

Jammu & Kashmir High Court

State Of J&K vs Manzoor Ahmed on 30 December, 2022

HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU

Reserved on :22.12.2022

Pronounced on: .30.12.2022

CRAA No. 79/2012(0&M)

State of J&K

.....Appellant(s)/Petitioner(s)

Through: Ms. Monika Kohli, Sr. AAG

vs

Manzoor Ahmed

..... Respondent(s)

Through: Mr. Altaf Hussain Janjua, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGEMENT

Per Oswal-J

1. The judgment of acquittal dated 04.04.2012 passed by the Principal Sessions Judge, Ramban (hereinafter to be referred as the trial court) in case, titled, "State vs Manzoor Ahmed" arising out of FIR No. 6/2005 for commission of offences under sections 302/34 RPC, has been assailed by the appellant on the ground that the learned trial court has not rightly appreciated the evidence available on record.

2. Ms. Monika Kohli, learned Sr. AAG appearing on behalf of the appellant vehemently argued that the prosecution had proved the case beyond reasonable doubt but the learned trial court has not rightly appreciated the evidence and acquitted the respondent erroneously.

3. On the contrary, Mr. Altaf Hussain Janjua, learned counsel representing respondent vehemently argued that it was a case of no evidence and there is no perversity in the judgment passed by the learned trial court.

4. Heard and perused the record.

5. The facts as they emanate from the charge sheet are that Mohd. Assadullah Bhat S/o Mohamadu resident of Gool lodged a written report with Police Station, Gool on 14.12.2004 against Manzoor Ahmed, his parents and brothers. In the report, it was stated that his daughter was married eight months ago with Manzoor Ahmed. The said persons used to quarrel with his daughter. The community meetings were also held four times but they did not mend their ways. On 13.12.2004, the

deceased along with Manzoor Ahmed, his father and brother, namely, Hakim Din had gone to jungle at around 8.00 AM. On enquiry from home, no information was provided as for what purpose they had gone. At around 2.00 PM, there was a noise from the jungle. The villagers went on spot and officials from Police Post, Ind had also come. The dead body of the deceased was lying there. The complainant also told the Police that he had not seen the occurrence. Pursuant to the said report, the proceedings under section 174 CrPC were initiated and after conclusion of the same, FIR bearing No. 6/2005 under section 302 RPC was registered on 01.07.2005. After the conclusion of the investigation, the Investigating Officer proved the offence under section 302 RPC against the accused Manzoor Ahmed and offence under sections 302/34 RPC against the brother of the accused i.e. Hakam Din, who was minor at the time of alleged occurrence. The charge sheet for commission of offence under section 302 RPC was filed against the respondent and under section 302/34 RPC against the accused Hakam Din. Learned trial court vide order dated 17.01.2006 framed the charge for commission of offence under section 302 RPC against the respondent and directed separate trial of the accused Hakam Din as he was juvenile. The prosecution examined all the witnesses and the respondent also examined two witnesses in support of his defence.

6. Before appreciating the rival contentions, it is necessary to have a brief resume of the relevant portion of the prosecution as well as defence evidence.

7. PW-1 Mohd. Assadullah Bhat stated that on the date of occurrence, he was working in his village and during lunch break, he heard noise from the jungle. In the jungle, he found his younger daughter Rehana Bano, who on enquiry told that accused Manzoor Ahmed had quarrelled with Shameema Begum. Rehana further told him that the accused had caught hold of the deceased from her hair and had given blows by the blunt side of the axe on the head and teeth of the deceased. Accused Hakam Din had caught the deceased from her arms. Rehana came to the village and again accompanied the police to the place of occurrence, wherefrom the dead body was recovered. The accused Manzoor Ahmed told the Police that the deceased had died after falling from hillock. The accused Hakam Din too had stated to the police that the deceased fell down from the hill in his presence. The deceased was assured by the accused and his family that they would deposit an amount of Rs. 10,000/- in her name at the time of marriage but they did not deposit and it led to the start of the quarrel. One of the brothers of the accused was a militant and the accused Hakam Din and his father had been in police custody for four months. The militant brother of the accused had killed his brother due to this animosity. He proved the contents of his report, custody memo of the deceased, seizure memo of the clothes of the deceased, supurdnama of the seal, receipt of the dead body and the seizure memo of the axe.

In cross examination, he stated that one of his sons, namely, Tariq was earlier with the militants and now he is in jail in connection with murder of Shabir, the real brother of the accused. The dead body was found in Bagdali jungle, which is 2 ½ kms. away from the village Ind. He admitted that there were shooting stones in the area.

8. PW-2 Rehana Bano was declared hostile by the prosecution. In cross examination, she stated that her sister Shameema was married to accused Manzoor Ahmed and they were having strained relations up to the day of occurrence. She heard noise of Hakam Din, brother of the accused, who

was weeping. He told her that the deceased had fallen from hill. She had not stated to the police that the accused had hit on the teeth of the deceased with an axe.

9. PW-3 Sakeena stated that there was dispute over demand of dowry between the accused and her daughter and the accused used to fight with the deceased. Prior to the day of occurrence, the accused had a fight with her. PW-Rehana had seen the accused hitting the deceased with an axe. In cross examination, she stated that Rehana had narrated the incident to her at home and then she left to the place of occurrence accompanied by her husband, police and PW Rehana. In her statement recorded by the Police, the killing of the deceased has not been mentioned.

10. PW-4 Farooq Ahmed stated that the deceased was his sister. She had been killed by the accused and his family at their home and the dead body was thrown in the jungle. Two of his uncles were killed by the brother of the accused. In cross examination, he stated that the accused had killed the deceased at his own house in presence of PW Rehana Bano.

11. PW-6 Zulfkar Ahmed stated that he heard the noise from the house of the accused, where the fight was going on between the accused and the deceased, PWs Farooq and Tariq were also present, who had counselled their sister, the deceased. They witnessed this fight on 12.04.2004 and on next day he heard that the deceased had died. In cross-examination he stated that he did not know as to why the fight between the accused and his wife took place.

12. PW-7 Manzoor Ahmed stated that he along with PW-6 while going to the house of Mohd. Shafi Wani, heard noise from the house of one Mohd. Abdullah Bhat. They went inside the house, where accused was found beating the deceased with a stick. They saved the deceased from the accused. They intervened and in the meantime, PW Mohd Farooq, brother of the deceased also came on spot and next day, he came to know that the deceased had died and it was suspected that she had been killed by the accused. The dead body of the deceased was found in the jungle. In cross examination, he stated that they heard noise of the deceased at 9.00 AM and she was crying in the compound of the house. He along with complainant and PW Mohd Farooq had reached the house immediately after the fight between the couple was over. He along with complainant and Rehana suspected that the accused had pushed the deceased from the hill.

13. PW-8 Puran Chand turned hostile and during cross examination, no incriminating material could be extracted from him by the Public Prosecutor.

14. PW-9 Dr. B. A. Tragwal proved the post mortem report. He further stated that injury found on the body of the deceased could possibly be caused due to a fall from high altitude of hilly terrain or due to rolling down.

15. PW-10 Suraj Pathania, SI stated that he conducted the investigation and he got the post mortem of the deceased conducted, recorded the statements of the witnesses and thereafter, FIR was registered. He proved the seizure memo of the dead body, supurdnama and receipt of the dead body, injury memo and the arrest memo. From the investigation, he proved the offences under sections 302/34 RPC against the accused persons. In cross examination, he stated that he had received

written information about the occurrence on 14.12.2004. In the application, it was not mentioned that the accused Manzoor Ahmed and Hakam Din had committed murder of deceased. PW-2 Rehana is the daughter of the complainant, who lived with him at his house. From the statement of the complainant and other witnesses, it transpired that the deceased had gone to the Bagdali Jungle for grazing of goats. In that area, if a person falls from a hill, can lose his/her life. In the report lodged by the complainant, it was not mentioned that PW Rehana had seen the occurrence itself.

16. This is whole prosecution evidence. The defence has examined two witnesses, namely, DW-1 Ghulam Mohd. Bhat and DW-2 Mohd Shafi. Both these witnesses have stated that the deceased had gone to jungle for grazing the live stock but she did not return and later on her dead body was found in a nallah.

17. From the charge sheet, PW-2 Rehana and PW-3 Sakeena have been cited as eyewitnesses. In the FIR, lodged by the complainant, who happens to be the father of the deceased, he has simply raised the suspicion about the involvement of the accused in the murder of his daughter. From the statement of the Investigating Officer PW-10 Suraj Pathania, it is evident that PW-2 Rehana, who is the sister of the deceased has been residing with the complainant at his house. Though she was cited as an eyewitness but she has not supported the prosecution story and was declared hostile. It appears that the whole of the prosecution story was built after recording the statement of PW-2 Rehana. Had there been any truth in the prosecution story, the complainant i.e. PW-1 would have been informed by the PW-2 Rehana about the occurrence and in turn the complainant would have mentioned it in the report. PW-3 is the mother of the deceased and she too has deposed on the basis of information supplied to her by PW-2 Rehana, who has not supported the prosecution case. Thus, the statement of PW-1 and PW-3 cannot be relied upon.

18. Also, this is an admitted case that there is animosity between the families of the complainant as well as the accused. No doubt, PWs-6 and 7 have stated that one day prior to occurrence, there was fight between the accused and the deceased but that alone was not sufficient to prove that the accused killed the deceased. More particularly, when PW-4 Farooq Ahmed has not corroborated the version of PW-6 and PW-7 and has rather given a new version that the deceased was killed by the accused and his family at their house and her dead body was dumped at the place of occurrence, whereas the prosecution story is that the deceased was killed in the jungle by the accused.

19. We have examined the judgment passed by the learned trial court and the learned trial court has considered the factum of animosity between two families and also the fact that PW-2 Rehana, who was cited as eye witness, has not supported the prosecution version. While acquitting the respondent, the learned trial court has also taken note of statements of the witnesses made by PW-4, PW-6 and PW-7 and have rightly come to the conclusion that the prosecution has failed to prove its case. The opinion formed by the learned trial court cannot be said to be contrary to the evidence led by the prosecution that warrants any interference by this court.

20. For all what has been discussed above, we do not find any reason to interfere with the well reasoned judgment of the trial court, as such, the present appeal is found to be devoid of any merit and the same is, accordingly, dismissed.

21. Record of the trial court be sent back.

(PUNEET GUPTA)
JUDGE

(RAJNESH OSWAL)
JUDGE

Jammu
30.12.2022
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No