
(2022) 04 J&K CK 0024

Jammu And Kashmir High Court

Case No: Criminal Appeal No. 125 Of 2014

State Of J&K

APPELLANT

Vs

Babu Ram

RESPONDENT

Date of Decision: April 8, 2022

Acts Referred:

- Jammu And Kashmir State Ranbir Penal Code, 1989 - Section 34, 302
- Indian Penal Code, 1860 - Section 302 Code Of Criminal Procedure, 1989 - Section 164A, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487
- Code Of Criminal Procedure, 1973 - Section 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 378(1), 417, 417(1)

Citation: (2022) 04 J&K CK 0024

Hon'ble Judges: Sanjeev Kumar, J; Rahul Bharti, J

Bench: Division Bench

Advocate: Dewakar Sharma

Final Decision: Dismissed

Judgement

Rahul Bharti, J

1. Heard. The present criminal acquittal appeal by the appellant-State, upon its bare reading, has caught this Court laboring with a thought process that

is the filing of an acquittal appeal from the State/Government's end just an administrative minded routine exercise to be done just for file making at

the cost of consuming the valuable time and energy of the appellate court(s), or is it supposed and, in fact, meant to be a mindful and meaningful

exercise on the part of the prosecution establishment of the State/Government to pose a prima facie, legal and factual, challenge so as to engage an

appellate court to make and undertake a deserving examination of the judgment of acquittal and more especially in case(s) of serious nature/gravity,

and which in the present case is under section 302 of the Ranbir Penal Code equivalent section reference being to section 302 Indian Penal Code.

With this reference frame weighing upon, this Court proceeds to deal with the present criminal acquittal appeal.

2. A first information report (FIR) No. 54 of 2010 was registered on 07.05.2010 for commission of offence under section 302 Ranbir Penal Code (in

short RPC), as it was then in force, with the Police Station Billawar falling in district Kathua of the then State of Jammu & Kashmir. Said FIR was

with respect to death of one Reeta Devi who was wife of Ashok Kumar and resident of Bartra Bial, Tehsil Billawar. FIR was registered on the basis

of a General Diary Report No. 10 dated 06.05.2010 of the Police Post Ramkot. In the FIR, except for the bare mention of the fact that said Reeta

Devi has been murdered by some persons and whose dead body is lying in her house, there is no other factual reference, particularly about the

suspected perpetrator/s of the crime, attending the incident. The investigation of the case was entrusted to a Probationer Sub Inspector (PSI) No.

055663 Mr. Sanjeet Sharma of the Police Post, Ramkote falling under the jurisdiction of the Police Station Billawar.

3. Acting upon said FIR, the said Investigation Officer (IO in short) came to get two persons namely Sh. Angrej Chand (PW-1) and Raj Kumar

(PW-2) presented before the Judicial Magistrate 1st Class, (JMJC), Billawar on 24/05/2010 for volunteering their respective statements under section

164-A J&K Code of Criminal Procedure (1939 AD). In those statements, said two persons, who were going to be the prosecution witnesses, gave a

version that on 06/05/2010 at about 09:00 a.m. both of them being in each other's company had gone for work when upon hearing noise they

entered the house of Babu Ram to see that accused was sitting on deceased Reeta Devi on the bed while the accused Geeta Devi was holding the

deceased Reeta Devi by her arm and that accused Babu Ram was inflicting blow of kulhari dasta on the chest of the deceased Reeta Devi and the

accused Sapna was giving blow on head of deceased by Balen (Rolling Pin). By this beating, the deceased Reeta Devi had died on spot and the

accused persons ran away from the scene of occurrence. It is important to cite here that the deceased Reeta Devi was aged 23 years and married to

one Ashok Kumar. Ashok Kumar is son of Babu Ram and Geeta Devi and brother of Sapna, the three persons so named to be doers of the crime.

4. Following the said version as narrated, the IO had arrested two persons said Babu Ram, aged 62 years, son of Masso and Mst. Sapna Devi

daughter of Babu Ram, aged 19 years, both residents of village Barota. This arrest was documented on 26/5/2010 which being the date of arrest.

Babu Ram and Sapna Devi happened to be father and daughter. Remand period for the police custody of the two accused under arrest started with

effect from 27/05/2010 to 01/06/2010 granted by the Executive Magistrate Ist Class, Billawar vide an order no. Teh. 367 bearing an overwritten date

27/05/2010. Police Custody remand of said two accused persons was not extended further and the two were remanded to judicial custody lasting up-

to 14/06/2010 vide an order dated 01/06/2010 of the learned Chief Judicial Magistrate Kathua. Incidentally, in this remand order, the fact of the

accused Sapna being a juvenile cropped up requiring the IO to enquire about the same. However, judicial custody of two accused persons kept on

extending from time to time. It is relevant to mention here that fact that nothing was said or recorded about the remand, police or judicial, of third

named accused Geeta Devi, despite the fact that her name had also figured in 164-A Cr.P.C statement of Angrej Chand, is because of the fact that

she was also found dead by drowning on 08/05/2010 which is just after two days from the death of Reeta Devi.

5. Upon carrying out the investigation exercise related formalities and getting the final medical opinion dated 06/07/2010 endorsed on the Post Mortem

Report dated 13/05/2010 recording therein the fact that death was due to head injury leading to cardio respiratory arrest and loss of blood, the Police

Challan No. 56/2010 dated 13.07.2010 came to be presented against the accused Babu Ram , shown as accused No. 1, and even against the

deceased Geeta Devi showing as accused No. 2 mentioning her as dead person. So much so the Police Challan even showing Geeta Devi's date

of arrest on 26.05.2010 when she was found dead on 08.05.2010. This is in the name of efficiency of police investigation done and presented by the

IO and forwarded by and under the supervision of SHO, Police Station, Billawar. Third named accused Sapna was found to be minor by being 14-16

years in age upon her medical examination so she was not subjected to face trial along with the accused Babu Ram in the trial court of learned

Sessions Judge Kathua.

6. In the Final Police Report, seventeen witnesses were cited for the purpose of proving the allegation of commission of offence under Section 302

RPC with respect to the death of Reeta Devi. It took almost three years for the prosecution to complete the examination of the prosecution witnesses.

The learned trial court conducted the appreciation of evidence of the prosecution witnesses with respect to the occurrence.

7. The trial Court focused its attention to the testimony of the prosecution witnesses namely Raj Kumar (PW-2) and Angrez Chand (PW-1) who were

purportedly meaning to prove by ocular account the accusation of commission of offence by the accused person. The trial Court, upon its meaningful

appreciation and appraisal of the testimony of said two witnesses in particular and others in general, felt constrained to observe that the said two

prosecution witnesses Raj Kumar and Angrez Chand were not truthful witnesses and, in fact, appeared to have been planted witnesses rather than

being the eye witnesses. Thus, the learned trial court had, for very safe reasons, lend no credence whatsoever to their testimony otherwise against the

alleged complicity of the named accused persons in the commission of the act of causing death of Reeta Devi. It needs a passing stress of observation

that it is not very often that a Sessions Judge would come up with an observation with respect to prosecution eye witnesses cited and examined in a

case to say it on record that they are planted witnesses by the Police. This Court needs not to reproduce the full text of the testimony of the said two

prosecution witnesses as that would only be lending their statements undeserving space and reference given the fact that upon the reading of the

testimony of the said two witnesses and the appreciation by the learned trial court, this Court is fully satisfied that there is no fault or error of any

shade in the same as understood and appreciated by the trial court. However, paragraph-23 of the acquittal judgment is fit to be reproduced for the

sake of appreciating trial court's judicial anguish in doing the appraisal:

“23. We need to understand that penal law cannot be used to hunt for the offender(s) without there being any legal evidence available

nor can the law allow the option of hit and trial exercise on the part of investigating agency. There has to be some evidence direct or

indirect to book a person under criminal law and more concrete proof to put him to trial. In this particular case, it is clear that the

investigating officer has planted PWs Raj Kumar and Angrezo as eye witnesses but their testimonies as said above when tested on the

touchstone of standard principles of appreciation, do not inspire confidence and both of them appear to be lying. There is no other

evidence on record to support the prosecution version. In so far as the documentary evidence is concerned, we have the so called

disclosure statements of accused on record. The disclosure statements have been recorded in presence of PWs Charan Dass and Angrez

Chand @ Angrezo. None of the two has supported the disclosure statements EXT-P16/8 and EXT-P16/9 and same is the case with

recoveries. The disclosure statements and recoveries cannot said to have been proved simply on the basis of statement of Investigating

Officer when there are glaring inconsistencies and material deficiencies in the case. That leads us to a conclusion that the prosecution has

failed to establish a doubt free nexus between the accused and the guilt.Ã¢â¬â¸

8. The trial Court arrived at the self-inviting inevitable conclusion that the Prosecution has failed to establish a doubt free nexus between the

respondent and the guilt, as a result whereof, the acquittal of the respondent warranted itself and was so acquitted vide judgment dated 21.12.2013

setting the respondent-Babu Ram to his long lost liberty.

9. The Appellant-State is in appeal against the judgment of acquittal dated 21.12.2013 passed by the Court of learned Sessions Judge, Kathua (herein

after to be referred as Ã¢â¬â¸trial courtÃ¢â¬â¸) on File No. 07/Sessions for trial of offence against the respondent-Babu Ram under Section 302/34 of Ranbir

Panel Code (in short Ã¢â¬â¸RPCÃ¢â¬â¸). When the learned Sessions Court had held the respondent-Babu Ram innocent of charges framed against him and,

had, thus, acquitted him of the same the respondent-Babu Ram had come to earn his liberty from the judicial confinement after having suffered course

of custody of almost three and half years in running from 26.05.2010 to 21.12.2013 bearing the ordeal of the criminal trial and which has still not

departed from him being a respondent in the present acquittal appeal.

10. Against the judgment of acquittal, the State had sought the statutorily required court leave to file the appeal from this Court which was granted

vide an order dated 14.08.2015. For the sake of propriety, the court may observe here that considering nature of offence alleged, being under Section

302 RPC and the deceased being a young woman, the leave sought for was granted by this court more to be on side of caution exercised by this Court

upon itself given the offence involved but the time has, perhaps, come to change the CourtÃ¢â¬â¸s caution into caveat for the State that the acquittal

appeal(s) must carry the prima facie merit to be pleaded through memo of acquittal appeal rather than a set standard routine paragraphed memo of

appeal.

11. The present appeal maintained by the State, pursuant to leave granted, assails the judgment of acquittal. The grounds of challenge in the memo of

appeal needs to be reproduced as it is for the sake of self-exhibiting the mechanical mindset on the part of the Senior Superintendent of Police (SSP),

Kathua representing the State in filing the appeal questioning the acquittal. The grounds of challenge as stated are reproduced as under:

“(a) That the judgment is against the law and facts of the case, hence liable to be set aside.

(b) That the learned trial court has mis-appreciated the law and evidence on record and has not appreciated the statements of prosecution

witnesses in their totality.

(c) That there is enough evidence on record which warrants the conviction and sentence of the respondents/accused for the commission of

offences under Sections 302/34 RPC.

(d) That the appellant reserves the right to agitate the other points of law and additional grounds with the kind permission of the Hon'ble

Court during the course of arguments”

12. Before proceeding further with the matter, the provisions of J&K Code of Criminal Procedure Svt. 1989 (1939 AD) dealing with the subject of

appeal against an acquittal in a criminal case need to be reproduced for the sake of highlighting and emphasizing the fact that in the matter of filing an

appeal against an original order of acquittal in a criminal case to the High Court, the action on the part of the State Government in directing the Public

Prosecutor to present an appeal, inherently, envisages a corresponding responsible thinking at the end of the Government for the purpose of

undertaking the exercise to call in question the acquittal in a given criminal case. A direction to the public prosecutor from the Govt. inherently

suggests that there has to be an exercise of application of mind in evaluating the acquittal judgment for the purpose of formulating the decision to call

in question the acquittal in the case and that application of mind would get transferred and translated in the memo of acquittal appeal. If the memo of

appeal is routine parroting then it can be safely assumed that even the intent on the part of the State for challenging the acquittal was actually blank.

Memo of Appeal in a criminal case is nothing but a pleading in a criminal case and by that standard the essential averments of facts, law and even

inferences have to be set up to carry forward the thrust of the prosecution case which otherwise has failed in the trial court to earn the conviction.

Section 417(1) of the Cr.P.C. reads as under:

“417. Appeal in case of acquittal

(1) Subject to the provisions of sub-section (4), the Government may, in any case, direct the Public Prosecutor to present an appeal to,-

(a) The Court of Sessions from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;

(b) The High Court from an original or appellate order of an acquittal passed by any court, not being an order under clause (a) or an

order of acquittal passed by Court of Session in revision.

Provided that no appeal to the High Court under Sub Section

(1) shall be entertained except with the leave of High Court.”

13. In fact, the understanding of law on the subject of acquittal appeals in the matter of filing of acquittal appeal(s) has to be the starting point for the

purpose of conceiving and conceptualizing the grounds of challenge to be thrown against a judgment of acquittal. In this regard, the most elementary

basis to be laid in the memo of appeal, being a criminal pleading, is first to generate a perspective that there was a view of conviction attending the

facts and circumstances of the case for the trial court to have taken instead of view of acquittal actually taken by the trial court and secondly that in

the acquittal appeal there are substantial and compelling reasons pleaded for the success of acquittal appeal. It has to be an operative script of a

memo of appeal against a judgment of acquittal as to how and on what basis the view of acquittal translated by the trial court into a judgment ought to

have given way to view of conviction withheld by the trial court. In this regard, Hon’ble the Supreme Court in case titled Chandrappa v. State of

Karnataka, AIR 2007 SC (Supp) 111 has served an educative discourse on the position of law of acquittal appeals. Paragraph 29A of the said

judgment yearns for reproduction:

“29A. In *Sanwat Singh v. State of Rajasthan*, (1961) 3 SCR 120: AIR 1961 SC 715, a three-Judge Bench considered almost all leading

decisions on the point and observed that there was no difficulty in applying the principles laid down by the Privy Council and accepted by

the SC. The Court, however, noted that appellate courts found considerable difficulty in understanding the scope of the words “substantial

and compelling reasons” used in certain decisions. Subba Rao, J., (as His Lordship then was) stated:

This Court obviously did not and could not add a condition to Section 417 of the Criminal Procedure Code. The words were intended to

convey the idea that an appellate court not only shall bear in mind the principles laid down by the Privy Council but also must give its clear

reasons for coming to the conclusion that the order of acquittal was wrong”.

The Court concluded:

The foregoing discussion yields the following results: (1) an appellate court has full power to review the evidence upon which the order of

acquittal is founded; (2) the principles laid down in *Sheo Swarup's* case afford a correct guide for the appellate court's approach to a case

in disposing of such an appeal; and (3) the different phraseology used in the judgments of this Court, such as, (i) “substantial and

compelling reasons”, (ii) “good and sufficiently cogent reasons”, and (iii) “strong reasons” are not intended to curtail the undoubted power

of an appellate court in an appeal against acquittal to review the entire evidence and to come to its own conclusion; but in doing so it

should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in

support of its order of acquittal in its arriving at a conclusion on those facts, but should also express those reasons in its judgment, which

lead it to hold that the acquittal was not justified".

14. Again in case titled Anwar Ali and anr. v. State of Himachal Pradesh reported in AIR 2020 SC 4519, Hon'ble the Supreme Court has made a

very wide and extensive understanding of law with respect to the acquittal appeals and which, in fact, are supposed to be kept in mind for the State in

taking a call as to whether an appeal decided to be filed by it against an acquittal judgment is meeting the requisite standard or not. The expression

"compelling and substantial reasons" though has been taken and understood not to mean curtailment of power of an appellate court to make an

extensive and intensive review of the acquittal judgment but the same very expression at least is to be taken as a benchmark for the State to present

its appeal carrying the pleas which would set an appellate court to examine the acquittal judgment on the stated merits.

15. Examining in the light of aforesaid, the content of the appeal of the State, as reproduced above, exposes the very casualness of the intent on the

part of the authorities, who were engaged in the matter for the purpose of taking a call to assail the acquittal judgment in appeal. The memo of appeal

in present case literally amounts to making a statement to this Court that let this Court do batting for the State in finding out a basis for knocking down

the impugned judgment of acquittal of the trial court. The very fact that the State Authorities, preparing and presenting the appeal, have not labored at

their own end to come out with averments as to how the acquittal of the accused namely Babu Ram, in the case which was built solely upon the court

held false and planted version of the two prosecution witnesses, namely, Raj Kumar and Angrez Chand, is unsustainable leaves this Court with no

reasons whatsoever to dislodge the basis of the trial court in disbelieving the testimony of the said two witnesses. As such, there cannot be any factual

and legal basis inviting this court to turn a judgment of acquittal into a judgment of conviction. The filing of the appeal has been done as if it is an

exercise just for the sake of record to be maintained at the end of the State authorities engaged on the side of prosecution of the criminal cases

especially at appellate level, without anyone venturing to register an educative and guiding opinion on record in the matter of filing/non filing of an

appeal against a judgment of an acquittal. In fact, the best which can be said for the acquittal appeal in hand is that it is a stenotyped and stereotyped

memo of appeal. This type of an acquittal appeal is antithesis to the intent and spirit of section 417(1) J&K Cr.P.C (Section 378 (1) Cr. P.C, 1973)

and also to the long assembly of case law on the subject of appeal against acquittal in criminal cases. It emanates from the understanding and

experience of the day to day dealing with the acquittal appeal/s on the docket of this court that invariably the filing of an acquittal appeal from the

State's end has taken place at the hand of the standing counsel of the particular time and by the time the same very acquittal appeal comes to its

final hearing stage it is a new incumbent in the position who is supposed to argue the said acquittal appeal which is stereotyped on two or three para

based routine lines of challenge without bearing any content worth name within. Thus, it becomes a matter of lost imagination for the new counsel

appearing for the State as to one what basis the challenge to the acquittal judgment was actually conceived and how that is to be carried to its logical

end with added vehemence. The State Counsel called upon to argue such like acquittal appeal finds himself/herself on backfoot from the very opening

of the case for arguments and is left to labour on his own to fish out and fetch the understanding of the case on his/her own in order to do justice to

the engagement of his/her appearance in the case without any assistance generated from the very brief itself. An appellate court can not afford to be

seen joining in the effort of the State counsel in building up case against acquittal.

16. Before parting with this judgment in holding that the acquittal appeal is lacking merit of any worth, this Court would be turning its eye from a very

disturbing aspect of the case which if left untouched would be doing a serious undermining of criminal administration of justice and that is the trial

court after having clearly held that the case was built upon two planted witnesses just let the matter rest there. The said two prosecution witnesses

namely Angrej Chand (PW-1) and Raj Kumar (PW-2) were not self planted but were found to be so planted by the IO in the case. This conduct and

act of the IO in the case can mean two things, that is, one by doing so he actually let the real crime doers escape the process of law or else the IO

ridden by his inefficiency and incompetence took the case just a matter of file making to add to his service credit of having solved a criminal case of

homicidal death of a young woman. The very fact that in the acquittal appeal the State has not even uttered a whisper as to counter the said finding of

the trial court about the very said two prosecution witnesses' credibility and veracity means that the State has also taken the fact accepted that

the IO did plant said two witnesses to book a family comprising of aged parents and then a minor daughter in a false accusation. The trial court ought

to have resorted to active use of provisions of law provided in chapter XXXV with heading "Proceeding in Case of Certain Offences Affecting the

Administration of Justice" sections 476 to 487 of the Jammu & Kashmir Criminal Procedure Code, 1933 A.D (corresponding to chapter XXVI

sections 340 to 352 Code of Criminal Procedure, 1973) so as to set a loud and clear message not only to persons volunteering false testimony in

criminal case but also to the Investigation Officers that they do it at their peril without any reciprocating leniency and let off from a criminal court of

law. In the present case it is too late for this Court to rectify said omission on the part of the trial court below. However, this Court directs the

Director General of Police, Govt. of Union Territory of J&K to order a departmental/disciplinary proceedings under the Police Rules in force against

the said IO namely Mr. Sanjeet Sharma No. 055663, who then was PSI Ramkot, in case he still continues to be in service of J&K Police, to suffer the

consequences of his purported misconduct as an investigation officer. Copy of this judgment for compliance be served to the Director General of

Police, Govt. of Union Territory of J&K through the office of the learned Advocate General, Govt. of UT of J&K.

17. This appeal is dismissed as being meritless.

18. Announced.