

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**CRAA No. 11/2003 c/w
CRA No. 08/2002**

**Reserved on : 04.12.2025
Pronounced on : 24.12.2025
Uploaded on: 24.12.2025
Whether the operative part or full
judgment is pronounced: Full**

**STATE OF J & K THROUGH ADDITIONAL
ADVOCATE GENERAL**

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

Through: Mr. Alla-u-din Ganie, AAG with
Ms. Naubahar Khan, Assisting Counsel.

Vs.

NAZIR AHMAD BHAT AND OTHERS.

...Respondent(s)

Through: Mr. Aswad Attar, Advocate for R1
Mr. S. T. Hussain Sr. Advocate with
Ms. Nida Nazir, Advocate for R-3
Ms. Razia Amin Advocate vice
Mr. Z. A. Qureshi, Sr. Advocate with
Ms. Rehana, Advocate for R-2 and R-4
Mr. H. Furrahi, Advocate.

CORAM:

**HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

J U D G M E N T

Sanjay Parihar (J):

1. The present two appeals arise out of the judgment and order passed by the Court of the Sessions Judge, Anantnag, in File No. 19, relating to FIR No. 176/1997 registered at Police Station Anantnag for offences punishable under Sections 148, 149, 336, 302 and 307 of the Ranbir Penal Code. In all, fifteen accused persons were put on trial. Out of them, (i) Nazir Ahmad Bhat, (ii) Haba Ganie, (iii) Imtiyaz Kuchay and (iv) Amma Bhat were convicted for the offence under Section 304-part-I/34 RPC and sentenced to undergo rigorous imprisonment of three years, with a fine of ₹500/- each. The remaining accused, namely Bashir Ahmad Bhat, Asad

Bhat, Zahoor Bhat, Ashraf Kuchay, Ali Ganie, Shabir Ganie, Mohammad Ganie, Nabi Kuchay, Mushtaq Kuchai (son of Muma Kuchai), Mushtaq Kuchai (son of Gul Kuchay) and Ganie Chopan, were acquitted as the prosecution failed to establish the charges against them beyond a reasonable doubt. CRA No. 08/2002 has been preferred, challenging the conviction of appellants (A-1 to A-4), whereas CRAA No. 11/2003 questions the acquittal of all the respondents insofar as the offence under Section 302 RPC is concerned. It is pertinent to note that the appeal, to the extent it concerns respondents Bashir Ahmad Bhat and Ashraf Kuchay, stands abated due to their death.

2. The case has a long and chequered history emanating from the incident dated 19.05.1997. Although the trial culminated in the year 2002, the appeals have remained pending for more than two decades and have not reached final adjudication thus far.

3. The prosecution case, in brief, is that on 19.05.1997, the inhabitants of village Khullchoher, through PW, Abdul Rehman Reshi, lodged a written complaint before the SHO, Police Station Anantnag, against accused Nos. 1 to 15, as well as against Gh. Mohammad Bhat, Naib Tehsildar, Circle Chitter Gul, Gh. Rasool Khan and the concerned Patwari. It was alleged that on the said date, Ghulam Hassan Reshi, Afzal Shah, Gull Mir, Ama Reshi, Abdul Rehman, and other villagers, along with shepherds, were proceeding towards the forest with their cattle's. When they reached Renipora Naganaden Road near the Government Bungalow at about 10:00 a.m., the accused persons, armed with lathis and axes, restrained them from proceeding further. Upon being questioned, the accused allegedly became aggressive and attacked the complainant party.

4. Accused Nos. 1 to 7, who were armed with axes, are stated to have acted with common intention and in furtherance of a criminal conspiracy to commit murder,

thereby causing grievous injuries to the complainant and others. The remaining accused allegedly pelted stones. Other villagers who came to rescue were also injured in the incident. It was further alleged that a dispute regarding the Kachahrie land was pending before the Deputy Commissioner, Anantnag, between the two villages, and that the non-applicants No.16 to 19 had inspected the spot on 18.05.1997 and, at their instigation, the remaining accused conspired to commit the offence. Based on the said complaint, the case was registered, and an investigation commenced. The injured persons were shifted to the hospital for medical treatment. Injured Hassan Reshi, having sustained grievous injuries, was referred to the Medical Institute, Soura, where he later succumbed. The weapons of offence were recovered and, upon completion of investigation, a charge-sheet under Sections 302, 307, 336, 148 and 149 RPC was presented against accused Nos. 1 to 15. The case was thereafter committed to the Court of Sessions.

5. After hearing the Public Prosecutor and the defence counsel, accused Nazir Ahmad Bhat, Haba Ganie, Imtiyaz Kuchay and Amma Bhat were charged under Sections 341, 336, 323, 148 and 302 read with Section 34 RPC. The remaining accused, namely Bashir Ahmad Bhat, Asad Bhat, Zahoor Ahmad Bhat, Ashraf Kuchay, Ali Ganie, Shabir Ganie, Mohammad Ganie, Nabi Kuchay, Mushtaq Kuchai and Ganie Chopan, were charged under Sections 148, 341, 336 and 323 RPC. The charges were read over and explained to the accused, who pleaded not guilty and claimed trial.

6. The appellants, while assailing the conviction of appellants Nos. 1 to 4 (respondents Nos. 1 to 4 in CRAA No. 11/2003), contend that the prosecution has failed to establish the exact place of occurrence and that the trial court has not properly appreciated the evidence on this crucial aspect. It is argued that once the place of occurrence becomes doubtful, the benefit of such doubt must necessarily

endure to the accused. The appellants further submit that there exists a material contradiction between the version set out in the FIR and the testimony of the prosecution witnesses. Whereas the FIR alleged that the accused were armed with axes and lathis, the complainant and other prosecution witnesses later deposed that only Nazir Ahmad Bhat was carrying an axe and that the remaining accused were armed merely with lathis. According to the appellants, this contradiction strikes at the root of the prosecution's case and renders its version wholly unreliable.

7. It is further contended that the prosecution evidence comprises two distinct and irreconcilable sets. One set, consisting of (i) PW-Rashid Chopan, (ii) PW-Ghulam Rasool Kuchay, (iii) PW-Ghulam Hassan Wagay, (iv) PW-Gul Mir, (v) PW-Ghulam Rasool Khan, (vi) PW-Mohammad Anwar Sheikh, and (vii) PW-Abdul Salam, supported the defence version, while the other set supported the prosecution case. It is urged that where two plausible versions emerge, one favouring the accused and the other the prosecution, the law mandates that the version favourable to the accused must prevail. The appellants also argue that the medical evidence is inconsistent with the ocular testimony. PW-Ghulam Qadir Reshi, a key prosecution witness, stated that the deceased had sustained only one injury on the head, whereas PW-Dr. Altaf Beigh opined that there were two injuries. This inconsistency, according to the appellants, creates a serious dent in the prosecution's case. It is further urged that the trial court failed to adequately consider the defence evidence. Appellant No. 1, who was an employee of the Rakhs and Farms Department, had taken the plea that he was on official duty at the relevant time, and the evidence led in support of this plea was not properly appreciated.

8. Lastly, the appellants submit that the occurrence was like a free fight in which both sides participated and, therefore, no intention or knowledge can be attributed to the appellants to attract the provisions of Section 304-I read with Section 34

RPC. On these grounds, the appellants seek reversal of their conviction.

9. Per contra, the respondent, who is also the appellant in the acquittal appeal, submits that all the accused persons were initially charged under Section 302 read with Section 148 of the Ranbir Penal Code for having attacked the complainant party in furtherance of their common object. It is contended that the trial court committed a grave error in convicting appellants Nos. 1 to 4 only under Section 304-I RPC, despite there being cogent and reliable evidence indicating that the act was premeditated and committed in furtherance of the common object. According to the State, the plea of a free fight raised by the defence is wholly untenable and, once such a plea fails, the conviction ought to have been recorded under Section 302 RPC.

10. In the alternative, it is argued that even assuming the offence falls under Section 304-I RPC, the sentence imposed upon appellants Nos. 1 to 4 is grossly inadequate. The punishment prescribed for an offence under Section 304-I RPC is imprisonment for life or imprisonment which may extend up to ten years, along with a fine. The sentence of only three years' rigorous imprisonment, therefore, is stated to be manifestly lenient and unsustainable.

11. We have given our thoughtful consideration to the submissions advanced at the Bar. Insofar as the acquittal of respondents Nos. 5 to 15 is concerned, the record reveals that although they were named in the FIR, upon filing of the charge-sheet, they were charged only under Sections 341, 336, 323 and 148 RPC by order dated 11.09.1997. This order of framing charge was never challenged by the Appellant-State, which proceeded to lead evidence in accordance therewith. Having acquiesced in the framing of charges, the State cannot now be permitted to contend that respondents Nos. 5 to 15 ought to have been charged under Section 302 read

with Sections 148 and 149 RPC.

12. During the course of arguments, learned counsel for the State fairly conceded that, having regard to the prolonged duration of the trial spanning nearly five years and the pendency of the appeal for more than two decades, coupled with the nature and quality of evidence on record, the State does not press for reversal of the acquittal of accused Nos. 5 to 15. Even otherwise, upon an independent perusal of the record, we find that the trial court has carefully and meticulously appreciated the evidence insofar as accused Nos. 5 to 15 are concerned and has rightly concluded that the prosecution failed to establish their involvement under Sections 341, 336, 323 and 148 RPC. Though some witnesses spoke about their presence, such testimonies were neither consistent nor mutually corroborative. We, therefore, find no perversity or infirmity in the acquittal of respondents Nos. 5 to 15.

13. Coming now to the conviction of respondents Nos. 1 to 4, it becomes necessary, for a proper adjudication of the appeal, to briefly recapitulate the essential prosecution evidence. As per the charge-sheet, appellants Nos. 1 to 4 were charged under Sections 302 read with Section 34, 323, 148, 341 and 336 of the Ranbir Penal Code as the principal assailants. The genesis of the dispute pertained to a pathway across Kachahri land situated near the Dak-Bungalow. The prosecution's case is that on 19.05.1997 at about 10:00 a.m., when the complainant party, along with the deceased, was taking cattle towards the jungle, they were intercepted by the accused on the disputed pathway leading to Nag Naden jungle.

14. It is alleged that the accused, armed with lathis and axes, restrained the complainant party from using the said path. Upon being questioned, they became enraged and assaulted the complainant party. The evidence on record reveals that there was a pre-existing dispute between the parties with regard to the pathway, which had earlier been taken up before the Deputy Commissioner concerned and

adjudicated upon twice by the revenue authorities. The prosecution's version further is that the accused constituted an unlawful assembly and, in furtherance of their common object to prevent the complainant party from using the Kachari pathway, assaulted them. Accused Nos. 1 to 7 were allegedly armed with axes, while accused Amma Bhat, Imtiyaz Kuchay and Habba Ganie carried lathis. Nazir Ahmad Bhat, armed with an axe, is alleged to have caught hold of the deceased, Ghulam Hassan Reshi, assaulted him with fists and blows and thereafter struck him on the head with the blunt side of the axe, as a result of which he felt unconscious and subsequently succumbed to his injuries. Other members of the complainant party were also beaten with lathis and fists.

15. In order to appreciate the merits of the rival contentions, it is necessary to briefly notice the testimony of the prosecution witnesses. PW–Ghulam Mohammad Reshi deposes that the incident occurred on the upper side of the house of Gul Kuchai and that the accused were armed with sticks and axes. According to him, sticks were in the hands of Ama Bhat, Nazir Bhat, Habba Ganie and Imtiyaz Kuchay, while Nazir Ahmad Bhat was carrying an axe. He further states that the lathis were studded with nails and that he himself sustained injuries from a nail-studded stick. Claiming to be an eyewitness, he attributes his injury to Naba Kuchay and states that the deceased was struck by Nazir Ahmad Bhat with an axe. He further claims that the deceased also received an injury from a stone. He admits that although axes and lathis were seized, he could not identify whether those weapons were used in the incident, except for identifying the axe. He further admits that his statement was recorded by the police two days after the incident. At another stage of his deposition, he states that all the accused were carrying axes and that the incident occurred while they were returning after dropping their cattle in the jungle, when the accused suddenly emerged from the adjoining fields and attacked them.

16. PW–Mohammad Maqbool Mir states that the occurrence took place while they were returning from the jungle and had reached near the fields of the Dak-Bungalow, from where the accused emerged from the crops and attacked them. According to him, the place of occurrence was land belonging to Pandits near the village Dahnambal, situated below the Dak-Bungalow. He states that some of the accused were armed with sticks, while Nazir Ahmad Bhat carried an axe. He could not specify the nature of injuries sustained by the victims, though he asserts that seven persons from the complainant party, including the deceased, were injured. He admits that neither he nor the accompanying shepherd sustained any injury. While claiming to be an eyewitness, he also states that it was a free fight between both sides, spread over an area of about 32 kanals and involving four separate groups from both sides. He further states that the property of the deceased was not shown to him. According to him, the incident occurred while they were returning home.

17. PW–Abdul Rehman Reshi deposes that the incident occurred near the remote land of village Dahnambal belonging to a resident of Ranipora. He claims that the accused were armed with Dandas, sticks, axes and stones and that seven of the accused were carrying axes. However, he could not describe the nature of injuries inflicted upon the victims. He states that there was confusion and jumbling during the incident and that, having scattered and ran away, he could not specify who assaulted whom. According to him, the occurrence took place while they were proceeding to drop their cattle in the jungle across the disputed pathway. He further admits that nothing was seized in his presence.

PW–Mohammad Akbar Hajam states that the incident took place near Dahnambal on a road situated below the Dak-Bungalow. He could not specify the nature of the weapons used. He claims to have received injuries from stones on his head and left arm, two blows by sticks and one blow by an axe. He states that only

six persons were present from the complainant side, whereas the accused were in large numbers. He admits that he did not see the seized articles in court. He further states that all the accused were armed with axes and lathis, though in cross-examination, he admits that this fact does not find mention in his statement recorded under Section 161 CrPC.

PW–Afzal Shah deposes that the incident occurred while they were returning from the jungle and had reached Pandit’s land between Nag Naden road and the land of the village Renipora. He refers to the use of stones and sticks but does not specify either the number of axes or the identity of persons carrying them. He states that he saw Hassan Reshi in an injured condition. At one stage, he claims that 10–20 persons emerged from the fields, and at another stage states that they were 16 in number. He further states that two persons, namely Ali Kuchai and Ali Bhat, were also part of the accused group, though they were not arrayed as accused. He narrates that while Hassan Reshi was returning, accused Nazir Ahmad Bhat followed him and struck him on the head with an axe.

18. PW–Ghulam Hassan Akhoon states that the place of occurrence was near the village Dahnambal. He claims to have seen Nazir Ahmad Bhat carrying an axe with a white handle and asserts that seven persons were injured. He states that all the accused emerged from the crops. However, he admits that his statement was recorded by the police after 10–20 days of the incident. He further admits that village Dahnambal is situated about one kilometre away from the Dak-Bungalow. He deposes that the police seized one spade and fifteen axes, but does not specify the nature of injuries sustained by the victims. He claims that Nazir Ahmad Bhat struck the deceased on the middle of the head. When shown an axe in court, he admits that its handle was not white and, therefore, not the same weapon. He denies that the attack took place while they were proceeding towards the jungle, and also

denies having stated in his Section 161 CrPC statement that the accused were armed with Dandas and axes.

PW–Subhan Dar states that the occurrence took place near Khull Choher and that seven persons were injured, though he could not name them. He could not specify the number of accused present. He claims that the police prepared two or three seizure memos of the articles recovered from the site on the following day. He states that his testimony is consistent with his statement under Section 161 CrPC and asserts that sticks, stones, axes and spades were used in the incident. According to him, the occurrence took place while they were proceeding to drop cattle in the jungle. In cross-examination, he initially states that he produced the seized articles before the police, but subsequently contradicts himself by stating that the police themselves lifted the weapons from the spot and that he did not personally hand over any weapon.

19. PW Ghulam Ahmad Bhat deposed that the incident occurred near the residence of Gul Kuchay, where all the accused were armed with sticks and dandas, and one carried an axe. He could not name the injured persons but stated that accused Ama Bhat struck the deceased Hassan Reshi, followed by Nazir Bhat delivering another blow with an axe. PW Gul Mir, son of Kudoos, placed the incident near a barbed-wire fence, claiming that one of the sticks carried by the accused had nails, while Nazir Ahmad Bhat carried an axe and others wielded spades and stones. He stated that four accused attacked Hassan Reshi and that fighting occurred at three different spots, but admitted in cross-examination that the sticks shown in court did not have nails and that he had been struck only with a lathi, despite initially claiming he had been hit with an axe. He also made his statement to the police 17–18 days after the incident. PW Ghulam Rasool Wani observed that the accused used sticks, stones, and axes against the complainants, though he did not specify the injured persons

and narrated the occurrence to police after three days. PW Ghulam Qadir Reshi gave varying locations for the incident, including near Gul Kuchay's house, below walnut trees, and ahead of Darshan Pandit's land, noting that 13 sticks, one sack of stones, and one spade were used by the accused, injuring seven persons; he feigned ignorance regarding the timing of his police statement. PW Samad Mir was declared hostile, and PW Ghulam Hassan Wagay, not being an eyewitness, stated only that a quarrel took place between the villages around 5 PM. PW Abdul Rashid Akhoon provided inconsistent locations, alternately citing Dahnambal and Nagnaden villages, claimed one accused carried an axe, and stated he became unconscious after being hit; he also mentioned a chain once, though no such item was seized by police. PW Joginder Singh, the Dy.SP who conducted the initial investigation, observed that villagers from both sides were armed with axes, stones, and lathis, and that the fight arose over a pathway dispute, with large crowds gathering and shouting slogans. PW Abdul Rashid Chopan, though hostile, admitted that villagers from both sides sustained injuries, noting that Renipora villagers' attempt to fence land was opposed by Kul Choher villagers who arrived in thousands with sticks and axes, leading to free fighting and stone pelting. PW Shaw Ali stated that Kul Choher villagers, shouting slogans, attacked Renipora villagers working in their fields, but the assault was repelled.

20. The medical evidence primarily relies on the testimonies of Dr. Altaf Hussain and Dr. Shakeel Ahmad. Dr. Shakeel examined the injured Ghulam Hassan Reshi, who was brought to the District Hospital Anantnag in an unconscious state, noting a lacerated wound on the right temporo-parietal region and a hematoma over the right zygomatic bone, and referred him to SKIMS due to the severity. Dr. Altaf Hussain, who conducted the post-mortem, opined that the cause of death was sudden cardio-respiratory arrest resulting from head injury, leading to extra-dural hematoma and cerebral edema. He found two head injuries on the deceased,

including a fracture of the skull bones, caused by a blunt weapon. He also verified that the axe, alleged as the weapon of offence, was recovered from the spot and seizure memos were duly proved by witnesses, though on cross-examination he acknowledged that similar injuries could result from stone pelting.

21. In a nutshell, the prosecution led evidence asserting that the appellants were involved in a violent altercation resulting in the death of the deceased. In his statement under Section 342 CrPC, appellant Nazir Ahmad Bhat contended that he was employed in the Rakhs & Farms Department and had no involvement in the incident. He explained that the dispute arose over a pathway forcibly carved by the villagers of Kul Choher through land belonging to the villagers of Renipora to shorten the distance to the jungle. The matter had already been brought before the Deputy Commissioner. Appellants 2 to 4 similarly denied any involvement, alleging false implication and stating that stone pelting had occurred from both sides.

22. The appellants stood charged under Sections 302, 34, 323, 341, and 336 of the Ranbir Penal Code as principal assaultants. Medico-legal evidence revealed that the deceased sustained two blunt force injuries, including a lacerated wound on the right temporo-parietal region, causing a skull fracture. The medical expert, Dr. Altaf Hussain, opined that the injuries could have resulted from stone pelting or a fall from height, but were inconsistent with the axe, a sharp-edged weapon allegedly used by the appellants. He further clarified that the two injuries could not have been caused by a single blow.

23. The defence contended that no weapons were recovered at the behest of the appellants and that the prosecution failed to establish the use of the alleged weapons. The seizure memo recorded speaks of recovery of an axe, a spade, and five sticks, allegedly produced by PW-Subhan Dar. However, he denied producing

any weapons, stating they were collected by the Investigating Officer from the scene of crime. PW-Gul Mir's testimony further cast doubt on the recovery, while the medical expert confirmed that no weapon was shown to him after the autopsy. Consequently, the recovery and use of the weapons remained highly doubtful.

24. Evidence also indicated that the incident arose from a long-standing dispute between the villagers of Kul Choher and Renipora over an encroached pathway leading towards Kachari land used for cattle grazing. PW-Joginder Singh, Dy. SP, stated that both groups were armed with stones, axes, and lathi's and that a free fight ensued. Eyewitnesses corroborated that large numbers of villagers were involved in stone pelting. Significant contradictions arose regarding the time and place of occurrence. While the FIR claimed the incident occurred at 10:00 AM while proceeding to the jungle, several witnesses stated it happened while returning. Conflicting accounts were also given about the precise location, with references to Dahnambal, Nagda Nyen Dakbunglow, remote land, and near the house of Gul Kuchay.

The cumulative effect of these inconsistencies, contradictions, and the doubtful recovery of weapons casts serious doubt on the prosecution's case. The large-scale nature of the confrontation and variations in eyewitness accounts make it unsafe to rely implicitly on the prosecution evidence. Given the absence of cogent, direct, and consistent evidence linking the appellants to the fatal assault, reasonable doubt arises regarding their specific involvement in the incident.

25. In *State of Uttar Pradesh v. Wasif Haider and Others*, reported in (2019) 2 SCC 303, the Supreme Court examined a case arising out of indiscriminate rioting and firing by police personnel, which resulted in the death of a senior police officer and injuries to other individuals. Upon a careful scrutiny of the medical and forensic evidence, the Court noticed a glaring inconsistency between the

prosecution version and the post-mortem report. The post-mortem disclosed only two firearm injuries on the body of the deceased, one entry wound and one exit wound, clearly attributable to a single bullet. Despite this, the prosecution alleged that the bullet had been recovered from the ashes of the deceased after cremation. The Court found this version to be wholly irreconcilable with the medical evidence, observing that the presence of an exit wound necessarily implies that the bullet had passed through and exited the body. In such circumstances, the alleged recovery of the bullet from the ashes of the deceased was inherently improbable and inconsistent with the medical findings.

26. Against this backdrop, the Supreme Court reiterated the well-settled principle that the prosecution is under a legal obligation to establish its case by leading evidence that satisfies the recognised standards of criminal jurisprudence. This duty does not stand diluted merely because the offence is alleged to have occurred in the course of a criminal disturbance or under exceptional circumstances. The Court ultimately held that the cumulative effect of serious investigative lapses substantially strengthened the presumption of innocence in favour of the accused, thereby entitling them to the benefit of doubt arising from a faulty and unreliable investigation.

27. Reliance has also been placed upon the judgment of the Supreme Court in *Syed Ibrahim v. State of Andhra Pradesh*, reported in (2006) 10 SCC 601. Paragraph 10 of the said judgment lucidly explains the legal position with respect to appreciation of evidence and the applicability of the maxim *falsus in uno falsus in omnibus*. The Supreme Court categorically held that the said maxim has no application in India and has not attained the status of a rule of law. It was observed that even if a portion of the evidence is found to be deficient or untrustworthy, the entire prosecution case need not be discarded if the remaining evidence is sufficient to

establish the guilt of the accused. The duty of the Court is to separate the grain from the chaff and to assess whether the trustworthy portion of the evidence can independently sustain a conviction. However, where truth and falsehood are so inextricably interwoven that separating them would require reconstruction of an entirely new case, the only course open to the Court is to discard the evidence in its entirety. The Court further clarified that while normal discrepancies attributable to errors of observation, memory, or mental disposition do not corrode the credibility of the prosecution case, material discrepancies do so and must be viewed with caution.

28. Applying the aforesaid principles to the facts of the present case, it emerges that there are conflicting versions with regard to the precise location of the alleged clash between the two groups of villagers, as well as with respect to whether the incident occurred while the complainant party was proceeding towards the jungle or while it was returning there from. These are two distinct and mutually exclusive situations which cannot be conveniently merged so as to infer that the prosecution has proved its case in material particulars. Where the prosecution evidence itself gives rise to two competing probabilities, the prosecution is under a legal obligation to establish either of them with clarity and certainty. If doubt arises regarding the timing or circumstances of the incident, such doubt must necessarily ensure to the benefit of the accused. The prosecution cannot evade the consequences of such doubt by merely glossing over or trivialising the issue of timing, as it strikes at the very root of the prosecution case.

29. It has further been contended by counsel for the appellants that although the prosecution alleged that appellant No. 1 was armed with an axe, no recovery of such weapon was effected at his instance. Nor was it established that the axe allegedly carried by him was the very same weapon that was recovered from the

spot. In the absence of such linkage, it cannot be stated with certainty that the injury sustained by the deceased was inflicted with that particular axe attributed to appellant No. 1.

In this context, the testimonies of the prosecution witnesses suffer from material inconsistencies. PW-Ghulam Ahmad Reshi stated that Nazir Ahmad Bhat struck both him and the deceased with an axe. However, PW-Mohammad Maqbool Mir deposed that due to the free fight and chaos, he could not see who had actually wielded the axe. PW-Abdul Rehman Reshi further stated that he could not say as to which side of the weapon was used. PW-Ghulam Akbar Hajam claimed that accused Nazir Ahmad Bhat hit him with an axe on the back of the head and, in the same breath, asserted that he personally saw the accused strike the deceased on the middle of the head. In contrast, PW-Afzal Shah stated that the deceased Hassan Reshi was running away and that accused Nazir Ahmad Bhat chased him and struck him on the head with an axe.

30. One of the witnesses further stated that the axe allegedly used by the accused had a white wooden handle. However, when the weapon was produced in Court, the witness categorically stated that the handle of the axe shown to him was not white in colour. Having regard to the nature of the evidence so collected, coupled with the admitted fact that there was a free fight between the complainant party and the accused, it is also noteworthy that the prosecution evidence does not disclose that any of the accused sustained injuries during the melee. The Investigating Officer admittedly did not take any steps to collect material relating to injuries, if any, suffered by the accused, which further weakens the prosecution case.

31. Keeping these aspects in view, the prosecution was required to lead clear, reliable and consistent evidence to establish that the deceased was struck by a particular accused in a particular manner. However, the evidence on record is

riddled with contradictions. While some witnesses stated that the deceased was hit with the sharp side of the axe, others stated that the blow was inflicted with the blunt side. In such circumstances, it cannot be said with certainty that the appellants were the persons who inflicted the fatal blow. This uncertainty is further compounded by the medico-legal opinion, which suggests that the injury was caused by a blunt object, thereby not ruling out the possibility that the injury could have been caused either by the blunt side of an axe or by a stone thrown from a distance.

32. Appellant No. 1, in his statement recorded under Section 342 Cr.P.C, categorically denied the incident and pleaded false implication. He asserted that he bore no animosity towards the complainant party and that he was serving in a government department entrusted with the duty of maintaining the sanctity of government land. It has also come on record that in the initial complaint, not only the appellants but even officials of the Revenue Department were implicated, with allegations that the incident dated 19-05-1997 was committed at the behest of appellant Nazir Ahmad Bhat along with others. However, these allegations could not be substantiated during investigation, and consequently, only the appellants were challaned.

33. The evidence further reveals that it was the complainant party which had widened the pathway by encroaching upon land used by the accused party, thereby giving rise to animosity between the two sides. The complainants were facing difficulty in taking their cattle towards the jungle and, in order to shorten the distance, widened the pathway by removing obstructions, which allegedly infuriated the accused party. Strong emphasis was laid on the submission that the appellants, particularly appellant No. 1, were deliberately implicated, despite the absence of any prior enmity and despite his alleged non-presence at the scene of

occurrence. In this regard, reliance was placed on *Aslam @ Imran v. State of Madhya Pradesh*, 2025 SCC Online SC 670, wherein the Supreme Court held that when prosecution evidence is inconsistent and fails to clearly establish the role attributed to the accused, such accused is entitled to the benefit of doubt. The Court observed that enmity is a double-edged weapon which, while providing motive, also raises the possibility of false implication, and where such possibility cannot be ruled out, the accused deserves the benefit of doubt.

34. The principles laid down in the aforesaid judgment apply with equal force to the present case. It is not the prosecution's case that appellant No. 1 was a resident of village Renipora. On the contrary, the evidence suggests that he was an employee of the Rakhs & Farms Department, engaged in protecting government land. The record further indicates that the complainant party had widened the pathway, thereby raising a reasonable probability of encroachment upon adjoining land. This appears to have invited scrutiny from the revenue authorities, who admittedly visited the spot on more than one occasion. In such a situation, the possibility that the complainant party, in order to justify its actions and to ward off potential proceedings by the revenue authorities, may have falsely implicated government officials cannot be ruled out.

35. There is no dispute that all the appellants were tried together. However, appellants 1 to 4 were convicted under Section 304-I read with Section 34 RPC on the premise of a prior meeting of minds, whereas appellants 5 to 16 were acquitted on the same evidence. Even assuming the existence of a common intention, the material on record suggests that the occurrence was a free fight involving residents of both villages, engaged in stone-pelting and mutual assault. The selective reliance placed by the Trial Court on the same set of witnesses to acquit some accused while convicting others, without any cogent distinguishing material, gives rise to a

serious inconsistency. In this regard, reliance has been placed on *Javed Shaukat Ali Qureshi v. State of Gujarat*, (2023) 9 SCC 164, wherein the Supreme Court reiterated that mere presence in a mob or unlawful assembly is not sufficient to fasten criminal liability. The prosecution must establish that each accused shared the common object or intention at all relevant stages. The Court further held that where identical or similar evidence is led against multiple accused, the principle of parity mandates that similarly situated accused must receive similar treatment.

36. Applying the aforesaid principle to the case at hand, once the benefit of doubt was extended to accused no. 5 to 16 on the same set of evidence, the appellants were equally entitled to such benefit. The prosecution cannot be permitted to draw an artificial distinction between similarly situated accused in the absence of any convincing basis. Undoubtedly, an innocent person lost his life in the incident. However, that circumstance alone cannot justify fastening criminal liability for culpable homicide not amounting to murder upon appellants 1 to 4, particularly when the prosecution evidence is inconsistent and suffers from serious contradictions relating to the timing of the incident, the place of occurrence and the nature of the weapon used. The prosecution has also failed to establish a clear nexus between the recovered weapon and the injury sustained by the deceased.

When the evidence is considered cumulatively, it becomes evident that the prosecution case lacks reliability. Mere presence of the appellants at the scene of occurrence, even assuming their participation at some stage, is insufficient to fasten liability in the absence of clear, cogent and trustworthy evidence establishing their specific role and common intention.

37. There was a land dispute and quarrel between the parties. Though the appellants were stated to be the aggressors, this fact has not been proved from the evidence on record, as the oral evidence led in this regard is not only contradictory but also

insufficient. In the incident dated 19.05.1997, a fight between two groups resulted in the death of the deceased and injuries to others. However, against most of the accused, the trial court found that guilt was not proved, whereas the case of the appellants was segregated, which could not have been done. The guilt of the accused has not been proved beyond reasonable doubt. At every stage of the case, right from the initial lodging of the FIR, the complainant party not only tried to implicate the revenue officials but also sought to portray itself as the victim, whereas it was they who initiated the dispute.

The nature of the injuries caused to the person of the deceased has been proved to be fatal; however, it has not been proved beyond doubt that the injuries inflicted on the deceased were perpetrated by the appellants. When there is a free fight and stone pelting by both sides, the probability of the deceased being hit by a stone from a distance cannot be ruled out, especially considering that the injury sustained was caused by a blunt object. The fact that an offence under Section 336 formed part of the charge-sheet strengthens the defense case that both parties were pelting stones at each other. Once this is so, it cannot be said with certainty that the deceased suffered fatal injuries due to the acts of the appellants.

Additionally, with regard to appellants 2 to 4, although the prosecution alleged that they shared a common intention and, in furtherance thereof, perpetrated a murderous assault on the deceased, the evidence against them is also shaky on the face of it. There being a presumption of innocence in favour of the accused, and in view of the acquittal of as many as ten accused persons, the same set of evidence could not have been used to fasten criminal liability on appellants 1 to 4. Suspicion, however grave, cannot take the place of proof. There were clear lapses in the investigation, giving rise to serious doubt, and therefore we are not persuaded to believe that the prosecution has proved its case beyond reasonable doubt. We are of

the considered view that the finding of conviction recorded against appellants 1 to 4 is not only perverse but is based on shaky and untrustworthy material. By placing reliance on such evidence, a grave miscarriage of justice has resulted in fastening criminal liability on the appellants.

38. For the aforesaid reasons, we find force in the submissions made on behalf of the appellants and accordingly **allow** CRA no. 82/2002 by setting aside the conviction and sentence of appellants 1 to 4. As a result, they shall stand acquitted of the charges leveled against them. On the other hand, CRAA no 11/2003 is held meritless and dismissed accordingly.

Srinagar

24 .12.2025

“Shaista-PS”

(Sanjay Parihar)

Judge

(Sanjeev Kumar)

Judge

❖

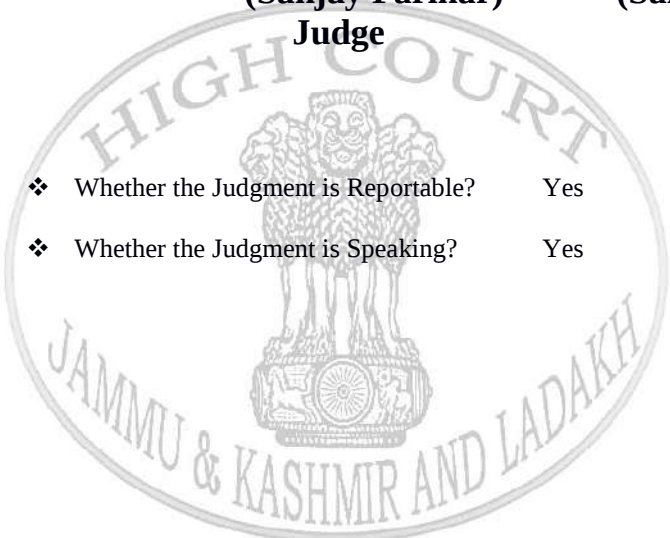
Whether the Judgment is Reportable?

Yes

❖

Whether the Judgment is Speaking?

Yes



CRAA No. 11/2003 c/w CRA No. 08/2002

Page 21 of 21