

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRAA No. 139/2014

Reserved on :- 03.07.2025
Pronounced on :- 18 .07.2025

State of Jammu and Kashmir through,
SHO Police Station, Gandhi Nagar, Jammu

.... Appellant(s)

Through:- Mr. Ravinder Gupta, AAG

V/s

1. Tajinder Singh S/O Gurcharan Singh
R/O Chatha Farm Jammu
2. Ravinder Singh S/O Hazara Singh
R/O Chatha Farm Jammu

.....Respondent(s)

Through:- Mr. Prince Khanna, Advocate

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

JUDGMENT

Per:- Shahzad Azeem, J

1. Through the medium of instant criminal acquittal appeal challenge is thrown to the judgment dated 02.01.2014 passed by the learned Special Judge (Principal Sessions Judge) Jammu (hereinafter referred to as 'the trial court'), whereby and whereunder the trial court has acquitted the Respondents (hereinafter referred to as A-1 Tajinder Singh and A-2 Ravinder Singh) of the charges under Sections, 4/5 Explosive Substance Act, 7/25 Arms Act & 120-B RPC, respectively.

2. Before adverting to the grounds of challenge, it will be profitable to take note of the prosecution case in brief.

FACTUAL MATRIX

3. The accusations germane lead to the trial of A-1 Tajinder Singh and A-2 Ravinder Singh are that on 24.08.2005, a source information was received by PW-6 Diwakar Singh (SHO Police Station, Gandhi Nagar) that A-1 and A-2 who bore allegiance to militant organization, operating under the name and style of; K.Z.F., which is controlled by Ranjeet Singh @ Nita group and are operating under the diktat of Pakistan's Inter Services Intelligence (I.S.I.) with the design and purpose to disturb the peace, tranquility, integrity and sovereignty of the country, and are seducing the youth of Satwari; Gadigarh and Gandhi Nagar, in Jammu to join the K.Z.F., a terrorist organization. The information also said to have been reached that the accused have concealed at some unknown place prohibited arms and ammunition, so as to commit heinous offence(s).

4. On receipt of this information, a case being FIR No. 195/2005 under Sections 121, 121-A, 122, 123, 120-B RPC came to be registered and investigation entrusted to PW-8 Vikas Gorkha (Sub-Inspector). During investigation, the police party of Police Station, Gandhi Nagar in collaboration with police party of Police Station, Satwari arrested the accused during naka laid at Satwari Chowk.

5. During interrogation, A-1 and A-2 said to have made disclosure statements that they have concealed at Sajadpur, prohibited arms and ammunition, namely, AK 56 Rifle, two magazines, containing 99 live cartridges and 30 rolls of explosive substance, namely, RDX near Nikki Tawi in the bushes beneath the earth in a plastic bag.

6. Accordingly, other codal formalities were completed, including disclosure statements were recorded and thereafter at the instance of the accused the alleged recovery of the prohibited arms and ammunition was made, site plan drawn, seizure memo(s) prepared, samples drawn and sent for examination etc.

7. On the basis of the material collected during investigation it came to fore that the accused have received the consignment of prohibited arms and ammunition from one Bua Ditta @ Suman S/O Dev Raj Caste Brahmin R/o Tehsil Akhnoor. The said Bua Ditta said to have received the alleged prohibited arms and ammunition from across the border, and has absconded.

8. Therefore, it was concluded by the investigating officer that the accused have procured the prohibited arms and ammunition for subversive activities, which were buried at Sajadpur, recovery whereof was made on disclosure of the accused.

9. On completion of the investigation, final police report was laid before the competent court and on committal vide order dated 23.05.2007

formal charges for commission of offences under Sections 4/5 ESA, 7/25 Arms Act and 120-B RPC were drawn up against the accused and on their denial, the trial commenced.

10. During trial the prosecution has examined, as many as, 12 witnesses out of listed 18 prosecution witnesses. When the accused were examined under Section 342 Cr.P.C. so as to explain the circumstances appearing in the prosecution evidence against them, the accused while denying the veracity of the prosecution case submitted that a false case has been foisted on them, however, despite opportunity was granted they did not lead evidence.

11. The trial court on appreciation of evidence and material produced during the trial, acquitted the accused vide the impugned judgment.

12. It is noteworthy that there is variation in numbering of prosecution witnesses given in impugned judgment and police challan, therefore, we shall be referring the prosecution witnesses as per the numbering assigned in the impugned judgment and rest of the witnesses who were either not examined or given up shall be referred by name, if need arises.

SUBMISSIONS

13. Mr. Ravinder Gupta, learned AAG, vehemently, argued that the accused were involved in commission of heinous crime, touching upon the security and sovereignty of the country and in this regard the prosecution during the trial remained successful in proving the recovery

of prohibited arms and ammunition at the instance of the accused. It is further canvassed that there is consistency in the evidence of the prosecution witnesses, pointing towards the guilt of the accused beyond reasonable doubt. While taking us to the impugned judgment, the learned counsel further submits that the Investigating Officer has undertaken scientific investigation in proving the case to the hilt against the accused, however, according to the appellant the trial court overlooked the vital material and gave undue advantage to the minor omissions and discrepancies, which do not go to the root of the prosecution case. Therefore, prays for setting aside of the impugned judgment and to convict the accused for the charges they were put to trial.

14. *Per contra*, Mr. Prince Khanna, learned counsel appearing for the respondents (A-1 & A-2) submits that the witness, namely, Kulvinder Singh has not supported the prosecution case with respect to the disclosure and recovery of arms and ammunition and admitted that he does not know whether any weapon was sealed on spot or not and the witness, namely, Gautam Sangra in his examination-in-chief has denied the fact that any disclosure was made by the accused in his presence at the time the accused were interrogated. It is further submitted that all the witnesses have stated in one voice that the independent witnesses were available at the time of disclosure as well as recovery of the arms and ammunition and the place of recovery is also near to the populated

locality, but despite the availability of the civil witnesses the investigating officer has not associated any civil independent witness; that the prosecution witness Daljeet Singh was declared hostile, who stated that no recovery memo was prepared in his presence but he signed it.

15. It is also submitted that the witness Diwakar Singh, who was the then SHO Police Station, Gandhi Nagar, Jammu has stated that no disclosure statement was made by the accused in his presence and this witness has totally contradicted the statement of the other witnesses with respect to the disclosure, who have stated that during interrogation in the room of the SHO the accused made a disclosure statement.

16. It is submitted that the prosecution witness Harjeet Singh stated that no disclosure was made in his presence and has not stated with respect to the recovery of arms and ammunition in this case and as such, the presence of this witness during the search and recovery is doubtful. It is submitted that the I.O. of the case Vikas Gorkha stated that the accused persons were arrested at Satwari Chowk and brought to the Police Station where they made disclosure statement and on their disclosure arms and ammunition were recovered, but this witness has never stated that any arms and ammunitions were sealed on spot and with whom the rings with which the material was sealed was kept in custody.

17. It is further submitted that the prosecution witness, namely, Sadiq Mohd., who is member of the raiding team, has stated that the accused

persons were arrested from Satwari Chowk and after arresting they straightway headed towards the Sajadpur and when they reached there, a number of civilians were present there and a gunny bag containing arms and ammunition was brought out by the SHO from the bushes and the accused did not made any disclosure in his presence, as such, this witness has totally demolished the case of the prosecution with respect to the disclosure as well as recovery.

18. Learned counsel, vehemently, argued that all the witness in this case are police officials and they have made totally contradictory statements with respect to the recovery of arms and ammunition. Some of the witnesses have stated that the arms and ammunition were concealed under the bushes, some have stated that it was buried in the ground and the third set of evidence which came before the court is that it was brought out of the bushes by the SHO himself. Therefore, learned counsel for the respondents prays for dismissal of the appeal.

REASONING OF THE TRIAL COURT

19. Since we are dealing with the acquittal appeal, whereby the accused have earned the acquittal, therefore, it is important to keep in mind the reasoning prevailed with the trial court while acquitting the accused, so as to find out as to whether the view taken by the trial court is also a plausible and reasonable view on the touchstone of the law governing the subject. While recording the judgment of acquittal the trial court has,

mainly, taken into consideration the contradictions in the testimonies of prosecution witnesses, who are none other than the police officials and thus, went on to point out the contradictions in the disclosure statements, the manner of arrest, how and from where the alleged recoveries of prohibited arms and ammunitions were made, non association of civilians though available and most importantly, the trial court appears to have taken into consideration the fact that material witnesses have turned hostile, despite being police officials.

ANALYSIS

20. Now let us examine the legality of the impugned judgment to find out, as to how the prosecution fared during the trial.

(i) Arrest

21. The prosecution story proceeded on the premise that on, 24.08.2005 a source information has reached the Police Station, Gandhi Nagar that A-1 & A-2 have allegiance to the terrorist organization, namely, K.Z.F. and are luring the youth of the area to join prohibited organization, so as to carry out the subversive activities. The information is also said to have been received that the accused have concealed the prohibited arms and ammunition within the territory of Jammu and Kashmir at some unknown place with a view to commit heinous crime. This information lead to the arrest of the accused from Satwari Chowk in a naka laid by the police

party of Police Station, Gandhi Nagar, in collaboration with police of Police Station, Satwari.

22. Since the investigation had commenced from the point of arrest of the accused, therefore, for the reasons given shortly hereinafter the point; as to how the accused came to be arrested assumes importance.

23. In this regard, be it noted that PW-1 Kulvinder Singh, though, turned hostile, but deposed that the accused were apprehended while travelling in a matador. The testimony of PW-1 finds support from the testimonies of PW-2 Gulzar Ahmed, PW-3 Gautam Sangra and PW-9 Subash Chander. However, PW-6 Diwakar Singh (SHO), who was cited as a star witness because the said witness said to have received the source information regarding the alleged anti-national activities carried out by the accused, has deposed that on receipt of information regarding the subversive activities of the accused when he along with PW-8 Vikas Gorkha, PW-3 Gautam Sangra and PW-1 Kulvinder Singh along with his police team reached at Satwari Chowk, found SHO, Police Station, Satwari present on the naka and in the meanwhile A-1 & A-2 were spotted walking across the Satwari Chowk and were apprehended on the spot. PW-7 Amarjeet Singh deposed that on 24.08.2005, SHO Police Station, Gandhi Nagar laid a naka at Satwari Chowk. They spotted A-1 and A-2 walking towards the naka, but on sensing their presence the accused tried

to escape but, they apprehended the accused, who were identified by SHO, Police Station, Satwari.

24. Therefore, testimonies of material witnesses, who are none other than the police personnel and were part of the police naka party, is full of contradiction, on the point that at the time of arrest, whether accused were walking on the road or they were travelling in the matador, therefore, the initial arrest of the accused itself becomes doubtful. It is noteworthy that PW-1 Kulvinder Singh and PW-5 Daljeet Singh were declared hostile.

(ii) **Whether accused after arrest taken to Police Station or to the place of recovery.**

25. It is important to note that the entire proceedings were conducted under the supervision of SHO, Police Station, Gandhi Nagar, i.e., PW-6 Diwakar Singh, who deposed that on receipt of information regarding subversive activities of the accused a naka was laid by him along with SHO Police Station, Satwari and during naka the accused were spotted and arrested and thereafter, taken to the Police Station, Gandhi Nagar. Since it has come in the testimony of PW-6 Diwakar Singh that at the relevant point of naka at Satwari Chowk, the SHO Police Station, Satwari along with his police team were also present, therefore, in this regard the testimony of PW-11 Sadiq Mohd. assumes importance. PW-11 Sadiq Mohd. is the only official witness from Police Station, Satwari and is cited as an eye witness to the occurrence. According to PW-11 Sadiq Mohd., on

24.08.2005 he along with SHO Police Station, Satwari were on naka duty at Satwari Chowk. Meanwhile, SHO Police Station, Gandhi Nagar Sh. Diwakar Singh has arrived there and they all proceeded towards Sajadpur.

26. It is important to note that the prosecution case, all along, is that when the accused were arrested during naka from Satwari Chowk they were taken to Police Station, Gandhi Nagar where disclosure was made by them and on the basis of the disclosure of the accused, they proceeded to Sajadpur Nikki Tawi, from where the alleged recoveries were made. However, while contradicting the prosecution case, PW-11 Sadiq Mohd. who was posted at Police Station, Satwari and was part of the police naka party, when accused was arrested, deposed that while he along with SHO, Police Station, Satwari on 24.08.2005 at about 07:30 pm was present in the Satwari Chowk, meanwhile, PW-6 Diwakar Singh (SHO) arrived there and along with him they proceeded to Sajadpur Nikki Tawi for making alleged recoveries.

27. Therefore, as to whether the alleged recoveries were made on the basis of disclosure statements of accused becomes doubtful, in view of testimony of PW-11 Sadiq Mohd.

(iii) Disclosure

28. As per the prosecution case, when the accused were arrested on 24.08.2005 they were taken to Police Station, Gandhi Nagar, where they said to have made disclosure statements vide Ext.P/1 and Ext.P/2,

respectively, to the effect that one gun AK-56, two magazines, containing 99 live cartridges and 30 rolls of explosive substance, i.e., R.D.X. are kept in a plastic bag, which is buried within the bushes at Sajadpur, near Nikki Tawi and can be got recovered.

29. PW-1 Kulvinder Singh and PW-3 Gautam Sangra are cited as attesting witnesses to the disclosure statements, therefore, their testimonies assume importance so far as disclosure statements of the accused are concerned, because it was on the basis of their statements, the alleged recovery of prohibited arms and ammunition was made.

30. PW-1 Kulvinder Singh deposed that at the time of questioning of accused, he was not present in the said room, as they were asked to stay outside the room. Thus as per the PW-1, who is the attesting witness to the disclosure statements, was not present in the room where the accused were questioned, when they said to have made the disclosure statements regarding concealment of arms and ammunition. It is further noteworthy that this witness was declared hostile.

31. Insofar as the PW-3 Gautam Sangra is concerned, he deposed that he did not remember as to whether the accused were questioned in Police Station in his presence or not. He further deposed that later in point of time he came to know that the accused have disclosed something about the arms and ammunition. Therefore, this attesting witness also falsified

the prosecution case that the alleged disclosure was made by the accused in his presence.

32. The PW-5 Daljeet Singh was cited as witness to the disclosure. He deposed that after the arrest, accused were taken to the Police Station in the room of SHO. In cross-examination, PW-5 deposed that in his attendance, neither at the time of arrest of the accused nor thereafter in the Police Station, any proceedings were held. Therefore, this witness was also declared hostile.

33. There is another witness to the alleged disclosure of the accused, who is none other than PW-12 Harjeet Singh (SHO, Police Station, Miran Sahib). The witness deposed that neither he was the I.O. nor the accused were arrested within the jurisdiction of Miran Sahib (i.e. Police Station, Miran Sahib), nor he was part of the naka party which nabbed the accused, however, he was called in the Police Station, Gandhi Nagar to witness the proceedings.

34. It is noteworthy that the PW-6 Diwakar Singh was the SHO, Police Station, Gandhi Nagar at the relevant time and he was the police officer who said to have received the information about the accused, which lead to the laying of naka at Satwari and thereafter the accused were arrested. Therefore, he was the most important witness, insofar as investigation of the case on hand is concerned. PW-6 Diwakar Singh only deposed about the information of the occurrence came to be supplied by him to the SHO,

Police Station Satwari and there is no whisper as to how and under which circumstance the PW-12 Harjeet Singh, who at the relevant time was posted as SHO, Police Station, Miran Sahib was roped in beyond his jurisdiction and was cited as a witness. Therefore, the manner in which this witness has been introduced, the same does not inspire confidence, thus, his testimony is of no help to the prosecution case.

35. PW-6 Diwakar Singh (SHO, Police Station, Gandhi Nagar) deposed in his examination-in-chief about the disclosure alleged to have been made by the accused regarding concealment of arms and ammunition at Sajadpur, Nikki Tawi, but in cross-examination he categorically deposed that no paperwork was done in his presence regarding the alleged disclosure statements of the accused. Therefore, the whole assertion of the PW-6 Diwakar Singh is totally unworthy of reliance and thus cannot be taken into consideration.

(iv) Recovery

36. As noticed, although the prosecution has cited PW-1 Kulvinder Singh also as witness to the recovery of the alleged arms and ammunition, but he was declared hostile.

37. PW-2 Gulzar Ahmed deposed that the arms and ammunition were recovered from the bushes, but in cross-examination he went on to state that the bag was buried under the ground, but it was buried in a little soil and was taken out by removing the soil with hands. PW-3 Gautam Sangra

deposed that earth was dug with a mattock while recovering the concealed bag containing the arms and ammunition. PW-5 Daljeet Singh was one of the witnesses cited to prove the recovery, but he was declared hostile. PW-8 Vikas Gorkha, who was the I.O. of the case, categorically deposed that the mattock was not seized, nor he was shown the recovered bag and ammunition in the Court. PW-9 Subash Chander in cross-examination deposed that the recovery of arms and ammunition was made from the bushes and the recovered arms and ammunition were handed over to the Munshi of the Police Station, who kept the same in almirah. Similarly, PW-11 Sadiq Mohd. deposed that recovery was made from the bushes by the SHO concerned.

38. As noticed herein above, there is complete contradiction insofar as situs and manner of recovery is concerned.

(v) Other discrepancies and omissions

39. There is another important flaw in the prosecution case which goes to the root of the matter, i.e., neither mattock (i.e., the tool with which the ground was dug) was seized nor produced in the Court, nor the safe custody of the weapons from the time of its alleged recovery and seizure till its deposit in the Police Station and thereafter its reaching for examination is proved before the Court.

40. All the witnesses deposed that when recovery was made it was dark, therefore, how the place was identified is a question which remained

shrouded in the mystery. However, assuming if in the dark, police party arranged the light, then question arises what was the source of that light, but same is not coming forth nor any seizure of such object is made, therefore, it appears that the investigation was done in a slipshod manner, overlooking the very vital aspects of the piece of material evidence.

41. It has been also noticed that even the seal embossed during the seizure is not proved during the trial nor sealing and re-sealing of the alleged recovered arms and ammunition proved by examining the Magistrate, therefore, very credibility or investigation itself is corroded.

42. It goes without saying that the prosecution also miserably failed to prove the safe custody of the alleged recovered arms and ammunition, as the Magistrate who stated to have done the sealing and resealing, even not cited as witness, therefore, at every stage it appears that sanctity and legality of the investigation has been badly compromised, leaving enough space for acquittal of the accused.

43. Apart from the discussion made on the point of contradictions and discrepancies on the point of arrest, disclosure, recovery etc. there is another vital aspect of the matter that almost all the prosecution witnesses have deposed that right from the arrest of the accused, and thereafter, civilians were available, but none were associated with the alleged arrest, disclosure and recovery of the arms and ammunition. This aspect assumes importance in view of the contradictions we have pointed out in the

testimonies of prosecution witnesses. Therefore, once it has come in the testimonies of the witnesses that civilians were very much available, but they were not associated, same vitiates the prosecution case and renders the same unworthy of reliance.

44. Although, there are other aspects also, which needs to be taken note of, but in our considered view the discussion we made so far and the view taken by the trial court is the possible view, therefore, we are of the opinion that there is no reason to record disagreement on any of the findings returned by the trial court, while acquitting the accused.

45. We are fortified in our view by the law laid down by the Hon'ble Supreme Court in, *"Tota Singh & ors. vs State of Punjab"* AIR 1987 SC 1083, wherein para 6 held thus:-

"6. The High Court has not found its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of P.W. 2 and P.W. 6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting

aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.”

46. Hon’ble Supreme Court in “*Ballu alias Balram alias Balmukund & anr. vs. State of Madhya Pradesh*” AIR 2024 SC 1678, observed thus:-

“9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted.

21. In any case, even if two views are possible and the trial Judge found the other view to be more probable, an interference would not have been warranted by the High

Court, unless the view taken by the learned trial Judge was a perverse or impossible view.”

47. It is settled proposition of law that if the view taken by the trial court is also possible view, the appellate court cannot interfere with the Judgment of the acquittal, even it is of the opinion that the view taken by the trial court on its consideration of evidence is erroneous, unless view taken by the trial Judge was a perverse or impossible view.

48. In the case on hand, all the material witnesses, who were to prove the disclosure statements alleged to have been made by the accused, which lead to the recovery of prohibited arms and ammunition, lacks credibility, probity, so much so, the witnesses did not support the prosecution case insofar as the alleged disclosure of the accused is concerned. Hence the very foundation on which edifice of the prosecution story rests, insofar as, the alleged recovery of arms is concerned, is badly shaken and renders the same unworthy of reliance.

49. In above context, from the discussion made so far, it is seen that prosecution case, right from the time of arrest of accused; making of disclosure statements; recovery of alleged arms and ammunition; and seizure and safe custody is marred by contradictions, improbabilities, omissions, discrepancies and even the conduct of the prosecution witnesses, who were none other than the police personnel/officers, is highly unworthy of reliance, as they lacks credibility, so much so, their

presence at the relevant point of time do not inspire confidence in the manner, as alleged by the prosecution.

50. In view of the discussion held, we do not find the impugned judgment, whereby A-1 and A-2 are acquitted, suffers from any perversity or impossibility, calling for interference or warranting any contrary view than the one taken by the trial court. Therefore, the judgment dated 02.01.2014 passed by the trial court is upheld and resultantly the Appeal No. CRAA No. 139/2014 is **dismissed**.

51. Registry is directed to send down the original record of the trial court against proper receipt.

JAMMU
18.07.2025
Pawan Angotra

(Shahzad Azeem)
Judge

(Sindhu Sharma)
Judge

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

