

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

...

CRAA No. 03/2013

Reserved on: 27.02.2025

Pronounced on: 20.03.2025

State of J&K

.....Appellant(s)

Through: Mr. Abdul Rashid Malik, Sr. AAG,
with Mr. Illyas Laway, GA.

Vs.

1. Sayed Shabir Bukhari son of Syed Gh. Mohiuddin r/o Kreeri Pattan.
2. Shakil Ahmad Sofi son of Habibullah Sofi resident of Kreeri Pattan.
3. Mushtaq Hussain Akhoon son of Gh. Ahmad r/o Zaldar Mohalla, Saeda Kadal, Srinagar.
4. Abu Ossama r/o Pakistan (dead).
5. Bashir Ahmad Sheikh s/o Mohammad Sultan r/o Panzipora, Sopore.
6. Bilal @ Salahu Din r/o Pakistan.
7. Ab. Rehman @ Darda resident of Pakistan.

.....Respondent(s)

Through: Mr. S. T. Hussain, Sr. Advocate with
Ms. Nida Nazir, Advocate for R-2 & 3.
Respondent No.1 in person.

**CORAM: HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE.**

JUDGEMENT

Sanjeev Kumar-J

1. This acquittal appeal by the then State of Jammu and Kashmir (now U.T. of J&K) arises out of a judgment of acquittal dated 10.10.2012 passed

by the learned Additional Sessions Judge, Srinagar [“the Trial Court”] in Criminal Challan No. 10/8 DJS titled State of J&K vs. Syed Shabir Bukhari and others.

2. Briefly put, the prosecution case, as was presented before the Trial Court, is that on 18.10.2005, at about 9:00 AM an information was received by Police Station Shergarhi, Srinagar from a reliable source that indiscriminate firing is going on at Government Quarters Tulsi Bagh, Srinagar and that some persons have been seriously injured. On this information, case F.I.R. No. 117/2005 under Sections 307 R.P.C and 7/27 Indian Arms Act was registered and investigation entrusted to Inspector Mir Rasiq, S.H.O. Police Station Shergarhi. The Investigating Officer proceeded on spot, prepared the site plan, seized the arms and ammunitions used by the terrorists in the attack and took the custody of the dead bodies lying on spot. The dead bodies, after completing all legal formalities, were handed over to the legal heirs for last rites.

3. During investigation, the Investigating Officer recorded the statements of the witnesses under Section 161 Cr.P.C. The investigation revealed that on 18.10.2005, the residential quarters at Tulsi Bagh, Srinagar came under attack by unknown terrorists. One of the terrorist tried to enter the main gate of the residence of Shri Mohd. Yousuf Tarigami, General Secretary, C.P.I.M. and M.L.A. The entry of the terrorist was resisted by Selection Grade Constable, Abdul Rashid at the gate. The second terrorist was chased by P.S.O. of Shri Mohd. Yousuf Tarigami and shot dead. From the possession of the second terrorist, AK-47 rifle, 6 AK-47 magazines, 119 rounds of AK-47 and 13 fired cartridges were recovered. The seized AK-47 rifle along with seized fired empty cases was sent to Forensic Science

Laboratory, Srinagar for ballistic examination. The investigation further brought to fore that simultaneously another attack was launched by the militants at Quarter No. T-20, the residence of MoS Education, Shri Gulam Nabi Lone. The Minister was assassinated by the other terrorist in the aforesaid attack. The Investigating Officer collected all the pieces of evidence found on the spot and sent the relevant material to F.S.L. Srinagar for examination.

4. Having regard to the sensitivity of the matter in which Hon'ble Minister had been assassinated, the investigation was later on handed over to a Special Investigating Team (S.I.T.) headed by PW45 –Superintendent of Police South, Srinagar. The matter was thoroughly investigated by the S.I.T. and it was found that Respondent Nos. 1 and 2 had, in pursuance of the conspiracy, provided logistics to Respondent Nos. 4 and 6 to carry out the attack at the twin locations. The entire attack was orchestrated by the operational chief of LeT, a banned outfit, at Kul Gujjar Pati Sumbler Bandipora. The Respondent Nos. 1 to 5 hatched a conspiracy to carry out a suicide attack for elimination of Shri Mohd. Yousuf Tarigami. In pursuance of the criminal conspiracy so hatched, the Respondent Nos. 1 to 4 and 6 visited the Government quarters at Tulsi Bagh Srinagar on 13.10.2005 on foot. The Respondent Nos. 1 and 3 dropped Respondent Nos. 4 and 6 near the Government quarters in question and returned back to Barzulla. It was further found that on 17.10.2005, Respondent No. 3 also came to Bulbul Bagh Barzulla and stayed there with other accused persons. The Respondent No. 3 was informed by the other accused about the suicide attack to be carried out for elimination of Shri Mohd. Yousuf Tarigami. On 18.10.2005, the Respondent Nos. 1 to 3 along with Respondent Nos. 4 and 6 boarded a

white soft top Gypsy and entered Government quarters at Tulsi Bagh at 08:45 AM through the main gate, while as Respondent No. 3 was dropped at Tulsi Bagh crossing. The Respondent Nos. 1 and 2 dropped the suicide attackers, that is, Respondent Nos. 4 and 6 near the residence of Mohd. Yousuf Tarigami and returned back with the Gypsy at Bulbul Bagh Barzulla. The Respondent No. 4 attempted to barge into the residence of Shri Mohd. Yousuf Tarigami, but was stopped by the police constable. The Respondent No. 4 was over powered by the security and was killed on spot by the P.S.O. of Shri Mohd. Yousuf Tarigami. The Respondent No. 6, in confusion, barged into the quarters of MoS Education and started indiscriminate firing in which the Hon'ble Minister got assassinated. He, however, managed to flee from the spot. It was also found in the investigation that when the attack was going on at Tulsi Bagh quarters, the Respondent Nos. 1 and 2 remained in constant touch with the operational chief, Respondent No. 7 on his cell phone.

5. It also emerged in the investigation carried by the SIT that on 01.01.2006, on the disclosure of Respondent No. 2, two video tapes showing the involvement of LeT terrorists, who were shot down in an encounter on 17.11.2004 in case F.I.R. No. 195/2004 of Police Station Ram Munshi Bagh Srinagar, were recovered. Similarly, on the disclosure of Respondent No. 1, some snaps of LeT terrorists including the snap of Shri Mohd. Yousuf Terigami and a sketch of Government Quarters Tulsi Bagh were recovered from the rented flat of these terrorists at Bulbul Bagh Barzulla. The recovered video tapes were sent to CFSL, Chandigarh for forensic analysis. The investigation conducted by SIT thus concluded to have established that Respondent Nos. 1 to 7 on 18.10.2005 in furtherance of criminal conspiracy

carried the terrorist attacks at government quarters Tulsi Bagh Srinagar, resulting in the death of some persons including MoS Education Sh. Gulam Nabi Lone. The offences under Section 302, 307, 120B, 380, 121, 124-A RPC, 7/27 Arms Act, 16/20 ULA(P) were found to be proved against Respondent Nos. 6 and 7 whereas offences under Section 302, 307, 380, 121, 124-A RPC, 7/27 Arms Act and 16/20 ULA(P) Act were found to be proved and established against Respondent Nos. 1 to 5. The Respondent Nos. 5 to 7 involved in the case could not be arrested despite efforts and, therefore, they were proceeded under Section 512 Cr.P.C. The final report prepared by the SIT against the respondents was laid initially before the Court of Chief Judicial Magistrate, Srinagar who committed it to the Court of Sessions on 16.12.2009 and it was later on assigned to the Trial Court.

6. The Trial Court charged the Respondent Nos. 1 and 3 for commission of offences under Section 302, 307, 120-A RPC and 18/20 ULA(P) Act. The accused present during the trial, i.e. Respondent Nos. 1 to 3 pleaded not guilty to the charge and claimed to be tried.

7. With a view to prove the case against the respondents, the prosecution produced 22 witnesses in the Court for examination whereas the statements of 15 prosecution witnesses were admitted by the Respondent Nos. 1 to 3 under Section 272 (1) Cr.P.C. The prosecution evidence was closed on 14.06.2012. The incriminating circumstances appearing in the prosecution evidence were put to Respondent Nos. 1 to 3 and their statements under Section 342 Cr.P.C. were recorded. The Respondent Nos. 1 to 3 denied having been involved in the commission of offences which they were charged with. The Respondent Nos. 1 to 3, however, chose not to lead any defence evidence.

8. The Trial Court having heard learned counsel for the prosecution and the defence and having gone through the prosecution case and the evidence brought on record, came to the conclusion that the prosecution had miserably failed to bring home the charge against Respondent Nos. 1 to 3. The Trial Court vide judgment impugned acquitted all the accused facing trial, i.e. Respondent Nos. 1 to 3 of all the charges. Feeling aggrieved, the State is before us in this acquittal appeal throwing challenge to the judgment of acquittal recorded by the Trial Court.

9. Having heard learned counsel for the parties, and perused material on record, we are of the considered opinion that the view taken by the Trial Court on the basis of evidence brought on record by the prosecution in this case is legally perfect and unexceptionable. As per the prosecution case, six accused in all were involved in carrying out the terrorist attack at Government Quarters Tulsi Bagh, Srinagar on the fateful day. The attack was carried by the two suicide attackers, i.e., Respondent No. 4 – Abu Ossama and Respondent No. 6 – Bilal, both residents of Pakistan. Respondent No. 4 was killed on spot whereas Respondent No. 6 succeeded in fleeing from the spot. The Respondent No. 7, the operational chief of LeT based in Pakistan, could not be apprehended by the police. Respondent No. 5, Bashir Ahmad Sheikh, too could not be captured. Admittedly, respondents before us, i.e. Respondent Nos. 1 to 3 who faced the trial are not directly involved in carrying out the attack in question, but are roped by the aid of Section 120-B RPC, i.e. for hatching a conspiracy with the other accused to carry out the attacks. It is, therefore, required to be seen as to whether the prosecution has proved the involvement of Respondent Nos. 1

to 3 in the criminal conspiracy hatched at the instance of Respondent No. 7 to carry out the attack on MLA Shri Mohd. Yousuf Tarigami.

10. The Trial Court has scanned the entire evidence on record including the scientific evidence and has concluded that the prosecution has not brought on record any cogent and credible evidence to prove the participation of Respondent Nos. 1 to 3 in the criminal conspiracy which, ultimately, led to the attack and killing of MoS Education Sh. Gulam Nabi Lone. As per the prosecution story, the conspiracy is said to have been hatched at Kul Gujjar Pati Sumbler Bandipora but as per the statement of Investigating Officer, SSP Pani who was heading the SIT, the conspiracy was allegedly hatched in Pakistan. There is another version on record that the conspiracy was hatched in a rented accommodation at Bulbul Bagh Barzulla. In the charge-sheet, Respondent No. 3, Mushtaq Hussain Akhoon, is shown to have been arrested in FIR No. 137/2005 of Police Station Maharaja Ganj, Srinagar who as per the prosecution made some disclosure statements, but he is shown to have been arrested in some other FIR registered at Police Station Soura. The Respondent No. 3, as per the prosecution confessed and disclosed his involvement in the suicide attack while he was in custody in reference to an FIR registered in Police Station Soura, but Respondent Nos. 1 and 3 as is brought on record by the prosecution were arrested in FIR No. 137/2005 by Police Station Soura and thereafter their custody was changed in FIR No. 182/2005 and 181/2005. The prosecution has not been able to explain as to what was the disclosure made and when it was made with some amount of certainty. The Trial Court has, on evaluation of evidence, clearly come to a conclusion that the prosecution evidence to prove the conspiracy is full of contradictions and

unworthy of credence. Once we take out the conspiracy angle in the case on hand having not been proved, we see no reason to see the involvement of Respondent Nos. 1 to 3 in carrying out of the terrorist attack resulting into killing of MoS Education Gulam Nabi Lone. Admittedly, these attacks were carried by PAK nationals one of which was killed and the other succeeded in fleeing from the spot. After having evaluated the evidence on record and having concluded that the evidence to prove conspiracy involving Respondent Nos. 1 to 3 was not worthy of any credence, there was hardly any need for the Trial Court to go into the other part of the evidence. The Trial Court, however, went into the detailed analysis of the prosecution evidence and for that purpose enumerated the circumstances sought to be proved by the prosecution by formulating 14 points for consideration. These 14 points are enumerated at Page 72 to 76 of the impugned judgment, which for facility of reference are set out below.

- 1. That the accused number three mentioned in the challan who was arrested in FIR No. 137/2005 police station Maharaja Ganj Srinagar confessed that he along with other terrorists of let are involved in the suicidal attack on government quarters Tulsi Bagh.*
- 2. That on his disclosure police station Soura two more terrorists along with white software top gypsy bearing registration number JK R/88 70 on 31st of November 2005 were arrested.*
- 3. That from gypsy two hand grenades, live A K – series rounds 50, video camera one number and*

some other incriminating documents were recovered.

4. That two mobile phones with cell numbers 9906745988 and 9906764916 were recovered from the accused Shabbier Bukhari and Shaquille Sophie respectively.

5. That in October 2005 accused number one and two were informed on their cell phones bearing cell numbers aforementioned by the operational chief of LeT banned outfit Bilal alias Sayeed Salahudin accused number seven resident of Pakistan to reach at Kul Gujjar Sumblar Bandipora where a conspiracy was hatched by the accused were 1 to 5 for making suicidal attack in government quarters of Tulsi Bagh for the elimination of Shri Mohammad Yousuf Tarigami.

6. That in pursuance of criminal conspiracy on eighth of October 2005 at about 900 hours they entered the government quarters Tulsi Bagh for reconnaissance of a residential quarter of Gen Sec CPI M/MLA Shri Mohammad Yousuf Tarigami.

7. On 12th October 2005 operational chief of LeT banned outfit accused number seven informed accused number two through his cell phone

number 9906522144 on cell number 9906764916 to reach to Goodger Pati Sumblar Bandipur with accused number one along with gypsy bearing registration number JK R/88 70.

8. That accused number two informed accused number one on his cell phone number 9906745988 at 1254 hours and both of them boarding in gypsy reached Gora Bandipora.

9. That the accused number four and six were briefed by accused number one and two about the security of government quarters Tulsi Bagh and that of government quarter of shri Mohammad Yousuf Tarigami and after talking with operational chief of banned outfit accused number five handed over two suicide attackers namely Abu Osma of Pakistan and Abdul Rehman alias Darda of Pakistan that is accused number four and six with fully equipped with automatic weapons to accused number one and two with the direction that the former accused 04 will attack on Mohammad Yousuf Tarigammy quarter and latter accused number six will hid himself some where and after gathering of police will make his presence to attach them.

10. That on 13th of October 2005 accused number 1 to 4 and six went to government quarters Tulsi Bagh on foot and accused number one and two after dropping accused number four and six reconnaissance of government quarters Tulsi Bagh and particularly the quarter of M Y Tarigami returned back to Barazulla.

11. That on 17th of October 2005 accused number three also came to Bulbulbagh Barazullah and stayed with other accused for the night who was informed by the accused about the suicidal attack to be made for the elimination of Shri M.Y. Tarigami.

12. That on 18th October 2005 the accused number 1 to 3 and four and six boarded the white coloured soft gypsy entered government quarters Tulsi Bagh at 845 hours through main gate when accused number three was dropped at near Tulsi Bagh crossing and accused number one and two dropped the suicide attackers accused over 4 to 6 near the residence of M.Y. Tarigami when accused number four attempted to barge in the residence of the said MLA he was toppled by police constable who caught hold of him. The terrorist tried to escape but PSOs of the MLA Mohammad Yousuf

Tarigami fired at him killing him on spot while as another attacker fled away.

13. On 1st January 2006 on the disclosure of LeT terrorists accused number two videotapes containing the videos of LeT terrorists including video of those LeT terrorist who were shot dead in an encounter on 17th of November 2004 in case in FIR number 195/2004 police station, the videotapes of terrorist is involved in Sulaiman Teng attack were recovered from the accused number two.

14. During investigation it was found that the accused number 1 to 4 were in constant contact with Chief operational commander of LeT banned outfit accused 07 regarding the attack on Tulsi Bagh quarters.

11. The Trial Court, after having discussed the evidence with respect to each of the circumstances enumerated above, came to the conclusion that the prosecution had failed to lead any cogent and trustworthy evidence to prove these circumstances which, if proved firmly, would have connected the Respondent Nos. 1 to 3 with the commission of offence they were charged with by the aid of Section 120B of RPC. The call details of the respondents, which could have at least proved that the Respondent Nos. 1 to 3 were in touch with Respondent No. 7, the operational chief of LeT based in Pakistan, and had provided logistics and other information to the suicide attackers, i.e. Respondent Nos. 4 and 6, were also not proved during the

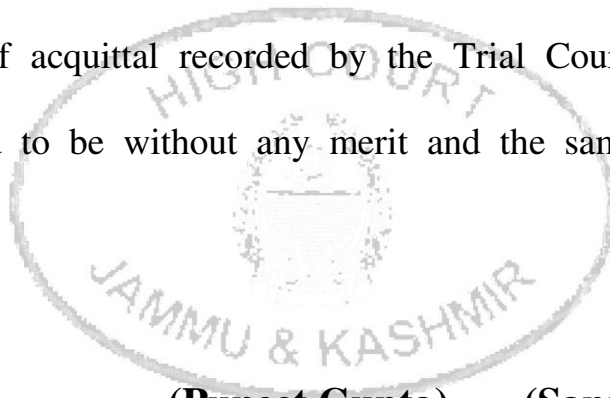
trial. The disclosure statements allegedly made by the Respondent Nos. 1 to 3 which led to the recovery of tapes and sketch plan too could not be proved to the satisfaction of the Trial Court which could have been relevant circumstances indicating the involvement of Respondent No. 1 to 3 with the commission of crime by Respondent Nos. 4 and 6.

12. Indisputably, there was no eyewitness account to prove the conspiracy, if any, hatched by Respondent No. 1 to 3 with other accused and the circumstances which were sought to be proved by the prosecution did not form an unbroken chain of firmly established circumstances leading to the only conclusion that Respondent Nos. 1 to 3 were indeed part of the conspiracy hatched by all the accused at the instance of Respondent No. 7 to carry out the assassination attack on Shri Mohd. Yousuf Tarigami. The Trial Court has gone in some details to evaluate the prosecution evidence and has concluded that none of the relevant circumstances projected by the prosecution have been firmly established and also the circumstances sought to be proved do not form a chain complete in itself without any missing links so that it could be said to be proved beyond any reasonable doubt that Respondent Nos. 1 to 3 were participants in the criminal conspiracy hatched by all the accused to carry out the attack at Tulsi Bagh Government quarters on the fateful day.

13. For the reasons which the Trial Court has given elaborately in the impugned judgment and on re-evaluation of evidence by us, we see no good reason to take a view different from the one taken by the Trial Court. The evidence on record is too weak and shaky to arrive at a conclusion different from one arrived at by the Trial Court. It is trite that the jurisdiction of the Appellate Court while hearing the criminal acquittal appeal is well

circumscribed. If upon evaluation of evidence and record, a view other than the one taken by the Trial Court in the judgment of acquittal is possible, the Appellate Court would be loath to take such view and rather would take the view which favours the accused. We are aware that nothing prevents the Appellate Court to re-evaluate and re-appreciate the evidence and come to a conclusion different from the Trial Court, provided the Appellate Court finds the appreciation of evidence by the Trial Court suffering from grave perversity. To interfere with the judgment of acquittal, the Appellate Court must be sure that the view taken by the Trial Court is totally impermissible in the face of evidence on record.

14. For the foregoing reasons, we do not feel persuaded to interfere with the judgment of acquittal recorded by the Trial Court. This appeal is, therefore, found to be without any merit and the same is, accordingly, dismissed.



(Puneet Gupta)
Judge

(Sanjeev Kumar)
Judge

SRINAGAR:

20.03.2025

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes