

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

*Reserved on: 16.07.2026
Pronounced on: 24.07.2026
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*Whether the operative part
or full judgment is
pronounced: **Full***

CrIa(AS) No.36/2022

UT OF J&K

... APPELLANT(S)

Through: - Mr. Bikramdeep Singh, Dy. AG.

Vs.

BASHIR AHMAD AHANGAR & ANR. ...RESPONDENT(S)

Through: - Mr. Sheikh Manzoor, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

01. The instant appeal, preferred by the appellant-State, is directed against the judgment dated 31.03.2022 passed by the learned Principal Sessions Judge, Budgam, in a case arising out of FIR No.102/2006 for offences punishable under Sections 307 and 341 of Ranbir Penal Code registered with Police Station, Magam, whereby the respondents-accused have been acquitted of the charges framed against them.

02. Briefly stated, the prosecution case is that on 28.06.2006, PW-1 (the complainant) lodged a written report with Police Station, Magam, to the effect that in the morning on the said day at about 7.00 a.m., he was proceeding to see

his sick mother, who is residing in a house adjoining to his residential house. On reaching near the entrance gate, accused No. 2-Abdul Gani Ahangar, started to hurl filthy abuses upon him, whereafter his father, PW-3, tried to intervene but in the meanwhile accused No.1 attacked the complainant on his head with a long, sharp-edged iron weapon, as a result which he sustained injuries and started bleeding. It was further alleged in the report that the wife and brother of the complainant intervened and rescued his life and took him to the hospital. In the FIR it was further alleged that the accused persons had, in the previous past, attacked younger brother of the complainant in the year 1993, though no FIR had been lodged by the family at that time.

03. On the basis of the aforesaid report, EXPW-1, FIR No.102/2006 for offences under Section 307 and 341 of RPC was registered and investigation of the case was set into motion. Upon completion of the investigation, the investigating agency found that the offence under Section 307 RPC is established against accused No. 1, whereas offence under Section 341 of RPC is established against accused No.2. It is pertinent to mention here that during the course of investigation, the complainant/injured was subjected to

medical examination and the statements of witnesses acquainted with the facts of the case were also recorded.

04. Vide order dated 14.02.2007, the learned trial court framed charges for offences under Sections 341 and 307 of RPC against both the accused persons, who denied the charges and claimed to be tried. In support of its case, the prosecution examined six out of ten witnesses cited in the challan. These included PW-1, Ghulam Nabi Ahangar (the injured/complainant), PW-2, Mst. Meema, the sister of PW-1, PW-3, Gh. Rasool Ahanger, father of the injured, PW-4, Mst. Jameela, sister-in-law of the injured. Besides this, the prosecution also examined independent witnesses, PW-6, Khazir Mohammad, and PW-7, Bashir Ahmad Ahangar. However, the Investigating Officer and the Medical Officer were not examined by the prosecution.

05. After completion of the prosecution evidence, the statements of the accused under Section 342 of the J&K Cr.P.C were recorded. In their statements, the accused took a defence that the complainant party, taking advantage of their poverty, are trying to coerce them into selling their house to the complainant party. In defence, the accused examined one witness, namely, DW Fateh Mohammad Bhat.

06. The learned trial Court, after hearing the parties and appreciating and analysing the evidence led during the course of the trial, passed the impugned judgment of acquittal by observing that the charges against the respondents/accused have not been proved beyond reasonable doubt, inasmuch as the evidence on record is contradictory in nature.

07. The appellant-State has challenged the impugned judgment of acquittal passed by the learned trial court on the grounds that the Court has not properly appreciated the evidence available on record. It has been contended that merely on the basis of certain insignificant contradictions here and there, it was not open to the learned trial court to throw out the entire prosecution case. It has also been contended that the prosecution had succeeded in establishing the charges against the respondents by reliable and cogent evidence, which, however, was ignored by the learned trial Court.

08. I have heard learned counsel for the parties and perused the grounds of appeal, the impugned judgment and the record of the trial Court.

09. Before dealing with the grounds of challenge projected by the appellant-State, it would be necessary to notice the principles laid down by the Supreme Court governing the

scope of interference by the High Court in an appeal filed by the State against an order/judgment of acquittal recorded by the trial Court.

10. In **Rajesh Prasad v. State of Bihar and another**, (2022) 3 SCC 471, the Supreme Court, after considering its earlier judgments on the issue, observed as under:

“29. After referring to a catena of judgments, this Court culled out the following general principles regarding the powers of the appellate court while dealing with an appeal against an order of acquittal following words: [Chandrappa v. State of Karnataka, (2007) 4 SCC 415]

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Criminal Procedure Code, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the

presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed strengthened by the trial court. and

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

11. Again, in **H.D. Sundara & Ors. v. State of Karnataka**, (2023) 9 SCC 581, the Supreme Court summarized the principles governing the exercise of appellate jurisdiction while dealing with an acquittal appeal under Section 378 of the Cr. P. C. The relevant extracts of the said judgment are reproduced hereunder:

“8.1. *The acquittal of the accused further strengthens the presumption of innocence;*

8.2. *The appellate court, while hearing an appeal against acquittal, is entitled to reappreciate the oral and documentary evidence;*

8.3. *The appellate court, while deciding an appeal against acquittal, after reappreciating the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;*

8.4. *If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and*

8.5. *The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”*

12. Taking note of the ratio laid down by the Supreme Court in the aforesaid judgments, the said Court, has, in the case of **Babu Sahebagouda Rudragoundar and others v. State of Karnataka**, (2024) 8 SCC 149, made the following observations:

“41. Thus, it is beyond the pale of doubt that the scope of interference by an appellate court for reversing the judgment of acquittal recorded by the trial court in favour of the accused has to be exercised within the four corners of the following principles:

41.1. That the judgment of acquittal suffers from patent perversity;

41.2. That the same is based on a misreading/omission to consider material evidence on record; and

41.3. That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

42. The appellate court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial court.”

13. In the light of the aforesaid legal principles, let us now advert to the facts of the present case. In the impugned judgment, the learned trial Court has noticed certain contradictions in the statements of the prosecution witnesses with regard to various aspects of the matter, which according to the learned trial Court, go to the root of the prosecution case and, as such, cannot be believed for returning a finding of guilt against the respondents-accused.

14. The first contradiction that has been noted by the learned trial Court relates to the weapon of offence. In the report, EXPW-1, the complainant has stated that he was attacked by accused No.2-Ab. Gani Ahangar, with a long, sharp-edged iron weapon on his head. However, in his statement recorded under Section 161 of the CrPC, PW-1 has stated that he had been attacked by accused Bashir Ahmad with an iron pipe. While deposing before the trial Court during trial of the case, PW-1 has stated that accused Bashir Ahmad was armed with a water pipe and a small sword and that he inflicted a blow on the right side of his head with the water pipe, which resulted in injuries to him. In his cross-examination, PW-1 stated that accused Bashir Ahmad was carrying a water pipe in his right hand and a knife in his left hand. He further stated that the said accused put knife on his right shoulder, though no injury was inflicted upon him with the knife.

15. From the aforesaid versions given by PW-1, the injured, it is evident that he has taken contradictory stands as regards the weapon of offence. While in the report lodged with the police, EXPW-1, he has stated that he had been attacked with a long, sharp-edged iron weapon, in his statement made during trial of the case, he has stated that the assailant was

carrying two weapons, a water pipe and a knife, and that he sustained an injury on his head on account of the blow inflicted with the water pipe, while the assailant put the knife on his right shoulder.

16. Since PW-1 has admitted the contents of the initial report, EXPW-1, as such, the contradictions between his statement made during trial of the case and the version given by him in the report, EXPW-1, so far as the same relate to the weapon of offence, stand proved. The contradiction with regard to the weapon of offence is a material contradiction which goes to the root of the prosecution case and it cannot be brushed aside lightly.

17. Another contradiction emerging from the evidence on record relates to the testimony of PW-2, Meema, the sister of the injured. She has stated that she was also beaten by the accused persons when she tried to rescue her brother, the injured. She has further stated that there were five assailants on spot. None of the other prosecution witnesses has stated that PW-2, Meema, was assaulted by the accused persons. Her statement that there were five persons who had launched an attack upon her brother, PW-1, also contradicts the version of the occurrence given by PW-1. PW-2, Meema, has stated that she was present alone on the spot at the time of

the occurrence. Thus, she has thrown a doubt about the presence of other family members on spot at the time of the occurrence.

18. Another contradiction that has come forth is with regard to the place of the occurrence. PW-1 has stated that the occurrence took place in the courtyard of his father's house. To the similar effect is the statement of PW-4, Mst. Jameela, wife of the injured. However, according to PW-3, Gh. Rasool Ahangar, the occurrence took place outside the courtyard and to the similar effect is the site plan of the occurrence, according to which the occurrence has taken place outside the house of father of PW-1. Thus, there is a material contradiction in the prosecution evidence with regard to the place of the occurrence.

19. While noticing the aforesaid contradictions in the prosecution evidence, this Court also has to take into account the background that there was previous enmity between the parties. PW-4, Mst. Jameela, wife of the injured, has clearly stated that the accused had got the windows of their house closed and that a dispute is going on between the parties on account of partition of land and their relations are strained. PW-3, Gh. Rasool Ahangar, has also stated that the accused had damaged their vegetable crop, as a result of which there

was a quarrel and a report was lodged with the police. Thus, there is ample evidence on record to show that the relations between the family of the injured and the family of the accused persons are strained. While strained relations between the parties can form a motive for the accused to commit the crime against the complainant party, it can also be a motive for their false implication. Therefore, while scrutinizing and analysing the statements of the injured witness and his family members, it is to be borne in mind that false implication of the accused cannot be completely ruled out. Therefore, the contradictions appearing in the statements of the prosecution witnesses, as noticed hereinabove, assume greater significance.

20. Apart from the above, the prosecution, in the present case, has neither examined the doctor who has issued the injury certificate in respect of PW-1 nor the Investigating Officer has been examined. In the absence of statement of the doctor and proof of the injury certificate, the testimony of PW-1 with regard to the alleged occurrence has not received corroboration from any independent source as both the independent eyewitnesses to the occurrence have turned hostile.

21. Similarly, the non-examination of the Investigating Officer, in the facts and circumstances of the present case,

has caused grave prejudice to the accused, inasmuch they have been deprived of an opportunity to prove the contradictions which have cropped up in the statements of the prosecution witnesses when compared with their statements recorded under Section 161 of the CrPC. This, in the considered view of this Court, has proved to be the last nail in the coffin of the prosecution case.

22. In view of the foregoing discussion, the finding of the learned trial court to the effect that the evidence led by the prosecution is not reliable in nature, is neither illegal nor the same suffers from any perversity. Therefore, the impugned judgment does not call for any interference by this Court in exercise of its appellate jurisdiction.

23. Accordingly, the judgment of acquittal passed by the learned trial Court is upheld and the appeal is dismissed.

24. The trial Court record, along with a copy of this judgment, be sent back forthwith.

(Sanjay Dhar)
Judge

Srinagar,
24.07.2026

“Bhat Altaf-Secretary”

Whether the judgment is reportable: YES