

IN THE COURT OF CHIEF JUDICIAL MAGISTRATE, JAMMU

Case No.15091/1992

CNR No.:JKJM030000011992

Date of Institution: 05.03.1992

Date of Judgment: 04.11.2025

Reserved on: 4.11.2025

Pronounced on: 4.11.2025

State through SHO Police Station Kanachak, Jammu

Through: Ld. APP for UT

Mr. Vikram Parihar

Versus

1. Nazir Ahmed Kathjoo S/o Gulam Mohd R/o Raina Wari, Srinagar
 2. Muzafar Ahmed Shah S/o Mohd Maqbool Shah R/o Bandipura
 3. Abdul Rashid Hakeen S/o Gulam Rasool R/o Lal Bazar
 4. Manzoor Ahmed @ C Jahid S/o Muzafar Ahmed R/o Doulat Bazar, Srinagar
 5. Mohd Shafi Ittu @ Shafi Karatay S/o Abdullah R/o Balbal Nogam
 6. Mushtaq Ahmed @ Goga @ Mushtaq Islam S/o Gulam Qadir R/o Batmaloo, Srinagar
 7. Farooq Ahmed Dar @Bitta Karatay S/o Gulam Rasool R/o Guru Bazar, Srinagar
 8. Jasved Ahmed Bhat S/o Abdul Gani R/o Raj Bagh, Srinagar
 9. Mohd Yousaf Waza S/o Abdu Majid R/o Ladruban Kupwara (Dead)
 10. Manzoor Islam @ Manzoor Ahmed Bhat S/o Abdul Majid R/o Anantnag (Dead)
 11. Mohd Rafiq@ Nana Ji @ Naseem S/o Gulam Hussain R/o Natipura, Budgam, Srinagar
-(Accused persons)**

Through: Mr.Yogesh Bakshi, Advocate

for accused no.6, 7 and 11

FIR No. 240/1991 of P/S Kanachak, Jammu

Offences under section 353, 336, 427, 147, 148, 224, 511 RPC

CORAM:

Preet Simran Kour Grover

JO Code: JK00168

Simran
Chief Judicial Magistrate
Jammu

JUDGMENT

04.11.2025

- 1.Ld.APP for UT Mr. Vikram Parihar present. Accused no 6, 7 and 11

are in Judicial custody. Mr. Yogesh Bakshi, Ld. Counsel on behalf of accused no.6, 7 and 11 present. Accused no.11 seen through virtual mode. Accused no. 6 and 7 could not be seen through virtual mode. Accused no.1, 4 and 5 already confessed their guilt vide order dated 24.11.2023. Accused no.9 and 10 have expired and proceedings against accused no.9 and 10 already stands abated before Ld. Session Court. Accused no. 2 stands proceeded under section 512 CrPC on 4.11.2000 whereas accused no.3 and accused no.8 stands proceeded under section 512 CrPC vide order dated 24.04.2008.

2. Today, PW 4-Guman Singh, PW 5-Harbans Lal and PW 6- Raj Kumar present whose statement have been recorded and made part of the file. No other PW present today. Vide order dated 27.10.2025, PW 2-Bharat Bhushan and PW 9-Tilak Raj stands deleted from the list of prosecution in view of their death. Today, police report received which reveals that PW8-Tulsi Ram has expired. The said report is accepted and made of the file. Further, police reports already received and made part of the file. Perusal of the same reveals that rest of the witnesses could not be traceable despite best efforts. In view of the police report as well as order dated 27.10.2025, the right of the prosecution to adduce further evidence stands closed vis-a-vis accused no.6, 7 and 11 and the file is kept for statement of accused no.6,7 and 11 under section 342 CrPC.

3. On this occasion, Ld. Counsel for accused no.6,7 and 11 has stated at bar that prosecution has failed to adduce any evidence who were able to identify accused persons and that since none of the witnesses were able to identify accused persons out of all the inmates in the jail, as such, proceeding further for recording of statement of accused persons under section 342 CrPC will be a futile exercise. As such, prayed for acquittal of said accused persons

4. On the other hand, Ld. APP for UT has stated that the witnesses have been able to recollect the incident however due to age of the

case, they are not in a position to identify the accused persons, as such prayed to proceed further.

Heard and Considered

5. Before proceeding further, let us first scan the prosecution story. Brief facts of the case are that on 16.12.1991, one docket was sent by Dy.SP Abdul Qayoom Manhas to SHO Police Station Kanachak through Ct. Munir Hussain No. 279 CIDCI who was deputed at Kot Bhalwal Jail, Jammu in which it has been reflected that one Interrogation Centre is in existence at Jail wherein 1172 inmates are there. On 13.12.1991, the accused persons who were lodged in Kot Bhalwal Jail, Jammu for the commission of different offences went on hunger strike in order to support their demands. At around 16:20 hours, Shreekant, Dy.SP ITBP has orally informed that the accused persons namely Nazir Ahmed Kathjoo, Muzafar Ahmed Shah, Abdul Rashid Hakeem, Manzoor Ahmed @ C Jahid, Mohd Shafi Ittu, Mushtaq Ahmed, Farooz Ahmed Dar, Javed Ahmed Bhat, Mohd Yousaf Waza, Manzoor Islam and Mohd Rafiq in pursuance of criminal conspiracy with other accused persons lodged in the Jail and with criminal intention broke the locks of doors and windows besides wall of the barrack where they were lodged and after coming out from there, they raised slogans in favour of Pakistan and Azadi and called the security forces to vacate the Kashmir besides to torch the constitution. It is further alleged that accused persons even pelted stones on the ITBP personnel who were posted there for the protection of barrack forcing them to fled away and in the shape of a mob, they started proceeding towards the main gate however ITBP and other police personnel foiled their attempt to escape from the jail by firing in the air due to which the situation was brought under control and accused persons returned back to their barrack out of fear. Because of the terror created by the said accused persons, there is a tense situation in the jail among the other inmates who were

Signature
Chief Judicial Magistrate
Jammu

already lodged.

6. On the basis of said docket, FIR No. 240/1991 was lodged for commission of offence under section 224, 511, 147, 148, 427, 336, 353, 120-B RPC and 4 TADA at Police Station Kanachak and investigation ensued. During the course of investigation, IO went to the spot, prepared the site map, recorded the statement of witnesses under section 161 CrPC and seized the stones which were lying on the spot. After the completion of investigation, it was found that on 13.12.1991, the said accused persons, who were lodged in Kot Bhalwal Jail, Jammu went on hunger strike in support of their demands and on 16.12.1991, the said accused persons in pursuance of the criminal conspiracy with other accused persons and with criminal intention broke the locks of doors and windows and started raising slogans and even attempted to break the internal gate. However, the ITBP personnel fired in the air due to which they could not run away from the jail and returned back and accordingly, charge sheet was presented before the court of law on 05.03.1992 against accused persons for commission of offences under section 4 TADA and section 224, 511/120-B/353/224/427/336/147/148 RPC.

7. Thereafter, on **27.09.2012**, filed was sent to this court after transfer by Ld. 3rd Addl. Session Judge, Jammu on the ground that provisions of section 4 TADA (P) Act are not attracted in the said case against the accused persons and only offences under sections 353, 336, 427, 147, 148, 224, 511 RPC are found proved against accused persons.

8. On **07.10.2015**, plea of accused persons i.e. accused no. 1, 4, 5, 6, 7 and 11 have been recorded. Accused no. 1, 4 and 5 already confessed their guilt vide order dated 24.11.2023, Since accused no. 6, 7 and 11 who are before the Court have not pleaded guilty and preferred trial, as such prosecution was directed to lead evidence.

9. The prosecution in sustenance of charges has able to adduce the evidence of four witnesses i.e. PW 1-Dy.SP Abdul Qayoom Manhas,

PW 4-Guman Singh, PW 5-Harban Singh and PW 6-Raj Kumar.

10. A brief resume of the material part of the evidence of witness examined is reproduced here under:

PW-1 Dy.SP Abdul Qayoom Manhas has deposed in his testimony that in the year 1991, he was deputed as Dy.SP at Kot Bhalwal Jail, Jammu. On 19.12.1991, he was informed by ASI I/C on duty that some inmates/accused persons who were lodged in different cases, have broken the windows of the barrack and came outside their barracks and started raising slogans in favour of Pakistan "*Pakistan Zindabad, hum kya chahte hain Azadi, Azadi hamara Haq hai cheen kay lain gay, Kashmir chor do*". At around 04:00 pm, when he reached internal gate of the jail, he saw accused persons raising slogans as well as raising hue and cry. Besides accused persons, rest of the persons were also present there whose names are reflected in the FIR namely Nazir Ahmed Katzoo, Tariq Ahmed, Farooq Ahmed Dar alias Bitta Karate, Mushtaq Ahmed, Mohd Rafiq and Muzaffar and others were involved. On the spot, ITBP Incharge fired in the air so that the mob is scattered however, there were chances that accused persons might fled away from Jail due to which fire was made in the air. Thereafter, he has prepared a letter for Police Station Kanachak for investigation of the matter. He has seen the said letter and it is the same which has been sent, the contents of the same are true and correct and admits his signatures and seal as Dy.SP Kot Bhalwal Jail, Jammu over which EXT-P1 has been exhibited. FIR has been lodged since 35 years ago and it is impossible to identify any of the accused persons and even if, if any one comes in front of him, he is not in a position to recognize him.

PW4 Mr.Guman Singh has deposed in his testimony that on 16.12.1991, he was posted at 19 Battalion and performing duty at Kot Bhalwal Jail as Constable in block no. 1. His duty was from 4.00 pm to 6.00 pm. The incident has taken place at around 4.15-4.30 pm. The inmates of the jail tried to flee from the jail by breaking the doors and windows. The crowd began to gather

and started shouting the slogans in favour of Pakistan "Pakistan zindabad, Hindustan murabad, hum kya chahte hain azadi, azadi hamara haq hai cheen kay lain gay, Kashmir chor do, Aain hind ko aag laga do". They also started pelting stones on the police officials on duty. He along with rest of the police officials tries to stop them however they were heading towards them and gathered there. At that time, his senior head constable namely Sardar Singh and Company Commander namely Tulsi Ram came at the spot and he informed them that crowd is approaching towards them. On this, they told him to fire 7 rounds and accordingly he has fired 7 rounds in the air to disburse the inmates. On this, all the inmates went back to their blocks. He cannot identify the accused person today even if shown to him as he was not known to them before and since the matter is old one. On the same day his statement was recorded. The inmates were pelting stones and accordingly documentation was prepared however he fails to remember any seizure memo made in his presence although he admits his signatures over the same. The Seizure memo of stones was shown to him and he admits the contents of the same as true and correct already exhibited as EXT-P5. Police recorded his statement.

PW 5-Harbans Lal has deposed in his testimony that on 16.12.1991, he was posted at 19 Battalion and performing duty at Kot Bhalwal Jail as Constable in block gali no. 2. The incident has taken place at around 4:00-4.30 pm. The inmates of the jail made hue and cry and tried to flee from the jail by breaking the doors and windows. The crowd came out of the barracks and started gathering and pelting stones on police personals on duty and even started shouting the slogans in favour of Pakistan "Pakistan zindabad, hum kya chahte hain azadi, azadi hamara haq hai cheen kay lain gay, Kashmir chor do, Aain hind ko aag laga do". He along with rest of the police officials tries to stop them however they were heading towards them and gathered at inner gate and later on went to office to intimate the senior officers. Assistant commandant Tulsi Ram

came on spot and order official (santry) at gate no 1 namely Guman Singh to open fire in air to control the crowd, who opened seven rounds of fire in the air stopping at regular intervals. Asstt. Commandant also gave order to Raj Kumar to open fire in air who fired seven rounds in air stopping at regular intervals to control the fire. On this, the mob was controlled and they moved back from the inner gate towards their barracks otherwise they would have fled away from the jail. The accused person who was heading the mob against whom the FIR was registered, neither can remember their names nor can identify them today even if they are brought before him or shown to him. Police have seized stones in his presence and accordingly has made seizure memo. Seizure memo has been seen in the file today. Contents of the seizure memo are read over to him, the same are correct. He admits his signature over it exhibited as EXT-P5. Thereafter, IO has recorded my statement.

PW 6-Raj Kumar has deposed in his testimony that on 16.12.1991, he was posted at 19 Battalion and performing duty at Kot Bhalwal Jail as Constable in block Gali no. 2. The incident has taken place at around 4.00 to 4.30 pm. The inmates of the jail tried to flee from the jail by breaking the doors and windows. The crowd came out of the barracks and started gathering and pelting stones on police personals on duty and even started shouting the slogans in favour of Pakistan "Pakistan zindabad, hum kya chahte hain azadi, azadi hamara haq hai cheen kay lain gay, Kashmir chor do, Aain hind ko aag laga do". He along with rest of the police officials tries to stop them however they were heading towards them and gathered at inner gate. Harbans Lal went to call the other officials for help then Company Commander Tulsi Ram came who ordered to open fire in air in order to stop the crowd. He fired 5 rounds in the air to disburse the intimates. His fellow constable namely Guman Singh also fired 7 rounds in the air stopping at regular intervals to control the crowd. Because of that, mob was controlled. The accused persons who were heading the mob against whom the FIR was

registered neither he can identify them today nor can recall the name of the said accused. He can remotely remember the name of Nazir Ahmed, Manzoor and Rafiq only however cannot identify them even if they are brought before him or shown to him today because the case is old one. Police have seized the stone and accordingly have made seizure memo. Therefore, I.O has recorded his statement.

11. On scanning the entire evidence, it is manifestly clear that although all the witnesses recollects the incident that has taken place on the fateful day however they are not in a position to identify the accused persons due to the strength of the inmates present in the jail at the relevant time and place as well as the age of the case. As such, on the basis of the statements of these witnesses, convicting accused persons no.6,7 and 11 will be suicidal as all the eyewitnesses have miserably failed to identify accused persons with the commission of aforesaid offences.

12. Therefore, keeping in view of evidence available on record as well as hearing both sides, I am of the firm opinion that there would be no prospect in proceeding further with the present case vis-a-vis accused no. 6, 7 and 11 are concerned.

13. In this context, I would like to cite an authority by our own Hon'ble High Court of J & K in case reported in SLJ 2003 Vol (II) page 419 titled J & K V/S Qasim Ali & Another, wherein it was held that.

Sec 249 CrPC –Sole eye witness not supporting the case of the prosecution. Trial court terminating the proceedings mid-way being of the view that sole eye witness had not supported the prosecution case therefore, there was no prospect of conviction, held in the peculiar circumstances of the case, Trial Court was justified in dropping the proceedings.

In peculiar circumstances of the case, where there is no prospect of case ending in conviction, a criminal court processes jurisdiction to truncate the proceedings even at the evidence stage, however such jurisdiction should always be exercised with due care and circumspection and the conclusion that case cannot end in conviction must not be drawn by critical appreciation of evidence which is yet to be tendered. The test would be that such evidence, if accepted, at its face value together with the evidence by the prosecution during the trial would not prove the charge against the

accused.

14. Therefore, keeping in view the discussion made supra, I am of the opinion that prosecution has failed to establish the guilt of the accused no.6, 7 and 11. As such, accused persons are acquitted of the offences under section 353, 336, 427, 147, 148, 224, 511 RPC. Their personal bond and bail bond stands forfeited. Office is directed to intimate the accused persons accordingly. So far as accused no.2 namely Muzafar Ahmed Shah, accused no.3 namely Abdul Rashid Hakeen and accused no.8 namely Javed Ahmed Bhat are concerned, since they are proceeded under section 512 CrPC, as such, file is consigned to records till they are appeared or brought before court.

**Announced
04.11.2025**

4/11/2025
**Chief Judicial Magistrate,
Jammu**