

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case No.:CRA No.45/2009
IA No. 62/2009

Reserved on:- 06.02.2026
Pronounced on:- 09.02.2026
Uploaded on:- 09.02.2026

*Whether the operative part
or full judgment is pronounced* **Full**

Ravi Kumar

....Appellant(s)

Through:- Mr. Ankur Sharma, Advocate.

V/s

State of J&K.

.....Respondent(s)

Through:- None.

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

JUDGMENT

1. The present Criminal Appeal is directed against the judgment dated 01.08.2009 passed by the learned Sessions Judge, Udhampur (hereinafter referred to as "**the trial Court**"), whereby the appellant has been convicted for offences punishable under Sections 307 and 341 of the Ranbir Penal Code (**RPC**) and sentenced to undergo rigorous imprisonment for a period of three years along with fine of ₹10,000/- for offence under Section 307 RPC and in default of payment of fine, to further undergo imprisonment for six months, and further sentenced to pay fine of ₹500/- for offence under Section 341 RPC with default stipulation. Out of the fine amount, if realized, ₹8,000/- has been directed to be paid to the injured Bishambar Dass (PW-3) as compensation.

2. The prosecution case, in brief, is that on 27.02.2004, Lalita Devi (PW-1), wife of the injured Bishambar Dass, submitted an application before Police Station, Udhampur alleging that while her husband was proceeding towards Reasi for duty, the appellant Ravi Kumar along with co-accused attacked him with a 'Toka' and inflicted injuries upon him. It was further alleged that an amount of ₹10,000/- was taken from his pocket. On the basis of the said application, FIR No. 54/2004 came to be registered for offences under Sections 307, 341, 34 RPC and Section 4/25 Arms Act. After completion of investigation, charge-sheet was presented and charges were framed on 12.08.2004.
3. The prosecution examined nine witnesses in support of its case, whereas the defence examined one witness. Upon appreciation of the evidence, the trial Court convicted the appellant under Sections 307 and 341 RPC while acquitting him of the charge under the Arms Act, whereas the other two accused stood acquitted by giving them benefit of doubt. Aggrieved thereof, the present appeal has been preferred.
4. Learned counsel for the appellant has contended that the conviction is unsustainable in law inasmuch as the injured himself has not supported the prosecution case; that most of the independent witnesses have turned hostile; that the alleged recovery of weapon has not been proved in accordance with law; and that material contradictions in the testimony of PW-1 render the prosecution case doubtful. It is submitted that the prosecution has failed to establish

the guilt of the appellant beyond reasonable doubt and that the learned trial Court has mis-appreciated the evidence on record.

5. ***Per contra***, learned counsel for the respondent-State has argued that the injuries sustained by the victim stand duly proved by medical evidence; that PW-1 is an eye-witness whose testimony inspires confidence; and that minor discrepancies ought not to result in acquittal. It is further contended that testimony of hostile witnesses is not to be discarded in toto and can be relied upon to the extent it supports the prosecution.
6. Having heard learned counsel for the parties and perused the record, this Court proceeds to examine whether the prosecution has succeeded in proving the charge beyond reasonable doubt.
7. The most material witness in the present case is PW-3 Bishambar Dass, the injured. In his examination-in-chief, he stated that while walking on the road he was pushed from behind, fell down and sustained stab injuries causing bleeding. Significantly, he categorically deposed that he does not know who attacked him. Although he admitted that the accused are his neighbours, he did not attribute any overt act to them. Even after being declared hostile and cross-examined by the prosecution, nothing incriminating could be elicited from him connecting the appellant with the assault.
8. It is settled law that testimony of an injured witness ordinarily carries great evidentiary value, as such a witness is presumed to be truthful because he has sustained injuries in the same occurrence.

In “*Jarnail Singh v. State of Punjab*, (2009) 9 SCC 719, the

Hon'ble Supreme Court held that the evidence of an injured witness stands on a higher pedestal. However, where the injured himself fails to identify the assailant, the very foundation of the prosecution case becomes shaky. In "**Vijay @ Chinee v. State of M.P.**, (2010) 8 SCC 191, it was held that when the injured witness does not support the prosecution, conviction cannot be sustained unless there is strong and reliable corroborative evidence. In the present case, such corroboration is conspicuously absent.

9. The prosecution heavily relies upon PW-1 Lalita Devi, the wife of the injured, who claims to be an eye-witness. She deposed that the appellant inflicted multiple blows with a Toka while the co-accused restrained her husband. However, her testimony in cross-examination reveals significant contradictions. She admitted that the allegation regarding theft of ₹10,000/- was mentioned in the report due to anxiety and that no such money was actually taken. This admission strikes at the credibility of the FIR, which is expected to contain truthful narration of facts. She further admitted discrepancies between her deposition in Court and her statement recorded under Section 161 Cr.P.C., particularly with regard to the role attributed to the accused, details of injuries and she deposing on hearsay.
10. In **State of Rajasthan v. Kalki**, (1981) 2 SCC 752, the Supreme Court held that minor discrepancies are bound to occur; however, contradictions which go to the root of the prosecution case cannot be ignored. The improvement and inconsistency in the present case

relate not to trivial details but to the core allegation, thereby creating serious doubt.

11. Further, PW-2 Sunil Kumar, PW-5 Mohan Lal, PW-6 Krishnu, PW-7 Ambo and PW-8 Krishan Chand were declared hostile. Though it is a settled proposition that evidence of a hostile witness is not to be discarded in toto and can be relied upon to the extent it supports the prosecution “(*State of U.P. v. Ramesh Prasad Misra*, (1996) 10 SCC 360)”, in the present case none of these witnesses have supported the prosecution version regarding the identity of the assailant or the alleged recovery.
12. The alleged recovery of weapon pursuant to disclosure statement also remains unproved. The witnesses to the disclosure and recovery memos denied their signatures and knowledge of proceedings. Under Section 27 of the Evidence Act, only that portion of the statement which distinctly relates to the fact discovered is admissible, as laid down in “*Phulkari Kottayam v. Emperor*, AIR 1947 PC 67”. In absence of reliable attesting witnesses, the recovery loses evidentiary value.
13. The medical evidence tendered by PW-9 Dr. Rajinder Sharma establishes that the injured sustained injuries caused by a sharp-edged weapon. However, medical evidence is corroborative in nature and cannot establish the identity of the assailant. In “*Thaman Kumar v. UT of Chandigarh*, (2003) 6 SCC 380”, it was held that medical evidence can only lend assurance to ocular testimony but cannot substitute it. In the present case, while the

injuries are proved, the person responsible for inflicting them has not been proved beyond reasonable doubt.

14. In order to sustain conviction under Section 307 RPC, the prosecution must establish that the accused had the intention or knowledge to cause death and committed an overt act towards its commission. In “*Sarju Prasad v. State of Bihar*, AIR 1965 SC 843, it was held that the mere fact that injury is grievous does not by itself bring the case within Section 307 unless intention to cause death is established. In the absence of reliable evidence identifying the appellant as the assailant, the question of attributing intention does not arise.
15. The cardinal principle of criminal jurisprudence is that the prosecution must prove its case beyond reasonable doubt. Suspicion, however strong, cannot take the place of proof. In “*Kali Ram v. State of Himachal Pradesh*, (1973) 2 SCC 808”, the Supreme Court observed that if two views are possible, the one favourable to the accused must be adopted. The presumption of innocence continues throughout the trial and even at the appellate stage.
16. On cumulative appreciation of evidence, this Court finds that the prosecution has failed to establish beyond reasonable doubt that it was the appellant who assaulted PW-3. The injured has not identified him; independent witnesses have not supported the prosecution; recovery of weapon is doubtful; and material contradictions exist in the testimony of the sole eye-witness PW-1.

17. The learned trial Court appears to have placed undue reliance upon the testimony of PW-1 without adequately considering the effect of material contradictions and the hostile stance of the injured witness. The trial court on her evidence has acquitted co -accused but on same set of evidence has convicted the appellant so the findings recorded by the trial Court, therefore, suffer from misappreciation of evidence.
18. For the foregoing reasons, this Court is of the considered view that the prosecution has failed to prove the guilt of the appellant beyond reasonable doubt. The appellant is entitled to benefit of doubt.
19. Consequently, the appeal is **allowed**. The impugned judgment dated 01.08.2009 passed by the learned Sessions Judge, Udhampur, is **set aside**. The conviction and sentence of the appellant under Sections 307 and 341 RPC are hereby quashed. The appellant is acquitted of all charges. Bail bonds, if any, shall stand discharged.
20. Record of the trial Court be sent back along with a copy of this judgment

(SANJAY PARIHAR)
JUDGE

JAMMU
09.02.2026
Ram Krishan