

J,  
Crl.A.No. 911 OF 1998  
ITEM No.105

Court No. 4

SECTION II

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Criminal Appeal No. 911/1998

STATE OF JAMMU & KASHMIR

Appellant(s)

VERSUS

FAROOQ AHMAD AHANGAR @ MIRZA

Respondent (s)

Date : 20/04/2004 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE  
HON'BLE MR. JUSTICE B.P. SINGH

For Petitioner (s)Mr. K.T.S. Tulsi, Sr. Adv.  
Mr. Anis Suhrawardy, Adv.  
Mr. S.Mehdi Imam, Adv.

For Respondent (s)Mr. Jana Kalyan Das, Adv.

UPON hearing counsel the Court made the following  
O R D E R

The appeal is dismissed in terms of the signed order  
placed on the file.

(Shashi Sareen) (Prem Parkash)  
Court Master Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 911 OF 1998

STATE OF JAMMU & KASHMIR

...  
Appellant (s)

Versus

...

Respondent (s)

O R D E R

State of Jammu & Kashmir is in appeal before us against the judgment of the High Court of Jammu & Kashmir at Jammu whereby the High Court allowed the appeal filed by the respondent herein and set aside the conviction and sentence imposed on him by the Sessions Judge, Jammu.

The brief facts necessary for the disposal of this appeal is that the respondent was married to one Mst. Chasfeeda sometime in September, 1991. It is the case of the prosecution that a child was born out of the said wedlock but the relationship between the husband and wife were not cordial allegedly on the ground that there was persistent demand of dowry by the respondent.

The said Mst. Chasfeeda was found dead on the night between 17th and 18th December, 1993. After investigation a chargesheet for offence punishable under section 302 and 498-A RPC was filed before the trial court. The trial court relying on the evidence produced by the prosecution including the medical evidence found the respondent guilty of offence as charged and sentenced the appellant to undergo imprisonment for life for an offence under 302 RPC and further awarded two years rigorous imprisonment for an offence under 498-A RPC.

In an appeal filed by the respondent before a Division Bench of the High Court the two Judges of the High Court differed in their view. One of the Judges confirmed the judgment of the learned Sessions Judge accepting the prosecution case while the other Judge differed from his colleague and allowed the appeal of the respondent setting aside the conviction and sentenced imposed on the respondent. The matter was referred to a third Judge.

The third Judge after considering the material on record came to the conclusion that the prosecution has failed to established the charge. Hence allowed the appeal setting aside the sentence and conviction imposed on the respondent.

It is to be noted on the facts of this case that there are three post mortem reports arising out of a single post mortem conducted by Dr. G.N.Bhat. The post mortem relied upon by the prosecution is that Ex. PW/GM dated 9th February, 1994 indicated that the death was due to strangulation while the very same Doctor as per post mortem EX CW1 dated 28th December, 1993 indicated that the death was due to hanging. While in the third post mortem report he had differed his opinion. It is the because of this divergent opinion of the same Doctor the majority of Judges came to the conclusion that it is not safe to rely upon the medical evidence, more so, because of the fact that the post mortem relied upon by the prosecution was admittedly tampered by the Doctor. Therefore, the two Judges of the High Court who did not agree with the trial court came to the conclusion that this is a case in which benefit of doubt should be given to the appellant. Hence allowed the appeal.

Mr. KTS.Tulsi, learned Senior counsel appearing on behalf of the appellant contended that since there is discrepancy in the medical evidence in the various post mortem reports given by him and the fact that the said Doctor had admitted that he had to give a false post mortem report because of the militant, the intent of justice required a retrial of the case. Having considering the facts of the case and the evidence led by the prosecution we are not inclined to accept this suggestion made by the learned counsel at this belated stage. Dr. G.N.Bhat was examined as prosecution witness to support its case and he opined in one of his report that the death was due to hanging, he was also examined by the High Court and he had stated that the report on which the prosecution relied upon was infact tampered by him at the instance of the militant and not vice versa. On this factual background we are not inclined to interfere with the plea raised by the learned counsel for the first time in this court. For the reasons stated above we do not find any merit in this case. The appeal is dismissed.

.....J.

(N.SANTOSH HEGDE)

.....J.

(B.P.SINGH)

New Delhi,  
APRIL 20, 2004.

