

HIGH COURT OF JAMMU & KASHMIR
AT SRINAGAR

Cr. Acq. Appeal No.25/2012

Date of Decision:29-05-2015

State of J&K

Vs.

Aijaz Ahmad Bhat & ors.

Coram:

Hon'ble Mr. Justice Mohammad Yaqoob Mir,
Judge

Hon'ble Mr. Justice Dhiraj Singh Thakur, Judge

Appearing counsel:

For the Applicant/Appellant(s): Mr. B. A. Dar, AAG.

For the Respondent(s): Mr. Mir Shafaqat Hussain.

Per Yaqoob J'

1. On 14.01.2005, Mr. Sharief-ud-din ASI along with police party comprising of Mr. Wali Mohammad, Hilal Ahmad and Manzoor Ahmad were deputed for patrolling at Lal Chowk Srinagar. During patrolling, some terrorist armed with illegal arms and automatic weapons, threw hand grenades indiscriminately on CRPF personnel resulting into sever injuries to some security personnel and passersby. Vehicles and shops were also damaged. In the process, terrorists paved way for hiding themselves in Peak View Hotel.

2. Report of the occurrence was forwarded to the Police Station by Mr. Sharief-ud-din, ASI, based on which case was registered as Crime No.121/2005 P/S Maisuma for commission of offences punishable under Sections 302, 307, 427, 49, 120-B RPC and 7/27 Arms Act.

3. Out of 30 listed witnesses, prosecution has produced only 08 witnesses. Thereafter prosecution evidence has been closed. Incriminating circumstances in terms of Section 342 Cr. P. C were put to the respondents (accused) who denied complicity in crime and claimed to be innocent and opted not to produce any evidence in defence.

4. Learned trial court after appreciating testimony of the prosecution witnesses as were produced and examined, has concluded that the prosecution has failed to prove the guilt against the accused.

5. Learned AAG, while highlighting depositions of the prosecution witnesses submitted that there were incriminating circumstances connecting accused with the commission of offence, they deserve to be convicted but on scrutiny of the statements of witnesses as produced, the argument was found to be without any substance.

6. Learned AAG tried to convince that the respondent No.1- Aijaz Ahmad, a PAK national, was arrested on spot, therefore, he was involved in the commission of offence as it is he who had hatched conspiracy with other accused which fact is clear from the disclosure

statements of four accused, persons, namely, Farooq Ahmad Shah, Jahangir Ahmad Khan, Jan Mohammad Sheikh and Mohammad Maqbool Beigh.

7. The disclosure statement as is stated to have been made by accused Mohammad Maqbool has not been proved at all whereas disclosure made by other three accused persons stand exhibited as EXPW-26/4, 26/3 and 26/2. In the disclosure statements, all the three accused persons have stated that they along with other accused had hatched a conspiracy in the house of one Bilal Ahmad wherein they had decided to attack the security forces.

8. Accused Abdul Hameed Bhat in his disclosure statement is shown to have said that one hand grenade is kept hidden in a migrant house at Habakadal, which, he can identify. Accused Abdul Rashid Khanday had said that one pistol is kept hidden in a migrant house, which he can identify. Likewise, accused Riyaz Ahmad Lone had said that one rifle grenade is kept hidden in a migrant house at Barbershah, which he can identify. The accused Farooq Ahmad Shah had also said that one UBGL is kept hidden, which he can identify. Accused Jahangir Ahmad had also said that one hand grenade is kept hidden, which, on his identity can be recovered.

Accused Jan Mohammad had also added that one rifle grenade is kept hidden which can be recovered on his identification.

9. The disclosure statements made by the accused in the Police Station are not admissible in evidence, however, recovery on such disclosure is admissible but no such recovery has been proved. PW Mohammad Yousuf Constable has stated that nothing was recovered in his presence at the instance of Mohammad Maqbool because he had not gone on spot. Further has qualified that the recovery memo dated 19.01.2006 bears his signature, however, nothing was recovered in his presence. He signed the recovery memo in the office. Further has qualified that he does not know as to at what time the special investigation team went to effect the recoveries.

10. PW Bilal Ahmad Khan has stated that he does not know accused nor he has any knowledge about the occurrence.

11. PW Constable Gh. Mohammad, who, in fact, was a star witness, has stated that the disclosure statements have been written in his presence in Kashmiri language. He identifies his signature on them but has demolished

the case by stating that no recovery was effected in pursuance to the disclosure statement of the accused.

12. All the witnesses one by one have given lie to the prosecution story vis-à-vis recovery on the basis of disclosure statements.

13. PW Nissar Ahmad Parra has shown total ignorance about the presence of accused on spot and has also added that Ab. Rashid Khanday had been brought to Lal Chowk from Cargo Centre. Then again has stated that he cannot say accused Ab. Rashid Khanday was brought from Cargo centre or not.

14. PW Constable Ghulam Hassan has stated that two terrorists entered into Lake View Hotel and started an attack, one militant was killed, another was arrested whose name was stated to be Abu Umah, a Pakistani boy. He has qualified that he does not know what was recovered on the basis of disclosure made by the accused, however, rifle grenade is stated to have been recovered from accused Ab. Hamid but has further qualified that he does not know what recoveries were made from accused Jahangir Ahmad or Riyaz Ahmad. In the open court when he had been asked as to who is Aijaz Ahmad, the main accused involved in the case,

he(witness) instead of identifying Aijaz Ahmad pointed towards Rouf Ahmad Sheikh as being Aijaz Ahmad, so he has not been able to identify the accused. He has further stated that the arrested militant did not make any statement in his presence as he was not present even at the time of recovery.

15. Learned trial court has appreciated the entire evidence, facts and circumstances and has drawn right conclusions by first holding that if at all confessions of the accused are taken to have been made but same are inadmissible being hit by Section 25 of the Evidence Act.

16. The circumstantial evidence relied upon by the prosecution regarding presence of accused Aijaz Ahmad Bhat at the time of occurrence is not fully established. Participation of the accused in the attack is not established. Recoveries also have not been proved. In addition thereto, out of 30 prosecution witnesses, only 8 have been produced, as such, 22 prosecution witnesses have been withheld which gives rise to drawing of adverse inference in terms of Section 114 of the Evidence Act, which favours the accused. In the said background, conclusion drawn by the trial court

that the prosecution has failed to prove the case,
cannot be found fault with.

17. Appellants have not been able to persuade the
Court to take a view different to one taken by the trial
court, appeal, as such, fails, shall stand dismissed.

18. Trial court record along with copy of the judgment
be sent back.

(Dhiraj Singh Thakur) (Mohammad Yaqoob Mir)
Judge Judge

Srinagar
29 .05.2015
"Mohammad Altaf"