

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

17

CRAA No. 135/2014

State of Jammu and Kashmir
Through Police Station Nagrota,
Jammu

.....Appellant

Through: Mr. P D Singh, Dy. AG.
vs

Mohd. Hayat Bohru S/O Atta Mohd. Bohru
R/O Chambalwas Banihal, District Ramban

..... Respondent

Through: Mr. R.K.S Thakur, Advocate with
Ms. Anandita Thakur, Advocate.

Coram: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

(Oral)

01. The present appeal has been directed against judgment and order dated 30.12.2013 propounded by learned Principal Sessions Judge, Jammu [“trial court” for short] in case titled “*State vs. Mohd. Hayat Bohru*”, vide which, respondent came to be acquitted of offences under Sections 3/25, 7/25 and 26 of the Arms Act

02. Before a closer look at the grounds urged in the memo of appeal, it shall be expedient to have an overview of background facts of the present case.

03. The prosecution case is that on 02.12.2017, a police party of Police Station, Nagrota laid a Nakka near TCP Bye Pass Nagrota and at about 11.00 AM, a young man travelling in a vehicle without number, on seeing the nakka, tried to run away towards river Tawi. However, he was chased and apprehended and on his search, a rexin bag came to be recovered from his possession from which, a pistol without number, two magazines and 11 live cartridges came to be recovered and seized. On his personal search, one identity card in the name of Imtiaz Ahmed Sohail and a mobile were also recovered. On being enquired, he

disclosed his name as Mohd. Hayat, S/O Atta Mohd. R/O Chambalwass Banihal (the respondent) and during investigation he revealed that he was trained by ISI for handling weapons in Pakistan to cause militant activities and kill civilians in the State of Jammu and Kashmir. The Sub-Inspector SOG forwarded a docket to the police station for registration of the case, consequent whereupon, PW Deepak Raina SHO, came to the spot and seized arms and ammunition from the possession of the respondent. The investigation culminated in presentation of a final report against the respondent for the alleged commission of offences under Section 307 RPC read with Sections 7/25, 26/27 of the Arms Act.

04. The accused was charged by the trial court for offences under Sections 3/25, 7/25 and 26 of the Arms Act, whereby he pleaded innocence and claimed trial, prompting the trial court to ask for the prosecution evidence and the prosecution in sustenance of charge has examined as many as 12 witnesses.

05. Before we advert to analyze and appreciate the prosecution evidence, it shall be expedient to give a brief resume of the prosecution evidence which reads as follows:-

06. PW 1, Sunil Singh Jasrotia has deposed that on receipt of source information that some armed militants of Hizbul Mujhaddin Organisation had sneaked into Jammu, a nakka was laid at TCP Nagrota. At about 11.30 AM, one person alighted from some vehicle and ran away in a lane towards Sidhra, who, however, was chased and apprehended. From his search, a China made pistol, two magazines and 11 live cartridges along with a mobile phone came to be recovered from a black coloured bag. He flashed a docket EXT-P-1 to the police station for registration of the case and after half an hour, PW Inspector Deepak Raina, SHO Police Station Nagrota, came to the spot and prepared the seizure memo EXT-P-2 of the arms and ammunition and he signed the same as an attesting witness. In

cross-examination, he has stated that seizure memo was prepared by the SHO on the spot but recovered arms were not sealed on the spot by the SHO.

07. PW 2, Mohd. Hussain Bali, has stated that on 21.12.2007, a nakka was laid by Police Ptation Nagrota at bye pass. He was told by Inspector Sunil Singh that one boy got down from a vehicle and ran towards river Tawi, he was chased and apprehended and was found carrying a bag from which a pistol without number, two magazines and live cartridges had been recovered. The said inspector sent a docket to Police Station, where FIR came to be registered and SHO came to the spot. The witness goes on to state that during investigation, the accused made a disclosure that he had concealed two grenades at Neel Top Forest. The SHO sent him along with the police party for the recovery of the said grenades and they went to Nill Top Forest, from where two grenades came to be recovered at the instance of the accused and the said grenades were brought to the police station and handed over to the SHO. In cross-examination, he has stated that SHO came to the spot half an hour after. The disclosure statement of the accused was reduced into writing by PW Deepak Raina.

08. PW 3 Atta Mohd, has stated that on 02.12.2007, a nakka was laid at TCP along with SOG and during checking, the accused got down from a Bus and ran towards river Tawi, but he was chased and apprehended and a chinese make pistol, two magazines and 11 live cartridges along with two identity cards came to be recovered from a rexin bag from the possession of the accused. He has admitted the seizure memo, EXT-P2. In cross-examination, he has stated that there was a forest check post near the place of nakka. He cannot say as to where the seizure memo was prepared. The witness has stated that SHO Deepak Raina was already present on the spot before the arrest of the accused and all the articles recovered from the accused were sealed on the spot.

09. PW 4 Shiv Kumar has stated that on 02.12.2007, they had laid a nakka at TCP along with SOG. He was called by the SOG officials and was told that a boy was coming with the bag in his hands, who was followed and arrested. On search, a pistol, two magazines and 11 live cartridges came to be recovered from the bag of the accused. In cross-examination, he has stated that he does not remember that from which vehicle the accused had alighted. Inspector Sunil Singh Jasrotia did not come to the spot. SHO Deepak Raina, who was already present on the spot, took the accused to the police station. Mohd. Arif was not present at the place of nakka on that day.

10. PW 5 Mangal Singh has stated that a nakka was laid at bye pass Nagrota in December 2007. Inspector Sunil Singh Jasrotia was also there. They saw a person going towards river Tawi, who was stopped and on search, a chinese pistol, two magazines came to be recovered from his possession. He has admitted the seizure memo EXT-P-6 as also the disclosure statement EXT-P/6. In cross-examination, he has stated that he does not remember as to who had written the seizure memo, disclosure statement and recovery memo and who else had signed the said documents. Mr. Jasrotia did not prepare any document. After the arrest, the accused was taken by the SOG to the police station and handed over to the police. The recovery memo was prepared in the police station, where he signed it.

11. PW 6, Devinder Singh, has stated that on 12.04.2007 at about 7.30 AM, a naka was laid at Nagrota Bye Pass on the instruction of Inspector Sunil Singh and except SOG, local police was not present there. During checking of the vehicle, one pistol, two magazines and 11 live cartridges, a mobile phone and two identity cards came to be recovered from the possession of the accused. The witness though admitted his signatures on the seizure memo but denied its contents. He also denied the disclosure statement and recovery of the grenades. However, on

being cross-examined by the prosecution, he has stated that two chinese grenades were recovered on the disclosure statement of the accused.

12. PW 7 Parshotam Singh, has stated that on 02.12.2007, they laid a nakka at bye pass under the command of Inspector Sunil Singh. At about 11.30 AM, the accused got down from a vehicle and started going towards river Tawi, however, he was stopped and on search, a pistol and 11 live cartridges came to be recovered from the bag under his possession. The SHO came to the spot and took the accused to the police station. In cross-examination, he has stated that a docket was sent to the police station by Inspector Sunil Singh through Constable Mangal Singh.

13. PW 8 Rajesh Singh, has stated that on 02.12.2007, they laid a nakka at TCP Nagrota on the directions of inspector Sunil Singh SOG. At about 11.30 AM, the accused alighted from the bus and ran towards river Tawi, however, he was chased and apprehended by the SOG personnels. He was brought to the place of nakka and, on search, a pistol, two magazines and 11 live cartridges came to be recovered from a bag in his possession. Besides, a mobile phone and two identity cards were also recovered on his personal search. Pertinently, the statement of this witness was deferred but he never turned up thereafter and could not be cross-examined.

14. PW 9 Ram Pal has stated that a nakka was laid at TCP Nagrota under the supervision of Inspector Sunil Singh and while they were searching the vehicles, they found the accused running towards river Tawi, who was apprehended and one pistol, two magazines and 11 live cartridges came to be recovered from a bag in his possession. Identity cards and mobile phone were also recovered on his personal search. The accused was taken to the Police Station Nagrota and was handed over to the SHO. According to the witness, the accused disclosed that he

was a militant of Hizbul Mujhaddin Organisation and had worked for ISI. His statement was recorded by the I.O. In cross-examination, he has stated that accused was searched at the nakka, but he was apprehended and taken to the police station and handed over to SHO Deepak Raina.

15. PW 10 Balwant Raj Bhagat Dy. S.P., has stated that on 02.12.2007, he was posted in Joint Interrogation Centre, Jammu He interrogated the accused and prepared his report, but he was not aware that who has investigated the accused.

16. PW 11, Inspector Deepak Raina is the Investigating Officer of the case.

He has stated that on 02.12.2007, he conducted investigation of the present case. At about 12'clock, Constable Mangal Singh produced a docket in the police station stating *inter alia* that some anti-national militants wanted to disturb the peace and integrity of the country and they had got training in Pakistan. FIR came to be registered and he along with police force went to the spot. He has admitted the site plan, EXT-P-11. According to the I.O., the accused made a disclosure statement during investigation that he had concealed tow grenades at Banihal and could get them recovered. He has admitted the disclosure statement, EXT-P-6. The witness goes on to state that two chinese grenades came to be recovered on the disclosure statement of the accused. The recovery memo was not in his hand writing but in the hand writing of ASI Mohd. Arif. He has also admitted the seizure memo EXT-P/2 regarding recovery of Chinese pistol two magazines and 11 live cartridges, a mobile phone and two identity cards. He has also admitted the site plan of the place of recovery EXT-P-11/1 in his hand writing and signatures. He has also admitted the statements of witnesses under Section 161 CrPC in his hand writing and signatures. In cross-examination, he has stated that seizure memo, EXT-P/2 and the disclosure statement, EXT-P6 are not in his hand writing, but they are in the hand writing of his reader. The docket dated

06.12.2007 is also in the hand writing of his reader. He has also stated that statements of the witnesses under Section 161 CrPC are also in the hand writing of his reader and he does not remember his name. The FIR is also not in his hand writing, but the same is in the hand writing of Munshi of the police station. He has also stated that the site plan is not in his hand writing, but in the hand writing of his reader Mr. Shah.

17. PW 12 S.I. Mohd. Arif, has stated that he joined as Incharge Police Station, Nagrota on 26.12.2007. The investigation of the present case was conducted by SHO Deepak Raina and he prepared the challan. The FIR on the file is in the hand writing of SHO Deepak Riana. In cross-examination, he has stated that the challan is not in his hand writing. He did not send the pistol, cartridges and grenades to FSL.

18. This is the crux of the prosecution evidence. After the culmination of the prosecution evidence, the incriminating material was put to the accused in terms of Section 342 CrPC, whereby he denied the incriminating evidence against him and examined two witnesses in defence, a brief resume whereof is given as under:

19. DW 1 Rakesh Hangloo is Incharge Scientific Officer Documents, FSL.

He has stated that there is no official in the FSL who could write Urdu. He failed to say anything regarding the documents on the file, those are written in Urdu.

20. DW 2 Mohd. Bashir ASI, has stated that on the direction of SHO Banihal, he produced Roznamcha from 03.12.2007 to 04.12.2007 in the court and as per copy of the report no. 38 dated 03.12.2007, J.P. Singh Sub-Inspector got a report about his arrival, entered in the Roznamcha and as per the said report, he reached there at 2100 hours on 03.12.2007 along with Constables Ram Paul, Ashok Kumar, Mangal Singh, Devinder Singh, ASI Mohd. Hussain, Jamil Ullah, Pawan

Kumar and Kuldeep Singh with respect to investigation of FIR No. 313/2007 under Sections 7/27, 76/27 of the Arms Act read with 124-A, 122, 121, 120-B RPC. Their return was entered in the Roznamcha vide report no. 39 dated 03.12.2007 at 2200 hours. Return of other employees has not been shown in the report no. 38 on 03.12.2007 or 04.12.2007 or even thereafter. The entry with respect to recovery from the accused is not reflected in Roznamcha and report no. 38 does not bear signature of any person. It is clarified by the witness that in case of any recovery within the jurisdiction of Police Station Banihal, same is entered in the Roznamcha by the official who made the report, but no such entry has been made in the present case on 03.12.2007 or 04.12.2007.

21. This is all about the defence evidence on record.

22. Learned trial court having marshalled and appreciated the prosecution evidence as also the defence evidence in its entirety, came to the conclusion that prosecution has failed to bring home guilt of the respondent beyond reasonable shadow of doubt, as a result whereof respondent came to be acquitted as stated at the foremost.

23. The appellant State has questioned the impugned judgment and order of acquittal on the predominant premise that learned trial court has failed to appreciate the prosecution evidence in its right perspective and respondent has been acquitted despite sufficient evidence available on record.

24. Having heard Mr. P D Singh, learned Dy. AG appearing for the appellant and Mr. R K S Thakur, learned counsel for the respondent, I have given my anxious consideration to the facts and circumstances attending the present case and the legal position occupying the field.

25. A bare perusal of the prosecution story reveals that prosecution case besides direct evidence regarding apprehension of the respondent and recovery

and seizure of the arms and ammunition from his possession on the spot hinges upon the alleged disclosure made by the respondent during investigation and the consequent recovery and seizure of two grenades recovered from Chambalwass Banihal at his instance. Let us analyze one by one.

26. Before we proceed to appreciate the direct evidence regarding recovery and seizure of the arms and ammunitions from the possession of the respondent, it shall be apt to recall that it is case of the prosecution that on 02.12.2007, a nakka party of Police Station Nagrota, saw a young man moving in some unnumbered vehicle and running towards river Tawi on seeing the police party. It is further case of the prosecution that he was chased and apprehended and a pistol, two magazines and 11 live cartridges came to be recovered from a bag under his possession.

27. PW 1 Sunil Singh Jasrotia has stated that at about 11.30 AM, the respondent alighted from some vehicle and ran away in a lane towards Sidhra, who was chased and apprehended, whereas, as noticed the prosecution case is that the respondent ran towards river Tawi and it is nowhere mentioned that respondent alighted from some vehicle and ran towards Sidhra. PW 2 Mohd. Hussain Bali who is stated to be a member of the nakka party is a hearsay witness as he has deposed that he was told by Inspector Sunil Singh that one boy got down from the vehicle and ran towards Tawi, who was chased and apprehended and arms and ammunitions came to be recovered from his possession. PW 3 Atta Mohd. has contradicted both the aforesaid witnesses by stating that respondent alighted from a bus and ran towards river Tawi, which is neither the prosecution case nor stated by any other prosecution witness that respondent alighted from a bus. PW 4 Shiv Kumar is again a hearsay witness and narrated altogether a different story by stating that he was told by SOG officials that a boy was coming

with a bag in his hands who was followed and arrested. He has neither mentioned nor stated that he was told by SOG officials that respondent was travelling in a vehicle or alighted from the vehicle. PW 5 Mangal Singh has also stated that they saw a person going towards river Tawi, who was stopped and searched. Like PW 4, PW Mangal Singh has also not mentioned about any vehicle or that the respondent alighted from any vehicle and made an attempt to run away from the place of nakka. PW 6, Devinder Singh contrary to all the aforesaid witnesses has stated that during the checking of vehicles, a pistol, two magazines and 11 cartridges along with a mobile phone and two identity cards came to be recovered from the respondent. He has neither mentioned about any vehicle or that the respondent alighted from any vehicle or that he was going towards river Tawi and was chased and apprehended. PW 7 Parshotam Singh, like PW 1 Sunil Singh Jasrotia, PW 2 Mohd. Hussain Bali and PW 3 Atta Mohd., has stated that respondent got down from a vehicle and started going towards river Tawi. Whereas PW 9 Ram Pal has stated that while they were searching the vehicles, they saw the respondent running towards river Tawi and he was apprehended. It is evident from the perusal of the aforesaid witnesses that all the prosecution witnesses have made contradictory statements to each other regarding apprehension, recovery and seizure of arms and ammunitions from the respondent, which not only casts a doubt about the veracity of the prosecution case but also about the presence of aforesaid witnesses at the place of recovery.

28. It is also the prosecution case that Sub-Inspector SOG sent a docket to police station for the registration of case and SHO Deepak Raina came to the spot, who seized arms and ammunitions from the respondent. PW 1 Sunil Singh Jasrotia has stated that he sent a docket to the police station for registration of the case and PW Deepak Riana, SHO Police Station Nagrota came to the spot half an

hour after. PW 2 Mohd. Hussain Bali has also stated that PW Inspector Sunil Singh sent a docket to the police station and SHO came to the spot. However, PW 3 Atta Mohd. and PW 4 Shiv Kumar have stated that SHO Deepak Raina was already present on the spot. Interestingly, PW Shiv Kumar has stated that Inspector Sunil Singh Jasrotia did not come to the spot, which is contradicted to the statement of PW 1 Sunil Singh Jasrotia that he sent a docket to the police station for registration of the FIR, whereupon, Inspector Deepak Raina SHO Police Station Nagrota came to the spot.

29. It may be recalled, though at the cost of brevity that as per the prosecution case, SHO Deepak Raina came to the spot only on receipt of the docket flashed by Sub-Inspector, SOG, who recovered arms and ammunitions from the possession of the respondent. However, PW 9 Ram Pal has stated that respondent was taken to Police Station Nagrota and was handed over to SHO, which belies the entire prosecution case that the FIR, on the basis of which the police agency swung into action, came to be registered on the basis of docket sent to the police station by Sub-Inspector, SOG, which is sufficient to dismantle the entire edifice of the prosecution case.

30. Another staggering circumstance which goes against the prosecution is self-contradictory statement made by none other than investigating officer of the case SHO Deepak Raina. The I.O. in his chief-examination has admitted the site plan EXT-P-11, disclosure statement of the accused, EXT-P-6, seizure memo EXT-P/2, site plan of the place of recovery EXT-P-11/1 and statements of witnesses under Sections 161 CrPC in his hand writing and signatures. However, in his cross-examination, the investigating officer took a U-turn to state that all the aforesaid documents are not in his hand writing but in the hand writing of his reader and it is intriguing to note that the investigating officer is not aware of the

name of his reader who scribed the said documents. According to the investigating officer, FIR was written by Munshi of the police station. But the said Munshi has neither been cited as prosecution witness nor examined during the prosecution, as a result whereof prosecution has failed to prove the FIR.

31. From a careful analysis of the statements of the aforesaid prosecution witnesses, it is evident that entire case of the prosecution is shrouded with doubt and being replete with serious contradictions and discrepancies cannot be made basis for the conviction of the respondent.

32. As already stated, the prosecution case is also perched on the alleged disclosure made by the respondent during investigation and the consequent recovery and seizure of two grenades from Chambalwass Banihal at his instance. One of the witnesses to the disclosure statement and the recovery and seizure of the grenades, PW 6 Ravinder Singh has turned hostile. It is only PW 2 Mohd. Hussain Bali, who has stated that accused made a disclosure statement during investigation that he had concealed two grenades at Neel Top Forest where, he along with police party were sent by the SHO and the grenades were recovered at the instance of the respondent. However, since statement of PW 2 Mohd. Hussain Bali has not been supported by any other prosecution witness and one of the witnesses to the disclosure, PW 6 Devinder Singh, a police official, has turned hostile, therefore, the alleged disclosure and consequent recovery and seizure of grenades is also doubtful.

33. The investigating officer, PW Deepak Raina has also not stated that respondent during investigation made a disclosure that he had concealed two grenades at Banihal and could get them recovered, however, as already stated the investigating officer though during chief-examination admitted the disclosure statement EXT-P-6 in his hand writing and signatures but in cross-examination,

he resiled and stated that the said disclosure was not in his hand writing and signatures but was prepared by his reader, whose name he did not know and the said reader has neither been cited or examined by the prosecution as a witness in the case. Interestingly, the investigating officer has not stated anything about the consequent recovery and seizure of the grenades at the instance of the respondent. Therefore, prosecution has also failed to prove the alleged disclosure of the respondent and recovery and seizure of the grenades by cogent evidence.

34. It is significant to note that the defence has examined DW ASI Mohd. Bashir who has dislodged the recovery and seizure of the grenades consequent upon the alleged disclosure statement made by the respondent. He has produced Roznamcha from 03.12.2007 to 04.12.2007 during which the aforesaid grenades came to be recovered at the instance of the respondent. The witness has stated that he along with Constables Ram Pal, Ashok Kumar, Mangal Singh, Devinder Singh, ASI Mohd. Hussain, Jamil Ullah, Pawan Kumar and Kuleep Singh along with respondent went to the Chambalwass for the recovery of the grenades in connection with the FIR in question. Though there going to the place of recovery was entered in report no. 38 of the Roznamcha but it is only return of DW 2 Mohd. Bashir, who is entered in the Roznamcha vide report no. 39 dated 03.12.2007 and the return of other employees has not been shown in the said report on 03.12.2007 or 04.12.2007 or even thereafter. Be that as it may, DW Mohd. Bashir has categorically stated that a recovery within the jurisdiction of a police station is entered in the Roznamcha, however, in the present case there is no entry made in the Roznamcha regarding any recovery at the instance of the respondent. The defence by examining DW 2 has succeeded to dislodge the prosecution case that any grenade was recovered at the instance of the respondent consequent upon his alleged disclosure.

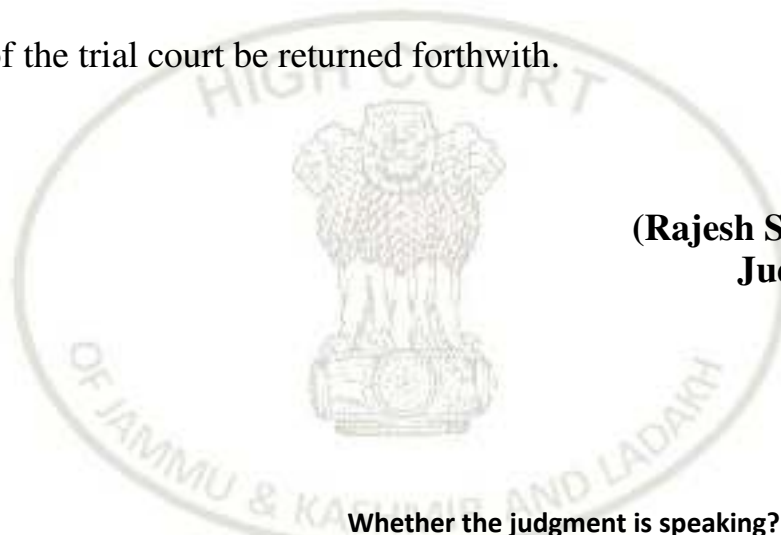
35. For what has been observed and discussed above, it is evident that the prosecution evidence is replete with serious contradictions and discrepancies. The prosecution witnesses have contradicted each other on material aspects of the case, whereby the very presence of the prosecution witness at the scene of recovery is doubtful. The prosecution has also failed to prove any disclosure statement made by the respondent and consequent recovery and seizure of grenades at his instance.

36. Having regard to what has been observed and discussed above, the present appeal being devoid of merit is **dismissed** and the impugned judgment and order of acquittal being well-reasoned is upheld.

37. Record of the trial court be returned forthwith.

(Rajesh Sekhri)
Judge

Jammu
31.10.2024
Abinash



Whether the judgment is speaking? Yes
Whether the judgment is reportable? No