



Sr. No. 01

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Reserved on:- 30.07.2025
Pronounced on:- 30.08.2025

CRAA No. 12/2011

**State of J&K through
Additional Advocate General,
Srinagar**

.... Appellant(s)

Through: Mr. Bikramdeep Singh, Dy. AG.

V/s

**1. Mohd. Ibrahim @ Khalil-
Ullah S/o Mohd. Shafi R/o
Pakistan (Deceased)
2. Gh. Rasool Wani S/o Ahad
Wani R/o Anderhama
Kupwara
3. Ab. Ahad Rather S/o
Mohd. Mansoor Rather R/o
TakiporaLolab.**

.....Respondent(s)

Through:- Mr. M.S. Reshi, Advocate

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

J U D G M E N T

Sanjay Parihar-J

1. By this acquittal appeal, challenge is thrown to judgment rendered by Sessions Judge Kupwara (the trial court) Dt. 28.01.2011 in case FIR No. 83/2003 U/S 302,307,212 RPC, 7/25 Arms. Act P/S Kupwara, in terms whereof respondent Nos. 2 and 3 have been acquitted, whereas against respondent No. 1(deceased) proceedings stood abated prior to the laying of charge-sheet. Challenge is thrown, on the grounds that same is against the facts and circumstances of the case, so is, not sustainable in the eyes of law. With the evidence and material produced



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on record, the prosecution had proved them guilty beyond shadow of doubt and there was no other view but to record conviction against them. However, respondents have been acquitted of a heinous crime which led to the killing of Police/CRPF Personnel, in as much as the respondents were also involved in the killing of Ex-Law Minister and his brother. A cursory look at the deposition of prosecution witnesses would demonstrate that the respondents not only have conspired with the slain militant (respondent No. 1) but committed a grave act of playing with many human lives. That the conspiracy was to eliminate innocent civilians as well as security personnel and the trial Court has adopted a technical approach towards acquittal of respondents. That the trial is concluded to ascertain the guilt or innocence of the accused, and it was the duty of the trial Court to separate truth from falsehood, but it has let-of the respondents of a heinous charge without any legal justification. That the trial Court had not appreciated the evidence in its proper perspective, therefore, its conclusion is perverse as there was credible evidence against the respondents showing their involvement in the incident.

2. Briefly stating the case of the prosecution before the trial Court happened to be that, on 12.05.2003 at around 11:00 am Police Station, Kupwara got information that a **Fedayeen** attack had taken place at the main Chowk Kupwara near SBI branch, wherein police/security forces vehicle coming from the side of Division Headquarters had come under attack. One BP police gypsy bearing No. JK09-0613 and CRPF Veh already standing thereto bore the brunt of said attack. Following that vehicle was an escort and the official vehicle of the SSP Kupwara. In



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the encounter the only Fedayeen came to be neutralized but before that, he had accomplished killing of two CRPF Jawans of 113 BN, namely Constable B Prashad No. 931130457 and B Ramaiah No. 880909346, and left as many as six police and CRPF personnel injured. The injured were evacuated to the hospital and from the encounter site, one AK rifle, 6 AK Magzns, 43 rounds and 04 Hand Grenades were recovered from the Fedayeen- attacker.

3. From preliminary inquiry, the Fedayeen was identified as Mohd. Ibrahim @ Khalil S/o Mohd. Shafi R/o Muzaffargarh, Punjab, Pakistan, a militant of Jaish-e-Mohd. This led to the registration of case FIR No. 83/2003 under Section 302,307, 7/25 Arms Act, which was investigated. It transpired that the **killed Fedayeen** was wearing a police uniform bearing belt No.1260-KP which was seized separately. It further transpired that the fedayeen was ferried by respondent Nos. 2 and 3 in their official vehicle from Sogam Police Station and brought to Kupwara and dropped near SBI Branch Kupwara. The respondents had confided with the police personnel who travelled with them from Sogam to SBI-Kupwara, that the alleged Fedayeen was Special Operation Group member of JK Police Lalpora (SOG) and that respondents were therefore acting as facilitators of terror organizations, who actively participated in accomplishing incident dated 12.05.2003.
4. We have heard both the counsels besides minutely assessed the evidence lead in trial.
5. Counsel for the appellant reiterating the grounds urged in the memo of appeal argued that the trial Court has relied upon testimony of PW-8 & 9 and has ignored the version of PW-32, 33 and PW-34, all the three



had conclusively proved the prosecution case. So much so, the testimony of PW-8 & 9 has been read in ipse dixit but not in material particulars.

On the other hand, supporting the judgment from the trial Court, it was argued by the respondents counsel that the case suffers from numerous inconsistencies because the testimony of PW- Sumundar Khan and PW 32, 33 and 34 suffers from inherent contradictions, thus, the trial Court has rightly discarded their evidence. There is also grave contradiction in the version of PW- 8 & 9 and what is described by the other witnesses. The prosecution had also failed to prove that the arms and ammunition recovered had got anything to do with the respondents, as it has also failed to bring credible evidence against the respondents rather has rested his case on conjectures and unreliable testimonies.

6. During the course of investigation, the prosecution examined PW's Ali Mohd Mir, Abdul Majid Mir, Abdul Majid Rather, Abdul Rashid Wani, Riyaz Ahmed, Ayaz Ahmed, Abdul Majid Gani, all policemen under section 164-Cr P C before Judicial Magistrate. As per prosecution all of them, were privy to the fact that on 12.05.2003 it was the accused (respondents-2 & 3) the then SHO, P/S Sogam and Moharir thereof respectively who conspired with fedayeen (respondent-1) in accomplishing the incident that took place at SBI Kupwara leading to the killing of two security personal as well as injuring six others. All these police witnesses were subsequently examined at trial. We will set herein the brief narration of these witnesses.



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7. **PW Habibullah SG Constable** stated that on the day of incident he was posted as guard in SBI Branch Kupwara along with Altaf constable and an SPO, at around 10:45 AM there was firing and because of that people ran helter-skelter, he immediately closed the main entrance of the bank and shifted to the upper floor. From there he saw a few of uniform personnel lying in injured condition. After firing, there was loud blast might be that of a grenade. Later on, he went to the scene of the crime and saw the body of gunmen lying there whose head had been ripped apart, whereas, the other injured had been evacuated.
8. **PW Abdul Rehman** claimed that on 12.05.2003 he boarded the police vehicle of police station Sogam which was driven by a constable Ali Mohd. Mir with both the respondents also being the occupants of the vehicle. Later PW. Abdul Rashid who was reader to area Dy SP, he too was travelling in vehicle with constable Abdul Majeed. The witness sat in front cabin of the vehicle as a result PW Ali Mohd driver went to back cabin and accused No. 2 started driving the vehicle. This witness was declared hostile, admitted that there was a suicide attack near SBI, Kupwara which resulted into killing of few of security personnel. He further admitted, along with the accused he too travelled in the vehicle from Sogam to Kupwara but denied suggestion that as the vehicle reached near SBI it was halted by the accused.
9. **PW- Mushtaq Ahmad SPO** is found narrating that on the day of the incident he was on security at SBI Kupwara, he saw a uniform personnel firing indiscriminately towards security forces and also upon a vehicle which was parked nearby with one Jawan standing in front who was fired upon by the said gun wielding person. Because of the



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firing CRPF personnel suffered injuries, the witness hid himself inside the bank from there he continued to watch the incident. The said gunman entered into a shop and from there he lobbed a grenade which rebounded having struck with the net and because of rebounding the grenade exploded killing the said gunmen. He does not know who that person was but he was wearing **police uniform** and was firing indiscriminately, he cannot say whether he (gunmen) belonged to any of the militant organization or not.

10. **PW-4 Abdul Rashid Wani**, though, has been declared hostile but is found narrating that he had a shop near the State Bank of India. On that day lot of security personnel had gathered around the bank for drawing of cash, he though heard gun shots but did not see who was firing, he also denied seizure of dead body, claims that after the incident he fled away and returned on the next day.
11. **PW- Reyaz Ahmad Pirtoo** has been declared hostile but admitted to have brought dead body to the hospital where the police gave him a white cloth which was put over the dead body.
12. **PW- Mushtaq Ahmad Lone** claims that on the day of the incident the police came to his shop saying that one **Shaheed** has died who is to be buried. He along with Abdul Rehman buried his dead body near the shrine. He does not know who that person was and also cannot say where he was martyred.
13. **PW- Mohd. Maqbool Zargar** also declared hostile claimed that the dead body was given to the Mohalla Committee of village Tikker, he is one of its members and was told, to bury that body, he does not remember whose body was it and what type of clothes it was wearing.



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14. PW- Abdul Majeed, Head Constable claims that it was Monday and had to go to Kupwara, so, was waiting at the national highway when a police vehicle (407) came from Sogam, it was driven by a driver who was from Sogam area, he too boarded the vehicle at its back. There he saw two/three persons already sitting therein he only knew Const. Riaz rest were not known to him, they all were in police uniform with weapons. Travelling ahead one Abdul Rehman also boarded the vehicle. After sometime he along with Abdul Rashid boarded off the vehicle he does not remember who was sitting with the driver. He had asked Riaz and he told him; they are the men of SHO Sogam and his escort. After half an hour he came to know that there had been Fedayeen attack at SBI. The two personnel who were sitting in the back of the vehicle whether they were policemen or militants he does not know, he only knew Constable Ayaz and he cannot say that whether the person who was sitting with him in the vehicle any of them had taken part in the Fedayeen attack or not.

15. PW- 32 Constable Ayaz Ahmad is found narrating that during the time of incident he was working with SHO P/S Sogam wherein accused No. 2 happened to be Moharir there was a Fidayeen attack near State Bank of India. On that day, he was told by accused No. 2 to come to Police Station as they have to proceed to Kupwara. He therefore brought his weapon along and Riyaz Ahmad const. also boarded the vehicle from its back. Along with them, one more person had boarded, who was in full combat dress carrying an AK-47 rifle who was known to accused No. 1 (SHO) because he (witness) saw that person in full uniform with accused No. 1. After travelling to some distance some



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more police men boarded the vehicle. Whereupon Driver Ali Mohd. came and sat with the witness at the back of the vehicle, after travelling some distance Abdul Rashid and Abdul Majeed boarded off the vehicle. The person who was sitting at the back of the vehicle and was in full combat dress had told him that he is working in Lalpora SOG. **Thereafter travelling to some distance and on reaching near SBI Kupwara, the driver stopped the vehicle and at that very moment the said person who was in full combat dress got off the vehicle and the witness saw accused No. 1 saying to that person that, his officer is waiting for him. Thereafter the vehicle proceeded towards Kupwara hospital their Abdul Rehman ASI got down.** From there he along with constable Riyaz Ahmad accompanied the accused No. 1 to the house of the later so as to unload the timber which was being carried in the vehicle. Thereafter they went to the SP office, there they came to know that a Fedayeen incident has happened at State Bank of India and also heard in the incident two CRPF personnel have been killed, he does know who has done the fedayeen hamla. He cannot say whether the two accused were in suspicious conversation with the said militant. Later he came to know that a militant wearing police uniform has been killed whose head got disfigured because of blast. He was working with SOG and only knew fellow constables, he saw that unknown person travelling in the vehicle who was in full combat dress cannot say, whether said unknown person was local or foreigner. But went up to narrate that the said person was speaking in Urdu. He was carrying AK-47 rifle the witness did not carry any grenade but that unknown person was carrying grenade as well admitted that prior to the



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incident ex-law minister Mushtaq Ahmed Lone had also been killed thereafter his brother was also shot dead.

- 16. PW- Constable Riyaz Ahmad** narrated he knew both the accused SHO and Moharrir of the Police Station Sogam. On 12.05.2003 he was told to come in uniform because SHO has to go to Kupwara, he along with Constable Ayaz Ahmad came in uniform as accused No. 1 was waiting for them near the official vehicle, they both boarded the vehicle accused No. 1 sat at the front along with accused No. 2 while it was driven by Ali Mohd. Besides them one more person boarded the vehicle from its back side, whom the witness could not identify, he was wearing police uniform and was in full combat dress carrying AK-47 rifle and also had put on pouch. When they reached the bus stand their Head Constable Abdul Rashid also joined and ahead Abdul Majeed who was working in the MI room, he too boarded the vehicle which was a Tata 407, at Zongli, Abdul Rashid and Abdul Majeed boarded off the vehicle. When they reached near State Bank of India there that unknown person who had boarded with them earlier at Sogam police station, got down at a place adjacent to SBI. The witness did not know, that person, as the vehicle was carrying timber, so after boarding off PW Abdul Rehman ASI, the vehicle was taken to the house of the accused No. 1 to unload the timber. After half an hour they came to know there has been a firing incident at SBI office. The person who travelled with them and had deboarded the vehicle near SBI, that person the witness never saw thereafter he was unknown gunman.



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- 17. PW-8 Gulzaman Khan** SPO is found narrating that he was working with the SOG and on the day of incident had gone to Kupwara Headquarter as their vehicle reached near SBI at Kupwara their the vehicle driver put up break, in the meanwhile, there was firing by a person who was **wearing army uniform** because of the firing he and PW-9 received injuries,, the firing incident took another half an hour, thereafter he came to know that the firing was by a foreign terrorist. He saw that person carrying AK-47 rifle with that he was firing towards the witness and other security personnel, denied having told to the police that during investigation there was recovery of a diary from the pocket of said militant which described his particulars, being Mohd. Ibrahim @ Khalil Ullah resident of Pakistan.
- 18. PW-9 Farooq Ahmad** Constable is found narrating that he along with PW-8 Gulzaman were in Kupwara and parked their vehicle near the State Bank of India, then someone fired upon them, they saw the person who was indulging in firing was in **army uniform**, he received bullet injuries on arm but they did not return the fire, because there were lot of civilians and constable Gulzaman got injured, after sometime the foreign terrorist was eliminated but he did not see the body of the said militant.
- 19. PW-25 Mohd Sidiq** Head Constable is found narrating that on reaching spot he saw two CRPF personnel had received injuries and also saw the dead body of militant. The injured were shifted to the hospital he later on came to know that gunmen was a Pakistani militant, he does not know whether the body of that person was identified or any



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identification papers were found. He is not a witness to the incident; he arrived at the spot after the incident had happened.

- 20. PW-34 Ali Mohd. Mir** identified both the accused as SHO and Munshi of the P/S Sogam and claimed in the year 2003 he was serving in Police Department as driver and drove vehicle No. 407 Tata which was of Police Station, Sogam, he was told that they had to go to Kupwara and get ready the escort party. The vehicle was parked in the police compound he along with SHO and police personnel boarded the vehicle, SHO and Munshi sat along with the driver and there were three more persons who boarded the vehicle at its back, one was from SOG and other two were of P/S. He only knew one of them, SHO told him they were from SOG. He does not remember that the uniform personnel had boarded the vehicle from Police Station or from somewhere else. On way few more personnel joined the vehicle, ASI Abdul Rehman boarded the vehicle, SHO told the witness to sit at the back side so as to enable them to drive vehicle. At Zangli Abdul Rehman and Abdul Majeed boarded off the vehicle there was timber in the vehicle which was dropped in the House of SHO. He along with Constable Riyaz, Ayaz went to the house of the SHO and dropped the timber there. There was one more person in the vehicle, who was in full combat dress though the witness did not conversate with him but he was wearing a **police uniform** and had put on the pouch whether that pouch was having any explosives or not he cannot say so.
- 21. PW -42 Latief Ahmad Constable** is found narrating that Tata vehicle 407 was seized in his presence with EXPW 41/1 belonged to P/S Sogam and after the seizure that veh. was kept at Police Station



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Kupwara, at the time of seizure of the vehicle only police officials and the investigating officials was present. That EXPW 41/1 also bear signature of Dy. SP while at Kupwara and at the time of seizure of the vehicle he did not see any Dy. SP present there.

22. PW-Varinder Kumar Bhat Dy. SP CID is found narrating that a fedayeen attack took place near SBI, Kupwara in which some security personnel got killed as well as sustained injuries, when the firing was over, he went on spot and saw CRPF men in injured condition and two of them, succumbed to the injuries on spot. There was also a body of terrorist who was wearing a khaki dress. One AK rifle, 6 Magazines and 43 live cartridges were recovered from the terrorist. In addition, a diary and plastic boot and khaki police uniform put on by slain terrorist too was seized. One bullet proof vehicle which had come under fedayeen attack that too was seized. That apparently the dead body of unknown person appeared to be that of militant, he did not read the diary that was seized. He does not remember whether the uniform which the terrorist was wearing whether it had blood stains or not, that since his face got disfigured so terrorist could not be identified.

23. PW-39 Sheikh Mohd. Shafi Ballistic expert, who has been examined and found that the Ak-56 rifle and the live cartridges as well as fired-one was produced before him and were in working condition. He gave report which is EXPW-39/2 that the spent cartridges shown to him had been fired from AK-56 rifle.

24. PW-40 Inspector Abdul Majeed Mir claimed that in 2003 he was working as SHO, Kupwara and investigated the case FIR no. 83/2003 where, in a fedayeen attack, one gunman was killed whose dead body



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was seized. Besides there was also killing of two security personnel whose bodies were also recovered. Seizure was prepared along with the weapons, recovered from the spot, that a diary was recovered from the pocket of the police uniform which the said unknown gunman was wearing at the time of fedayeen attack which disclosed his address as, Mohd. Ibrahim @ Khalil Ullah resident of Pakistan. The accused were rounded up on suspicion and it was found that on the day of incident they brought the militant in their official veh. from Sogam to Kupwara and later dropped him near SBI Kupwara enabling him to accomplish a suicide attack on security forces. He recorded the statement of witness under Section 164-A. From the seizure of trouser which the deceased militant was wearing same was identified by PW Const. **Samundar Khan**, that had been stolen from the line premises. It transpired that the killed militant had been brought to the scene of the crime by SHO Ghulam Rasool in conspiracy with Abdul Ahad, Munshi and on the basis of investigation offence under sections 302,307, 109 RPC, 7/25 Arms Act, 120B and 34 RPC were found made out against them. That the seized trouser was of khaki color, admitted that said trouser had no bullet marks nor has it got any blood stains. PW Sumander Khan had identified the said trouser. During investigation constable Reyaz Ahmed had told him that it was constable Ayaz who told the former that the person who had boarded the police vehicle and who was in full combat dress was made to board the vehicle by SHO Ghulam Rasool. Besides SHO also had told him that the said gunmen is of SOG Lalpora and is being dispatched to Kupwara for official duties. Admitted,



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though the incident is of May 2003, however, the witnesses were examined in June.

25. It is also relevant to state herein that both the respondents in terms of Section 342 CrPC were put with incriminating evidence, to which they claimed that all the witnesses have been forced to make statements rather they were under the influence of Senior Police Officials who got both of them falsely implicated. That the witnesses have made contradictory narrations, thus case put against them is false without any supporting evidence and even if there is any inculpatory one; that all has been, stated by the witnesses under the influence of their senior officers. When asked to lead any defence evidence, the respondents claimed that they were innocent and would not like to lead any evidence in their defence.
26. The trial Court after appreciating the evidence was of the view that from the evidence it is proved that on the day of occurrence when the respondents proceeded from Sogam to Kupwara, there was one unidentified person wearing police uniform, armed with AK- rifle and Magazines who also boarded with them in that very vehicle who was dropped at SBI, Kupwara. However, the prosecution has not been able to prove that the said unidentified person was wearing police uniform because PW-8 and PW-9 have stated that the said unidentified gunman was wearing an Army uniform. Whereas the prosecution case is that he was wearing police uniform.

Trial Court was also of the view that PW- Sumander Khan who claimed that his uniform had been stolen by someone; whereas the trouser which the unidentified gunmen was wearing at the time of



fedayeen attack which though had been seized but from the narration of PW- Sumander Khan it is not conclusively discernible that said uniform belonged to him. That the prosecution has also not been able to prove that the alleged militant who got killed in the suicide attack at SBI, Kupwara was a Pakistan based militant and also it had not been conclusively proved that he had traveled from Sogam to Kupwara along with the respondents in their official vehicle. As such the trial Court took the view that the respondent cannot be said to have entered into conspiracy with the said militant to carry out a suicidal attack.

27. Given the conclusion drawn by the trial Court that an unidentified gunman wearing a police uniform had travelled with the respondents in the vehicle Tata 407 model, it is necessary to set in below the sequence of events leading to the incident dated 12.05.2003.

28. **PW- 34 Ali Mohd. Mir** was the official driver of the Tata vehicle which was 407 model, thus had the capacity to carry more than 5 to 10 persons. Whereas both the respondents at the relevant time were posted as SHO and Munshi of concerned Police Station. These facts are clearly established. It is also proved that at that time PW-27 Constable Sumander Khan had claimed that while he was on leave and on reporting back on duty, he found his uniform missing. Whereas PW-32 and PW-33 were the official escorts of SHO, they both are categorically stating that as they arrived at the Police Station for onward journey to Kupwara, they saw an unknown gunman who was **in full combat dress wearing police uniform** standing with SHO. They both further claimed that this gunman was known to the SHO.



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We have assessed the testimony of PW-32 and PW-33 and have no doubt to disbelieve them, as they both are categorically stating that said gunman spoke with them in Urdu language, and informed them, he is from Lalpora SOG. It is further stated by them that when the vehicle reached at Kupwara it was respondent No. 3 Abdul Ahad who was driving it, because PW- Ali Mohd. Mir the driver had shifted to the back of the vehicle due to boarding by ASI Abdul Rehman and H.C Abdul Majeed. So, when the vehicle reached near SBI Kupwara it stopped and the gunman got down. Both PW-32 and 33 were found stating that SHO told the said gunman, that the destination of SBI Kupwara has come so he should meet his immediate superior. After deboarding by the said gunmen, they proceeded to the hospital and then to the residence of respondent No. 2 where they unloaded the timber that had been brought in the vehicle from Sogam.

29. In addition, PW Ali Mohd Mir the driver of the veh, in question is also clearly stating that said gunman as per SHO was from SOG Lalpora and was in full police combat uniform. Had the said gunmen been from SOG Lalpora as was portrayed by respondent No. 2, he would have definitely spoken to PW 32 and PW 33 in local dialect but not in Urdu. PW Mushtaq Ahmad SPO who was on duty at SBI Kupwara too has described that gunman who indulged in firing was in **police uniform** and later he saw his dead body lying on spot.
30. Respondents have been charged with the offence of having conspired with respondent No. 1 to affect killing of security personnel and that the respondent No. 1 was a foreign militant who had intruded into this part of the country with the only object to undertake killing whether by



acting as a fedayeen or otherwise. The charge under Section 302 RPC is laid against them with the aid of Section 120-B.

Section 120B is in itself a substantive offence and even if an overt act does not take place pursuant to the illegal agreement, the offence of conspiracy would still be attracted. In a passage from **Russell on Crimes**, the House of Lords decision in *Quinn Vs. Letham and the address of Willes, J. to the Jury in Mulchay Vs. R*, are often quoted in the decisions of various Courts. In **Kehar Singh's case 1998 (3) SCC 609** "it was held the gist of the offence of conspiracy then lies, not in doing the act, or affecting the purpose for which the conspiracy is found, nor in attempting to do them, nor inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, *per se* enough. The apex Court is in **Nalini's case 1999 (5) SCC 253**" pointed out that meeting of minds of two or more persons for doing an illegal act or an act by illegal means is a *sine qua non* of the criminal conspiracy. It went on to describe when men enter into an agreement for an unlawful end; they become *ad hoc* agents for one another and have made partnership in crime". In **2005 (11) SCC 600 State (N.C.T. of Delhi) Vs. Navjot Sandhu @ Afsan Guru** dealing with the charge of criminal conspiracy against accused Afzal Guru "it was held that the first circumstance of charge against him was that he knew the deceased terrorist, second that he was having frequent telephonic contact with them, he had led the police to various hideouts and also got various recoveries affected. So much so, he had also ensured purchase of



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vehicle and other items which were ultimately used in accomplishing the terrorist attack on 13.12.2001, which circumstances clearly established that the said accused was associated with the deceased terrorist in almost every act done by them in order to achieve the objective of attacking the Parliament House. He established close contacts with deceased terrorist more especially the terrorist named Mohammed, the Court therefore went on to hold that these circumstances cannot be read in isolation and by no standard of common sense can be regarded as innocuous acts, which all pointed to his involvement in the conspiracy.

When the facts given in the aforesaid **supra** are applied to the instant case, we have no hesitation in accepting the testimony of PW 32 and 33 who were the police escorts of respondent No. 2. The trial Court had concluded that an unidentified gunman was wearing police uniform and had been carried by the respondent in the official vehicle from Sogam to Kupwara on the date of incident. Now the questions remain, who that unidentified gunman was. The answer lies in the testimony of PW 32 and PW-33 as well as the statement given by the driver Ali Mohd. Mir who was driving the vehicle. All these three witnesses and their deposition when read in sequence leaves not an iota of doubt that the gunman was found in the company of respondent No. 2 on the morning of 12.05.2003 when PW-32 and PW-33 came to the police station having been told to come in uniform as they all had to proceed to Kupwara. Respondent No. 2 being the SHO of police station Sogam and an overall custodian of police vehicle driven by driver PW Ali Mohd. Mir would not have under any stretch of imagination allowed an



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unknown gunman that too in full combat dress to board the vehicle. Having said so, the fact that prior to the incident police uniform of PW Sumunder Khan went missing lends credibility to the fact that the unknown gunman who during investigation has clearly been found to be a foreign terrorist who had emanated from across the border and come to this part of the state to indulge in subversive activities was camouflaged by respondent No. 2 as SOG man from Lalpora.

31. The learned trial Court had discarded the version of PW-32 and PW-33 regarding the gunman being in police uniform and relied upon the testimony of PW-8 and 9 to hold that the person who indulged in Fedayeen attack at SBI Kupwara was wearing army uniform so was not the one who was claimed to have been brought by respondent No. 2 from Sogam to Kupwara (as narrated by PW-32 and PW-33). We have gone through the testimony of PW-8 Gulzaman Khan, PW-9 Farooq Ahmed, they both were on escorting duty to SOG, Kupwara, who were proceeding towards SBI Kupwara escorting the convey of SSP Kupwara that was following them. They both say that there was firing by a person who was wearing, army uniform and because of the firing they both received injuries. Both these witnesses claimed to have seen that person carrying AK-47 rifle with that he was firing towards the witnesses and other security personnel. They further admit that during investigation a pocket diary came to be recovered from the possession of the said gunman, which identified him as foreign militant hailing from Pakistan. Whereas, PW-9 Farooq Ahmed in his 161 Cr.PC statement recorded on 12.05.2003 is categorically found narrating that the gunman who had fired upon them was in **police uniform** and



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having a pouch as well, whereas, PW-8 Gulzaman Khan, SPO, too is narrating that the said gunman was in police uniform. So, what the two witnesses had been stating and upon whom the trial Court has placed reliance, their testimony on the face of it was a case of marked improvement thereby rendering deposition made by them in trial as untrustworthy. There was clear cut evidence of PW-32, PW-33 as well as PW Ali Mohd. Mir, driver having clearly described that the gunman who disembarked from the vehicle at SBI Kupwara, was in full combat dress and wearing police uniform, rather PW- Ali Mohd. Mir is categorically stating that he saw that gunman wearing a uniform with the pouch as well, which fact is also stated by PW-8 and PW-9.

During the course of the hearing, the respondent laid thrust on the issue that from the evidence of PW- Sumander Khan Constable, it was not conclusively proved that the uniform which the gunmen was wearing was that of the said witness. We have evaluated testimony of PW- Sumander Khan and from his narration we find that his uniform had been stolen from Police Station, Sogam, where he was posted, and the uniform which the gunmen was wearing and that was seized, especially the trouser and belt no. the same stood identified by him. Though in cross-examination, has admitted that he cannot conclusively say that the trouser belonged to him. But his whole testimony cannot be discarded, as witness has been examined after long delay, so was bound to suffer infirmities. However, having examined his version in totality, we have no doubt in believing the prosecution case that the gunmen who was brought by the respondent from Police Station, Sogam and dropped at SBI, Kupwara, was wearing a police uniform and was in full



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combat dress carrying a sophisticated weapon of AK-56 rifle with hand grenades. Which carrying of weapons and hand grenades is stated by almost all witnesses, including the injured.

32. There is one more issue which we have noticed in this case that during the investigation, as many as six Police personnel had been examined under Section 164-A Cr.PC and therein, all of them had made incriminating statements against respondent's No. 2 and 3. Subsequently except PW-32, PW-33 and driver PW- Ali Mohd. Mir, rest of witnesses have tried to screen away the respondents by stating in Court, though they saw a gunman having travelled with them from Sogam to Kupwara, however, they were unable to identify him. Whereas both the respondents in this case happened to be police officers that too posted in P/S Sogam and the witnesses examined being inferior in ranks, their testimonies were bound to suffer infirmities, because of the influence which the respondents must be having. This Court cannot be oblivious of such a probability in this case. Having said so, we are constrained to state here that the trial Court has not appreciated the evidence in its proper perspective. It is not the quantity of evidence that was to be taken in consideration by the trial judge rather the evidence was to be examined intrinsically on the strength of what the witnesses are stating.

33. Not only, there was clear evidence of the said gunman having been duly identified as a foreign militant hailing from Pakistan, besides that there was oral evidence, before the trial Court in the shape of narration by PW- Farooq Ahmed and SPO Gulzaman, describing deceased gunman a fedayeen i.e., respondent no.1. PW-Varinder Kumar Bhat



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Dy. SP CID, who had initially investigated the case, is, categorically found, stating that a diary was recovered from police- uniform which, said gunman was wearing and from there he was identified to be a foreign militant.

34. It is admitted case of the prosecution and even the defence too has not contradicted it, that the incident that took place near SBI Kupwara was a fedayeen attack, whereas the said gunmen had come in full combat dress having been brought at the scene of the crime only with the object to ensure killing of security personnel who had visited the bank and in the incident, two CRPF personnel were killed, and five security personnel were injured including two from the SOG, Kupwara who were on escort duty at the relevant time. There was seizure of a bullet-proof vehicle which came under fire from the said gunmen. It is that very vehicle in which PW-8 and PW-9 had come to the scene of the crime being on escort duty of then SSP Kupwara. So, respondentNo. 1 was identified as the gunman who, having camouflaged in police uniform was brought to the scene of the crime by the respondents to affect and perpetuate a terrorist attack leading to the killing of CRPF Personnel.
35. We are conscious of the fact that, while considering an appeal against acquittal, this Court is not exercising any extraordinary jurisdiction, its power to consider and decide the appeal against the judgment of acquittal is same as against the judgment of conviction. However, certain guidelines have been laid by the Apex Court in a number of cases on subject. One is that if there are two views on evidence which are reasonably possible, one supporting the acquittal and the other



indicating conviction, then this Court, in an appeal against the judgment of acquittal, should not interfere merely because it feels that it would, as a trial Court, have taken a different view.

But this Court would certainly interfere if it finds that the findings of acquittal is manifestly erroneous and that the trial Court has acted with a material irregularity or its appreciation of evidence lacks coherence, or it has made assumptions that are unwarranted or its evaluation of evidence, is such, to shock the sense of justice or its reasoning defies the logic or is against the **weight** of the evidence. Such, principles have been laid in **2000 (4) SCC 603**, where the Apex Court was considering the judgment of the High Court whereby it had reversed the acquittal of the accused. We proceed on that basis and find no merit in the contention of the respondents that the testimony of PW-27, Sumander Khan, suffers from any inherent deficiency. His testimony, when read in totality, clearly demonstrates that during the period of leave after joining back, he found his uniform missing and subsequently, during the investigation, the uniform was shown to him, stated to have been recovered from the body of the deceased, fedayeen. He identified the same from the number existing on the trouser/belt. At the cost of repetition, we wish, to reiterate that the testimony of this witness in no way can be said to have dented the prosecution case because version of PW-32, PW-33, driver PW Ali Mohd Mir coupled with statements of PW-8 and PW-9 have proved the prosecution case beyond doubt.

It was argued by respondents that in case the Court relies upon the testimony of PW-8 & PW-9 to the extent of identification of



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respondent No. 1 then it should also rely upon them to have found respondent No. 1 in army uniform at the time of incident. What the respondents intend to convey is that either the statement of PW-8 & PW-9 is not to be believed or to be discarded as a whole and similar claim is raised against the testimony of PW-32 & PW-33.

Coming to the acceptability of the evidence of PW-8 & PW-9, it is the duty of the Court to separate the grain from the chaff, falsity of a particular material witness on a particular fact would not ruin it from the beginning to the end. The maxim “**Falsus in uno, falsus in omnibus**” has not received general acceptance in our jurisprudence of appreciation of evidence. It only puts the Court on caution. This issue has been dealt with by the Apex Court in case of “**Shakila Abdul Gaar Khan vs. Vasant Raghunath Dhoble and others**” reported in 2003 (7) SCC 749 by holding as under:

Para 26: It is the duty of Court to separate grain from chaff. Falsity of particular material witness or material particular would not ruin it from the beginning to end. The maxim “falsest in uno falsest in omnibus” has no application in India and the witnesses cannot be branded as liar. The maxim “falsest in uno falsest in omnibus” has not received general acceptance nor has this maxim come to occupy the status of rule of law. It is merely a rule of caution. All that it amounts to, is that in such cases testimony may be disregarded, and not that it must be disregarded. The doctrine merely involves the question of weight of evidence which a Court may apply in a given set of circumstances, but it is not what may be called ‘a mandatory rule of evidence’.

Para 27: The doctrine is a dangerous one specially in India for if a whole body of the testimony were to be rejected, because witness



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was evidently speaking an untruth in some aspect, it is to be feared that administration of criminal justice would come to be dead stop. Witnesses just cannot help in giving embroidery to a story, however, true in the main. Therefore, it has to be appraised in each case as to what extend the evidence is worthy of acceptance, and merely because in some respects the Court considers the same to be insufficient for placing reliance on the testimony of a witnesses, it does not necessarily follow as a matter of law that it must be disregarded in all respects as well. The evidence has to be shifted with care. The aforesaid dictum is not a sound rule for grain of untruth or at any rate exaggeration, embroideries or embellishment (See 1972CrlJ1302 & AIR1965SC277). An attempt has to be made to, as noted above, in terms of felicitous metaphor, separate grain from the chaff, truth from falsehood. Where it is not feasible to separate truth from falsehood, because grain and chaff are inextricably mixed up, and in the process of separation an absolutely new case has to be reconstructed by divorcing essential details presented by the prosecution completely from the context and the background against which they are made, the only available course to be made is to discard the evidence in toto. See AIR1954SC15, 1975CrlJ1734 & 1981CrlJ1012, normal discrepancies in evidence are those which are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental disposition such as shock and horror at the time of occurrence and those are always there however honest and truthful a witness may be. Material discrepancies are those which are not normal, and not expected of a normal person. Courts have to label the category to which a discrepancy may be categorized. While normal discrepancies do not corrode the credibility of a party's case, material discrepancies do so. These aspects were



highlighted recently in 2002CrlJ2645, 2003CrlJ41 and 2003CrlJ1226.

Given the aforesaid legal proposition merely because PW-8 & PW-9 are found to have made some kind of improvement (relating to uniform worn by respondent No.1), the same can be categorized as normal errors which are bound to occur but are not material discrepancies to wash out their entire evidence. This has also to be kept in the background that even other police officials except PW-32, PW-33 & PW Ali Mohd. Mir rest had also tried to screen away the respondent No. 1 by pleading ignorance about the particulars of the unknown gunman and since PW-8 & PW-9 also, were from local police though working in SOG they cannot be held to be immune from influence of respondent No. 1. In that background the contention that the narration of PW-8 & PW-9 to be thrown in totality is required to be rejected.

36. Since, respondent No. 1 was proved to be fidayeen whose main objective was to kill and get killed, so intention to cause death or intention to cause bodily injury as would in all probability cause death is writ large in the acts of respondent No. 1 and the conspiracy was directed towards an indiscriminatory attack on CRPF personnel as well as police party escorting the convoy of the then SSP, Kupwara. Respondent No. 2 not only knew respondent No. 1 but had brought later safely to the scene of crime by disguising him as SOG personnel of Lalpora, which in fact he was not. Had that been the case then in Section 342 Cr.PC explanations nothing should have prevented respondent No. 2 in contending that he gave lift to that unknown gunman as he believed him to be a regular



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police personnel of SOG, Lalpora. But no such explanation is found tendered by respondent No. 2 in said statement. He merely brushes aside the testimony of PW-32 & PW-33 as well as driver Ali Mohd. Mir by stating that they have made deposition under the influence of Senior Police Officers. However, there is no explanation as to why the senior officers would have got respondent No.2 falsely implicated that too when he himself was a senior police officer who was holding the assignment of SHO Police Station, Sogam, a vital police station in border areas of Distt. Kupwara. So, respondent No. 2 not only guided him to deboard from police vehicle at the crime scene and immediately, thereafter, respondent No.1 succeeded in killing two CRPF personnel and injuring five others by resorting to indiscriminating firing. It was implicit in the conspiracy to attack security personnel and it was with this motive that respondent No. 1 came at the crime scene which act was duly facilitated by respondent No.2

In, so far as, respondent No. 3 is concerned though he was Munshi of Police Station, Sogam and at the time when respondent No. 1 deboarded from the police vehicle on reaching near SBI Kupwara, at that moment it was he, who was driving the said vehicle. Respondent No. 3 would not have driven it because PW Ali Mohd. Mir happened to be its driver who went to the back side of the vehicle because of joining of ASI Abdul Rehman. So, it was thereafter that respondent No. 3 started driving the vehicle with respondent No. 2 and the said ASI Abdul Rehman sitting at the front of the vehicle. It, therefore, could not be anticipated that respondent No. 3 would have met ASI Abdul Rehman on way to Kupwara. We are of the considered



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view that case of conspiracy against respondent No. 3 is absolutely without any iota of evidence. May be, being Munshi of P/S Sogam, he might have known that PW Sumundar Khan is on leave so his uniform to be made available to respondent No. 1; but this is only hypothetical, without supported by any evidence; rather this aspect of the case has not been proved in trial. We concur with the finding of the trial Court and held him not guilty of charge, thereby confirming his acquittal.

Whereas, respondent No. 2 was the only person who had full acquaintance of respondent No. 1 and knew him to be a militant and despite knowing objectives of respondent No. 1, he tacitly consented to the acts of respondent No. 1 and watched his actions despite being person in uniform. He was to protect the life and property of police and security personnel, he instead became their tormentor. He consciously allowed respondent No. 1 to play havoc at the scene of the crime. Intention to cause death or intention of causing bodily injury as would in all probability caused death is proved from the narration of the witnesses who saw respondent No. 1 firing indiscriminately rather they all claimed that it was a fidayeen attack in which the fidayeen (respondent No. 1) was eliminated. But not before he had killed two CRPF personnel and injured five others including PW-8 & PW-9. Section 300 RPC says that except in the cases provided therein, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death. A person without any excuse fires a loaded canon into a crowd of persons and killed one of them, he is guilty of murder, although, he may not have had a premeditated design to kill any particular individual.



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37. We are absolutely clear that the findings of acquittal recorded in favour of respondent No. 2, not only was perverse, but the trial Court had ignored the clinching evidence led in trial in the nature of PW-32, PW-33 as well as PW Ali Mohd. Mir, Driver and has solely rested its finding on the testimony of PW-8 and PW-9. The trial Court proceeded to record acquittal of respondent No. 2 on a reasoning, which on the face of it was palpably wrong, as it failed to appreciate the entire evidence led by prosecution in its proper perspective. Evidence of PW-32, PW-33, PW-8, PW-9 as well as PW Ali Mohd. Mir had conclusively proved in material particulars, the criminal conspiracy of respondent Nos. 1 and 2 to perpetuate the incident dated 12.05.2003. The only conclusion reached on the basis of evidence on record pointed towards the involvement of respondent No. 2 and the approach of trial Court in acquitting respondent No. 2 was clearly erroneous in its consideration of the evidence on record.

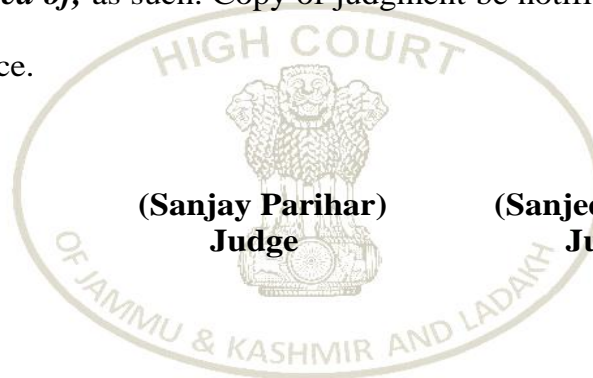
38. The conspiracy to commit the offence of murder in the course of execution of conspiracy is well within the scope of conspiracy to which respondent No. 2 was a party. Therefore, he is liable to be punished under Section 120-B read with Section 302 RPC. The punishment applicable is the one prescribed under Section 109 RPC. In view of the phraseology of Section 120-B “be punished in the same manner as if he had abetted such offence”. In that background the conspirator even though he may not have indulged in the actual criminal operation to execute the conspiracy, becomes liable for the punishment prescribed under Section 302 RPC which is either sentence of death or imprisonment of life. The respondent No. 2 after being taken in custody



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had continued to languish in jail pending trial and we are informed that even after the trial ended in acquittal, he remained under preventive detention and subsequently had been released. Having regard to the facts and circumstance of the case, we deem it appropriate to hold him guilty for having committed offence of murder in conspiracy with respondent No. 1 (now deceased) and sentence him to imprisonment for life prescribed under Section 302 RPC. He shall surrender to custody of the trial Court and the latter shall draw formal order of sentence and commit him to custody, so as to undergo the sentence of imprisonment of life. In that manner this acquittal appeal is partly allowed and shall stands *disposed of*, as such. Copy of judgment be notified to trial Court for compliance.

JAMMU
30.08.2025
Rahul Sharma



(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

Whether the order is speaking?
Whether the order is reportable?

Yes
Yes