



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

**CRAA No. 62/2017**

*Reserved on: 23.04.2026*  
*Pronounced on: 04.05.2026*  
*Uploaded on: 04.05.2026*  
*Whether the operative part or*  
*full judgment is pronounced:*

**State of Jammu and Kashmir  
through Police Station,  
Rembhal, Udhampur.**

.... Petitioner(s)

Through:- Ms. Saliqa Sheikh, Advocate  
vice Mr. Raman Sharma, AAG

**Vs.**

**Rakesh Singh, S/o Kartar  
Singh, R/o Assi Phalata,  
District Udhampur.**

.....Respondent(s)

Through:- Mr. Sachin Sharma, Advocate.  
Respondent present in person.

**CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE**  
**HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE**

**JUDGMENT**

**SHAHZAD AZEEM-J**

1. This acquittal appeal is directed against the judgment dated 30 April 2016 passed by learned Principal Sessions Judge, Udhampur ("the Trial Court") in File No. 80/Sessions titled State Vs. Rakesh Singh, whereby the trial Court has acquitted the respondent-Rakesh Singh of the offences punishable under Section 302, 401, 201 of Ranbir Penal Code (RPC).



## **PROSECUTION CASE**

**2.** Prosecution case, in brief, is that the respondent-Rakesh Singh (accused), a bachelor from the Rajput Caste alleged to have taken sexual advantage of Late Subadri Devi (deceased), belonged to Scheduled Caste (SC) Community and mother of two children who was staying with her parents at Aghar Ballian, Reasi after obtaining divorce from her husband. The accused after being caught in the room of the deceased in the intervening night of 20/21 April 2014, though had no genuine intention of entering into an inter-caste marriage with the deceased, but on the false pretext of solemnizing the Court marriage in Reasi Court, instead took the deceased in the morning of 21 April 2014 to the Maand Jungle (East Maand Forest). Whereafter, in order to get rid of the deceased, murdered her. Accused hid the cell phone and the pair of gold earrings in the Bai Nallah, Katra Jungle under the bushes after concealing in a plastic bag. The dead body was recovered on 24 April 2014.

**3.** This is the short and brief accusation on which the accused was put on trial for the commission of offences punishable under Sections 302, 404, 201 of RPC.

**4.** For the sake of brevity and in order to avoid repetition, further details relevant for the adjudication of appeal on



hand shall be taken note of hereinafter while appreciating the evidence at appropriate stage.

### **FINDINGS OF THE TRIAL COURT**

5. The trial Court, while acquitting the accused held that the prosecution case is completely based on circumstantial evidence. The trial Court has held that the prosecution failed to prove “*Disclosure, recovery*” and “*Last Seen Theory*”. The trial Court also held that the “*medical evidence*” being inconclusive, and the prosecution case suffers from major contradictions, omissions and delayed disclosure, therefore, rendering the prosecution story as unreliable, hence, had come to the conclusion that the prosecution has not established a conclusive link connecting each individual circumstance with the other, and the accused.

6. The trial Court was of the view that the evidence do not bridge the gap between “*may be true*” and “*must be true*” so essential for a Court to see, while finding the guilty of an accused, particularly, in cases based on circumstantial evidence. Therefore, the trial Court has acquitted the accused of the charges, vide impugned judgment under challenge.



## **SUBMISSIONS**

7. The judgment of acquittal is challenged on the ground that the impugned judgment is a result of non-application of judicial mind on facts as well as on law, which renders the same bad in the eyes of law. The appeal has also been filed on the ground that the prosecution has established the guilt of the accused beyond any reasonable shadow of doubt but trial Court has not properly appreciated the evidence brought on record and has ignored the statements of material witnesses, thereby acquitting the respondent. According to the appellant, the accused has committed heinous crime where strict view was required to be taken in view of the legal position settled by the Apex Court regarding the disclosure statement and Last Seen Theory, thus, the judgment is liable to be set aside.

8. ***Ex Adverso***, learned counsel for the respondent has argued in line with the reasoning given by the trial Court in the judgment under challenge and same shall be taken note of hereinafter at the appropriate stage.

## **ANALYSIS**

9. Since there is variation insofar as the numbering of prosecution witnesses in the challan and impugned judgment of the trial Court is concerned, therefore, for the



sake of clarity and to keep the record straight, we propose to mention the prosecution witnesses in the same seriatim as mentioned in the impugned judgment of the trial Court.

**10.** The prosecution case is based on circumstantial evidence and in order to complete the chain of circumstances, so as to bring home the guilt against the accused, the prosecution had mainly relied upon three circumstances, i.e. "*Last Seen Theory*", "*Disclosure, and Recovery*".

**11.** The case set up by the prosecution is that in the intervening night of 20-21 April 2014, the accused was caught in the room of deceased and when the family members of the deceased have enquired about his undesirable presence, the accused alleged to have narrated a false story that he is in relationship with deceased, therefore, wanted to marry today itself in the Reasi Court. Accordingly, in the morning of 21 April 2014, he took away the deceased, however, when after 2-3 days, she did not return home, a missing report alleged to have been lodged on 25 April 2014 by PW-2, Sobha Ram, the father of the deceased in the police station, Reasi.

**12.** However, in the evening of 25 April 2014, PW-20, Sheru Ram, the brother of the deceased was informed by the



police of police post, Tikri about the recovery of the dead body of a woman from Maand Jungle, which was later identified by him as that of the deceased.

**13.** The prosecution heavily relied upon the fact that the accused and deceased were last seen together on 21 April 2014 while leaving the house of the deceased on the pretext of solemnizing marriage, but she did not return and thereafter, her dead body was found on 24 April 2014.

**14.** To prove that the accused and deceased were last seen together on 21 April 2014, *inter-alia*, the prosecution has relied upon the testimonies of the PW-2, Sobha Ram (father of deceased), PW-5, Usha Rani (Sister-in-law of deceased), PW-13, Punjab Dai (mother of deceased), PW-20, Sheru Ram (brother of deceased) and PW-12, Rakesh (Minor son of deceased). All these witnesses have deposed in contradiction to each other and their testimonies are full of improvements, omissions and embellishments, therefore, have demolished the Last Seen Theory on which the prosecution case primarily hinges.

**15.** According to PW-2, Sobha Ram, accused and deceased left the house together at 6 a.m, for solemnization of their Court marriage. PW-5, Usha Rani deposed that the



accused left the house but after 20-25 minutes, had returned and then he took the deceased at 6.30 a.m-7 a.m.

**16.** PW-13, Punjab Dai deposed that accused left the house at 7 a.m, however, deceased had gone from house thereafter at 8 a.m. PW-20, Sheru Ram deposed that the accused left the house first, deceased departed one hour later.

**17.** The most important witness is the PW-12, Rakesh (minor son of deceased) who deposed that his mother while departing from the house had told him that she is going to the houses of certain persons for work and she will be back home in the evening. He further deposed that deceased departed from the house two hours after the accused had left.

**18.** PW-2, Sobha Ram deposed that the accused and deceased left at 6 AM, however, PW-5, Usha Rani deposed that the accused firstly had gone from house and again returned after 20-25 minutes and then took the deceased at around 6.30-7.00, AM, however, these facts did not find mention in their earlier statements recorded under Section 161 Cr.PC. Insofar as the time of leaving the accused and deceased immediately before the occurrence from the house



of deceased is concerned, there are contradictions in the testimonies of PW-2 and PW-5.

**19.** PW-13, Punjab Dai, mother of the deceased had completely demolished the prosecution case. She deposed that the accused left the house at 7 a.m and thereafter, at 8 a.m, deceased had also gone from there, therefore, there was a gap of one hour when accused and deceased were last seen together.

**20.** Similarly, PW-20, Sheru Ram, brother of deceased also deposed in line with PW-13, Punjab Dai and deposed that the accused firstly left the house and after a gap of one hour, deceased had left the house.

**21.** Lastly, the very important star witness PW-12, Rakesh, the minor son of the deceased deposed that the accused had left the house, two hours after the accused. PW-12 further deposed that when deceased left the house, she told him that she is going for work in the houses of certain persons.

**22.** From the testimonies of these star prosecution witnesses, who are none other than parents, brother, son and sister-in-law of the deceased, the Last Seen Theory sought to be relied upon by the prosecution is totally demolished as there is complete contradiction as to the time



of leaving the house together by the deceased and the accused, inasmuch as, the witness went to the extent of deposing that accused much before the deceased had left the house, therefore, the question of last seen together is rendered totally improbable.

**23.** The next circumstance is alleged disclosure and recovery, which was made in pursuance of a disclosure statement made by the accused, in respect of one pair of gold earrings and a mobile phone belonging to the deceased, which were recovered at the instance and identification of the accused from the Bai Nallah, Katra vide recovery memo EXTP-7/IV dated 17 June 2014, witnessed by PW-8, Govind Ram and Head Constable Sukhdev Singh. The disclosure statement is the EXTP-7/III.

**24.** PW-8, Govind Ram and Head Constable Sukhdev Singh were the witnesses to the disclosure statement and recovery memo, however, Head Constable Sukhdev Singh was not examined by the prosecution, whereas, PW-8, Govind Ram deposed that the disclosure statement EXTP-7/III is not the document which was prepared on 17 June 2014 as that document was signed by him, Kaka and one Gorkha boy. Therefore, the trial Court was correct in holding that PW-8, Govind Ram had completely defaced the



disclosure statement and recovery memo and thus, made these documents highly doubtful and unreliable.

**25.** The prosecution story of recovery and seizure of the mobile phone and earrings of the deceased at the instance of the accused has also been completely falsified by PW-11, Farman Ali. This witness went un-to depose that the mobile phone was found lying beside the dead body and earrings were still worn in her ears. This witness had demolished the alleged recovery of mobile phone and earrings of the deceased at the instance of the accused, as alleged by the prosecution.

**26.** The expert opinion also did not support the prosecution case that the deceased was done to death by strangulation with headgear, however, in the post-mortem examination report, no definite cause of death could be ascertained.

**27.** From the above noted facts, it can be safely concluded that the prosecution has miserably failed to prove that the accused and deceased were seen last together and further that the recovery on which the prosecution has banked upon alleged to have been made in pursuance of the disclosure and identification of the accused, therefore, these important links in the chain of circumstances are missing,



rendering the chain of circumstantial evidence as incomplete.

**28.** The allegation against the accused is that he and the deceased left the house on 21 April 2014 and the dead body of the deceased was found on 24 April 2014. However, there is no other positive material on record to show that the deceased was last seen together with the accused and in the intervening period of four days, there was nobody in contact with the deceased, therefore, in the absence of any other link in the chain of circumstantial evidence, it cannot be said that only inference that could be drawn is the guilt of the accused.

**29.** Lastly, we are not oblivious of the fact that in the case of an acquittal, the appellate Court must bear in mind that there is a double presumption in favour of the accused and where two views are possible, the one favouring the accused is leaned in. In support of this proposition, a reference advantageously can be made to the judgment passed by Hon'ble Supreme Court in ***Chandrappa Vs. State of Karnataka; (2007) 4 SCC 415.***

### **CONCLUSION**

**30.** Considering the material contradictions, the improvements inasmuch as the failure of the prosecution to



prove last seen and alleged recovery based on disclosure statement of the accused, we do not find any illegality on facts or law has been committed by the trial Court while recording the acquittal of the accused.

**31.** Accordingly, while concurring with the judgment of the trial Court, the instant appeal is dismissed being devoid of merit.

**32.** Record be sent back to the trial Court with due dispatch.

**(Shahzad Azeem)**  
**Judge**

**(Sindhu Sharma)**  
**Judge**

**Jammu:**  
04.05.2026  
Tarun/PS

*Whether approved for reporting:*  
*Whether the order is speaking*

: Yes/No  
: Yes/No