



2025:UHC:7582-DB

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

THE HON'BLE CHIEF JUSTICE MR. G. NARENDAR

AND

THE HON'BLE JUSTICE MR. SUBHASH UPADHYAY

Criminal Appeal No. 54 of 2025

20 August, 2025

Dunger Dev Pathak

--Appellant

Versus

State of Uttarakhand and Others

--Respondents

Presence:-

Mr. D.S. Mehta, Advocate for the appellant.

Mr. J.S. Virk, learned Deputy Advocate General along with Mr. Rakesh Joshi, learned Brief Holder for the State of Uttarakhand.

JUDGMENT: (per Subhash Upadhyay, J.)

This Criminal Appeal has been preferred by the appellant assailing the judgment and order dated 06.12.2024 passed by learned 1st Additional Session Judge, Haldwani, District Nainital in Session Trial No.30/2020, "*State Vs. Yogendra Singh Bisht & Anr.*" whereby respondent no.2 Yogendra Singh Bisht has been acquitted of the charge under Section 307 read with Section 34 and 506 of IPC and Section 3/25 of the Arms Act and respondent no.3-Anand Ram has been acquitted of the charge under Section 307 read with Section 34 and 506 of IPC.

2. The prosecution's case in brief is that, on 01.07.2020, the appellant/complainant (PW1) filed a written complaint that in the year 2017, the



complainant had purchased 8 bighas of land from Narsingh. On 01.07.2020, at 8 a.m. the accused Yogendra Singh Bisht came to the complainant's house and asked him to sell the said land to him, which was said to be purchased by the complainant from father of the accused. As the complainant refused to accept the said proposal, as such, on the same night at about 9:10 p.m. the accused Yogendra Bisht arrived on a motorcycle with an associate and opened fire on him, from a country-made pistol.

3. Based on the said complaint, an FIR was registered in the Police Station Mukhani, District Nainital under Section 307 read with Section 34, 506 of IPC and 3/25 of the Arms Act. It was also stated that along with Yogendra Singh Bisht another person came on his motorcycle to assist Yogendra Singh Bisht in the commission of crime.

4. After investigation, charge-sheet was submitted against respondent no.2 under Section 307 read with Section 34 and 506 of IPC and Section 3/25 of the Arms Act and against respondent no.3 - accused Anand Ram under Section 307 read with Section 34 and 506 of IPC. The Trial Court took cognizance of the case and provided copies to the accused and committed the case to the Sessions Court. Charges were framed against the accused under sections as referred above. Several witnesses were examined including, appellant/complainant as PW1, PW2 Devesh Kandpal, PW3 Kamal Joshi, PW4 Constable Manju Pandey(FIR writer), PW5 Dr. Vasu Agarwal (Medical Officer who treated the injured), PW6 Constable Harikrishna Mishra,



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PW7 Constable Pradeep Pilkhwal, PW8 Gaurav Joshi, PW9 Sub-Inspector Mahesh Joshi (Investigating Officer), PW10 Geeta Pathak (wife of the complainant) and PW11 Naresh Kumar Pathak. The following exhibits were marked during the trial - written report (Ex.P-1), seizure memo of two pellets (Ex.P-2), seizure memo of a sando vest (Ex.P-3), FIR (Ex.P-4), GD entry(Ex.P-5), medical supplementary report (Ex.P-6), seizure memo of a 12-bore country-made pistol (Ex.P-7), sample seal (Ex.P-8), site plan(Ex.P-9), arrest memo of accused Anand Ram (Ex.P-10), information memo (Ex.P-11), checklist (Ex.P-12), site plan of recovery location (Ex.P-13) and charge sheet(Ex.P-14).

5. The prosecution witnesses were examined and after completion of the prosecution evidence the statements of the accused/ respondent no.2 and respondent no.3 were recorded under Section 313 Cr.P.C., however, they denied the prosecution's version and claimed that prosecution witnesses had given false testimony and indicated their intention to present defence evidence but no defence evidence was presented. The Trial Court after hearing the parties and on examination of evidence led before it, acquitted the respondent nos.2 and 3.

6. Learned counsel for the appellant /complainant contended that the learned Trial Court failed to consider the statements made by all the prosecution's witnesses and the recovery of cartridge proved that the offence was committed by the accused and on erroneous analysis of evidences acquitted respondent nos.2 and 3.



7. The learned Trial Court acquitted respondent nos.2 and 3 on the ground that prosecution failed to prove its case beyond reasonable doubt and for arriving at the aforesaid conclusion, considered the following aspects of the matter:-

A) The appellant contended that the accused Yogendra Singh Bisht opened fired at him twice and the pellets hit the wall and then struck the complainant. It was held that if pellets from 12 bore gun hit a wall then it would either create a small hole, embed in the wall or fall to the ground after impact because pellets from 12 bore do not have enough velocity to reflect in the another direction after hitting a wall.

B) If a person is directly hit by pellets from 12 bore firearm then the injury would be of an incise wound or a punctured wound and not just an abrasion mark. PW5 Dr. Vasu Agrawal, who examined the complainant, in its medical report found the following injuries:-

1) Abrasion - a scraped mark measuring 0.7 cm. x 0.5 cm on the right side of the abdomen. There was no burning or tattooing present.

2) Second injury was also an abrasion and a scraped mark on the middle finger of the left hand measuring 0.5 cm x 0.5 cm, reddish in colour.

C) Medical supplementary report of the complainant after X-ray of abdomen detected



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no metallic shadow, no bone injury or sign of perforation. The opinion expressed after the conduct of the X-ray was of normal study and injury was simple in nature. The said medical report is marked as Paper No.15Ka/1 and 15Ka/3 and the said papers were identified by Dr. Vasu Agrawal.

D) The metal pellets were handed over by the complainant to the Sub-Inspector, Mahesh Joshi (PW9), stating that they were recovered from the house of the complainant after the accused persons fired at him. A seizure memo was prepared and the country-made pistol and an empty 12 bore cartridge were recovered from a jungle pathway between Fatehpur and Kaladhungi on 14.07.2020 at the instance of accused Yogendra Bisht. The metal pellets, country-made pistol and 12 bore cartridge were sent for FSL examination. In the FSL report and the related documents (paper nos.30-Kha/2 to 30Kha/5), it is indicated that the gunshots residue detected on the two metal pieces could not be possible to link to the pistol due to insufficient individual characteristic mark.

8. We have heard learned counsel for the appellant and perused the records. On perusal of the records, we are of the considered view that there is no infirmity in the order passed by the learned Trial Court. Considering the entire aspect of the matter and after the proper analysis of the witnesses, the Trial Court held that the prosecution could not prove the case



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beyond reasonable doubt and respondent nos.2 and 3 were acquitted of the charges levelled against them.

9. The judgment and order passed by the learned Trial Court has been passed after considering the entire prosecution evidence and the learned Trial Court found that the case set up by the prosecution, on the basis of the complaint, was of firearm injuries, however, the medical report did not corroborate with the said contention. The medical report indicated that the injuries on the complainant could have been inflicted by the complainant himself. The learned Trial Court also held that there was some property dispute between the complainant and the private respondent and, as such, it appears that the criminal complaint was made to settle the scores with regard to the said property dispute.

10. Thus, the findings recorded by the learned Trial Court of acquitting respondent nos.2 and 3, on the ground that the prosecution could not prove its case beyond reasonable doubt, does not suffer from any infirmity and, as such, the Criminal Appeal fails and the same is dismissed.

(G. NARENDAR, C.J.)

(SUBHASH UPADHAYA, J.)

Dated: 20.08.2025

Sukhbant

SUKHBANT SINGH

Digitally signed by SUKHBANT SINGH
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