

Reserved on – 31.12.2025

Delivered on – 09.01.2026

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 657 of 2019

Jalaluddin @ Manoj

.....Appellant

Versus

State of Uttarakhand

.....Respondent

Present:-

Mr. Dheeraj Joshi, *Amicus Curiae*.

Mr. Pankaj Joshi, AGA for the State.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.

Hon'ble Ashish Naithani, J.

Per: Hon'ble Ravindra Maithani, J.

The instant appeal is preferred against the judgement and order dated 23.10.2019/04.11.2019 passed in Sessions Trial No. 17 of 2016, State v. Jalaluddin @ Manoj, by the court of First Additional District and Sessions Judge, Kashipur, District Udham Singh Nagar. By it, the appellant has been convicted under Section 307 IPC and sentenced to life imprisonment and a fine of Rs. 20,000/- and in default of payment of fine, to undergo further imprisonment for a period of two years.

2. Briefly stated, the prosecution case is as follows. PW 1 Ram Avtar Singh lodged a first information report on 26.09.2015 at 08:15 a.m. at Police Station Kashipur, District Udham Singh Nagar. According to it, on 22.09.2015, PW 2 Vijay Pal Singh (Home Guard) and PW 3 Khemkaran (Home Guard) along with other Home Guards were on security duty of Sugar Mill, Kashipur ("the Mill"). In the night at about 10:45 p.m., they noticed four miscreants roaming around the

Mill. When PW 2 Vijay Pal Singh and PW 3 Khemkaran tried to stop the miscreants, they pushed them and ran away. Both PW 2 Vijay Pal Singh and PW 3 Khemkaran chased them, but in the process, one of the miscreants fired at PW 2 Vijay Pal Singh by his country made pistol, due to which, he fell on the ground. The miscreant could be identified by PW 3 Khemkaran, who was the appellant Jalaluddin. The FIR also records that earlier also a report of theft was lodged against the appellant and others. Based on this report, Ex. A-1, chik FIR, Ex. A-12 was recorded and Case Crime No. 283 of 2015 under Section 307 IPC was lodged against the appellant and others. The extract of GD is Ex. A-13. The injured was taken to hospital. He was referred to higher centre also. Subsequently, according to the prosecution case, on 26.09.2015, from the possession of the appellant, a country made pistol along with cartridge case was also recovered, of which a recovery memo, Ex. A-2 was recorded and a chik FIR under Section 25 of the Arms Act, 1959 ("the Arms Act") was recorded at Police Station Kashipur, District Udham Singh Nagar. This chik FIR is Ex. A-10. The Investigating Officer prepared a site plan of the incident and the place of recovery. Thereafter, the Investigating Officer submitted a charge sheet under Section 307 IPC against the appellant Jalaluddin and Mintu Sagar.

3. Based on the charge sheet submitted against Mintu Sagar, the proceeding of Sessions Trial No. 210 of 2016, State v. Mintu Sagar, was instituted. This Sessions Trial No. 210 of 2016 has also been decided by the common impugned judgment. Charge sheet under Section 25 of the Arms Act was also submitted against the appellant, based on which separate Sessions Trial No. 18 of 2016, State v.

Jalaluddin, was lodged in the court of First Additional Sessions Judge, Kashipur, District Udham Singh Nagar. Sessions Trial No. 18 of 2016, State v. Jalaluddin was also decided along with Sessions Trial No. 17 of 2016, State v. Jalaluddin on 23.12.2019. In fact, the appellant has been acquitted of the charge under Section 25 of the Arms Act. He has only challenged his conviction under Section 307 IPC.

4. On 21.03.2016, charge under Section 307 was framed against the appellant Jalaluddin and co-accused Mintu Sagar, to which they denied and claimed trial.

5. In order to prove its case, the prosecution examined as many as 11 witnesses, namely, PW 1 Ram Avtar Singh, PW 2 Vijay Pal Singh, PW 3 Khemkaran, PW 4 Inspector Arun Kumar, PW 5 Madan Narayan Joshi, PW 6 Dr. Vikas Gahlot, PW 7 SI Lakhan Singh, PW 8 constable Madan Singh, PW 9 HC Gaje Singh, PW 10 Dr. Shantanu Sahu and PW 11 SI Prahlad Singh.

6. The appellant was examined under Section 313 of the Code of Criminal Procedure, 1973 ("the Code"). According to him, he has falsely been implicated. After hearing the parties, by the impugned judgment and order, the appellant has been convicted under Section 307 IPC and sentenced as stated hereinbefore. It may be noted at this stage, that co-accused Mintu Sagar has been acquitted of the charge levelled against him under Section 307 IPC by the impugned judgment and order.

7. Heard learned counsel for the parties and perused the record.

8. Learned counsel for the appellant submitted that the prosecution has not been able to prove the case beyond reasonable doubt; PW 1 Ram Avtar Singh is the informant; he has not witnessed the incident; he is not an eyewitness; PW 3 Khemkaran, according to the FIR, is an eyewitness, but he has not supported the prosecution case. There are great discrepancies in the statements of PW 2 Vijay Pal Singh. It is argued that, in fact, there are a lot of contradictions in the statements of the witnesses and the FIR; the FIR is delayed; the story as narrated by the prosecution is self-contradictory; there are contradictions in the statement of the witnesses as to whether cartridge case was ever recovered from the place of incident or not; the blood stained clothes of the injured was also not recovered from the police. Therefore, it is argued that the appeal deserves to be allowed.

9. On the other hand, learned State Counsel submits that PW 2 Vijay Pal Singh is an injured; he has categorically stated that at the time of incident, the appellant fired at him, due to which he sustained injuries. It is argued that the injuries have been supported by the medical evidence and the FSL report also confirms that the country made pistol that was recovered from the appellant was fired through. It is argued that the prosecution has been able to prove the case beyond reasonable doubt.

10. Before the arguments are appreciated, it would be apt to examine as to what the witnesses have stated.

11. PW 1 Ram Avtar Singh is the informant. He did not see the incident as such. He has proved the contents of the FIR. According to him, after the four persons were spotted by PW 2 Vijay Pal Singh

and PW 3 Khemkaran, who were patrolling in the Mill premises, they tried to stop them, but all those four miscreants pushed these Home Guards and tried to run away. According to this witness, in that process, they fired at PW 2 Vijay Pal Singh, due to which PW 2 Vijay Pal Singh fell on the ground. In second paragraph of his examination-in-chief, PW 1 Ram Avtar Singh tells that the fire was made by the appellant, who was identified by another Home Guard and in FIR, it records that PW 3 Khemkaran has identified the appellant. This witness has proved the FIR, Ex. A-1. According to him, he did not see the incident. In the last but one paragraph of his cross-examination, he tells that the next day, from the place of incident, two live cartridges of 315 bore were recovered.

12. PW 2 Vijay Pal Singh is the injured. According to him, at the time of incident, they spotted four persons in the Mill premises. When this witness and PW 3 Khemkaran tried to stop them, immediately the appellant fired at him. According to PW 2 Vijay Pal Singh, he has identified the appellant. He states that the bullet hit him on his stomach; his companions raised an alarm. He has identified the appellant in the court. According to him, he was taken to hospital and referred to other hospital as well.

13. PW 3 Khemkaran has not supported the prosecution case as such. According to him, at the time of incident, he had gone to washroom, when he heard a fire shot; he came out and saw PW 2 Vijay Pal Singh in the injured condition. According to him, he had seen the person, who had fired while he was running. He also tells in his cross-examination that PW 2 Vijay Pal Singh did not tell him that it is the appellant, who did fire at him. In fact, in his cross-examination made

on 29.07.2017, PW 3 Khemkaran tells that he was not present in Kashipur on 22.09.2015.

14. PW 4 Inspector Arun Kumar is the person, who has allegedly recovered a country made pistol from the appellant on 26.09.2015. He has prepared the recovery memo of fire arm, etc.

15. PW 5 Madan Narayan Joshi had investigated the case pertaining to fire arm recovery from the appellant. He has proved the charge sheet Ex. A-5. As stated, the appellant has already been acquitted of the charge under Section 25 of the Arms Act, and the State has not filed any appeal, therefore, the statements of PW 4 Inspector Arun Kumar and PW 5 Madan Narayan Joshi do not bear any relevance for ascertaining the involvement of the appellant in so far as the charge under Section 307 IPC is concerned.

16. PW 6 Dr. Vikas Gahlot was posted at L.D. Bhatt Government Hospital, Kashipur on 22.09.2015. According to him, at 11:10 p.m. on that date, the injured PW 2 Vijay Pal Singh was brought before him. He had examined him. This witness has proved the injury report, Ex. A-6.

17. PW 7 SI Lakhan Singh is the Investigating Officer of the case. He has prepared the site plan. He arrested the appellant. He proved those documents, including charge sheet, Ex. A-9. He has also stated that the weapon of offence was got recovered from the appellant by PW 4 Inspector Arun Kumar. He has stated about it. But, as stated, the case pertaining to recovery of fire arm has already been lost by the State and they are not in appeal.

18. PW 8 constable Madan Singh has proved the chik FIR and extract of general diary with regard to the 25 Arms Act, that was lodged against the appellant on 26.09.2015.

19. PW 9 HC Gaje Singh has proved the chik FIR and extract of general diary under Section 307 IPC against the appellant.

20. PW 10 Dr. Shantanu Sahu was posted at Himalayan Hospital, Jollygrant, Dehradun on 23.09.2015. He has stated that there were fire arm wounds on the injured PW 2 Vijay Pal Singh; he was operated upon. He has proved the original documents with regard to treatment of PW 2 Vijay Pal Singh, Ex. A-14 to Ex. A-18.

21. PW 11 SI Prahlad Singh has stated about arrest of co-accused Mintu Sagar, who has already been acquitted.

22. As stated, PW 1 Ram Avtar Singh is not an eyewitness. He has not seen the incident. PW 2 Vijay Pal Singh tells that he was fired by the appellant and he sustained injury. There is an injury report, which supports that, in fact, PW 2 Vijay Pal Singh did sustain fire arm injury on that date. The question is - who did it?

23. Charge sheet was submitted against the appellant and one Mintu Sagar. Mintu Sagar has already been acquitted for the charge under Section 307 IPC. The appellant has also been acquitted for the charge under Section 25 Arms Act.

24. According to the FIR, PW 2 Vijay Pal Singh and PW 3 Khemkaran were on security duty in the Mill premises at the relevant time. They spotted four miscreants, tried to stop them, but they ran

away after pushing these witnesses and when chased, one of them fired at PW 2 Vijay Pal Singh. The FIR records that, in fact, due to fire, PW 2 Vijay Pal Singh fell on the ground and PW 3 Khemkaran could identify the person, who shot at PW 2 Vijay Pal Singh. But, in his evidence, PW 2 Vijay Pal Singh has not stated so. According to him, they spotted four persons and tried to stop them and immediately the appellant fired at him. He has not stated that the appellant and his companions were running away and when they were chased, the appellant fired at him. In his cross-examination PW 2 Vijay Pal Singh tells that he had caught hold of the appellant and then he was fired at. He also tells that PW 3 Khemkaran was also trying to catch him. He also tells in his cross-examination, in the last page, that he had a scuffle with the appellant, when he was fired at. As stated, this is not the case in the FIR.

25. PW 3 Khemkaran has not supported the prosecution case. He says that he was in the washroom, when he heard a fire arm shot. According to him, PW 2 Vijay Pal Singh did not tell him that the appellant did fire at him.

26. PW 7 SI Lakhan Singh is the Investigating Officer of the case. In page 2, 2nd paragraph of this examination-in-chief, he admits that no cartridge case was recovered from the place of incident. He also tells that no blood stained clothes or blood stained soil were ever taken into custody. Why? It is also one of the basic principles of the criminal jurisprudence that any defect in the investigation does not affect the merit of the case.

27. PW 7 SI Lakhan Singh submits that no cartridge case was ever recovered from the place of incident. PW 1 Ram Avtar Singh, in his last but one paragraph of cross-examination tells that two live cartridges of 315 bore were recovered from the place of incident on the next day. Where are those cartridge cases? They have not been produced. Interestingly, PW 2 Vijay Pal Singh, in page 4 of his examination-in-chief tells that he was fired by 12 bore gun.

28. The factum of recovery of cartridge case is much doubtful. As stated, on the one hand, according to PW 2 Vijay Pal Singh, he was fired by 12 bore gun, but according to PW 1 Ram Avtar Singh, the next day, they could recover two live cartridges of 315 bore. But, according to PW 7 SI Lakhan Singh, no cartridge case was ever recovered. Although, at this point, learned State Counsel submits that, according to PW 7 SI Lakhan Singh, cartridge case was not recovered; he has not stated about live cartridges. But, the fact remains that even those live cartridges were never produced before the court by the prosecution. The recovery memo is not before the Court. How could PW 1 Ram Avtar Singh say that two live cartridges of 315 bore were recovered from the place of incident on 23.09.2015?

29. FIR in the instant case was lodged by PW 1 Ram Avtar Singh. The incident allegedly took place on 22.09.2015 at 10:45 p.m. The FIR was lodged on 23.09.2015 at 09:15 a.m. at Police Station Kashipur, which is at about a distance of 1/2 km. from the place of incident. It is definitely delayed. Has the delay been explained?

30. Learned State Counsel submits that the injured had sustained injuries; he was taken to hospital; in that process, the delay

took place. But, PW 1 Ram Avtar Singh has not explained as to why the FIR was delayed. He tells that the injured PW 2 Vijay Pal Singh was firstly taken to Government hospital; thereafter, he was taken to Jeevan Rekha Hospital and thereafter to Dehradun Hospital. This witness has not stated that he had gone to Dehradun and in that process, delay took place.

31. What is important is that PW 7 SI Lakhan Singh in his statement at 2nd paragraph, page 2, states that they did receive the information in the night itself and the case was lodged in the morning. This is very important. This is also important that the place of the incident, which is the Mill premises, is at a distance of 1/2 km. from the Police Station Kashipur. Which information did PW 7 SI Lakhan Singh receive in the night of 22.09.2015 and where is that information? If the information was received in the night of 22.09.2015 itself, that could be treated as an FIR. Why that FIR has been concealed? Was it in writing or oral, recorded in general diary? Nothing has been explained. If according to PW 7 SI Lakhan Singh, the Investigating Officer, the information was received in the late night of 22.09.2015, why the case was lodged in the morning? These all factors were to be clarified by the prosecution. But, the prosecution has not been able to clarify these factors. It, in fact, doubts the prosecution case.

32. PW 3 Khemkaran has not supported the prosecution case. PW 1 Ram Avtar Singh, the informant, is not an eyewitness. The only evidence available is the statement of the injured PW 2 Vijay Pal Singh. His statement is inconsistent with the averments of the FIR, with regard to the genesis of the incident and the identification of the

appellant. According to PW 7 SI Lakhan Singh, police had received the information in the night of 22.09.2015 itself, but that information has not been placed. It is concealed. Was it a written information, oral information, recorded in general diary entry, etc.? Because, the information that was received at the police station on 22.09.2015 in the night could have been treated as FIR. The FIR was lodged after about 10 hours at police station, which is at a distance of about 1/2 km. from the place of incident. It is definitely delayed. These all circumstances definitely doubt the prosecution case.

33. In view of the discussions made above, this Court is of the view that the prosecution has not been able to prove the charge against the appellant under Section 307 IPC. Accordingly, the appeal deserves to be allowed and the impugned judgment and order deserves to be set aside.

34. The appeal is allowed.

35. The appellant is acquitted of the charge under Section 307 IPC.

36. The judgement and order dated 23.10.2019/04.11.2019 passed in Sessions Trial No. 17 of 2016, State v. Jalaluddin @ Manoj, by the court of First Additional District and Sessions Judge, Kashipur, District Udham Singh Nagar is modified to the extent indicated above.

37. The appellant is in jail. Let he be set free forthwith, if not wanted in any other case. He shall furnish personal bond and two sureties each of the like amount, to the satisfaction of the court

concerned under Section 437A of the Code within a period of one month from today.

38. Let a copy of this judgment along with lower court record be sent to the court concerned.

(Ashish Naithani, J.)
09.01.2026

(Ravindra Maithani, J)
09.01.2026

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