

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 454 of 2019

Deepak Singh Rawat Appellant

Vs.

State of Uttarakhand Respondent

Present:

Mr. Piyush Garg, Advocate for the appellant.
Mr. Pankaj Joshi, A.G.A. for the State.

with

Criminal Appeal No. 665 of 2019

Jony Sharma Appellant

Vs.

State of Uttarakhand Respondent

Present:

Mr. Navneet Kaushik, Advocate for the appellant.
Mr. Pankaj Joshi, A.G.A. for the State.

With

Criminal Appeal No. 666 of 2019

Vishal @ Jolly Appellant

Vs.

State of Uttarakhand Respondent

Present:

Mr. Navneet Kaushik, Advocate for the appellant.
Mr. Pankaj Joshi, A.G.A. for the State.

And

Criminal Appeal No. 576 of 2019

Surendra Singh alias Suri Appellant

Vs.

State of Uttarakhand Respondent

Present:

Mr. Navneet Kaushik, Advocate for the appellant.
Mr. Pankaj Joshi, A.G.A. for the State.

JUDGMENT

Coram: Hon'ble Ravindra Maithani, J.
Hon'ble Alok Mahra, J.

Per: Hon'ble Ravindra Maithani, J.

Since, all these appeals arise from common judgment and order, they are heard together and decided by this common judgment.

2. All these appeals are preferred against the judgment and order dated 31.08.2019/03.09.2019, passed in Sessions Trial No. 21 of 2015, State of Uttarakhand Vs. Deepak Rawat and others, by the court of Additional Sessions Judge, Kotdwar, Pauri Garhwal. By it, the appellants Vishal @ Jolly and Jony Sharma have been convicted under Section 302 IPC and sentenced to imprisonment for life with a fine of Rs. 1 lakh each and in default of payment of fine, to undergo imprisonment for a further period of one year. The appellants Deepak Rawat and Surendra Singh @ Suri were convicted under Section 302 read with 34 IPC and sentenced to imprisonment for line with a fine of Rs. 1 lakh each and in default of payment of fine, to undergo imprisonment for a further period of one year.

3. The appellant Surendra Singh @ Suri, died during the pendency of the appeal, therefore, appeal against him stands abated.

4. Briefly stated, according to the prosecution case, on 22.03.2015, at about 05:45 in the evening, 2-3 motorcycle borne assailants waylaid the deceased Sumit Patwal at Beladaat Crossing in Kotdwar, shot him dead from close range and ran away. The incident was witnessed by many nearby shopkeepers and others. The deceased was into the property dealing; therefore, he had enmity with certain persons. His mother PW1 Smt. Sateshwari Patwal lodged an FIR Ex.A1 at 12:30 midnight at Police Station Kotdwar, District Pauri Garhwal, based on which, Case Crime No. 29 of 2015, under Section 302 IPC was lodged at Police Station Kotdwar. PW1 Smt. Sateshwari Patwal also gave a text dated 04.02.2015, purportedly written by the deceased to the Station House Officer, Police Station Kotdwar, wherein, it was stated that the appellants Deepak Singh Rawat, Surendra Singh @ Suri and others had once waylaid him on 02.02.2014 and demanded money from him and threatened him to life. This text is Ex.A2. PW1 Smt. Sateshwari Devi also gave a communication to the Police, which is Ex. A3, which records that the shooters were seen alongwith the appellant Deepak Singh Rawat on a motorcycle Yamaha Fazer bearing Registration No. UK008P4959. The inquest of the deceased Sumit Patwal was conducted on 23.03.2015. the inquest report is Ex. A15. The post mortem was done on 23.03.2015. According to the post mortem report, the cause of death is due to brain injury as a result of firearm injuries. The doctor conducting post mortem had also taken out two bullets from the person of the deceased. They were handed over to the police. The statements of PW2 Ashish Rana and PW3 Ravindra Singh Negi were recorded under Section 164 of the Code of Criminal Procedure, 1973 ("the Code"). They are Ex. A5 and Ex. A6, respectively. According to the Police, after killing the deceased, the assailants came at roadways

bus stand, parked their motorcycle there and from there, they ran away on the motorcycle of the appellant Deepak Singh Rawat. The police took the CCTV footage into custody from the roadways bus stand Kotdwar. They got identification of the assailants done during investigation and prepared its memos, which are Ex. A4 and Ex. A39. The motorcycle which was parked by the assailants near roadways bus stand was also taken into custody.

5. It has also been the prosecution case that, in fact, the real shooters are appellants Jony Sharma and Vishal @ Jolly, who had stayed a few days before in one Paramount Hotel. They were shown the deceased by the appellant Deepak Singh Rawat. The police took into custody the visitors register from the Paramount Hotel.

6. According to the prosecution, on 27.03.2015, upon an information having been received, the appellant Surendra Singh @ Suri alongwith the appellants Jony Sharma and Vishal @ Jolly were apprehended. They confessed their guilt and the appellant Jony Sharma stated that after killing the deceased, he had kept the pistol in his rented room in Subhash Nagar. He had hid the weapon. According to the prosecution, the appellant Vishal @ Jolly had kept the country-made pistol in some bushes in Kotdwar. At the instance of the appellant Jony Sharma, a pistol was recovered from a rented accommodation of the appellant Jony Sharma in Subhash Nagar from the building of Sewa Ram. A recovery memo of arrest and recovery of pistol, Ex. A25 was prepared. Next day, at the instance of the appellant Vishal @ Jolly, a country-made pistol was recovered from an open place in Kotdwar. Recovery memo of it, Ex. A27 was also prepared. Those

recovered firearms were sent for forensic examination. The Investigating Officer prepared site plan. He also received Forensic Science Laboratory report. The result of examination is as follows:-

“Result of Examination:

“OPINION”

- i) The 7.65mm pistol cartridge marked 'L/1' was successfully test fired through the non-standard pistol marked 'A/1'. On test firing the non-standard pistol marked 'A/1' was found in working order and the 7.65mm pistol cartridge marked 'A/1' was found to be live.
- ii) Two .315"/8,, rifle cartridges from the stock of the laboratory were successfully test fired through the countrymade pistol marked 'A/2' was found in working order.
- iii) On thorough examination and comparison of individual characteristics marks present on crime and test fired cartridge cases under the comparison microscope, I came to the conclusion that the .315"/8mm rifle cartridge case marked 'C/1' and the 7.65mm pistol cartridge case marked 'C/2' had been fired through the countrymade pistol marked 'A/2' and non-standard pistol marked 'A/1' respectively and they could have not been fired through any other firearm because every firearm has its own individual characteristics marks.
- iv) On thorough examination and comparison of individual characteristics marks present on crime and test fired bullets under the comparison microscope, I came to the conclusion that the 7.65mm pistol bullet marked 'B/2' had been fired through the non standard pistol marked 'A/1' and it could have not been fired through any other firearm because every firearm has its own individual characteristic marks.
- v) It could not be possible to form any definite opinion regarding linkage of .315"/8mm rifle bullet marked 'B/1' with respect to the countrymade pistol marked 'A/2' due to lack of sufficient individual characteristic marks present on it."

7. After investigation, charge sheet was submitted against the appellants. On 16.12.2015, charge under Section 302 read with 34, 120B IPC were framed against the appellants and Surendra Singh @ Suri, to which, they denied and claimed trial.

8. It may be reiterated that since the appeal against the appellant Surendra Singh @ Suri has been abated, therefore, the evidence shall not be scrutinized *qua* Surendra Singh @ Suri.

9. In order to prove its case, the prosecution examined forty one witnesses.

10. After prosecution evidence, the appellants were examined under Section 313 of the Code. According to them, they have been falsely implicated. They did not commit any offence.

11. After hearing the parties, by the impugned judgment and order, the appellants have been convicted and sentenced, as stated hereinbefore. Aggrieved, the appellants have preferred these appeals.

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

13. Learned counsel for the appellant Deepak Singh Rawat submits that there is no evidence against the appellant; merely based on some CCTV footage, the appellant Deepak Singh Rawat has been convicted. But, he would submit that there is no certificate under Section 65B of the Indian Evidence Act, 1872 ("the Evidence Act") *qua* the electronic evidence and in view of the judgment in the case of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and others, (2020) 7 SCC 1, without certification under Section 65B of the Evidence Act, such electronic evidence may not be read into evidence. Learned counsel also submits that the appellant Deepak Singh Rawat has been acquitted under Section 120B IPC, whereas, he has been

convicted under Section 302 read with 34 IPC, which is not legally permissible. In support of his contention, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court, in the case of Vasant *alias* Girish Akbarasab Sanavale and another Vs. State of Karnataka, 2025 SCC OnLine SC 337.

14. In paras 51 and 53 of the judgment, in the case of Vasant (*supra*), the Hon'ble Supreme Court discussed the scope of Section 120B IPC and Section 34 IPC, as follows:-

“51. Participation of the individual offender in the criminal act in some form or the other which is the leading feature of Section 34, IPC differentiates it not only from Section 149, IPC, but also from other affiliated offences like criminal conspiracy and abetment. A bare agreement between two or more persons to do or cause to be done an illegal act might make a person liable for the offence of criminal conspiracy as defined in Section 120, IPC. If the said agreement is to commit offence, then such an agreement is by itself enough to make a man guilty and no overt act apart from the agreement would be necessary.

53. On the other hand, under Section 34, IPC, a mere agreement, although it might be a sufficient proof of the common intention, would be wholly insufficient to sustain a conviction with the application of Section 34, IPC, unless some criminal act is done in furtherance of the said common intention and the accused himself has in some way or the other participated in the commission of the said act.”

15. Learned counsel for the appellants Jony Sharma and Vishal @ Jolly submits that from the possession of the appellant Jony Sharma, according to the prosecution case, pistol was recovered. But, he submits that the recovery is beyond the disclosure statement and how the pistol is connected with the prosecution case, is not established by the prosecution. Recoveries from both, the appellants Jony Sharma and Vishal @ Jolly were made from an open place. Merely based on the recovery, conviction cannot be held. In support of

his contention, learned counsel has placed reliance in the case of Govind Vs. State of Haryana, 2025 SCC OnLine SC 2456 and Raja Khan Vs. State of Chattisgarh, (2025) 3SCC 314.

16. In the case of Govind (*supra*), it was argued that merely based on the recovery of pistol and the live cartridges, supported by FSL Report, the conviction is not justified. On this argument, the Hon'ble Supreme Court observed as follows:-

“17. In the present case, the alleged recovery was made from a place accessible to other family members, hence, the extent to which such recovery can be relied upon to establish the appellant's guilt requires careful scrutiny in light of judicial precedents. In this regard, we can profitably refer the judgment of this Court in the case of Jaikam Khan v. State of U.P.¹¹, wherein the conviction was based on recovery of knives from the accused, one from room and two from an open field, which were later found not relevant to connect the accused in commission of offence when such recoveries were from a place accessible to others and also from place of public use. The relevant portion of the said judgment is reproduced as under:

58. As already discussed hereinabove, since no public witness has been examined to support the said memo, the statement made therein will have to be scrutinised with greater caution and circumspection. All the statements made therein with regard to the confession of committing the crime would not be admissible in evidence. Only such information, which distinctly relates to the discovery of facts will be admissible under Section 27 of the Evidence Act, 1872 (hereinafter referred to as “the Evidence Act”). The evidence of PW 9 Brahmesh Kumar Yadav (IO) would reveal that immediately after the FIR was lodged, he had come to the spot of incident for further investigation. According to him, Accused 1, 3 and 4 were arrested at around 2.00 a.m. on 24-1-2014. Even according to him, the police party was very much there at the spot. One of the alleged recoveries is from the room where deceased Asgari used to sleep. The other two recoveries are from open field, just behind the house of deceased Shaukeen Khan i.e. the place of incident. It could thus be seen that the recoveries were made from the places,

which were accessible to one and all and as such, no reliance could be placed on such recoveries.

18. In *Manjunath v. State of Karnataka* (supra), this Court while dealing with the recovery from the place accessible to public or areas accessible to others observed that such recovery alone is not sufficient and it becomes suspicious. In the said case, eucalyptus sticks found from eucalyptus plantation and iron chains recovered from houses shared with other occupants were not found sufficient to prove the guilt and to bring home the charge of murder. The court in para 28 held as thus:

“28. As reflected from record, and in particular the testimony of PW-15 it is clear that the discoveries (stick as shown by A10, for instance) was a eucalyptus stick, found from the eucalyptus plantation, which indisputably, is a public place and was found a week later. A second and third stick purportedly found half kilometre away on that day itself, was found by a bush, once again, a place of public access. Two further sticks recovered at the instance A6 and A7, were also from public places. An iron chain produced from the house of A1 and A2, is not free from the possibility that any of the other occupants of their house were not responsible for it. We, further cannot lose sight of the fact that sticks, whether bamboo or otherwise, are commonplace objects in village life, and therefore, such objects, being hardly out of the ordinary, and that too discovered in places of public access, cannot be used to place the gauntlet of guilt on the accused persons.”

19. Similarly, in *Nikhil Chandra Mondal v. State of West Bengal*¹², the appellant was accused of murdering his wife with a bhojali (knife) which was found from an open place accessible to others. The Trial Court acquitted the accused though the High Court reversed the findings. While confirming the order of the Trial Court, this Court observed as under:

“20. The trial court disbelieved the recovery of clothes and weapon on two grounds. Firstly, that there was no memorandum statement as required under section 27 of the Evidence Act, 1872 and secondly, the recovery of the knife was from an open place accessible to one and all. We find that the approach adopted by the trial court was in accordance with law.....”

17. Further in para 23 of the judgment, the Hon'ble Supreme Court observed that **“though the FSL report indicates that the pistol and cartridges recovered correlate with the bullets found in the body of the deceased, such evidence by itself is not sufficient to establish the appellant's guilt in the absence of any proof that the recovered pistol was indeed used in the commission of the offence.”**

18. In the case of Raja Khan (*supra*), the Hon'ble Supreme Court discussed the evidence pertaining to the recovery and observed that **“the courts below were not justified in disregarding the glaring inconsistencies with respect to the recoveries.”** Further it was observed that **“the manner of recovery and preparation of seizure memos raises grave doubts about the version of disclosure and recovery put forth by the prosecution.”**

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

20. PW1 Smt. Sateshwari Devi is the informant. She is mother of the deceased. According to her, on 22.03.2015, she was in Delhi, wherein, she got an information that her son Sumit Patwal has been shot dead. Thereafter, she reached Kotdwar and lodged a report, Ex. A1. According to her, in her house, she found a letter written by the deceased to the police, before his death, on 04.02.2014. She gave this letter, Ex. A2 to the police and on the same day, she also gave another communication to the police, Ex. A3, which records that the shooter was seen with the appellant Deepak Singh Rawat on a motorcycle. According to her, the deceased was in the property dealing, therefore,

the appellant Deepak Singh Rawat was inimical to him and he, with the help of other appellants killed the deceased.

21. PW2 Ashish Rana, PW3 Ravindra Singh Negi, PW5 Pradeep Chamoli, PW6 Pradeep Lakhera, PW8 Prakash Chand, PW9 Mohan Khantwal, PW11 Yudhveer Singh, PW12 Suraj Kumar, PW13 Budhi Prakash, PW 14 Gaurav Bothiyal, PW17 Sanjay Gaur, PW18 Manwar Singh Chauhan, PW20 Ram Prakash, PW31 Satish Prasad, PW33 Jagmohan Singh, PW34 Sonu Kumar, PW37 Smt. Usha Dimri and PW39 Narendra Singh Rawat have not supported the prosecution case. They have been declared hostile and cross examined by the prosecution, although, these witnesses have identified their signatures on certain documents.

22. PW2 Ashish Rana has identified his signatures on Ex. A4. It is a memo written on 27.03.2015. According to which, PW2 Ashish Rana and PW3 Ravindra Singh Negi did identify the appellant Deepak Singh Rawat in the CCTV footage. But, PW2 Ashish Rana has said that he had declined to sign on it, but he was forced by Inspector Pramod Shah to sign on it. With regard to his statement recorded under Section 164 of the Code, this witness tells that police had asked him to give such statement. In his cross examination by the defence, PW2 Ashish Rana states that he had seen CCTV footage, but he did not identify anyone in it.

23. This is settled law that the statement of hostile witness can also be taken into consideration while reading the prosecution case. But, PW2 Ashish Rana, in no manner, supports or proves the prosecution case.

24. PW3 Ravindra Singh Rana is another witness of Ex. A4, the identification memo of the appellant Deepak Singh Rawat in CCTV footage. According to him, he was asked to sign on Ex. A4 without reading and he was forced to sign on it. With regard to his statement recorded under Section 164 of the Code, this witness tells that the police had asked him to speak before the Magistrate and accordingly, he had given his statement. He, in his cross examination by the defence, clearly speaks that under the threat of police, he deposed before the Magistrate. He denies having identified the appellant Deepak Singh Rawat in any CCTV footage. The statement of this witness also does not support the prosecution case.

25. PW4 Vijendra Chaudhary has totally denied the prosecution case. He was cross examined by the prosecution.

26. Similarly, PW5 Pradeep Chamoli, PW6 Pradeep Lakhera, PW8 Prakash Chand have also not supported the prosecution case. PW8 Prakash Chand has though proved his signatures on the recovery memo Exs. A9, A10 and A11, which are recovery memo of taking into custody plain and blood stained soil, recovery memo of cartridge case and recovery memo of two mobile phones from the place of incident, but, according to him, the cartridge case and mobile phones were not recovered in his presence.

27. PW9 Mohan Khantwal, PW11 Yudhveer Singh, PW12 Suraj Kumar, PW 13 Budhi Prakash, PW14 Gaurav Bothiyal, PW17 Sanjay Gaur, PW18 Manwar Singh Chauhan have also not supported the prosecution case. They have been cross examined by the

prosecution. There statements also, in no manner, support the prosecution case. PW18 Manwar Singh Chauhan has identified his signatures on Ex. A12, which is recovery memo of the CCTV footage. In fact, PW18 Manwar Singh Chauhan was working in the Uttarakhand Transport Corporation, Kotdwar Office, at the relevant time. According to him, once police had visited their office. Beyond it, this witness has not stated anything about the prosecution case. He simply says that when he signed Ex. A12, it was a blank paper. His statement also does not support the prosecution case.

28. PW20 Ram Prakash, PW31 Satish Prasad, PW33 Jagmohan Singh, PW34 Sonu Kumar, PW37 Smt. Usha Dimri and PW39 Narendra Singh Rawat have not supported the prosecution case to any extent.

29. PW7 Head Constable, Devi Lal has proved the chik FIR Ex. A7 and an extract of GD, by which the case was registered, Ex. A8. According to him, the FIR was lodged at 12:30 in the midnight. He denied the suggestion that PW1 Sateshwari Devi did reach at the police station in the morning.

30. PW10 Sanjeev Singh was working in the Uttarakhand Transport Corporation. According to him, on 24.03.2015, police had visited their office and had seen the CCTV footage of 22.03.2015 saying that some murder was committed, which is under investigation. According to this witness, he telephoned his senior officers and he alongwith PW18 Manwar Singh Chauhan, his colleague shown the CCTV footage to the police and the police prepared recovery memo of it, which is Ex. A12. It may be noted that according to PW18 Manwar

Singh Chauhan, he signed Ex. A12, when it was blank, whereas, according to PW10 Sanjeev Singh, police had prepared recovery memo Ex. A12.

31. PW15 Vivek Rathi was the Police Officer at the relevant time. According to him, PW11 Yudhveer Singh and PW12 Suraj Kumar had told him that near their shop, a motorcycle bearing Registration No. UK008P4959 was parked. Thereafter, this witness took the motorcycle into custody and prepared recovery memo Ex. A13. It may be noted that PW11 Yudhveer Singh and PW12 Suraj Kumar, both have identified their signatures on Ex. A13, but according to both of them, when they signed it, it was blank. According to PW15 Vivek Rathi, he also took into custody the CCTV footage from the roadways bus stand on 24.03.2015, of which recovery memo Ex. A12 was prepared by him. It may be noted that PW10 Sanjeev Singh has also stated that police had taken the CCTV footage into custody. But, as stated, PW18 Manwar Singh Chauhan has said that he had signed on a blank sheet, which was Ex. A12 signed by him. PW15 Vivek Rathi also tells that PW1 Smt. Sateshwari Devi had identified the appellant Deepak Singh Rawat in the CCTV footage. It may be noted that PW1 Smt. Sateshwari Devi has not stated about any identification of any CCTV footage.

32. PW16 Anup Barthwal runs a hotel in Kotdwar. He has stated about the visitors register maintained in the hotel, but he has not made any entry in that register.

33. PW19 Harish Chandra has stated about some land, which according to him, one Chandi Prasad wanted to sell to the deceased and Surender Singh @ Suri.

34. PW21 Dipendra Kala has identified his signatures on the inquest report Ex. A15.

35. PW22 Dr. Guman Singh Rana had conducted the post mortem of the deceased and had found two entry wounds as follows:-

“(1) Entry wound measuring 2x1.5cm x brain deep right side of face 06 cm laterally from the lateral angle of right eye with inverted margin the subcutaneous tissues round the wound of entrance are lacerated surrounding skin is scoured, blackened the adjacent hair are signed.

(2) Entry wound 2.5 x 2cm x chest cavity deep on the right side of chest 20 cm laterally from the right nipple and 18 cm below the right shoulder joint with inverted margin round the wound the wound of entrance are lacerated. Surrounding skin is scorched and blackened and the adjacent hair are signed.”

According to the Doctor, the cause of death was firearm injury on the brain.

36. PW23 Sub Inspector, Neeraj had recorded inquest Ex. A15 and had prepared documents for post mortem. According to him, on 24.03.2015, upon information having been received, they intercepted the appellants Vishal @ Jolly and Jony Sharma alongwith Surendra Singh @ Suri at 02:50 p.m., when they confessed that they had killed the deceased Sumit Patwal and the pistol was kept by Jony Sharma in his rented accommodation in Subhash Nagar, which was recovered on the same day. He has proved the recovery memo Ex. A25 and also proved the pistol Ex.2 and cartridges Exs. 4 and 5 alongwith magazine Ex. 3.

37. PW24 Sunil Kumar has stated about a mobile number and according to him mobile number was taken by the deceased Surendra Singh @ Suri by using his ID.

38. PW25 Ashwini Kumar has stated that Surendra Singh S/o Ganpat Singh had taken a sim from him on the ID of Sunil S/o Jagpal.

39. PW27 Narendra Singh Bisht and PW28 Girish Chandra Sharma are also police officers. They have corroborated the statement of PW23 Sub Inspector, Neeraj with regard to recovery made on 27.03.2015 and arrest of appellants Vishal @ Jolly and Jony Sharma.

40. PW26 Wasim has stated about some photographs, which are on record.

41. PW29 Sub Inspector Vijay Singh has corroborated the statement of PW23 Sub Inspector Neeraj with regard to the arrest of appellants Vishal @ Jolly and Jony Sharma on 27.03.2015 and recovery of the pistol. He has also stated that on 28.03.2015, at the instance of appellant Vishal @ Jolly, a country-made pistol was recovered from a vacant plot of Harendra Rawat. He proved its recovery memo Ex.A 27.

42. PW30 Sunil Singh Rawat has stated about the mobile number, which the appellant was holding and with the help of call details report, he has stated that the appellants were in touch, before and after the incident of killing.

43. PW32 Raj Darshan Singh is a witness of recovery memos Ex. A9, A10 and A11. He has stated about other recoveries made by

the police. He is also a witness of recovery of a country-made pistol made on 28.03.2015, at the instance of the appellant Vishal @ Jolly.

44. PW35 Surjeet Singh is the witness of identification of appellant Deepak Singh Rawat in the CCTV footage, which is Ex. A4. It may be noted that PW2 Ashish Rana and PW3 Ravindra Singh Negi have denied of having any identification made on that date. This witness PW35 Surjeet Singh tells that PW2 Ashish Rana and PW3 Ravindra Singh Negi had identified the appellant Deepak Singh Rawat in the CCTV footage.

45. PW36 Mohit Kumar tells that the motorcycle bearing Registration No. DL13HH0285 was a stolen motorcycle, of which an FIR was lodged.

46. PW38 Anil Kumar was owner of the motorcycle bearing Registration No. DL13HH0285. According to him, it was stolen and he had lodged an FIR.

47. PW40 Pramod Kumar Shah is the Investigating Officer. According to him, he had taken blood stained and plain soil and prepared recovery memo, Ex. A9. He had also taken into custody the cartridge case and prepared its recovery memo, Ex. A10. According to him, two mobile phones, which were left at the place of incident were taken into custody by Police Constable Sandeep Rathi and this witness took them into custody and prepared recovery memo, Ex. A11. He also states about Ex. A2, a letter purportedly written by the deceased to the police officer on 04.02.2014, of which photocopy was given to this witness by PW1 Sateshwari Devi. He also tells that Ex. A3, another

communication of PW1 Sateshwari Devi was given to him by PW1 Sateshwari Devi, in which it was recorded that shooters were seen with the appellant Deepak Singh Rawat, in the vicinity, on motorcycle bearing Registration No. UK008P4959. This witness also took into custody the CCTV footages and got their photographs prepared. He also proved various articles and documents. According to him, after investigation, he submitted charge sheet.

48. PW41 B.P. Singh, Senior Scientific Officer has proved the Forensic Science Laboratory report, Ex. A48. Its conclusion has already been stated hereinbefore.

49. In fact, according to the prosecution, witnesses had seen the appellants Vishal @ Jolly and Jony Sharma shooting the deceased and then moving from the place of incident on a motorcycle, which they parked near roadways bus stand, Kotdwar and from there, the appellant Deepak Singh Rawat took them on his motorcycle. The prosecution tried to produce eyewitnesses of the incident, but no witness has supported the prosecution case.

50. Second set of evidence, which the prosecution tried to adduce, is that, near the roadway bus stand Kotdwar, the appellants Vishal @ Jolly and Jony Sharma came on a motorcycle. They parked their motorcycle and from there, they drove away on the motorcycle driven by the appellant Deepak Singh Rawat. According to the prosecution, the CCTV footage was taken into custody from the roadways bus stand and the appellants were identified. One of the identification memo of it, is Ex. A4. But, PW2 Ashish Rana and PW3 Ravindra Singh Negi have categorically stated that they did not

identify the appellant Deepak Singh Rawat in the CCTV footage. According to them, they were forced to sign on Ex. A4. They did not read it even.

51. There is another CCTV identification memo, which is Ex. A39. According to it, PW1 Smt. Sateshwari Devi had identified the appellant Deepak Singh Rawat on a motorcycle Yamaha Fazer bearing Registration No. UK008P4959. But, PW1 Smt. Sateshwari Devi has not stated anything about Ex. A39.

52. With regard to the CCTV footages, admittedly, there is no certificate under Section 65B of the Evidence Act. In the impugned judgment, in paragraph 102 onwards, it is recorded that, in fact, the electronic evidence may be proved by secondary evidence and certificate under Section 65B of the Evidence Act is not required. But, fact remains, the law has further been clarified by the Hon'ble Supreme Court, in the case of Arjun Panditrao Khotkar (*supra*), and in paras 33, 36 and 37 of it, the Hon'ble Supreme Court observed as follows:-

“33. The non obstante clause in sub-section (1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65-B, which is a special provision in this behalf — Sections 62 to 65 being irrelevant for this purpose. However, Section 65-B(1) clearly differentiates between the “original” document — which would be the original “electronic record” contained in the “computer” in which the original information is first stored — and the computer output containing such information, which then may be treated as evidence of the contents of the “original” document. All this necessarily shows that Section 65-B differentiates between the original information contained in the “computer” itself and copies made therefrom — the former being primary evidence, and the latter being secondary evidence.

36. Despite the law so declared in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 :

(2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] , wherein this Court made it clear that the special provisions of Sections 65-A and 65-B of the Evidence Act are a complete code in themselves when it comes to admissibility of evidence of information contained in electronic records, and also that a written certificate under Section 65-B(4) is a sine qua non for admissibility of such evidence, a discordant note was soon struck in *Tomaso Bruno* [*Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] . In this judgment, another three-Judge Bench dealt with the admissibility of evidence in a criminal case in which CCTV footage was sought to be relied upon in evidence. The Court held : (*Tomaso Bruno* case [*Tomaso Bruno v. State of U.P.*, (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] , SCC pp. 191-92, paras 24-25)

“24. With the advancement of information technology, scientific temper in the individual and at the institutional level is to pervade the methods of investigation. With the increasing impact of technology in everyday life and as a result, the production of electronic evidence in cases has become relevant to establish the guilt of the accused or the liability of the defendant. Electronic documents *stricto sensu* are admitted as material evidence. With the amendment to the Evidence Act in 2000, Sections 65-A and 65-B were introduced into Chapter V relating to documentary evidence. Section 65-A provides that contents of electronic records may be admitted as evidence if the criteria provided in Section 65-B is complied with. The computer generated electronic records in evidence are admissible at a trial if proved in the manner specified by Section 65-B of the Evidence Act. Sub-section (1) of Section 65-B makes admissible as a document, paper printout of electronic records stored in optical or magnetic media produced by a computer, subject to the fulfilment of the conditions specified in sub-section (2) of Section 65-B. Secondary evidence of contents of document can also be led under Section 65 of the Evidence Act. PW 13 stated that he saw the full video recording of the fateful night in the CCTV camera, but he has not recorded the same in the case diary as nothing substantial to be adduced as evidence was present in it.

25. The production of scientific and electronic evidence in court as contemplated under Section 65-B of the Evidence Act is of great help to the investigating agency and also to the prosecution. The relevance of electronic evidence is also evident in the light of *Mohd. Ajmal Amir Kasab v. State of Maharashtra* [*Mohd. Ajmal Amir Kasab v. State of Maharashtra*, (2012) 9 SCC 1 : (2012) 3 SCC (Cri) 481] , wherein production of transcripts of internet transactions helped the prosecution case a great deal in proving the guilt of the accused. Similarly, in *State (NCT of Delhi) v. Navjot Sandhu* [*State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , the links between the slain terrorists and the masterminds of the attack were established only through phone call transcripts obtained from the mobile service providers.”

37. What is clear from this judgment is that the judgment of *Anvar P.V.* [*Anvar P.V. v. P.K. Basheer*, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] was not referred to at all. In fact, the judgment in *State (NCT of Delhi) v. Navjot Sandhu* [*State (NCT of Delhi) v. Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] was adverted to, which was a

judgment specifically overruled by Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] It may also be stated that Section 65-B(4) was also not at all adverted to by this judgment. Hence, the declaration of law in Tomaso Bruno [Tomaso Bruno v. State of U.P., (2015) 7 SCC 178 : (2015) 3 SCC (Cri) 54] following Navjot Sandhu [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] that secondary evidence of the contents of a document can also be led under Section 65 of the Evidence Act to make CCTV footage admissible would be in the teeth of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] and cannot be said to be a correct statement of the law. The said view is accordingly overruled.

53. And, finally, in para 46, the law laid down in the case of Shafhi Mohammad Vs. State of Haryana, (2018) 5 SCC 311 has been overruled as such. The Hon'ble Supreme Court observed as follows:-

“46. Resultantly, the judgment dated 3-4-2018 of a Division Bench of this Court reported as Shafhi Mohd. v. State of H.P. [Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311 : (2018) 2 SCC (Cri) 704] , in following the law incorrectly laid down in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801 : (2018) 2 SCC 807 : (2018) 2 SCC (Civ) 346 : (2018) 2 SCC (Civ) 351 : (2018) 1 SCC (Cri) 860 : (2018) 1 SCC (Cri) 865] , must also be, and is hereby, overruled.”

54. Admittedly, in the instant case, certificate under Section 65B of the Evidence Act has not been prepared or proved by the prosecution. In absence of that certificate, the secondary evidence of any electronic evidence, like CCTV footage cannot be read into evidence. Therefore, the CCTV footages, which have been tried to be proved by the prosecution cannot be read into evidence. In fact, as stated, in the CCTV footages, the appellants were seen, even it has not been established. PW2 Ashish Rana and PW3 Ravindra Singh Negi, who allegedly identified the appellant Deepak Singh Rawat on the motorcycle, as recorded in the recovery memo Ex. A4, have denied having identified the appellant Deepak Singh Rawat. Similarly, in Ex.

A39, it is recorded that PW1 Smt. Sateshwari Devi did identify the appellant Deepak Singh Rawat. But, Smt. Sateshwari Devi has not stated about it in her statement.

55. Moreover, the CCTV footages that have been tried to be proved by the prosecution are not of the actual incident. According to the prosecution, it only shows that two persons came on the motorcycle and parked it at the roadways bus stand and from there, they ran away on a motorcycle driven by the appellant Deepak Singh Rawat. Without any connecting evidence, even if, such evidence is read at all, it does not help the prosecution case. As stated, there is no eyewitness of the incident. There is no evidence suggesting that it is the appellant Vishal @ Jolly or Jony Sharma, who fired at the deceased. Therefore, this Court concludes that CCTV footage evidence is not admissible. Even otherwise, it does not help the prosecution at all.

56. In order to prove enmity between the deceased and the appellants Deepak Singh Rawat and Surendra Singh @ Suri, the prosecution has relied on Ex.A2, which has been proved by PW1 Smt. Sateshwari Devi, the informant. According to PW1 Smt. Sateshwari Devi, after lodging of the FIR, when she came to her house, she found a photocopy of the communication signed by the deceased Sumit Patwal addressed to the Station House Officer, Police Station Kotdwar, which she proved as Ex.A2. In page 4, top paragraph of her statement, PW1 Smt. Sateshwari Devi has stated that Ex.A2 is a photocopy. It is not in the handwriting of the deceased Sumit Patwal, but it is signed by him.

57. The question is, can it be read to establish enmity, as held in the impugned judgment in para 86? Mere proving of signature does not prove the contents of the document. Mere signature of the deceased on the photocopied document cannot prove its contents. Contents are otherwise to be proved. In the instant case, the contents, Ex. A-2 are not proved. It is a photocopy document. Though, it records that the appellant Deepak Singh Rawat and others did threaten the deceased on 02.02.2014. But, mere identification of signature on this document, as stated, does not prove its contents. Therefore, based on Ex. A2, it cannot be said that there was any enmity between the deceased and the appellants or any of them.

58. The prosecution witnesses have stated that on 27.03.2015, the appellants Vishal @ Jolly and Jony Sharma were apprehended and at the instance of the appellant Jony Sharma, a pistol was recovered from the roof top of the house of Sewa Ram.

59. Arguments have been made that alleged recovery is beyond the scope of Section 27 of the Evidence Act.

60. PW23 Sub Inspector Neeraj has stated about the arrest of the appellants Vishal @ Jolly and Jony Sharma on 27.03.2015 and at their instance, recovery of pistol from the building owned by Sewa Ram. He has proved the recovery memo Ex. A25. The disclosure statement, which is recorded in it, reveals that on interrogation, the appellant Jony Sharma had stated that the pistol by which he shot the deceased has been concealed by him in a rented room in Subhash Nagar. But, fact remains that when the police proceeded to recover, they record that they visited the rented room of the appellant Jony

Sharma at Gali No.8, in the building of Sewa Ram and from the roof top of double storey house, from below bricks a pistol and cartridges were recovered. Definitely, the recovery is beyond what was disclosed. According to the recovery memo Ex. A25, on interrogation, the appellant Jony Sharma had revealed that he had concealed the pistol in his rented room in Subhash Nagar. He had not stated that he had kept the pistol on the roof top of his rented house in Gali No. 8, Subhash Nagar owned by Sewa Ram. How these further details were recorded in the recovery memo Ex.A25? It is not clear. Witnesses have not explained it. Admittedly, the house owner Sewa Ram is not the witness and there is no other independent witness of the locality. The recovery was made from an open place.

61. There is another recovery with regard to recovery of a country-made pistol from an open plot at the instance of the appellant Vishal @ Jolly, as stated by PW29 Vijay Singh. This is also a recovery from an open place. There is no evidence to suggest that the appellant Vishal @ Jolly or Jony Sharma had any actual control of the place from where the weapons were allegedly recovered.

62. It is the prosecution case that from the dead body of the deceased two bullets were recovered and they were handed over to the police. The post mortem report, Ex. A19, records two entry wounds and at page 2, it records that from entry wound no.1 a bullet about 1.5 cm was obtained. It did not disclose as to from where another bullet was obtained. But then, two bullets were handed over to the police. From where two bullets were recovered? PW22 Dr. Guman Singh Rana has not stated about two bullets handed over by him to the police.

63. The Forensic Science Laboratory report has been proved by PW41. According to it, Constable Omveer Singh Bisht took those articles for forensic examination, which had the seal of CJM, Pauri Garhwal. The question is as to where the bullets were kept after they were handed over by the doctor to the police? When were those bullets produced before the Magistrate? When they were forwarded to the Forensic Science Laboratory and who forwarded it? Whether the recovered bullets were forwarded to the Magistrate for forensic examination or not? The carrier of those articles to Forensic Science Laboratory Constable Omveer Singh Bisht has not been examined. No GD entry has been proved to reveal the complete chain of safe custody of the bullets after their extraction from the dead body till they were produced before the Magistrate. Therefore, the forensic report does not help the prosecution.

64. The recovery of firearms was made from an open place. The allegedly recovered weapons are not connected with the offence. The CCTV footages cannot be read into evidence. Even identification of the appellants has not been done. There is no evidence of actual shooting, whatsoever, in terms of eyewitness or any other manner.

65. In view of the foregoing discussion, this Court is of the view that the chain of events, in this case is not complete. Prosecution has not been able to prove the charge leveled against the appellants Vishal @ Jolly, Jony Sharma and Deepak Singh Rawat and these appellants ought to have been acquitted of the charges. Learned court below committed an error in convicting and sentencing them. Therefore, the appeals deserve to be allowed.

66. The appeals are allowed.

67. The judgment and order dated 31.08.2019/03.09.2019, passed in Sessions Trial No. 21 of 2015, State of Uttarakhand Vs. Deepak Rawat and others, by the court of Additional Sessions Judge, Kotdwar, Pauri Garhwal, is set aside.

68. The appellants Vishal @ Jolly and Jony Sharma are acquitted of the charge under Section 302 IPC and the appellant Deepak Singh Rawat is acquitted of the charge under Section 302 read with 34 IPC.

69. Appellants are in jail. Let they be released forthwith, if not wanted in any other case, subject to their furnishing personal bonds and two sureties each of the like amount to the satisfaction of the court concerned under Section 437 A of the Code.

70. Let a copy of this judgment be sent to learned court below along with the original records.

(Alok Mahra, J.)

(Ravindra Maithani, J.)

07.01.2026

Jitendra