

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.110 of 2007

Azam

.....Appellant

Versus

State of Uttarakhand

.....Respondent

Mr. Mohd. Alauddin, learned counsel for the appellant through V.C.

Mr. Vipul Painuly, learned Brief Holder for the State.

Mr. Mohd. Safdar, learned counsel for the informant.

Judgment reserved on 03.03.2025

Judgment delivered on 07.05.2025

Hon'ble Pankaj Purohit, J. (Oral)

This appeal is preferred by the appellant under Section 374 (2) against the judgment and order dated 26.03.2007 passed by the learned Additional Sessions Judge, Roorkee, District Haridwar in Sessions Trial No.44 of 2006 & Sessions Trial No.45 of 2006, State vs. Azam, whereby, the accused appellant has been convicted under Section 307 IPC and Section 25 of the Arms Act, 1959 (“the Act”) respectively and was sentenced to undergo 7 years rigorous imprisonment with fine of Rs.50,000/- with default stipulation of additional 1.5 years rigorous imprisonment under Section 307 IPC & 1 year rigorous imprisonment with fine of Rs.2,000/- with default stipulation of additional 6 months rigorous imprisonment under Section 25 of the Act. Both the sentences were directed to run concurrently. The learned Additional Sessions Judge awarded Rs.40,000/- as compensation to the victim.

2. In brief, the prosecution case is that on 23.11.2005

at around 4:00 P.M., the daughter (Kumari Naila) of complainant (Safdar Khalil) was standing at the terrace of his neighbour (Liaqat) talking to her friend Aarti. Finding an opportunity one Mr. Aajam S/o Liaqat shot her with country made pistol and fled away.

3. On the basis of above facts, an FIR was lodged by the informant (PW 1) in P.S. Gang Nahar, District Haridwar. Due sanction of District Magistrate was taken to register a case under Section 25 of the Arms Act and after investigation, two separate charge-sheets were filed by the Investigating Officer under Section 307 IPC and Section 25 of the Act. As both the charge-sheets were related to the same incident. The learned trial court undertook a joint trial, after consolidating both the cases.

4. Thereafter, learned Additional Sessions Judge, Haridwar on 12.04.2006 framed charges under Section 307 IPC and Section 25 of the Arms Act. The charges were read over and explained to the accused, who pleaded not guilty and claimed to be tried.

5. To prove its case, the prosecution has examined PW1 Safdar Khalil (the complainant), PW2 Naila Parveen (the victim), PW3 Toshif, PW4 Dr. Hemant Gupta, PW5 Dr. Ajay Mohan Agarwal, PW6 Constable Arvind Singh, PW7 H.C.P. Rohitash Singh, PW8 S.H.O. M.S. Bisht.

6. After prosecution evidence, the statement of appellant was recorded under Section 313 Cr.P.C., in which,

he denied the evidence of prosecution and stated that he has been falsely implicated by the police. He further stated that he was not there in the village on the alleged dated of incident.

7. After hearing the public prosecutor as well as the appellant accused, the trial court found the charges proved against the appellant beyond all reasonable doubts and convicted and sentenced him, accordingly as stated above.

8. During trial, PW1 reiterated the facts of prosecution story and supported it. He on oath deposed that the victim is his daughter and on the fateful day at around 4:00 PM, she was standing on the terrace and talking to her friend Aarti when the accused/appellant shot her from behind. He further deposed that on hearing the gunshot he alongwith his son and neighbour rushed to the spot where they found that Naila was lying in a pool of blood and the accused was rushing down with a country made pistol in his hand. He further stated that when they tried to catch hold the accused he threatened them by showing the pistol and ran away. Thereafter, PW1 stated that he took the victim to nearby Government Hospital. On his cross examination, he denied any sort of romantic relationship between his daughter and the accused. He also stated that he reached the place of incident after 5-10 minutes of hearing the gunshot and found his daughter in pool of blood. He further explained that they took the victim to Dr. Hemant Gupta and not to Government Hospital as surgeon was not available there. He denied any sort of financial transaction between him and the accused.

9. PW2, who is the victim, on oath, deposed that on the alleged date of incident, the accused approached her carrying a pistol and stated that “I am roaming behind you for so many years and now you are denying marriage with me”, and shot her near waist with the intention of killing her. She further deposed that on hearing the gunshot her family members reached there and on watching them the accused ran away. She was subjected to intense cross examination in which she narrated the entire story as to what had transpired on that day. Her veracity could not be shaken by the defence.

10. PW3, who is the brother of the victim, in his examination-in-chief stated that on hearing the gunshot we rushed to the alleged spot where we found that my sister was shot and blood was oozing out from her. He further deposed that when they tried to catch hold the accused/appellant he threatened them with pistol and ran away. In his cross examination, he deposed that he was not at the place of incident and reached there after 4-5 minutes after hearing the gunshot.

11. PW4 and 5, are the doctors who attended the victim. They on oath stated that the victim was brought to them and on examination they found that she was suffering from gunshot injury which they reported to the nearby police station. On cross examination, they proved the medical report prepared by them as Exhibit- Ka 2 and Exhibit -Ka 3.

12. PW6 Constable Arvind on oath deposed that on that fateful day he was on night duty along with S.H.O. S.S.

Bisht and other police personnel. He further deposed that he got a tip that a person accused of shooting a girl was trying to sneak away and was currently standing at Rampur Chungi. He further stated that he along with other police personnel caught hold of the accused on the basis of above tip and found a country made pistol in his possession.

13. PW7 and PW8 are Investigating Officer of offences punishable under Section 25 of the Arms Act and 307 IPC respectively. They fully supported the prosecution story during trial. They deposed regarding the veracity of charge-sheet, site plan, FIR, Arrest Memo, Recovery Memo. Both the witnesses were elaborately cross examined and their veracity could not be shaken.

14. It is vehemently argued by learned counsel for the appellant that learned court below committed grave irregularity by convicting the accused appellant as the prosecution failed to prove its case beyond all reasonable doubts. He further stated that the prosecution story is highly improbable and unbelievable as the prosecution failed to prove any motive against the accused appellant.

15. It is also submitted by the learned counsel for the appellant that Aarti who was the independent eye-witness was not examined and the conviction is based on testimony of the witnesses who themselves admitted that they reached the spot of the alleged incident after a delay of 5-10 minutes. He also submitted that this prosecution was launched as the victim's father owed some money to the accused/appellant

and he wanted to escape the liability. He further raised doubts on the medical reports as they were prepared by private hospital and not by government hospital.

16. Per contra, learned State Counsel supported the case of prosecution and the impugned judgment contending that the evidence of the victim and other prosecution witnesses remained consistent and unshaken throughout the trial and no material contradiction could be elicited even on lengthy cross examination of the victim as well as other prosecution witnesses. He further submitted that the conviction can be sustained on the basis of uncontroverted evidence of the injured witness.

17. I have heard the learned counsel for the parties and perused the trial court's record very carefully. The victim was examined as PW2 by the prosecution and she has given a very natural and candid version of the occurrence in her evidence. She has fully supported the prosecution story and there is no material contradiction in her statements. Moreover, she being a injured witness greater credence is given to her testimony as held by various judgments of Hon'ble Supreme Court including ***Balu Sudam Khalde and Anr. Vs. State of Maharastra*** (2023 SCC OnLine SC 355) in para 26 which is reproduced as under:-

“When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:

(a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

(b) Unless, it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

18. So far as the arguments advanced by learned counsel regarding non examination in government hospital is concerned it is well explained by PW1 that because of non availability of surgeon in government hospital PW 2 was taken to private doctor and was therefore admitted in private hospital.

19. So far as the contention of learned counsel for the appellant regarding false implication on account of some money transaction between victim's father and appellant is concerned, there is nothing on record except bald suggestions.

20. As regards, the contention of learned counsel for the appellant, non examination of Aarti as PW, this can be overlooked particularly in a country like India where people are reluctant to visit courts as witnesses. Moreover, uncontradicted testimony of other prosecution witnesses go on to prove the case of prosecution beyond all reasonable doubt. Thus, there is no cogent reason to interfere with a well reasoned judgment and order impugned in present appeal.

21. As a result, the appeal preferred by the appellant being bereft of any merit is dismissed. The judgment and order under challenge is accordingly affirmed. The appellant is on bail. His bail bonds are cancelled and sureties are discharged. He shall surrender immediately to serve out the sentence.

22. Let the TCR be immediately sent to lower court for consignment.

(Pankaj Purohit, J.)
07.05.2025

Ravi