

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Jail Appeal No. 414 of 2007

Harish Pandey Appellant

Versus

State of Uttarakhand Respondent

Present: Mr. M.S. Chauhan, Amicus curiae, for the appellant.
Mr. A.S. Gill, Government Advocate for the State/respondent.

**Coram: Hon'ble Barin Ghosh, C.J.
Hon'ble Alok Singh, J.**

BARIN GHOSH, C.J. (Oral)

Ajai Kumar Goel (PW10) reported the local Police Station that he has heard the sound of a gunshot coming from the house of the victim. This information prompted the Police to arrive at the residence of the victim. Victim was found lying unconscious with a gunshot injury. She was taken to the hospital, where she succumbed to her injury. Post-mortem was conducted, which suggested that the victim died because of ante-mortem gunshot injury. The First Information Report, in the instant case, was registered on the basis of information orally supplied by the 13-year-old son of the victim, Amit (PW3). In the First Information Report, it was recorded that it was the appellant, who fired upon the victim. A 12 bore cartridge was found from the place of occurrence. Appellant was arrested and from his possession, a country made pistol was recovered, whereafter another FIR was lodged under Section 25 of the Arms Act. The recovered 12 bore cartridge as well as the recovered country made pistol were sent for examination to FSL, Dehradun, who reported that the recovered cartridge was used by the recovered country made pistol. PW3, in course of tendering evidence, stated that it was the appellant, who fired upon the victim. The said ocular statement was corroborated by scientific evidence. PW3 also furnished the reason for firing. He

stated that the victim, he and his younger brother used to reside together and in their house the appellant used to frequent. He stated that appellant used to consume liquor with the victim. He stated that the appellant used to insist upon the victim to call the daughter of the victim, who was then about 19 years old and had been married of, but the victim refused to accede to such request. He stated that on the fateful day, appellant also insisted for the same and since the victim refused, appellant fired upon the victim. It was stated by him that while the country made pistol was fired, the barrel thereof was pressed on the cheek of the victim. The post-mortem report supported the said contention. Having regard to the nature of evidence, as was brought on record by the prosecution, in the instant case, there was no scope of holding that the prosecution has failed to establish the charge, as was framed against the appellant.

2. We, accordingly, hold that the court below has rightly convicted the appellant. The appeal fails and the same is dismissed.

3. Let a copy of this judgment be sent to the court below alongwith lower court records.

(Alok Singh, J.)
28.02.2013

(Barin Ghosh, C.J.)
28.02.2013