

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Appeal No. 24 of 2015**

Narendra ..... Appellant

Vs.

State of Uttarakhand ....Respondent

Present:

Mr. Lalit Sharma, Advocate for the appellant.  
Mr. B.N. Molekhi, D.A.G. for the State.

with

**Criminal Appeal No. 25 of 2015**

Pappu Gujjar ..... Appellant

Vs.

State of Uttarakhand ....Respondent

Present:

Mr. Lalit Sharma, Advocate for the appellant.  
Mr. B.M. Molekhi, D.A.G. for the State.

With

**Criminal Appeal No. 43 of 2015**

Praveen Balmiki ..... Appellant

Vs.

State of Uttarakhand ....Respondent

Present:

Mr. Shiv Bhatt, Advocate for the appellant.  
Mr. B.M. Molekhi, D.A.G. for the State.

with

**Criminal Appeal No. 44 of 2015**

Praveen Balmiki ..... Appellant

Vs.

State of Uttarakhand ....Respondent

Present:

Mr. Shiv Bhatt, Advocate for the appellant.  
Mr. B.M. Molekhi, D.A.G. for the State.

And

**Government Appeal No. 53 of 2019**

State of Uttarakhand .... Appellant

Vs.

Susheel ....Respondent

Present:

Mr. B.M. Molekhi, D.A.G. for the State/appellant.  
Mr. Bharat Chaudhary, Advocate for the respondent.

**JUDGMENT**

**Coram: Hon'ble Ravindra Maithani, J.**  
**Hon'ble Siddhartha Sah, J.**

**Hon'ble Ravindra Maithani, J. (Oral)**

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

2. In Criminal Appeal No. 24 of 2015, filed by the appellant Narendra, in Criminal Appeal No. 25 of 2015, filed by the appellant Pappu Gujjar and in Criminal Appeal No. 44 of 2015, filed by the appellant Praveen Balmiki, the challenge is made to the judgment and order dated 18.12.2014 passed in Sessions Trial No. 335 of 2008, State v. Praveen and others, by the court of Additional District and Sessions Judge, Laksar, District Haridwar. By it, the appellants Narendra, Pappu Gujjar and Praveen Balmiki have been convicted under Sections 302 read with 34, 307 read with 34, 302 read with 120B & 504 IPC and sentenced as hereunder:-

- (i) Under Section 302 read with 34 IPC –life imprisonment with a fine of Rs.10,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of three months.
- (ii) Under Section 307 read with 34 IPC –rigorous imprisonment for a period of seven years with a fine of Rs.10,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of three months.
- (iii) Under Section 302 read with 120B IPC –life imprisonment with a fine of Rs.5,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of two and a half months.
- (iv) Under Section 504 IPC –rigorous imprisonment for a period of two years with a fine of Rs. 1,000/- each. In default of payment of fine, to undergo simple imprisonment for a period of one month.

3. Criminal Appeal No. 43 of 2015 has been preferred by the appellant Praveen Balmiki challenging the judgment and order dated 18.12.2014, passed in Sessions Trial No. 336 of 2008, State Vs. Praveen Balmiki, by the court of Additional District and Sessions Judge, Laksar, District Haridwar. By it, the appellant has been convicted under Section 25 of the Arms Act, 1959 (“the Arms Act”) and sentenced to undergo rigorous imprisonment for a period of two years with a fine of Rs.500/- and in default of payment of fine, to undergo simple imprisonment for a further period of 15 days.

4. State has preferred Government Appeal No. 53 of 2019, against the judgment and order dated 29.09.2018, passed in Sessions

Trial No. 335A of 2008, State Vs. Susheel, by the court of Additional Sessions Judge, Laksar, District Haridwar. By it, the respondent Susheel has been acquitted of the charge under Sections 302 read with 34, 307 read with 34, 302 read with 120-B and 504 IPC.

5. Facts necessary to appreciate the controversy, briefly stated, are as follows. On 08.05.2008, at 07.45 in the morning, PW1 Atul lodged an FIR at Police Station Kotwali Laksar, District Haridwar. According to it, in the month of July, 2005, his father was killed and in that matter, Vimla Devi, the grand-mother of PW1 Atul had lodged a report against Gyan Singh, Punjab and Susheel. Two persons in that matter were not known. Those names came into light subsequently. These named persons were pressurizing PW1 Atul and his family members so as to compromise the case. A few months before the incident, the respondent Susheel had threatened Vimla Devi to life in case compromise is not done. On 08.05.2008, when PW1 Atul, PW2 Ashish Kumar and their grand-mother were proceeding on a motorcycle, they were followed by Gyan Singh and Punjab Singh of their village, on one motor cycle and by Dilshad and Irshad (of Mangalore) and another person in another motor cycle. They opened fire, due to which, Vimla Devi died on the spot. PW1 Atul also sustained injuries. They somehow managed to escape, but they were chased by the accused, who further opened fire on them. Based on this FIR, Case Crime No. 125 of 2008, under Sections 147, 148, 149, 307, 302, 506, 34 IPC was lodged against the named persons i.e. Gyan Singh, Punjab Singh, Dishad, Irshad and Susheel, and investigation proceeded in the case.

6. The prosecution case, took a sudden turn. On 09.05.2008, when PW1 Atul was interrogated by the Investigating Officer ("IO"), he

said that the assailants were some other persons, whom he could identify by their faces, but he does not know their names. Again, on 18.05.2008, it is PW1 Atul, who according to the prosecution informed the police about the presence of the appellant Praveen Balmiki and others. The police proceeded at the spot and noticed a Pulsar motorcycle approaching them from the opposite side. The motorcycle rider sensing fear took a turn and in that process he fell down. The pillion riders, who were two in number, managed to escape, but appellant Praveen Balmiki was apprehended and from his possession, a country-made pistol and cartridges were recovered. He revealed that the persons who managed to escape were the appellant Narendra and one Amit @ Sonu. At the spot only, the recovery memo Ex. A11 was prepared.

7. According to the prosecution, the appellant Praveen Balmiki confessed his guilt and said that at the behest of the respondent Susheel, he alongwith the appellant Narendra and one Amit killed Vimla Devi on 08.05.2008 and the appellant Pappu was also part of the plot, who helped them. His confession was allegedly recorded, which is Ex. A13. Further, at the instance of the appellant Praveen Balmiki, on the same day, two cartridge cases were also recovered, of which recovery memo Ex. A15 was also prepared. Based on the confessions, according to the prosecution, the appellant Pappu Gujjar was also apprehended and from his possession also, a country-made pistol was recovered, of which recovery memo is Ex. A17. On 29.06.2008, as per prosecution, the appellant Narendra was also apprehended and from his possession, a country-made pistol was recovered of which, recovery memo Ex. A 20 was prepared and at the instance of the appellant Narendra, two cartridge cases were also recovered of which recovery memo Ex. A21 was further prepared. The

IO prepared the site plan of the place of incident, which is Ex. A12. Site plans pertaining to the recoveries of firearms, cartridges and cartridge cases were separately proved, which are Exs. A22, A23, A24, A25 and A26.

8. After investigation, charge sheet was submitted against all the appellants and respondent Susheel, which was the basis of Sessions Trial No. 335 of 2008. Separate charge sheet was submitted under Section 25 of the Arms Act, against the appellant Praveen Balmiki, which is the basis of Sessions Trial No. 336 of 2008. Both these Sessions Trials were tried together, but at the stage of recording statements under Section 313 of the Code of Criminal Procedure, 1973 ("the Code") on 27.11.2014, the appellant Susheel remained absent. Therefore, his trial was separated. Sessions Trial Nos. 335 of 2008 and 336 of 2008 were decided on 18.12.2014 by the court of Additional District and Sessions Judge, Laksar, Haridwar, by which the appellants Praveen, Narendra and Pappu Gujjar were convicted and sentenced as stated hereinbefore. The appellant Praveen Balmiki was also convicted and sentenced under Section 25 of the Arms Act. The appellants have challenged it before the court.

9. In the separate trial against the respondent Susheel, which was registered as Sessions Trial No. 335A of 2008, State v. Susheel, in the court of Additional Sessions Judge, Laksar, District Haridwar, judgment was delivered on 29.09.2018 and he was acquitted of the charge under Sections 302 read with 34, 307 read with 34, 302 read with 120B and 504 IPC. State has chosen to prefer an appeal against the acquittal of the respondent Susheel.

10. In order to prove its case, the prosecution examined ten witnesses, namely, PW1 Atul, PW2 Ashish Kumar, PW3 Arun Kumar, PW4 Om Pal, PW5 Dr. Mange Ram Malik, PW6 Dr. Anil Kumar Verma, PW7 Sub Inspector, Rakesh Chand Bhatt, PW8 Jaipal Singh, PW9 Kaushal and PW10 Inspector, B.S. Chauhan. In their defence, the appellants got examined Bobby as DW 1.

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

12. After hearing the parties, by the impugned judgment and order dated 18.12.2014 passed in Sessions Trial Nos. 335 and 336 of 2008, the appellants Praveen Balmiki, Pappu Gujjar and Narendra have been convicted and sentenced, as stated hereinbefore, which is impugned before this Court. Respondent Susheel has been acquitted on 29.09.2018, by the impugned judgment and order passed in Sessions Trial No. 335A of 2008 by the court of Additional District and Sessions Judge, Laksar, Haridwar. State has challenged the acquittal. It may be noted that prosecution evidence in Sessions Trial Nos. 335, 336 and 335A of 2008 is one and the same.

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

14. Learned counsel for the appellant Praveen Balmiki submits that entire prosecution case is false. There are five named persons in the FIR, who were known to PW1 Atul, the informant. They were not proceeded with, instead the appellants have been roped in

the case without any basis. He submit that if PW1 Atul knew the named persons how could his subsequent statement be held reliable by which he has named the appellants and the respondent Susheel as the assailants who shot his grand-mother dead on 08.05.2008 and in the incident he was also injured. He also raised the following points in his submissions:-

- (i) There was no blood on the clothes of the deceased or any of the witnesses which doubts the prosecution case.
- (ii) The injuries on the person of the deceased are on her left side, whereas, according to the prosecution case, the fire was shot from the right side of the deceased when she was going on the motorcycle. It is argued that it also doubts the prosecution case.
- (iii) Appellant Praveen Balmiki was arrested on 10.05.2008. He was kept in the lockup. His family members did lodge report also and then he was falsely shown to have been arrested on 18.05.2008 with a country-made pistol, etc.

15. Learned counsel for the appellant Narendra submits that he has been implicated merely based on confession made by the appellant Praveen Balmiki. The recovery has been falsely shown on him. Even he has not been charged with offence under Section 25 of the Arms Act. He has not been convicted thereunder. Referring to the statement of PW10 Inspector, B.S. Chauhan, learned counsel submits that according to the IO, PW1 Atul and PW2 Ashish Kumar did not name the appellant Narendra. It was revealed to him, by one Sansar, but that Sansar has not been examined as a witness. No test identification parade was done. Hence, it is argued that the

prosecution has not been able to prove its case beyond reasonable doubt.

16. Learned counsel appearing for the appellant Pappu Gujjar submits that there is no evidence against the appellant Pappu Gujjar. A country-made pistol has been shown to have been recovered from him on 24.05.2008, but the appellant Pappu Gujjar has not been charged for the offence under Section 25 of the Arms Act. He submits that there is no evidence against him.

17. Learned State counsel submits that the acquittal of the respondent Susheel in Sessions Trial No. 335A of 2008 is bad in the eyes of law. He submits that in the case of killing of the father of PW1 Atul, the respondent Susheel was an accused. He was in jail. He was extending threats to the family members of PW1 Atul and PW2 Ashish Kumar. Witnesses have stated about it. There have been call details which have been noted by PW10 B.S. Chauhan, IO, which proves that they wanted to eliminate Vimla Devi, the grand-mother of PW1 Atul. He submits that the co-accused had confessed their guilt.

18. Learned counsel for the respondent Susheel submits that there is no evidence against the respondent Susheel.

19. Before the arguments are appreciated, it would be apt to examine as to what the witnesses have stated. PW1 Atul is the informant. He is an alleged eyewitness of the incident. According to him, on 08.05.2008 at 6:30 in the morning, he alongwith PW2 Ashish Kumar, his brother and his grand-mother Late Smt. Vimla Devi were proceeding towards court in order to give evidence in the case of killing of his father. When they came outside the village, the appellants Praveen Balmiki, Narendra and one Amit Goswami met them on a motorcycle. But, this witness did not give any

attention to them and they proceeded further. When they reached near Kharanja Kutubpur graveyard, the appellants Praveen Balmiki and Narendra alongwith Amit Goswami approached them from behind, abused them and suddenly opened fire at his grand-mother, due to which she was hit on her stomach. All these three assailants ran away from the spot. This witness tried to turn his motorcycle back to the village, but it fell down. Meanwhile, the appellants Praveen Balmiki and Narendra alongwith Amit Goswami returned and again opened fire, which hit on the head of the deceased Vimla Devi and she died on the spot. According to this witness, he could identify the registration number of the motorcycle which is UP17-9155. This witness has proved the FIR, which is Ex. A1. According to him, after the incident, the police had reached at the spot and had sent the dead body for post mortem. This witness did sustain injury. He was examined at the Government Hospital.

20. PW2 Ashish Kumar has also corroborated the statement of PW1 Atul. They both are brothers.

21. PW3 Arun Kumar and PW4 Om Pal are witnesses of inquest.

22. PW5 Dr. Mange Ram Malik conducted post mortem of the deceased Vimla Devi on 08.05.2008 at JNSM Government Hospital, Roorkee. According to him, following injuries were detected on the person of the deceased:-

- “(i) Firearm wound of entry 3.0 cm x 2.0 cm x brain cavity deep on left side head, 3.0 cm above left ear margins lacerated and inverted abrasion color present. Underlying skull bone fractured, no blackening or tattooing seen.
- (ii) Lacerated wound 20.0 cm x 16.0 cm x brain cavity deep over whole of right side head just above right ear, over right side

forehead and right side face. Underlying skull bones both peritals, right temporal occipital frontal, maxilla, right zygomatic, right mandible are fractured and fragmented soft tissue bulging out. Brain matter badly lacerated and most of brain matter lost. Right eyeball lost. Clotted blood present. Margins everted. No blackening and tattooing seen. Communicating to injury no. 1.

- (iii) Lacerated wound 1.5 cm. x 1.5 cm x chest cavity deep on left side back, 12.0 cm below left scapula, lower angle, margins inverted, abrasion color present, clotted blood present (wound of entry).
- (iv) Firearm wound of exit 5.0 cm. x 3.5 cm x chest cavity deep over right side chest on anterior axillary fold. Margins everted, on dissection track passing through lung, base of heart and left lung, communicating to injury no. 3. Margins lacerated. No blackening or tattooing present. Clotted blood present.
- (v) Lacerated would 1.5 cm x 1.0 cm. x bone deep over left side back, 1.0 cm medial to injury no. 3, on dissection one metallic piece recovered from wound which is sealed and sent to SSP, Haridwar. No blackening or tattooing seen. (Wound of Entry) abrasion, color present. Clotted blood present.”

23. This witness has proved the post mortem report which is Ex. A2. According to him, the cause of death was due to shock and hemorrhage as a result of ante mortem injuries. He also tells that at the time of post mortem, a metal piece was also detected from the dead body which was handed over to Constables Jagdish and Satpal.

24. PW6 Dr. Anil Kumar Verma examined PW1 Atul on the date of incident i.e. 08.05.2008 at 8:00 p.m. and found the following injuries:-

- “ (i) A lacerated wound single entry wound is present on the right elbow joint measuring 4cm x 2 cm x oval shape wound lateral aspect situated x fresh bleeding x blackening edges x tattooing x charring x advised x-ray right elbow joint AP & lateral x swelling. No exit wound is present.

- (ii) Multiple abrasions are present on the right forearm x just below the injury no.(1) measuring 16 cm x 11 cm in an area of x tattooing x charring x fresh.”

He has proved injury report Ex. A3 as well as the supplementary report Ex. A4.

25. PW7 Sub Inspector, Rakesh Chand Bhatt is the person who upon information having been received reached at the spot. He prepared the inquest report Ex. A5. He also prepared various other documents for the purpose of forwarding the dead body for post mortem. According to him, on 18.05.2008, the appellant Praveen Balmiki was arrested and from his possession, a country-made pistol and two cartridges of 3.15 bore have also been recovered. He has proved the recovery memo Ex. A11. According to this witness, the appellant Praveen Balmiki also got recovered two cartridge cases of which recovery memo was also prepared. This witness has also stated that on 24.05.2008, the appellant Pappu Gujjar was arrested and at his instance, a country-made pistol was also recovered. PW7 Sub Inspector, Rakesh Chand Bhatt is also the witness of recovery made at the instance of the appellant Narendra on 29.06.2008. He has also stated about it. He has also proved all those articles Ex. 1 to Ex. 21.

26. PW8 Jaipal Singh is the brother of the deceased Vimla Devi. He has stated that once in the court, the appellant Susheel had threatened him to life in case he does *pairvi* in the case of killing of the father of PW1 Atul. He is also a witness of recovery of plain and blood stained soil on 08.05.2008. This witness has stated about the recovery memo also.

27. PW9 Kaushal has stated about the relationship between the parties. According to her, the appellant Susheel was threatening to

the family for compromising the case relating to the murder of the father of PW1 Atul. She has also stated that, in fact, the appellant Pappu Gujjar had also extended threat two or three times. She is not an eyewitness.

28. PW10 Inspector, B.S. Chauhan is the IO. According to him, after the incident on 09.05.2008, PW1 Atul was interrogated by him, but he said that the persons other than named in the FIR did commit the offence. He said that those assailants were spotted in the village with the appellant Pappu Gujjar. According to PW10 Inspector, B.S. Chauhan, on 18.05.2008, it is the PW1 Atul, who telephonically informed the police and thereafter, the appellant Praveen Balmiki was arrested and from his possession, a country-made pistol, cartridges and cartridge case were recovered. He proved those recovery memos. This witness has also stated about the arrest of the appellant Pappu Gujjar and the recovery made from him. He has proved the recovery memo of a country-made pistol from the appellant Pappu Gujjar. According to PW10 Inspector, B.S. Chauhan, the appellant Narendra had gone to jail in some other case. He was taken on remand and at his instance, a country-made pistol was recovered of which recovery memo Ex. A20 was also prepared by this witness. This witness has also stated that, in fact, the appellant Narendra had also got recovered two cartridge cases of which recovery memo Ex. A21 was prepared. This witness has investigated the matter and prepared site plans with regard to the recovery of country-made pistol, cartridges and cartridge cases which are Ex. A22 to Ex. A26. According to him, the telephone call records of the appellants Susheel, Pappu Gujjar and Narendra reveal that they were talking to each other on multiple occasions prior to the incident and on the date of incident as well. This witness has proved the charge sheet and had also identified the handwriting of the

writer of the chik FIR and the extract of the General Diary entry, which he proved as Ex. A28 and Ex. A29.

29. DW1 Bobby has stated that on 10.05.2018, the Police from Gangnagar took the appellant Praveen Balmiki and one other person alongwith them. Police committed atrocities with them of which report was given to the authorities. He has proved certain documents.

30. According to the FIR, the incident took place in the morning of 08.05.2008, when PW1 Atul and PW 2 Ashish Kumar were proceeding on a motorcycle alongwith their grand-mother to attend the proceedings of the court. There were five persons in two motorcycles. According to the FIR, they opened fire, due to which, Vimla Devi died. Those five persons are named in the FIR. They are Gyan Singh, Punjab Singh (both belonging to same village that of PW 1 Atul), Dilshad and Irshad (the residents of Mangalore) and one more person. According to the FIR, there were two motorcycles, in which, five persons were riding. Four were named. It may be noted that the FIR was lodged at 07:45 a.m. on the date of incident. PW1 Atul has stated that the incident took place at 06:30 in the morning. FIR is prompt. Those named persons have not been charge sheeted. According to PW10 Inspector, B.S. Chauhan, the IO, on the next date of incident, PW1 Atul had disowned the FIR to the extent of the names of the assailants and then, in a subsequent statement, according to PW10 Inspector, B.S. Chauhan, the informant PW1 Atul had said that three persons on a Pulsar motorcycle did commit the offence. This is a very wavering statement. Why is it so? If it is not sufficiently explained, it is fatal to the prosecution.

31. According to the FIR, there was acrimony between Gyan Singh, Punjab Singh, Dilshad and Irshad on one hand and the family

members of PW1 Atul and PW2 Ashish Kumar on the other hand. The reason for it is that the father of PW1 Atul and PW2 Ashish Kumar was killed in the month of July, 2005 and in which case, these persons were accused and with them the respondent Susheel was also an accused. They were threatening to PW1 Atul and PW2 Ashish Kumar and their family members to compromise the murder case. They were extending threats, which means that PW1 Atul and PW 2 Ashish Kumar knew these four persons Gyan Singh, Punjab Singh, Dilshad and Irshad.

32. PW1 Atul in his cross examination at page 4, has stated that in the killing of his father, Gyan Singh, Punjab Singh, Susheel and others were accused and all those accused would appear on the date of hearing of the murder case of his father. He has named Dilshad and Irshad as the persons, who were accused in the case, who would come from jail. Does not it mean that PW1 Atul had reason to identify the killers of his father? It is the case in the FIR that those persons were extending threats and they did commit offence. PW1 Atul was appearing in the court proceedings in the murder case of his father where Gyan Singh, Punjab Singh, Dishad and Irshad were accused. They were appearing in the court. It further means at least by their faces, PW1 Atul knew them and they were named in the FIR. What made PW1 Atul to change the names of the assailants? As per the FIR, there were two motorcycles and subsequently, as per the changed statement of PW 1 Atul, there was only one motorcycle and three persons on it, who committed the offence.

33. In page 5 of his statement, PW1 Atul says that Praveen Balmiki and Narendra were in the police station where this witness was called and police had introduced their names to this witness. This procedure is quite unknown in the criminal law. If a person was not

identified by the witness, perhaps to establish the identity, test identification parades are done so as to eliminate any error in the matter of identification, particularly, where the assailants are unknown. Although, as stated, as per FIR, the assailants were quite known to PW1 Atul and PW2 Ashish Kumar. They were killers of their father. They were extending threats to compromise that murder case. In page 7 of his statement, PW1 Atul admits that he had named Pappu, Susheel, Dilshad and Irshad as the assailants, but it is not correct because the names of the assailants were Gyan Singh, Punjab Singh, Dilshad and Irshad. Pappu and Susheel are not named as such, as the killers of Vimla Devi.

34. PW2 Ashish Kumar is not the informant. He has not lodged the FIR. But, he named only three persons as the killer of his grand-mother, who according to him, came on a Pulsar motorcycle. According to him, they are the appellant Praveen Balmiki, appellant Narendra and one Amit Goswami. According to the prosecution, PW2 Ashish Kumar was alongwith PW1 Atul and his grand-mother, when the incident took place. Soon thereafter, FIR was lodged. Gyan Singh and Punjab Singh are named in it and they both are his neighbours. PW2 Ashish Kumar has admitted it in the first paragraph of his cross examination where he says that adjoining his house, there is a house of Bijendra, thereafter, house of Tej Pal and thereafter, house of Pappu Gujjar and house of Punjab Singh is situated in the outer side of the village, which is 300-400 meters away from his house. He also states about the location of the house of the Gyan Singh. They were villagers. Which means PW2 Ashish Kumar also knew Gyan Singh and Punjab Singh. They were known to him. They were his neighbours. They were named in the FIR. But subsequently, the assailants have been replaced. It doubts the credibility of the FIR and credibility of the

statements of the PW1 Atul and PW2 Ashish Kumar. Their statements are not reliable.

35. At the cost of repetition, it may be reiterated that the reasons for not believing the testimonies of PW1 Atul and PW2 Ashish Kumar are as follows:-

- (i) According to the FIR, the assailants came in two motorcycles, whereas, subsequently, in their deposition in the court they say that three persons came in one motorcycle.
- (ii) In the FIR, the registration number of the motorcycle is not given, whereas in the testimony, the witnesses gave the details of the motorcycle registration number also.
- (iii) As per FIR, there were five assailants, four of whom, were known to PW1 Atul and PW2 Ashish Kumar because they were also the killers of their father in the month of July, 2005 and of which, a case was pending in the court.
- (iv) There was no chance of error of identification of the assailants if they were known to PW1 Atul and PW2 Ashish Kumar. Suddenly, names of three persons have been taken. Why? It is not clear.

36. Therefore, we are of the view that the statements of PW1 Atul and PW2 Ashish Kumar cannot be a basis for conviction. Except it, there is confession of the appellant Praveen Balmiki only. A confession before the Police Officer may not be an admissible evidence. According to the prosecution, recoveries of firearms were also made from the appellants Praveen Balmiki, Pappu Gujjar and Narendra.

Those recovery memos have been proved alongwith articles recovered. But, it is admitted at Bar that except the appellant Praveen Balmiki, none of the appellants has been charged under Section 25 of the Arms Act. The court below has recorded conviction against the appellant Praveen Balmiki for the offence under Section 25 of the Arms Act, but this conviction is bad in the eyes of law because the sanction under Section 39 of the Arms Act has not been proved.

37. In view of the foregoing discussion, we are of the view that prosecution has utterly failed to prove its case beyond reasonable doubt, insofar as, the case against appellants Praveen Balmiki and Narendra is concerned. Accordingly, the appellants Praveen Balmiki and Narendra deserve to be acquitted of the charge.

38. Insofar as, the case against the appellants Pappu Gujjar and Susheel is concerned, PW1 Atul, PW2 Ashish Kumar, PW8 Jaipal Singh, PW9 Kaushal and PW10 Inspector, B.S. Chauhan have stated that they have extended threats to compromise the case and particularly stated that the appellant Susheel was extending threats. How could it be connected with the offence under Section 120B IPC and common intention? When was threat extended? What kind of threat was extended? Nothing has been explained.

39. PW10 Inspector, B.S. Chauhan has stated that, in fact, respondent Susheel, appellants Praveen Balmiki, Narendra and others were talking with each other over telephone. From which telephone numbers these appellants were talking to each other? To whom did those telephone numbers belong to? Where are those call details? It

has not been proved. Where is that electronic evidence? That has not been proved.

40. Mere statements in such matters may not prove the facts stated. In fact, insofar as, the case of appellants Pappu Gujjar and the respondent Susheel are concerned, it is a no evidence case and the appellant Pappu Gujjar and respondent Susheel are also liable to be acquitted of the charge.

41. In view of the foregoing discussions, this Court is of the view that Criminal Appeal No. 24 of 2015, Criminal Appeal No. 25 of 2015, Criminal Appeal No. 43 of 2015 and Criminal Appeal No. 44 of 2015 deserves to be allowed. But, Government appeal No. 53 of 2019 deserves to be dismissed.

42. Criminal Appeal No. 24 of 2015, Criminal Appeal No. 25 of 2015, Criminal Appeal No. 43 of 2015 and Criminal Appeal No. 44 of 2015 are allowed. The judgment and order dated 18.12.2014 passed in Sessions Trial No. 335 of 2008, State v. Praveen and others, as well as Sessions Trial No. 336 of 2008, State v. Praveen Balmiki by the court of Additional District and Sessions Judge, Laksar, District Haridwar are set aside. The appellants Narendra, Pappu Gujjar and Praveen Balmiki are acquitted of the charge under Sections 302 read with 34, 307 read with 34, 302 read with 120B & 504 IPC. The appellant Praveen Balmiki is also acquitted of the charge under Section 25 of the Arms Act.

43. Government Appeal No. 53 of 2019, State of Uttarakhand v. Susheel is dismissed. The judgment and order dated 29.09.2018, passed in Sessions Trial No. 335A of 2008, State Vs. Susheel, by the

court of Additional Sessions Judge, Laksar, District Haridwar is affirmed.

44. Appellant Narendra and Pappu Gujjar are on bail. They need not surrender. Their bail bonds are cancelled and the sureties are discharged of their liability.

45. The appellant Praveen Balmiki is in jail. Let he be set free forthwith, if not wanted in any other case.

46. The appellants Narendra, Pappu Gujjar and Praveen Balmiki shall furnish a personal bond and two reliable sureties, to the satisfaction of the court concerned, within a period of one month from today, in terms of Section 437 A of the Code.

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

(Siddhartha Sah, J.)

Jitendra

08.04.2026

(Ravindra Maithani, J.)