

CRA-S-505-SB of 2003 with
CRA-S-703-SB of 2003

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-505-SB of 2003
Date of Decision : **April 23, 2015**

Rajesh @ Raja

..... Appellant

Vs.

State of Haryana

..... Respondent

11)

CRA-S-703-SB of 2003
Date of Decision : **April 23, 2015**

Jagdev @ Devinder @ Jagga

..... Appellant

Vs.

State of Haryana

..... Respondent

CORAM: HON'BLE MRS. JUSTICE RAJ RAHUL GARG

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Ravi Kant Sharma, Advocate
for the appellant in CRA-S-505-SB of 2003.

Ms. Aditi Girdhar, Advocate as amicus curiae
for the appellant in CRA-S-703-SB of 2003.

Mr. Munish Dev Sharma, Assistant Advocate General,
Haryana.

RAJ RAHUL GARG, J

The aforesaid two appeals have been instituted by Rajesh @ Raja and Jagdev @ Devender @ Jagga assailing the impugned judgment rendered by Sh. N.L.Pruthi, the then Additional Sessions Judge (Adhoc), Fast Track Court-II, Faridabad whereby both the aforementioned appellants were convicted and sentenced to undergo imprisonment for a period of five years each and also to pay a fine of ₹500/- each for committing offence punishable under Section 307 of Indian Penal Code (for short 'IPC') with default clause and they were further sentenced to undergo imprisonment for a period of seven years each for committing offence under Section 397 IPC and sentenced to undergo imprisonment for a period of three months each for committing offence punishable under Section 186 IPC and for a period of one year each for committing offence punishable under Section 353 IPC. Appellant Jagdev @ Devender @ Jagga was also sentence to undergo imprisonment for a period of five years for committing offence under Section 412 IPC. He was also sentenced to undergo imprisonment for a period of three years for keeping in his possession spring actuated knife whereas appellant Rajesh @ Raja was sentenced to undergo imprisonment for a period of five years for keeping in his possession a country made pistol .315 bore and two live cartridges of the same bore.

Briefly, prosecution story is like this; that on 15.07.2000, SI

Ram Bhagat (PW-10) alongwith Head Constable Umar Mohd., Constable Mohd. Rafiq, Constable Dharm Singh, Constable Krishan Kumar and driver Babu Lal in Government Zpsy bearing No. HR-51D-7914 were present near Kheripul (Bridge) on patrolling when a V.T. message was received from control room to the effect that a Maruti Zen Car bearing registration No. DL-4C-8130 colour white had gone towards Kheripul side whereby four boys had run away after snatching a sum of ₹9 lac from Sector 11, Faridabad. At this, SI Ram Bhagat along with police officials had reached by Government vehicle at Kheripul, there they came to know that ASI Ram Niwas and Head Constable Kuldeep Singh who were also present at Kheripul Naka had tried to stop the aforementioned Maruti Zen Car which was being driven at a high speed but the same did not stop whereupon Head Constable Kuldeep Singh had broken the left front window pane of the aforesaid Maruti Zen Car by hitting the car with *danda*. ASI Ram Niwas and Head Constable Kuldeep Singh chased the aforesaid car by riding on the motorcycle whereas PCR-I & II also chased the car by driving it alongwith pavement of Agra Canal. In the meanwhile, ASI Ram Niwas gave a V.T. message to the control room from the aforementioned PCR-I to the effect that the aforesaid Maruti Zen Car was going towards Tilpat Range side which was occupied by four young boys. At this, SI Ram Bhagat along with police officials had gone towards Tilpat Range side in order to chase the aforesaid Maruti

Zen Car. ASI Ram Niwas informed SP, Additional S.P and DSP Head Quarter that the accused were running towards Tilpat Range side and requested them to go towards that side. When SI Ram Bhagat along with his staff was going towards Tilpat Range side, ASI Ram Niwas again gave V.T. message to the effect that the Zen Car of the accused was got stuck in the mud and the accused had snatched one scooter from its rider, on pistol point. All the four accused had run away on that scooter. When SI Ram Bhagat had reached the place from where the aforesaid scooter was snatched, Vikas (PW) stopped SI Ram Bhagat and disclosed that the accused had snatched his scooter on pistol point and the accused had proceeded towards Dadasiya side. At this, SI Ram Bhagat along with police officials had also chased the accused by going towards village Dadasiya side. Officers also instructed through V.T. message to chase the accused and apprehend them. When SI Ram Bhagat along with police officials was chasing the accused, he again received V.T. message from ASI Ram Niwas to the effect that the accused had snatched scooter No. DL-85B-3774 on pistol point from yunus and all the four accused had run away towards village Dadasiya side by riding two on one scooter and two on other scooter. At this, SI Ram Bhagat along with police officials had gone towards village Dadasiya side. ASI Ram Niwas, also informed all the police officials who were following them to the effect that the accused had crossed village Dadasiya and were going towards village Lalpur side. While

police was chasing the accused, the accused had crossed village Mahavatpur and climbed on the pavement of Budia Nala. When police party was at a distance of about 200 yards, then all the four accused had abandoned their scooter in the bushes alongwith pavement and had run away on foot at the pavement of the nala. SI Ram Bhagat and police officials ASI Ram Niwas along with his staff had left their vehicles and after informing the driver about the situation, chased the accused on foot. In the meanwhile, Pawan Kumar s/o Ram Gopal Chauhan, resident of village Mahawat had come across the police party. After disclosing the facts of the case, he was joined in the police party. In the meanwhile, driver of the vehicle in a loud voice declared that SP had given the order to surround all the accused from all the four sides so that they may not be able to escape. At this, SI Ram Bhagat instructed ASI Ram Niwas to lay the siege towards upper side fields as the accused were trying to hide themselves in the bushes. In the meanwhile, accused fired two shots, one at the police party of SI Ram Bhagat and the other at the police party of ASI Ram Niwas. However, the police could save itself by lying on the ground. In the meanwhile, Ram Niwas ASI's police party surrounded the accused from the front and made Ram Bhagat SI aware about the position of the accused. At this, SI Ram Bhagat warned the accused by stating that they were under siege and they should abandon their arms and surrender before the police. Immediately thereafter, accused had fired shot on SI Ram

Bhagat. However, he could save himself by taking a lying position. SI Ram Bhagat directed H.C. Umar Mohd who was having a carbine, to fire in the air. However, accused also fired shots in reply. In spite of all that accused had been fired at the police straight, as such under compelling circumstances, finding no other alternative H.C. Umar Mohd was ordered to fire at the accused so as to cause injury to them in order to apprehend them and further so that they surrender themselves before the police. At this H.C. Umar Mohd, fired from his carbine on the accused, thereafter, they heard a voice whereby one of the accused was telling Devender-accused to surrender themselves before the police by stating that he and Bablu had received fire shots. At this, SI Ram Bhagat again held out a warning to the accused to surrender themselves before the police telling them that they were under siege. At this, two young boys, one was having knife in his hand and the other was having a pistol, came and stood in front of the police. They had thrown away their arms and surrendered before the police by raising their arms. When they took few steps forward, police apprehend them. They also took into the possession their arms as well; the boy, who was having a pistol in his hand gave his name as Rajesh S/o Rameshwar and also gave his complete address, on inquiry. The other one who was having a knife in his hand disclosed his name as Devender s/o Kuldeep Singh and also gave complete address to the police. Thereafter, SI Ram Bhagat called out and told that two accused were lying in injured

condition at a distance of few steps. SI Ram Bhagat after giving a warning, apprehended the aforesaid two injured accused as well. One who was having a mauser in his hand gave his name as Harsad s/o Salim and further gave his full address. The fourth accused who was lying on the ground was found dead on checking his pulse. On his left tempel, there was fire shot injury. He was not speaking as well. Harsad Rajja co-accused, on inquiry gave his name as Bablu resident of Gandhi Nagar, Delhi. When inquiry was made about his weapon then it was told to the police by Harsad Rajja that Bablu had thrown away his country made pistol into the nala. In the meanwhile, all the officers of the police had reached the spot. Witnesses were also there. In their presence a *thaila* contained ₹3 lacs and a slip of Oriental Bank of Commerce on which ₹9 lacs written, hanging on the shoulder of the accused Devender, was taken into police possession. From personal search of the accused Devender, one wrist watch make 'Titan' and spring actuated knife were also recovered. One pistol .315 bore, two live cartridges, one wrist watch make 'Titan', one mobile phone make 'Nokia' were taken into police possession by the police from the possession of accused Rajesh. From the possession of accused Harsad Rajja, a mauser and a magazine containing two live cartridges, one mobile phone make Nokia were taken into police possession. From the left hand of accused Bablu who was dead, one *thaila tat* (bag made of jute) containing ₹6 lac and cheque book were also recovered and taken

into police possession. From right side pocket of the pant of accused Bablu, two live cartridges were taken into police possession whereas from the left pocket of accused Bablu one mobile phone make Nokia, farrari and from the left hand of Bablu one gold kada, one gold chain from the neck were also recovered besides titan wrist watch. All the aforesaid recovered articles were made into separate parcels and were sealed with the seal of 'RB'. Accused Harsad Rajja was sent to B.K.Hospital, Faridabad for treatment. The aforesaid recovered articles were taken into police possession vide separate recovery memo. Seal after use was handed over to PW Pawan Kumar. During the course of investigation site plan of the spot was prepared. Statement of witnesses were recorded. Inquest proceedings regarding death of Bablu were prepared. His dead body was got post-mortem and the same was handed over to his legal heirs. Disclosure statement of accused were also recorded. Scaled site plan of the spot was also got prepared. After completion of necessary investigations, the challan was put in the Court against the accused Jagdev @ Devender @ Jagga, Rajesh @ Raja and Harsad Rajja whereas accused Bablu was dead.

As later on accused Harsad Rajja had died, therefore, finding a prima facie case against the accused Rajesh @ Raja and Jagdev @ Devender @ Jagga, both of them were charge sheeted by the then Additional Sessions Judge, Faridabad vide order dated 22.11.2001 for committing offence punishable under Sections 307/34 IPC, 397 IPC

186, 353 IPC whereas Jagdev was also charge sheeted for committing offence under Section 412 IPC and 25/54/59 of the Arms Act for keeping in his possession spring actuated knife. Accused Rajesh @ Raja was also charge sheeted under section 25/54/59 of the Arms Act for keeping in his possession a country made pistol .315 bore and two live cartridges without any permit or licence. To the charge, both the accused did not plead guilty but claimed trial.

Prosecution in support of its case examined Vikas whose scooter was snatched by the accused, which was taken into police possession vide recovery memo. Ex.PB. Accused Devender and Rajesh also gave nishandehi of the place from where they had abandoned the aforesaid scooter. Vikas also identified this scooter as belonging to him. This very memo is also regarding recovery, nishandehi and identification of scooter No. DL-85B-3774 belonging to Yunus. Both the accused had also given nishandehi of the place from where they have snatched the scooter of Vikas. Recovery memo. Ex.PC was prepared in that regard. Ruqa is Ex.PD, whereupon Ranbir Singh H.C. recorded formal FIR as Ex.PF.

Dharam Singh, HC, Member of the police party of SI Ram Bhagat and eye witness of the case was examined as PW-2. Umar Mohd. Member of the police party of SI Ram Bhagat and who fired shots from his carbine, was examined as PW-3. SI Sadhu Ram, who took the injured Harsad to B.K.Hospital and prepared report under

Section 173 Cr.P.C, was examined as PW-4. C.Mohd. Rafiq, H.C. Rajender and PW Yunus were given up as having been won over by the accused.

Tarun Grover, from whom ₹9 lacs looted by the accused, stated on oath before the police that he had taken the aforesaid amount on superdari and used the money for the purpose for which he had withdrawn from Oriental Bank of Commerce, Faridabad. He also stated that he could not take the risk by keeping the huge amount with him at his residence.

Dr. S.K.Bhutani, was examined as PW-5. He conducted the post-mortem of Bablu as one of the Members of the Board constituted for conducting the post-mortem. The other Members of the Board were Dr.P.S.Yadav and Dr. Arvind Lohan. Both the aforesaid doctors were given up being unnecessary. Dr. S.K.Bhutani (PW-5) gave the cause of death of Bablu-shock as a result of injuries described, which were anti-mortem in nature and were sufficient to cause death in normal course of nature. It was also opined that the injuries sustained were caused by firearm. Post-mortem report was proved as Ex. PG. Dr. S.K.Manocha (PW-6) conducted the medico legal examination of Devender s/o Kuldeep and proved his MLR as Ex.PH. He also proved the MLR Ex.PH/1 pertaining to accused-Rajesh. Dr. S.K.Gupta (PW-7) medico legally examined Harsad Rajja s/o Salim and proved his MLR as Ex. PJ. H.C. Bijender Singh, who gave the sealed parcels to C. Ram

Niwas for depositing in the FSL, was examined as PW-8. He tendered in evidence his affidavit as Ex.PK. Ranbir Singh H.C. who recorded the formal FIR, was given up being unnecessary. Rajesh Halqa Patwari, who prepared the 'aks sharjara' of rectangle No. 13/19 of Revenue estate of Bhoopani as Ex. P.K. was examined as PW-9. SI Ram Bhagat, Investigating Officer of the case appeared as PW-10. He deposed about the entire occurrence including taking into possession/ recovery of arms, cash and the articles from 'jamatalshi' of accused. He deposed that vide memo. Ex.PE, he took into the possession spring actuated knife from the possession of accused Devender. After preparing its rough sketch plan Ex.PK/1 converting it into a sealed parcel, sealed with the seal of 'RB' besides one bag made of cloth filled with currency notes amounting to ₹3 lacs i.e. 30 wads of the denomination of ₹100 bearing stamp of Oriental Bank of Commerce and a slip of the bank on which ₹9 lacs dated 15.07.2000 was written. The aforesaid currency notes and a slip were put into the same cloth bag and was sealed with the seal of 'RB'. He also deposed that vide recovery memo. Ex.PE/1 one country made pistol .315 bore and two live cartridges of the same bore recovered from the right side pocket of the pant of accused Rajesh, were taken into police possession, after preparing rough sketch plan of pistol as Ex.PE/5 and sealing the same with the seal of 'RB'. He further deposed that vide memo Ex.PE/2 one pistol (mauser type) .32 bore with magazine containing two live cartridges of the same bore

were taken into police possession, after preparing its rough sketch plan as Ex.PE/4 and sealing it with the seal of 'RB'. He also stated that vide memo. Ex.PE/3 one bag made of jute (TAT Bag) with wooden handles containing 6 lacs currency notes i.e. 12 wads of the denomination of ₹50 each and 54 wads of the denomination of ₹100 each having stamp of Oriental Bank of Commerce, NIT, Faridabad and one cheque book of the same bank by one cheque bearing No. 906731, ₹9 lacs were withdrawn from the bank on 15.07.2000. The aforesaid currency notes were put into the same bag and sealed with the seal of 'RB'. Two live cartridges were recovered from the pocket of the pant of Harsad Rajja which were of .32 bore. The cartridges were separately sealed with the seal of 'RB'. From the left side pocket of the pant, one mobile phone make Nokia; from the left hand of the accused one gold kada; one gold chain from the neck of the accused; one wrist watch make titan, one wallet containing ₹565 were recovered and sealed with the seal of 'RB'. Disclosure statements of accused Devender was recorded as Ex.PK/2 and that of Rajesh Ex.PK/3 and of accused Harsad as Ex.PK/14. He further deposed about preparation of memo Ex.PK/4 pertaining to the nishandehi given by the accused Devender and Rajesh of the place where they have abandoned the car which was stuck up in the mud. He also deposed about the preparation of memo Ex.PK/6 pertaining to the nishandehi given by the accused Devender and Rajesh, of the place where they had snatched the scooter from Yunus. Sealed parcel

pertaining to clothes and shoes of deceased Bablu given by the doctor to Constable Mohd. Rafiq were taken into police possession vide memo. Ex.PK/5. Vide memo. Ex.PC, accused Devender and Rajesh gave nishandehi of the place from where they had snatched the scooter from Vikas. Site plan of the place of recovery of scooter was prepared as Ex.PK/7. Site plan of the place of recovery of car was prepared as Ex.PK/8. Site plan of the place from where the scooter snatched, was prepared as Ex.PK/9 and site plan of the place from where the scooter belonging to Vikas snatched, was prepared as Ex.PK/10. Complaint made by Vikas to police regarding snatching of his scooter is Ex.PK/11 whereas that of Yunus is Ex.PK/12. Inquest report regarding death of Bablu was prepared as Ex.PK/13. ASI Ram Niwas was examined as PW-11. He is one of the star witness of the prosecution. Two empty cartridges .315 bore and two empty cartridges .32 bore were recovered from the spot. The same were separately sealed with the seal of 'RB' and were taken into police possession vide memo. Ex.PJ/1. Site plan of the spot Ex.PK was prepared. Constable Ram Niwas who took 3 parcels given to him by H.C. Bijender Singh to FSL, tendered in evidence his affidavit Ex.PL by appearing as PW-12. H.C. Kuldeep Singh, C. Umed Singh and UGC Rajinder Singh were given up being unnecessary.

SI Ramesh Kaushik, was examined as PW-13. Pawan Kumar, eye witness was examined as PW-14. Report FSL Ex.PX was

tendered in evidence.

H.C. Umar Mohd. Produced two empty cartridges and the same were taken into police possession vide memo. Ex.PJ after converting the same into the sealed parcel.

Statement of accused was recorded. Each allegation appearing against them was denied and accused pleaded their innocence. The defence taken by the accused is this; that they have been falsely involved in this case. There was no encounter. Accused Jagdev stated that the police had snatched gold ring, gold chain and a sum of ₹510.

After hearing both the counsel for the parties and appraising the entire material coming on record, the learned trial Court convicted both the appellants vide impugned judgment dated 05.12.2002 and order on sentence dated 07.12.2002 for committing offences punishable under Sections 307/34 IPC, 397, 186, 353 IPC and 25-54-59 of the Arms Act whereas accused Jagdev was also convicted for committing offence punishable under Section 412 IPC vide order on sentence dated 07.12.2002, they were convicted in the manner mentioned in the earlier part of the judgment.

I have heard learned counsel for the appellants and learned State counsel and also appraised the entire evidence and material coming on record.

It was argued by counsel for the appellants that the

appellants have been falsely implicated in this case. The prosecution story is concocted one. In fact accused of this case have been picked up from their house. Two of them were done to death whereas the other two have been implicated in this case.

In order to show false implication of the accused in this case, there is in fact no material on record. No reason has been given as to what sort of enmity, the police and witnesses of this case were having against the accused. Besides that even when the statement of accused under Section 313 Cr.P.C. was recorded they did not take the plea that they were in fact picked up from their house and falsely implicated in this case or that two of their associates have been done to death. Of course they took plea of false implication but again no reason has been assigned by them for their false implication in this case.

It was next argued by learned counsel for the appellants that as per prosecution case while running away along with the booty, the accused of this case abandoned the car in question when the same was stuck up in the mud but that car was not taken into custody by the police. This shows the false implication of the accused in this case.

The above contention of learned counsel for the appellants is not sustainable in view of recovery memo Ex.PK/4 as on the nishandehi of the appellants Devender and Rajesh, the car in question was taken into possession by the police from the place where it was stuck up in the mud. It also finds mentioned in this recovery memo that

at that time the left side window pane of car was broken. Stereo and stepney of the car were also not there in the car. ASI Ram Niwas (PW-11) and Umar Mohd. (PW-3) have signed this memo. as witnesses. Both the aforesaid witnesses when appeared in the Court besides SI Ram Bhagat (PW-10) fully corroborated the prosecution story in this regard. Not only this, even site plan of the place of recovery of the car was also prepared as Ex.PK/18 and site plan was duly proved by SI Ram Bhagat when appeared as PW-10. As such recovery of car in question from the place, the same was abandoned by the appellants and their accomplices support the prosecution version and establish the prosecution case as put up before this Court.

It was next argued by learned counsel for the appellants that as per prosecution story, the police followed the tyre marks of the scooter in order to reach upto the accused but these tyre marks were not lifted from the place nor got tallied with the same that are of the very scooters belonging to Vikas and Yunus, which are later on recovered in this case.

Of course this evidence could be collected by the police. As the accused were apprehended in this case on the spot, i.e. too that after cross firing and after surrender of the appellants Devender and Rajesh; therefore, lifting of tyre marks of the scooter to reach upto the accused was not very material so as to connect the accused with this crime. Not only this even accused Harsad Rajja was found in injured condition at

the spot and was taken by the police to B.K.Hospital, Faridabad. The fourth accused namely Bablu had died at the spot itself and the police got his dead body postmorted and also prepared the inquest report Ex.PK/13. Thus so far as the identity of the accused in this case concerned, there is no doubt about it, as such non-lifting of tyre marks from the spot pales into insignificance.

For the aforesaid reasons, the argument of learned counsel for the appellants that in this case no test identification parade was got conducted, is devoid of any force.

Likewise, the argument put forth by the counsel for the appellants that Vikas (PW-1) whose scooter was allegedly snatched by the police, turned hostile and did not support the prosecution case, is devoid of any force. In fact this witness could not identify the accused at the spot as stated by him but so far as snatching of scooter belonging to him is concerned, he fully corroborated the prosecution story by identifying his scooter on recovery of the scooter vide memo. Ex.PB. He also identified the place from where his scooter was snatched as Ex.PC. He further stated that after the occurrence, the police Zpsy had come over there and then he verbally told the facts to the police. SI Ram Bhagat (PW-10) proved the complaint made by Vikas (PW-1) to the police as Ex.PK/11. This complaint is in writing and it was made by Vikas to the police regarding snatching of scooter in question by the occupants of the Maruti Car at about 12:30 P.M. Likewise, he proved

the complaint made by Yunus to the police regarding snatching of his scooter at pistol point by the occupants of the scooter. This complaint is Ex.PK/12. Thereafter, the nishandehi of the place from where the aforesaid scooter snatched, was given by both the appellants and even Vikas (PW-1) identified his scooter after recovery. So is the case of Yunus. SI Ram Bhagat (PW-10) also proved memo Ex.PB regarding nishandehi of the place from where the scooter were snatched and recovery of scooters and identification of the same by Vikas and Yunus. He also stated that he prepared the site plan of the spot where the accused had abandoned the aforesaid scooters as there was a cut in the pavement from where the accused could not proceed further on scooters. This site plan is Ex. PK/7.

Thus, with this overwhelming evidence on record regarding snatching of scooter of Vikas by the accused while they were riding by a car and, thereafter, snatching of scooter of Yunus by the accused while they were riding on the scooter of Vikas and,thereafter abandoning both the scooters in the bushes along side the pavement of Budia Nala clearly connect the appellants-accused with the scooters of Vikas and Yunus in this case.

The next argument advanced by learned counsel for the appellants that the police personnel, who nabbed the accused, were in fact, not present at the spot. This arguments is in the air as it is not based on any record. In order to show the absence of police personnel

from the spot, the defence could well show with the help of documentary evidence that the police personnel were not on duty or present somewhere else but the defence did not make any effort in this regard. Thus, in the absence of any documentary evidence, this argument of learned counsel for the appellants is not sustainable.

It was next argued by learned counsel for the appellants that Pawan Kumar (PW-14) was joined by the police party as he is the alleged eye witness of the case. He deposed that only two persons were nabbed at the spot. He did not depose that the accused were four in number. In fact, the police who killed the two accused were not on duty. The total evidence led by the prosecution does not support the prosecution version. Even the V.T messages allegedly received by the police while chasing the appellants and their accomplices have not been placed on file. Even the spot inspection was not done and there is no report of Forensic Science.

The above contention of learned counsel for the appellants is not sustainable. If we peruse the statement of Pawan Kumar (PW-14), it becomes evident that since the appellants surrendered at the spot, therefore, they were apprehended and, therefore, he deposed so in the Court.

Accomplice Harsad was lying at the spot in injured condition as such he was sent to B.K.Hospital by the police, is also stated by PW-14 and other eye witnesses i.e. Dharam Singh, HC

(PW-2), Umar Mohd. (PW-3), SI Sadhu Ram (PW-4), who had taken Harsad to B.K.Hospital, Dr. S.K.Gupta (PW-7), who conducted the MLR of Harsad as Ex.PJ and SI Ram Bhagat (PW-10), Investigating Officer of the case. ASI Ram Niwas (PW-11) another star witness of the prosecution besides Pawan Kumar (PW-14). Pawan Kumar (PW-14) clearly deposed about the recovery of ₹6 lacs from the possession of accused Bablu who had died at the spot and recovery of one revolver and two cartridges vide memo. Ex.PE/2 from the possession of accused Harsad. As such in the light of this statement of PW-14, it cannot be said that this PW deposed about the presence of only two accused and not of four.

Likewise, for the absence of any duty record of the Police personnel, it cannot be said that the police who killed Harsad and Bablu were not on duty. If V.T. messages have not been produced on record, it does not matter as I have already discussed that it is the case where the police received information that a sum of ₹9 lacs were looted from Tarun Grover in the area of Sector 11 Faridabad whereupon ASI Ram Niwas (PW-11) and Kuldeep Singh who were present at Naka Kheripul, tried to stop the fast moving car in question which did not stop and H.C. Kuldeep Singh by hitting the left window pane of the car with *danda*, broke the same. Ram Bhagat (PW-10) along with his police party also chased the car in question. He had been getting V.T. messages from ASI Ram Niwas (PW-11) and thus followed the

accused. Ultimately they succeeded in laying siege at Budia Nala and, thereafter had an encounter where cross firing was done and as a result of firing, accused Bablu and accused Harsad received fire shots which led to the surrender of appellants Devender and Rajesh. This entire sequence stands fully supported/corroborated by the prosecution witnesses mentioned above. Even Dr. S.K.Bhutani, (PW-5) proved the death of Bablu at the spot and further deposing that the cause of death of Bablu was shock as a result of injuries described, which was anti-mortem in nature and were sufficient to cause death in normal course of nature. Injuries sustained were caused by firearms. Dr. S.K.Manocha (PW-6), proved the MLRs of Devender as Ex.PH and that of Rajesh Ex.PH/1 and deposed about the injuries found on their persons. Even Dr. S.K.Gupta (PW-7) proved the MLR of Harsad Ex.PJ and proved the injuries on his person. Thus, with the statements of these doctor witnesses the presence of all the accused at the spot stands established. SI Ram Bhagat (PW-10), proved the site plan of the spot Ex. PK. Even report FSL Ex.PX has already been tendered in evidence and as per this report, the firearm i.e pistol recovered from the possession of Harsad was reported as firearms as defined in Arms Act 54 of 1959 and it was further reported that the fire mechanism on this firearms was found in working order. The same is the report regarding country made pistol recovered from the possession of accused Rajesh. It was also reported that 7.65 mm fired cartridge cases marked C/3 and C/4 had been fired

from 7.65 mm pistol W/1 recovered from the possession of Harsad Rajja and not from any other firearm even of the same make and calibre, because every firearm has got its own individual characteristics marks. It was also reported that two .315 fired cartridge cases marked C/1 and C/2 recovered from the place of occurrence, had been fired from country made pistol W/2 recovered from the accused Rajesh (“Chambered for .315 cartridges”) and not from any other firearm even of the same make and bore/calibre, because every firearm has got its own individual characteristics marks.

Thus, with this evidence on record, the aforesaid arguments of learned counsel for the appellants are devoid of any force.

No other point was urged before me.

For the aforesaid reasons, finding no merit in these appeals, the same stand dismissed. Judgment of conviction dated 05.12.2002 and order on sentence dated 07.12.2002 rendered by Sh. N.L.Pruthi, the then Additional Sessions Judge (Adhoc), Fast Track Court-II, Faridabad, are maintained. If the appellants are on bail, their bail bonds, shall stand cancelled. The concerned Chief Judicial Magistrate, shall take necessary steps, to comply with the judgment, with due promptitude, keeping in view the applicability of the provisions of Section 428 of the Criminal Procedure Code, and submit compliance report, to this Court, within a period of two months, from the date of receipt of a copy thereof.

The District and Sessions Judge, Faridabad shall ensure that the directions are complied with, within the time frame, and the compliance report is submitted immediately thereafter.

The Registry shall keep track of the submission of compliance reports, and put up the papers whether the reports are received or not, within the time frame, immediately after the expiry thereof.

(RAJ RAHUL GARG)
JUDGE

April 23, 2015
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