

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

1. **CRA-D-383-DB-2010 (O&M)**
Date of Decision: 1st March, 2016

Joginder and Another

.....Appellants

Versus

State of Haryana

.....Respondent

2. **CRA-D-1136-DB-2010 (O&M)**

Baljeet Singh

.....Appellant

Versus

State of Haryana and Others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE GURMIT RAM**

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

Present: Mr. K.D.S. Hooda, Advocate
for the appellants in **CRA-D-383-DB-2010**.

Ms. Tanisha Peshawaria, DAG, Haryana.

Mr. Jagjeet Beniwal, Advocate
for the complainant in CRA-D-383-DB-2010 and
for the appellant in CRA-D-1136-DB-2010.

GURMIT RAM, J.

1. The above noted CRA-D-383-DB-2010 has been preferred by
appellants Joginder and another against the judgment dated 13.03.2010 and

**CRA-D-383-DB-2010 (O&M) &
CRA-D-1136-DB-2010 (O&M)**

order of sentence dated 16.03.2010 passed by the Court of learned Additional Sessions Judge, Hisar in criminal case bearing FIR No.475 dated 11.12.2006 under Sections 302, 216 read with Section 120-B of the Indian Penal Code (“IPC” - for short) and Section 25 of the Arms Act, Police Station Narnaund District Hisar vide which present appellants (accused Nos.1 and 2) were held guilty for the offences punishable under Section 302 read with Section 34, IPC and Sections 25 and 27 of the Arms Act and were awarded sentences thereunder as detailed below:-

Offence	Punishment
Sections 302/34, IPC, for murder of Sonu.	Both the convicts shall undergo rigorous imprisonment for life and fine of Rs.10,000/- each. In default thereof rigorous imprisonment for eight months each.
Sections 302/34, IPC, for murder of Rajesh.	Both the convicts shall undergo rigorous imprisonment for life and fine of Rs.10,000/- each. In default thereof rigorous imprisonment for eight months each.
Section 25 of Arms Act.	Both the convicts shall undergo rigorous imprisonment for two years and fine of Rs.2,000/- each. In default thereof rigorous imprisonment for two months each.
Section 27 of Arms Act.	Both the convicts shall undergo rigorous imprisonment for three years and fine of Rs.5,000/- each. In default thereof rigorous imprisonment for four months each.

2. The above noted CRA-D-1136-DB-2010 has been preferred by appellant-herein (complainant) Baljeet Singh against the abovesaid impugned judgment vide which respondents No.2 to 9-herein (accused Nos.3 to 10) were acquitted in this case with the prayer to accept this appeal and to set aside impugned judgment and to sentence respondents No.2 to 9-herein for the offences punishable under Sections 302/148/149, 216/120-B, IPC and Section 25 of the Arms Act.

3. Both the appeals are taken up together for the disposal as these emanate from one and the same impugned judgment in order to avoid repetition as well as conflict of judgments.

4. The case of prosecution in nutshell as projected before the learned trial Court was that on 11.12.2006, Vinod Kumar SI/SHO, Police Station Narnaund along with SI Surender Kumar and other police officials was present near petrol pump Baas in connection with patrolling and detection of crimes. There came to him complainant-Baljeet Singh son of Shri Ram Sarup resident of Madanheri along with his son Anand Bir @ Nandu who made his statement Ex.PM before him, the gist of which was as under:-

“ That yesterday on 10.12.2006 he and his wife Shanti were cutting the grass of water-drain (Nali) in Kherewale field at about 4/4:30 p.m. and his son Rajesh Kumar aged 34 years was diffusing fertilizer in Javi crop (green fodder), whereas his another son Sonu @ Sudhir aged 20 years was cutting Javi

crop. At that time within his view Milu @ Hawa Singh son of Matu, Zile Singh son of Hawa Singh, Balraj son of Hawa Singh, Joginder @ Kala son of Hawa Singh, Sandeep son of Balraj, Nasib son of Mahinder, Sunder wife of Zile Singh and Maya wife of Joginder all residents of his village came out from his adjacent sugarcane fields while armed with pistols, axe, spade, gandasi, lathis etc. Then Milu @ Hawa Singh raised a 'Lalkara' that today they be taught a lesson for murdering their grandson Vikas and that both should not be spared. On perceiving the assailants, abovesaid Sonu @ Sudhir started running. Accused Joginder @ Kala and Sandeep Kumar who were armed with pistols chased Sonu and both of them fired at Sonu @ Sudhir within their sight (complainant-Baljeet Singh and his wife Shanti). On receiving the fire arm injury, Sonu fell down at the spot. Then within their sight accused Zile Singh caused blow on the right side of the head of Rajesh with a handle of spade, who also fell down on receiving this injury. While he was lying on the ground, accused Balraj also caused him a spade blow, accused Sunder and Maya inflicted injuries to him with gandasi, whereas accused Nasib inflicted him injury with lathi. After inflicting the injuries to abovesaid Sonu @ Sudhir and Rajesh, the assailants left the spot. He and his wife hid themselves in the water-course of the field on account of fear. When the assailants went away, then they went to spot and saw bullet injury on the back of Sonu and head of Rajesh was torn seriously on its right side and blood was scattered in large

quantity. They heard the sound of firing of several shots. The assailants while leaving the spot also put a country made pistol in the hand of Sonu @ Sudhir (deceased). Then he and his wife reached at home while staggering and became unconscious due to shock. They gained consciousness in the morning on the arrival of his son Anand Bir @ Anand at home. He told him about this incident. The cause behind this occurrence was that about 14 months ago, Vikas @ Tunda son of Zile Singh resident of his village was murdered, in which his son Sonu was named as an accused. Due to this grievance, the aforesaid assailants committed the murder of his sons. Prayer was made to take legal action against the culprits.”

Complainant signed his above statement after admitting it to be correct. SI/SHO made his endorsement Ex.PN on the above statement of the complainant, on the basis of which the FIR Ex.PQ was recorded qua the alleged incident.

5. During investigation, spot of scene of crime was inspected. Its snaps were taken, bloodstained earth was also lifted from the spot. Empty cartridges and one loaded country made .315” pistol were also taken into police possession from the spot. Inquest proceedings under Section 174, Cr.P.C., were conducted in respect of dead body of both the deceased. Their post-mortems were also got conducted. Statements of witnesses were recorded on the spot.

On 13.12.2006 Shanti wife of Baljeet Singh-complainant got recorded her statement that Joginder @ Kala, Sandeep and Rajwanti were

present at the spot at the time of the occurrence. On 14.12.2006, one Ramesh facilitated accused Sandeep and Rajwanti in sending them by his car through accused Upkar to railway station Rohtak, besides providing them money and clothes.

On 16.12.2006 accused Joginder @ Kala was arrested in this case who got recovered as per his disclosure statement one country-made pistol .315 bore, one live cartridge of same bore along with his bloodstained clothes which were taken into police possession. On the same very day, accused Rajwanti and Sandeep were also arrested in this case. Accused Sandeep suffered disclosure statement during interrogation and got recovered one country made pistol of .315” which was used in the commission of the alleged offence along-with three live cartridges, one empty of same bore and his clothes which were also taken into police possession. Bloodstained earth lifted from the spot, empty cartridge cases and the pistols of .315” which were got recovered by the accused along with their clothes were sent to Forensic Science Laboratory, Haryana, Madhuban, Karnal (“FSL”- for short) for the chemical test.

On 26.12.2006, accused Zile Singh was also arrested in this case for the offence under Section 120-B, IPC, who got recovered one mobile phone allegedly used at the time of the alleged occurrence. Accused Upkar was also arrested in this case on 08.02.2007 under Section 216, IPC. He got recovered one Santro car bearing registration No.HR51-E-7246 which was allegedly used for the commission of the crime in question.

During investigation, accused Nasib, Hawa Singh, Balraj, Maya and Sunder were found innocent in this case. On the completion of

investigation, challan against accused Joginder @ Kala, Sandeep, Rajwanti, Zile Singh and Upkar was presented in the Court of learned Illaqua Magistrate, Hansi, who committed this case to the learned Court of Sessions Hisar for trial after making compliance of provisions of Section 207, Cr.P.C.

Finding a prima facie case punishable under Sections 302 read with Section 34, 212, 120-B, IPC against the accused, they as such, were charge-sheeted accordingly vide order dated 24.5.2007, to which, they pleaded not guilty and claimed trial.

After partly recording evidence of prosecution, the prosecution filed an application under Section 319, Cr.P.C., for summoning of Hawa Singh @ Milu and four other persons as additional accused in this case, which was accepted vide order dated 03.11.2008.

On procuring their presence charge was re-framed in this case.

Finding a prima facie case punishable under Sections 148, 302, 212, 120-B, IPC and Sections 25 and 27 of the Arms Act against the accused, they were charge-sheeted accordingly vide order dated 23.12.2008 to which they pleaded not guilty and claimed trial.

6. During trial of the case, the prosecution examined as many as 14 witnesses in all to substantiate its case against the accused. Besides this, it also tendered into evidence reports of FSL Ex.PBBB and Ex.PCCC.

Thereafter accused were duly examined as per the provisions of Section 313 Cr.P.C. during which the entire incriminating evidence brought on the record against them was put to them which they denied entirely. Further they also took the plea of innocence and their false implication in

this case. In addition to this, accused Balraj, Nasib Singh and Zile Singh also took the plea that they have been falsely implicated in this case for the reason that Joginder was the witness in case FIR No.538 dated 11.10.2005 under Sections 302/120-B/34, IPC and Section 25 of the Arms Act, Police Station Narnaund, in which Sonu-deceased along with four others was facing trial for the murder of Vikas @ Tunda son of Zile Singh resident of Madanheri just to put pressure upon them for compromise. Said Joginder was stated to be brother of accused Zile Singh. Accused Joginder @ Kala also took the same very plea in his statement.

Accused Sandeep, Rajwanti and Upkar took the plea of their false implication in this case due to family members of Zile Singh. Accused Hawa Singh took the plea of his false implication in this case due to his relation with the family of Zile Singh.

Then in the defence, accused examined five witnesses.

7. The learned trial Court after hearing learned counsel for both the parties and going through the record as well held the appellants-herein (accused No.1 and 2) guilty for the offences under Sections 302/34, IPC and Sections 25 and 27 of the Arms Act and awarded them the sentences as detailed in para No. 1 of this judgment.

8. Both the appellants being not satisfied with the impugned judgment and order of sentence have come up in the instant appeal i.e. CRA-D-383-DB-2010.

9. Appellant-Baljeet Singh (complainant) also being not satisfied with the impugned judgment so far as it relates to acquittal of respondents

No.2 to 9-herein (accused No.3 to 10) has come up in the instant appeal bearing No.CRA-D-1136-DB-2010 with the prayer to accept this appeal, to set aside their acquittal and further to punish them in this case in accordance with law.

Leave to appeal in this regard against the acquittal of respondents No.2 to 9 was granted vide order dated 15.11.2010.

10. Notices of both the appeals were given to the respondents. Record of learned trial Court was also requisitioned.

11. We have heard learned counsel for both the parties and also scrutinized the record very minutely with their able assistance.

12. The learned counsel for the appellants has contended that in fact the present case was a case of blind murder and there was no eye-witness to it. In this connection, it is his contention that PW-9, Baljeet Singh-complainant and PW-10, Shanti were not present at the spot at the time of alleged occurrence nor they had ever seen this incident. Herein he has contended that both these prosecution witnesses were introduced in this case in order to lend support to prosecution version just for the purpose of false implication of the present appellants and their co-accused (since acquitted) in this case and further to secure their conviction as well.

13. Now let us see the depositions of these two prosecution witnesses for the purpose of appreciation of this contention of learned defence counsel. PW-9 deposed in the Court during trial of the case as per his statement Ex.PM made by him before the Police on 11.12.2006. The

relevant part of his cross-examination for the purpose abovementioned was as under:-

“That on the date of occurrence, he, his wife and his both sons had gone to fields at about 9:00 a.m. They all took lunch in the fields at about 1/1:30 p.m.. They had gone to the fields in a bullock cart. Sonu had cut one bundle of Javi (green fodder). Rajesh was spreading fertilizers in the Javi crop with the help of a piece of cloth which was hanging on his shoulder.....

His fields were irrigated by Sunder minor, but he does not remember outlet number. This minor is at a distance of about 15 acres from his fields which is a very old one. He has also a tubewell in his fields and the water-course from the tubewell connect his all 5 acres of land. They were removing grass from the water-course (Nali) at a distance of about 1 ½ acre from their tubewell. They had removed grass from the water course with the help of sickle. He had been doing agricultural work since his childhood and that they were cutting grass for cleaning water-course for irrigation. They started raising alarm immediately when they had seen the accused coming out of sugarcane field. They did not try to conceal themselves in the water channel.....

It is correct that people visit their fields to collect green fodder in the evening hours, but they used to return within time to their houses in the early evening. Self stated they remained in their fields as their tubewell was out of order which was got repaired

on the date of incident prior to occurrence. They could not disclose the matter to the other villagers on their return to the village as they were not in their full senses.....

After re-gaining consciousness, he first of all disclosed about the incident to his son Anand Bir. He did not tell about the incident to his daughter-in-law Mukesh wife of Rajesh as she was not fully conscious.

14. In the rural area, it is a hard fact that in the winter season in the month of December of every year green grass, weeds etc. grow in the water course (Nali) in abundance and the same are removed by the farmers for cleaning the water course for the free and smooth flow of water for irrigation purpose. Then it is also a fact that due to winter, people return to their houses in time in the evening after procuring the green grass and finishing their other field work as well. In the case in hand the alleged occurrence took place in the evening time at about 4/4:30 pm, which was not too late. Further explanation given by PW-9 qua his presence at the spot at the time of alleged occurrence was that their tubewell was not in workable condition which was got repaired on the date of the occurrence itself prior to occurrence. If this witness did not apprise anybody in the village about the occurrence throughout night, it also did not make any difference since his explanation in this connection was that he became unconscious after the alleged occurrence. If he was found present in his fields while doing some sort of field work at the time of alleged occurrence then his presence at the spot at the said relevant time is held to be natural one and the same cannot be discounted on any count. Moreover, he was an agriculturist by avocation.

If no injury was caused to him and his wife Shanti-PW-10 by the assailants, then also it cannot be said that he was not present at the spot at the time of alleged occurrence.

15. PW-10 Shanti was the wife of PW-9, Baljeet Singh (complainant). As per the case of prosecution, she was also present at the spot when the alleged occurrence took place and had witnessed the same. She also supported the prosecution version by lending corroboration to the above statement of PW-9. Her explanation in the cross-examination is also the same as stated by PW-9 that she did not narrate about the incident to anybody in the village since she was unconscious and re-gained consciousness on the third day of the incident. She was cross-examined by learned defence counsel at length, but nothing material had come on record in her cross-examination to disbelieve her deposition except the improvements and some omissions as pointed out by the learned defence counsel.

The improvements which she allegedly made in her statement while appearing in the Court as per record are as under:-

“She mentioned in her statement to the Police that from the sugarcane fields Hawa Singh, Zile, Balraj, Naseeb, Maya and Sunder had also come out. She also got mentioned in her statement to the Police that all the eight assailants were armed with axe, kassi, gandasi and pistols. She also got mentioned in her said statement that Hawa Singh raised a Lalkara that for the murder of his grandson Vikas, both be done to death. Then she also got mentioned in her statement to the Police that on

seeing the assailants, her son Sonu ran to save his life who was chased by Joginder and Sandeep while holding one pistol each. Then she also got mentioned in her statement to the Police that both Joginder and Sandeep fired at Sonu. Then she also got mentioned in her statement to the Police that Zile Singh inflicted reverse blow of gandasi on the right side head of Rajesh. Then she also got recorded in her statement to the Police that while Rajesh was lying on the ground then all the assailants caused injuries to him by means of axe, gandasi and pistols. Then she also got mentioned in her statement to the Police that while leaving the spot, assailants had put pistol in the left hand of Sonu. She also got mentioned in her said statement to the police that motive for the occurrence was that grandson of Hawa Singh namely Vikas was murdered and her son Sonu was one of the accused in that murder case. But when this witness was confronted with her alleged statement Ex.D1 made by her before the police, then all the abovesaid facts were not found to be so recorded in it.

Regarding omissions, this witness stated that she did not mention in her statement Ex.D1 to the police that Rajwanti had made lalkara that both two are the murderers of her husband and they should not be spared. Then she also did not mention in her said statement before the Police that Rajwanti, Joginder @ Kala and Sandeep are the real culprits of the murder of her two sons. But when this witness was

confronted with her alleged statement Ex.D1, then both the abovesaid facts were found to be recorded in it.

Even if for arguments sake, the statement of PW-10 is to be ignored altogether, even then statement of PW-9 as above discussed is there which stands like a rock to substantiate the prosecution version. Moreover if the abovesaid improvements are to be subtracted from the statement of PW-10 Shanti alike *separating grain from the chaff*, even then the remaining part of her statement is sufficient to hold that she was present at the spot and had seen the occurrence. So consequently above contention of learned counsel for the appellants is declined.

16. Then the learned counsel for the appellants has contended that there is a delay of about 16 hours in lodging the FIR and on this count also the possibility of false implication of the appellants in this case after making due consultation and deliberation cannot be ruled out. In the case in hand alleged occurrence took place on 10.12.2006 at about 4/4:30 p.m. and as per the endorsement Ex.PN, the matter was reported to the police on the next day at about 8:50 a.m. by the complainant-Baljeet Singh vide his statement Ex.PM. Then the learned counsel for the appellants has also contended that special report qua the alleged occurrence was sent to the authority concerned at about 1:55 p.m. on the same day.

Now let us see how this delay was explained by prosecution. It has been well established on record that both PW-9 and PW-10 who were eye-witnesses to the alleged occurrence had become unconscious on seeing

the incident. PW-9 re-gained consciousness on the next day of the alleged occurrence whereas PW-10 regained her conscious on the third day of this occurrence. The matter was reported to the Police as abovesaid on the next day of occurrence in the morning at about 8:50 a.m. Both PW-9 and PW-10 are the parents of both the deceased i.e. Sonu and Rajesh. Both deceased were murdered in their presence while they were in their young age by the assailants in a brutal manner. If the two young children of any parents are eliminated within their view then certainly they feel spineless both mentally and physically thereby impairing their mental and physical senses temporarily for some time. Then as recorded in the FIR Ex.PQ, the place of occurrence was at a distance of 25 KMs from concerned Police Station Narnaund. Then it is also to be noted that alleged occurrence took place during extreme winter time i.e. in the month of December. There was no other male member in the family, when PW-9 along with PW-10 returned to the house after the alleged occurrence while staggering. As per the prosecution version, Anand Bir another son of the complainant reached at house in the morning on the next date of occurrence to whom the entire alleged incident was narrated by PW-9 and then they proceeded to approach the police to lodge the report qua alleged occurrence. Then as per the testimony of PW4 ASI Dalbir Singh, he handed over the copy of special report to EHC Kulbir Singh at 9:40 A.M. In this connection, PW9 EHC Kulbir Singh in his cross-examination stated that he delivered the copy of special report to Illaqa Magistrate at his residence at 12:00 noon. The distance between P.S. Narnaund and residence of Illaqa Magistrate, Hansi is 23 kms.

In the light of the above circumstances, the alleged delay in lodging the FIR stood duly explained and there is nothing to doubt the prosecution version so far as it relates to present appellants.

17. Then it is also contended by learned counsel for the appellants that there is another discrepancy in the case of prosecution since ocular version with regard to mode of causing injuries to the deceased by the assailants as narrated by PW-9 and PW-10 is not in conformity with the medical version.

So far as deceased Rajesh son of Baljeet Singh was concerned, post-mortem on his dead body was conducted by a Board of Doctors of which PW-3 Dr.K. N. Shrivastava was one of the members. He tendered his duly sworn affidavit Ex.PG as a part of his statement. Further he proved the carbon copy of post-mortem report of this deceased as Ex.PH and found following injuries on his person:-

- i. A 1 cm semi circular wound on left side of the temporal region and wound was about 2.5 cm above the left ear pinna and both side parietal bones was fractured, on exploration the brain matter and vessels were damaged and haematoma was present in the surrounding areas. An wound of 1 cm, the margins and edges inverted, collar of abrasion was present. There was another wound on right side of skull of about 10 cm X 6 cm size, the bony part was missing at fronto-parietal-Temporal region of right side skull. Skin margins were everted.
- ii. A oval shaped wound of 5 cm X 3 cm on upper part of the right thigh on its anterior aspect.

Margins were inverted and collar of abrasion was present the wound travels upward and another wound is placed of 8 cm X 4 cm near the analring, the rectum was torn lacerated. The haematoma present all around injury parts. There was injury to right femoral artery, and veins and nerve was ruptured.

In the cross-examination, he deposed that there was no other injury on the head of Rajesh except a fire arm injury. Injury No.1 is in two parts i.e. first part is entry wound and second one is exit. Then he also gave his opinion Ex.PL that the injuries on the person of this deceased were the fire arm injuries.

The ocular version as stated by PW-9 Baljeet and PW-10 Shanti qua the injuries caused to deceased Rajesh by the assailants was that accused Zile gave a reverse kassi blow on the head of Rajesh, then thereafter all the assailants started causing injuries to him with their weapons i.e. pistols, gandasi, lathi, kassi etc. etc. So from this, one thing is established beyond doubt that as per the ocular version, assailants caused injuries to Rajesh on his head which were also found as such on his person during his post-mortem though caused by fire arm only.

So far as deceased Sonu was concerned, post-mortem on his dead body was conducted by PW-8 Dr.D.S. Lamba, who was one of the members of Board of Doctors constituted for this purpose. In this connection, he brought on the file his duly sworn affidavit Ex.PX as a part of his statement. As per his statement/affidavit, the injuries which were found on the person of this deceased during post-mortem are recorded as under:-

- i. 1 cm diameter round lacerated wound present on occipital area of scalp with margins inverted and a collar of abrasion present. Another lacerated wound of 2 cm. X 2.5 cm. present on forehead. On dissection, the occipital and frontal bones found fractured, the membranes lacerated and brain matter was found damaged. Hematoma was present in the surrounding area.
- ii. That a lacerated wound of 1 cm diameter, round shape on left scapular area of back. Another lacerated wound of 1 cm diameter present on right scapular area, round in shape. Both wounds have inverted margins with a collar of abrasion and burn marks on margins. Both scapulas found fractured, the 3rd and 4th ribs on left side found fractured. There is a lacerated wound of 3 cm X 2 cm on left nipple on chest and another lacerated wound 8-9 mm size and round shape on left side of chest about 3 ½ cm above nipple. A bullet was found stuck in this wound which was recovered and sealed as such. The plural membranes found torn and lacerated. The lungs lacerated and the thoracic cavities full of blood. The heart was found punctured both at the anterior and posterior walls.

The ocular version in this regard as stated by PW-9 and PW-10 was that the assailants Kala and Sandeep while armed with pistol ran after their son Sonu, who started running on seeing the assailants. They both fired upon Sonu, who died at the spot. When they saw his son Sonu after the

occurrence they found injury on his back. Then in the opinion of Doctor, the cause of death in this case as abovesaid was fire arm injury to the vital organs.

Then it is also a fact that a layman is to tell about the number and nature of injuries on the person of injured/deceased as the case may be in his own fashion, whereas the Medical Officer is to depose in this regard exactly as per the medical prescribed norms. Little variation in the oral version viz.-a-viz. medical version qua the number and nature of injuries is not to affect the case of prosecution adversely unless some substantial as well as major difference between these two versions has come on the record which is not so in the case in hand.

18. Then the learned counsel for the appellants has also argued that as per the case of prosecution after the alleged occurrence, the assailants put a country made pistol in the hand of Sonu @ Sudhir deceased before leaving the spot of crime. In support of his contention, he has referred to the statement Ex.PM of complainant-Baljeet (PW-9) wherein it has been so stated. In this regard, he has contended that this version of prosecution has not been established on the record since it has nowhere been mentioned in the inquest report Ex.PAA of deceased Sonu that any pistol was recovered from his hand while preparing the same and consequently a serious dent has been caused in the prosecution version, the benefit of which is to be granted to the appellants. It is correct that in inquest report Ex.PAA of this deceased, no pistol was shown to be recovered from the hand of this deceased while preparing his said inquest report.

Now other evidence relevant to this aspect of the case, if any, is also to be considered and appreciated. It came on the record in the statement of PW-13 Inspector Vinod Kumar, Investigating Officer that country made .315” pistol was found in the right hand of Sonu @ Sudhir-deceased during spot inspection. On unloading this pistol a live cartridge of same bore was also recovered. Rough sketch Ex.PBB of this pistol was prepared and thereafter the same was taken into police possession along with live cartridge and three empty cartridges which were also recovered from the spot vide memo Ex.PCC. Then in scaled site plan Ex.PC of the spot of occurrence, Mark F is shown to be the place where illicit pistol was alleged to be placed in the hand of deceased Sonu @ Sudhir. Then in the site plan Ex.PSS of the spot of occurrence and the note appended to it, Mark F is shown to be the place where in the left hand of deceased Sonu illicit pistol was lying. This pistol was produced in the Court during trial of the case and proved as Ex.P10 in the statement of PW-13 Inspector Vinod Kumar.

19. So in the light of above discussed documents i.e. scaled site plan Ex.PC, recovery memo Ex.PCC, rough sketch Ex.PBB, site plan of the spot of occurrence Ex.PSS, pistol Ex.P10 coupled with oral statement of PW-13, the recovery of the country made loaded pistol of .315” from the hand of deceased Sonu @ Sudhir has been duly proved on the record beyond the shadow of reasonable doubt. Non-mentioning of this fact in the inquest report Ex.PAA of this deceased could be there either due to slip of pen on the part of Investigating Officer or for the reason that he might be under the impression that this pistol was taken into police possession vide recovery memo Ex.PCC along with one live cartridge and three empty cartridges as

abovementioned. Hence the above contention of learned counsel for the appellants is also rejected being found to be not tenable.

20. Then it was the case of prosecution that parcels containing bloodstained earth lifted from the spot, arms and ammunition recovered from the spot and of all the arms and ammunition which were allegedly got recovered by the accused along with the parcels containing clothes of the deceased as well as of the accused were sent to the office of FSL, Madhuban, Haryana which after doing the needful submitted its reports Ex.PBBB and Ex.PCCC. Now let us see the contents of both these reports in order to hold as to whether the same has any impact on the merits of case in hand or not.

Parcels mentioned at Sr. Nos.I to IV and X to XII in the report Ex.PBBB were containing bloodstained earth lifted from the spot, clothes of both the deceased Sonu @ Sudhir and Rajesh and of accused Joginder, Sandeep and Rajwanti and contents of parcels mentioned at Sr. Nos. V to IX in this report were as under:-

v. Contained one countrymade pistol (chambered for .315” cartridges) alongwith one .315” live cartridge stated to have been recovered from the left hand of deceased Sonu @ Sudhir from the place of occurrence. (Pistol marked as W/1).

vi. Contained three .315” fired cartridge cases stated to have been collected from the place of occurrence. (Marked C/1 to C/3).

vii. Contained one .315” fired bullet stated to have been taken out from the body of deceased Sonu @ Sudhir. (Marked BC/1).

viii. Contained one countrymade pistol (chambered for .315” cartridges) alongwith one .315” live cartridge stated to have been recovered from the accused Joginder. (Pistol marked as W/2).

ix. Contained one countrymade pistol (chambered for .315” cartridges) alongwith three .315” live cartridges and one .315” fired cartridge stated to have been recovered from the accused Sandeep (pistol marked as W/3 & cartridge case as C/4).

After the mechanical as well as chemical test of the above weapons and ammunitions the laboratory gives the report that country-made pistols marked W/1 to W/3 of .315” were the fire arms and their firing mechanism was found in working order. .315” fired cartridge cases marked C/1 to marked C/3 and .315” fired bullet marked BC/1 were fired from the country made pistol marked W/1 and not from any other firearm even of same make and bore .315” fired cartridge case marked C/4 had been fired from country made pistol marked W/3 and not from any other weapon even of same bore and make.

So this report corroborates the fact that the pistol which was allegedly got recovered at the instance of accused Sandeep was used in the alleged occurrence. Then as per the report, pistol which was allegedly got recovered by accused Joginder was also found to be having been fired, though scientifically the time of its last firing could not be given. It was the

case of prosecution from the very beginning that when Sonu @ Sudhir (since deceased) started running on noticing the assailants, then the accused Joginder @ Kala and Sandeep while armed with the pistols chased him and fired upon him. So the fact that pistol which was allegedly got recovered by accused Joginder was also used in the alleged occurrence has also been duly proved on the record.

Then as per the second report Ex.PCCC of the FSL, human blood was found in the one parcel containing bloodstained earth and the parcels containing, cap, shirt, pants, jean pants, kachha and Banian.

Then PW3 Dr. K.N. Srivastava has proved the clothes i.e. shirt Ex.P1, pants Ex.P2, underwear Ex.P3, Cap Ex.P4 which were allegedly got removed from the dead body of the deceased Rajesh at the time of his post-mortem.

Similarly PW-8 Dr. D.S. Lamba has proved the clothes i.e. one shirt, banian, one underwear and one pant; Ex.P6 to Ex.P9 respectively which were allegedly got removed from the dead body of deceased Sonu @ Sudhir at the time of post-mortem on his dead body.

So this report only tells about the fact of the presence of human bloodstains on the clothes of deceased and nothing-else more.

21. Then learned counsel for the appellants has also pointed out that parties were inimical to each other prior to this occurrence and as such the possibility of false implication of the present appellants along with their co-accused (since acquitted) in this case cannot be ruled out. It is an admitted fact that Sonu @ Sudhir one of the deceased in this case was one of the accused in criminal case with

regard to murder of Vikas @ Tunda son of Zile Singh accused and this fact is also duly established on record as per certified copy of the police report Ex.D6 submitted under Section 173, Cr.P.C. Then in the list of witnesses Ex.D7 annexed with the challan, appellant-herein Joginder Singh (accused) along with four other (namely Hawa Singh, Balraj, Nasib and Zile Singh who were acquitted in the case in hand after trial) were cited as witnesses in the abovesaid murder case of Vikas @ Tunda bearing FIR No.358 dated 14.10.2005 under Sections 302/120-B-/34, IPC and Section 25 of the Arms Act, Police Station Narnaund.

But in the case in hand, the learned trial Court acquitted eight of the accused out of ten accused persons who were facing trial before the trial Court by granting them benefit of doubt. So far as the present appellants are concerned, the evidence against them on the record is sufficient as well as reliable for their conviction and as such no benefit could be granted to them in this case on the ground of abovesaid enmity.

22. Then it was the defence version that both the deceased namely Rajesh and Sonu were known criminals and that they were murdered by some unknown persons during night of 10/11-12-2006 and the present case was foisted upon present appellants and their co-accused (since acquitted) with a motive to put pressure upon them to settle the matter with regard to the murder of Vikas @ Tunda son of Zile Singh. But during the trial of the case, no material evidence came on the record to show that abovesaid both the deceased were having any criminal record or having any hostility with any group of criminals. So this contention of learned defence counsel is also held to be not tenable.

23. Then PW13 Vinod Kumar, Inspector/ Investigating Officer was posted as SI/SHO at Police Station Narnaund on the date of present occurrence. He proved the statement of the complainant Ex.PM and made his endorsement on it Ex.PN. Further he proved FIR Ex.PQ. He also proved the inquest reports Ex.PJ and Ex.PAA of deceased Rajesh and Sonu respectively. Then he also deposed about the articles recovered from the spot which were taken into police possession after preparing parcels thereof vide memos Ex.PCC and Ex.PDD. Then he also deposed about the disclosure statement Ex.PGG suffered by accused Joginder and recovery of arms and ammunition as well as of the clothes as per this disclosure statement. In this connection memo Ex.P-II was also prepared vide which these articles after converting the same into parcels were taken into police possession. Then he also deposed about the disclosure statement Ex.P-PP suffered by accused Sandeep and recovery of one pistol, three live cartridges and one empty cartridge got effected by this accused vide said disclosure statement and the recovery memo Ex.PRR vide which these articles were taken into police possession after preparing their parcels. He also deposed about recovery of mobile phones made from appellant – herein (accused) Sandeep and the clothes produced by this appellant. He also recorded the statements of witnesses and on completion of investigation, challan was presented in the Court.

PW-11 Anand Bir accompanied PW-13 Inspector Vinod Kumar during investigation and he corroborated with his statement.

PW-1 Mangat Ram Patwari proved scaled site plan Ex.PC.

PW-4 Dalbir Singh, ASI recorded the FIR Ex.PQ on receipt of ruqa.

PW-7 EHC Kulbir Singh delivered the copy of special report Ex.PQ to the Illaqa Magistrate and other higher police officials.

PW-12 Jasmer was the photographer, who took photographs Ex.P25 to Ex.P37 of the dead bodies lying on the cot and the negatives of which were Ex.P38 to Ex.P50.

PW-14 Nihal Singh, Reader to District Magistrate, Hissar proved the sanction orders Ex.P-DDD and Ex.PEEE for prosecuting accused Joginder @ Kala and Sanjiv (Sandeep) under Section 25 of the Arms Act.

So far as the statements of DW1 Ramesh Kumar, DW-2 Randhir Singh, DW-3 Om Parkash, DW-4 Bhim Singh and DW-5 Poonam are concerned, these are related to accused Zile Singh, Rajwanti, Sunder Devi, Hawa Singh, Naseeb, Balraj and Maya Devi, who have been acquitted by the learned trial Court vide impugned judgment. So there is no need to discuss their statements herein.

In the light of above discussion and appreciation of the evidence of both the parties, this appeal is found to be meritless, hence it stands dismissed and disposed of accordingly.

CRA-D-1136-DB-2010

1. Since respondent No.3 – Rajwanti has expired on 24.3.2012, as per death certificate produced on record, during the pendency of this appeal, so proceedings of this appeal qua her stand abated.

2. Learned counsel for the appellant has contended that the learned trial Court has committed a grave error in acquitting the accused Nos.3 to 10 (now respondents No.2 to 9) while passing impugned judgment. It is further his contention that there is sufficient evidence on the record qua the abovesaid accused (respondent Nos. 2 to 9 herein) to hold them guilty in the case in hand and to sentence them by awarding punishment as per law which fact the learned trial Court has failed to appreciate while passing impugned judgment. Further he has prayed for the acceptance of the appeal, to set aside the acquittal of the abovesaid accused (respondents No.2 to 9 herein) and to punish them of the charges for which they have been charge-sheeted.

3. Now let us see the facts of the case and evidence on record in order to hold as to whether it is a fit case to upset the acquittal of the aforesaid respondents and to bring them to book. As per the prosecution case, accused Hawa Singh (respondent No.5 - herein) was present at the spot at the time of alleged occurrence and only 'lalkara' has been attributed to him. Then as per the case of prosecution, accused Zile Singh (respondent No.2-herein) was armed with the kassi and he gave a kassi blow on the right of the head of Rajesh (since deceased). Then as per further case of prosecution accused Balraj (respondent No.7-herein) was also armed with the kassi and he gave kassi blow to Rajesh (since deceased). Then further as per the case of prosecution, accused Sunder Devi and Maya Devi (respondent Nos.4 and 8 respectively herein) were armed with gandasies and they inflicted injuries to said Rajesh with their gandasies. Then accused

Nasib (respondent No.6-herein) was armed with lathi and he inflicted injuries to said deceased Rajesh with lathi.

4. The abovesaid prosecution version was made by complainant-Baljeet Singh vide his statement Ex.PM which he made before the police on 11.12.2006. He and his wife Shanti while appearing in the Court as PW-9 and PW-10 respectively also corroborated the said version of prosecution.

5. Then post-mortem on the dead body of deceased Rajesh was conducted by PW-3 Dr. K.N. Srivastava along with other members of Board of Doctors. He proved the carbon copy of his post-mortem report Ex.PH. As per his post-mortem report, only two injuries were found on the person of Rajesh (since deceased) and both were found to be caused by fire arms. No injury was found on his person having been caused by means of weapon like gadansi, kassi, lathi etc. So in the light of this medical evidence, the prosecution version that abovesaid accused (respondents No.2 to 9 – herein) were armed with kassies, gandasies, lathies etc. and that they had inflicted injuries to Rajesh (since deceased) by means of these weapons stands fully falsified so far as it relates to these respondents.

6. Then Shanti wife of complainant-Baljeet Singh made her statement before the police on 13.12.2006 to the effect that accused Naseeb Singh (respondent No.6-herein) and accused Rajwanti (respondent No.3-herein - now deceased) were also present at the spot at the time of alleged occurrence along with their co-accused. As per the case of prosecution they were neither armed with any weapon nor any injury was attributed to them. So the involvement of these respondents in the alleged occurrence is also not established on the record in order to connect them with this case.

7. Then respondent No.3 - Rajwanti (now deceased) along with accused Joginder and Sandeep (both convicted in this case) was charge-sheeted in this case for the offence under Section 120-B of the IPC on the allegation that PW-10 Shanti Devi had heard one day prior to the occurrence while Zile Singh was saying to Rajwanti and Joginder that sons of Baljeet be eliminated before the next date of hearing. She supported this fact while appearing as PW-10 in the Court during trial of the case. Then it came in her cross-examination that she narrated this fact on her return to her house to her husband who told that they would report the matter to the police after doing some urgent work of tubewell repair on the next morning. Her husband-Baljeet Singh appeared as PW-9. He did not say even a single word to the effect that his wife Shanti had told him that accused Zile Singh along with accused-Rajwanti and Joginder had been conspiring to eliminate their sons before the next date of hearing. So the evidence of the prosecution on the record to substantiate the charge under Section 120-B, IPC, is also very weak as well as scanty.

8. Accused Upkar (respondent No.9-herein) was involved in this case for the offence under Section 212, IPC, for harbouring accused Sandeep and Rajwanti. Then strange enough PW-9 Baljeet Singh in his cross-examination stated that he does not know as to whether Upkar is son-in-law of accused Zile or that he is resident of Rohtak. Self stated that he has not been named as an accused by them. So in this situation no case under Section 212, IPC, makes out against this respondent.

9. In the light of above discussion, no ground is made out to make any kind of interference in the impugned judgment so far as it relates to

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acquittal of respondent No.2 to 9-herein. So this appeal also stands dismissed and their acquittal is affirmed.

March 01, 2016
Gaurav Sorot

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE