

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

CRA D-177-DB of 2011

Date of Decision: February 3, 2016

Dharam Raj @ Balu and others	Appellants
Versus	
State of Haryana	Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN**

Present: Mr. S.R.Hooda and Mr. Kanwar Satbir Singh,
Advocates for the appellants.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S.MANN. J.

The appellants, namely, Dharam Raj @ Balu, Satish @ Mintu and Mukesh Kumar were tried for committing offences punishable under Sections 302 and 333 read with Section 34, Section 392 read with Section 397, 120-B IPC and Section 25 of the Arms Act. Vide judgment and order dated 30.10.2010/11.11.2010, learned Additional Sessions Judge, Sonapat, convicted and sentenced them as follows:-

- (i) All the appellants were convicted under Section 120-B IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year;
- (ii) All the appellants were convicted under Section

302 read with Section 120-B IPC and sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of one year;

(iii) All the appellants were convicted under Section 333 read with Section 120-B IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months;

(iv) All the appellants were convicted under Section 392 read with Section 120-B IPC and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months;

(v) All the appellants were convicted under Sections 392/397 read with Section 120-B IPC and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.8,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of nine months; and

(vi) Appellant Dharam Raj @ Balu was convicted under Section 25 of the Arms Act and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of

Rs.1,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month.

The substantive sentences of imprisonment were ordered to run concurrently. The period already spent by them in custody was ordered to be set off against the substantive sentences imposed upon them.

According to the prosecution, Sub-Inspector Sat Pal Singh, Station House Officer, Police Station Baroda, District Sonipat, was present in the Police Station on 20.4.2005 at 10.45 p.m., when he was informed by the MHC that a telephone call had been received from EHC Ram Kishan, driver/rider No. 41 that he along with one more police official had been fired at by two persons, who were on a scooter and were lying near Dhanana turning at Meham road, ahead of Kathura and requested to reach there at the earliest. Accordingly, Sub-Inspector Sat Pal Singh along with ASI Dhanpat Rai, ASI Baljit Singh, HC Raj Singh and EHC Ramesh reached the spot on Meham road in a Government jeep bearing registration No. HR-10E-0610 being driven by Anil Kumar. He saw that EHC Ram Kishan was lying dead towards southern side of the road at its kacha berm after having suffered fire shots near his right eye, on the chest and right side of his waist and his dress besmeared with blood whereas EHC Randhir Singh No. 918, was found lying dead under the keeker on kacha

portion of the road towards the northern side, who also appeared to have suffered fire shots straight in his chest and waist. There was walky-talky set in his left hand and scooter bearing registration No. PB-25-8592, make Bajaj Chetak, colour grey, was lying nearby. The driving licence No. 17387/W dated 16.9.2002 was also found lying at the spot, which was issued in the name of one Dharam Raj @ Balu son of Ram Kumar resident of Baghru Khurd, Tehsil Safidon, District Jind. There was colour photograph affixed on the licence, which was valid upto 15.3.2003. There was also an empty cartridge of .315 bore with 8 mm written on it lying near the dead body of EHC Ram Kishan. Both the police officials were on duty at Meham road on the motorcycle bearing registration No.HR-10F-8952, make Hero Honda Splendor, white in colour with rider EHC Ram Kishan. They were provided with a walky-talky set and a sten gun alongwith 35 bullets/cartridges of 9 mm each with its magazine but the same were not found at the spot. The empty cartridge lying at the spot was taken into possession after preparing a parcel. The said parcel along with the scooter and driving licence of Dharam Raj @ Balu and walky-talky set were taken into police custody vide separate recovery memos. The recovery memos were attested by the witnesses. It appeared that some unknown persons had murdered the two police officials after snatching the motorcycle and sten gun

alongwith 35 bullets of 9 mm each and, accordingly, committed offences under Sections 353, 333, 392, 397, 302 IPC and Section 25 of the Arms Act. Ruqa was prepared and sent through EHC Ramesh Kumar to the Police Station for registration of case. Accordingly, FIR No. 43 dated 21.4.2005 was registered at 2.00 a.m. at Police Station Baroda.

During the investigation of the case, Sub-Inspector Sat Pal Singh got the place of occurrence photographed. Rough site plans of the place of recovery of dead bodies were prepared. Blood stained earth from near the dead bodies, one bullet lying near the dead body of EHC Randhir Singh and one empty cartridge of .315 bore were also lifted and put in a parcel. Inquest proceedings in respect of dead bodies were also conducted. On 21.4.2005, the dead bodies were sent to CHC Gohana for post-mortem. On receipt of information that motorcycle of the deceased was lying abandoned in the field of one Wazir in the area of village Jasiya, Sub-Inspector Sat Pal Singh went there and took it into possession. The spot was also inspected by a team of Forensic Science Laboratory, Madhuban, which lifted the finger prints from the motorcycle. On 23.4.2005, accused Dharam Raj @ Balu was arrested. On interrogation, he suffered disclosure statement that he along with his co-accused had planned to rob the amount meant for distribution of old age pension and to the

handicapped persons. He further stated that he alongwith his co-accused went to Meham Road in order to snatch arms from the two police officials who used to patrol that area. Those police officials asked them for document of the scooter on which they were going. He and his co-accused then fired shots upon those police officials and fled away on their motorcycle after snatching their arms and ammunition as per the conspiracy hatched by them. Pursuant to the disclosure statement, accused Dharam Raj @ Balu got recovered a country made pistol. Sub-Inspector Sat Pal Singh also arrested accused Mukesh Kumar on 25.4.2005. On 19.5.2005, SI Sahib Singh formally arrested accused Satish @ Mintu. On interrogation, he suffered disclosure statement pursuant to which he got recovered 25 live cartridges and an identity card of deceased EHC Ram Kishan. During further investigation, the crime weapons, blood stained earth and the uniforms of the deceased were sent to Forensic Science Laboratory for analysis. Statements of the witnesses were recorded. After completion of the investigation and presentation of challan followed by commitment of the case, the appellants were charged for the aforementioned offences, to which, they pleaded not guilty and claimed trial.

In support of its case, the prosecution examined twenty nine witnesses.

PW1 Chander Singh testified that he had identified the dead body of his son Randhir Singh, who was posted in Police Station Baroda as EHC.

PW2 Surrender stated that he had identified the dead body of his brother Ram Kishan at the spot where one another dead body was also lying there.

PW3 Constable Ashok Kumar testified that he had delivered the special report to the Ilaqa Magistrate on 21.4.2005. He had also delivered one sealed parcel to the Director, Forensic Science Laboratory, Madhuban, on 24.5.2005, which was handed over to him by MHC Seshan Kumar.

PW4 Ravinder, Patwari Halqa Kathura, stated that he had prepared scaled site plan Ex.PA of the place of occurrence on 24.5.2005.

PW5 ASI Daya Nand testified that on 27.5.2005, he went to Police Station Basant Kunj, Delhi, and collected sten gun from HC Subash through memo Ex.PB. He also recorded the statement of Licencing Clerk Safidon for getting information about the driving licence of Dharam Raj @ Balu.

PW6 Kaptan Singh testified that on 20.4.2005, he was present at petrol pump known as Shiv filling Station, Gohana Meham road. At that time, he was taking diesel for the tractor. In the meantime, accused Dharam Raj @ Balu, Mintu and Sandeep

came there on a scooter, make Bajaj Chetak. They also got petrol from the same petrol pump. One of the accused paid for the petrol. After that the accused left the said pump towards Gohana while he went towards his fields for thrashing the wheat. On the same night at about 11.00 p.m., he along with Surender came to the tea stall of Mehar Singh for taking tea. At that time, the three accused again came on a motor-cycle of white colour at a very high speed and they went towards village Chhiri. It was moonlit night. Besides, there was electricity at the tea stall. After that he came back to his fields. On the next morning, he learnt in the village that two police officials had been murdered. Accordingly, he alongwith Surender reached the spot and saw the scooter, which was lying near the place of occurrence. It was the same scooter, which he had seen in the possession of the accused at the time of getting petrol filled. He apprised the police in this respect as well as the names of the accused as they were taking each others names while making payment for the petrol. He identified scooter Ex.P2 in the Court premises.

PW7 Vikash, brother of Ram Kishan, deposed that on 1.5.2005, he had joined the police party headed by SHO and on reaching Police Station Sadar Gohana, accused Dharam Raj @ Balu, who was in the lock-up, was brought out and on interrogation, he made disclosure statement that his previous

statement Ex.PD recorded by the police was false. In fact, he and his co-accused committed the murder of two police officials and the weapons, which were used in the crime had been kept concealed in the corner of the school campus in village Nizampur and pursuant to the same, he got recovered country made pistol of .315 bore from the designated place after removing some brickbats. Pursuant to the same, he got recovered .315 bore country made pistol which was taken into possession vide memo Ex.PD/1. He further deposed that on 20.5.2005, accused Satish was interrogated by the police in his presence, who also confessed his guilt and stated that he had kept concealed 25 unused cartridges near power house in the village of Kathura and he could get the same recovered. Pursuant to the disclosure statement Ex.PE, accused Satish got recovered 25 live cartridges alongwith an identity card from the campus of temple, which were taken into possession through recovery memo Ex.PE/1.

PW8 Constable Anil Kumar tendered his affidavit Ex.PF in evidence.

PW9 ASI Baljit Singh deposed that on 21.4.2005, he had moved an application for conducting post mortem on the dead bodies of EHC Ram Kishan and Randhir Singh. After the post-mortem, he had handed over sealed parcels of the clothes of the two deceased and one sealed parcel of bullet before Sat Pal

Singh SHO, who took the same into possession vide recovery memo Ex.PF/3.

PW10 ASI Satbir Singh, Incharge, Police Lines Sonapat as M.T.O. testified from the record that motor-cycle make Hero Honda bearing registration No. HR-10F-8952 was allotted to Rider No. 41, Police Station Baroda and he handed over registration certificate of the said motorcycle to the Investigating Officer, which was taken into possession vide memo Ex.PG.

PW11 ASI Dhanpat Rai testified that on 20.4.2005 on receipt of telephone call from EHC Ram Kishan, Rider No. 41 that two persons had fired at them, he accompanied SI Sat Pal Singh and others on a Government jeep to the spot, where they found Rider EHC Ram Kishan and EHC Randhir Singh lying dead on the katcha portion of the road. They observed bullet injuries on their dead bodies. EHC Randhir Singh was holding a walky-talky set by its lace in his hand. One scooter bearing registration No. PB-25-8592 make Bajaj Chetak and one driving licence in the name of accused Dharam Raj @ Balu with colour photograph affixed on the same were recovered from the spot. By the side of dead body of EHC Ram Kishan, one empty cartridge of .315 bore, one walky-talky set, driving licence of accused Dharam Raj @ Balu and above said scooter were also taken into possession vide

recovery memo Ex.PH. From underneath the dead body of Ram Kishan, one bullet, blood stained earth and empty cartridge of .315 bore were taken into possession vide recovery memo Ex.PJ. From the place where the dead body of Randhir Singh was lying, one bullet and blood stained earth were taken into possession. The motor-cycle, on which, riders EHC Ram Kishan and EHC Randhir Singh had gone for patrolling, their sten gun and 35 cartridges were found missing. He had also accompanied SI Sat Pal Singh to the fields in village Jasiya behind the power station from where Hero Honda motorcycle bearing registration HR-10F-8952 was found lying abandoned and taken into possession vide memo Ex.PL. He also witnessed the disclosure statement Ex.PM made by accused Dharam Raj @ Balu regarding hatching of conspiracy for committing dacoity of Rs.25 lacs meant for distribution of old age pension, for which, one car and weapon were required. Accused Dharam Raj @ Balu had also stated that Mukesh had told him about some place at Gohana-Meham road where because of road being bumpy, it would be quite easy to snatch the car. He had also disclosed that he alongwith Mintu and Sandeep got filled one litre of petrol in the scooter belonging to Sandeep on 20.4.2005 at about 6.30 p.m. and, thereafter, they parked the scooter by the side of the road. All of them were armed with country made pistols. Sandeep

concealed himself behind bushes. When the two police officials came there for patrolling and made inquiries from them, he had handed over his driving licence to one of the police officials, who stated that they would set them free after being satisfied. In the meantime, Sandeep fired a shot hitting the police official. When the second police official tried to catch hold of them, Sandeep and Mintu fired a shot at him who also fired shot in return. Thereafter, they left their scooter at the spot and fled away on the motorcycle of the police officials after snatching sten gun and the cartridges. He had earlier disclosed that he had kept concealed his country made pistol at Marwar in Rajasthan but that fact was wrong. In fact, he had thrown his pistol while running away.

PW12 SI Partap Singh, Police Station Vasant Kunj, New Delhi, testified that on 27.4.2005, he had investigated FIR No. 271 dated 27.4.2005 under Sections 186, 353, 307 IPC and Sections 25 and 27 of the Arms Act. In the said case, Sandeep Deswal son of Krishan was killed in police encounter. He had held inquest proceedings Ex.PN/1 on the dead body of said Sandeep. He had also sent the dead body of Sandeep for post-mortem vide request Ex.PN/2. From the possession of Sandeep after his death, one revolver, six empty cartridges, one sten carbine with one magazine and 10 live cartridges besides 9 empty cartridges of 9 mm bore were recovered. Those articles were deposited by

him with the MHC of Police Station Vasant Kunj.

PW13 SI Rahul Dev testified that he was posted as Incharge, Special Staff, Sonapat on 18.5.2005. On that day, he alongwith other police officials was holding Nakabandi at Turk Pur crossing. At about 8.30 p.m. one motorcycle was seen coming from the site of village Nahri. He gave signal with a torch to the motor-cyclist to stop. However, instead of stopping the motor-cycle, he took out a pistol from his pocket and opened fire upon the police party. The police party had a narrow escape. Ultimately, he was overpowered near Drain No. 8 and he disclosed his name as Satish @ Mintu. His search led to recovery of one country made pistol of .315 bore alongwith one empty cartridge and two live cartridges. FIR No. 84 dated 18.5.2005 under Sections 307/353 IPC and Section 25 of the Arms Act in this regard was registered at Police Station Kharkhoda. He also testified that after being formally arrested, accused Satish during investigation confessed his guilt and involvement in case regarding committing of murder of two police officials.

PW14 Chander Bhan testified that on 25.4.2005 at about 7.00 p.m. accused Mukesh came to his house and started weeping. He disclosed that he stood involved in the murder of his relative and the police was after him. He requested him to get the matter compromised. He also disclosed that on 19.4.2005, he

alongwith Sandeep, Dharam Raj @ Balu and Mintu had hatched a conspiracy to rob the amount of old age pension, for which, they required sophisticated arms and vehicles. Pursuant to the conspiracy hatched, he had remained in the village whereas Sandeep, Mintu and Dharam Raj @ Balu went on the damaged road. His co-accused committed murder of the police officials and snatched the motorcycle of both the police officials and also their weapons. He further stated that as deceased Ram Kishan was his relative, therefore, he had approached him for getting the matter compromised. He further testified that he then produced Mukesh before the police at Fountain Chowk.

PW15 EHC Subhash Chander tendered his affidavit Ex.PR in evidence.

PW16 HC Shishan Kumar, who was posted as MHC in Police Station Baroda on 20.4.2015 deposed that on that day EHC Randhir Singh and EHC Ram Kishan had gone for patrolling as per DDR No. 27 in the area of Anaj Mandi, Kathura on motor-cycle bearing registration No. HR-10F-8952. Both of them were given one sten gun and 35 live cartridges. On the same day, at about 10.45 p.m., he received telephonic message from EHC Ram Kishan that some scooterists had fired at them and they were lying at Meham road, ahead of Kathura at Dhanana crossing. Subsequent thereto, SI Sat Pal Singh alongwith other

police officials left for the place of occurrence. DDR No. 30 (Ex.PT) in this regard was recorded by SI Sat Pal Singh. He also deposed that during the course of investigation, SI Sat Pal Singh deposited sealed parcel containing empty cartridges of .315 bore, sealed parcels containing blood stained earth taken from underneath the dead bodies of EHC Ram Kishan and EHC Randhir, one sealed parcel of empty cartridge .315 bore, separate sealed parcels containing uniforms of the two police officials, one parcel containing bullets were deposited with him on 21.4.2005. On 22.4.2005, he had sent the case property to Forensic Science Laboratory Madhuban through EHC Subhash Chander. On 1.5.2005, SI Sat Pal Singh had deposited one sealed parcel of .315 bore alongwith sample seal impressions which he sent to the Director, Forensic Science Laboratory, Madhuban on 9.5.2005 through Constable Anil Kumar. On 20.5.2005 SI Sahab Singh deposited parcel containing identify card of EHC Ram Kishan having some blood stains and parcels containing 25 cartridges. He sent those parcels to the Forensic Science Laboratory, Madhuban.

PW17 ASI Ram Kumar deposed regarding suffering of disclosure statement Ex.PD by accused Dharam Raj @ Balu before SI Sat Pal Singh pursuant to which he got recovered country made pistol of .315 bore.

PW18 ASI Kapoor Singh testified that sten gun No. F-48310 with butt No. 26 and another sten gun No. 8828 with butt No.47 were issued to Police Station Baroda along with two magazines and 70 live cartridges of .9mm.

PW19 Jagbeer, Photographer, testified that on 21.4.2005, he had taken photographs Ex.P34 to Ex.P43, which he had developed on the basis of negatives Ex.P44 to Ex.P53.

PW20 SI Sat Pal Singh described in detail the prosecution case starting with receiving telephonic message by MHC Shishan Kumar from EHC Ram Kishan pursuant to which he alongwith his police officials reaching the spot and noticed the dead bodies of EHC Ram Kishan and EHC Randhir Singh at the spot besides recovery of various articles therefrom.

PW21 Dr. Sanjay Antil, deposed that on 21.4.2005 at about 12.30 p.m. he alongwith Dr. I.S.Punia and Dr. Parveen Goyal conducted autopsy on the dead body of Randhir Singh and found the following injuries:-

- “1. Entry wound on the back side in between the 7th and 8th rib size was 3 x 2 cms blackening of margins present and abrasion collar present one cm apart from the wound margin and scorching of the wound.
2. Exit wound on anterior external chest. Right lateral side of sternum at level of 6th rib. Bullet path was through and through passing the right ventricle, right atrium and infraventricular septum through a seak cavity full of blood and all the wearing

clothes blood stained.”

He further deposed that in their opinion the cause of death was firearm injuries leading to immediate death. The injuries were ante mortem in nature and sufficient to cause death in normal course of life.

He further deposed that on the same day at about 1.15 p.m. he alongwith Dr. I.S.Punia and Dr. Parveen Goyal conducted autopsy on the dead body of Ram Kishan and found following injuries:-

- “1. Entry wound on the back side was 3 x 2.4 cms having blackening of the margins present. Intine hemorrhagic spot were present in the area about 6 to 7 cms and seclaning along the trace of the bullet. Left half of liver was lacerated and left lower right lung was lacerated and then at the level of manubriumm sterni.
2. At the angle of manubriumm sterni the bullet made a wound size 2x2 cms. Angle of sternum have fractured this side and then the trace enters in left exala passing the body of scapula. The bullet was recovered from infraspilatus”.

He also deposed that in their opinion the cause of death was due to injuries of firearm to vital organs which led to immediate death. Injuries were ante mortem and sufficient to cause death in ordinary course of life.

PW22 HC Subhash Chander testified on the basis of the summoned record that SI Partap Singh of Police Station

Vasant Kunj had deposited one sten gun bearing No. F-48310 alongwith 10 live cartridges and one magazine, which was the case property of FIR No. 271 dated 27.4.2005 under Sections 186, 353, 307 IPC and Sections 25 and 27 of the Arms Act registered at Police Station Vasant Kunj, which were recovered from the possession of Sandeep.

PW23 Ram Parkash, Reader to District Magistrate, Sonapat, brought on record sanction Ex.PV/1 for prosecution of Dharamraj @ Balu under the Arms Act.

PW24 SI Kanwal Singh testified that on 18.5.2005 he was posted as ASI, Special Staff, Sonapat and on that day at about 8.30 p.m., he alongwith SI Rahul Dev and ASI Rajiv Kumar had apprehended accused Satish @ Mintu from whose possession country made pistol of .315 bore alongwith one empty cartridge and two live cartridges were taken into possession vide recovery memo Ex.PO.

PW25 Sahab Singh, who stood posted as Sub-Inspector, Police Station Baroda on 19.5.2005 testified that he arrested accused Satish @ Mintu when he was produced before the Judicial Magistrate 1st Class, Sonipat. On 20.5.2005, he interrogated Satish @ Mintu who suffered disclosure statement Ex.PE to the effect that after firing upon the police officials, he alongwith his co-accused fled away on the motor-

cycle and also taken sten gun of the police officials. He also disclosed that the motor-cycle was left near power house in the area of village Jasiya. He further admitted that he had taken 25 live cartridges, which he had kept concealed along with identity card of Ram Kishan underneath the soil near the wall of the temple ahead of power house of village Kathura. He had further disclosed that from the purse of Ram Kishan, he had taken out Rs.1500/1600/-. Thereafter, he led the police party and got recovered 25 live cartridges and the identity card of Ram Kishan. They also deposed that upon completion of investigation, he had prepared report under Section 173 Cr.P.C., which was presented in the Court.

PW26 Satish Kumar, Licence Clerk, Office of SDM, Safidon, testified from the summoned record that driving licence No. 17387/LP stood issued in the name of accused Dharam Raj @ Balu.

PW27 Ram Singh, Finger Print Expert, testified that on 18.5.2005, he had received two sealed envelopes containing 15 negatives of change prints and the other containing sample of accused Dharam Raj @ Balu bearing ten digit finger prints. After comparison and displaying, he prepared detailed report Ex.PR.

PW28 Constable Satnarain, Police Station Vasant Kunj testified that FIR No. 271 dated 27.4.2005 under Sections

186, 353 and 307 IPC was registered at Police Station Vasant Kunj, Delhi on the complaint of Inspector Hari Daya Bhushan.

PW29 SI Satbir Singh, M.T.O., Police Lines, Sonapat, testified that on 26.4.2005 SI Sat Pal Singh took into possession the photostat copy of registration certificate of motor-cycle bearing No. HR-10F-8952.

Besides examining the aforementioned witnesses, learned Public Prosecutor tendered in evidence reports Ex.PD and Ex.PD/1 of Forensic Science Laboratory and closed the prosecution evidence.

When examined under Section 313 Cr.P.C., all the three accused pleaded that they had been falsely implicated in the case, although they were innocent.

In their defence, the accused did not examine any evidence.

After hearing learned counsel for the parties and on going through the evidence available on the record, the trial Court believed the prosecution version and convicted and sentenced the appellants, as mentioned above.

Learned counsel for the appellants has submitted that the appellants have been falsely implicated in the case. It was a blind murder case and the prosecution has not led any evidence to connect the appellants with the crime. No reliance can be

placed upon the testimony of PW6 Kaptan Singh, who claimed to have seen two appellants, namely, Dharam Raj @ Balu and Satish @ Mintu besides Sandeep (since deceased) immediately prior to and after the occurrence. Even the recovery of driving licence of appellant Dharam Raj @ Balu is nothing but a crude padding on the part of the prosecution. The recovery of identity card of deceased EHC Ram Kishan from the possession of appellant Satish @ Mintu has been planted as no prudent person would retain the same after committing the murder. The testimony of PW14 Chander Bhan, who happened to be a relative of deceased EHC Ram Kishan and extra judicial confession said to have been made by appellant Mukesh before him is not worthy of credence as he was not a person present in whom said appellant would have reposed confidence.

On the other hand, learned State counsel has submitted that the prosecution has led cogent and convincing evidence to connect the appellants with the crime of committing murders of EHC Ram Kishan and EHC Randhir Singh. The testimonies of the prosecution witnesses have been rightly believed by the learned trial Court.

Having heard learned counsel for the parties and on going through the record, this Court finds that after receiving telephonic message from EHC Ram Kishan that he alongwith his

fellow police official had been shot at by some persons, who were on a scooter, the MHC of the Police Station had apprised PW20 Sub-Inspector Sat Pal Singh, Station House Officer, who immediately rushed to the spot and saw EHC Ram Kishan and EHC Randhir Singh lying dead on account of receiving firearm injuries. Walky-talky set with its lace was found with EHC Randhir Singh. One Chetak scooter bearing registration No. PB-25-8592 and one driving licence in the name of appellant Dharam Raj @ Balu, which bore his colour photograph were found lying at the spot. An empty cartridge of .315 bore was also found lying there. The motor-cycle bearing registration No. HR-10F-8952 make Hero Honda Splendor, which was being used by the two deceased for patrolling the area was found missing and so also the sten gun and 35 cartridges of 9 mm. Accordingly, SI Sat Pal Singh prepared ruqa Ex.PK and sent it to Police Station Baroda where FIR Ex.PK/1 was recorded by ASI Daya Nand. Blood stained earth was found under the dead bodies of the two deceased and was lifted and put into a sealed parcel. During the investigation of the case, the motor-cycle was recovered from an abandoned field situated in the area of village Jasiya. The Forensic Science Laboratory team on being summoned to the spot reached there and lifted finger prints from the motor-cycle. The dead bodies were sent to Civil Hospital, Sonipat for

post-mortem.

PW20 Sub-Inspector Sat Pal Singh had also testified that on 24.4.2005 after arresting appellant Dharam Raj @ Balu, he had interrogated him who suffered disclosure statement Ex.PM pursuant to which he got recovered country made pistol, which he had kept concealed underneath the heap of brickbats lying on the North-East corner of the vacant plot situated behind Government Girls School of village Nizampur. The presence of appellant Dharam Raj @ Balu at the place of occurrence is also established from the recovery of his driving licence, which was found lying at the spot. It bore his colour photograph. PW26 Satish Kumar, Licence Clerk in the Office of S.D.M., Safidon had proved from the relevant record that the recovered driving licence Ex.P30 stood in the name of appellant Dharam Raj @ Balu.

The .315 bore pistol got recovered by appellant-Dharam Raj @ Balu made him liable for the offence under Section 25 of the Arms Act as he did not have any licence or permit to carry the same. PW23 Ram Parkash, Reader to the District Magistrate, Sonipat, had proved sanction order Ex.PV/1 for prosecuting appellant Dharam Raj @ Balu for the offence under the Arms Act.

PW25 Sub-Inspector Sahab Singh had testified that on 20.5.2005, he had interrogated appellant-Satish @ Mintu, who

suffered disclosure statement Ex.PE pursuant to which he got recovered identity card Ex.P54 of deceased EHC Ram Kishan and 25 live cartridges Ex.P3 to P28 of 9 mm which he had kept concealed underneath the soil near the wall of the temple ahead of Power House of village Kathura. Similarly, PW13 SI Rahul Dev had deposed that on 18.5.2005, he had apprehended appellant Satish @ Mintu after holding nakabandi and on his personal search .315 bore country made pistol alongwith one empty and two live cartridges were recovered.

It may also be mentioned that during post-mortem on the dead body of EHC Ram Kishan, PW21 Dr. Sanjay Antil had recovered a bullet, which was lying embedded in his body. The said fired bullet and so also the .315 bore country made pistol recovered from the possession of appellant-Satish @ Mintu were sent to the Forensic Science Laboratory, Madhuban, for comparison. Vide report Ex.PD/1, the Assistant Director (Ballistics) opined that .315 bore fired bullet jacket had been fired from country made pistol of .315 bore, which had been marked as W/1 (of case FSL No. 05/F-1731, FIR No. 84 dated 18.5.2005 under Sections 307/353 IPC and Arms Act, Police Station Kharkhoda) and not from any other firearm even of the same make and bore/calibre. This circumstance independently confirms involvement of appellant Subhash @ Mintu in the commission of

the crime.

Coming to the case of appellant Mukesh Kumar regarding his involvement in the commission of the crime, he is said to be one of the conspirators of the alleged crime as prior to the occurrence he had called appellants Dharam Raj @ Balu and Satish @ Mintu besides Sandeep (since deceased) in order to loot old age pension amount from Julana and visited the place including the place of occurrence from where arms and ammunition from the police officials were to be robbed. Even a car was also to be looted so as to facilitate the crime. To support the prosecution case regarding the conspiracy part, Chander Bhan, brother of deceased EHC Ram Kishan was examined as PW14, who testified that on 25.4.2005 at about 7.00 p.m. appellant Mukesh Kumar had come to his house and started weeping. Appellant Mukesh disclosed that he stood involved in the murder of his relative and the police was after him. He further disclosed that on 19.4.2005, he alongwith Sandeep, Dharam Raj @ Balu and Mintu had assembled near the water tank where they hatched a conspiracy to rob the old age pension and in order to facilitate the same, even weapons and vehicles were required. He had also confessed that while he remained in the village, his co-accused Sandeep, Mintu and Dharam Raj @ Balu went to the damaged road where they committed the murder of police

officials and snatched the motor-cycle of the police officials and also their arms in pursuance of the conspiracy. PW14 Chander Bhan further deposed that he took Mukesh Kumar with him to Police Station Gohana but met the police at Fountain Chowk, where he produced Mukesh Kumar before him, who was taken into custody. In his cross-examination, he admitted that appellant Mukesh Kumar belonged to village Julana which fell in District Jind and the distance between his village and village Julana was 30 kms. He also admitted that he did not know Mukesh Kumar previously who came to see him for the first time on that day. He admitted that he was neither a Lambardar nor elected member of the village Panchayat.

Keeping in view the aforementioned statement of PW14 Chander Bhan, it is highly improbable that appellant Mukesh Kumar would have approached him and confessed about his involvement in the crime. Both of them belonged to different villages, which were 30 kms apart. He did not know appellant Mukesh Kumar previously, who was meeting him for the first time on that day. PW14 Chander Bhan was also not a Lambardar or an elected member of the village Panchayat and, therefore, he would not have been of any help to appellant Mukesh Kumar in getting him exonerated in the crime. Apart from that, there is no other legally admissible evidence available on the file, from which,

the involvement of appellant Mukesh in the commission of crime could be established.

In view of the above, this Court is of the considered view that no case is made out for any interference in the impugned judgment passed by the trial Court to the extent of convicting and sentencing appellants Dharam Raj @ Balu and Satish @ Mintu of the charges against them. At the same time, the part and participation of appellant-Mukesh Kumar has not been proved by the prosecution beyond reasonable doubt and, therefore, his conviction and sentence as awarded by the trial Court is liable to be set-aside.

Resultantly, the conviction and sentences of imprisonment and fine imposed upon appellants Dharam Raj @ Balu and Satish @ Mintu are maintained. At the same time, the conviction and sentence of appellant Mukesh Kumar is set-aside and he is acquitted of the charges against him.

The appeal is, accordingly, disposed of.

(T.P.S. MANN)
JUDGE

February 3, 2016
amit rana

(RAMENDRA JAIN)
JUDGE