

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Appeal No.D-703-DB of 2010

Date of Decision : July 13, 2016

Devender alias Latkan

....Appellant

Versus

State of Haryana

....Respondent

CORAM : HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE GURMIT RAM

Present : Ms. Deepinder Singh, Advocate
for the appellant.

Mr. Dhruv Dayal, Deputy Advocate General, Haryana.

T.P.S. MANN, J.

Appellant-Devender @ Latkan, along with Kedar, Bijender Singh, Binesh and Jai Singh, was tried for committing offences punishable under Sections 148, 323/149 and 302/149 IPC on the allegations that they were members of an unlawful assembly, common object of which was to commit the offence of rioting while being armed with deadly weapons, causing hurt to Vivek Rawat, besides committing the murder of Sanjeev. Kedar was also tried for committing the offence under Section 25 of the Arms Act for having been found in possession of one country made pistol of .315 bore, along with one live cartridge of the same bore without any permit or licence. After recording the prosecution evidence and noticing that none of the witnesses had stated about Binesh and Jai Singh to be present at the time of the

occurrence and, thus, there was nothing incriminating on record so as to examine them under Section 313 Cr.P.C., the trial Court, vide order dated 14.12.2006, acquitted them of the charges against them. Subsequent thereto, the three other accused, namely Devender @ Latkan, Kedar and Bijender Singh were examined under Section 313 Cr.P.C. followed by the defence examining twelve witnesses. The trial Court vide judgment and order dated 3.7.2010 convicted Devender @ Latkan, Kedar and Bijender Singh under Sections 148 IPC and sentenced them to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months. They were further convicted under Sections 302/149 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/- each and in default of payment of fine, to undergo further rigorous imprisonment for one year. They were also convicted under Sections 323/149 IPC and sentenced to undergo rigorous imprisonment for one year each. All the substantive sentences were ordered to run concurrently. The period of custody undergone during investigation or trial of the case by any of the convicts was ordered to be set off against their substantive sentences.

Aggrieved of the impugned judgment of conviction and sentence passed by the trial Court, Devender @ Latkan filed the present appeal, whereas Kedar and Bijender Singh convicts filed Criminal Appeal No.D-726-DB of 2010 and Criminal Appeal No.D-822-DB of 2010,

respectively. Pursuant to issuance of notice, learned State counsel had put in appearance and the record of the trial Court requisitioned. As all the three appeals arise out of the same judgment of conviction and sentence, they are being disposed of by one common judgment.

The prosecution case, in brief, is that on 10.12.2005 at about 10.15 p.m. when the marriage of Surender Parashar's sister was being solemnized, complainant Kuldeep @ Bhappa, along with Vivek Rawat, Manish Arora, Sanjeev Tewatia and Sunil Tewatia, being friends of Surinder Parasher reached there in a car bearing registration No. HR-29-M-2919 and proceeded towards House No.2148, Sector 3, Faridabad. The complainant, who was driving the car stopped the vehicle at Tigaon road 'T' point on the turn of Tagore School, which was 150/200 metres short of the marriage place. The time was about 10.30 p.m. The complainant felt an urge to urinate. In the meantime, one black colour Alto car without bearing any registration number and one yellow colour motorcycle CBZ came and halted there. Binesh and Kedar carrying pistols, Bijender and Devender @ Latkan, besides three other persons carrying rods and dandas, got down. Binesh and Kedar fired at the complainant party. As a result, Sanjeev Tewatia was hit and blood started oozing out. Bijender, Devender @ Latkan and other persons inflicted injuries to Sanjeev Tewatia with dandas, besides giving blows with lathis and dandas to Vivek Rawat. While firing towards complainant party, the assailants left in their car and motorcycle. While leaving, the assailants had proclaimed that if anyone followed them, he would also

be killed. Sanjeev Tewatia was removed to Escorts Hospital, Faridabad where the doctor declared him as brought dead.

It is also the case of the prosecution that on receiving information about Sanjeev being killed in Sector 3, Faridabad after being fired at, Inspector Devender Singh reached Escorts Hospital, Faridabad and recorded statement of complainant Kuldeep @ Bhappa on 11.12.2005 at 1.30 a.m. On its basis, FIR No.501 dated 11.12.2005 under Sections 148/149/323/302 IPC and Section 25 of the Arms Act was registered at Police Station, Sector 7, Faridabad on 11.12.2005 at 1.50 a.m. Special report sent through Constable Mahabir Singh was received by the Ilaqa Magistrate on 11.12.2005 at 7.00 a.m.

During the investigation of the case, Inspector Ramesh Kumar, Station House Officer, Police Station Sector 7, Faridabad conducted inquest proceedings. He visited the spot, along with the complainant and prepared rough site plan. Blood found at the spot was collected with the help of cotton and duly sealed. One country made pistol was found lying at the spot at a distance of 30 feet near the board of one Doctor Parkash, from where bullet was stated to have been fired by Binesh, which pistol had fallen there when Vivek @ Bobby had hit the hand of Binesh with danda. On checking the pistol it was found to contain fired cartridge. The pistol and the fired cartridge were converted into a parcel and taken into possession. Statements of Vivek Rawat, Sunil Tewatia and Manish were recorded under Section 161 Cr.P.C. in which they also named Jai Singh to be one of the assailants,

besides Binesh, Devender @ Latkan, Kedar and Bijender Singh. They also disclosed that Vivek had hit danda at the hand of Binesh due to which pistol held by him in his hand had fallen. It was also stated that in their defence they had caused injuries to Bijender Singh and Jai Singh. Post-mortem on the dead body of Sanjeev was got conducted. The bullet retrieved from the dead body by the doctor was taken into possession. Injured Vivek Rawat was got medico-legally examined. On 13.12.2005, black colour car without any registration number used in the crime was found in front of the house of Devender @ Latkan which was taken into possession. On 16.12.2005, Devender @ Latkan was arrested. Pursuant to disclosure statement, he got recovered danda. Accused Bijender Singh was arrested on 3.2.2006 whereas accused Jai Singh on 14.2.2006. After completing investigation qua the aforementioned three accused, challan was prepared against them since by that time, other accused Kedar and Binesh were absconding. Kedar was arrested in case FIR No.81 dated 4.4.2006 under Section 25 of the Arms Act registered at Police Station, Sector 31, Faridabad. He was arrested in the present case on 5.4.2006. He also suffered a disclosure statement, pursuant to which the pistol recovered in FIR No.81 of 2006 was taken along with the live cartridge in possession. Challan qua Kedar was also prepared. Both the challans were presented before the Ilaqa Magistrate who committed the case to the Court of Sessions, where Devender @ Latkan, Bijender Singh, Jai Singh and Kedar were charged subsequently on 12.6.2006. On 20.7.2006, accused Binesh was also arrested and after completing the formalities

against him, supplementary challan qua him was submitted in the Court, which was, thereafter, committed to the Court of Sessions. Both the above cases were, later on, clubbed on 22.8.2006 and on 8.12.2006, all the five accused were charged, as mentioned above, to which they pleaded not guilty and claimed trial.

At the trial of the case, the prosecution examined seventeen witnesses. Dr. R. Mathur, Dr. Ashok, Constable Manoj, Devi Singh, Parveen and Jeet Singh were given up as unnecessary, whereas PW Sunil Tewatia was given up having been won over by the accused. Report of Forensic Science Laboratory was tendered and prosecution closed its evidence on 8.12.2006.

There are four alleged eye-witnesses of the occurrence namely, PW10 Kuldeep @ Bhappa, PW11 Vivek Rawat, PW13 Manish and PW18 Sunil Tewatia. All of them proved the occurrence but PW13 Manish and PW18 Sunil Tewatia did not establish the identity of any of the accused as assailants. They resiled from their statements made before the police under Section 161 Cr.P.C., wherein they had named five accused namely Binesh, Kedar, Devender @ Latkan, Bijender Singh and Jai Singh as assailants. The two others, i.e. PW10 Kuldeep Singh @ Bhappa and PW11 Vivek Rawat, proved the occurrence and established the identify of three of the accused, namely, Devender @ Latkan, Bijender Singh and Kedar. They failed to establish the identity of accused Binesh and Jai Singh. After being declared hostile, they were confronted with their respective statements under Section 161 Cr.P.C.

but they resiled from their statements qua the identity of accused Binesh and Jai Singh. PW10 Kuldeep @ Bhappa proved statement Ex.PE made to the police, which is the basis of FIR Ex.PD. He also proved memos. Ex.PM, Ex.PN and Ex.PN/1. During cross-examination, PW10 admitted that FIRs Ex.D1 to Ex.D6 were registered against him.

PW9 Dr. Rajeev Nayyar, Medical Officer, Escorts Medical Centre, Faridabad deposed that on 10.12.2005 at about 11.35 p.m. dead body of Sanjeev Tewatia was brought to the hospital in emergency. Patient was declared brought dead. PW9 proved the ruqa Ex.PL sent to the Police Station.

PW12 ASI Devender Singh deposed that on 11.12.2005, on receiving telephonic message regarding arrival of dead body of Sanjeev Tewatia, who had died due to bullet injury, he along with other officials reached Escorts Medical Centre, Faridbad, where after collecting ruqa, he recorded statement of Kuldeep @ Bhappa. He proved said statement Ex.PE, on which he had made endorsement Ex.PE/2, which he sent to the Police Station for registration of FIR. He deposed that he went to the spot, where SHO Ramesh Kumar had already reached and took over further investigation.

PW5 ASI Narender Kumar proved the FIR Ex.PD, which he recorded on receipt of ruqa Ex.PE from ASI Devender Singh. He also proved his note Ex.PE/1 made below the endorsement of SI Devender Singh.

PW4 Constable Mahabir Singh proved delivery of special report at the residence of learned Area Magistrate on 11.12.2005. He also deposed that on 20.12.2005, he was handed over a sealed packet of the case property by MHC Surender Kumar, which he delivered at Forensic Science Laboratory, Madhuban on the same day and that during his custody, he did not tamper with the same in any manner.

PW1 MHC Surender Kumar deposed that on 11.12.2005, Inspector Ramesh Kumar had deposited with him various sealed parcels, which he had handed over to Constable Mahabir Singh on 20.12.2005 for delivery at Forensic Science Laboratory, Madhuban and that during his custody, he did not tamper with the same.

PW2 Dr. Gajraj Singh, Medical Officer, General Hospital, Faridabad, had medico-legally examined Vivek son of Padam Singh on 12.12.2005 at 12.15 p.m. and found following injuries on his person:-

1. Complaint of pain with mild swelling over right thumb at the base. No visible marks of injuries were there. X-ray right thumb was advised.
2. Complaint of pain on right knee joint with no visible marks of injury. X-ray of right knee joint was advised.
3. A bruise measuring 2 x 6 cm. on the left shoulder posteriorly placed reddish in colour.

All the injuries were caused by blunt weapon with probable duration of 24 to 36 hours. He proved MLR Ex.PA in that regard.

PW3 Dr. Narender Kaur, Medical Officer at B.K. Hospital, Faridabad testified that on 11.12.2005, she along with Dr. R. Mathur and Dr. Ashok Gupta had conducted post-mortem examination on the dead body of Sanjeev Tewatia and found following injury :-

'A lacerated wound 1.5 x 1.0 cm. with inverted margins with tattooing over anterior lateral aspect of left arm 3" below the left shoulder. Bleeding was there. A probe was introduced through this wound which was found passing through left shoulder joint (periarttheritic part) towards left side second inter-costal space, towards left pleural cavity, towards upper lobe of the left lung towards right pleural cavity towards right lung towards middle lobe. The bullet was embedded in the 5th inter-costal space right side posterior laterally.'

Dr. Narender Kaur further testified that in the opinion of the Board, the death had occurred due to shock and haemorrhage resulting from the injuries described above, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. Duration between injuries and death could be within a few minutes to one hour and between the death and the post mortem examination, it could be between six to twenty hours.

Dr. Narender Kaur proved the post mortem report Ex.PB. She further deposed that after post mortem examination, the dead body along with its belongings and copy of post-mortem report was handed over to the police. She had also initialled inquest papers. The

sealed vial containing bullet extracted from the body of the deceased and sealed parcel containing clothes of the deceased etc. were also handed over to the police. Sealed parcel was produced in the Court. It was opened and found to contain a bullet. Dr. Narender Kaur proved the bullet Ex.P1 to be the same, which was extracted from the dead body of deceased. In cross-examination, Dr. Narender Kaur deposed that the deceased had received only one fire arm injury. As per her, since she was not a ballistic expert, so she could not opine if the presence of tattooed margins was an indicator of close range firing. However, injury found on the body of deceased was otherwise an entry wound.

PW14 Inspector Ramesh Kumar is the Investigating Officer of the case. He deposed that on 11.12.2005, he was Station House Officer, Police Station, Sector 7, Faridabad. On receipt of message from ASI Devender Singh, he reached Escorts Medical Centre, Faridabad, where he conducted inquest proceedings on the dead body of Sanjeev Tewatia. He proved the inquest report Ex.PC. He then recorded statements of various witnesses. The dead body was then sent through HC Dalbir Singh for getting conducted the post mortem examination. He then proceeded towards the place of the occurrence and prepared rough site plan Ex.PQ. Blood found at the spot was lifted with cotton and taken into possession vide memo Ex.PM. The country made pistol of .315 bore with one fired cartridge in its barrel was found at the spot, which was taken into possession vide memo. Ex.PN after preparing

sketch Ex.PN/1 of the pistol. He proved the pistol Ex.P1 and empty cartridge Ex.P2. He deposed that HC Dalbir Singh produced before him a sealed vial containing bullet and parcel containing clothes of the deceased, which were taken into possession vide memo. Ex.PG. He proved that bullet as Ex.P3. He further proved the memo. Ex.PF, whereby the Alto car used in the crime was taken into possession on 13.12.2005 from near the house of accused Devender @ Latkan. He then proved the arrest of accused Devender @ Latkan on 16.12.2005, the disclosure statement Ex.PH suffered by the accused leading to recovery of danda, which was taken into possession vide memo. Ex.PJ. He proved the danda Ex.P4 and the site plan of the place of recovery as Ex.PJ/1. He further deposed that accused Bijender Singh and accused Jai Singh were arrested on 3.2.2006 and 14.2.2006, respectively. On completion of investigation, report under Section 173 Cr.P.C. was submitted against them, whereas warrants of arrest were procured against the remaining accused. He further deposed that on 5.4.2006 accused Kedar was arrested by SI Amar Chand and report under Section 173 Cr.P.C. was separately prepared against him. Accused Binesh was arrested on 20.7.2006 and supplementary report under Section 173 Cr.P.C. was prepared qua him.

PW6 Constable Charan Singh corroborated PW14 Inspector Ramesh Kumar by proving memo. Ex.PF in respect of Alto Car.

PW7 Head Constable Dalbir Singh proved the memo. Ex.PG.

He also corroborated PW14 Inspector Ramesh Kumar by proving the

disclosure statement Ex.PH of accused Devender @ Latkan made on 16.12.2005 and recovery of danda Ex.P2 from him. He further proved disclosure statement Ex.PK made by the accused Kedar on 6.4.2006 when he was interrogated by SI Amar Chand.

PW8 Manoj Kumar, Draftsman proved the scaled site plan Ex.PF prepared by him on 23.12.2005 on the demarcation of complainant Kuldeep.

PW17 Rajesh Kumar, Ahlmad to District Magistrate, Faridabad proved the sanction order Ex.PS accorded by District Magistrate, Faridabad so as to prosecute accused Kedar under the provisions of Arms Act.

PW16 SI Amar Chand deposed that he had arrested the accused Kedar on 5.4.2006 in the case after obtaining his production warrants as the accused was already in custody in case FIR No.81 of 2006 under Section 25 of the Arms Act registered at Police Station, Sector 31, Faridabad. He further proved the disclosure statement Ex.PK suffered by the said accused Kedar on 6.4.2006. He further deposed that on 8.5.2006, during investigation of this case, he had gone to Police Station, Sector 31, Faridabad and took into possession country made pistol of .315 bore Ex.P4 and live cartridge Ex.P5, which was the case property of FIR No.81 dated 4.4.2006. Those were taken into possession vide recovery memo. Ex.PR. The accused had earlier made

the disclosure statement Ex.PK that the pistol used in the crime had already been recovered from him.

PW15 HC Ravinder Kumar corroborated the statement of PW16 SI Amar Chand by proving the memo. Ex.PR, pistol Ex.P4 and cartridge Ex.P5.

On 14.12.2006, when the case was fixed for examining of the accused under Section 313 Cr.P.C., the trial Court observed that no incriminating circumstances had appeared against accused Binesh and Jai Singh and accordingly, both of them were acquitted of the charges against them. Statements of the remaining accused, i.e. Devender @ Latkan, Bijender Singh and Kedar were recorded under Section 313 Cr.P.C., wherein they denied the incriminating material produced by the prosecution and pleaded their false implication.

Accused Devender @ Latkan pleaded that he was not present at the time of occurrence and rather, he along with Sunil son of Sukhbir resident of Ajronda was present in the marriage of daughter of one Yash Pal at Prithla. He further pleaded that the witnesses had deposed against him as he had lodged so many cases against Kuldeep @ Bhappa, due to which they were having grudge against him and in order to get those matters compromised, he had been falsely implicated in the case. He also pleaded that the witnesses had told lie and that they had been won over by accused Binesh and Jai Singh by giving them hefty amount.

Accused Kedar pleaded that as a matter of fact, there was enmity between him and Vivek. On the day of alleged occurrence, he along with his friend Braham Singh was at Gharonda attending marriage of sister of Gurvinder Rana, nephew of Gharonda's MLA Ramesh Rana. He had been implicated by Vivek and his allies because of old enmity. He further pleaded that in fact, Vivek, Kuldeep @ Bhappa and others were stated to have caused injuries to Bijender. Sanjeev deceased was accompanying Vivek Rawat and others. There was scuffle between Bijender and Vivek Rawat and others. Vivek Rawat himself fired a shot from the country made pistol, which incidentally hit his own friend Sanjeev. Out of nervousness, Vivek Rawat threw the pistol and ran away from the spot and fabricated this false case with a view to save his own skin. Accused Kedar further pleaded that later on, at Escorts Hospital, Faridabad where Bijender was taken, Binesh and Jai Singh sons of Bhoop Singh were caused indiscriminate injuries, regarding which separate FIR No.364 dated 11.12.2005 was registered at Police Station Kotwali under Sections 147, 149, 323, 325 and 506 IPC against Vivek and his allies. A private complaint was also filed against them by co-accused Binesh under Section 307 IPC. With this stand, accused Kedar pleaded his innocence.

It may also be worthwhile to mention here that Raghubir Singh, father of deceased Sanjeev Tewatia had moved application under Section 311 Cr.P.C. before the trial Court for summoning Sunil Tewatia, who was stated to be a material witness and had been given

up by the prosecution as won over by the accused. The said application was rejected by the trial Court, which order was stayed by this Court under Section 482 Cr.P.C. Initially, the passing of the final order was stayed by the High Court. Ultimately, the petition was partly accepted qua Devender @ Latkan, Bijender Singh and Kedar whose trial had not yet concluded. Accordingly, the trial Court was directed to summon Sunil Tewatia as a prosecution witness. Pursuant to the same, Sunil Tewatia was summoned as prosecution witness and examined as PW18. But he did not support the prosecution case and failed to establish the identity of any of the accused as assailants.

In their defence, the three convicted accused examined twelve witnesses.

DW1 Braham Singh has been examined to prove the alibi plea of accused Kedar.

DW2 Gurvinder Rana supported the version given by DW1 Braham Singh.

DW3 Yashpal Singh has been examined to prove the plea of alibi of accused Devender @ Latkan. He deposed that on 11.12.2005, marriage of his daughter Rachna was performed in village Pritha. It was attended by numerous people including accused Devender @ Latkan, who had come to his house on 10.12.2005, as he had brought furniture from the shop of his brother, which was purchased by him for being gifted to his daughter at the time of marriage. He further deposed

that accused Devender @ Latkan is related to him as he belongs to village Sihi. His sister Bimla is married to Raghubir. Sanjeev deceased is his sister's son. During cross-examination, he stated that he did not tell the police about the presence of Devender @ Latkan in his house at the time of occurrence since he was not joined in the investigation. He further admitted that he did not make any effort to approach higher officers to cancel implication of accused Devender @ Latkan in this case.

DW6 Devi Singh is the real brother of accused Devender @ Latkan. He had got released the Alto car on superdari. He deposed that his brother Devender @ Latkan had gone to attend marriage of Rachna daughter of Yash Pal on the alleged date of occurrence and that regarding false implication of his brother, he had moved various complaints to senior police officers. Copy of complaint is Ex.D8. Postal receipts to evidence the dispatch of complaints to various officers are mark 'A' to mark 'G'.

DW4 Arun Munjal, Additional Ahlmad in the Court of learned JMIC Faridabad had brought the summoned file titled '**Binesh Bhadana Vs. Satpal**' and proved the copy of complaint Ex.D7. In cross-examination, he admitted that the matter was referred to the police by the learned Magistrate under Section 202 Cr.P.C. and that the police had sent the report, as per which the complaint was false.

DW5 Charan Singh, Criminal Ahlmad to the Court of learned JMIC, Faridabad on the basis of summoned record deposed that the

police had submitted the cancellation report in respect of the case arising out of the FIR No.190 of 2005 under Section 307 IPC registered at Police Station Sector 7, Faridabad. The complainant in that case was Kuldeep @ Bhappa.

DW7 Ram Gopal is the Criminal Ahlmad in the Court of learned Chief Judicial Magistrate, Faridabad. On the basis of record of summoned file of case titled '**State Vs. Kuldeep etc.**' arising out of FIR No.384 dated 11.12.2005 registered at Police Station Kotwali, he deposed that trial was pending for prosecution evidence against accused Sanjay, Vivek Rawat, Kuldeep, Rajbir and Manish. The case was registered on the complaint of Bhoop Singh son of Shri Man Singh. As per record/MLRs, the injured witnesses are complainant Bhoop Singh, Binesh Bhandana son of Bhoop Singh and Rajbir Singh.

DW11 Constable Randhir Singh brought the original FIR register to prove FIR No.384 of 2005, registered at Police Station Kotwali. He proved the final report submitted in that case as Ex.DW11/A. During cross-examination, he stated that all the accused of that case have since been acquitted of the charges on 26.9.2007.

DW9 Johar Mal, Ahlmad in the Court of learned JMJC, Faridabad brought the summoned file pertaining to case arising out of FIR No.320 of 2004 registered at Police Station Sector 7, Faridabad. The FIR was lodged on the complaint of Vivek Rawat. Copy of report under Section 173 Cr.P.C. is Ex.DW9/A.

DW8 Parshant Sharma, Advocate/Oath Commissioner stated that on 28.2.2008, he had attested affidavit of Vivek Rawat, which was furnished in Criminal Misc. No.14242-M of 2007 before the Hon'ble High Court. He identified his signatures on the affidavit Ex.DW2/A. During cross-examination, he admitted that Vivek Rawat did not sign the affidavit in his presence. He also admitted that affidavit was dated 19.2.2008 but it was attested on 28.2.2008.

DW10 Susheel Kumar, Advocate proved the affidavit dated 8.4.2008 of Kuldeep @ Bhappa, which was furnished in Criminal Misc. No.14242-M of 2007 before Hon'ble High Court. He proved the certified copy of said affidavit as Ex.DW10/A.

DW12 Shri Pawan Gaur is an Advocate in Hon'ble Punjab and Haryana High Court. He deposed that he along with Neeraj Gaur was engaged by Kuldeep Singh @ Bhappa so as to file Criminal Misc. No.18078 of 2008 in main petition bearing Criminal Misc. No.14242-M of 2007. Certified copy of Criminal Misc. No.14242-M of 2007 is mark 'DX', whereas certified copy of miscellaneous application moved by him on behalf of Kuldeep is Ex.DW12/A. He further deposed that he had filed affidavits Ex.DW10/A and Ex.DW8/A along with miscellaneous application, as referred above. Those affidavits were produced by Kuldeep.

One DW, namely, Neeraj Gaur, Advocate was given up as unnecessary by the convicted accused before closing their evidence in defence.

After going through the evidence brought on the record and hearing learned counsel for the parties, the trial Court held that the prosecution had successfully proved charges against the three appellants, namely, Devender @ Latkan, Kedar and Bijender Singh. Accordingly, they were convicted and sentenced, as mentioned above.

This Court had heard learned counsel for the parties and perused the evidence with their able assistance.

Complainant-Kuldeep @ Bhappa, who, alongwith Vivek Rawat, Manish and Sunil Tewatia, were claimed to be the eye-witnesses of the occurrence in question had stepped into the witness-box as PW10. He testified that on 10.12.2005 at about 10.15 p.m., all of them, alongwith Sanjeev Tewatia, went to Sector 3, Faridabad for attending the marriage of sister of their friend Surender Parasher. About 150 metres short of the marriage place, they halted for passing urine. In the meantime, an Alto car and a motorcycle came there and 6/7 boys came out of those vehicles. Out of them, he knew only three, namely, Devender @ Latkan, Bijender Singh and Kedar. Kedar fired a shot towards Sandeep Tewatia whereas Devender @ Latkan proclaimed that he was the root cause of the problem. The complainant party tried to run away and in the process 4/5 shots were fired towards them but none was hit. The accused also proclaimed that if anybody tried to chase them, he would be killed. He further deposed that Devender @ Latkan and Bijender Singh inflicted injuries with iron rods on the person of Sanjeev Tewatia. The accused managed to escape. Sanjeev Tewatia,

who had fallen down, was removed to the hospital where he was declared dead. As this witness did not depose about causing of injuries to Vivek Rawat and also did not name Binesh and Jai Singh, as accused, learned Public Prosecutor, after getting him declared hostile, cross-examined him. During his such cross-examination, he denied that in his statement Ex.PQ made before the police he had named Jai Singh as one of the accused. The statement Ex.PQ was also not read-over by the police to him. He denied the suggestion that Binesh and Jai Singh were present at the place of occurrence or that Binesh had fired at Sanjeev Tewatia.

PW11 Vivek Rawat, who, according to the prosecution had received blunt weapon injuries, testified that Devender @ Latkan, Kedar and Bijender Singh, alongwith 2/3 persons whom he had never seen earlier and did not know who they were, had come to the spot where the occurrence had taken place. He deposed that on the exhortation of Devender @ Latkan, his co-accused Kedar fired at Sanjeev Tewatia. On being hit, Sanjeev Tewatia fell down at the spot. Bijender Singh and Devender @ Latkan also inflicted injuries with iron rods to Sanjeev Tewatia as well as to him. He snatched a danda from one of them and hit Kedar on his hand, as a result of which the fire arm carried by Kedar fell down. This witness also did not name Binesh and Jai Singh as the assailants, therefore, learned Public Prosecutor got him declared hostile as well and during his cross-examination, he was read-over statement Ex.PR made to the police but he stated that he did not tell the police about Binesh firing a shot and hitting Sanjeev Tewatia. He had also not

told the police that at the time of the occurrence, accused Jai Singh was present there.

PW13 Manish did not state a single word as to how the occurrence had taken place. According to him, after halting near village Tigaon for urinating, he had gone to buy cigarette at some distance and when he returned after about seven minutes, he found Sanjeev Tewatia lying wounded. According to him, he did not know as to who had caused him injuries. He went on to add that the accused present in the Court never caused injuries to either the deceased or to Vivek Rawat injured in his presence. As he was suppressing the truth, learned Public Prosecutor got him declared hostile and in the cross-examination, which followed, he stated that no such statement as Ex.PN was made by him to the police. He had also not stated that when they had halted for urinating, then accused Binesh and Kedar armed with pistols, Bijender Singh, Devender @ Latkan and Jai Singh armed with dandas and rods, had come to the spot and he had identified them in the light of electric bulb. He had also not stated before the police that Binesh and Kedar had fired shots at Sanjeev Tewatia whereafter danda blow was given by Vivek Rawat on the arm of Binesh as a result of which pistol carried by Binesh in his hand fell down. He also denied that, in defence, injuries were caused to Bijender Singh and Jai Singh accused.

Initially, Sunil Tewatia was given up by the learned Public Prosecutor as having been won over by the accused. Subsequently, pursuant to the order dated 3.2.2010 passed by the High Court, he was examined as PW18 and deposed that he, alongwith Vivek Rawat,

Manish, Kuldeep @ Bhappa and Sanjeev Tewatia had reached Sector 3, Faridabad so as to participate in the marriage of sister of their common friend Surender Parasher. About 100/150 metres short of the marriage place, Kuldeep @ Bhappa stopped the car as he wanted to urinate. In the meantime, one car and a motorcycle came and halted at that place. 5/6 persons were occupying the car whereas 3/4 persons were on the motorcycle. He could not notice the registration number of the car as well as of the motorcycle. 3/4 persons, who alighted from the motorcycle started beating Kuldeep @ Bhappa with dandas. When he alongwith his companions got out of the car to rescue Kuldeep @ Bhappa then the occupants of black colour car came out and a scuffle started. He went to a distance of about 20/30 metres and did not participate in the scuffle. He also claimed that he was not familiar with the faces of occupants of black colour car or that of the motorcycle and, therefore, could not recognize any of them. He had heard a sound of firing of a shot. After 2/3 minutes, the accused escaped from the spot in the car and on the motorcycle. He reached the place and saw Sanjeev Tewatia lying and blood oozing out of his face, mouth and other parts of the body. As this witness also did not support the prosecution case, learned Public Prosecutor made a request to the trial Court to declare him hostile and, therefore, cross-examined him, but could not elicit any material which could establish the identity of the accused who had reached the spot and fired at Sanjeev Tewatia, besides causing injuries to Vivek Rawat.

From the combined reading of the statements of PW10 Kuldeep @ Bhappa, PW11, Vivek Rawat, PW13 Manish and PW18 Sunil Tewatia, it stands established that PW13 Manish and PW18 Sunil Tewatia did not support the case of the prosecution at all. Though PW10 Kuldeep @ Bhappa partly supported the prosecution by fixing the identity of the three convicts as the culprits, but he also deposed that after Sanjeev Tewatia had been fired at by Kedar accused, Devender @ Latkan and Bijender Singh had also wielded iron rods in causing injuries on the person of Sanjeev Tewatia. However, causing of injuries with iron rods on the person of Sanjeev Tewatia is not corroborated by the medical evidence. While conducting post-mortem on the dead body of Sanjeev Tewatia, PW3 Dr. Narender Kaur had noticed only one injury, i.e. a lacerated wound with inverted margins over anterior lateral aspect of left arm, 3" inches below the left shoulder. On probing, one bullet was lying embedded in the 5th inter-costal space on the right side. In cross-examination, she deposed that the deceased had received only one injury, which was fire arm injury. Moreover, PW10 Kuldeep @ Bhappa did not testify that the accused had caused injuries to Vivek Rawat. Fact remains that Vivek Rawat was medico-legally examined by PW2 Dr. Gajraj Singh, who had found three injuries on his person, two of them were complains of pain while the third a bruise on the left shoulder. Under these circumstances, it would not be safe to rely upon his testimony to hold that the three appellants were present at the time of the occurrence and had caused injuries to Sanjeev Tewatia since deceased and Vivek Rawat injured.

In his testimony as PW11 Vivek Rawat testified that after Kedar had fired at Sanjeev Tewatia who fell down at the spot, Bijender Singh and Devender @ Latkan had inflicted blows with iron rods to him. However, he had snatched the danda from one of the accused and hit it on the hand of Kedar as a result of which the country made pistol held by Kedar in his hand fell down. Once he had received injuries on his person at the hands of Bijender Singh and Devender @ Latkan, it was highly improbable that he would snatch a danda and then wield the same in hitting Kedar on his hand. After being declared hostile followed by his cross-examination by the learned Public Prosecutor, he was cross-examined by the defence counsel also. In his such cross-examination, he testified that he had told the police while making statement that the shot fired by Kedar had hit Sanjeev Tewatia. He was, however, confronted with his statement Ex.PR where it was not so recorded. Therefore, the testimony of Vivek Rawat is also not sufficient to establish the manner in which the occurrence had taken place.

Another startling fact in the case is that though it was firing resorted by Kedar convict that Sanjeev Tewatia had received an injury which ultimately proved fatal, yet during the post-mortem the bullet which was fired by Kedar was found embedded in the 5th inter-costal space. However, when the bullet retrieved from the dead body was sent to Forensic Science Laboratory, Madhuban, it was found that it had been fired from the same pistol, which was recovered from the spot and as per the prosecution version, had fallen at the spot from the hand of

Binesh. It totally demolishes the prosecution case as Sanjeev Tewatia was hit on account of firing resorted to by Kedar and not by Binesh and if the weapon recovered by the police from the spot had fallen from the hand of Binesh then participation of Kedar in causing one and the only injury on the person of Sanjeev Tewatia is rendered doubtful. It is another thing that Binesh has already been acquitted of the charges as his identity could not be established.

The occurrence in question had taken place on 10.12.2005 at about 10.30 p.m. in Sector 3, Faridabad. Immediately after the occurrence, Sanjeev Tewatia, who was almost collapsing, was rushed to Escorts Hospital where he was declared by the doctor to have already died. Soon thereafter, ASI Devender Singh had come to know about the incident and the injured having been already transported to Escorts Hospital, Faridabad, he reached there and recorded the statement of complainant Kuldeep @ Bhappa on 11.12.2005 at 1.30 a.m. On its basis, formal FIR came to be registered at Police Station, Sector 7, Faridabad at 1.50 a.m. Uptill that time, there was no delay in lodging report with the police or the FIR being registered on its basis. However, subsequent to 1.50 a.m. on 11.12.2005, there was delay of about 4 to 5 hours in receipt of the special report by the Area Magistrate, i.e. on 11.12.2005 at 7.00 a.m. through PW4 Constable Mahabir Singh. Said Mahabir Singh admitted in his cross-examination that the special report was handed over to him at about 2.00 a.m. and the residence of the Area Magistrate was at a distance of 1½ kms. from the Police Station.

If that be so, the special report ought to have been in the hands of the Area Magistrate by 2.30 a.m. Fact remains that the special report was received by the Area Magistrate at 7.00 a.m. This indicates that the report/FIR had been ante-timed and this delay used by the complainant party so as to make due deliberations and consultations and then to name the accused as the culprits on account of previous enmity between the parties, material in that regard having already been brought on record, and to an extent admitted by the complainant party.

In view of the above, it cannot be said that the prosecution has been able to prove its case against the appellants beyond reasonable doubt. In such a situation, case is made out for setting aside the conviction and sentences of the three convicts.

Resultantly, Criminal Appeal No.D-703-DB of 2010 filed by convict Devender @ Latkan, Criminal Appeal No.D-726-DB of 2010 filed by convict Kedar and Criminal Appeal No.D-822-DB of 2010 filed by convict Bijender Singh are accepted, impugned judgment of conviction and sentence is set aside and consequently, they are acquitted of the charges against them.

(T.P.S. MANN)
JUDGE

(GURMIT RAM)
JUDGE

July 13, 2016
satish