

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No.D-58-DB of 2012 (O & M)
Date of decision: 09.02.2016.

Naresh @ Neshi

....Appellant

Vs.

Central Bureau of Investigation

...Respondents

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

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate and
Mr. Vineet Kaushal, Advocate for the appellant.

Mr. Balraj Singh Rathee, Advocate for the appellant.

Mr. Sumeet Goel, Advocate for respondent-CBI.

S.S. Saron, J.

The appeal has been filed by Naresh @ Neshi against the judgment of conviction and order of sentence dated 16.12.2011 passed by the learned Additional Session Judge cum Special Judge CBI Haryana at Panchkula. In terms thereof, the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code ('IPC' - for short) as well as under Section 25 of the Arms Act, 1959. He has been sentenced to undergo life imprisonment and pay a fine of Rs.5000/- and in default in payment thereof undergo rigorous imprisonment for six months for offence under Section 302 IPC. He has also been sentenced to undergo rigorous imprisonment for three years, besides, pay a fine of Rs.1000/- and in default in payment thereof undergo rigorous imprisonment for three months for the offence under Section 25 of

the Arms Act. Both the substantive sentences of imprisonments have been ordered to run concurrently.

Telephone information was received from an unknown person at Police Station City Gohana, District Sonapat, on 27.08.2007 at about 08:45 p.m. that Rakesh @ Lara (deceased in the case) son of Mangal Dass had been shot in front of Khasa College, Gohana by some unknown persons riding on a motorcycle. It was informed that he had died at the spot and his dead body had been taken to the Post Graduate Institute of Medical Sciences Hospital (PGIMS - for short), Rohtak. On the basis of the said information, Daily Diary Report (DDR) No.25 was recorded by Shri Lakhwinder Singh, SI/SHO (PW37) and FIR No.232 dated 27.08.2007 (Ex.PW37/A) was registered at Police Station City Gohana, District Sonapat for the offences under Sections 302 and 34 IPC as also Section 25 of the Arms Act, 1959. Necessary action was asked to be taken.

Investigation in the case was started. Special report was forwarded to the Senior Officials, the '*Illaga*' Magistrate, SP Sonapat through Constable Ram Singh. ASI Ram Rattan (PW22), SHO Lakhwinder Singh (PW37), HC Pardeep and Constable Pawan were sent to the PGIMS, Rohtak for conducting proceedings under Section 174 of the Code of Criminal Procedure ('Cr.P.C.' - for short). SHO Lakhwinder Singh (PW37) along with SI Raj Pal, ASI Mahinder Singh (PW19), Constable Suresh and HC Samunder went in a 'Gypsy' vehicle which was driven by Constable Bijender. The statement of witnesses, it was mentioned, were to be recorded

SHO Lakhwinder Singh (PW37) conducted the initial investigations in the case. He along with SI Raj Pal, ASI Mahinder Singh (PW19), HC Surinder Singh and other officials went to the place of occurrence in the government vehicle No.HR69-4365. When he reached near Samta Chowk, Balmiki Mohalla, Gohana, a big crowd of people had gathered there. They were asked about the crime. The persons who had gathered there, informed him (PW37) that this was the duty of the police. Then the police officials reached the place of occurrence, however, nobody was at the spot. A rough site plan Ex.PW37/B of the place of occurrence was prepared. Blood stained earth and empty cartridges were lifted from the place of occurrence and taken in possession by the police vide recovery memo Ex. PW19/A. The same were converted into parcels and sealed with the seal of 'RR'. The 'MHC' (Mohrar Head Constable) sent the parcels to the FSL, Madhuban. Rough site plan of the place from where the blood stained earth and empty cartridges were collected was prepared. The statements of ASI Mahinder Singh (PW19) and ASI Ram Rattan (PW22) were recorded under Section 161 Cr.P.C. The latter handed over the clothes of the deceased Rakesh @ Lara and bullets as also pellets to SI/SHO Lakhwinder Singh, which were taken in possession vide memo Ex.PW22/A. The case property was deposited with the MHC by SHO Lakhwinder Singh (PW37). The MHC handed over to SI/SHO Lakhwinder Singh (PW37) one letter No.288 received from SP, Sonapat regarding transfer of the investigation of the case to DSP Abhey Singh (PW42). The further investigation in the case was then conducted by DSP Abhey Singh (PW42).

DSP Abhey Singh (PW42) on 28.08.2007 went through the file regarding the investigation conducted in the case. Since it was a murder case of a person who was a member of the Scheduled Castes Community, he (PW42) was directed to add the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST Act' - for short). The spot was inspected by DSP Abhey Singh (PW42) on 29.08.2007. Naresh son of Chander Bhan met him there and he was joined in the investigation. On inquiry, said Naresh son of Chander Bhan informed DSP Abhey Singh that the assailants after killing Rakesh @ Lara had fled away and while running, they stated that information regarding the killing of Rakesh @ Lara be given to Sanjay Butana (who died during trial of the case). The said Sanjay Butana at that time was confined in District Jail, Karnal. Number of cases were registered against him. DSP Abhey Singh (PW42) filed an application in the Court of learned Sub-Divisional Judicial Magistrate, Gohana and requested for issuance of his production warrants. The production warrants was obtained and the same was sent from the Court to the District Jail, Karnal through ASI Radhey Sham. Sanjay Butana was brought to the Court of Sub-Divisional Judicial Magistrate, Gohana in pursuance of the production warrants on 30.08.2007. Then an application was filed seeking permission to join him in the investigation of the present case and also interrogate him.

Sanjay Butana was interrogated by DSP Abhey Singh (PW42). He made a disclosure statement (Ex.PW40/A) and disclosed about the conspiracy hatched for the murder of Rakesh @

Lara. Sanjay Butana disclosed that he along with Dinesh @ Dinu (accused No.2) son of Tara Chand of village Khanda and Naresh @ Neshi (appellant) were confined in jail. Sanjay Butana further stated that he was being taunted by his other jail inmates that Rakesh @ Lara (deceased in the case) had killed his friend Baljit Siwach, but Rakesh @ Lara's name was not included in the charge-sheet as an accused. Sanjay Butana further disclosed that he was managing for the release of Dinesh @ Dinu (accused No.2) on parole and also arranging for bail being granted to Naresh (appellant) through Dinesh (accused No.4). Sanjay Butana asked Naresh (appellant) and Dinesh @ Dinu (accused No.2) to meet Prahlad (accused No.3) of Chaudani and Dinesh (accused No.4) son of Om Parkash as they would help them with money and weapon for committing the murder of Rakesh @ Lara.

The disclosure statement of Sanjay Butana was recorded in the Court Complex at Gohana, which was signed by SI Kaptan Singh (PW40) and Sanjay Butana. He (Sanjay Butana) further disclosed that he could point out the places where the above-mentioned persons were hiding themselves as he was aware of their hideouts. After recording the disclosure statement, Sanjay Butana was arrested in the present case. He (Sanjay Butana) was produced before the Court of learned Sub-Divisional Judicial Magistrate, Gohana, on the same day. An application was filed for his police custody remand for ten days. He was, however, remanded to police custody till 04.09.2007.

A letter was received by DSP Abhey Singh on 30.08.2007

vide which Inspector Yashpal Singh (PW39) and Sub Inspector

Kaptan Singh (PW40) were also directed to assist him in the investigation of the case.

Dinesh (accused No.4) son of Om Parkash, resident of Mudlana was thereafter arrested on 31.08.2007. Naresh @ Neshi (appellant) was arrested from Safiabad 'mor' (turning) on the pointing out of Om Parkash father of Dinesh (accused No.4). Naresh (appellant) and Dinesh (accused No.4) son of Om Parkash were interrogated. Naresh (appellant) made a disclosure statement and he confirmed the contents of the statement given by Sanjay Butana. He (Naresh) disclosed that he along with Sanjay Butana and Dinesh (accused No.4) were confined in jail. Sanjay had informed him (Naresh) that he was managing the parole of Dinesh @ Dinu (accused No.2) and he (Naresh) should arrange surety for him. He also asked Naresh to meet Dinesh (accused No.4) son of Om Parkash, resident of Mudlana. Naresh on his release from the jail met Dinesh (accused No.4) son of Om Parkash and informed him about the plan of Sanjay that Rakesh @ Lara was to be killed. Dinesh (accused No.4) son of Om Parkash had assured Naresh to extend help.

Thereafter, both i.e. Naresh (appellant) and Dinesh (accused No.4) had gone to Panipat and they met Mia Chand and paid him Rs.40,000/- for getting Dinesh @ Dinu (accused No.2) out from jail on parole. Dinesh @ Dinu (accused No.2) after completion of the period of his parole did not surrender back in jail. Naresh @ Neshi (appellant) then had a meeting with Prahlad (accused No.3), Dinesh @ Dinu (accused No.2) and Dinesh (accused No.4) son of Om Parkash at his village Busana where the plan for murder of

Rakesh @ Lara was chalked out. Dinesh @ Dinu (accused No.2) had arranged three pistols, out of which one was given to Naresh (appellant). As per the plan, they made an attempt to kill Rakesh @ Lara on 16.08.2007, but could not execute the plan. Thereafter, Naresh (appellant) along with Prahlad (accused No.3) and Dinesh @ Dinu (accused No.2) committed the murder of Rakesh @ Lara on 27.08.2007. Naresh (appellant) also disclosed that at the time of commission of the offence, they had a motorcycle, which was concealed by him in the house of his maternal aunt in village Sanghi, District Rohtak and he could get the same recovered. Besides, the pistol which was used by him in the commission of the crime had been kept concealed in a room situated at Jaipur (Rajasthan) where his associates Dinesh @ Dinu (accused No.2) and Prahlad (accused No.3) were hiding. He further disclosed that he could point out the room and could get the weapon recovered. The disclosure statement (Ex.PW40/B) of Naresh (appellant) was reduced into writing.

Dinesh (accused No.4) son of Om Parkash on the same day made a disclosure statement (Ex.PW40/C) on the same lines of Naresh Kumar (appellant), which was also reduced into writing. During interrogation, Dinesh (accused No.4) also disclosed that he could get the mobile phone recovered from Arunachal Pradesh where his wife was posted. Besides, he had obtained the mobile phone on the identity of different persons. Both the accused were arrested by DSP Abhey Singh (PW42) and they were produced before the Court and their police remand was granted up to 04.09.2007. The statements of the witnesses including SI Kaptan

Singh (PW40), who was a signatory to the disclosure statements, were recorded.

DSP Abhey Singh (PW42) again interrogated Naresh (appellant) and Dinesh (accused No.4) on 01.09.2007 in the presence of the witnesses. Naresh (appellant) was handed over to SI Kaptan Singh (PW40) for effecting recovery of the motorcycle. Inspector Yashpal (PW39) was directed by DSP Abhey Singh (PW42) to obtain the parole record of Dinesh @ Dinu (accused No.2) from Karnal; besides, also obtain the record files from the respective jails regarding the confinement of Sanjay, Naresh (appellant) and Dinesh (accused No.4). SI Kaptan Singh (PW40) took Naresh (appellant) in his custody led the police party to village Sanghi to the house of Om Parkash husband of his paternal aunt ('Bua') and got recovered a 'Bajaj Platina' motorcycle No.HR11-D-6235 which was parked inside the house along the front wall by the side of the main gate. The motorcycle was taken in possession vide recovery memo Ex.P23/A. It was signed by SI Kaptan Singh (PW40) and HC Pawan Kumar and Ranbir Singh. Rough site plan Ex. PW23/B of the place of recovery of the motorcycle was prepared by SI Kaptan Singh (PW40). On return, he (SI Kaptan Singh) handed over Naresh (appellant) to DSP Abhey Singh (PW42) with the recovery memo and the case diary including statements. The motorcycle was deposited with the MHC of Police Station City Gohana.

Naresh (appellant) was again interrogated by DSP Abhey Singh (PW42) in the presence of SI Kaptan Singh (PW40) and HC Pawan Kumar. On interrogation, Naresh (appellant) made another disclosure statement Ex.PW40/D and he disclosed the weapon

which was used by him in committing the crime had been kept concealed by him at a place situated on the road of village Rukhi-Chhichhrana by the side of the canal bank towards village Sanghi in the bushes. He could point out the place and could get the weapon recovered. He also disclosed that he could point out the place of occurrence of this case. In pursuance of the said disclosure statement, Naresh (appellant) took the police officials to the place disclosed by him. After reaching there, he got recovered a .315 bore pistol which he took out from a red and black colour plastic bag from the bushes. The pistol was found loaded with one live cartridge. It was unloaded and its measurements were taken. A sketch (Ex.PW40/E) of the pistol was prepared and then the pistol and cartridges were sealed with the seal of 'AS' in the same envelope after converting them into a sealed parcel. The same were taken in possession vide memo Ex.PW40/F. A site plan (Ex.PW42/A) of the place of recovery was prepared. Naresh (appellant) then took the police team to Gohana. After reaching there, he pointed out the place where he along with his associates had committed the murder of Rakesh @ Lara. A memo (Ex.PW40/G) regarding the pointing out the place was prepared. A rough sketch (Ex.PW42/B) of the place pointed out by Naresh (appellant) was also prepared. The pistol that was recovered was exhibited on record as Ex.P23. On return to the police station, DSP Abhey Singh (PW42) deposited the case property with the MHC and the statements of the witnesses were recorded under Section 161 Cr.P.C.

DSP Abhey Singh (PW42) on 03.09.2007 then again interrogated Dinesh (accused No.4) son of Om Parkash. He made a

disclosure statement (Ex.PW39/B) in which he disclosed that he had concealed a mobile phone with his real brother - Rajesh. Besides, he also disclosed that out of Rs.40,000/- he had contributed Rs.15,000/- while Ram Niwas @ Kallu (accused No.5) had contributed Rs.25,000/-. In a similar manner, Naresh (appellant), on the same day, made a disclosure statement (Ex.PW42/C) in the presence of Inspector Yashpal and HC Suresh Kumar. Naresh (appellant) disclosed that he had kept the mobile phone with Naseeb, resident of village Jamni, District Jind. Dinesh (accused No.4) son of Om Parkash in pursuance of his disclosure statement (Ex.PW39/B) led the police party to Shop No.28 situated in the Grain Market, Gohana. Rajesh was present there and he produced the mobile phone which was taken in possession vide memo (Ex.PW39/C). The mobile phone was sealed with the seal of 'SK'. Signatures of Rajesh son of Om Parkash and brother of Dinesh (accused No.4) were obtained on the memo which was signed by Inspector Yashpal Singh. Similarly, Naseeb son of Ramphal, resident of village Jamni produced mobile phone make 'Nokia 1110', which was converted into a parcel. The parcel was sealed with the seal of 'SK' and taken in possession by the police vide memo (Ex. PW39/D), which was signed by Naseeb and Inspector Yashpal Singh. On the same day, i.e. 03.09.2007, HC Subhash brought a letter from the District Jail, Karnal, along with the record relating to the confinement of Naresh @ Neshi (appellant). It was taken in possession vide memo (Ex.PW39/A). Sub-Inspector Satyawar Singh of the Computer Branch, SP Office, Sonapat on the same day supplied the call details of mobile phone No.9813483996 which was

in the name of Naresh (appellant) son of Mahavir Singh, resident of Busana, Tehsil Gohana. The call details of mobile phone No.9436676159 with Id in the name of Ajit Rao, village Amba-Homukh, Arunachal Pradesh. The same was taken in possession vide memo (Ex.PW28/A). The statements of the witnesses were recorded by DSP Abhey Singh (PW42) under Section 161 Cr.P.C. Ram Niwas @ Kallu (accused No.5) was also arrested by him. Thereafter, the investigation was taken over by the CBI.

The Haryana Government issued notification dated 31.08.2007 (Ex.PW44/1) under Section 6 of the Delhi Special Police Establishment Act, 1946 ('1946 Act' - for short) and accorded consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Haryana for investigation of the offences punishable under Sections 302/34 IPC and Section 25 of the Arms Act; besides, Section 3 of the SC/ST Act and any other offences, attempts and conspiracy in relation to or in connection with the said offences committed in the course of the same transaction or arising out of the same facts in regard to FIR No.232 dated 27.08.2007 under Sections 302/34 IPC and Section 25 of the Arms Act; besides, Section 3 of the SC/ST Act registered at Police Station Gohana, District Sonapat. A copy of the said notification (Ex.PW44/1) was conveyed to the CBI.

The Government of India then issued a notification dated 14.09.2007 (Ex.PW44/2) in exercise of powers conferred by sub-section (1) of Section 5 read with Section 6 of the 1946 Act. The Central Government with the consent of the State Government of Haryana vide notification dated 31.08.2007 (Ex.PW44/1) extended

the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation in Crime No.232/2007 dated 27.08.2007 under Sections 302/34 IPC, Section 25 of the Arms Act and Section 3 of the SC/ST Act registered at Police Station Gohana, District Sonapat and attempts, abetments and conspiracies in relation to or in connection with the offences mentioned above and any other offence or offences committed in the course of the same transaction or arising out of the same facts.

After the two notifications were received, regular case was registered by the CBI vide case No. RC.4(S)/2007/CBI/SCB-II/Delhi on 14.09.2007 (Ex.PW44/3) by Shri S.J.M. Jilani, the then S.P., CBI/SCB, New Delhi at Police Station SCB-II/New Delhi. The case FIR (Ex.PW44/3) was then investigated by CBI S.P. Nirbhay Kumar, Economic Offences II, CBI, New Delhi (PW44). He (PW44) formed a team of officials of the CBI comprising of Shri Satpal, Inspector; Shri J.B. Singh, Inspector (PW43); Shri Shiv Kumar, Inspector; Shri Layak Ram, Inspector etc. to assist him in the investigation.

CBI S.P. Nirbhay Kumar (PW44) along with the assisting investigating officers proceeded to Sonapat and Gohana on 15.09.2007. He met the then S.P., Sonapat and also DSP Abhey Singh (PW-42), who was investigating the case. He (PW44) had a briefing of the facts of the case from the aforesaid officers. Inspectors J.B. Singh (PW43) and Satpal were directed to proceed to Gohana and to collect the case record, i.e. case file of the case.

They were also directed to visit the residence of Rakesh @ Lara (deceased in the case) at Gohana and examine his family members.

They were also directed to visit the scene of the crime. Inspectors J.B. Singh (PW43) and Satpal accordingly proceeded to Gohana. They visited the house of Rakesh @ Lara and examined his family members. Then they proceeded to the spot along with three eyewitnesses whose names had come to their knowledge after examining the family members of the deceased particularly Shri Deepak and Mithun, brothers of deceased Rakesh @ Lara. Rough site plan (Ex.PW43/1) of the place of occurrence on the pointing out of the eye witnesses Vicky, Arun, Mithun and Naresh was prepared by Inspector Satpal on the instructions of Inspector J.B. Singh (PW43). The site plan and the supplementary case diary was handed over to CBI S.P. Nirbhay Kumar (PW44) after their return from the spot. Then on the next day, i.e. on 16.09.2007, Inspector J.B. Singh (PW-43) again visited P.S. Gohana and collected the case record from DSP Abhey Singh (PW42) through memo (Ex. PW43/2). After collecting the case record, Inspector J.B. Singh (PW-43) handed over to CBI S.P. Nirbhay Kumar (PW44), the seizure memo, case record and supplementary case diary. Perusal of the case diary revealed the names of Sanjay Butana, Naresh @ Neshi (appellant), Dinesh (accused No.4) son of Om Parkash, Dinesh @ Dinu (accused No.2), Prahlad (accused No.3) and Ram Niwas @ Kallu (accused No.5) as the main conspirators behind the murder of Rakesh @ Lara. CBI S.P. Nirbhay Kumar (PW44) went through the rough site plan (Ex.PW37/C) prepared by Inspector Lakhwinder Singh, SHO, Police Station City Gohana (PW37). The said site plan was in consonance with the site plan (Ex.PW43/1) got prepared by Inspector J.B. Singh (PW43) which, however, was more exhaustive

and contained more information as per the statements of the eyewitnesses.

The postmortem report of Rakesh @ Lara was also perused. It was observed that there were eight injuries on the person of Rakesh @ Lara out of which six were firearm injuries. The doctors had opined that the death of Rakesh @ Lara was due to firearm injuries which were ante mortem in nature and sufficient to cause death in the ordinary course of nature. A perusal of the case diary revealed that in the disclosure statement of Dinesh (accused No.4) son of Om Parkash it was mentioned that Ram Niwas @ Kallu (accused No.5) was also one of the conspirators and he was arrested by the local police only a few days ago. Accordingly, it was decided to take the police custody remand of Ram Niwas @ Kallu (accused No.5). The team members were directed to file an application in the Court for issuance of production warrants of Ram Niwas @ Kallu (accused No.5). ASI R.P. Sharma, CBI, Delhi filed an application (Ex.PW44/4) in the Court of the Special Magistrate of CBI cases at Ambala. The learned Court vide order dated 17.09.2007 issued production warrants of Ram Niwas @ Kallu (accused No.5) for 19.09.2007 who was produced in Court on the said date. An application (Ex.PW44/5) was submitted for his custody remand; besides, Inspector Satpal moved an application (Ex. PW44/6) for permission to arrest him. The learned Court on the application (Ex.PW44/5) granted ten days police custody remand of Ram Niwas @ Kallu (accused No.5) till 29.09.2007.

CBI SP Nirbhay Kumar (PW44) along with his team interrogated Ram Niwas @ Kallu (accused No.5). During

interrogation, according to CBI S.P. Nirbhay Kumar (PW44), he admitted his involvement in the crime of killing Rakesh @ Lara along with his other associates namely Naresh @ Neshi (appellant), Dinesh (accused No.4) son of Om Parkash, Dinesh @ Dinu (accused No.2) son of Tara Chand, Prahlad (accused No.3) etc. During interrogation, CBI S.P. Nirbhay Kumar (PW44) also came to know that Naresh @ Neshi (appellant) was a resident of Ram Niwas @ Kallu's village Busana. A deep conspiracy surfaced from the interrogation of Ram Niwas @ Kallu (accused No.5). He also corroborated the disclosure statements of the other accused persons which were recorded by the local police earlier. He (Ram Niwas @ Kallu) also disclosed that he along with other accused in this case had remained together in various jails of Haryana at one point of time or the other. Accordingly, records about the confinements of the accused in various jails were sought. Requisite information was supplied by the Superintendent District Jail, Karnal vide his communication Ex.PW15/A. As per said information, Ram Niwas (accused No.5) had visited Sanjay Butana in Karnal Jail with Pawan on 04.11.2006 and along with Naresh @ Neshi (appellant) on 10.01.2007. Further information was received in CBI office vide letter dated 24.09.2007 (Ex.PW15/B) by which it was informed that Ram Niwas @ Kallu (accused No.5) remained in District Jail Karnal from 20.03.2005 to 09.06.2005. During this period, Sanjay Butana and Naresh @ Neshi (appellant) were also lodged in District Jail, Karnal. It was also revealed that Sanjay Butana and Dinesh @ Dinu (accused No.2) had shared the same barrack while in District Jail, Karnal. The convict Mai Chand son of Lachhman remained in District

Jail, Karnal from 05.08.2005 to 26.05.2006. This record gave in detail the cases in which the aforesaid accused persons remained confined in District Jail, Karnal from time to time.

The District Jail, Ambala vide letter dated 31.10.2007 informed that Naresh @ Neshi (appellant) and Ram Niwas (accused No.5) were lodged in District Jail, Ambala as co-accused in crime No.114/04 from 24/25.09.2004 onwards. The District Jail Authorities Sonapat also informed about the confinement of Ram Niwas @ Kallu (accused No.5) from 08.02.2007 to 17.04.2007 along with Naresh @ Neshi (appellant) in District Jail, Sonapat and then from 30.06.2007 to 05.07.2007. It was also informed that Sanjay Butana and Prahlad (accused No.3) were together in Sonapat jail between April 2005 to May 2005 and subsequently, both were transferred to Karnal.

The Superintendent, District Jail Rohtak vide letter dated 02.11.2007 informed in response to CBI letter about the period during which Ashok (accused No.6), Dinesh @ Dinu (accused No.2), Sanjay (Sanjay Butana) son of Hukmi had remained in District Jail, Rohtak. As reported by the Jail Authorities, Ashok (accused No.6), Sanjay Butana, Prahlad (accused No.3) and Dinesh @ Dinu (accused No.2) were lodged in Rohtak Jail. Dinesh @ Dinu (accused No.2) was reported to be a life convict in FIR No.465 P.S. Sadar Gurgaon. Prahlad (accused No.3) was a life convict in FIR No.179 P.S. Sadar Bahadurgarh and Sanjay Butana was a life convict in FIR No.299 P.S. Baroda, Sonapat. Besides, Ram Niwas (accused No.5) and Naresh @ Neshi (appellant) were lodged together in Ambala Jail, Sonapat Jail and Karnal Jail during the last few years.

Sanjay Butana was with Ashok (accused No.6), Dinesh @ Dinu (accused No.2), Prahlad (accused No.3), Naresh @ Neshi (appellant) and Ram Niwas @ Kallu (accused No.5) in various jails at different points of time. The aforesaid information had corroborated the statement of accused Ram Niwas @ Kallu (accused No.5).

Ram Niwas @ Kallu (accused No.5), thereafter expressed his willingness to get his statement recorded before a Magistrate in a Court at Delhi and not in Haryana citing caste backlash and security concern of his family members in his village in Haryana. Ram Niwas (accused No.5) was accordingly produced in the Court of the learned Additional Chief Metropolitan Magistrate, Delhi on 25.09.2007 along with an application (Ex.PW48/B) for recording his statement under Section 164 Cr.P.C. The application was vide order dated 25.09.2007 (Ex.PW48/C) marked to the Court of Sh. Chander Shekhar, Metropolitan Magistrate, Patiala House Court, New Delhi (PW48) and it was taken up on 26.09.2007. The Court made an enquiry from Ram Niwas @ Kallu (accused No.5) if he wanted to make his statement voluntarily and with his free will. On this, Ram Niwas @ Kallu (accused No.5) expressed his willingness to get his statement recorded but the Court gave him time to rethink before making a confessional statement in Court. The accused being in police custody was remanded to judicial custody till 27.9.2007 with a direction to the Superintendent Central Jail Delhi to produce him in his Court on 27.9.2007 at 10.00 a.m. An order dated 26.09.2007 (Ex.PW44/7) in this regard was passed by the learned Metropolitan Magistrate, New Delhi.

Ram Niwas (accused No.5) was produced in the Court of Sh. Chander Shekhar, Metropolitan Magistrate, New Delhi (PW48) on 27.09.2007. CBI S.P. Nirbhay Kumar (PW44) identified Ram Niwas @ Kallu in Court. He (PW44) was asked to wait outside the Court room and Ram Niwas (accused No.5) was called in the chambers attached to the Court so as to enable the learned Magistrate (PW48) to satisfy himself as to whether the accused was making his statement voluntarily. Questions (Ex.PW48/D) were put to the accused by the learned Magistrate (PW48). The learned Magistrate (PW48) felt satisfied that the statement was being made voluntarily recorded his satisfaction note (Ex. PW48/E). The Court then after satisfying itself recorded his statement (Ex.PW48/A). According to CBI S.P. Nirbhay Kumar (PW44), the said statement in Court virtually corroborated the disclosure statement which he made during the course of interrogation with some additions of his past criminal history and his involvement in various other cases. Ram Niwas @ Kallu it is mentioned had stated that Naresh @ Neshi (appellant) introduced him to Sanjay Butana while they were lodged in Karnal Jail. He also confessed that he and Naresh were lodged in District Jail, Sonapat in 2007 in an attempt to murder case. Later, Naresh (appellant) was shifted to Karnal Jail for two days. During this period, Sanjay Butana informed Naresh @ Neshi (appellant) that Baljit was killed by Rakesh @ Lara. Besides, Rakesh @ Lara was also collecting monthly money and also that he was a witness against Sanjay Butana in a case, therefore, he wanted to kill Rakesh @ Lara. These facts were disclosed to Ram Niwas (accused No.5) by Naresh @ Neshi (appellant). He further disclosed that

Rs.40,000/- was given to Mai Chand for furnishing sureties for getting Dinesh @ Dinu (accused No.2) released on parole from District Jail, Karnal. Out of the amount of Rs.40,000/-, Rs.25,000/- was contributed by Ram Niwas (accused No.5) and the remaining Rs.15,000/- was given by Dinesh (accused No.4) son of Om Parkash. He (Ram Niwas) further disclosed that on the 27th of last month i.e. August 2007, Naresh @ Neshi (appellant) etc. killed Rakesh @ Lara near Khasa School, Gohana. After some days, Ram Niwas was arrested by the local police in the Lara murder case. He was lodged in District Jail, Sonapat where Naresh @ Neshi (appellant) was also confined as accused in the said case. Ram Niwas also disclosed about the manner in which Rakesh @ Lara was killed and which were the weapons in the hands of the assailants that were used in killing him. Ram Niwas (accused No.5) also disclosed that in the killing of Lara; Prahlad (accused No.3) was armed with a 12 bore 'katta' (country made firearm), Naresh @ Neshi (appellant) was armed with a .315 bore 'katta' (country made firearm); besides, this pistol was also used in the killing of Rakesh @ Lara. It is stated by CBI S.P. Nirbhay Kumar (PW44) that although Ram Niwas @ Kallu disclosed that the third assailant as informed to him by Naresh @ Neshi (appellant) was Dinesh @ Dinu (accused No.2); however, as per his investigation as well as by the local police in case crime (FIR) No.210/2007, P.S. Kharkhoda, Sonapat the third assailant was Ashok (accused No.6). It also came in his (PW44's) investigation that the name of Ashok (accused No.6) was deliberately not disclosed as one of the assailants in the killing of Rakesh @ Lara. The local police had recorded the disclosure

statement (PW39/Q) of Ashok (accused No.6). Ashok (accused No.6) in the said statement had also disclosed about this fact. It is also stated by SP Nirbhey Kumar (PW44) that in his investigation Ashok (accused No.6) had also disclosed that after the murder of Rakesh @ Lara, he handed over the .32 bore pistol which was used by him in the killing of Rakesh @ Lara to Dinesh @ Dinu (accused No.2) who later on gave it to Jaswinder who was later arrested in FIR No.210/07 (Ex.PW39/E), Police Station Kharkhoda, District Sonapat. The .32 bore pistol as mentioned above was recovered from Jaswinder which was taken in possession by the Police. Similarly, one Shankar son of Ram Karan, resident of Butana was arrested in case FIR No.210/07 (Ex.PW39/E) of Police Station Kharkhoda and a .315 bore country made pistol was recovered which was taken in possession vide memo Ex.PW40/E. CBI S.P. Nirbhay Kumar (PW44) received copies of the documents of case FIR No.210/2007 (Ex.PW39/E) duly attested by Inspector Yashpal Singh In-charge CIA, Sonapat (PW39).

Inspector Shiv Kumar during investigation was deputed by CBI S.P. Nirbhay Kumar (PW44) to collect the case properties of case FIR No.210/07 (Ex.PW39/E) of Police Station Kharkhoda. He seized the sealed case properties from MHC Ashok Kumar, Police Station Kharkhoda (PW25) on 24.10.2007 vide memo Ex.25/B. The photographs of Dinesh @ Dinu (accused No.2), Prahlad (accused No.3), Ashok (accused No.6), Dinesh (accused No.4) son of Om Parkash, Naresh @ Neshi (appellant) and Sanjay Butana were also seized from ASI Subash Chand CIA, Sonapat on the same day vide

memo Ex.PW44/8 which bears the signatures of Inspector Shiv

Kumar. The case property and the photographs of the accused after these were collected and after reaching Delhi were handed over to SP Nirbhay Kumar (PW44). The photographs were exhibited and some were marked. The photographs though are depicted to some of the assailants but these have not been exhibited on record and are not proved in the manner of proving admissible evidence.

Inspector Shiv Kumar seized the motorcycle used in the crime from ASI Jagbir Singh, MHC Police Station City Gohana (PW30) vide memo Ex.PW30/A. It was handed back to him (PW30) on 'superdari' vide memo Ex.PW30/B. A requisition was sent to the District Magistrate, Sonapat seeking information in respect of Arms Licence issued in the name of Dinesh (accused No.4) son of Om Parkash. The necessary information was provided vide letter Ex.PW27/C which is to the effect that the Arms Licence in question had been issued in the name of Dinesh (accused No.4). It was made for N.P.B. (Non-Prohibited Bore) revolver/pistol; NPB gun. A .32 bore pistol No. RP 121449 was entered. The validity was up to 14.02.2008 and its jurisdiction was limited to Haryana State.

The case property that is weapons, parcel receipt from the doctor etc. were examined in the Forensic Science Laboratory, Madhuban. The FSL report running into six pages was received by the CBI. The Ballistic Experts' report Ex.PW24/A revealed that the .315 pistol recovered at the instance of Naresh @ Neshi (appellant) was the same weapon which was used to fire a bullet which was recovered from the dead body of Rakesh @ Lara at the time of post mortem. Similarly, three other bullets recovered from the dead body of the deceased were found to have been fired from the

weapons which were recovered from Jaswinder and Shankar at the time of their arrest in case FIR No.210/07 (Ex.PW39/E) Police Station Kharkhoda. It was also opined by the Ballistic Experts that the pellets recovered from the body of deceased Lara were fired lead pellets loaded in the shot gun including 12 bore. The local police had recovered 12 bore weapon from the possession of Prahlad (accused No.3) at the time of his arrest. Inspector Shiv Kumar vide seizure memo dated 08.11.2007 (Ex.PW44/9) had seized registration certificate No.HR11-B-6235 (Ex.P59) in respect of motorcycle make 'Bajaj Platina' in the name of Pawan Singh son of Inder Singh village Gosana, District Sonapat from Mahavir son of Tara resident of Busana (i.e. father of Naresh @ Neshi). The memo along with the documents was given to CBI S.P. Nirbhay Kumar (PW44) on the return of Inspector Shiv Kumar to Delhi. The Licensing Authority, Motor Vehicle Gohana vide letter dated 05.11.2007 (Ex.PW44/10) in response to CBI letter provided the original file (Ex.PW44/11) containing 12 pages regarding the R.C. of the motorcycle. The AIOs supplied to CBI S.P. Nirbhay Kumar (PW44) the file from the office of District Magistrate, Sonapat relating to release of Dinesh @ Dinu (accused No.2) on parole.

The details (Ex.PW44/12) of mobile phone No.9255167187 in the name of Om Parkash resident of village Mudlana and mobile No.9215530333 in the name of his son Dinesh Kumar (accused No.4) and also mobile No.9255498379 in the name of Ram Niwas (accused No.5) were received by CBI S.P. Nirbhay Kumar (PW44).

SI Yoginder Parshad who was also associated with CBI S.P. Nirbhay Kumar in the investigation of the case. He was asked to collect the

ID proof of one phone No.9466035000. The details pertaining to this number was received by him from the Bharat Sanchar Nigam Limited vide letter dated 05.01.2008 (Ex.PW46/B). The Tata Tele Services provided the ID proof and CDRs of mobile No.9255 498379 which was in the name of Ram Niwas (accused No.5) and mobile No.9215530333 which was in the name of Dinesh Kumar (accused No.4). The details of incoming and outgoing calls of the mobile in the name of Ram Niwas (accused No.5) for the period 01.05.2007 to 01.09.2007 were given vide letter (Ex.PW45/E) in response to letter of the CBI dated 15.10.2007. The details of incoming and outgoing call for the period 01.05.2007 to 01.09.2007 in respect of the mobiles in the name of Om Parkash and in the name of his son namely Dinesh Kumar (accused No.4) were also given vide letter (Ex.PW45/G) in response to CBI letter dated 15.10.2007. The ID proofs (Ex.PW45/C) in respect of Dinesh Kumar (accused No.4) and (Ex.PW45/D) in respect of Ram Niwas @ Kallu (accused No.5) were also furnished and received. The call details Ex.PW45/F were proved. The Vodafone company provided call details for the period 01.05.2007 to 01.09.2007 (Ex.PW44/13) of mobile phone No. 9813122185 in the name of Sandeep son of Sat Narain; besides, call details for the period from 01.05.2007 to 01.09.2007 (Ex.PW44/14) were provided in respect of mobile Phone No.9813483996 in the name of Naresh (appellant). Naresh (appellant) was also found to be using mobile No.9813122185 which was found in the name of Sandeep son of Sat Narain. Dinesh (accused No.4) son of Om Parkash was found to be using mobile No.9466035000 which was recovered by the local police at his

instance. Ram Niwas @ Kallu (accused No.5) was using mobile No.9255498379 which was in his name. Besides, he was also using mobile No.9813673823 which was in the name of his brother Ramesh. Dinesh (accused No.4) son of Om Parkash was also using another mobile No.9215530333. There were numerous calls between the aforesaid mobile numbers before and after the murder of Rakesh @ Lara.

The investigation in the case was completed and the police report was filed in the Court of Special Judicial Magistrate, Ambala on 27.11.2007 against the accused namely Naresh @ Neshi (appellant), Dinesh @ Dinu (accused No.2), Prahlad (accused No.3), Dinesh (accused No.4) son of Om Parkash, Ram Niwas @ Kallu (accused No.5) and Ashok (accused No.6), besides, Sanjay Butana (who has since died).

The learned Special Judicial Magistrate, Ambala vide order dated 14.12.2007 in view of the fact that the report under Section 173 Cr.P.C. disclosed commission of offences under Section 302 read with Section 120-B IPC and Section 3 (2) (v) of the SC/ST Act, which were exclusively triable by the Court of Sessions committed the case to the Court of learned Sessions Judge, Ambala. The accused were in custody and the jail authorities were directed to produce them in the Court of learned Sessions Judge, Ambala on 21.12.2007. Till then, they were to be kept in judicial custody. The commitment of the case was notified to the Public Prosecutor for the CBI.

The learned Additional Sessions Judge, Ambala to whom the case was assigned charge sheeted all the accused in the case on

05.02.2008. It was alleged that they on or before 27.08.2007 agreed/conspired to do or to be done, an illegal act for committing the murder of Rakesh Kumar @ Lara, an act which was not legal and the same act was done in pursuance of an agreement/conspiracy and thereby they all committed an offence punishable under Section 120-B IPC. Secondly, on the said date, at about 8:45 p.m. in the area of Khasa School, Gohana, in compliance (sic. furtherance) of the common object of the unlawful conspiracy, Naresh @ Neshi (appellant), Prahlad (accused No.3) and Ashok (accused No.6) caused the the murder of Rakesh @ Lara with illegal weapons i.e. .315 bore pistols and .32 bore pistol; whereas Dinesh @ Dinu (accused No.2), Sanjay Butana (since deceased), Dinesh (accused No.4) and Ram Niwas @ Kallu (accused No.5) committed an offence punishable under Section 302/120-B IPC. Thirdly, on the said date, time and place Naresh @ Neshi (appellant), Prahlad (accused No.3) and Ashok (accused No.6) caused the murder of Rakesh @ Lara with illegal weapons i.e. .315 bore pistols and .32 bore pistol respectively and thereby using them by keeping the same in their possession, they thus committed an offence punishable under Section 25 of the Arms Act. Lastly, on the said date, time and place all the above named accused not being members of Scheduled Castes or Scheduled Tribes, committed the offence of hatching conspiracy of the murder of Rakesh Kumar @ Lara and in furtherance of the said criminal conspiracy, committed the murder of Rakesh @ Lara who was a 'Balmiki' by caste, which was punishable either with imprisonment for life or death sentence and thereby committed an offence punishable under Section 3 (2)

(v) of the SC/ST Act. The accused were directed to be tried by the Court learned Additional Sessions Judge, Ambala. They heard and understood the charges and pleaded not guilty to the same.

The prosecution in order to establish its case examined as many as 48 witnesses; besides, tendered documents in evidence. The statement of Naresh @ Neshi (appellant) was recorded in terms of Section 313 Cr.P.C. The substance of the evidence appearing against him was put to him. He denied the same. No question was put to him as to whether he had anything else to say. Consequently, there is no reply with regard to the same, in which he could have stated a defence.

The learned Additional Sessions Judge-cum-Special Judge CBI, Haryana, Panchkula after considering the evidence and material on record convicted Naresh @ Neshi (appellant) for the offences under Section 302 IPC and Section 25 of the Arms Act. He was, however, been acquitted of the offence under Section 3 (2) (v) of the SC/ST Act. The other accused have been acquitted of all the charges. Naresh @ Neshi (appellant) aggrieved against his conviction and sentence, has filed the present appeal.

Mr. Vinod Ghai, Senior Advocate appearing with Mr. Simrandeep S. Sandhu, Advocate and Mr. Vineet Kaushal, Advocate as also Mr. Balraj Singh Rathee, Advocate for the appellant submitted that though the examination of .315 bore pistol allegedly recovered from Naresh @ Neshi (appellant) is shown to have been examined by Shri L.S. Yadav (PW24); however, there is no material on record to show as to who took the pistol from the MHC of the Police Malkhana to the FSL for examination. It is submitted that the

link evidence is, therefore, completely missing. It is also submitted that the learned trial Court itself has held that the prosecution has failed to establish any conspiracy to commit the murder. It is further submitted that the reliance placed by the learned Additional Sessions Judge on the case Kalua v. State of Uttar Pradesh, AIR 1958 SC 180 is absolutely misplaced as the FSL examination of the pistol is only corroborative evidence and the conviction cannot be based on the same.

In response, Mr. Sameer Goyal, learned counsel for the CBI submitted that the learned trial Court has rightly relied upon the judgment in Kalua's case (supra) and has come to the conclusion that the guilt as against Naresh @ Neshi (appellant) has been clearly established as the bullet that was fired and recovered from the dead body of Rakesh @ Lara matched with the pistol that was recovered from Naresh @ Neshi (appellant). Therefore, this by itself according to learned counsel for the CBI is sufficient evidence and a guarantee that the learned trial Court has recorded a correct and firm finding, which is not liable to be dislodged merely because it is alleged by the learned Senior Counsel for the appellant that there is no evidence to establish as to who took the pistol from the Malkhana to the FSL.

We have been given our thoughtful consideration to the contentions of the learned counsel for the parties and with their assistance gone through the records of the case.

As has already been noticed the learned Additional Sessions Judge-cum-Special Judge (CBI), Haryana at Panchkula has not found the case to be made out against the accused other than

Naresh @ Neshi (appellant).

The prosecution case of the CBI is that initially case FIR No.232 dated 27.08.2007 (Ex.PW37/A) was registered at Police Station City Gohana for the offences under Sections 302/34 IPC; besides, Section 25 of the Arms Act and Section 3 (2) (v) of the SC/ST Act. The case was initially investigated by Inspector Lakhwinder Singh (PW-37) who was on 27.08.2007 posted as SHO Police Station City Gohana. Thereafter, it was investigated by DSP Abhey Singh (PW42) of the Haryana Police. The Government of Haryana then issued notification dated 31.08.2007 (Ex.PW44/1) under Section 6 of the 1946 Act and accorded consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Haryana for investigation of the offences in the present case i.e. FIR No.232 dated 27.08.2007 under Sections 302/34 IPC and Section 25 of the Arms Act; besides, Section 3 of the SC/ST Act registered at Police Station Gohana, District Sonapat. The Government of India then issued a notification dated 14.09.2007 (Ex.PW44/2) in exercise of powers conferred by sub-section (1) of Section 5 read with Section 6 of the 1946 Act and with the consent of the State Government of Haryana extended the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Haryana for investigation in Crime No.232/2007 dated 27.08.2007 under Sections 302/34 IPC, Section 25 of the Arms Act and Section 3 of the SC/ST Act registered at Police Station Gohana, District Sonapat. After the two notifications were issued, regular case was registered by the CBI vide case No. RC. 4(S)/2007/CBI/SCB-

II/Delhi on 14.09.2007 (Ex.PW44/3) by Shri S.J.M. Jilani, the then S.P., CBI/SCB, New Delhi at Police Station SCB-II/New Delhi. The case was then investigated by CBI S.P. Nirbhay Kumar, Economic Offences II, CBI, New Delhi (PW44) with his investigating team comprising of Inspector Satpal, Inspector J.B. Singh, Inspector Shiv Kumar, Inspector Layak Ram, etc. A reference has been made above to the investigation that was conducted in the case.

The appeal as already noticed is to be considered insofar as Naresh @ Neshi (appellant) only is concerned as it is he who has been convicted and sentenced and has filed the present appeal assailing his conviction and sentence. The learned trial Court insofar as his conviction is concerned, considered the case along with that of Prahlad (accused No.3) and Ashok Kumar (accused No.6) for committing the murder of Rakesh @ Lara. It was *inter alia* observed by the learned trial Court that admittedly none of the alleged eye witnesses had supported the CBI case. They deposed that they had not witnessed the occurrence. According to CBI, Arun Kumar (PW8), Vicky (PW9) and Rai Singh (PW11) had witnessed the occurrence; however, none of them testified that any one of them had seen any accused causing fire arm injuries to Rakesh @ Lara. The CBI had also got their statements recorded before Sh. Sandeep Yadav, Metropolitan Magistrate, Tees Hazari, New Delhi (PW33). However, the witnesses explained that they simply signed the statements before the Magistrate (PW33) and they did not understand what was written on the statement. In view of this position, the learned trial Court was of the considered view that there was no direct positive evidence on record that Naresh @ Neshi (appellant),

Prahlad (accused No.3) and Ashok Kumar (accused No.6) had committed the murder of Rakesh @ Lara.

The learned trial Court then considered as to whether there was other evidence on record which could connect the accused with the crime. It was noticed that according to CBI, DSP Abhey Singh (PW42) of the Haryana Police had arrested Naresh @ Neshi (appellant) on 31.08.2007. Naresh @ Neshi made disclosure statements Ex.PW40/B and Ex.PW40/D. In pursuance of the disclosure statement Ex.PW40/D, he on 01.09.2007 got recovered a loaded .315 bore pistol which was taken in possession vide recovery memo (Ex.PW40/F). Sketch of the pistol (Ex.PW40/E) was prepared. SHO Lakhwinder Singh (PW37), who had initially conducted investigation in the case recovered an empty cartridge case from the spot vide recovery memo Ex.PW19/A. The post mortem examination on the dead body of Rakesh @ Lara was conducted by Dr. Viney Kumar (PW2). He (PW2) handed over a sealed packet containing the recovered bullets and pellets from the dead body of Rakesh @ Lara to the police. The bullets and pellets recovered from the dead body of Rakesh @ Lara by Dr. Vinay Kumar (PW2), the bullets and the cartridge case recovered from the spot by SHO Lakhwinder Singh (PW37) and pistol recovered at the instance of Naresh @ Neshi (appellant) were reportedly sent to FSL.

Shri L. S. Yadav (PW24), Ballistics Expert compared the recovered bullet from the body of Rakesh @ Lara with the cartridge case recovered from the spot and the pistol recovered at the instance of Naresh @ Neshi (appellant) by DSP Abhey Singh (PW42). He (PW24) came to the conclusion that the fired .315 bore

bullet recovered from the dead body of Rakesh @ Lara and the cartridge case recovered from the spot had been fired from the pistol which was recovered at the instance of accused Naresh @ Neshi (appellant) and from no other pistol. On the basis of the said evidence, the learned trial Court was of the considered view that the said evidence established beyond doubt that the accused Naresh @ Neshi fired with his .315 bore pistol at Rakesh @ Lara which had caused his murder. In the said circumstances, the learned trial Court placed reliance on the Supreme Court decision in Kalua v. State of Uttar Pradesh (supra) and held that this evidence was sufficient to come to the conclusion that the accused had caused the murder of the deceased. Therefore, it was held that Naresh @ Neshi (appellant) was one of the assailants who had fired a bullet at Rakesh @ Lara which caused his murder.

It was also observed that the ballistic report stated that the seals of the case property were intact; besides, Shri L. S. Yadav (PW24), Ballistics Expert had deposed that the seals on the case property were intact when he had received the same. In the said circumstances, it was held by the learned trial Court that non examination of the person with whom the case property remained was of no consequence.

It is, therefore, to be noticed that the conviction of Naresh @ Neshi (appellant) has been based by the learned trial Court on the basis of the deposition of Shri L.S. Yadav (PW24), Ballistics Expert who has opined that the fired .315 bullet recovered from the dead body of Rakesh @ Lara and the cartridge case recovered from the spot had been fired from the pistol which was recovered at the

instance of Naresh @ Neshi and no other pistol.

It may be noticed that Dr. Vinay Kumar, Medical Officer, Forensic Medicine Department, Post Graduate Institute of Medical Sciences, Rohtak (PW2) conducted the postmortem examination on the dead body of Rakesh @ Lara. A copy of the postmortem report (Ex.PA) prepared by him was tendered in evidence. The police request (Ex.PB) for conducting the postmortem examination and the inquest report (Ex.PC) accompanying the request were also tendered in evidence. He (PW2) deposed and tendered in evidence his affidavit (Ex.P1) containing the details of the postmortem examination conducted by him and Dr. Sunil Gambhir on the dead body of Rakesh @ Lara. According to the affidavit (Ex.P1) the following injuries were found on the dead body:-

"1. A lacerated wound of size 2x1 cm, oval shape was present at scalp at left parietal bone situated 17 cm superior to external auditory meatus, 21 cm posterior to nasion & 4 cm left to midline. Margins were inverted. Hairs around the wound showed singeing. No tattooing or blackening observed around it. Floor shows brain matter. On deeper dis-section surrounding tissue were ecchymosed, parietal bone was fractured in pieces and fracture line was in long axis of midline. Track of wound goes towards midline (right), crosses midline through and through brain matter, greater wing of sphenoid bone on right pierces base of mid-cranial (right) fossa and exit out of

skull cavity & bullet was impacted medial to right T.M.joint.

2. A lacerated wound of size 1 x .5 cm, oval, was present at left parietal region situated 4 cm left to midline and 4 cm anterior to wound 1(described earlier). Margins were inverted and surrounding hairs show singeing. No tattooing or blackening of surrounding tissue was observed. On deeper dissection-track of wound goes to right towards midline anteriorly to middle cranial fossa it pierces the middle cranial fossa to exit through it to Right maxilla and bullet was found impacted in soft tissue of right cheek against 2nd molar.

3. Multiple blackened spots some of which were elevated from surrounding skin at nape (Posterior) of neck. Their size (<.5cm) was uniform, shape was round. On deep dissection multiple were found, four of which were recovered and sealed. They were more on right side to the midline of neck in an area 10 x 5 cm.

4. A lacerated wound of size 1.5 x 1 cm obliquely oval with medial and tapering surrounding skin blackened in a strip circle manner, was present in right hypochondrium situated 16 cm vertically below right nipple, 5cm rt to midline 28 cm (on right) from superasternal notch. On deeper dissection surrounding tissues were ecchymosed,

margins were inverted and track went medially and superiorly to right costo – chondral junction of lower ribs (9-10) from where it is deflected to midline & towards left piercing anterior of stomach, descending colon and peritoneum of left anterior abdominal wall. Bullet was recovered from fat of Left anterior abdominal wall 26 cm below left nipple, 10 cm left to the midline.

5. A disposable needle present at dorsum of left palm in a subcutaneous vein fixed in position by adhesive leuko.

6. A lacerated wound of size 2 x 2 cm, at back, round in shape, blood was present around it in an area 3 x 2 cm. It was situated 130 cm above the left heel and 7 cm left to midline. On deeper dissection margins were inverted & ecchymosed no blackening or tattooing seen in surrounding area, track traced medially to right and superiorly in front of spinal column through pleura of right lung and bullet discovered in right pleural space posteriorly under right scapula's lateral border.

7. A lacerated wound of size 2 x 1 cm oval in shape at back's left side 18 cm above the injury described in 6, and 5 cm left to midline. No tattooing or darkening of surrounding was noted. Margins were inverted. Multiple dried blood stains were present in surrounding skin. Track of wound

went to supero medially to right, crossed the spinal column, enters the pleural cavity of right lung and bullet was impacted in 2nd rib posteriorly. It was impacted in 2nd rib very tightly and was left there only.

8. Superficial contusion at left shoulder tip of size 5 x 3 cm irregular in shape and dark brown in colour. On deep dissection, no fracture was found. No other injury was seen.

The time between death and postmortem examination was between 6 to 24 hours.

Remarks—In our opinion after careful postmortem examination in the cause of death of deceased in this case was due to fire arm injuries described. Injuries are all ante mortem in nature and sufficient to cause death in due course of nature.”

A perusal of the above injuries show that there were as many as six fire arm injuries on the dead body of Rakesh @ Lara; besides, one superficial contusion on the left shoulder tip and a disposable needle was found present at the dorsum of left palm. All the fire arm injuries were cumulatively sufficient to cause death and it is not a case where only the bullet injury attributed to Naresh @ Neshi (appellant) can be said to have resulted in the death of Rakesh @ Lara. This is being noted in the context that the accused other than Naresh @ Neshi (appellant) have been acquitted.

From the place where the incident had occurred on

initial investigation. He reached the place of occurrence where nobody was present. He prepared rough site plan (Ex.PW37/B) of the place of occurrence. Besides, blood stained earth and empty cartridges from the place of occurrence were collected and taken in possession vide recovery memo Ex.PW19/A. These were converted into sealed parcel with the seal of 'RR'. It is stated by SHO Lakhwinder Singh (PW37) that these were sent to FSL, Madhuban. It is further stated by him that ASI Ram Rattan handed over to him clothes of the deceased Rakesh @ Lara as also the bullets and the pellets. These were taken in possession vide memo Ex.PW22/A. The case property it is stated was deposited with the MHC, who also handed over to him one letter regarding transfer of the case to DSP Abhey Singh (PW42). In cross-examination, it is inter alia stated by SHO Lakhwinder Singh (PW37) that when they reached at the spot not even a single person was present there as it was night time. It is also stated that when they reached the spot at night, no document was prepared by them there. He had not seen the case property on the date he was deposing in the Court.

The recovery memo (Ex.PW19/A) is in respect of blood stained paper, empty cartridge and live cartridge. It is mentioned that in the presence of the witnesses namely ASI Mahinder Singh at the place of the occurrence, in front of the school gate, blood was lying on the cemented street. It was taken on a paper. The blood stained paper was kept in a plastic container and from the spot six empty cartridges 7.65 mm, three live cartridges and 7.65 mm two empty cartridges were recovered. One side of cartridge was marked with 'KF 8mm 10' and the second side was marked with '99'. The

same were kept in an empty container and two sealed parcels were prepared, which were separately sealed with seal of 'RR'. Every sealed parcel had been sealed with five seals which were taken in possession with sample seals. After using the seal, the seal was handed over to ASI Mahinder Singh, Police Station City Gohana, who was also attesting witness of the said memo.

The other memo (Ex.PW22/A) relates to recovery of memo of parcel of clothes, bullets and pellets of cartridges. This has also been proved by SHO Lakhwinder Singh (PW37). In terms thereof, after postmortem examination on the dead body of Rakesh @ Lara, ASI Ram Rattan, Police Station City Gohana submitted two parcels containing clothes of the deceased, which were given to him by the doctor. Parcel No.1 contained the clothes of the deceased Rakesh @ Lara, which was sealed with the seal of the doctor. Parcel No.2 contained the bullets and pellets that had been sealed by the doctor. The parcels were taken in possession vide said recovery memo Ex.PW22/A, the memo was attested by ASI Ram Rattan, Police Station City Gohana (PW22).

SHO Lakhwinder Singh (PW37) conducted the investigation in the case only on 27.08.2007 i.e. the date when the incident had occurred. From his deposition it is evident it has not been brought out that any .315 bore bullet was recovered from the place of occurrence. The further investigation in the case was conducted by DSP Abhey Singh (PW42). He (PW42) states that Naresh (appellant) suffered a disclosure statement and confirmed the statement (Ex.PW40/A) given by Sanjay. The disclosure statement of Sanjay is to the effect that Dinesh @ Dinu (accused No.2) and Naresh @

Neshi (appellant) were confined with him in Karnal jail. At that time, he (Sanjay Butana) disclosed his mind that Rakesh @ Lara had committed the murder of his schoolmate Baljit Siwach, resident of Gharwal in the year 2005 and he had to wreak vengeance against him because the jail inmates of other castes used to taunt him and shame him. He got the parole of Dinesh @ Dinu (accused No.2) sanctioned through a message sent to Dinesh (accused No.4) son of Om Parkash. Besides, he got bail for Naresh @ Neshi (appellant) through Dinesh (accused No.4). He told Dinesh @ Dinu (accused No.2) and Naresh @ Neshi (appellant) to meet Prahlad (accused No.3) and Dinesh (accused No.4) son of Om Parkash and he would help them with money and arms and acting upon this plan, the incident that occurred had succeeded. He knew their hiding places and they used to visit him. He could demarcate the hotel and get them apprehended. The said disclosure statement of Sanjay is stated by DSP Abhey Singh (PW42) to be confirmed by Naresh @ Neshi (appellant). In cross-examination DSP Abhey Singh (PW42), however, states as correct that in furtherance of the disclosure statement (Ex.PW40/A) no recovery was effected.

DSP Abhey Singh (PW42) states that Naresh @ Neshi (appellant) also disclosed that he along with Sanjay (i.e. Sanjay Butana) and Dinesh (accused No.2) were confined in jail where Sanjay had informed him that he was managing the parole of Dinesh @ Dinu (accused No.2) and he (Naresh @ Neshi) should arrange surety for him. Naresh @ Neshi (appellant) was also to meet Dinesh (accused No.4) son of Om Parkash. Naresh @ Neshi on his release from jail met Dinesh (accused No.4) and informed

him about the plan of Sanjay that Rakesh @ Lara is to be killed. Dinesh @ Dinu (accused No.2) had arranged three pistols out of which one was given to him (Naresh @ Neshi). It is also stated that as per plan, they made an attempt to kill Rakesh @ Lara on 16.08.2007 but could not succeed. Thereafter, Naresh @ Neshi (appellant) along with Prahlad (accused No.3) and Dinesh @ Dinu (accused No.2) committed the murder of Rakesh @ Lara. This part of the deposition of DSP Abhay Singh (PW42) was objected to by the defence being inadmissible in evidence. Naresh @ Neshi also disclosed that at the time of commission of offence, they had a motorcycle which had been concealed by him in the house of his maternal aunt in village Sanghi District Rohtak and he could get the motorcycle and also the pistol which was used by him in the commission of the crime which had been concealed in a room situated in Jaipur (Rajasthan) where his associates Dinesh @ Dinu (accused No.2) and Prahlad (accused No.3) were hiding. He further disclosed that he could point out the room and get the weapon recovered. His disclosure statement (Ex.PW40/B) was reduced into writing which was signed by him.

The disclosure statement (Ex.PW40/B) of Naresh @ Neshi (appellant) is to the effect that he was confined in Sonapat jail for two days in a case under Section 307 IPC in April 2007. There he met Sanjay of Butana whom he already knew. Sanjay got him introduced with Dinesh @ Dinu (accused No.2); besides, Sanjay informed him (Naresh) that Rakesh @ Lara had murdered his friend Baljit Siwach, resident of Gharwal and he had been saved from the case. He had to wreak vengeance against Rakesh @ Lara. Sanjay

also informed Naresh @ Neshi (appellant) that Rakesh @ Lara used to collect protection money in lakhs every month from Gohana city and if they kill him, they would get this protection money. Sanjay was getting leave sanctioned for Dinesh @ Dinu (accused No.2) and Naresh @ Neshi was asked to manage sureties. He was also asked to meet Dinesh (accused No.4) son of Om Parkash and inform him about his plan as he would definitely help them. Naresh @ Neshi (appellant) further stated that on coming out of jail, he met Dinesh (accused No.4) and told him about the plan of Sanjay. Dinesh (accused No.4) got ready to help him. Naresh @ Neshi (appellant) and Dinesh (accused No.4) then went to Mai Chand Dalal at Panipat. He arranged false sureties and for this he was given Rs.40,000/-, i.e. for managing the surety for Dinesh @ Dinu (accused No.2). Mai Chand Dalal on the basis of fake surety got Dinesh @ Dinu (accused No.2) released. He then did not surrender back in jail after the expiry of his leave. Naresh @ Neshi (appellant) then got Dinesh (accused No.4) introduced to Prahlad (accused No.3) and Dinesh @ Dinu (accused No.2) at his residence in village Busana. There they planned to kill Rakesh @ Lara. Dinesh @ Dinu (accused No.2) was asked to arrange arms. Three pistols were arranged by him and one pistol was given to Naresh @ Neshi (appellant). As per planning, Dinesh (accused No.4) got himself confined in Tihar Jail, Delhi so that his name does not appear in the case. In this course of time, they could not murder Rakesh @ Lara and Dinesh (accused No.4) got bail and went to his wife who lived in Arunachal Pradesh. She was a Captain in the Army. Dinesh (accused No.4) would talk to them on telephone regarding the plan

to kill Rakesh @ Lara. Naresh @ Neshi (appellant) along with Prahlad (accused No.3) and Dinesh @ Dinu (accused No.2) murdered Rakesh @ Lara on 27.08.2007 with their respective arms in the street adjoining Khasa School, Gohana. After committing the crime, they fled away on a 'Platina' make motorcycle bearing No.HR11-B-6235. Naresh @ Neshi (appellant) then concealed the motorcycle at the residence of his father in Sanghi village. The pistol he used in the murder had been concealed in a room at Jaipur, Rajasthan. His colleague Dinesh @ Dinu (accused No.2) and Prahlad (accused No.3) were hiding there and only he knew of this fact. He could get the pistol recovered by demarcation and he also knew the places where his colleagues were hiding in Rajasthan, Delhi and Uttar Pradesh. He could get them apprehended if a raid was carried out. The disclosure statement (Ex.PW40/B) was signed by Naresh @ Neshi and witnessed by SI Kaptan Singh (PW40) and signed by DSP Abhey Singh (PW42) on 31.08.2007.

DSP Abhey Singh (PW42) again interrogated Naresh (appellant) and Dinesh (accused No.4) on 01.09.2007 in the presence of witnesses. Besides, he (PW42) handed over Naresh (appellant) to SI Kaptan Singh (PW40) for effecting recovery of motorcycle. SI Kaptan Singh (PW40) took Naresh (appellant) in his custody to the place disclosed by him, i.e. in village Sanghi to the house of Om Parkash, husband of his father's sister ('bua'). From there, Naresh @ Neshi (appellant) got recovered a 'Bajaj Platina' motorcycle No. HR11 D-6235, which was parked inside the house along the front wall by the side of the main gate. The motorcycle was taken in possession vide recovery memo Ex.PW23/A. It was

signed by SI Kaptan Singh (PW40), besides, the witnesses HC Pawan and Ranbir Singh. Rough site plan Ex.PW23/B of the place of recovery was prepared. SI Kaptan Singh (PW40) on his return handed over the accused (Naresh @ Neshi) with the recovery memo and the case diary including statements to DSP Abhey Singh (PW42). The motorcycle was deposited by SI Kaptan Singh (PW40) with the MHC.

DSP Abhey Singh PW42 then again interrogated Naresh (appellant) in the presence of SI Kaptan Singh (PW40) and Head Constable Pawan Kumar and on his interrogation, he (Naresh) changed his previous statement (Ex.PW40/B) and stated that the pistol that he used in the crime in fact had been concealed by him on the approach road of the canal towards village Sanghi in the grass on the Rukhi-Chhichhrana road by the side of the canal bank and he could point out the place and could get the weapon recovered. He also disclosed that he could point out the place of occurrence of this case.

The changed disclosure statement (Ex.PW40/D) of Naresh @ Neshi (appellant) was recorded by DSP Abhey Singh (PW42) on 01.09.2007. It was signed by SI Kaptan Singh (PW40), Head Constable Pawan Kumar, Naresh (appellant) and DSP Abhey Singh himself. Naresh @ Neshi (appellant) in pursuance of his changed disclosure statement (Ex.PW40/D) disclosed that he along with his accomplices had fired with a pistol at Rakesh @ Lara at Gohana on 27.08.2007. Besides, on the way to village Sanghi, he had concealed the pistol on the Rukhi-Chhichhrana road on the side of the canal towards village Sanghi and he could get it recovered after

demarcation. He also disclosed that he could demarcate the place where Rakesh @ Lara was murdered by shooting at him.

In pursuance of the aforesaid disclosure statement (Ex.PW40/D), above mentioned Naresh @ Neshi (appellant) was taken in a vehicle for effecting the recovery of the pistol. On the way, he got the vehicle stopped. Then, he took out a .315 bore pistol from the congress grass growing on the western pavement. The pistol was handed over to DSP Abhey Singh (PW42). It was wrapped in a red and black colour polythene bag. The recovered pistol was checked and one live round of .315 bore was found in its chamber. The country made pistol was unloaded. The length of the barrel of the pistol was measured and it was 15 cms. The body length was 11 cms. and the length of the wooden butt was 9.5 cms. At the top of the country made pistol, a hammer and downside a safety catch was fitted, which was used to open and close the pistol. Trigger was fitted on the back of the butt. Wooden scales were fitted on both sides of the butt. The letters '8mm00KF' were written at the bottom of the recovered round. Separate sketch (Ex.PW40/E) of the recovered pistol was prepared and it was put back in the same polythene along with rounds. A parcel was made and was sealed with the seal 'AS' and it was taken in possession vide recovery memo Ex.PW40/F. After being sealed, the specimen seal was handed over to SI Kaptan Singh (PW40). The memo was signed by the witnesses.

The learned trial Court in its impugned judgment recorded that the bullets and pellets recovered from the dead body of Rakesh

@ Lara by Dr. Vinay Kumar (PW2), the bullets and cartridge case

recovered from the spot by SHO Lakhwinder Singh (PW37) and the pistol recovered at the instance of Naresh @ Neshi were sent to FSL. Sh. L.S. Yadav (PW24) who was a Ballistics Expert had compared the recovered bullet from the body of Rakesh @ Lara with the cartridge case recovered from the spot and the pistol recovered at the instance of accused Naresh @ Neshi (appellant) by DSP Abhey Singh (PW42). He (PW24) came to the conclusion that the fired .315 bore bullet recovered from the dead body of Rakesh @ Lara and cartridge case recovered from the spot had been fired from the pistol which was recovered at the instance of Naresh @ Neshi (appellant) and from no other pistol.

The learned trial Court was, therefore, of the considered view that the said evidence established beyond doubt that Naresh @ Neshi (appellant) had fired with his .315 bore pistol at Rakesh @ Lara which had caused the murder of the latter.

It is, however, to be noticed from the evidence referred to that SHO Lakhwinder Singh (PW37) from the place of occurrence recovered a blood-stained paper, empty cartridge and a live cartridge vide recovery memo Ex.PW19/A. As regards the recovery of .315 bore pistol, it is to be noticed that Naresh @ Neshi (appellant) made a disclosure statement (Ex.PW40/B) on 31.08.2007 in which he *inter alia* stated that the pistol he used in the murder had been concealed by him in a room at Jaipur, Rajasthan, where his colleagues were also hiding. He knew this fact and he could get the pistol recovered by demarcation. Admittedly, no recovery was effected in pursuance of the said disclosure statement (Ex.PW40/B). Naresh @ Neshi (appellant) then changed

his disclosure statement. The changed disclosure statement (Ex.PW40/D) was made by Naresh @ Neshi (appellant) on 01.09.2007 in which he *inter alia* stated that he had concealed the pistol in the bushes towards village Sanghi on the Rukhi-Chhichhrana road on the side of the canal. Except him nobody else was in the knowledge of the same and he could get the same recovered after demarcation. In pursuance of the said changed disclosure statement (Ex.PW40/D), the pistol was recovered vide recovery memo (Ex.PW40/F). The pistol was tendered in evidence as Ex.P23 and it is stated by DSP Abhey Singh (PW42) that he deposited the case property with the MHC and recorded statements of witnesses under 161 Cr.P.C.

It may also be noticed that ASI Jagbir Singh (PW30) stated that he was posted as MHC, Police Station City Gohana in the month of August, 2007. Case FIR No.232 dated 27.08.2007 (Ex.PW37/A) was registered at Police Station City Gohana in respect of the murder of Rakesh @ Lara. The then Investigating Officer SHO Lakhwinder Singh (PW37) of Police Station City Gohana it is stated deposited five parcels in the 'Malkhana' of Police Station Gohana on 28.08.2007. He again stated that four parcels were deposited on 28.08.2007 and one parcel was deposited on 03.09.2007. During the period the parcel remained in the 'Malkhana' in his custody, he did not tamper with the parcels and neither did he allow anybody else to tamper them. Inspector Shiv Kumar of CBI, Delhi on 07.11.2007 seized the motorcycle No.HR11-B-6235 of 'Bajaj Platina' make, silver colour which was parked in the police station. A memo (Ex.PW30/A) in this regard was prepared. It bears the signatures of

MHC Jagbir Singh (PW30) at Point 'A'. Copy of the memo was handed over to him against a receipt which bears his signatures at point 'B'. On the same day, i.e. on 07.11.2007, the aforesaid motorcycle after seizure was handed over back to him (PW30) for safe custody by Inspector Shiv Kumar of CBI Delhi. Memo in this regard (Ex.PW30/B) was prepared. It bears the signatures of MHC Jagbir Singh (PW30) at point 'A'. Copy of the memo was handed over to him against receipt which bears his signatures at point 'B'. It is further stated by MHC Jagbir Singh (PW30) that Inspector Sat Pal visited P.S. City Gohana on 25.11.2007. He took in possession two mobile phones vide memo (Ex.PW30/C). It bears his signatures at point 'A'. Copy of the memo was handed over to him against receipt which bears his signatures at point 'B'. Both the mobile phones were in separate seal parcel and were handed over to CBI Inspector in the same condition. Description and detail of the mobile phone, its recovery and seizure memo was mentioned in the memo (Ex.PW30/C). In cross-examination it is stated as correct that at Point B on both the memos Ex.PW30/A and Ex.PW30/B only word 'received copy' was mentioned but there was no signatures of any proper person. It is further stated that he (PW30) had not seen any case property on the date he was deposing in Court. The word 'received copy' in both the memos was not in his hand writing. It is voluntarily stated that it was written by the CBI officer. He (PW30) had not shown any memo vide which the case property which was handed over to him (PW30) by the CBI was recovered and from where it was recovered and who had recovered it. It is stated as incorrect to suggest that he was deposing falsely.

The above deposition of ASI Jagbir Singh (PW30) who was MHC of Police Station City Gohana where the case property was deposited does not make any mention of the .315 bore country made pistol which was recovered on the basis of the disclosure statement (Ex.PW40/D) of Naresh @ Neshi (appellant) vide recovery memo (Ex.PW40/F) was deposited with him by DSP Abhey Singh (PW42) as is stated by the latter. In fact, there is no mention in the statement of ASI Jagbir Singh (PW30), the then MHC of Police Station City Gohana that the same was sent to the FSL for examination. The seizure memo Ex.PW30/A relates to 'Bajaj Platina' motorcycle, which was seized by CBI Inspector Shiv Kumar from MHC Jagbir Singh (PW30) on 07.11.2007. Ex.PW30/B is the 'Superdari' memo signed by CBI Inspector Shiv Kumar and CBI Inspector Sat Pal by which the possession of the said motorcycle was handed back to MHC Jagbir Singh (PW30) and it was recorded that the motorcycle may be produced as and when desired by the Court.

The prosecution has also examined Sub-Inspector R.P.Sharma, SC-III, New Delhi (PW26) who has stated that he was posted in SCB-II/CBI, Delhi on 08.10.2007 and 25.10.2007. On the said two dates, he (PW26) had taken three parcels in a sealed condition pertaining to case FIR No.232 of 2007 of Police Station Gohana and RC No. 4(S)/2007 SCB-II/New Delhi to the FSL, Madhuban. He (PW26) deposited those parcels with their seals intact with FSL, Madhuban. Till the parcels remained in his custody he did not allow anybody to touch or tamper with the samples.

Constable Suresh Kumar No.920 and Constable Surender Kumar

also accompanied him to the FSL, Madhuban. He (PW26) had not brought the case property on the date of his deposition as per directions of the Court from the 'Malkhana'. In cross-examination, he (PW26) was questioned as to whether he had been shown any case property in the Court during his examination-in-chief on the date he was deposing in Court. He stated: "The sealed parcels are with me as I was directed by the Court to produce them and I brought it in a sealed condition from CBI 'Malkhana'." He further stated that he did not see the contents of the parcels by opening the same at his instance.

The FSL report addressed to the Superintendent of Police, CBI/SCB-II, New Delhi (Ex.PW24/A) records as follows:-

"Forwarding memo No.1743/DSP/G, dt. 03.09.2007 of DSP Gohana and your forwarding memo No.3781/3/4(S)/07/SCB-II/CBI/DLI and 3846/3/4(S)/07/SCB-II/CBI/DLI dated 08.10.07 and 25.10.07 regarding Thirteen (5+3+5=13) sealed parcels in connection with FIR No.232 and RC4(S)/07/SCB-II/New Delhi dated 27.08.07 and 14.09.07 U/S 302/34/120-B IPC and 25/54/59 Arms Act Police Station City Gohana and CBI/SCB-II/New Delhi stated by you to have been dispatched vide RC No.495 and Nil dated 04.09.07 through C. Suresh Kumar No.920; ASI R.P. Sharma (PW-26) and C. Surender Kumar and received in this division on 04.09.07; 19.10.07 and 25.10.07 respectively."

Parcel No. II of the report mentions that it contained one .315" fired bullet, one country made fired bullet (for chambering .315" calibre firearms), two 7.65 mm fired bullets and four pellets stated to have been taken out from the body of the deceased Rakesh @ Lara. These were first sent to the Serology Division in original packing and then examined in Ballistics Division. The .315" fired bullet was marked as BC/1, country made fired bullet was marked as BC/2 and 7.65mm fired bullets were marked as BC/3 and BC/4 by Shri L.S. Yadav (PW24), Senior Scientific Officer (Ballistics)-cum-Ex-officio Assistant Chemical Examiner to Government of Haryana, Forensic Science Laboratory, Madhuban, Karnal. Parcel No.IV, it is mentioned, contained one .315" fired cartridge case, one country made fired cartridge case (for chambering .315" calibre firearms), six 7.65mm fired cartridge cases and three 7.65mm live cartridges stated to have been collected from the place of occurrence. The cartridge cases were marked as C/1 to C/8 by Sh. L.S. Yadav (PW24). Parcel No. V, it is mentioned, contained one country made pistol (chambered for .315" cartridges) along with one .315" live cartridge stated to have been recovered from accused Naresh (appellant). The pistol was marked as W/1 by Sh. L.S. Yadav (PW24).

The Chemical Examiner's report is being referred primarily in respect of the country made .315" pistol and cartridges of the same bore, as these are attributed to be used by Naresh @ Neshi (appellant) in the crime whose case only is to be considered. The result of the Ballistics Expert at serial No. 1 *inter alia* is that the

Naresh, it is mentioned is a firearm as defined in the Arms Act, 1959. Its firing mechanism was found in working order. At serial No.3, it is mentioned that .315" fired cartridge case marked C1 and .315" fired bullet marked BC/1 had been fired from the country made pistol marked W/1 (chambered for .315" cartridges) and not from any other firearm even of the same make and bore/calibre, because every firearm has got its own individual characteristics marks. At serial No.5, it is mentioned that the percussion cap of country made fired cartridge case marked C/2 (for chambering .315" calibre firearms) was missing in the present condition. No other sufficient comparable individual characteristics marks were present on C/2. Therefore, no opinion could be formed regarding the linkage of country made fired cartridge case marked C/2 in respect of country made pistols W/1 and W/6 (each chambered for .315" cartridges).

The above FSL report (Ex.PW24/A) firstly goes to show that some articles were received at the FSL, Madhuban, Karnal before the matter was handed over for investigation to the CBI. The report mentions thirteen parcels having been received on 04.09.2007, 19.10.2007 and 25.10.2007. FIR (Ex.PW37/A) in the present case was registered at Police Station Gohana on 27.08.2007. Thereafter, the Haryana Government issued notification under Section 6 of the 1946 Act on 31.08.2007 (Ex. PW44/1). Consequent to the said notification, the Government of India issued notification under sub-section (5) of Section 1 read with Section 6 of the 1946 Act on 14.09.2007 (Ex.PW44/2). After receipt of the two notifications, regular case was registered by the

CBI on 14.09.2007 (Ex.PW44/3). However, some sample parcels had reached the FSL, Madhuban on 04.09.2007 according to the FSL report (Ex.PW24/A).

HC Ashok Kumar (PW25) who, as already noticed, was posted as MHC at Police Station Kharkhoda on 17.10.2007. He (PW25) on that day handed over three parcels to CBI Inspector Richhpal Singh which were taken in possession by him vide seizure memo Ex.PW25/A. Then again on 24.10.2007, he (PW25) handed over five sealed parcels to CBI Inspector Shiv Kumar, which were taken in possession vide seizure memo Ex.PW25/B. A perusal of the said seizure memos (Ex.PW25/A and Ex.PW25/B) show that these relate to articles seized in FIR No. 210 dated 28.09.2007 of Police Station Kharkhoda. One of the articles seized was a sealed parcel containing one .315 bore pistol with a round, as indicated on the parcel, sealed with seal bearing 'DP'. Three other parcels that were seized do not relate to seizure of .315 bore pistol. Therefore, the same are of no relevance for the purpose of the present appeal. It is only the .315 bore pistol, which was seized vide seizure memo (Ex.PW25/B), which is to be noticed and considered as the weapon of the same bore was stated to have been used by Naresh @ Neshi (appellant) in the murder of Rakesh @ Lara. The same, however, is also not of much relevance as the .315 bore pistol mentioned in memo Ex.PW25/b was recovered in FIR No.210/2007 of Police Station Kharkhoda and was not recovered from Naresh @ Neshi (appellant).

In this regard, it may also be noticed that Mahinder Singh,

Sub-Inspector (Retired) (PW19) was posted as ASI at Police Station

City Gohana on 27.08.2007. Inspector Lakhwinder Singh (PW37) was posted as SHO, Police Station City Gohana. Mahinder Singh, Sub-Inspector (PW19) states that he was associated with the investigation of case FIR No.232 dated 27.08.2007 (Ex.PW37/A). It is stated that during the intervening night of 27/28.08.2007, spot inspection was done by Inspector/SHO Lakhwinder Singh (PW37) who lifted blood from the spot with the help of a paper. This was put in an empty plastic container which was converted into a parcel. Besides this, six empty cartridge cases were lifted and 7.65 mm was engraved on their base. Two empty cartridges were also lifted. On the base on one cartridge 'KF8mm10' and on the base of other cartridge '99' was written. Three live cartridges of 7.65 mm were lifted. These were put in a plastic container and parcels were prepared. On both the parcels, seals of 'RR' were affixed and then the same were taken in possession vide recovery memo Ex.PW19/A, which was signed by him (PW19) and Inspector Lakhwinder Singh (PW37). To similar effect is the statement of SHO Lakhwinder Singh (PW37), who has reiterated the recoveries made in pursuance of recovery memo Ex.PW19/A and he also states that he deposited the case property with MHC.

The above referred evidence does not clarify clearly and beyond reasonable doubt as to the .315 bore pistol (Ex.P23) recovered from Naresh @ Neshi (appellant) was sent to the FSL, Madhuban for its examination, which makes the link evidence doubtful.

It is to be noticed that the .315 bore pistol (Ex.P23) with one .315 bore cartridge in its chamber was got recovered by

Naresh @ Neshi (appellant) from the bushes on the road from village Rukhi to Chhichhrana towards village Sanghi on the side of the canal bank on 01.09.2007 vide recovery memo Ex.PW40/F in pursuance of his disclosure statement Ex.PW40/D. This recovery was effected by DSP Abhey Singh (PW42) and he states that he on return to the police station deposited the case property with MHC. The said .315 bore pistol though is stated to have been deposited by DSP Abhey Singh (PW42) with the MHC but it is not shown as to who received the said .315 bore pistol in the 'Malkhana' of Police Station Gohana City and who sent it to the FSL, Madhuban.

As already noticed that the seizure memos Ex.PW25/A and Ex.PW25/B relate to FIR No.210 of 2007 of Police Station Kharkhoda, District Sonapat and not to the present case FIR No.232 dated 27.08.2007 (Ex.PW37/A) of Police Station City Gohana or CBI case No. RC.4(S)/2007/CBI/SCB-II/Delhi registered on 14.09.2007 (Ex.PW44/3).

The position with regard to FIR No.210 of 2007 of Police Station Kharkhoda, has been submitted by CBI S.P. Nirbhay Kumar (PW44), which is to the effect that although Ram Niwas @ Kallu (accused No.5) disclosed that the third assailant as was informed to him (PW44) by Naresh @ Neshi (appellant) was Dinesh @ Dinu (accused No.2); however, according to his (PW44's) investigation as well as the investigation by the local police in case crime (FIR) No.210 of 2007 of Police Station Kharkhoda, the third assailant was Ashok (accused No.6) son of Bharpoor Singh. CBI S.P. Nirbhay Kumar (PW44) states that it had come in his investigation that the name of Ashok (accused No.6) as one of the assailants of Rakesh @

Lara was deliberately not disclosed in the killing of Rakesh @ Lara. The local police, it is stated, had also recorded the disclosure statement (Ex.PW39/Q) of Ashok (accused No.6) in case FIR No.210 dated 29.09.2007 of Police Station Kharkhoda wherein Ashok (accused No.6) had also disclosed the said fact. According to CBI S.P. Nirbhay Kumar (PW44) it had also come in his investigation that Ashok (accused No.6) had also disclosed that after the murder of Rakesh @ Lara, he had handed over the .32 bore pistol which was used by him in killing Lara to Dinesh @ Dinu (accused No.2) who later gave it to Jaswinder who was thereafter arrested in FIR No.210 of 2007 of Police Station Kharkhoda, District Sonapat. The .32 bore pistol was recovered from him (Jaswinder) which was taken in possession by the Police. It is further stated that similarly in case FIR No.210 of 2007 of Police Station Kharkhoda one Shankar son of Ram Karan resident of Butana was arrested from whom 3.5 (sic-.315) bore country made pistol was recovered which was taken in possession vide memo Ex.PW40/E. CBI S.P. Nirbhay Kumar (PW44) received copies of documents of case FIR No.210 of 2007 duly attested by Inspector Yashpal Singh, In charge CIA, Sonapat (PW39).

It is to be noticed that the .315 bore country made pistol stated to be recovered and taken in possession vide recovery memo Ex.PW40/E from Shankar son of Ram Karan resident of Butana does not appear to be correct as Ex.PW40/E is the sketch of the .315 bore country made pistol which is stated to be recovered from Naresh @ Neshi (appellant) vide recovery memo Ex.PW40/F in pursuance of his disclosure statement Ex.PW40/D. Besides,

Inspector Kaptan Singh (PW-40) drew the sketch (Ex.PW40/E) of the recovered pistol (Ex.P23) from Naresh @ Neshi (appellant).

Therefore, it is to be noticed that the .315 bore pistol (Ex.P23) stated to be used by Naresh @ Neshi (appellant) in the murder of Rakesh @ Lara is though stated to be deposited with the MHC Police Station Gohana by DSP Abhey Singh (PW42) is in fact not shown to be received in the 'Malkhana' of Police Station City Gohana. The evidence of ASI Jagbir Singh (PW30) who was the MHC of Police Station City Gohana does not mention the deposit of .315 bore pistol with him while he was posted as MHC at the said Police Station. He (PW30) states that in the present case FIR No.232 dated 27.08.2007 (Ex.PW37/A), SHO Lakhwinder Singh (PW37) deposited parcels in the Malkahan of Police Station City Gohana on 28.08.2007 and one parcel on 03.09.2007. The nature of the articles in the parcels are not mentioned and in any case the parcels deposited on 28.08.2007 do not relate to the .315 bore pistol (Ex.P23) as the said pistol was later recovered on 01.09.2007 and it could not be deposited on 28.08.2007. DSP Abhey Singh (PW42) stated that on return to the police station i.e. on 01.09.2007 itself, the case property was deposited with the MHC. As such, the parcel deposited on 03.09.2007 cannot also be said to be that of the .315 bore pistol Ex.P23 used in the occurrence by Naresh @ Neshi (appellant). This is also more so for the reason that the parcel deposited on 03.09.2007 was deposited by SHO Lakhwinder Singh (PW37) whereas the case property recovered on 01.09.2007, it is stated by DSP Abhey Singh (PW42) was deposited

by him.

The CBI Inspector Shiv Kumar on 07.11.2007 seized the 'Bajaj Paltina' motorcycle with registration No.HR 11B – 6235 vide recovery memo Ex.PW30/A from ASI Jagbir Singh, the then MHC (PW30) and on the same day he handed over the motorcycle back to ASI Jagbir Singh (PW30) for its custody. Thereafter, Inspector Satya Pal Singh on 25.11.2007 vide memo Ex.PW30/C seized two mobile phones. There is no mention of the .315 bore pistol being taken from the 'Malkhana' of Police Station City Gohana and thereafter sent to the FSL Madhuban for its examination. According to the FSL report Ex.PW24/A, it is mentioned against Parcel No.V that it contained one country made pistol (chambered for .315" cartridges) along with one .315" live cartridge stated to have been recovered from accused Naresh (appellant). It was marked as W/1 by Sh. L. S. Yadav, Assistant Director, Ballistics, FSL Madhuban (PW24). However, the manner in which it reached the FSL and who took it there has not been brought on record by the prosecution, which makes the link evidence in the case with respect to the .315" pistol (Ex.P23) not only with regard to its being deposited in the 'Malkhana' but also about it being taken to the FSL Madhuban, to be missing.

In Pancho v. State of Haryana, 2011 (4) RCR (Criminal) 665 (Supreme Court), a country made pistol of .315 bore was recovered from the accused in the said case after more than about six months of the date of the incident. According to the FSL report, the country made pistol marked W/1 was test fired. The bullet marked BC/1 taken out from the body of the deceased in the said case, it was opined had been fired from the said country made

pistol. The FSL report also stated that the hole on the clothes of the deceased which were sent for examination had been caused by bullet projectiles. The Supreme Court, however, was of the opinion that on the basis of the said report, it was difficult to come to the conclusion that the accused A2-Pancho, in the said case, was responsible for the fire arm injury caused to the deceased as the prosecution had not led any evidence to show as to in whose custody the pistol was during the period of six months after the incident. The accused therein in his statement under Section 313 Cr.P.C. denied that any such recovery was made from him. It was held that assuming that the recovery was proved, however, in the absence of any other cogent evidence, it was unable to hold that this was sufficient to establish that A2-Pancho caused the fatal fire arm injury to the deceased with the pistol that was recovered.

In the present case also, as already noticed, the recovered pistol from Naresh @ Neshi (appellant) though is stated by DSP Abhey Singh (PW42) to have been deposited with the MHC on the date of its recovery that is on 01.09.2007; however, it is not shown to have been received by ASI Jagbir Singh, the then MHC (PW30). Besides, it is not shown to be taken to the FSL at Madhuban. CBI Sub Inspector R.P.Sharma (PW26) states that he had taken three parcels in a sealed condition pertaining to FIR No.232/2007 (Ex.PW37/A) and RC No.4(S)/2007/CBI/SCB-II/Delhi (Ex.PW44/3) on 08.10.2007 and 25.10.2007; however, he does not mention the contents of the articles that were taken.

The FSL report (Ex.PW24/A), as already noticed, mentions the sealed parcels in connection with the present case were

received on 04.09.2007, 19.10.2007 and 25.10.2007 respectively. Sub Inspector R.P. Sharma (PW26) states that he had taken three parcels on 08.10.2007 and 25.10.2007 but there is nothing on record to show as to where the parcel that he had taken on 08.10.2007 was kept till 19.10.2007 as no parcel was received by the FSL on 08.10.2007. The parcel received on 04.09.2007 it is mentioned in the FSL report that forwarding memo No.1473/DSP/G dated 03.09.2007 of DSP Gohana and forwarding memos of the CBI dated 08.10.2007 and 25.10.2007 regarding thirteen parcels (5 + 3 + 5 = 13) in connection with the present case stated to have been dispatched vide RC No.495 and Nil dated 04.09.2007 through Constable Suresh Kumar No.920, ASI RP Sharma and Constable Surender Kumar were received in the FSL Division on 04.09.2007, 19.10.2007 and 25.10.2007 respectively. Constable Suresh Kumar, who took the parcel on 04.09.2007 has not been examined as a prosecution witness. In fact till that time i.e. till 04.09.2007, the CBI had not taken over the case which was taken over after registration of the FIR by it on 14.09.2007 (Ex.PW44/3). One ASI Suresh Kumar (PW31) was examined, whose number is mentioned as 826, Economic Cell, Sonapat. The number of Constable Suresh Kumar in the FSL report Ex.PW24/A is mentioned as 920. He (PW31) stated that he was posted as Head Constable, Reader to DSP City Sonapat in the month of August, 2007. Sh. Abhey Singh (PW42) was posted as DSP Sonapat. During those days, Police Station Kharkhoda was under jurisdiction of City Sonapat. He was associated in the investigation of FIR No.232 dated 27.08.2007 (Ex.PW37/A) under Sections 302/120-B IPC and Section 25 of the

Arms Act. The case was registered in respect to the murder of Rakesh @ Lara. The case was being investigated by Sh. Abhey Singh, DSP (PW42). He (PW31) and Inspector Yashpal (PW39) were joined at the time of interrogation of the accused persons. Dinesh (accused No.4) resident of Mudlana and Naresh (appellant) suffered disclosure statements in his presence as well as in the presence of Inspector Yashpal (PW39). Further cross-examination of this witness (PW31) was deferred on 12.08.2011 as the original record was not available. It is not shown that he was thereafter examined. Therefore, it cannot be said that he had taken any parcel from the 'Malkhana' to the FSL. In any case, ASI Suresh Kumar (PW31) was not associated with the disclosure statement (Ex.PW40/D) made by Naresh (appellant) regarding concealing of the pistol used by him in the incident of murder and nor with its recovery in pursuance of recovery memo Ex.PW40/F, which both are signed by SI Kaptan Singh (PW40) and HC Pawan Kumar as also DSP Abhey Singh (PW42).

Sub Inspector R P Sharma (PW26) of the CBI stated that he took three parcels on 08.10.2007 and 25.10.2007 to the FSL. He (PW26) also states that Constable Suresh Kumar and Constable Surender Kumar also accompanied him. However, the FSL report mentions that the articles that were dispatched by the DSP Gohana and the CBI on 03.09.2007, 08.10.2007 and 25.10.2007 through Constable Suresh Kumar, ASI R.P. Sharma and Constable Surender Kumar were received in the FSL Division on 04.09.2007, 19.10.2007 and 25.10.2007 respectively. This would mean that the parcels were dispatched separately by three separate officials and

not that CBI Sub Inspector R.P. Sharma (PW26) took the articles on one date along with Constable Suresh Kumar No.920 and Constable Surender Kumar. In fact on 04.09.2007 when the first parcel was received by the FSL Division through Constable Suresh Kumar, the CBI was not even in seizin of the case and the investigation of the same was started by the CBI thereafter on 14.09.2007.

In the circumstances, the learned trial Court erred in holding that non examination of the person with whom the property remained was of no consequence. The judgment of the Supreme Court in the case of Kalua v. State of Uttar Pradesh (supra) which has been relied upon by the learned trial Court would be inapplicable in the present case as the link evidence is clearly missing. The learned trial Court observed that Shri L. S. Yadav (PW24), Ballistics Expert had compared the recovered bullet from the body of Rakesh @ Lara with the cartridge case recovered from the spot and the pistol recovered at the instance of accused Naresh @ Neshi by DSP Abhey Singh (PW42) and he (PW24) came to the conclusion that the fired .315 bore bullet recovered from the dead body of Rakesh @ Lara and cartridge case recovered from the spot had been fired from the pistol which was recovered at the instance of Naresh @ Neshi and from no other pistol. This evidence on the strength of Kalua's case (supra) it was held was sufficient to come to the conclusion that the accused Naresh @ Neshi (appellant) had caused the murder of Rakesh @ Lara. However, the aspect of the recovered .315 bore pistol (Ex.P23) being deposited in the 'Malkhana' and then dispatched to the FSL Madhuban, besides, as to how it was received at the FSL Madhuban has not been

established and this link in the evidence is clearly missing, therefore, the ratio of the judgment in Pancho's case (supra) would apply.

In the circumstances, although the recovery of .315 bore pistol Ex.P23 is shown to have been effected vide recovery memo Ex.PW40/F in pursuance of the disclosure statement Ex.PW40/D of Naresh @ Neshi; however, the link evidence is completely missing in the case. Therefore, the offence under Section 302 IPC against Naresh @ Neshi (appellant) is not shown to be established by the prosecution but in view of the recovery of the .315 bore pistol Ex.P23 from him, his conviction and sentence for the offence under Section 25 of the Arms Act is liable to be maintained and upheld.

Consequently, the appeal is partly allowed. The appellant Naresh @ Neshi is acquitted of the offence under Section 302 IPC and his conviction and sentence for the said offence is set aside. However, his conviction and sentence for the offence under Section 25 of the Arms Act is maintained and upheld. The appellant already stands acquitted for the offence under Section 3 (2) of the SC/ST Act by the learned trial Court.

(S.S. SARON)
JUDGE

(GURMIT RAM)
JUDGE

February 09, 2016
Sheetal/A.Kaundal