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

1. CRA-D-592-DB-2014

Vikas Manchanda and another Appellants

Versus

State of Haryana Respondent

2. CRA-D-626-DB-2014

Vikram alias Bunti Appellant

Versus

State of Haryana Respondent

3. CRA-D-691-DB-2014

Nishan Singh alias Fouji and another Appellants

Versus

State of Haryana Respondent

4. CRA-D-801-DB-2014

Gulshan alias Sonu Appellant

Versus

State of Haryana Respondent

5. CRA-D-955-DB-2014

Parkasho Devi Appellant

Versus

State of Haryana and others Respondents

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Date of Decision : November 8, 2016

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN**

Present Mr. P.S.Hundal, Senior Advocate with
Mr. Premjit Singh Hundal, Advocate,
for the appellant in CRA-D-592-DB-2014.

Mr. J.S.Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate,
for appellant [Ankush] in CRA-D-592-DB-2014.

Mr. Vinod Ghai, Senior Advocate,
with Mr.Simrandeep Singh Sandhu, Advocate,
for the appellant in CRA-D-626-DB-2014.

Mr. A.S.Virk, Advocate,
for the appellant No.1 in CRA-D-691-DB-2014.

Mr. A.P.S.Deol, Senior Advocate with
Mr. Vishal R. Lamba, Advocate and
Mr. Munish Behl, Advocate,
for the appellant No.2 in CRA-D-691-DB-2014.

Mr. Saurabh Sharma, Advocate,
for the appellant in CRA-D-801-DB-2014.

Mr. Surinder Mohan Sharma, Advocate,
for the appellant in CRA-D-955-DB-2014.

Mr. G.S.Wasu, Addl. A.G. Haryana,
for the respondent-State.

SHEKHER DHAWAN, J.

Criminal Appeals bearing Nos. CRA-D-592-2014; CRA-D-626-DB-2014; CRA-D-691-DB-2014; and CRA-D-801-DB-2014 are directed against the judgment of conviction dated 01.03.2014 and order of sentence dated 06.03.2014 passed by learned Additional Sessions Judge, Ambala whereby the appellants were convicted under Section 120-B and Section

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302 IPC and were sentenced as under:-

Appeal No. & Name of Appellant[s]	Under Section	Sentence	In default
<u>CRA-D-592-DB-2014</u> 1]. Vikas Manchanda 2]. Ankush Sharma	U/S 120-B IPC U/S 302 IPC with the aid of Section 149 IPC	Rigorous Imprisonment for Life and to pay a fine of ₹ 40,000/-. Rigorous Imprisonment for Life and to pay a fine of ₹ 40,000/-.	to further undergo RI for six months. to further undergo RI for six months.
<u>CRA-D-626-DB-2014</u> Vikram alias Bunti	U/S 120-B IPC U/S 302 IPC with the aid of Section 149 IPC	Rigorous Imprisonment for Life and to pay a fine of ₹ 40,000/-. Rigorous Imprisonment for Life and to pay a fine of ₹ 40,000/-.	to further undergo RI for six months. to further undergo RI for six months.
<u>CRA-D-691-DB-2014</u> 1]. Nishan Singh alias Fouji 2]. Rantej Singh	U/S 120-B IPC U/S 302 IPC with the aid of Section 149 IPC	Rigorous Imprisonment for Life and to pay a fine of ₹ 40,000/-. Rigorous Imprisonment for Life and to pay a fine of ₹ 40,000/-.	to further undergo RI for six months. to further undergo RI for six months.
<u>CRA-D-801-DB-2014</u> Gulshan alias Sonu	U/S 120-B IPC U/S 302 IPC with the aid of Section 149 IPC	Rigorous Imprisonment for Life and to pay a fine of ₹ 40,000/-. Rigorous Imprisonment for Life and to pay a fine of ₹ 40,000/-.	to further undergo RI for six months. to further undergo RI for six months.

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The sentences imposed upon the convicts in the present case were ordered to run concurrently.

2. Parkasho Devi, complainant has filed CRA-D-955-DB-2014 against judgment dated 01.03.2014 whereby Sanjay Kumar, Govind Sharma and Hardeep Kumar alias Happy, (originally arrayed as accused) were acquitted of the charge. Since all the above mentioned five appeals arise out of the common judgment dated 01.03.2014 passed by learned Additional Sessions Judge, Ambala, therefore, all are taken up together and are being disposed of by this common judgment.

3. Relevant facts for the purpose of decision of these appeals are that on 1.9.2009, at about 10.50 AM, matter was reported to the police regarding murder of of Smt. Ritu and Ramesh. As per complainant, Smt. Parkasho Devi, she was resident of House No. 131, Subhash Colony, Ambala and having two sons. Her elder son, Naresh was living separately at Nahan and the other son, Rakesh alias Boby was in jail in a murder case. Her daughter - Ritu [since deceased] had performed love marriage with Amit. Ritu and Amit used to visit her to meet her at her house. On that night, at about 8.00 PM, her daughter – Ritu alongwith Ramesh had come to her house and after taking refreshments, both of them left her house at about 9.00 PM on motor-cycle bearing registration No. HR01L-2092. They had gone about 50 feet away from her house when meanwhile, Nishan Singh, Vikas son of Parshotam, Sonu Majriwala, Rantej, brother of Nishan Singh, Ankush, Vikram alias Banti came on black coloured motorcycles

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and all of them '*gheraoed*' Ritu and Ramesh, who tried to run away, but Nishan Singh and his companions fired upon them resulting in their death on the spot. Accused persons fled away from the spot alongwith their motorcycles. Ritu and Ramesh were smeared with blood when the complainant had gone near their body. One pistol was lying on the spot.

4. As per the complainant, Nishan Singh and his companions had also fired a gunshot at Ritu about 4-5 years back, but she survived. Ritu used to favour her brother - Bobby and that is why, Nishan Singh and his companions hatched criminal conspiracy and murdered Ritu and Ramesh.

5. On this, the police started investigation. Photographer was arranged and photographs of the place of occurrence were taken. Inquest proceedings under Section 174 Cr.P.C. were completed. Incriminating articles from the place of occurrence were taken into custody and after completion of necessary formalities of investigation, challan was presented against Nishan Singh alias Fouji, Sanjay Kumar, Gulshan alias Sonu, Gobind Sharma, Vikram alias Banti, Hardeep Kumar alias Happy and Vikas Manchanda. On 22.12.2010, charges were framed against the accused-appellants for commission of offences punishable under Sections 120-B IPC and 302 IPC read with Section 120-B IPC and accused Sanjay was also charge sheeted under Section 25 of the Arms Act, to which all the accused persons pleaded not guilty and claimed trial.

6. During trial, the prosecution examined as many as 33 witnesses apart from leading documentary evidence. The accused were examined

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under Section 313 Cr.P.C. Accused examined four witnesses in their defence. After considering the prosecution evidence and plea of defence as set-up in the statements of accused recorded under Section 313 Cr.P.C. and as per statements of the defence witnesses, appellants Nishan Singh alias Fouji, Vikram alias Banti, Vikas Manchanda, Gulshan alias Sonu, Ankush Sharma and Rantej Singh were convicted under Section 120-B and Section 302 IPC and were sentenced thereunder as detailed in para No.1 of this judgment. However, with the aid of Section 149, accused Sanjay Kumar, Govind Sharma and Hardeep Kumar alias Happy were acquitted of the charge by learned Additional Sessions Judge, Ambala vide same judgment dated 1.3.2014.

7. Aggrieved of passing of the judgment of conviction and order of sentence, all the convicts have filed separate four appeals whereas Smt. Parkasho Devi, complainant and mother of Ritu [since deceased] has preferred appeal against acquittal bearing No. CRA-D-955-DB-2014.

8. Mr. A.P.S.Deol, learned senior counsel representing appellant – Rantej Singh contended that the prosecution story is mainly based upon the sole testimony of PW-1 - Smt. Parkasho Devi, who was of the age of 65 years and as per her version, she was at a distance of more than 100 feet where the occurrence had taken place. Learned senior counsel further contended that it is significant that the occurrence had taken place at about 9.00 PM in the street where there was no light. The version of PW-1 itself is unbelievable that the witness could over-see all the accused committing the

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offence of murder from such a distance where there was no light. This fact is further fortified when the complainant made material improvements on almost all the points regarding availability of vehicles as well as motive thereby implicating so many other people. PW-1, Smt. Parkasho Devi had been changing her version on different dates as her statement was recorded on different dates because some of the accused were arrested later on and separate challan was submitted against them and thereafter two accused, namely, Ankush and Rantej were summoned under Section 319 Cr.P.C.

9. While arguing further, learned senior counsel for the appellant submitted that the testimony of the sole material witness of the prosecution is to be scrutinized with greater care and caution because the relationship between the sole witness and the accused facing the trial were inimical since long. She has every reason and motive to falsely implicate all the accused though they were innocent. None of the accused was apprehended on the spot. They were arrested after a gap of considerable period. The first version put forward by PW-1, Smt. Parkasho Devi was that only motorcycles were used by the assailants and later on, she has introduced the plea that the assailants had come in car and motorcycles. As per learned senior counsel for the appellants, if the solitary witness is not wholly reliable, accused are entitled to acquittal. On this point, reliance was placed on the judgments of Hon`ble Apex Court in **Marwadi Kishor Parmanand and another Vs. State of Gujarat, (1994) 4 SCC 549; Ramji Surjya Vs. State of Maharashtra 1983 (2) R.C.R. (Criminal) 216 and Swarn Singh**

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Vs. State of Punjab 2001(Sup2) JT 338.

10. Mr. P.S.Hundal, learned Senior counsel representing appellant – Vikas Manchanda contended that as per Smt. Parkasho Devi, complainant, the assailants were six in number and they came on motorcycles. As per the entire prosecution case, Vikas Manchanda had no motive to commit the crime. He has no history of previous inimical relations with deceased or their family members. More so, the testimony of PW-1 is not complete in itself so as to implicate all the accused in this case because she was not in a position to explain that which one of the accused-assailants had fired upon the deceased and what was their role. This is significant in the light of the fact that the alleged incident had taken place at the instance of large number of assailants. However, appellant – Vikas Manchanda has been able to prove by way of statement of DW-2, Rameshwar Dass DSP [Retd.] that he was not involved in the commission of offence as appellant – Vikas Manchanda was not known to the complainant or deceased and had no enmity with them and had no motive to commit the alleged offence and there is deposition on the point. Thus, appellant – Vikas Manchanda is certainly entitled to acquittal. In support of his arguments, learned senior counsel representing Vikas Manchanda placed reliance upon judgment of Hon`ble Apex Court in **State [Delhi Administration] Vs. V.C.Shukla and another** 1980 AIR [SC]1382. Learned senior counsel also took the plea that none of the appellants was arrested on the spot and there is no Test Identification Parade to connect the accused with the alleged offence and as

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such the testimony of PW-1, which is otherwise shaky and unreliable, cannot be made the basis so as to convict so many many accused persons without there being any positive and reliable legal evidence available on the file. On this point, reliance has been placed on the judgment of Apex Court in **Ramkishan Mithanlal Sharma and others Vs. State of Bombay, 1955 CriLJ 196** and judgment of Hon`ble Hyderabad High Court in **Hulliah and another Vs. State 1954 CriLJ 454.**

11. While reiterating the above submissions, Shri J.S.Bedi, learned senior counsel representing Ankush Sharma contended that appellant Ankush Sharma was not named in the FIR and he had no enmity with deceased so as to commit the alleged offence.

12. Learned counsel representing the other accused have made the submissions in the above lines and reiterated the same. While concluding, learned counsel for all the convicts prayed that the judgment of conviction and order of sentence deserve to be set-aside and the appellants are entitled to be acquitted of the charge.

13. While arguing on these points, learned State counsel contended that the Court below has rightly appreciated the oral as well as documentary evidence and rightly placed reliance on the testimony of PW-1, Smt. Parkasho Devi who is quite natural witness of this case. As per the first version of the complainant, which was recorded immediately after the occurrence and on the spot itself, her daughter Ritu and Ramesh had come to see her and after taking refreshment, they had just left her house and

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when they covered a short distance, both of them were murdered by Nishan Singh, Vikas son of Parshotam, Sonu Majriwala, Rantej, brother of Nishan Singh, Ankush, Vikram alias Banti. The occurrence had taken place in close proximity of residential house of the complainant. The accused persons were known to her because of previous inimical relations and as explained by PW-1, Smt. Parkasho Devi, they had even made an unsuccessful attempt to kill Ritu 4/5 years back as well. Learned State counsel further contended that law does not require quantity of evidence, rather quality of evidence is sufficient to prove charge against the accused persons. This is not required as per law that a particular fact must be proved by such such and such number of witnesses, rather the Court is to see whether the witness deposing before the Court is giving truthful version and has been able to withstand the test of cross-examination or not. In the present case, Smt. Parkasho Devi, complainant appearing as PW-1 has explained all the material facts and well stood the test of cross-examination. The discrepancies as pointed out by learned counsel for the appellants are relatively on insignificant points because she was very particular while saying that Nishan Singh, Vikas son of Parshotam, Sonu Majriwala, Rantej, brother of Nishan Singh, Ankush, Vikram alias Banti had committed murder as they fired upon Ritu and Ramesh who died on the spot and thereafter, she immediately rushed to the spot and then reported the matter to the police on the spot itself. The place of occurrence was quite close to the residential house of PW-1, Smt. Parkasho Devi and it was a straight street where PW-1 could certainly see

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through the entire happening and she explained the true facts. The criminal conspiracy on the part of the accused persons has been proved on the file because they had inimical relations with Ritu and Ramesh as well as PW-1 and her family members. They were involved in so many criminal cases earlier also. The motive for committing murder of Ritu and Ramesh has been explained by PW-1.

14. The post-mortem examination on the dead bodies of Ritu and Ramesh was conducted by Dr. Pooja, PW-8, who proved the post mortem reports Ex. P20 and P21. The investigation proceedings were carried out by different Investigating Officers as the investigation stood transferred to different agencies because the matter was relating to murder of two persons in a residential area.

15. The accused persons were arrested by police during investigation and they had made their respective disclosure statements. The defence version is just a plea of denial as put forward in the statements of accused recorded under Section 313 Cr.P.C. The defence version put forwarded by DW-1 to DW-3 does not prove the innocence of the accused in any way and the same has been rightly discarded by the trial Court. As such, the present appeals are without any merit and the same be dismissed.

16. We have heard the submissions made by learned counsel for both the parties besides going through the record of the case. The main contention having been raised before the Court that prosecution case is based upon the testimony of PW-1, Smt. Parkasho Devi who happens to be

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the mother of Smt. Ritu [since deceased], who had come with the plea that she had seen the alleged occurrence from a short distance. The main plea taken by learned counsel for the appellants while claiming innocence of the appellants is that it was quite improbable to see the real assailants committing the offence of murder at a distance of 100 feet in a street where there was no light. The statement of PW-1, Smt. Parkasho Devi is also to be scrutinized in the light of the background of existing relations between the appellants and deceased, complainant and her family members. It has come on the file that they had number of criminal cases pending against each other. That way identification of the accused persons, namely, Nishan Singh, Vikas son of Parshotam, Sonu Majriwala, Rantej, brother of Nishan Singh, Ankush, Vikram alias Banti cannot be disputed in any way. Rather, all of them were known to Smt. Parkasho Devi for a considerable time and they had been meeting each other on different occasions which includes meetings during the Court proceedings.

17. The site-plan, Ex. P40 available on the file depicts that Smt. Parkasho Devi was certainly in a position to see the place of occurrence which was in the open street. It has come in the cross-examination of Balwant Rai, Investigating Officer [PW-22] that Smt. Parkasho Devi was standing outside the gate of her house and from that place, the place of occurrence was about 100 feet only. Undisputedly, the street was a straight street and there was no obstruction so as to see the place of occurrence from the place where complainant was stated to be present.

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18. We have also considered the judgments relied upon by learned counsel for the appellants and are of the considered view that Hon`ble Apex Court was of the view that it is unsafe to rely upon the testimony of solitary witness if the said witness is unreliable. But in the present case, if the statement of Smt. Parkasho Devi is taken as a whole, she has disclosed all the material facts and presence of Nishan Singh, Vikas son of Parshotam, Sonu Majriwala, Rantej, brother of Nishan Singh, Ankush, Vikram alias Banti on the spot immediately after the occurrence, though they had fled away from the spot after leaving country-made pistol, five live cartridges and a magazine on the spot. Even four empty cartridges (MO/10 to MO/13) and one bullet (MO/14) were recovered from the spot which were taken in to police custody vide recovery memo Ex.P7. One country made pistol (MO/1) and five live cartridges (MO/2 to MO/6) were taken into custody vide recovery memo Ex. P5. A magazine (MO/7) and two live cartridges (MO/8 and MO/9) were taken into police custody vide recovery Memo Ex. P6. Apart from that police also recovered a *dupatta* (MO/16) and a Mobile phone [marka TATA Indicom] (MO/18) were taken into custody vide recovery memo Ex. P/11. Motorcycle bearing registration No. HR01L-2092 (MO/21) was taken into custody vide recovery memo Ex. P13. All these articles were taken into police custody by the police in the presence of PW-5 HC Suresh Kumar and EHC Ram Kumar. Who attested the recovery memos.

19. The testimony of PW-1, Smt. Parkasho Devi is to be scrutinized

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in the light of the fact that murder of Ritu and Ramesh had taken place at a short distance from residential house of Smt. Parkasho Devi. As per the first version made available to the police by Smt. Parkasho Devi, that too on the spot was that Ritu and Ramesh had come to her house and both of them had taken tea and stayed for some time with her and thereafter left her house on a motorcycle and at a short distance, they were surrounded by accused persons and they fired upon them which resulted into the murder of Ritu and Ramesh. At that time, there was absolutely no reason for Smt. Parkasho Devi to depose falsely against the accused-persons so as to implicate them falsely and allow the real culprits to go scot-free. This fact certainly makes out a case that the version put forward by PW-1, Smt. Parkasho Devi was the natural and truthful version and there is no reason to disbelieve her statement.

20. As regards the contention that there was no light in the street and PW-1 was at a distance of more than 100 feet and as such she was not in a position to identify the assailants, more specifically, when there was no Test Identification Parade, it is common knowledge that when the parties are having inimical relations and are known to each other, a person can certainly identify other person by voice also. We are supported in our view by a decision of Hon`ble Apex Court in **Mohan Singh Vs. State of Bihar** 2011 AIR (SC) 3534, wherein it has been held that identification even from voice is possible if there is evidence to show that the witness was closely acquainted with the accused. As per PW-1, she had seen the occurrence and

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at that time the assailants were available on the spot and after committing the crime, they had fled away from the spot. PW-1 had ample time and opportunity to identify the assailants because of inimical relations and PW-1 being available at a short distance only where there was no obstruction to see through the incident. The trial Court has rightly placed reliance upon the testimony of PW-1 while holding the accused-appellants guilty and convicting them for the offence punishable under Section 302 and 120-B of Indian Penal Code. The trial Court has also rightly come to the conclusion that the appellants had hatched a criminal conspiracy to eliminate Ritu and Ramesh. It is well settled proposition of law that possibly, there cannot be any direct evidence to prove criminal conspiracy because such a conspiracy is always pursuant to the illegal agreement. It has to be inferred from the surrounding circumstances. This has been so held by Hon'ble Supreme Court in Yogesh alias Sachin Jagdish Joshi Vs. State of Maharashtra 2008(2) SCT 654 wherein, in paragraph No. 25, the Apex Court laid-down the following principles:-

“ Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is *sine qua non* of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. **Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused.** But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement.”

(emphasis supplied)

21. In the present case, the presence of Nishan Singh, Vikas son of

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Parshotam, Sonu Majriwala, Rantej, brother of Nishan Singh, Ankush, Vikram alias Banti on the spot and commission of offence of committing murder of Ritu and Ramesh with fire arms establishes criminal conspiracy on their part and the appellants have rightly been held guilty for the commission of offence punishable under Sections 120-B and 302 IPC. Resultantly, the appeals filed by the appellants against conviction bearing **CRA-D-592-DB-2014; CRA-D-626-DB-2014; CRA-D-691-DB-2014 and CRA-D-801-DB-2014** are dismissed.

22. As regards Criminal Appeal No. CRA-D-955-DB-2014 titled **Parkasho Devi Vs. State of Haryana and others**, the trial Court has already considered the material and evidence available on file and acquitted respondents, namely, Sanjay Kumar, Govind Sharma and Hardeep Kumar alias Happy. There are no grounds to interfere with the said judgment and the appeal is without any merit and the same stands dismissed.

23. All the appeals are dismissed in the above terms.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

November 8, 2016
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes