

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

Criminal Appeal D-245-DB of 2011

Date of decision : January 19, 2017

Chhattar Singh and another

..... Appellants

Versus

State of Haryana

..... Respondent

**CORAM: HON'BLE MR. JUSTICE T.P.S.MANN
HON'BLE MR. JUSTICE H.S.MADAAN**

**Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Simrandeep S. Sandhu, Advocate
for the appellants.**

**Mr. Parveen Bhadu, Assistant Advocate
General, Haryana**

**Mr. Sagar Aggarwal, Advocate
for the complainant.**

H.S.MADAAN J.

This appeal is directed against the judgment of conviction dated 19.1.2011, and sentence order dated 29.1.2011 passed by the Court of Additional Sessions Judge, Sonapat vide which he had convicted accused Chhattar Singh and Kaptan Singh for offences under Section 302, 307 IPC and in addition to that convicting Kaptan Singh for

1	Chhatar Singh	
	Section 307 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- and in default of payment of fine to further undergo imprisonment for three months
	Section 302/34 IPC	Imprisonment for life and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo imprisonment for a period of six months.
2	Kaptan Singh	
	Section 307/34 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs. 5,000/- and in default of payment of fine to further undergo imprisonment for three months
	Section 302 IPC	Imprisonment for life and to pay a fine of Rs. 10,000/- and in default of payment of fine to further undergo imprisonment for a period of six months.
	Section 25 of the Arms Act	Rigorous Imprisonment for three years and to pay a fine of Rs. 2,000/- and in default of payment of fine to further undergo imprisonment for a period of one month.

All the substantive sentences were ordered to run concurrently.

Whereas accused Jagbir Singh, Sonu, Randhir Singh @ Dheera and Surender Kumar were acquitted of the charge framed against them. The accused-convicts, who are appellants before this Court pray that the appeal be accepted, impugned judgment of their conviction and sentence be set aside and they be acquitted of the charges framed against them.

Briefly stated, facts of the case, as per prosecution story, which got unfolded during the trial, are that on 17.10.2006 complainant- Pardeep Kumar son of Arjun Singh of Jat community, resident of Village

Katwal, aged about 33 years and serving as Head Constable in 25th

Batalion, Rajput Regiment c/o 56 APO Gurdaspur Punjab had come home on leave for fourteen days. At about 8.00 A.M. when he was proceeding to his house in the street of Village Katwal and had reached near outer gate of his house, then Chhattar Singh @ Charat Singh son of Pehlad Singh of Jat Community along with his elder son Jagbir Singh and nephews Surender, Dheera and Kaptan sons of Satyawan besides Sonu son of Satbir Singh, Jat of that very village came there and started following him. Chhattar Singh @ Charat Singh, Kaptan Singh and Dheera @ Randhir Singh were armed with pistols whereas their remaining associates had kept their hands in their pockets. All the six raised lalkara “leylo” then Chhattar Singh @ Charat Singh fired a shot from his pistol hitting complainant Pardeep Kumar on left side of his abdomen (pasu). After hearing the noise of the shots being fired, Attar Singh, brother of complainant Pardeep Kumar came out of his house. Then Kaptan Singh fired a shot hitting him in the chest. Randhir Singh fired a shot at complainant Pardeep Kumar but that missed the target. Two other brothers of complainant namely Kuldeep and Ajit also arrived at the spot. After receiving gun shots complainant-Pardeep Kumar and his brother Attar Singh had fallen on the ground. Both the injured were taken to PGIMS Rohtak, where injured Attar Singh was declared as brought dead. However, at request of complainant- injured Pardeep Kumar, he was shifted to Civil Hosptial, Rohtak. He was given first aid there and was referred back to PGIMS, Rohtak for treatment with ruka where he came across police party headed by SI Amarjeet Singh. It is relevant to mention here that on receipt of intimation from police post PGIMS, Rohtak that Attar Singh had been brought dead to the PGIMS., Rohtak with fire arm injuries, a police party led by SI Amarjeet Singh, SHO of Police Station, Sadar

Gohana, District Sonapat (hereinafter referred to as “Investigating Officer/I.O.”) went to PGIMS, Rohtak where he came across complainant-Pardeep Kumar and recorded his statement. SI Amarjeet Singh, the Investigating Officer, had put his endorsment Ex.PA below the said statement and sent the Ruka to the Police Station through Constable Pardesi for registration of FIR on the basis of which formal FIR Ex. PL/1 was recorded at Police Station Sadar Gohana, District Sonapat under signatures of SI Sohan Lal.

Then the police party went to mortuary of PGIMS Rohtak. SI Amarjeet Singh, Investigating Officer carried out inquest proceeding in that regard and prepared inquest report Ex.PD/1. The dead body was identified to him by S/Sh.Kishan Chand and Azad Singh, PWs. He deputed Constable Sant Kumar for getting the postmortem examination conducted on the dead body. The Investigating Officer along with remaining members of police party went to the spot at Village Katwal. He got the place of occurrence photographed. He lifted blood stained earth, placing it in a plastic box which was converted into a parcel sealed with his seal having inscription 'AS'. The said parcel was taken into possession vide recovery Memo Ex. PB attested by ASI Narinder Kumar and PW Ajit Singh. The Investigating Officer found three live cartridges of .315 bore at the place of incident. He prepared a parcel of such cartridges sealing that with his seal having inscription ' AS' and the said parcel was also taken into police possession vide Memo Ex. PC attested by the witnesses aforesaid. The Investigating Officer prepared a rough site plan of the place of incident Ex.PW/18/A. He recorded statements of witnesses. In the meanwhile Arun Kumar, DSP reached the spot and verified facts of the case. Thereafter

Section 120-B IPC was added in the case.

The police searched for accused but they could not be apprehended. Thereafter the police party, returned to the Police Station where the Investigating Officer deposited the case property with the MHC. Constable Sant Lal handed over sealed parcel of clothes of Attar Singh besides another sealed parcel of pellets along with one envelope and sample seal vide Ex. PN attested by Constable Sant Kumar.

Further the Investigating officer took into possession one envelope besides copy of MLR of complainant-Pardeep Kumar vide recovery memo Ex. PH. He deposited the case property with MHC of Police Station Sadar, Gohana.

On 26.10.2006, accused Chhattar Singh and Kaptan Singh were arrested in this case from Village Bali Brahman. Accused Kaptan Singh was interrogated on 27.10.2006 and he suffered a disclosure statement. Accused Chhattar Singh and Kaptan Singh were produced before Illaqa Magistrate and Kaptan Singh remanded in police custody till 30.10.2006. During the period of police custody, on 29.10.2006 SI Amarjeet Singh, Investigating Officer interrogated accused Kaptan Singh, during the course of which he suffered a disclosure statement Ex. PO signed by accused Kaptan Singh attested by ASI Ram Kumar. Vide the disclosure statement, the accused had stated that .12 bore pistol used in the incident having empty shell had been concealed by him in the room used for storing fodder adjacent to the door in his residential house and he could get the same recovered. The said accused, while in police custody, led the police party to the disclosed place at Village Katwal and got recovered .12 bore country made pistol. The Investigating Officer prepared rough sketch of the

recovered pistol Ex. PC/1, thereafter converted it into a parcel sealing it with his seal having inscription 'AS' which was taken into possession vide Memo Ex. PC. After the recovery police party along with accused Kaptan Singh returned to Police Station, Sadar, Gohana and, when the Investigating Officer deposited the case property with MHC and put the accused in police lock up. During the course of investigation, the Investigating Officer got prepared a scaled site plan of place of incident from Rajesh Kumar draughtsman on 6.11.2006. The site plan was taken into possession from the draughtsman and made part of the investigation file. On 6.11.2006 the Investigating Officer took into possession photographs Ex. P-1 to P-6 along with negatives Ex. P-7 to P-12 from Jagdish Chand, Photographer and on 10.11.2006, offences under Section 148, 149 IPC were deleted and one under Section 34 IPC was added. During the course of investigation, the Investigating Officer took into possession agreement to sell about the plot in dispute.

After completion of investigation and other formalities challan against Chattar Singh @ Charat Singh and Kaptan Singh, accused only was prepared and filed in the Court.

On presentation of challan in the Court of Illaqa Magistrate, copies of the documents, relied upon therein as envisaged under Section 207 Cr.P.C were furnished to the accused free of cost.

Then observing that the challan had been filed for offences under Section 307, 302/34 IPC and such offences being exclusively triable by the Court of Sessions, the Magistrate committed the case. When the case was received by way of commitment and after consideration, formal charge for offence under Section 302 and 307 read

with Section 34 IPC was framed against the accused. In addition to that charge for offence under Section 25 of the Arms Act was framed against Kaptan Singh, to which they pleaded not guilty and the case was fixed for evidence of prosecution.

During the course of evidence of prosecution, statement of complainant Pardeep Kumar was recorded. Thereafter, the public prosecutor moved an application under Section 319 Cr.P.C for summoning of additional accused.

After hearing arguments the trial court vide order dated 1.4.2008 summoned accused Randhir Singh @ Dheera, Surender Kumar, Sonu and Jagbir Singh to face trial along with Chattar Singh @ Charat Singh and Kaptan Singh for offence under Sections 302 and 307 read with Section 149 IPC and under Section 25 of the Arms Act.

The presence of such additional accused was procured and aforementioned charge was framed against all the six accused for offence under Section 302, 307, 148, 149 IPC. In addition to that, charge for offence under Section 25 of the Arms Act was framed against Kaptan Singh, to which all the accused pleaded not guilty and claimed trial.

During the course of trial, the prosecution examined witnesses as follows:-

PW-1 Pardeep Kumar-complainant injured provided the eye witness account of the incident deposing in consonance with the prosecution story.

PW-2 Krishan Chand stated that on 17.10.2006 he along with Azad Singh identified dead body of Attar Singh son of Arjun Singh resident of Village Katwal at PGIMS.,Rohtak.

PW-3 Kuldeep and PW-4 Ajit Singh provided the ocular version of the incident supporting the prosecution story on material aspects.

PW-5 Arjun Singh, father of the deceased deposed that on 29.10.2006, in his presence accused Kaptan Singh had got recovered one country made pistol from room meant for storing chaff of his house in pursuance to his disclosure statement which was found to contain one live cartridge. He had also got recovered one empty cartridge. Those articles were converted into a sealed parcel with seal having impression 'AS' vide Ex.PC which was thumb marked by him and signed by ASI Ram Kumar. He stated that the Investigating Officer had prepared a sketch Ex. PC/1 which was also thumb marked by ASI Ram Kumar.

PW-6 Dr. (Ms.) Asha Goel, Medical Officer, General Hospital, Rohtak deposed that on 17.10.2006 while she was posted as Medical Officer at General Hospital, Rohtak she had conducted postmortem of dead body of Attar Singh, deceased. This witness further stated that the dead body was having multiple holes of pellets and rigor mortis was present in all the four limbs; there were 60 pellets (entry like) wound on the chest; however, there was no blackening around the surrounding; the pellets were present mainly on the pericardium; on dissection, pellets were recovered from both the lungs and also from the heart; Mediasternum was full of blackish blood; both the lungs were congested, upper abdominal wall was having pellets entry wound, Rest of the organs were healthy. She further deposed that two pellets were recovered from the liver. According to this witness, the cause of death of deceased was shock and haemorrhage as a result of firearm injuries, which were ante mortem in nature and were sufficient to cause death in ordinary course of nature. She stated that the

following articles were handed over to the police.

1. a well stitched dead body (2) copy of PMR (3) police papers nine in number duly initialled by her (4) a sealed packet containing clothes of the deceased and (5) sealed packet containing pellets retrieved from the dead body. (6) Sample seals impression. The witness gave the time that elapsed between injuries and death as instant whereas the time that elapsed between death and post mortem was within 24 hours. She proved copy of post mortem report prepared by her in the same process bearing her signatures as Ex. PD. Ex. PD/1 is the inquest report bearing her initials on each page, Ex. PD/2 is the police request vide which she had conducted autopsy on the dead body. T-shirt Ex. P-3, vest (T-shirt) Ex. P4 and underwear Ex.P-5, the same clothes which she took into possession at the time of post mortem examination. She stated that pellets Ex.P-6 to Ex.P-10 are the same which were extricated from the dead body.

PW-7 HC Sukhbir Singh happened to be a formal witness and had submitted his affidavit Ex. PE.

PW-8 Dr. Ranvir Singh, Medical Officer, PHC Madina Tehsil Meham, District Rohtak, who while posted at General Hospital, Rohtak had medico legally examined the complainant Pardeep Kumar deposed that on 17.10.2006 he had medico legally examined Pardeep son of Arjun Singh, aged 32 years, resident of village Katwal, who had arrived at General Hospital, Rohtak at 10.55 a.m. on 17.10.2006 and was brought by his real brother Kuldeep. There was alleged history of assault at village Katwal on 17.10.2006 at about 9.00. a.m. Patient was conscious, co-operative, PR 100/mm BP 150/100 mm Hg. the following injuries were found on his person:-

“1. An abrasion cum laceration of size 5 cm. X 2.5 cm.situated on left side chest in posterior axillary line base is reddish in colour. Advised x-ray chest and surgeon opinion.

2. About twenty two abrasions cum lacerations of sizes 4 mm -7 mm x 3 mm-7 mm round to oval in shape on left side chest from front, lateral and back. Fresh bleeding from wound coming out. Advised x-ray left side chest and surgeon opinion.

3. About twelve contusions of oval and round of different shapes and sizes present on same area of above injury. Size about 4 mm-7 mm x 3 mm-7 mm. Advised x-ray left side chest and surgeon opinion.

All the injuries were kept under observation. Weapon for injury No.1 was blunt and injury Nos. 2 and 3 was fire arm. Duration of injuries was less than eight hours. The witness proved carbon copy of MLR of Pardeep prepared by him in the same process as Ex. PF and ruqa sent by him to the SHO Police Station Civil Lines, Rohtak. Ex.PF/1, Shirt Ex. P-11 and Vest Ex.P-12 of the injured were taken into possession at the time of medico legal examination of Pardeep injured.”

PW-9 Naresh Kumar Constable happened to be a formal witness who stated that on 17.10.2006, while he was posted at Police Station Sadar Gohana he had delivered special report of this case to the

Illaq Magistrate and also to the senior police officers without any delay on his part.

PW-10 Constable Pardeep Kumar, another formal witness submitted his affidavit Ex. PG.

PW-11 Satnam Singh, ASI, stated that on 17.10.2006 he was posted at MHC at Police Station, Civil Line, Rohtak and on that day he received a sealed envelop along with a sealed parcel of deceased vide memo Ex. PH and he had handed over the same to SI/SHO Amarjit Singh on that very day.

PW-12 EHC Rajesh Kumar stated that on 2.11.2006, at the asking of SI/SHO Amarjeet of Police Station Sadar, Gohana he had visited the spot and prepared the scaled site plan of the place of occurrence Ex. PK on the demarcation of Ajit Singh with correct marginal notes.

PW-13 SI Sohan Lal, stated that on 17.10.2006, he was posted at Police Station Sadar Gohana as Sub Inspector and on that day he received ruka through Constable Pardesi, that he had appended his endorsement Ex. PL and registered the formal FIR Ex. PL/1 and then sent the special report through Constable Naresh Kumar.

PW-14 Om Parkash, Reader to District Magistrate, Sonapat stated that on 6.12.2006 the then District Magistrate Smt. Nirja Shekhar, IAS accorded the sanction vide order Ex. PM against the accused Kaptan son of Satyawar resident of Village Katwal.

PW-15 ASI Narender Kumar who on 17.10.2006 was member of the Police party headed by SI Amarjeet Singh deposed regarding what had transpired in his presence at the spot on the fateful day.

PW-16 Constable Sant Kumar stated that on 17.10.2006

he had got conducted the post mortem examination on dead body of Attar Singh and that the doctor had handed over to him two sealed parcels containing clothes of the deceased besides one sealed envelope along with seal of the doctor which he handed over to SHO Amarjeet Singh, who took the same in possession vide recovery Memo Ex. PN.

PW-17 SI Ram Kumar in whose presence accused Kaptan Singh while being interrogated by SI Amarjit Singh had suffered a disclosure statement regarding concealment of .12 bore pistol and getting recovery effected from his possession, deposed in that regard in addition to that, stating that Jagbir Singh son of Chhattar Singh had produced photocopy of agreement Ex. PW17/A along with other papers, which had been seized vide Memo Ex. PP.

PW-18 Amarjeet Singh the Investigating Officer of this case deposed regarding the investigation conducted by him proving various documents.

With that the prosecution closed its evidence.

Statements of accused under Section 313 Cr.P.C were recorded in which they were put all incriminating circumstances, appearing against them but they denied the allegations and stated that they are innocent and have been falsely implicated in this case. Accused Chhattar Singh stated that they had purchased a plot from Santosh Kumari etc.in the month of July, 2006 and had taken possession of the same. The complainant party used to quarrel with the family of Chhattar Singh regarding purchase of that plot. Complainant party wanted to take forcible possession of the plot and on the date of occurrence the complainant party fired shots upon Jasbir etc., who were present in the disputed plot but they

escaped and the shots fired by the complainant party hit deceased Attar Singh and Pardeep PW. That the complainant and 10-12 other persons had attacked Jasbir etc.in disputed plot, that they did not fire any shot upon the complainant party and they have been challaned falsely in connivance with the police. That the occurrence took place in the plot purchased by them. That the accused challaned by the police or summoned by the court were not present at the time of occurrence. Only Jasbir and his family members were present in the plot at the time of occurrence. The pleas taken by other accused are also on similar lines.

During the defence evidence the accused examined S. L. Verma, draughtsman DW-1 who stated that on 30.9.2010 he had visited the spot at Village Katwal and prepared site plan Ex. D1 on demarcation of Jasbir son of Chhattar Singh.

With that the defence evidence was closed.

After hearing arguments, learned Additional Sessions Judge, Sonapat convicted and sentenced accused Charat Singh @ Chhattar Singh and Kaptan Singh, as mentioned above, which left them aggrieved whereas other four accused namely Randhir Singh @ Dheera, Sonu, Surender and Jagbir Singh were acquitted of the charges framed against them. Accused-convicts Chhattar Singh and Kaptan Singh have filed the present appeal praying that the same be accepted, the impugned judgment of the trial court be set aside and they be acquitted of the charges.

We have heard learned counsel for the appellants and the Assistant Advocate General, Haryana, assisted by Sh. Sagar Aggarwal, Advocate for the complainant besides going through the record and we find that there is no merit in the appeal.

Here all the three eye witnesses of the incident examined by the prosecution namely PW-1 Pardeep Kumar injured PW-3 Kuldeep , PW-4 Ajit Singh supported the prosecution story on material aspects. Although, all those three PWs were subjected to lengthy cross-examination on behalf of the accused, but they stuck to their guns and could not be shattered on any important point. All three of them deposed in a natural and convincing manner and the account given by them inspire confidence. Their presence at the spot is natural and probable inasmuch as PW-1 Pardeep Kumar having suffered injuries in the incident is a stamped witness and his presence at the place of occurrence cannot be doubted. Whereas PW3 Kuldeep and PW-4 Ajit Singh have got their house, nearby and it were they who had removed the injured to hospital. If they had not been present at the spot at the relevant time they could not possibly have arrived at the scene of occurrence within such a short span of time and accompanied the injured to hospital. A perusal of the statement of complainant-injured Pardeep Kumar which he got recorded with the police on the date of incident itself at 1.30 P.M. i.e. within 5 ½ hours of the incident, goes to show that it is specifically mentioned that the injured had been taken to the hospital by their brothers Ajit Singh and Kuldeep in a jeep for treatment.

Learned counsel for the appellants tried to put forward an argument that names of Kuldeep and Ajit Singh are not mentioned in the FIR as having seen the incident and as such, their presence at the spot is rendered doubtful. But then the FIR is not a substantive piece of evidence and its only purpose is to set the machinery of law in motion. FIR is often lodged in haste and minute details may not be given therein. However, as regards the instant case, the important facts of the incident are there in the

FIR and names of Kuldeep and Ajit Singh are also mentioned having taken the injured to the hospital. As regards contention of learned counsel for the appellants that if they had been present at the spot they would have definitely intervened and got hit by the pellets, the same appears to be devoid of merit. The accused-assailants possessing fire arms having fired at two brothers of Kuldeep and Ajit Singh namely Pardeep Kumar and Attar Singh causing them serious injuries on vital parts of body it would have been a fool hardy act on the part of other two brothers to rush forward so as to intervene and get shot in the process.

Another argument advanced by learned counsel for the appellants was that statements of these two witnesses were not recorded by the Investigating Officer during inquest proceedings, which puts a question mark over their having seen the incident. Again, this argument is devoid of any merit, since during the inquest proceedings the Investigating Officer was required to get the dead body identified, which he did from two persons present in the hospital namely Kishan Chand and Azad Singh, therefore non-recording of statements of Ajit Singh and Kuldeep during inquest proceedings does not make their presence at the spot at relevant time to be doubtful.

One more argument advanced by learned counsel for the appellants was that since all the three witnesses have been disbelieved by the trial Court as regards involvement of accused Jagbir Singh and Sonu, Randhir Singh @ Dheera and Surender in the incident, that goes to show that witnesses are not truthful and no reliance can be placed upon them as regards their depositions with respect to involvement of Chhattar Singh @ Charat Singh and Kaptan in the incident. Again, this argument fails to

convince us. The maxim Falsus in uno falsus in omnibus; i.e false in part, false in whole is not made applicable in India. The Courts are required to separate grain from the chaff i.e.truth from the falsehood. Merely because a witness has made a slip here or there and has indulged in same exaggerations and improvements, does not mean that deposition of such witness is to be discarded outrightly. The attempt of the Court is to find the truth from depositions of such type of witnesses.

Though, in the instant case, all the three witnesses have not been believed by the trial Court, as regards involvement of accused Jagbir Singh, Sonu, Randhir Singh @ Dheera and Surrender in the incident, but then they have been believed as regards the participation of accused Chhattar Singh @ Charat Singh and Kaptan by giving proper reasoning. We also find that qua Chhattar Singh and Kaptan, the statements of all the three witnesses are cogent, convincing and worthy of reliance.

Another argument put forward by the learned Counsel for the appellants was that all the three witnesses have tried to make vast improvements from the version originally given by the complainant to the police as such they should be disbelieved. However, we find that it is not so. As already observed statement of complainant Pardeep Kumar was recorded by the police at PGIMS, Rohtak at 1.30 P.M. i.e. within 5 ½ hours of the incident, at that time complainant was having serious gun shot injuries whereas his brother Attar Singh had scumbed to the firearm injuries which he had suffered in the incident. A person in state of shock over such sudden turn of events may not be able to give necessary minute details of the incident. Similarly, the other two eye witnesses Kuldeep Singh and Ajit Singh in their initial statements to the police would not have been able to

give the fine details as regards, which of the assailants, in particular firing a shot aiming at which victim. When gun shots are fired and the incident takes place all of sudden in a very short time, there is a melee and chaos. It is very difficult to note down the precise details and reproduce those within a short span of time. The improvements so pointed out by learned counsel for the appellants are only clarificatory in nature and do not set up all together a different case.

One more argument advanced by learned counsel for the appellants was that there was no motive for the appellants to attack the complainant party since they were already in possession of the plot which was bone of contention between the two sides and rather motive was with the complainant party to attack the accused party and to take possession of the plot. However, we do not agree with learned counsel for the appellants on this point. Motive is a double edged weapon which cut both ways. As it is specifically mentioned in the statement of complainant, which he got recorded with the police soon after the incident, an altercation had taken place between his father and Chhattar Singh, accused regarding the partition of plot about 1 ½ months prior to the incident when he had come on leave on occasion of Raksha Bandhan. The accused do not deny such dispute being there. It is also proved on record that the accused party was aggressor having attacked Pardeep Kumar and his brother Attar Singh while armed with fire arms and firing shots at them. The defence has been unable to show that the complainant or any of his associates had attacked any of the accused with the result, apprehending danger to their lives and to protect their property they had to fire at them in retaliation. The accused neither had taken up specific plea of self defence nor adduced any evidence to

establish that. There is nothing on file to show that the complainant or his brother Attar Singh were having any weapon with them, much less any fire arm. No injury shown to have been caused to any of the accused or their family members. Therefore plea of self defence could not be taken up by them. Even otherwise, when there is direct evidence, the motive pales into insignificance. Motive is often hidden in the mind of a person and it is very difficult to dig it out. Sometimes a crime is committed without any plausible reason. Therefore motive in case of direct evidence does not have much importance.

Learned counsel for the appellants tried to advance an argument that three live cartridges of .315 bore were recovered from the spot regarding, which no explanation is rendered by the prosecution and it is quite possible that those cartridges belong to Pardeep Kumar, a BSF personnel and further the genesis of the incident has been suppressed by the prosecution and eye witnesses, rendering the prosecution story doubtful. We do not agree with this argument also. As it comes out from the record, the investigation in this case has not been conducted in a professional and scientific manner. The investigating Officer should have investigated the matter from the angle as to how .315 bore live cartridges were found to be there at the scene of crime and to whom they belonged but nothing of that sort was done. Nevertheless, even if, for a moment, it is taken that Pardeep Kumar was having .315 bore pistol and live cartridges belonged to him then it is highly unlikely that he would not have fired from the said pistol at the accused and rather drop three live cartridges at the spot and himself go away, not even indulging in retaliatory fire when he himself had been shot at and his brother Attar Singh was shot dead in his presence. It has to be

kept in mind that Pardeep Kumar in his statement recorded with the police had stated that three of the assailants, namely, Chhattar Singh @ Charat Singh, Randhir Singh @ Dheera, Kaptan and Sonu had come to the spot after following him. Out of them, Chhattar Singh, Kaptan and Dheera were armed with pistols whereas rest were keeping their hands in their pockets. It is quite possible that the third alleged assailant Dheera was armed with .315 bore pistol and the other three accused who were stated to be keeping their hands in their pockets were carrying arms and ammunition of .315 bore which might have fallen at the spot in the melee after shooting had started.

With respect to the argument, that the genesis of the incident was suppressed, the defence should have explained as to how the incident had originated as per its version rather than keeping quiet and making vague references to the incident having originated in a different manner.

A look at the cross-examination of all the three witnesses goes to show that no suggestion has been given to them that infact the complainant party was the aggressor having attacked the accused or any of their family members, while possessing fire arms or had trespassed in property of the accused party. As such the contention of the learned counsel for the appellant cannot be accepted. It may be stated that keeping in view the multiple injuries found on person of Pardeep Kumar and that on the dead body of Attar Singh and number of pellets recovered therefrom, it leads to a conclusion that those could not have been caused with a single shot and more than one shots have been fired. As per prosecution story Chhattar Sngh had fired a shot at Pardeep Kumar whereas Kaptan had fired

a shot at Attar Singh. As such it could not be said that only one shot was fired by Kaptan which had caused injuries to Pardeep Kumar and Attar Singh. Therefore, involvement of Chhattar Singh and Kaptan stands established on record.

As regards non-recovery of weapon from Chhattar Singh, the blame lies on the shoulders of Investigating Officer, who is stated to have not applied for police remand of Chhattar Singh, with the result the matter could not be properly investigated and recovery of fire arm from his possession could not be effected. The defence cannot take advantage of this fact and start putting forward a plea that since the fire arm has not been recovered from possession of Chhattar Singh that makes his participation in the crime doubtful. In view of the detailed discussion above, it was Chhattar Singh who was having a strong motive to attack the complainant and his brother Attar Singh and he was joined in doing so by his real nephew Kaptan Singh. Apart from lapse on the part of Investigating agency there could be any number of other reasons for non-recovery of the weapon i.e. accused Chhattar Singh having disposed it of by throwing it at some secluded place or in some water body or destroying it in any other manner. Merely due to non-recovery of weapon from Chhattar Singh, he cannot be given a clean chit as far as this incident is concerned.

One more factor to be taken into consideration is that the incident had taken place in the public street. This spot is fixed by the fact that blood stained earth was lifted from a place in the public street in front of house of the accused, which fortifies the contention of the prosecution that when Pardeep Kumar, a BSF personnel on leave was going home, which is in the neighbourhood of house of Chhattar Singh, accused, he was

intercepted by the accused in the street in front of their house and attacked and when on hearing the noise his brother Attar Singh came he too was shot. Therefore, the accused party clearly comes out to be aggressor and not the complainant party.

Learned counsel for the appellants had referred to cross-examination of PW-18 SI Amarjeet Singh, the Investigating Officer of this case wherein he had admitted it as correct that it had come in his investigation that sons of Chhattar Singh had purchased plot in dispute in the month of July, 2006 and had taken possession of the same and that complainant party used to quarrel with the family of Chhattar Singh regarding the purchase of that plot and that the occurrence took place because of that plot and at the disputed plot. He had stated that it had come in his investigation that the complainant party wanted to take forcible possession of the plot from sons of Chhattar Singh accused but he denied that it came to his notice that the complainant party fired shots upon Jagbir Singh etc. and they escaped and the shot fired by the complainant hit the deceased Attar Singh.

However, we are of the view that the replies given by the Investigating Officer in his cross-examination do not make much difference. It is even case of prosecution that the bone of contention between the parties was a plot, whether or not the complainant party wanted to take forcible possession thereof is a different matter. Things would have been different if the Investigating Officer had stated that complainant party having fire arms trespassed in the plot and during the course of retaliatory firing Pardeep kumar and Attar Singh got hit. He could not have possibly stated so since this witness had carried out investigation in this case and

thereafter had sent up Chhattar Singh and Kaptan to face trial for offences under Sections 307, 302 read with Section 34 IPC besides Kaptan for offence under Section 25 of the Arms Act. He in his cross-examination had categorically denied that it had come to his notice that complainant party had fired shots upon Jagbir Singh who escaped, and a shot fired by complainant hit the deceased. This suggestion given is least convincing. If the complainant party had infact done so they would have been challaned by the police and not the accused. There is least probability of an assailant firing in such an indiscriminate manner so as to hit co-assailant in such a manner. Furthermore, this theory has a major flaw as to how the complainant himself came to suffer injuries on vital parts of his body. Therefore, it is difficult to accept this theory. Though PW-18, Amarjeet Singh, the Investigating Officer, had referred in his cross-examination that the incident had taken place in the disputed plot but the same is bit confusing and ambiguous because he himself in the site plan prepared by him has shown the place of incident to be public street and he could not possibly contradict himself in such a manner. The said reply being against the record is meaningless.

Learned counsel for the appellants raised a further contention that in the site plan prepared by the Investigating Officer at the spot only name of Kaptan is being mentioned having fired a shot but he is not correct on this point. A perusal of the margin notes on the site plan Ex. PW/18/A goes to show that the Investigating officer has shown point A to be place from which Kaptan Singh etc.had fired shot at Pardeep Kumar which clarifies the matter that name of Kaptan etc. is being mentioned having fired shot which means Kaptan Singh along with his co-accused and

not Kaptan alone. It needs to be mentioned here that the Investigating Officer had gone to the spot after recording statement of Pardeep Kumar at PGIMS., Rohtak wherein Pardeep Kumar had named assailants giving his version though, not the minute details.

The medical evidence in this case duly corroborates the ocular evidence. As already observed the investigation in this case, has not been conducted in a professional and scientific manner and the investigating officer had committed several serious mistakes while carrying out the investigation. Nevertheless, it comes out that Chhattar Singh and Kaptan Singh had been properly challaned after completion of investigation. The judgment passed by the trial court is well reasoned one based upon proper appreciation of evidence and correct interpretation of law. It stands adequately established on record that accused Chhattar Singh and Kaptan shared common intention and in furtherance of that on the fateful day at about 8.00 A.M., in the area of Village Katwal, Kaptan fired a shot from .12 bore gun at Attar Singh, resultantly, pellets caused injuries on his person to which he succumbed and on the same day, time and place in furtherance of intention shared by accused Chhattar Singh and Kaptan Singh. Chhattar Singh had fired a shot at Pardeep Kumar injured, resultantly, pellets entered his body and he had done so with such an intention and circumstances that if death of Pardeep Kumar had been caused then Chhattar Singh would have been guilty of offence of murder. The intention of the accused to cause death of Attar Singh and Pardeep Kumar is evident from the fact that they had fired shots from fire arms and the pellets hit vital parts of the body. Similarly, Kaptan Singh while using country made .12 bore pistol in the incident without possession of any license contravened Section 3 of the

Arms Act and thus committed offence under Section 25 of the Arms Act. The trial court also convicted accused Kaptan Singh and Chhattar Singh for offence under Section 302 IPC and also for offences under Section 307 IPC and sentenced them accordingly.

Resultantly, the appeal filed by the accused-appellants being without any merit, is dismissed accordingly.

(T.P.S.MANN)
JUDGE

(H.S.MADAAN)
JUDGE

January 19, 2017
archana

Whether speaking/reasoned	Yes
Whether Reportable	No