

In the High Court of Punjab and Haryana at Chandigarh.

Criminal Appeal-D No. 441-DB of 2013

Date of Decision:- November 07, 2017

I.

Madan Lal and others

.....Appellants

Versus

State of Haryana

.....Respondent

Criminal Appeal-D No. 531-DB of 2013

II.

Surender @ Samunder

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Gurvinder Singh Gill

Present : Mr. Vinod Ghai, Senior Advocate with
Mr. Harmandeep Singh Brar, Advocate and
Mr. Simrandeep S.Sandhu, Advocate
for the appellants in CRA-D No.441-DB of 2013.

Mr. Tarundeep Kumar, Advocate,
for the appellant in CRA-D No.531-DB of 2013.

Ms. Palika Monga, DAG, Haryana.

Mr. Balraj Singh Rathee, Advocate,
for the complainant.

Gurvinder Singh Gill, J.

1. This judgment shall dispose of the above mentioned two appeals filed on behalf of accused Madan Lal, Jasbir Singh, Devender @ Dhillal, Ranbir @ Dhallu and Surender challenging judgment dated 30.3.2013 and order dated 3.4.2013 passed by Additional Sessions Judge, Sonapat vide which they have been convicted and sentenced as under:

Name of convict	Convicted u/s	Sentence Imposed	In default of payment of fine
Madan Lal, Jasbir Singh Devender @ Dhillla	(i) 302/149 IPC (ii) 148 IPC	R.I. for life and fine of ₹ 10,000/-. R.I. for 2 years	Further R.I. for 6 months. — — —
Ranbir @ Dallu Surender	(i) 302/149 IPC (ii) 148 IPC (iii) 25(1-B)(a) of Arms Act	R.I. for life and fine of ₹ 10,000/-. R.I. for 2 years R.I. for 2 years and fine of ₹ 5,000/-.	Further R.I. for 6 months. — — — Further R.I. for 3 months.

2. This case arises out of FIR No. 154 under Sections 148, 302/149, 120-B IPC and Section 25 of the Arms Act, 1959 registered at Police Station Sadar, Sonapat on 26.4.2009 at the instance of Chand Roop, resident of Raipur. The gist of his statement (Ex.PA), the basis of FIR, when translated to English reads as follows:-

“I am an agriculturist. My uncle's son namely Sanjay son of Puran was Sarpanch of the village. However, members of family of Ranbir @ Dallu were having grudge with him on account of elections regarding which a case under Section 307 IPC is pending. Today, in the morning, at about 7:30 A.M., when I, my brother Sanjay, my sister-in-law Nirmala wife of Sanjay and brother-in-law of Sanjay namely Rajbir resident of Silana were returning back from Ch. Devi Lal Park after taking a walk and were near house of Sandeep, then a white-coloured Verna Car bearing registration No.DL4C-AS-3626 and another black-coloured

Verna Car bearing registration No. DL4C-ND-0834 came and stopped in front of my brother Sanjay Sarpanch who was walking a little ahead of me. Ranbir @ Dattu, Devender @ Dhillal who were carrying pistols came out of the white car along with its driver Devender Butania, Jasbir and Madan Lal (uncle of Dattu) who were carrying pistols came out of the black-coloured car along with the driver who was a young boy whose name and address is not known to me but is usually seen with Dattu. All of them declared that they will eliminate Sarpanch and warned us not to come near them or we would also be shot. Ranbir @ Dattu, Devender @ Dhillal, Jasbir and Madan Lal started firing from their respective weapons at my brother Sanjay Sarpanch who fell down upon receipt of gun shots. Thereafter, all of them went away with their weapons in their cars. When we went near Sanjay, we saw that he was having gun shot injuries on his head, mouth, shoulders, chest, belly, thighs and on both of his hands. Empty cases of cartridges and pellets were lying there and blood was spattered at the spot. I left Rajbir and Nirmala at the spot and informed relatives and members of the family and also the police on phone and came back at the spot where you have reached. I have made my statement. Ranbir is a criminal type of person and is a gang leader against whom several criminal cases are registered at many police stations. Ranbir, Jasbir, Devender @ Dhillal, Madan Lal, Devender and one unknown young boy have murdered my brother Sanjay with their common intention due to grudge about elections. Action be taken against them.”

3. Pursuant to recording of statement of complainant, the police conducted inquest proceedings. Formal FIR was lodged. The dead body was sent for post-mortem examination. Blood stained earth, empty cartridges and pellets were lifted from the spot. A rough site plan of the place of occurrence was prepared. Statement of witnesses were recorded under Section 161 Cr.P.C.
4. Upon conclusion of investigation, challan was presented initially against the accused Madan Lal, Fateh Singh, Jasbir Singh, Devender @ Dilla, Ranbir @ Dattu and Devender Kumar on 25.7.2009 in the Court of JMFC, Sonapat, who committed the case to the Court of Sessions vide order dated 21.8.2009. Subsequently, a supplementary challan was filed against co-accused Surender on 17.11.2009 which was also committed to the Court of Sessions vide order dated 8.12.2009. Accused Satyawar could not be arrested and was declared a proclaimed offender.
5. The learned Trial Court, upon finding sufficient grounds to presume that the accused Madan Lal, Fateh Singh, Jasbir Singh, Devender @ Dhillal, Ranbir and Devender Kumar had committed offences punishable under Sections 148, 302/149 and 120-B of IPC framed charges against the accused on 16.9.2009. Ranbir was also charged for committing offence under Section 25 (1B) (a) of Arms Act. Since accused Surender had been arrested subsequently and supplementary challan had been filed against him later, therefore, identical charges were framed against him on 17.5.2010. Surender was also charged for committing offence under Section 25(1B)(a) of Arms Act. All the accused, however, pleaded not guilty and claimed trial.
6. The prosecution in order to establish charges framed against the accused examined 38 witnesses. PW-1 Chand Roop, complainant on whose statement,

the FIR was lodged, stated in tune with his statement (Ex.PA). PW-2 Rajbir, brother-in-law of deceased, who is also an eye-witness stated in corroboration to the statement of PW-1 Chand Roop. PW-3 Balwan Singh and PW-10 Jagmender stated that they had identified the dead body of Sanjay.

7. PW-7 Dr. Manju Arora who had conducted the post-mortem examination on the dead body of Sanjay proved the post-mortem report as Ex. PK and opined that the cause of death of deceased was shock and haemorrhage due to injuries on vital organs which were ante mortem in nature and sufficient to cause death in ordinary course of nature.
8. PW-4 Kishna stated that he had found a mobile phone lying on the railway track which he handed over to the police. PW-6 Asgar Ali stated about recovery of another mobile phone. PW-17 Anil Kumar Khosla, Criminal Ahlmad to Metropolitan Magistrate, Saket Court, Delhi produced original file pertaining to FIR No.210/09 dated 2.6.2009 under Section 25 of Arms Act, Police Station Vasant Kunj, Delhi. PW-26 Ram Parkash, Reader to District Magistrate, Sonapat proved the sanction letter Ex.PU/3 pertaining to sanction for prosecuting Surender under the Arms Act. PW-37 Om Parkash, Patwari proved the scaled site plan Ex.PW37/A of the place of occurrence which had been prepared by him at the instance of police.
9. PW-5 Constable Sunder Lal, PW-8 Sub-Inspector Subhash Chand, PW-9 Head Constable Mahender Singh MHC, PW-11 ASI Jai Parkash, PW-13 ASI Mahender Singh, PW-14 Inspector Rajender Singh, PW-15 EHC Jai Singh, PW-18 Constable Sandeep, PW-19 Head Constable Paramjit, PW-23 DSP Virender Singh, PW-24 ASI Rajender Singh, PW-25 Inspector Sandeep Singh, PW-27 ASI Rajbir Singh, PW-28 DSP Vijender Singh, PW-30 Sub-Inspector

Karambir, PW-38 DSP Rajender Singh, PW-36 Inspector Ashok Kumar are all police officials who had remained associated at some stage with investigation of the case and deposed about the same.

10. PW-22 Sub Inspector Om Parkash, the main investigating officer of this case, stated in detail in respect of the proceedings conducted in the case including recording of statement(Ex.PA) of complainant Chand Roop, getting place of occurrence photographed, preparing rough site plan, lifting blood stained earth, empty cartridges and bullets from the spot, sending dead body for post-mortem examination etc
11. PW-12 Head Constable Jagmal, Police Station Vasant Kunj, New Delhi , PW-16 ASI Sube Singh, Police Station, Vasant Kunj, New Delhi, PW-20 Head Constable Pardeep Kumar, Police Station Rohini South, Delhi, PW-21 Sub Inspector Ram Parkash, MACT Cell, Saket, New Delhi, PW-29 Head Constable Laxman Parsad, Ante Robbery Cell, Nehru Palace, Delhi , PW-34 Head Constable Rai Singh, Police Station Vasant Kunj, Delhi, PW-35 Inspector Jai Parkash, SHO, Police Station, Rohini, are all police officials of Delhi Police who have deposed about arrest of Ranbir @ Dally, recovery of one pistol along with two live cartridges from his possession and as regards registration of FIR No.210/09 dated 2.6.2009 u/s 25 of the Arms Act at Police Station Vasant Kunj, Delhi.
12. PW-31 Head Constable Rajbir Singh, SOS Crime Branch Kotwari, Delhi, PW-32 Sub Inspector Jai Kishan, SOS Crime Branch Kotwari, Delhi, PW-33 Sub Inspector Narender Kumar, Special Unit Crime Branch, Delhi, all of Delhi Police, have stated about arrest of Surender Khatri and regarding recovery of .38mm revolver along with five live cartridges from him.

13. After closure of evidence of the prosecution, entire incriminating evidence appearing against the accused was put to them to enable them to explain the same. The accused, however, while denying the prosecution allegations, pleaded false implication. Accused Madan Lal, Fateh Singh, Devender @ Dhilla and Surender took a stand that they have been falsely implicated due to the village and family rivalry with the complainant party. Accused Jasbir Singh, however, simply pleaded false implication. Accused Ranbir took a stand he has been falsely implicated by the police at the instance of the complainant party and infact on the day of alleged occurrence i.e. on 26.4.2009 he was not present at his village and was on duty as TTE in Indian Railways at Ambala and had also realized fine from two-three passengers on the said day.
14. The accused in their defence examined three witnesses. DW-1 Dr. Saroj Dahiya deposed that on 26.4.2009, upon receipt of a telephonic message from Reader to SSP, Sonapat, she inspected the place of occurrence in Village Raipur. She proved her report as Ex.DW-1/A and stated that she had mentioned the facts in her report as told by the Investigating Officer. DW-2 Ranbir Singh son of Chhida Singh stated that on 25.4.2009, Dhilla and Chet Ram came to him at Faridabad and stayed with him. He deposed that at about 8 A.M. on 26.4.2009, a telephonic call was received on Dhilla's phone that his brother had been killed and thrown in the village. He further stated that in fact the name of the person was Chand Roop and not Chet Ram. DW-3 Rajbir Singh stated that he is serving in Indian Railways as Head TTE. He deposed that on 26.4.2009, he was on duty in Survado Express bound from Delhi to Jammu and the said train had departed from Delhi at about 5:20 A.M. He further stated that Ranbir Singh was his colleague and was there with him in

the train in the checking squad on 26.4.2009 and he had met Ranbir Singh between Panipat and Ambala on that day on the said train.

15. Accused Davender son of Balwan Singh died during the pendency of the trial and proceedings against him, thus, stood abated vide order dated 14.2.2012 of trial Court.
16. The learned trial Court upon appreciating the evidence on record held Madan Lal, Jasbir Singh, Devender @ Dhillal, Ranbir @ Dallu and Surender guilty of committing offence under Sections 148 and under Section 302 read with Section 149 of IPC. Accused Ranbir @ Dallu and Surender were also convicted for offence punishable under Section 25 (1-B)(a) of the Arms Act vide judgment dated 30.3.2013. Accused Fateh Singh was, however, acquitted of all the charges framed against him. The accused, aggrieved against their conviction, filed the present appeal.
17. The learned counsel for the accused while assailing the impugned judgment have submitted that in fact the alleged eye-witnesses PW-1 Chand Roop and PW-2 Rajbir were never present at the spot and have come forward to depose in favour of prosecution being relatives of the deceased and that they are chance witnesses and their presence at the spot is not natural especially that of PW-2 Rajbir who resides in a different village. The learned counsel has further submitted that the prosecution being clueless about the real culprits have involved the entire family of the accused. It has further been submitted that though as per case of prosecution a pistol of 7.62 mm bore was allegedly recovered from the accused Ranbir but use of the same is absolutely ruled out by the report of FSL. The learned counsel has further submitted that accused Surender in any case is neither specifically named in the FIR nor is attributed

any motive nor his description finds mention in the FIR and and that in these circumstances his identification for the first time in the Court cannot be made the basis for his conviction. The learned counsel have, thus, submitted that the impugned judgment cannot sustain and have prayed for acquittal of the accused.

18. On the other hand, the learned counsel representing the State has submitted that the case of the prosecution is supported by consistent testimonies of two eye-witnesses and their testimonies cannot be discarded merely on the ground that they happened to be relatives of the deceased. The learned counsel has further submitted that recovery of weapons from the accused and also recovery of one of the vehicles in which the accused had come to the place of occurrence, whose registration number finds mentioned in the FIR itself lends corroboration to the case of prosecution. The learned State counsel has submitted that the impugned judgment has been passed while appreciating all the material aspects of the case and there is no misreading of evidence and has thus, prayed for dismissal of the appeals.
19. We have considered the rival submissions addressed before this Court and with able assistance of learned counsel have also perused the relevant referred record of the case.
20. In the present case, it is the case of prosecution that deceased was fired upon by the accused with pistols and he died having sustained firearm injuries. The prosecution has led medical evidence and examined PW-7 Dr. Manju Arora who had conducted post-mortem examination on dead body of Sanjay who proved the post-mortem report as Ex.PK. PW-7 Dr. Manju Arora opined that the cause of death of deceased was shock and haemorrhage due to injuries to

vital organs which were ante mortem in nature and sufficient to cause death in ordinary course of nature. PW-7 described the injuries found on the dead body as follows :-

- “1. There was a punctured lacerated wound with inverted margins of size 1x1 cm over right parieto occipital region of scalp, clotted blood was present. It was going medially and downwards (entry wound).
2. There was lacerated wound of size 1.5 cm x 1.5 cm over left parieto occipital region (exit for injury No.1).
3. There was lacerated wound of size .5 x .5 cms above right ear with inverted margins. Wound was going medially towards left side (entry wound).
4. There was lacerated wound of size 1.5 x 1.5 cms, 4 cms in front of left ear (exit for injury No.3).

On exploration of cramal cavity there were multiple fracture of skull and big haemotoma was present around brain tissue, brain matter was lacerated at places.

5. There are lacerated wound of size .5 x .5 cms over left shoulder with inverted margins. It was going through subcutaneous tissues and exit wound was lacerated wound of size 3 x 3 cms above left elbow.
6. There was lacerated wound of size 1 x 1 cm over right side of chest. 5 cms above right nipple. It was with inverted margins. Wound was going downwards and medially towards left side and exit wound was of size 1.5 x 1.5 cms, on left side of back on the margin between abdomen and back. There was injury to left lung and heart. Both were lacerated and haemo-thorax was present on left side.
7. There was lacerated wound of size .5 x .5 cms with inverted margins on right side of chest 7 cms above injury No. 6. It was going through and through right lung to back, injuring right lung and right haemo thorax was there. The exit wound was on the right side of the

back with size 1.5 x 1.5 cms. There was fracture of rib on right side and there was injury to aorta.

8. There was lacerated wound of size .5 x .5 cms with inverted margins over right side of abdomen. 10 cms away from umbilicus, it was going through subcutaneous tissues to left side of abdomen 6 cms from umbilicus, clotted blood was present in the sub cutaneous tissues. There was collection of clotted blood in sub cutaneous tissues.
9. There was lacerated wound of size .5 x .5 cms in size on left side of back with inverted margins going upwards in sub cutaneous tissues and exit wound was on left side of back of size 1 x 1 cm in the mid auxiliary area. Clotted blood was present in sub cutaneous tissues.
10. There was lacerated wound of size .5 x .5 cms over right side of pubic region above scrotum with inverted margins. It was going through sub cutaneous tissues and pelvic organs on left side of abdomen 10 cms above anterior superior iliac spine injuring left pelvic area. There was fracture of left pelvic region, clotted blood was present
11. There was lacerated wound of size .5 x .5 cms over left thigh with inverted margins on medial aspect of left thigh. It was going upwards and laterally exit wound was present in front of left thigh of size 1.5 x 1.5 cms. Clotted blood was present.
12. There was lacerated wound of size .5 x .5 cms over medial aspect of right thigh with inverted margins going laterally through sub cutaneous tissues, clotted blood was present and exit wound was present over lateral aspect of right thigh of size 1 x 1 cm.
13. There was lacerated wound of size .5 x .5 cms over right palm with inverted margins. It was going dorsally clotted blood was present, exit wound was present over dorsum of hand of size 1 x 1 cm injuring bone of right hand, clotted blood was present.

14. There was lacerated wound of size .5 x .5 cms over palmer aspect of left middle finger with inverted margins going dorsally injuring left middle finger and bone. There was fracture of left middle finger. Exit wound was on dorsum of left middle finger of size 1 x 1 cm, clotted blood was present all around.”
21. A perusal of the post-mortem report shows that the deceased had sustained as many as 12 fire arm injuries. While injury No. 1 is a punctured lacerated wound in the head with inverted margins, injury No. 2 is stated to be exit wound for the said injury No.1. Similarly, while injury No. 3 is a lacerated wound with inverted margins over right ear, injury No. 4 is stated to be exit injury corresponding to injury No.3. Each of the injuries No. 5 to 12, on various other parts of the body, are described as 8 composite entry and exit wounds. Thus, it is apparent that the deceased had received at least 10 firearm injuries. PW-7 Dr. Manju Arora was briefly cross-examined on behalf of the accused but nothing substantial could be elicited so as to doubt the veracity or opinion of the doctor. In any case, the cause of death has not seriously been disputed. As such, it is affirmed that deceased died as a result of multiple firearm injuries sustained by him.
22. The FIR, in the present case was lodged at the instance of PW-1 Chand Roop, who is cousin of the deceased. PW-1 Chand Roop, while in the witness box has stated absolutely in tune with his statement Ex.PA, which forms the basis of FIR. PW-1 Chand Roop, while in the witness box has specifically stated that on 26.4.2009, he along with his brother Sanjay Sarpanch, his sister-in-law Nirmala and brother-in-law of Sanjay namely Rajbir were returning from Ch. Devi Lal Park after morning walk. When they reached near the plot of Rajbir Singh at about 7:30 A.M. then a white-coloured Verna Car bearing registration

No.DL4C-AS-3626 and another black-coloured Verna Car bearing registration No. DL4C-ND-0834 came there and stopped in front of Sanjay who was walking a little ahead of them. Devender @ Dhillu and Devender Butania came out of the white coloured Verna car and Ranbir @ Dallu who was in the driver seat also stepped out of the said car. He further stated that Madan Lal, Jasbir and another unknown young person came out of the black-coloured car and all the said persons were having pistols in their hands and they surrounded Sanjay. The accused threatened them not to come near them or they will also be shot. He further stated that the said persons started firing indiscriminately at Sanjay from their weapons and due to bullet injuries, Sanjay fell down on the ground and thereafter the assailants fled away from the spot.

23. PW-1 further stated that after the assailants had left, they went near Sanjay and saw that he was having bullet injuries on his head, mouth, shoulders, chest, belly, thighs, on both of her hands and blood was spattered all around. He further stated that after leaving Nirmala and Rajbir at the spot, he went home to give information to members of the family and to relatives and when he returned back, several persons had gathered at the spot. Someone suggested to inform the police and gave him his mobile phone after dialing the number of the police and he informed the police. The police reached at the spot after about 1-1 ½ hours and recorded his statement Ex.PA. He further stated that Ranbir is a habitual offender and a criminal and several criminal cases are pending against him and had attacked his brother Sanjay due to election rivalry. To a similar effect is the statement of PW-2 Rajbir.

24. The learned counsel for the accused have, however, assailed the aforesaid statements on the ground that their presence at the spot is highly doubtful and

that their conduct itself shows that they were never present at the spot. The learned counsel has submitted that though the said witnesses are related to the deceased but it remains unexplained as to why they did not raise any alarm and did not make any serious effort to save the deceased. The learned counsel has further submitted that the conduct of PW-1 Chand Roop in going to his house after the incident instead of informing the police or anyone else in the neighbourhood is highly unnatural and in fact it is suggestive of the fact that he was not present at the spot. The learned counsel has further submitted that absence of names of the aforesaid witnesses in the inquest report virtually establishes that they were never present at the spot as the dead body has been identified by one Jagmender and Balwan and not by the said so called eye witnesses. It has also been submitted that PW-2 Rajbir Singh is a resident of Village Silana whereas the occurrence had taken place in village Raipur and admittedly the said two villages are at a distance of 20-25 kilometers and as such it would not be expected of PW-2 to be taking morning walk in a different village 25 kilometers away from his native village Silana. The learned counsel has further submitted that for reasons best known to the prosecution, Nirmala who was also stated to be present at the time of occurrence has not been examined and in fact she being wife of the deceased was the best person to shed some light on the incident in case the occurrence had taken place, as alleged by the prosecution.

25. We have considered the aforesaid submissions. A substantial number of firearm injuries found on the dead body of Sanjay shows that the accused were large in number and were armed with different firearms. Under normal circumstances, eye-witnesses would not have dared to come closer for fear of endangering

their own lives especially when the accused had specifically warned them not to come near lest they would lose their life. Thus, the omission of eye-witnesses to make an attempt to save deceased cannot be said to be highly unnatural. Act of PW-1 Chand Roop in immediately rushing to his house to inform other members of the family cannot also be said to be an unnatural as occurrence had taken place in his village itself. In any case, during cross-examination he has stated that he was stunned and not in his senses. It is well known that different persons react differently in different situations. In any case, there is every likelihood of a person getting shocked upon witnessing indiscriminate firing upon a relative. As such, the conduct of PW-1 cannot be said to be unnatural so as to discard his statement.

26. As regards submission of learned counsel for the appellants that omission of name of complainant in Inquest Report casts a doubt on case of prosecution, it would be apposite to refer to relevant column at Sr. No.4 of Form No.25.35 (I) pertaining to Inquest proceedings, as prescribed in Cr.P.C., which reads as follows:

4	Name of those two or more persons with their father's name and residence who identified that dead body is of the Particular person mentioned in the report.	
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27. A perusal of the aforesaid contents of the relevant column shows that there is no such requirement that the dead body should be identified by parents or relatives of the deceased. Inquest proceedings are conducted immediately when any unnatural death is reported to the police. At that point of time, the

parents or immediate relatives, even if present, may be in a state of shock and in such circumstances if there are others who are able to identify the deceased, the needful is got done by the police from such persons. It is not necessary for the police to get the dead body identified specifically from the complainant or the parents or the relatives of the deceased. In any case, the death took place in village Raipur where the deceased was residing and thus his identification would not be difficult in his village. The witness namely Jagmender and Balwan, who identified the dead body are both residents of village Raipur which leaves no room to doubt the identification of dead body. In view of the aforesaid discussion we do not find any merit in the aforesaid contention and the same is hereby rejected.

28. As regards presence of PW-2 Rajbir Singh is concerned, it is no doubt correct that he is not resident of village Raipur but he has stated that his sister Nirmala was married to deceased in village Raipur and that one day prior to the occurrence he had gone to village Raipur to meet his sister. During cross-examination, he has further stated that he used to visit matrimonial home of his sister after interval of 20-25 days. Visit by brother to the matrimonial home of his sister, though not unnatural but is normally not very frequent. In these circumstances, the duty of the court is to be cautious before accepting statement of such like chance witness. In the present case, upon perusal of testimonies of PW-1 Chand Roop and PW-2 Rajbir, it is noticed that both the statements are consistent on all the material aspects of the case. In fact PW-2 Rajbir is named in the FIR itself which was lodged fairly, promptly after the occurrence. The occurrence took place at 7:30 A.M.; the matter was reported to the police by 8.30 A.M.; and the proceedings of recording of ruqa had been

completed by 10.15 A.M. There is nothing on record to doubt the presence of PW-2 Rajbir Singh.

29. As regards, the contention of learned counsel for the accused regarding omission of prosecution to examine Nirmala wife of the deceased who was also stated to be present at the time of occurrence, it is well settled that it is the quality and not the quantity of the witnesses which matters. Hon'ble the Supreme Court in 2017 (5) SCC 817 titled as S.P.S.Rathore Vs. CBI and another, held that it is the quality and not the quantity of the witnesses that matters and evidence is weighed and not counted and that evidence of even a single eye witness, if found truthful, consistent and inspiring confidence is sufficient for maintaining conviction.
30. In an attempt to negate the prosecution evidence, the accused has examined DW-2 Ranbir Singh, who stated that on 25.4.2009 Dhillia and Chet Ram (whose name he later clarified to be Chand Roop and not Chet Ram) had stayed with him at Faridabad on the night intervening 25.4.2009 and 26.4.2009 and that in the morning on 26.4.2009, a telephonic message was received on Dhillia's phone that Chand Roop's brother had been killed. The learned counsel while referring to the aforesaid statement submitted that in fact Chand Roop had never witnessed the death of his brother and had simply been projected as an eye-witness subsequently. We have considered the aforesaid submission. In view of totality of the circumstances and also the fact that the statement of Chand Roop is also corroborated from the testimony of PW-2 Rajbir, the statement of DW-2 Rajbir is apparently an after-thought and does not inspire confidence and the presence of Chand Roop at the time of the occurrence

cannot be doubted.

31. The learned counsel in order to further assail the presence of PW-1 Chand Roop and PW-2 Rajbir at the spot had referred to the statement of PW-18 Constable Sandeep who had photographed the place of occurrence and who during cross-examination stated that he had reached at the spot at about 8-8:30 A.M. and about 50-60 villagers and some policemen were already there. The learned counsel has submitted that since PW-1 in his examination-in-chief has stated that the police had come at the spot after 1-1 ½ hour of occurrence, therefore, the said inconsistency in the said statements shows that the prosecution story had been cooked up much after the occurrence so as to implicate the accused falsely.
32. We have considered the aforesaid submission. The statements of PW-1 Chand Roop and PW-2 Rajbir were recorded after about 1-½ years of occurrence and in these circumstances some minor discrepancies as regards timings are bound to occur and such discrepancies cannot have the effect of demolishing the case of prosecution especially when the witnesses have otherwise stated consistently on all material aspects of the case as is noticed from perusal of their statements.
33. It has next been submitted by learned counsel for the accused that the fact that the present case is a case of blind murder is established from the report of the Forensic Science Expert Dr. Saroj Dahiya who had inspected the spot immediately after the occurrence, upon receipt of a telephonic message. The learned counsel while referring to the report (Ex.DW1/A) of DW-1 Dr. Saroj Dahiya submitted that in the said report while narrating the history, she

recorded that some unknown assailants had fired at deceased. The learned counsel has submitted that DW-1 Dr. Saroj Dahiya while in the witness box has stated that she recorded the said facts as told to him by the Investigating Officer. The learned counsel submitted that the prosecution intentionally chose not to examine the said witness though she had been cited as the prosecution witness and that the said intentional omission on part of the prosecution shows that the prosecution has tried to conceal the truth and has come up with a false version. The learned counsel submitted that if a Senior Scientific Expert visits the scene of crime and prepares a "Scene of Crime" report, such witness ought to have been examined by the prosecution and omission to examine him casts serious doubt on the case of the prosecution and the said doubt in the present case is rather substantiated by the fact that in the said report it is specifically recorded that the assailants were unknown.

34. We have considered the aforesaid submission. The learned counsel for the appellants are banking heavily on the fact that the prosecution has chosen to give up the aforesaid witness and did not examine her. A perusal of the report shows that the said witness had simply furnished the following advise to the Investigating Officer :-

(a) Lift the blood from the spot and send to Director FSL,
Madhuban for further serological examination.

(b) Send the deformed bullets and empty cartridge cases
to FSL, Madhuban for ballistics examination.

35. The Investigating Officer had gone by the advice of the Senior Scientific Assistant i.e. DW-1 Dr. Saroj Dahiya. The Investigating Officer having lifted the blood stained earth from the spot and also having sent the bullet and empty

cartridges for ballistic examination rendered examination of Dr. Saroj Dahiya unnecessary for the prosecution as she herself had not lifted any blood stained earth or any other incriminating piece of evidence from the spot and had not conducted any tests so as to be examined as prosecution witness. The mention of unknown assailants in the said report is stated to be based upon the information received by her from the Investigating Officer. The Investigating Officer having himself stepped in the witness box and the eye witnesses also having categorically named the accused would render the said reference of the assailants being unknown in the report DW1/A of DW-1 Saroj Dahiya insignificant and the accused cannot derive any advantage from the same.

36. It may here be added that as per DW-1 Dr. Saroj Dahiya, she had visited the spot on the day of occurrence at 10 AM or 11 AM. In these circumstances it remains unexplained as to how she had chosen to record in her spot inspection report Ex.DW1/A that the Investigating Officer had informed her that some unknown assailants had killed Sanjay whereas in fact the proceedings regarding recording of DDR had been completed by 10:15 AM. PW-22 SI Om Parkash during his cross-examination has stated that he had received telephonic information regarding the occurrence at 8:15 AM. He had reached at the spot along with the photographer and police officials and inspected the spot. He started writing ruqa at about 9:15 AM and thereafter sent the same at 10:15 AM. In fact PW-22 SI Om Parkash stated that Dr. Saroj Dahiya, Incharge FSL Team from Rohtak had reached at the spot at about 1:30 PM. She had come with her entire team and he had disclosed the facts of the case to her correctly. The aforesaid facts indicate that the brief history as recorded by DW-1 Dr. Saroj Dahiya in her report dated 14.5.2009 Ex.DW1/A is not correct

and the report cannot have the effect of washing away the entire prosecution evidence which is to the effect that the accused were known and identified at the spot and that after information was sent to the police at about 8:15 AM, the police immediately reached at the spot.

37. In view of the discussion made above, we do not find the presence of PW-1 Chand Roop and PW-2 Rajbir at the spot to be doubtful and their presence cannot be discarded solely on the ground that they happened to be relatives of the deceased. Hon'ble the Supreme Court in a case reported as (2013) 15 SCC 284 Guiram Mondal vs. State of West Bengal, held that merely because witness is a relative of deceased is not a reason for discarding his evidence and that testimony of a relative can be acted upon if the court finds it reliable and trustworthy. The aforesaid principle has been reiterated by Hon'ble the Supreme Court in a case reported as (2016) 4 RCR (Criminal) 753 Yogesh Singh vs. Mahabeer Singh and others.
38. The learned counsel for the accused while pressing upon his submission that the death had taken place much earlier during night time and that the prosecution has cooked up a false version in the morning, has referred to the inquest report Ex.PL wherein it has been recorded that *rigor-mortis* was present. The learned counsel has submitted that *rigor-mortis* normally sets in after about 12 hours of the death and as per opinion of the doctor who had conducted the post-mortem examination i.e. PW-7, the time elapsed between death and post-mortem was within 36 hours and that since the post-mortem examination had been conducted at 2:30 PM on 26.4.2009, therefore, it is apparent that death had taken place much before 7:30 AM as projected by the eye-witnesses.

39. We have considered the aforesaid submission. The inquest report had been prepared by PW-22 Om Parkash. The opinion of the Investigating Officer regarding setting of *rigor mortis* cannot be accepted as a definite opinion as he is not a medical expert. The onset of *rigor mortis* varies from case to case and also greatly dependent upon climatic conditions. The relevant extract from *Modi's Medical Jurisprudence and Toxicology* reads as follows:-

“*Time of Onset* — This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop. In India, it usually commences in one to two hours after death.

Duration — In temperate regions, *rigor mortis* usually lasts for two to three days. In northern India, the usual duration of *rigor mortis* is 24 to 48 hours in winter and 18 to 36 hours in summer. According to the investigations of Mackenzie, in Calcutta, the average duration is nineteen hours and twelve minutes, the shortest period being three hours, and the longest forty hours. In Colombo, the average duration is 12 to 18 hours. When *rigor mortis* sets in early, it passes off quickly and *vice versa*. In general, *rigor mortis* sets in one to two hours after death, is well developed from head to foot in about twelve hours. Whether rigor is in the developing phase, established phase, or maintained phase is decided by associated findings like marbling, right lower abdominal discolouration, tense or taut state of the abdomen, disappearance of rigor on face and eye muscles. If on examination, the body is stiff, the head cannot be fixed towards the chest, then in all probability, the death might have occurred six to twelve hours or so more before the time of examination.”

40. The aforesaid opinion makes it amply clear that there is lot of variation in onset of *rigor-mortis* and it has various stages regarding which only an expert can opine. In these circumstances, the observation as recorded in inquest report by the investigating officer that *rigor-mortis* had set in cannot have the effect of demolishing the prosecution case so as to hold that death had taken place much earlier than 7:30 AM. The contention made by learned counsel in this regard found to be devoid of merit and is repelled.
41. The learned counsel for the accused has next submitted that though the prosecution has attributed election rivalry to be a motive for occurrence but no documentary evidence in this context has been led by the prosecution. We have considered the aforesaid submission. It is correct that the prosecution has led only oral evidence that it was due to election rivalry that the accused had murdered Sanjay who was Sarpanch of the village. Hon'ble Apex Court in (2016) 10 SCC 663 Saddik @ Lalo Gulam Hussein Shaikh & Ors vs. State of Gujarat held as follows:

“ It is settled legal position that even if the absence of motive, as alleged, is accepted, that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence cannot be discarded only on the ground of absence of motive, if otherwise the evidence is worthy of reliance.”

42. The prosecution apart from the aforesaid oral evidence relied upon the factum of recovery of firearms from the accused and also the factum of recovery of empty cartridges and fired bullets from the spot. It is the case of prosecution that when accused Ranbir Singh was arrested on 2.6.2009 from Delhi by the Delhi Police, he was found in possession of one pistol of 7.62 mm bore along with two live cartridges which were taken into possession by the Delhi Police and deposited in the Malkhana. The prosecution in order to prove the factum of arrest of accused Ranbir from Delhi has examined PW-20 Constable Pardeep Kumar and PW-21 S.I. Ram Parkash of Delhi Police. The prosecution has also proved on record the FIR registered under Arms Act by the Delhi Police and also the relevant extract from Register No.19 pertaining to deposit of recovered pistol and cartridges.
43. After the police reached at the place of occurrence, the police had lifted five empty cartridges cases of 7.62 mm and two fired bullets of 7.62 mm. The pistol recovered from the accused Ranbir and also empty cartridges and the fired bullets recovered from the spot was got examined from the FSL Madhuban and as per the report Ex.PX of FSL, though the empty cartridges and the fired bullets had been fired from the same firearm but no definite opinion was expressed by the FSL in respect of the same having been fired from the recovered pistol.
44. When Surender was arrested on 25.7.2009 by the Delhi Police, upon receipt of secret information, one .38mm revolver along with five live cartridges were recovered from his possession. PW-31 Head Constable Rajbir Singh and PW-32 SI Jai Kishan Singh of Delhi Police have been examined by the prosecution to establish the aforesaid act. However, since no empty cartridge or fired bullet

of .38 mm was recovered from the spot, therefore, the use of the said weapon is not established.

45. It is, however, the case of prosecution that on 30.8.2009 PW-28 DSP Vijender Singh had interrogated Surender and during interrogation Surender made a disclosure statement and in pursuance of the same got one .9mm pistol and one live cartridge recovered which were taken into possession vide recovery memo Ex.PE.

46. The police had got examined the said recovered 9mm pistol and also four empty cartridges of 9mm and one fired bullet of 9mm which had been recovered from the place of occurrence, examined from FSL Madhuban, Haryana and as per the report Ex.PX, the recovered empty cartridges and the fired bullet of 9mm had been fired from 9mm pistol recovered from Surender. The opinion of the FSL Expert is very categorical to this effect. The relevant extract from the report Ex. PX reads as follows:

“The 9mm fired cartridge cases marked C/6 to C/9 and 9mm bullet marked BC/3 have been fired from Countrymade pistol marked W/2 (Chambered for 9mm cartridges) and not from any other firearm even of same make and bore because every firearm has got it on individual characteristics marks.”

47. While referring to the report of FSL, the learned counsel for the accused has submitted that since no definite opinion had been expressed by the FSL regarding use of 7.62 mm pistol from Ranbir, therefore, his involvement in the occurrence is ruled out and he is entitled to be acquitted.

48. We have considered the aforesaid submission. It is no doubt correct that FSL has not given definite opinion regarding use of the weapon recovered from

possession of Ranbir. However, recovery of the weapons is not *sin-qua-non* for establishing involvement of accused in commission of an offence. In the present case, the number of firearm injuries sustained by the deceased and the different types of empty cartridges recovered from the spot shows that it was handwork of several persons with different types of weapons. Since the eye witnesses PW-1 Chand Roop and PW-2 Rajbir have stated consistently and have specifically named Ranbir to be one of the accused right from the very beginning and his name finds mentioned in the FIR itself which was lodged promptly, the involvement of Ranbir Singh is clearly borne out and the fact that the FSL has not specifically opined that the recovered empty cartridges and the fired bullet had been fired from the weapon recovered from Ranbir is not of much significance.

49. The learned counsel representing the accused Surender has submitted that since he is neither specifically named in the FIR nor any motive attributed to him and he was identified in the Court for the first time, therefore, there is hardly any convincing evidence to connect him or to establish his presence at the spot.
50. We have considered the aforesaid submission. It is correct that Surender is not specifically named in the FIR. In the FIR, it has been mentioned that name of driver of black coloured Verna car in which the accused had come at the spot was not known but it is specifically mentioned therein that the said person is usually seen with Ranbir @ Dallu. In these circumstances the identification by the eye witnesses in the Court was possible as witness had seen him earlier also in the company of Ranbir. Further, his involvement in the present case is clearly established from the fact that the empty cartridges and the fired bullet of 9mm recovered from the spot was found to have been fired from 9mm pistol

recovered at the instance of Surrender. It has been specifically so reported by the FSL in its report Ex.PX. The disclosure statement Ex.PO of Surrender has been duly proved by examining PW-28 DSP Vijender Singh. In pursuance to the said disclosure statement, the accused led the police party to the disclosed place and had got the 9mm pistol recovered which was taken into possession vide recovery memo Ex.PE. The recovery of the weapon used in the occurrence at the instance of the accused leaves no manner of doubt that the accused Surrender played an active role in the occurrence.

51. As regards remaining three accused Madan Lal, Jasbir and Devender, we find that both the witnesses have specifically named them at the very first instance in the FIR and their testimonies recorded in the Court could not be shattered despite lengthy cross-examination. No doubt, the court has to be cautious especially when the accused happen to be of the same family so as to be sure that the complainant, in order to wreak vengeance, has not falsely named all the members of family of the accused, but the number of injuries sustained by the deceased in the present case and the different types of fire arms used clearly reflect that it is not the handywork of one or two persons. In case the deceased had been attacked by only one or two persons then definitely, the eye witnesses could have made efforts to rescue him. It is only when the assailants outnumber the complainant and others, that the eye witnesses do not dare to come forward to rescue the victim. In any case, involvement of Devender @ Dhilla is also borne out from the fact that Verna car used in occurrence and also mentioned in the FIR itself had been got recovered pursuant to disclosure statement of accused Devender @ Dhilla. The said disclosure statement Ex.PO/3 has been proved by the prosecution by examining PW-38 Rajender

Singh, DSP. Pursuant to said disclosure statement, the accused led the police party to the disclosed place and got recovered the black-coloured Verna car bearing Registration No. DL4C-ND-0834 along with its Registration Certificate. Though, the vehicle in question is registered in the name of one Jatinder but the said fact pales into insignificance in view of the fact that the registration number is mentioned in the FIR registered immediately after the occurrence.

52. The learned counsel for Ranbir Singh also pressed upon plea of *alibi* raised on behalf of Ranbir Singh and submitted that in fact at the time of occurrence, he was on duty and was in the checking squad in Survado Express bound from Delhi to Jammu, as he was employed in Indian Railways in the checking staff. The learned counsel has referred to testimony of DW-3 Rajbir Singh who has stated that he is serving in Indian Railways as Head TTE. He deposed that on 26.4.2009, he was on duty in Survado Express bound from Delhi to Jammu and the said train had departed from Delhi at about 5:20 A.M. He further stated that Ranbir Singh was his colleague and was there with him in the train in the checking squad on 26.4.2009 and he had met Ranbir Singh between Panipat and Ambala on that day on the said train.

53. Before proceeding to consider the plea of alibi, it would be useful to bear in mind the basic principles governing alibi as laid in *Binay Kumar Singh v. State of Bihar, 1997(1) R.C.R.(Criminal) 178.* The relevant extract reads as follows:

“23.It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that

the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi.”

54. Hon'ble the Supreme Court in (2015) 4 SCC 749, Vijay Pal vs. State(Govt. Of NCT of Delhi) , while relying upon Binay Kumar Singh's case (supra) held that the plea can succeed only if it is shown that the accused was so far away at the relevant time that he could not be present at the place where the crime was committed.
55. In the present case, we do find that DW-3 Rajbir Singh has specifically stated that on 26.4.2009 he was on duty with Survado Express and that his colleague Ranbir Singh was also there with him in the checking squad. However, apart from the above stated oral testimony of DW-3 Rajbir Singh, there is no

documentary evidence to establish the plea of alibi. The accused could have led some documentary evidence in the shape of duty roster etc. Infact the accused Ranbir, in his statement u/s 313 Cr.P.C. has stated that fine had also been realised from 2-3 passengers while he was on duty. If this was the position, then some evidence to show receipt of fine could have been produced which could have substantiated the fact that he was actually on duty when the occurrence took place.

56. The evidence led by the accused to prove the plea of alibi is rather sketchy and does not exclude with absolute certainty the possibility of his presence at the place of occurrence. The evidence adduced by the accused is not of such a kind that it creates a doubt in the case of prosecution. The burden on the accused is rather heavy and he is required to establish the plea of alibi with certitude. In the present case, it has not been established by convincing evidence that presence of accused at scene of the offence was a physical impossibility by reason of his presence at another place.
57. In view of discussions above especially in light of ratio of above cited judgments, the plea of alibi raised on behalf of appellant Ranbir cannot be accepted simply on the basis of an oral statement by a witness.
58. No other argument has been raised before this Court.
59. As a sequel to the discussions made above, we do not find any infirmity in the impugned judgment and the same is upheld. The conviction of all the appellants namely Madan Lal, Jasbir Singh, Devender @ Dhillal, Ranbir @ Dhallu and Surender as recorded by trial Court is maintained. There is no scope even for alteration of the sentence.

60. There is no merit in either of the two appeals and the same are hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

November 07, 2017
kamal

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No