

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

**1. CRA-D-510-DB-2013
Date of decision:06.03.2017**

Rashid alias Samim

.....Appellant

Versus

State of Haryana

.....Respondent

2. CRA-D-1340-DB-2014

State of Haryana

.....Appellant

Versus

Rahis & Others

.....Respondents

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

Present: Mr. J.S. Bedi, Senior Advocate with
Mr. Sunil Sihag, Advocate
for the appellant in **CRA-D-510-DB-2013**.

Mr. Praveen Bhadu, Asstt. A.G., Haryana.

None for respondents No.1, 3 to 5 and 10.

Mr. R.K. Dhiman, Advocate
for respondents No.2 & 9 in **CRA-D-1340-DB-2014**.

Mr. Shiva Khurmi, Advocate
for respondents No.6 to 8 **CRA-D-1340-DB-2014**.

H.S. MADAAN, J.

Vide this judgment we propose to dispose of two appeals i.e. **CRA-D-510-DB-2013** filed by Rashid alias Samim and **CRA-D-1340-DB-2014** filed by State of Haryana against Rahis and Others. Both the appellants are dissatisfied with the judgment dated 06.05.2013 passed by the Court of Additional Sessions Judge, Nuh vide which accused-Rashid alias Samim was convicted for offences under Section 302 of the Indian Penal Code ("IPC" for short) and Section 25 of the Arms Act and vide order dated 09.05.2013, he was sentenced to undergo imprisonment for life and to pay fine of ₹5,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one year as regards Section 302 IPC and regarding offence under Section 25 of the Arms Act to undergo rigorous imprisonment for one year and to pay fine of ₹1,000/- and in default of payment of fine, to undergo further rigorous imprisonment for a period of one month.

Both the substantive sentences were ordered to run concurrently.

Vide the impugned judgment dated 06.05.2013, remaining accused namely Rahis, Sahid, Tahir, Azhruddin, Nahid, Fajru, Wahid, Jamshed, Hanif and Khalid were acquitted of the charge framed against them.

Accused-convict Rashid alias Samim prays that the appeal filed by him be accepted, resultantly the judgment of his conviction and order of sentence be set aside and he be acquitted of the charge framed against him. Whereas State of Haryana submits that its appeal be allowed and impugned judgment vide which accused Rahis, Sahid, Tahir, Azhruddin, Nahid, Fajru, Wahid, Jamshed, Hanif and Khalid have been acquitted be set aside and they be convicted and sentenced for the charge framed against them.

Briefly stated the prosecution story as it unfolded during the trial is that on 06.09.2008 at about 11:30 a.m., complainant-Mujaffar, son of Sujat Khan, resident of Chandeni, aged about 22 years, a student of B.B.A. third year in Yaseen Meo Degree College, Nuh along with Samim, Kafeel, Yusuf, Imran and Akbar was sitting in the college lawn. In the meanwhile Rahis, Samim, Abass, Saikul, Noman, Aslam, Mahender, Haseen, Zahir Abbas, Sanaulla, Tariq, Khalid, Wahid Buture, Zahid, Sahid and Arif arrived there. Some of them were armed with iron rods, whereas others were having *DANDAS* (clubs). Complainant-Mujaffar

rushed to office of the Principal-Javed, where Imtiaz Ahmed-Lecturer in Hindi was also present and he lodged an oral complaint with them against those boys stating that they had come there to cause injuries to them. The Principal asked him that they should remain sitting there and nobody would dare to touch them. As such, complainant returned to the lawn. Then Rashid alias Samim having a spring actuated knife stabbed Samim in his abdomen while Rahish and Noman had caught hold of him. On receipt of the injury Samim fell down on the ground. The complainant was given a knife blow on his thigh on the left side by Aslam. Khalid tried to give iron blow to Kafil, but Kafil retraced his feet and saved himself from the blow. Sanaulla took out a country-made pistol from his *DUBB* (turning of trouser) and he gave a blow with its butt on the back side of right hand of Kafil. When Soyab tried to rescue the injured from assailants then Rahis took out a knife from the pocket of his pant and caused a blow on the middle finger of right hand of Soyab. Kasam had also arrived at the spot, several students had gathered at that place. On their arrival, all the assailants fled from the spot alongwith their respective weapons. Injured complainant-Mujaffar Hussain, Samim and Soyab were put in a car and taken to General Hospital, Nuh. Mujaffar Hussain and Soyab were admitted there whereas keeping in view the serious condition of Samim, he was referred to hospital at Gurgaon. While Samim was taken there, on the way he succumbed to the knife injury suffered by him. Therefore, his dead body was brought back to General Hospital, Nuh.

A police party led by Inspector-Puran Chand, SHO, Police Station, Nuh (hereinafter referred to as Investigating Officer/I.O.) travelling in Government Vehicle No.HR-55-D-7907 was on patrolling duty on Adbar crossing when the Investigating Officer received a telephonic message from MHC of said police station that a fight had taken place between the students in YMD College, Nuh. As such, the police party went to General Hospital, Nuh. The police party came across C. Daya Nand, who produced an MLR in respect of Kafil indicating one injury for which X-ray was advised, caused by blunt weapon; second MLR in respect of Soyab indicating one sharp edged injury, with X-ray advised; and third MLR in respect of Mujaffar, in which one injury, sharp pointed, was found to be there and X-ray examination was advised. The Investigating Officer recorded statement of injured-complainant/Mujaffar Hussain as Ex.PA which was signed by complainant- Mujaffar Hussain, his signatures were attested by Inspector-Puran Chand. In that statement the complainant had stated that the incident had occurred at the instance of Principal-Javed and Hindi Lecturer-Imtiaz Ahmed. The Investigating Officer put his endorsement below said statement and sent *ruqa* to police station through EHC Satbir Singh on the basis of which FIR Ex.PA/1 was recorded at Police Station, Nuh under signatures of ASI Puran Lal. Thereafter, the Investigating Officer along with police officials went to General Hospital at Nuh, where he observed dead body of Samim. He (Investigating Officer) carried out inquest proceedings with regard to

unnatural death of Samim preparing a report in that regard as Ex.PW5/D. He deputed SI Satyavir Singh for getting post-mortem examination conducted on the dead body of Samim handing over application Ex. PW5/C to him. Thereafter the police party proceeded towards the spot, the Investigating Officer inspected the spot and prepared rough site plan of the place of incident Ex.PW10/B. He lifted blood stained earth from the place of occurrence and placed the same in a plastic container sealing it with seal having impression 'RC'. Seal after use was handed over to ASI Kuldeep Singh. The said parcel was taken into possession vide recovery memo Ex.PB. Then the police party returned to General Hospital, Nuh where SI Satyavir Singh produced sealed parcel of clothes of deceased-Samim alongwith sample seal, which were taken into possession vide recovery memo Ex.PW10/C. On 11.09.2008 accused Azruddin, Nahid, Tahir and Rahis were arrested in this case.

On 08.09.2008 a police party headed by SI-Ram Chander went to village Muradbas. On receipt of secret information such party reached old house of Abdul Hamid, where a boy was found lying on a cot. He was apprehended and on being asked he disclosed his name as Samim alias Rashid, son of Abdul Hamid, resident of Muradbas, at that time resident of Hidyat Colony, Nuh. He was formally arrested in this case and was interrogated. Thereafter, he was brought to police station and put in the lock up. On 09.09.2008 accused Samim alias Rashid was taken out of the lock up and was interrogated, during the course of which

he suffered a disclosure statement Ex.PB that he had kept concealed the knife used by him in the incident in his house which he could get recovered. Such disclosure statement of the accused Ex.PB was attested by HC Radha Raman and EHC Ram Kishan. The accused was got medico legally examined from General Hospital, Nuh and was produced before the Illaqa Magistrate. He was remanded to police custody. Thereafter, such accused while in police custody led the police party to the disclosed place and got recovered one spring actuated knife therefrom. The Investigating Officer had prepared its rough sketch as Ex.PB/1. Then the knife was converted into a sealed parcel and said parcel was taken into possession vide recovery memo Ex.PB/2 which was attested by HC Radha Raman and EHC Ram Kishan. The Investigating Officer had prepared rough site plan of place of recovery as Ex.PB/3. On return to the police station the Investigating Officer deposited the case property with MHC and put accused-Samim alias Rashid in the lock up. On 08.10.2008 accused Sahid was arrested in this case. Four accused namely Wahid, Hanif, Fakru and Jahid who had given shelter to the accused involved in this case were also arrested by the Police. During the course of investigation the Investigating Officer got prepared scaled site plan of place of incident as Ex.PC. Reports from FSL, Madhuban (Karnal) Ex.PX and Ex.PX/1 were received.

After completion of investigation and other formalities, challan against as many as 12 persons, namely, Rashid alias Samim,

Rahis, Sahid, Tahir, Azhruddin, Nahid, Fajru, Wahid, Jamshed, Hanif, Sanaulla and Khalid was prepared and filed in the Court of Sub-Divisional Judicial Magistrate, Nuh.

On presentation of the challan in the Court of Sub-Divisional Judicial Magistrate, Nuh, copies of documents relied upon therein were supplied to the accused free of cost as provided under Section 207 Cr.P.C.. Thereafter, finding that offence under Section 302 IPC is exclusively triable by the Court of Sessions, the Sub-Divisional Judicial Magistrate, Nuh committed the case to the Court of learned Additional Sessions Judge, Nuh vide order dated 24.03.2009.

On receipt of case, finding a prima facie case, charge for the offences under Section 148, 212, 323, 324, 326, 302 IPC read with Sections 149 & 120-B IPC was framed against the accused. In addition to that, charge for offence under Section 25 of the Arms Act was framed against accused Rashid alias Samim. Accused pleaded not guilty and claimed trial. Thereafter, the case was fixed for evidence of prosecution.

During the course of evidence of prosecution it examined as many as sixteen (16) witnesses as per details below:-

<i>PW-1</i>	<i>Mujaffar Hussain</i>
<i>PW-2</i>	<i>ASI Kuldeep Singh</i>
<i>PW-3</i>	<i>Naresh Kumar Draughtsman</i>
<i>PW-4</i>	<i>ASI Ram Kishan</i>
<i>PW-5</i>	<i>Dr. M.S. Ranga</i>

<i>PW-6</i>	<i>Dr. Sanjay Phogat</i>
<i>PW-7</i>	<i>Mohd. Irfan</i>
<i>PW-8</i>	<i>ASI Raj Pal Singh</i>
<i>PW-9</i>	<i>Abdul Gafoor</i>
<i>PW-10</i>	<i>Puran Chand</i>
<i>PW-11</i>	<i>EASI Mange Ram</i>
<i>PW-12</i>	<i>Kafeel Ahmed</i>
<i>PW-13</i>	<i>Kaptan Singh</i>
<i>PW-14</i>	<i>HC Radha Raman</i>
<i>PW-15</i>	<i>EHC Satbir</i>
<i>PW-16</i>	<i>SI Ram Chander</i>

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to them, but they denied the allegations contending that they are innocent and have been falsely involved in this case.

During their defence evidence accused examined witnesses, namely, DW-1 Soyab, DW-2 SP Devender Yadav, DW-3 Baruddin, DW-4 Inspector Rishi Pal, DW-5 Halqa Patwari Subeddin, DW-6 Akhtar, DW-7 Daya Sankar Lal, DW-8 Halqa Patwari Kamruddin, DW9 and Dr. Mohammad Umar, Time Table Incharge, Yasin Meo Degree College, Nuh.

With that the defence evidence of the accused stood concluded.

After hearing the arguments, learned trial Court convicted

and sentenced accused-Rashid alias Samim as mentioned above, whereas remaining eleven accused were acquitted of the charge framed against them. Hence the two different appeals as detailed above.

We have heard the learned counsel for the parties, besides going through the record and we are of the view that there is no element of merit in both the appeals. Accused-appellant Rashid alias Samim is specifically named in the FIR and injury with spring actuated knife in the abdomen of deceased Samim, which had proved fatal, has been attributed to him. Then during the trial PW-1 (wrongly repeated) Mujjaffar Hussain/complainant-injured has categorically deposed in that regard. PW-7 Mohd. Irfan and PW-12 Kafeel Ahmed have corroborated such version on material aspects as regards criminal acts attributed to accused-Rashid alias Samim. They all the three PWs were cross-examined at length on behalf of accused-Rashid alias Samim, but they could not be shattered on any material point and rather they were consistent in deposing that Rashid alias Samim had thrust the knife in the abdomen of deceased-Samim to which injury he had succumbed. We find the presence of all the three witnesses to be natural and probable and account given by them to be worthy of reliance. We do not find any reason to discard statements of these PWs as regards accused-Rashid alias Samim. The medical evidence in this case duly corroborates the ocular evidence. PW-5 Dr. M.S. Ranga who along with Dr. T.R. Prasher and Dr. Sanjay Phogat had conducted post-mortem examination on dead body of

Samim vide post-mortem report Ex.PW5/B and had observed that cause of death was due to haemorrhage and shock resulting from stab injury to major blood vessels which was ante-mortem and sufficient to cause death in normal course of nature. During the course of investigation accused Rashid @ Samim had suffered a disclosure statement and got recovered a spring actuated knife from his possession on 09.09.2008, which was converted into a sealed parcel and taken into possession vide a memo. PW-4 ASI Ram Kishan, PW-14 HC Radha Raman and PW-16 SI-Ram Chander have deposed in that regard. The spring actuated knife had been sent to FSL, Madhuban (Karnal) and as per FSL report Ex.PX it was found to be stained with human blood which indicates that it was used in the incident. Thus the prosecution has successfully proved its charge against accused-Rashid alias Samim that on 06.09.2008 at about 11:30 a.m. in the campus of YMD College, Nuh, such accused committed the murder of Samim, son of Deen Mohammad and that he had retained in his possession spring actuated knife without any permit or licence, therefore, charge under Section 302 IPC and Section 25 of the Arms Act stood proved against such accused beyond a shadow of reasonable doubt.

Though learned counsel for the appellant-accused came up with a submission that it was a sudden occurrence with no motive for the same established on the file and it is a case of single injury coupled with the delay in reporting the matter to the police in the light of the fact that other co-accused have been acquitted by the trial Court, at the most

offence under Section 304 Part-II is disclosed against the accused. However, learned State counsel vehemently countered such contentions. After giving a thoughtful consideration to the entire facts and circumstances of the case, we find that accused had gone to the college premises with a spring actuated knife which is a dangerous weapon and he was carrying it without any licence or permit, that means he had gone there well prepared to attack the victim and he by thrusting spring actuated knife in the vital part of the body i.e. abdomen clearly showed his intention to commit murder of the victim. The single blow had resulted in death of the deceased-Samim. The very fact that the accused has chosen a vital part of the body of the victim to give blow does not leave any doubt in the mind about his intention to cause death of the victim. As regards the motive, it is not of much significance in a case of direct evidence which in this case is sufficiently there as regards the appellant-accused (Rashid alias Samim). Even otherwise the motive is something which is hidden in the mind of a person and it is very difficult to dig it out. As regards the delay in lodging the FIR, we find that it is of no effect as regards the appellant/accused-convict. Therefore, the judgment of conviction and order of sentence against the accused-convict Rashid alias Samim do not suffer from any illegality or infirmity and thus are upheld.

Similarly, the judgment of acquittal against respondents-accused No.1 to 10 in **CRA-D-1340-DB-2014** does not call for any interference. The trial Court by giving cogent and convincing reasons has

come to the conclusion that charge against such accused is not proved beyond a shadow of reasonable doubt. We do not find any reason to disagree with the trial Court. We have scanned the entire evidence and kept in mind the testimony of DW-2 Devender Yadav, SP 3rd Battalion, Sunaria, Rohtak, who in the year 2008 while posed as DSP Head Quarter, Mewat on 08.12.2008 had enquired into the matter and verified the facts observing that involvement of Principal S.M. Javed, Professor Imtiaz Ahmad, Haseen son Hakmudeen, Mahender son of Ratti Ram, Khalid son of Sahabudeen, Tarik son Badrudeen residents of village Adwar; Abbas son of Wahid, Sakul son of Sule Khan resident of village Muradbas; Sahid son of Ch. Jaleb Khan, resident of Kot, Noman son of Idrish resident of Meoli, Arif son of Mubarik resident of Nem Khera, Aslam son of Fajru resident of Salamba was not there.

DW-1 Soyab who as per prosecution story had also suffered injuries in the incident had stated that when he had reached the spot he saw that some students were quarreling each other in which he had also suffered injuries on the hands of some unknown person. However, he could not identify that person. He stated that accused Rahish son of Hakkmudin was not present there and not caused any injury to him. Rather he stated that accused then present in the Court was not present at the time of incident.

DW-3 Baruddin had supported the defence version.

DW-4 Rishi Pal, Inspector, Police Line, Gurgaon deposed

that on 07.09.2009 investigation of this case was entrusted to him under orders of SP, State Crime Bureau Branch, Faridabad and during the course of investigation conducted by him 17 accused were found to be innocent which included Khalid son of Sahabuddin, since it had transpired that said Khalid had gone on truck on 25.08.2008 from Dharuhera to Patna (Bihar) and he had returned on 06.09.2008, whereas truck was unloaded at Panipat on 07.09.2008.

DW-6, Akhtar had supported such version of Khalid being innocent, so had DW-7, Daya Sankar Lal, owner of The Rohtak Haryana Rajasthan Transport Co. Mugal Sarai, Chandoli.

Presence at the spot of other accused and their participation in the incident could not be proved by the prosecution conclusively and affirmatively. The prosecution had of-course failed to establish that an unlawful assembly was formed by accused No.2 to 12 having an intention to which a common object was there. As regards accused Azruddin, Tahir, Nahid, Fazru, Wahid, Jamshed and Hanif facing trial for offence under Section 212 IPC, the prosecution could not establish that such persons had knowledge that the accused were wanted by police in some criminal case. The trial Court has rightly observed that no evidence has been produced by prosecution to prove offence under Section 212 IPC against other accused except accused-Fajru and evidence produced against him by producing PW-8 ASI Raj Pal Singh, PW-13 Kaptan Singh and PW-15 EHC Satbir does not fulfill the ingredients of Section 212 IPC. As

such, they were rightly acquitted by trial Court. Accused Noman had been discharged by this Court. The trial Court by observing that criminal acts attributed to accused-Rahis were also attributed to Noman, has granted him benefit of doubt and acquitted him of the charge framed against him. Similarly Khalid and Sahid were given benefit of doubt for the reasons that prosecution could not prove that they had caused any injury to the deceased or the complainant or his companions. Then there is reference to testimony of PW-10 Puran Chand (retired Inspector) that when he reached hospital, many people of village Chandani were present there and they asked that Mujjafar would make statement according to their wishes and his statement was recorded after consultations with such persons. PW-16 Ram Chander-SI (retired) had admitted as correct that during the investigation it came that many innocent persons had been involved in this case.

Under these circumstances we find little merit in the appeal preferred by State of Haryana for conviction and sentence of respondents No.1 to 10 (accused). Therefore, impugned judgment/order of conviction are upheld, whereas both the appeals are doomed for failure and are dismissed accordingly.

06.03.2017
Gaurav Sorot

(T.P.S.MANN)
JUDGE

(H.S. MADAAN)
JUDGE

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| | 1. | Whether reportable? | Yes |
| | 2. | Whether reasoned / speaking? | Yes |