

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

(1)	CRA-D-921-DB of 2013 Date of decision:-2.5.2017
Sonu and another	...Appellants
Versus	
The State of Haryana	...Respondent
(2)	CRA-D-1110-DB of 2013
Somnath @ Somi	...Appellant
Versus	
State of Haryana	...Respondent
(3)	CRA-D-1269-DB of 2013
Rinku	...Appellant
Versus	
State of Haryana	...Respondent
(4)	CRA-D-579-DB of 2014
Narender @ Chhotu	...Appellant
Versus	
State of Haryana	...Respondent

CRA-D-921-DB of 2013;
CRA-D-1110-DB of 2013;
CRA-D-1269-DB of 2013; and
CRA-D-579-DB of 2014

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

Present : Mr. Vijay Kumar Jindal, Senior Advocate with
Mr.Amardeep Sheoran, Advocate
for the appellants in **CRA-D-921-DB of 2013.**

Mr.Keshav Pratap Singh, Advocate
for the appellant in **CRA-D-1110-DB of 2013.**

Mr.Rakesh Nehra, Advocate
for the appellant in **CRA-D-1269-DB of 2013.**

Mr.Dilpreet Singh, Advocate for
Mr.Gautam Dutt, Advocate
for the appellant in **CRA-D-579-DB of 2014.**

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

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of four appeals
i.e. **CRA-D-921-DB of 2013** filed by Sonu and Sanjay, **CRA-D-1110-DB of 2013** filed by Somnath @ Somi, **CRA-D-1269-DB of 2013** filed by Rinku and **CRA-D-579-DB of 2014** filed by Narender alias Chhotu, all accused, who were tried and convicted by the Court of learned Additional Sessions Judge, Rohtak for the offences under Sections 302, 307, 452, 506, 148 and 149 IPC, in addition, appellants – accused Rinku and Somnath @ Somi were also convicted for the offence under Section 25 of the Arms Act vide impugned judgment of conviction dated 23.7.2013 and vide order of sentence dated 27.7.2013, they (except Narender @ Chhotu) were sentenced as follows:

Offence under Section	Sentence Awarded
Section 302 read with Section 149 IPC.	Imprisonment for life and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo simple imprisonment for a period of one year.

Section 307 read with Section 149 IPC.	Rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- each and in default thereof, to further undergo simple imprisonment for a period of one year.
Section 452 read with Section 149 IPC.	Rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo simple imprisonment for a period of six months.
Section 506 read with Section 149 IPC.	Rigorous imprisonment for a period of one year each.
Section 148 IPC	Rigorous imprisonment for a period of one year each.

Whereas, accused Rinku and Somnath @ Somi were sentenced as follows:

Offence under Section	Sentence Awarded
Section 25 of Arms Act.	Rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- each and in default thereof, to further undergo simple imprisonment for a period of six months.

All the substantive sentences were ordered to run concurrently.

It is pertinent to mention here that on the date of pronouncement of judgment, accused Narender @ Chhotu was absent, therefore his papers were separated. After securing his presence, he was sentenced separately vide order dated 15.1.2014 as under:

Offence under Section	Sentence Awarded
Section 302 read with Section 149 IPC.	Imprisonment for life and to pay a fine of Rs.5,000/- and in default thereof, to further undergo simple imprisonment for a period of one year.
Section 307 read with Section 149 IPC.	Rigorous imprisonment for a period of seven years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo simple imprisonment for a period of one year.

Section 452 read with Section 149 IPC.	Rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/- and in default thereof, to further undergo simple imprisonment for a period of six months.
Section 506 read with Section 149 IPC.	Rigorous imprisonment for a period of one year.
Section 148 IPC	Rigorous imprisonment for a period of one year.

The substantive sentences were ordered to run concurrently.

The accused-convicts, who are appellants before this Court pray that their appeals be accepted, the impugned judgment of their conviction and orders of sentence be set aside and they be acquitted of the charge framed against them.

Briefly narrated, the prosecution story as it unfolded during the trial is that on 12.5.2008, a police party headed by ASI Om Parkash, Incharge, Police Post Gaukaran, Police Station City, Rohtak (hereinafter referred to as the Investigating Officer/IO) was present at Mata Darwaja Chowk, Rohtak in connection with official duties, where he (IO) received an information that a firing incident had taken place in the area of Old Sabji Mandi, Rohtak. Accordingly, the police party proceeded towards that place. At the house of Kuldeep Balmiki where the incident had taken place, the police party found womenfolk namely Kavita, Gaindo Devi and Tilak weeping and a dead body was lying in the gallery of the house having suffered firearm injuries. Kavita identified the dead body to be that of her husband – Shankar. The police party comforted Kavita and thereafter, she got her statement Ex.PA recorded wherein she stated that her brother-in-law (dewar) - Sachin had

relations with Monika daughter of Rakesh, resident of Old Sabji Mandi, Rohtak, who is their neighbour; that in this regard an altercation arose between her husband Shankar, her brother-in-law (dewar) - Sachin on one side and Sonu son of Satish, Chhotu son of Siri Ram, Sanjay son of Ishwar, Rinku son of Rakesh, Sonu son of Pappu, all of Balmiki community, residents of Kachi Garhi Mohalla, Rohtak, on the other side, about one year earlier; that due to fear, they left Rohtak city and started living at village Mundka, the village of her parents which included she, her husband and dewar - Sachin. According to the complainant, since betrothal ceremony of her brother-in-law Sachin was to take place, hence she, her husband Shankar, brother-in-law Sachin, her parents, Gaindo Devi, a parental aunt (BUA) of her husband and Tilak had reached at their house in Rohtak at about 11:00 A.M.; that at about 5:30/6:00 p.m. when Rinku son of Rakesh, Somi son of Satish, armed with pistols and Chhotu son of Siri Ram, Sanjay son of Ishwar, Sonu son of Pappu, armed with weapons like swords came to their house; that on their reaching, they caught hold of her husband Shankar in the gallery and Rinku gave a fire shot on his head within her sight; that her brother-in-law (dewar) Sachin was given fire shot on the mouth and head by Somi son of Satish in a room adjacent to gallery; that Chhotu, Sanjay and Sonu were threatening her, *bua* of her husband Gaindo Devi and Tilak; that all the accused left the spot while causing threat that if intimation was given to police then they would kill them and their relatives. According to the complainant, the accused further stated that they had taught a lesson to them for developing intimacy with

their sister Monika. She further stated that the dead body of her husband Shankar was lying in their house and Sachin had been sent to PGIMS, Rohtak for treatment.

The statement Ex.PA was signed by the complainant in Hindi. Her signatures were attested by ASI Om Parkash, who appended his endorsement Ex.PA/1 below that statement and sent ruqa to the police station through Constable Bhoj Raj on the basis of which formal FIR Ex.PA/2 was recorded at Police Station City, Rohtak by Sub-Inspector Lekh Raj for offences under Sections 148, 149, 307, 302, 452, 506 of the Indian Penal Code and Section 25 of the Arms Act. The original ruqa along with endorsement was sent back to the Investigating Officer whereas special reports in the case were despatched to Illaqa Magistrate and higher police officers. The Investigating Officer summoned the Photographer to the spot, who had clicked the photographs of the dead body and the spot whereas the FSL team was also pressed into action. Thereafter, the Investigating Officer prepared the inquest report. He also lifted the blood stained earth, two shells, hair of Sachin injured and one mobile phone from the spot and thereafter converted it into a parcel sealing it with his seal bearing inscription 'OP'. The said parcel was taken into possession vide memo Ex.PD attested by the witnesses. Thereafter, the Investigating Officer deputed Constable Shamsheer Singh to get the post-mortem conducted on the dead body of Shankar handing him over the inquest papers along with the application Ex.P20. He (IO) prepared the rough site-plan Ex.P45 of the place of occurrence and recorded the statements of witnesses. Thereafter, SHO

and DSP came at the place of occurrence and after completion of investigation, he reached at Casualty, PGIMS, Rohtak and received medical ruqa Ex.P15 and MLR of Sachin Ex.P14 and moved an application before the concerned doctor seeking opinion regarding the fitness of injured – Sachin, but the doctor gave his opinion Ex.P46 vide which patient was declared unfit to make statement.

On 13.5.2008, the Investigating Officer again moved same application before the concerned doctor seeking opinion regarding the fitness of injured – Sachin, who declared him fit for making his statement vide his opinion. Thereafter, the IO recorded statement of injured Sachin. On the same day, Constable Shamsheer handed him over post-mortem report, sample seal, pellets and parcel of clothes of Shankar and all the articles were taken into possession vide recovery memo Ex.PG. Thereafter, on 14.5.2008, he (IO) handed over the investigation of this case to SI Lekh Ram.

On 28.5.2008, HC Satpal received a secret information that one Rinku, who was involved in a murder case relating to District Rohtak along with other co-accused wanted to murder another person, who was under treatment in Delhi Hospital. On that information, a police party headed by SI Suresh Kumar from Anti Extortion Cell, Crime Branch, R.K. Puram, New Delhi reached at Safdarjang Hospital, Delhi and on the pointing of secret informer apprehended three persons namely Rinku, Somnath alias Somi and Narender alias Chhotu. On personal search, accused Rinku got recovered one loaded country-made pistol from left side pocket of his pant, whereas accused Somnath @

Somi was found to carry one loaded country-made pistol and accused Narender alias Chhotu two live cartridges. SI Suresh Kumar prepared rough sketches of the abovesaid articles, converted them into sealed parcels and the same were taken into possession vide memos Ex.PC, Ex.P11 and Ex.P12, respectively. He (SI Suresh Kumar) sent ruqa through Constable HC Yashpal in this regard, on the basis of which, formal FIR No.216 dated 28.5.2008, Police Station Sarojni Nagar was registered by HC Jai Singh.

On 31.5.2008 accused Rinku, Narender and Somnath @ Somi were brought from Delhi Police on production warrants by SI Lekh Ram, who moved an application before Court for joining them in the investigation and after grant of necessary permission, SI Lekh Ram interrogated accused Rinku, Narender and Somnath @ Somi, who suffered disclosure statements Ex.P26, Ex.P27 and Ex.P28 about the occurrence and about the weapons respectively. Thereafter, SI Lekh Ram sought police remand of above named accused for two days and interrogated them, who suffered their disclosure statements about the occurrence and concealment of weapons. Disclosure statement of Narender @ Chhotu is Ex.P29, disclosure statement of Somnath @ Somi Ex.P30 and disclosure statement of Rinku Ex.P31.

Thereafter, accused Rinku, while in police custody, led the police party to the disclosed place and got the pistol along with shell recovered from near HAFED Area, Uttam Vihar Colony. SI Lekh Ram prepared sketch of the pistol and shell as Ex.P34 and the same were taken into possession vide memo Ex.P35, pistol being Ex.P38 and shell

Ex.P39.

Thereafter, accused Somnath @ Somi, while in police custody, led the police party to the disclosed place and got the pistol along with one live cartridge recovered from near HAFED Area, Uttam Vihar Colony. SI Lekh Ram prepared sketch of the pistol and live cartridge as Ex.P32 and the same were taken into possession vide memo Ex.P33, pistol being Ex.P36 and shell being Ex.P37.

Thereafter, accused Narender @ Chhotu, while in police custody, led the police party to the disclosed place and got the sword recovered from near HAFED Area, Uttam Vihar Colony. SI Lekh Ram prepared sketch of the sword as Ex.P29/A and the same was taken into possession vide memo Ex.P29/B, sword being Ex.P40. SI also prepared rough site-plan of place of recovery as Ex.40/2.

Thereafter, on 8.6.2008, the investigation of this case was again handed over to ASI Om Parkash on the direction of higher officers.

On 8.6.2008, the Investigating Officer arrested accused Sonu and Sanjay from their houses and interrogated them and thereafter both of them were lodged in police lock up. On 9.6.2008, accused Sonu and Sanjay were again interrogated. Accused Sonu, while in police custody on being interrogated, suffered a disclosure statement Ex.P41 that he had kept concealed a sword used by him in the incident at Jind Bye pass road in the waste, regarding which he had exclusive knowledge and could get the same recovered. Thereafter, accused Sanjay, while in police custody on being interrogated, suffered a

disclosure statement Ex.P42 that he had kept concealed a sword used by him in the incident at Kehar Wala Peer, Khakhrakot, regarding which he had exclusive knowledge and could get the same recovered. Thereafter, accused Sanjay, while in police custody, led the police party to the disclosed place and got the sword recovered from the place specified by him in his disclosure statement. The IO prepared a sketch of the said sword Ex.P42/A and the sword was taken into possession vide memo Ex.P42/B. The IO prepared rough site-plan of place of recovery of sword as Ex.P42/C, the sword being Ex.P43. Similarly, accused Sonu, while in police custody, led the police party to the disclosed place and got the sword recovered from the place specified by him in his disclosure statement. The IO prepared sketch of the sword as Ex.P41/A and said sword was taken into possession vide memo Ex.P41/B. The IO prepared rough site-plan of place of recovery of sword as Ex.P41/C, the sword being Ex.P44. The disclosure statements, recovery memos and sketches were attested by HC Ram Niwas and Constable Prem.

On 5.7.2008, the Investigating Officer recorded statements of witnesses. After completion of investigation and other formalities, challan against the accused was prepared and filed in the Court of Chief Judicial Magistrate, Rohtak.

On presentation of challan in the Court of Chief Judicial Magistrate, Rohtak, he supplied copies of documents relied upon in the challan to all the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offences under Sections 302 and 307 IPC are exclusively triable by the Court of Sessions, learned Chief Judicial

Magistrate, Rohtak vide his order dated 6.9.2008 committed the case to the Court of learned Sessions Judge, Rohtak from where it was entrusted to the Court of learned Additional Sessions Judge, Rohtak.

On receipt of case in the Court of learned Additional Sessions Judge, Rohtak, observing that charge for offences under Section 120-B IPC against all the accused, under Sections 148, 452/302/307/506 read with Section 149 IPC against accused Rinku, Somnath @ Somi, Narender @ Chhotu, Sonu alias Suresh and Sanjay and charge for the offence under Section 25 of the Arms Act was disclosed against accused Rinku, Somnath @ Somi, Narender @ Chhotu, Sonu, they were charge-sheeted accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as twenty three witnesses as per details below:

PW1 Kavita, wife of deceased Shankar Lal provided the eye-witness account of the incident. PW2 Sachin, injured also gave the ocular account of the occurrence. Both of them supported the prosecution story on material aspects.

PW3 Tej Ram had identified the dead body of Shankar during inquest proceedings and had received the dead body after post-mortem examination against receipt Ex.PB.

PW4 HC Yash Pal, who was member of the police party which on 28.5.2008 had arrested accused Rinku, Somnath @ Somi and Narender @ Chhotu from Safdarjang Hospital, Delhi and had effected

recovery of a country-made each from Rinku and Somnath and two live cartridges from accused Narender which had been taken into possession vide recovery memo Ex.PC deposited in that regard.

PW5 HC Narender, who on 12.5.2008 was member of the police party headed by ASI Om Parkash which had gone to the spot and carried out the necessary investigation deposed regarding what had transpired in his presence.

PW6 EHC Sukhdarshan, who on 27.5.2008 while posted as Assistant MMHC at Police Station City, Rohtak and had been handed over case property by MMASI Ram Kumar for the purpose of depositing the same with FSL, Madhuban tendered in evidence his affidavit Ex.PE.

PW7 HC Sumit Kumar, Draughtsman in the Office of SP, Rohtak, who on 5.7.2008 after visiting the spot and on the direction of ASI Om Parkash had prepared scaled site-plan on being pointing out of Kavita proved such plan as Ex.PF.

PW8 Constable Shamsheer Singh, who on 13.5.2008 on being instructed by ASI Om Parkash had got post-mortem examination conducted on the dead body of Shankar from PGIMS, Rohtak testified in that respect stating that after post-mortem examination, the doctor had handed over to him a parcel containing clothes of the deceased, another parcel containing blood sample, both of those sealed with the seal of doctor and he had produced parcels before ASI Om Parkash, who had taken those into possession vide memo Ex.PG.

PW9 EASI Ram Kumar, who on 13.5.2008 was posted as

MM ASI at Police Station City, Rohtak when ASI had deposited with him five parcels deposited in that regard stating that on 9.6.2008 one more parcel was deposited by ASI Om Parkash whereas on 1.6.2008 SI Lekh Ram had deposited three parcels with him. He furnished his affidavit in that regard as Ex.PH.

PW10 Constable Raju deposed that on 12.5.2008, he was posted as General Duty Constable at Police Station City, Rohtak; that on that day, SI/SHO Lekh Ram handed over to him three envelopes containing special reports which were delivered by him to higher authorities without any delay. He tendered in evidence his affidavit Ex.PJ submitting that the same be read as a part of his statement.

PW11 HC Vijay Pal, Photographer stated that on 12.5.2008 at the asking of ASI Om Parkash, he had gone to the place of occurrence and took photographs of the dead body. He proved such photographs as Ex.P1 to Ex.P5 stating that thereafter he had handed over such photographs along with negatives Ex.P6 to Ex.P10 to the Investigating Officer.

PW12 Inspector Suresh Kumar from Anti Extortion Cell, Crime Branch RK Puram, New Delhi, who on 28.5.2008 while posted as Sub Inspector in that very branch along with other police officials had arrested accused Rinku, Somnath alias Somi and Narender alias Chhotu from the area of Safdarjang Hospital, Delhi effecting recovery of one loaded country-made pistol each from Rinku and Somnath @ Somi and two live cartridges from accused Narender alias Chhotu which were taken into possession regarding which FIR No.216 dated 28.5.2008 was

registered with Police Station Sarojni Nagar, copy Ex.P13 testified in that respect.

PW13 Dr.Rakesh Kumar, CMO, PGIMS, Rohtak tendered in evidence his affidavit Ex.P14/A. In the affidavit he had stated that on 12.5.2008, he medico-legally examined Sachin son of Kuldeep, aged 26 years, resident of New Sabji Mandi Rohtak with alleged history of firearm injury. He found following injuries on his person:

1. A punctured wound of size 1 cm x 1 cm on Lt. Side of chest 5 cm above the nipple and 5 cm away from the midline, blackening present around the wound more on the Rt. Side of the wound IMPRESSION :- Entry wound.
2. A lacerated wound of size 5 cm x 1 cm present over vertex of skull, bone deep.
3. A cut wound through and through the upper part of Lt. Ear, oval in shape of size 2 cm x 1 cm, blackening present over the interior part of the wound.
4. Punctured wound of size 2.5 cm x 1 cm over Lt. Mastoid region just behind the injury No.3 bone deep.
5. Lacerated wound of size 3 cm x 1 cm over upper lip whole face is soaked in blood, multiple small tattooing is present over face and forehead.

All the injuries were kept under observation. Except injury No.2, all the injuries were by firearm weapon. Injury No.2 was caused

by blunt weapon.

He advised for Surgeon's opinion for injuries No.1 and 2 and Dental Surgeon's opinion for injury No.5 and ENT Surgeon's opinion for injuries No.3 and 4.

All the injuries were within the probable duration of six hours.

He proved carbon copy of MLR as Ex.P14, information sent to police regarding admission of injured as Ex.PW15, police request Ex.P16 along with Sword seeking his opinion whether the injuries on the person of Sachin can be caused from the said weapon and his opinion Ex.P17 that the possibility of injuries No.2 and 3 could not be ruled out by the weapon shown to him.

PW14 Dr.S.P.S. Bhatia deposed that on 13.5.2008 while posted at General Hospital, Rohtak, he had conducted post-mortem examination on the dead body of Shankar son of Kuldeep, 30 years male, resident of Old Sabji Mandi, Rohtak at 12:30 p.m. and found that the body was moderately built, wearing *baniyan* (vest), white pyjama, blue colour underwear; that rigor mortis was present in the limbs; that a wound of entry 1 cm round was present in occipital bone towards left side; that brain matter was congested on exploration of skull; that left parietal bone was found fractured; on further exploration of the skull a bullet was recovered; that rest of the body was pale and healthy. In the end, this witness came to the conclusion that the cause of death was due to severe shock and haemorrhage due to injury which was ante-mortem in nature and sufficient to cause death in ordinary course of nature. The

duration between death and post-mortem examination was within six hours to 24 hours. He proved carbon copy of the post-mortem report as Ex.P19 and application for conducting post-mortem examination as Ex.P20.

PW15 ASI Jai Narain deposed that on 31.5.2008, he was posted as ASI at Police Station City, Rohtak. On that day accused Rinku, Narender @ Chhotu and Somnath @ Somi were interrogated by SI Lekh Ram. Accused Rinku, Narender @ Chhotu and Somnath @ Somi suffered disclosure statements Ex.P26, Ex.P27 and Ex.P28, respectively.

On 1.6.2008, accused Narender @ Chhotu was interrogated by SI Lekh Ram at Police Station City, Rohtak, who suffered a disclosure statement Ex.P28 that he had kept concealed one sword beneath the brick bats near the Hatchery ground at Uttam Vihar Colony, Rohtak and could get the same recovered. Thereafter, accused Somnath @ Somi was interrogated by SI Lekh Ram, who too suffered a disclosure statement Ex.P30 that he had kept concealed one country-made pistol beneath the brick bats near the Hatchery ground at Uttam Vihar Colony, Rohtak and could get the same recovered. Thereafter, accused Rinku was interrogated by SI Lekh Ram, who also suffered a disclosure statement Ex.P31 that he had kept concealed one country-made pistol beneath the earth near the Hatchery ground at Uttam Vihar Colony, Rohtak and could get the same recovered.

Accused Narender @ Chhotu, Somnath @ Somi and Rinku disclosed that their earlier disclosure statements were not true.

Thereafter, accused Somnath @ Somi, while in police custody, led the police party to the disclosed place and got a country-made pistol of .315 bore and one cartridge recovered from the place specified by him in his disclosure statement. The IO prepared rough sketch of the pistol and cartridge as Ex.P32. He converted those articles into a parcel sealing it with his seal having impression 'LR' and said parcel was taken into possession vide memo Ex.33. Seal after use was handed over to this witness.

Thereafter, accused Rinku, while in police custody, led the police party to the disclosed place and got a country-made pistol of .315 bore and one empty shell recovered from the place specified by him in his disclosure statement. The IO prepared rough sketch of the pistol and empty shell as Ex.P34. He converted those articles into a parcel sealing it with his seal having impression 'LR' and said parcel was taken into possession vide memo Ex.35. Seal after use was handed over to this witness.

PW16 ASI Jagdish Chander and PW17 Constable Prem Singh, who were associated with the investigation deposed regarding their part whereas PW18 Om Parkash, Reader to District Magistrate, Rohtak proved sanction for prosecution of accused Rinku and Somnath @ Somi under Section 25 of the Arms Act granted by District Magistrate, Rohtak vide orders Ex.PW18/A and Ex.PW18/B, respectively.

PW19 ASI Om Parkash, who had carried out investigation in this case initially and to a major extent deposed in that regard proving

various documents.

PW20 Inspector Pawan Kumar deposed that on 16.5.2008, he was posted as SHO at Police Station City, Rohtak. On that day, he had arrested accused Pushpa in this case and after completion of investigation had prepared and filed the challan in the Court.

PW21 SI(Retd.) Lekh Ram, who had recorded the formal FIR in this case and had carried out investigation in this case from 31.5.2008 onwards testified regarding his part.

PW22 Dr.Parvinder Singh stated that on 12.5.2008, while he was posted as P.G. Student at Ward No.6, Unit-1, the police moved an application Ex.P46 seeking opinion regarding fitness of injured Sachin son of Kuldeep Singh, resident of Old Sabji Mandi, Rohtak, who was admitted in the above-said Ward to make statement and that after examining the patient, he found that the patient was unfit to make statement and gave his opinion Ex.P46/A in that regard. Going further, the witness stated that Dr.Sharad Kumar was also posted with him as P.G. Student in the same ward and he also attended upon patient Sachin. He identified the signatures of Dr.Sharad Kumar on Ex.P46 at Point A.

PW23 Dr.Shard Chauhan deposed that on 13.5.2008 while he was posted as P.G. Student at Ward No.6, Unit-1, the police moved an application Ex.P46 seeking opinion regarding injured Sachin son of Kuldeep Singh, resident of Old Sabji Mandi, Rohtak, who was admitted in the above-said Ward. He further deposed that after examining the patient, he found that the patient was fit to make statement and gave his opinion Ex.P46/B in that regard.

Learned Public Prosecutor had tendered in evidence FSL reports i.e. dated 23.6.2008 Ex.P50, dated 8.8.2008 Ex.P51 and dated 24.6.2008 Ex.P52 and closed evidence of prosecution.

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

Further, in addition to that accused Pushpa took up a plea that she was not present at Rohtak and was present in Delhi on 12.5.2008.

Whereas, accused Sonu took up a plea that he has been falsely implicated in this case by police at the behest of the complainant; that there was a dispute between accused Rinku, Somnath @ Somi and deceased regarding their ancestral house and he being related to both the parties, had been wrongly involved in this case; that he had no enmity with the complainant and his family members but they were having grudge against him and accused Sanjay because of the abovesaid property dispute and for that reason they had falsely named both of them in this case and that in fact he was not even present at the place of occurrence at the time of incident and was present at Old Sabji Mandi, Rohtak with Amit son of Sadan Lal, resident of Garhi Mohalla Rohtak and Raj Kumar son of Prem Chand, resident of Kachi Garhi Dadu Wala Johar Rohtak and Sunny son of Harnam Dass, resident of Chawla Chowk Arjun Gali, Rohtak.

Then, accused Sanjay took up a plea that he had been falsely implicated in this case by police at the behest of the complainant; that there was a dispute between accused Rinku, Somnath @ Somi and their family members regarding their ancestral house and he being in relation with the accused Rinku had been wrongly dragged in this case; that he had no enmity with the complainant or deceased or his family and had been falsely implicated just to pressurize them and, that in fact, he was not even present at the spot at the time of incident and was sitting with Sham Lal Ex-M.C. son of Bhola Ram, resident of 1016/13, Ramlila Ground, Rohtak and Pawan son of Mansha Ram, resident of House No.452/3, Jhimrawala Mohalla, Rohtak at Old Sabji Mandi, Rohtak.

During their defence, accused examined five witnesses.

DW1 Amit son of Sadan Lal, resident of Kachi Garhi Mohalla, Rohtak deposed that on 12.5.2008, he was selling vegetables on *Rehri* (hand cart) at Old Sabji Mandi, Rohtak and at that time accused Sonu was also selling vegetable on his *rehri* adjacent to him; that at about 5/6:00 p.m., they heard the noise of gun shots and after that they ran towards the house of deceased Shankar and saw that deceased Shankar was lying dead on the ground after receiving the gun shot injury and Sachin was in injured condition having a gun shot injury; that after two days of the incident, they came to know that Sanjay and Sonu son of Suresh were also implicated in this case; that after that one Panchayat was convened in their area and thereafter they contacted S.P., D.S.P. and SHO and apprised them about the fact that Sanjay and Sonu were falsely

implicated in this case but to no effect.

DW2 Shyam Lal son of Bhola Ram, Ex-MC, resident of Ramlila Parao near Old Sabji Mandi, Rohtak stated that on 12.5.2008, he was present near his house situated in the area of Old Sabji Mandi, Rohtak and he was Municipal Councilor of that locality; that on that day at about 6:00 p.m., they were sitting in the area of Old Sabji Mandi and were playing cards; that at that time accused Sanjay was also playing cards with them and when they heard the gun shot sound, they went towards the house of deceased Shankar and found that some persons had caused gun shot injuries to them and after two days of this occurrence, they came to know that accused Sanjay had been wrongly named in this case, regarding which one Biradari Panchayat was also convened in their area and after that they went to the S.P., D.S.P. and SHO concerned regarding false implication of accused Sanjay in this case but no action was taken by them and that accused Sanjay was arrested by the police and involved in the case later on.

DW3 Pawan Kumar deposed on the lines as that of DW1 Amit.

DW4 Sudhir deposed almost on the lines as that of DW2 and also supported the defence version.

DW5 Gaindo Devi wife of Sohan Lal was unable to tell the date of death of Shankar and as to how he had died.

With that the defence evidence got concluded.

After hearing arguments, learned trial Court convicted and sentenced the accused as mentioned supra, which left them aggrieved

and they have filed the present appeals praying that the same be accepted, the impugned judgment of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

We have heard learned counsel for the appellants-accused-convicts and learned Assistant Advocate General for the State of Haryana besides going through the record.

To prove the incident, the prosecution in this case has examined PW1 Kavita, widow of Shankar and PW2 Sachin – injured. We find presence at the spot of both the witnesses at the relevant time to be natural and probable. The incident had taken place in the residential house of these witnesses and the deceased. Even otherwise PW2 – Sachin having suffered injuries in the incident is a stamped witness and his presence at the spot cannot be doubted. The eye-witness account provided by them is consistent as regards Rinku, Somnath @ Somi, Narender @ Chhotu inasmuch they having a common intention, trespassed in the house of injured/deceased on 12.5.2008 at about 5:30/6:00 p.m. in the area of Old Sabji Mandi, Rohtak, at that time, Rinku was armed with a country-made pistol of .315 bore, Somnath @ Somi also a pistol of same type and same bore whereas Narender @ Chhotu in unauthorized possession of sword of 23 inch length and 9 cm width; none of them had any valid licence authorizing them to possess such weapons. It further comes out that Rinku had fired shot from the country-made pistol hitting Shankar on head whereas Somnath @ Somi had fired a shot from country-made pistol hitting Sachin on mouth and head whereas Narender @ Chhotu having sword had also caused

injuries to Sachin. The very fact that they had come together having deadly weapons and had attacked Shankar and Sachin simultaneously and after the incident had fled from the spot along with their respective weapons goes to show that they shared a common intention for carrying out the incident. During the course of investigation, the Investigating Officer on spot inspection had lifted blood stained earth, two empty shells, hair of Sachin – injured and mobile phone from the spot, which were converted into a sealed parcel and then taken into possession. During the course of investigation, accused Narender @ Chhotu while in police custody had suffered a disclosure statement Ex.P29 before ASI Jagdish Chander on 1.6.2008 about the occurrence stating that he had concealed a sword used by him in the incident in the area of Azadgarh near the hatchery farm and subsequently got the sword recovered from under the stones which had been taken into possession, such sword being Ex.P40. Whereas as deposed by PW15 ASI Jai Narain, on 1.6.2008 accused Somnath @ Somi and Rinku had suffered disclosure statements during interrogation which led to recovery of county-made pistol of .315 bore and one cartridge in the case of former and the country-made pistol of .315 bore and an empty shell at the instance of latter. The recovered country-made pistols, empty shells and sword had been sent to FSL, Madhuban (Karnal), Haryana and as per reports received therefrom Ex.P50, Ex.P51 and Ex.P52, two empty shells of .315 bore recovered from the spot which were sent to FSL, Jacket of .315 fired bullet stated to have been taken out from the body of Shankar had been fired from the country-made pistol marked W/1 and not from

any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks. Though no opinion could be formed regarding linkage of .315” fired cartridge case C/2 in respect of country-made pistols W/1 and W/2 due to lack of sufficient, comparable, individual characteristic marks. For the same reasons, no opinion could be formed regarding linkage of .303” misfired cartridge case in respect of country-made pistols W/1 and W/2 whereas the country-made pistols marked W/1 and W/2 (each chambered for .303” and .315” cartridges) were found as firearms as defined in Arms Act 54 of 1959 and their firing mechanisms were found to be in working order. That clearly connects such accused with the crime. Though the recovered sword from Narender @ Chhotu was not sent to FSL but that does not make much difference since from the other evidence available on the file, Narender @ Chhotu having participated in the incident using the sword for causing the injuries to Sachin stands established. Although in the MLR of Sachin, five injuries have been observed and Dr.Rakesh Kumar, who had conducted medico-legal examination of Sachin on 12.5.2008 while appearing as PW13 had submitted his affidavit Ex.P14/A in which giving details of the injuries, he has opined that except injury No.2, all the injuries were by firearm weapon whereas injury No.2 was caused by blunt weapon but in his examination-in-chief, he has stated that on 15.6.2008, police had moved an application Ex.P16 along with a sword to know whether injuries on the person of Sachin could be caused from said weapon and he had opined that possibility of injuries No.2 and 3 having been caused with

such sword could not be ruled out. Injury No.3 is in the form of cut wound through and through upper part of left ear which could be caused with a sharp edged weapon like sword. Though in the FIR such injury with sword has not been specifically attributed to Narender @ Chhotu but then FIR is not a substantive piece of evidence and its only purpose is to set the machinery of law in motion. The minute details of the incident may not be mentioned there. In the FIR name of Narender shown by alias of Chhotu and armed with sword is mentioned. When several assailants armed with deadly weapons are there it is difficult to remember the blows given by each of the assailants since the witnesses do come in a state of shock by a sudden mishappening. However, during the course of trial, PW2 Sachin has categorically stated in his examination-in-chief that Narender @ Chhotu had given a sword blow on his head. Therefore, injury No.2 on his person is found to have been caused by Narender @ Chhotu with sword. The medical evidence corroborates the ocular evidence on material points. The investigation in this case has been conducted in a fair and impartial manner though not in a very scientific way. The motive for accused Somnath @ Somi, Rinku and Narender @ Chhotu to attack Sachin and his brother Shankar was there since as suggested by prosecution and proved on record by it, Sachin had relations with Monika, daughter of Rakesh, residing in their neighbourhood and a dispute had arisen between the parties about a year prior to the incident i.e. Shankar and his brother Sachin on one side, Sonu son of Satish, Chhotu son of Siri Ram, Sanjay son of Ishwar, Rinku son of Rakesh, Sonu son of Pappu on the other side and out of

fear, the complainant side had migrated to some other place and it was only in connection with betrothal ceremony of Sachin that they had come to Rohtak for a few days when this incident took place.

However, we find that involvement of Sonu and Sanjay in the present incident is not established. Convincingly, no injury has been attributed to them and no weapon was recovered from them during investigation of the case. The accused had led evidence in defence by way of examining DW1 Amit, a vegetable seller, DW2 Shyam Lal, a resident of Old Sabji Mandi, Rohtak, DW3 Pawan Kumar, a resident of that very locality, DW4 Sudhir, another vegetable seller at Old Sabji Mandi, Rohtak to show that they were present in the area of Old Sabji Mandi at the time of incident. As such they (Sonu and Sanjay) could not possibly have taken part in the incident. PW1 Kavita and PW2 Sachin might have taken their names on the basis of suspicion but their involvement in the incident is not proved convincingly. As such conviction and sentence of appellants – accused – convicts Sonu and Sanjay for all the offences is liable to be set aside by way of acceptance of CRA-D-921-DB of 2013. They are ordered to be acquitted of the charge framed against them. They are on bail. Bonds and sureties furnished by them are discharged.

Whereas conviction and sentence of remaining appellants – accused – convicts Somnath @ Somi, Rinku and Narender @ Chhotu for offence under Section 148 IPC is set aside. Their conviction under Sections 302, 307, 452, 506 read with Section 149 IPC is converted to one under Sections 302/34, 307/34, 452/34 and 506/34 IPC whereas

sentence awarded for the original offences is maintained. Similarly sentences of Rinku and Somnath @ Somi under Section 25 of the Arms Act is also ordered to be kept intact. CRA-D-110-DB of 2013, CRA-D-1269-DB of 2013 and CRA-D-579-DB of 2014 in that way are allowed partly.

2.5.2017
Brij

(T.P.S. MANN)
JUDGE

(H.S.MADAAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No