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*Criminal Appeal-D No.580-DB of 2014 &
Criminal Appeal-D No.528-DB of 2014*

In the High Court of Punjab and Haryana at Chandigarh.

(I)

Criminal Appeal-D No. 580-DB of 2014
Date of Decision:- November 10, 2017

Pawan Rathi and others

.....Appellants

Versus

State of Haryana

.....Respondent

(II)

Criminal Appeal-D No. 528-DB of 2014

Manish Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present : Mr. R.S.Mamli, Advocate,
for appellants Nos.1,2 and 4 in CRA-D No.580-DB of 2014.

Mr. S.S. Dinarpur, Advocate,
for appellant No.3 in CRA-D No.580-DB of 2014.

Mr. D.S.Brar, Advocate,
for the appellant in CRA-D No.528-DB of 2014.

Mr. Ankur Mittal, Additional Advocate General, Haryana and
Mr. Manoj Dhankhar, Assistant Advocate General, Haryana.

Gurvinder Singh Gill, J.

1. This judgment shall dispose of the above mentioned two appeals filed on behalf of accused Pawan Rathi, Ravinder @ Ninna, Gaurav Rana @ Kala,

Dinesh @ Dhannu and Manish Kumar challenging judgment dated 3.2.2014 passed by Additional Sessions Judge, Yamunanagar whereby the accused/appellants have been convicted for offences punishable under Sections 148, 302, 307, 465, 468, 471 read with Section 149 IPC and for offence under Section 506 IPC. Vide order dated 10.2.2014, the accused have been sentenced for various offences as follows :-

Name of convicts	Convicted u/s	Sentence Imposed	In default of payment of fine
	<u>All the 5 appellants convicted as under:-</u>	<u>All the 5 appellants sentenced as under:-</u>	
Pawan Rathi	(i) 148/149 IPC	R.I. for 3 years and fine of ₹ 3,000/-.	Further R.I. for 1 month.
Ravinder @ Ninna,	(ii) 302/149 IPC	R.I. for life and fine of ₹ 10,000/-.	Further R.I. for 6 months. [It has further been ordered that the accused shall not be released till their last breath i.e. natural death]
Gaurav Rana @ Kala	(iii) 307/149 IPC	R.I. for 10 years and fine of ₹10,000/-	Further R.I. for 6 months.
Dinesh @ Dhannu	(iv) 465/149 IPC	R.I. for 2 years and fine of ₹5,000/-	Further R.I. for 3 months.
Manish	(v) 468/149 IPC	R.I. for 5 years and fine of ₹5,000/-	Further R.I. for 3 months.
	(vi) 471/149 IPC	R.I. for 5 years and fine of ₹ 5,000/-	Further R.I. for 3 months.
	(vii) 506 IPC	R.I. for 3 years and fine of ₹ 3,000/-	Further R.I. for 1 month.

2. The case arises out of FIR No.9 under Sections 148, 149, 341, 307, 302, 506, 120-B IPC and under Sections 25, 54 and 59 of Arms Act registered at Police Station Chaccharauli, District Yamunanagar on 19.1.2010 on the basis of

statement (Ex.PW-4/A) of Ranbir Singh, resident of Village Herewa, Police Station, Chaccharauli, District Yamunanagar. The translated gist of the said statement reads as follows :-

“I am resident of above mentioned address and am an agriculturist. We are three brothers. I am the youngest. While Dharambir is the eldest, Karambir is younger to him. Today i.e. on 19.1.2010, at about 10 A.M, I and Sanjay started from our village to go to Hariyali, Chaccharauli for some personal work on a motor cycle. My brother Karambir and Arun were riding another motor cycle. A white coloured Swift car bearing Registration No.HR-06-P-0377 came from the direction of Chaccharauli. Kala @ Gaurav, Manish Kumar, Ravinder Kumar, Pawan and Dinesh came out of the car and stopped the motor cycle of my brother Karambir. Kala was carrying a '*Patla Dant*' in his hand while others were carrying country-made pistols. Kala said that they would today finish Karambir @ Kamma and Arun and teach them a lesson for having enmity with him and Sonu Dagar. Kala gave a blow with *Patla Dant* on face, mouth and hands of my brother. The remaining persons i.e. Manish, Ravinder Kumar, Pawan and Dinesh Kumar fired from their country-made pistols and *Kattas* on Kamma and Arun. My brother Karambir and Arun, upon receiving bullets, fell towards the Hariyali side. Thereafter Kala and the other assailants ran away in their car towards Jagadhri. Upon hearing gun-shots, several persons gathered there. I and Sanjay, after arranging for a vehicle, took my brother Karambir and Arun to Civil Hospital,

Jagadhri where Karambir was declared dead while Arun was referred to PGI. Kala and Sonu Dagar are friends and they have enmity with my brother Karambir and Arun. Yesterday i.e. on 18.1.2010 I and Sanjay had gone to Bilaspur in connection with some work. On Bilaspur-Chhachhrauli turn, Kala, Manish Kumar, Ravinder Kumar, Pawan and Dinesh were there in their Swift Car bearing registration number HR06-P-0377 and were standing and conversing with each other and referring to each other by their names and addresses due to which I and Sanjay knew the said persons. Kala and the aforesaid persons have given bullet and *Patla* injuries to my brother Karambir and Arun with an intention to kill them in conspiracy with Sonu Dagar. My brother has expired due to receipt of injuries while Arun have been referred to PGI. I have made my statement. Action be taken.”

3. Pursuant to the aforesaid statement, FIR was lodged. The police conducted inquest proceedings and got post-mortem examination conducted on dead body of Karambir. The police visited the spot and prepared rough site plan. Blood stained earth and empty cartridges were lifted from the place of occurrence. The police also collected MLR in respect of the medical examination of Arun. Accused Pawan, Ravinder, Gaurav, Dinesh and Manish were arrested on 19.1.2010. All the aforesaid five accused were found in possession of country-made pistols along with live cartridges which were taken into possession by the police. It is further the case of prosecution that on 21.1.2010, pursuant to disclosure statement (Ex.PW-15/G) Manish led the police party to the disclosed place and got a '*gupti*' recovered. As per the

sketch (Ex.PW-15/H), the said '*gupti*' is in the shape of a long dagger having a wooden handle measuring 11 cm and a pin type long blade measuring 34 cms. It is further the case of prosecution that on 21.1.2010 Gaurav Rana also made a disclosure statement Ex.PW-16/D and pursuant to the same led the police party to the disclosed place and got a '*patla daat*' recovered. A perusal of sketch(Ex.PW-16/C) of recovered "*patla daat*" shows that the same is in the nature of a knife with handle measuring 12.5 cms and its blade measuring 27.5 cms. The blade apparently is sharp edged from one side. During investigation, the police found involvement of five more accused namely Parvez Kumar, Harpreet Singh, Pardeep Kumar, Sonu Kumar and Dharambir.

4. After conclusion of investigation, challan was initially presented against eight accused in the Court of JMIC, Yamunanagar who committed the case to the Court of Sessions on 28.4.2010. The matter was assigned to the Court of Additional Sessions Judge who vide order dated 17.8.2010 framed charges against the accused for offences under Sections 148, 149, 341, 302, 307, 506, 465, 471, 468, 216 120-B IPC. Subsequently, a supplementary challan was filed against Sonu Dagar on 27.1.2011 which was also committed to the Court of Sessions. Consequently, an amended chargesheet was framed against the accused on 18.3.2011. Dharambir was declared a proclaimed offender.
5. The prosecution in order to establish charges framed against the accused examined as many as 24 witnesses. PW-1 Dr. Naveen Garg, Medical Officer, PHC, Chhachrauli, District Yamunanagar proved the post-mortem report in respect of deceased Karambir as Ex.PW1/F. PW-7 Dr. Gopi Kishan, Junior Resident, PGI, Chandigarh proved the discharge card in respect of injured Arun Sharma as Ex.PW7/A.

6. PW-4 Ranbir Singh, Complainant stated in tune with his statement Ex.PW4/A on the basis of which FIR was lodged. PW-9 Arun, who is an injured witness stated in corroboration to the statement of complainant Ranbir Singh. PW-8 Dharambir stated that on 19.1.2010, his brother Kamma had been murdered by Sonu Dagar and his accomplices Pardeep, Dharambir, Soni and Ravinder. PW-11 Charan Singh stated that he had identified the dead body of Karambir in the mortuary at Civil Hospital, Jagadhri.
7. PW-2 Gurnam Singh, Kanungo proved the scaled site plan Ex.PW-2/B of the place of occurrence. PW-3 Suresh Kumar, Photographer proved the photographs Ex.P-48 to Ex.P-50 of the car, taken by him at the instance of the police. PW-5 Yash Pal, Registration Clerk, Registration Authority Panipat stated on the basis of record that car bearing Registration No.HR06-P-0377 is registered in the name of Ravinder Kumar. PW-6 Rajiv Kumar stated that he is registered owner of Swift Car bearing Registration No.DL-9CW-1156 and his car had been taken away by miscreants on 30.12.2009. PW-21 Shri Rupesh Kumar, Ahlmad proved a copy of order dated 20.9.2010 passed by the learned JMIC, Yamunanagar. PW-24 Ishwar Singh, Ahlmad to the Court of District Magistrate, Yamunanagar produced the sanction orders vide which the District Magistrate had accorded sanction for prosecuting the accused under the Arms Act 1959.
8. PW-10 ASI Subhash Chand stated that upon receipt of ruqa Ex.PW4/A, he recorded formal FIR Ex.PW10/A. PW-12 ASI Bhim Singh, Armourer, stated that he had examined five country-made pistols given to him by Inspector Kuldeep Singh which he found to be in working condition and he accordingly made a report Ex.PW-12/A. PW-13 SI Suresh Kumar and PW-14 Inspector

Kuldeep Singh stated that on 19.1.2010, upon receipt of information that some accused had committed crime in the area of village Chhachhrauli and are hiding in sugarcane fields, they along with other police officials reached at the spot and cordoned off the fields but the accused started firing upon the police party but ultimately during combing of the area, five accused were apprehended from the fields who disclosed their names as Pawan, Ravinder, Gaurav, Dinesh and Manish. They further stated about the weapons recovered from them.

9. PW-15 ASI Rajinder Kumar and PW-16 ASI Mehar Singh deposed about disclosure statements made by Ravinder, Pawan, Dinesh, Manish and Gaurav. PW-17 Head Constable Rajesh Kumar, PW-18 SI Randhir Singh, PW-19 Inspector Sandeep Kumar, PW-20 Head Constable Satish Kumar and PW-22 SI Renu Yadav are also police officials who had remained associated with investigation of the case at some stage and have deposed about the same.
10. PW-23 Inspector Rajeev, who is the Investigating Officer in the present case stated in detail in respect of the entire investigation conducted in the matter right from recording of statement of complainant Ex.PW4/A on the basis of which FIR was lodged upto filing of challan.
11. 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 while denying the case of prosecution took a stand that they have been falsely implicated.
12. The accused in their defence examined DW-1 Anwar Ahmad Khan, Manager, Arco Palace, Jaipur who deposed that there are 80 rooms in the hotel and

whenever any guest comes there, his identity proof is taken. He proved record pertaining to occupancy in the hotel on 14.1.2010 generated from computer. He stated that Parvez Kumar who had stayed in the hotel checked in on 14.1.2010 at 7:25 AM and checked out on 15.1.2010 at 8:33 AM. DW-2 Vikram Singh Negi, Manager, Hotel Lavania Villas, Gwalior Road, Baluganj, Agra, produced the occupancy register maintained in the hotel pertaining to 16.1.2010. He deposed that Parvez Kumar along with his wife, who had come from Jaipur, stayed in their hotel and had arrived at 5:30 AM on 16.1.2010 and departed in the evening at 9 PM.

13. The learned trial Court upon appraisal of evidence, while acquitting Pravez, Harpreet Singh, Pardeep Kumar and Sonu Dagar, found the accused Pawan Rathi, Ravinder, Gaurav Rana @ Kalu, Dinesh and Manish Kumar guilty for committing offences under Section 148, 302, 307, 465, 468, 471, 506 read with Section 149 IPC and convicted them accordingly vide impugned judgment dated 3.2.2014. The sentence was imposed upon the said convicts vide order dated 10.2.2014. Aggrieved with the same, the present appeal has been filed.
14. The learned counsel for the appellants while assailing the case of prosecution have submitted that there is a delay of more than 5 hours in lodging the FIR which shows that the FIR had been lodged after consultations and the accused have been implicated falsely. It has been submitted that in fact the deceased himself was a gangster against whom several cases were pending and he had enmity with various persons and that it was infact a case of blind murder and the present appellants have been implicated falsely. The learned counsel further submitted that specific attribution of injuries to each of the accused is

not established and in the absence of the same no liability could be fastened on any of the accused.

15. The learned counsel for the accused Manish submitted that though as per FIR, Manish is stated to be armed with a pistol but as per the case of prosecution he made disclosure statement regarding use of a *dagger* which he allegedly got recovered. The learned counsel further submitted that in any case even as per the report of FSL, empty cartridges lifted from the place of occurrence were not found to have been fired from the pistol allegedly recovered from Manish and that in these circumstances presence of Manish in the present case is rendered highly doubtful. It has also been submitted that the very fact that the dead body was identified by none of the brothers of the deceased but by one Charan Singh itself shows that the complainant was never present at the spot when the occurrence took place. The learned counsel have thus submitted that the impugned judgment cannot sustain and have prayed for acquittal of the accused by settling aside the impugned judgment.
16. On the other hand learned counsel for the State submitted that apart from the testimony of the complainant, the case of prosecution is supported by testimony of a stamped witness who had sustained injuries in the occurrence and whose testimony could not be shattered on any count. The learned counsel further submitted that five appellants were arrested shortly after the occurrence by the police party and the said accused in order to evade their arrest had fired at the police party regarding which a separate FIR was lodged in which they had been held guilty by the trial Court for committing offence under Section 307 of IPC and under Section 25 of Arms Act, 1959. The appeal filed by them was partly allowed to the extent that their conviction

under Section 307 IPC was converted to offence under Section 336 of IPC. However, their conviction for offence under Section 25 of the Arms Act, 1959 was maintained vide judgment dated 9.3.2016 passed in Criminal Appeals bearing No.CRA-S-683-SB of 2012 and CRA-S-648-SB of 2012. He has further submitted that the weapons recovered from them and the empties recovered at the spot were found to be matching expect in the case of firearm recovered from Ranbir. The learned State counsel further submitted that in a case of large number of injuries caused by a large number of accused, specific attribution in respect of each of the injury is not possible as it is difficult for a witnesses to keep track of all the injuries especially if caused in quick succession. The learned State counsel has thus submitted that the entire evidence led by the prosecution is absolutely convincing and there is no room to doubt involvement of the appellants and has thus prayed for dismissal of the appeals.

17. We have considered the rival submissions addressed before this Court and with assistance of learned counsel have also perused record of the case.
18. Before discussing the submissions raised above, it is apposite to refer to the medical evidence led by the prosecution. The prosecution has examined PW-1 Dr. Naveen Garg, Medical Officer, PHC, Chhachrauli, District Yamunanagar who stated that on 19.1.2010 he along with Dr. Prithvi Singh had conducted post-mortem examination on the dead body of Karambir and found the following injuries on the dead body :-
 1. Incised wound including both angles of mouth, right side 4.5x2 cm cavity deep, left side 4x2 cm cavity deep.
 2. Incised wound 5x2 cm bony tissue deep at right at frontal region 2 cm above eye brow horizontal.

3. Incised wound horizontal 5x2 cm bony tissue deep at left at frontal region 1 cm below hair line.
4. Incised wound horizontal 3x1.5 cm upper 1/3 posterior aspect on left forearm below elbow.
5. Incised wound vertical 3x1 cm upper 1/3 posterior aspect on left forearm below elbow, above injury no.4
6. Abrasion on right side abdomen upper and lateral to umbilical oblique 4x0.5 cm pinkish colored.
7. Incised wound 2X0.5 cm muscle deep medial border of right palmer aspect, hand.
8. Fracture right thigh upper 1/3.
9. Incised wound ulnar aspect left hand near wrist 12x3 cm deep cutting tendons, muscles and bones 5th metacarpals.
10. Lacerated wound oval shaped inverted margins with blacking tissue 1x1 cm on lower part of sternum.
11. Lacerated wound oval shaped inverted margins with blacking of tissue 1x1 cm present on left midaxillary line 11cm below the arm pit.
12. 1.5x1.5 cm oval shaped innverted margins on left posterior part of upper right thigh 6cm below and posterior to the trochanter.
13. 1x1cm round inverted margins with blacking of tissue on lateral part of right eye brow.
14. 3x2.5cm, everted margins, lacerated wound on left parietal bone anteriorly 2cm lateral to midline.
15. Hematoma in scalp 3x3 cm corresponding to injury no.14. No fracture seen.
16. Hematoma 3x3cm on eye ball left, corresponding to injury no.13. No fracture seen.
17. Rt. Posterior rib fracture-6th and 7th.
18. Hematoma 1.5x1.5 cm corresponding to injury no.10. No fracture seen.
19. Hematoma 1x1 cm on inner surface of sternum below above injury, blood present.
20. Lacertaed wound 2x2 cm on posterior aspect right lung.

21. 2x2cm lt. lung anteriorly.
22. 2x2 cm lacerated wound. lt. lung latterly.
23. 1x1 cm lacerated wound lt. ventricle heart on superficial surface.
24. All other viscera were found as normal.

Track of bullet injury :

1. Entry wound observed at injury no.11, piercing lt. lung, heart and rt. Lung, injuring rt. Posterior ribs and placed at subcutaneous plane corresponding to it. Recoiling at sternum injury no.9.
2. Entry wound as injury no.12, track is anterior and medial reaching up to upper part of Rt. Femur and lodged in bone marrow near # site.”

19. The aforesaid description of injuries shows that a large number of injuries including firearm injuries had been caused to the deceased. One of the firearm injuries pierced the lung and as per opinion of the doctor, the death has been caused due to hemorrhage and shock due to injury to vital organ lung. Despite cross-examination of the witness, nothing could be elicited so as to doubt the opinion of the doctor.

20. The prosecution also examined PW-7 Dr. Gopi Kishan, Junior Resident, PGI who stated regarding admission of Arun Sharma in PGI on 19.1.2010 and discharge on 21.1.2010. The relevant extract from the statement of PW-7 reads as follows :

“The patient had suffered injuries in an alleged assault. He had suffered gut shot injury left gluteal region. Patient was attended by the emergency doctor. He was stable at that time. His CT record showed a bullet track across left sacro iliac joint upper

part with pellets lodged in relation to left transverse process of L5 vertebra with associated soft tissue inflammatory changes and air loculi.”

21. During cross-examination, the doctor was put questions as regards specific name of the firearm used in causing the injury which he could not tell. The doctor could not even specify the distance from which the shot had been fired and could not even tell the size of the pellets. However, the aforesaid omission on the part of the doctor cannot be read to mean that the injury had not been caused at all. In any case, it may not be possible for a doctor to specify the exact make and name of the firearm used for causing the injury as he is not a firearms expert though some experienced doctor would be able to state generally about the approximate distance from which the shot had been fired. The accused in any case cannot derive much advantage from the aforesaid omission on account of aforesaid lack of opinion as regards the said aspects. In any case, from perusal of testimonies of both the above referred doctors i.e. PW-1 Dr. Naveen Garg and PW-7 Dr. Gopi Kishan, it is evident that the deceased Karambir and injured Arun Sharma had been caused injuries including firearm injuries which is in tune with the case of the prosecution.
22. The learned counsel for the accused have submitted that since no test identification parade was conducted, therefore, in the absence of proper identification, it cannot be said that it is the present appellants, who had fired at the deceased and caused injuries. We find that the five appellants who have been convicted are the ones who have been specifically named in the FIR. Further, it is a case where the accused had been arrested shortly after the occurrence and that too under circumstances which leaves no room to doubt

their complicity. Shortly after the occurrence, when information regarding firing was received by the police, the police cordoned off the area where the accused were suspected to be hiding. When the accused were surrounded in the fields, the accused started firing at the police party. Upon combing the area, the police was able to nab the five accused namely Pawan, Ravinder, Gaurav, Dinesh and Manish and from whose possession weapons were also recovered. It will not be out of place to mention a separate FIR No.7 dated 19.1.2010 under Section 307 IPC and Section 25, 54 and 59 of the Arms Act, was registered at Police Station Sadar Jagadhri in respect of said incident of firing on police and the accused were convicted for offence under Section 307 IPC and under Section 25 of the Arms Act, 1959. The appeal filed by them was partly allowed to the extent that their conviction under Section 307 IPC was converted to offence under Section 336 of IPC. However, their conviction for offence under Section 25 of the Arms Act, 1959 was maintained by this Court vide judgment dated 9.3.2016 passed in Criminal Appeals bearing No.CRA-S-683-SB of 2012 and CRA-S-648-SB of 2012.

23. The five accused named in FIR, having been nabbed from a nearby area in a firing encounter, shortly after the present occurrence had taken place, regarding which FIR No.7 dated 19.1.2010 was lodged at Police Station Chhachhrauli Yamunanagar, there is hardly any scope to nurse any doubt regarding identification and presence of the appellants.
24. As regards the contention regarding delay in lodging FIR, we do not find that there is any such delay in lodging the FIR so as to render the prosecution case doubtful. In the present case, while the occurrence is stated to have taken place at about 10 AM on 19.1.2010, the recording of statement of complainant had

concluded by 3:10 PM i.e. in about 5 hours of the occurrence. Immediately after the occurrence the victim Karambir and Arun Sharma were rushed to Civil Hospital, Jagadhri where Karambir was declared dead and Arun Sharma was referred to PGI. It was on the basis of statement of real brother of the deceased that FIR was lodged. Needless to mention that the brother of the deceased would be in a state of shock upon loss of his brother and it could have taken some time for him to recover and make a statement to the police. Hon'ble the Supreme Court in Om Prakash v. State of Haryana, (2014) 5 SCC 753, while considering the effect of delay in reporting a crime to the police held as follows:

“ The learned counsel for the appellants would emphasise on the concept that effort has to be made to lodge the report at the earliest, but the “earliest”, according to us, cannot be put in the compartment of absolute precision. Apart from what we have stated, the impact of the crime on the relations who are eyewitnesses, the shock and panic which would rule supreme at the relevant time and other ancillary aspects are also to be kept in mind. That apart, as we notice, the FIR is not the result of any embellishment which has the roots in any kind of afterthought. Considering the totality of facts and circumstances the submission of the learned counsel for the appellants pertaining to delay in lodging of the FIR being totally unacceptable is hereby rejected.”

25. The other injured Arun Sharma by that time had been referred to PGI and his statement could only be recorded in case the police immediately went to PGI. In any case, delay, if any, in lodging the FIR *ipso-facto* would not render the case of prosecution doubtful. It is only if there are other circumstances which cast a doubt on the case of prosecution that delay in lodging FIR assumes importance.

26. As regards the contention of learned counsel for the accused that the dead

body of Karambir had been identified by one Charanjit Singh and not by the complainant or any of his close relative, 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 only from the complainant or the parents or the relatives of the deceased. In view of the aforesaid discussion we do not find any merit in the aforesaid contention and the same is hereby rejected.

28. The learned counsel for the appellants has submitted that in fact the deceased himself was a gangster who was wanted in a large number of cases and due to his enmities he must have been killed by one of his several enemies and that the accused have been falsely implicated. Though none of the accused have raised any such plea in the statements recorded under Section 313 Cr.PC but

some suggestions to this effect have been given to the complainant and other witnesses regarding involvement of the deceased in other cases. In any case, even if it is taken to the correct that there were some cases pending against the deceased still the said fact *ipso facto* would not cause any dent in the case of prosecution in view of the fact that it is a case of direct evidence against the accused where apart from the complainant, there is a stamped witness also who has deposed against the accused. As such the aforesaid submission does not carry any weight and is rejected.

29. The learned counsel for the accused Manish has submitted that though as per the case of prosecution one country-made pistol of .315 bore had been recovered from Manish, but as per the report of FSL (Ex.PA), no opinion could be formed regarding linkage of country-made mis-fired cartridge recovered from the spot with the pistol allegedly recovered from Manish.
30. We have considered the aforesaid submission. The present case is such were several shots had been fired from different weapons. It is not always possible to recover each and every empty cartridge fired at the spot. While recovery of an empty cartridge and its matching with the recovered weapon is certainly a positive and corroborative piece of evidence, absence of recovery of cartridge which matches with the gun would not absolutely rule out use of the same because some of the empty cartridges may have been misplaced and may not have been recovered. In any case in case where a common intention or common object is there for commission of crime, individual attribution is not even required. As such, the contention raised above does not carry much weight and is rejected.

31. It has next been submitted on behalf of the accused Manish that since in the

Discharge Certificate(Ex.PW-7/A) in respect of Arun Sharma, while recording brief history of patient, it has been mentioned that the injured had been caused a gut-shot injury by unknown person, therefore, the case of prosecution regarding identification of the accused is virtually demolished.

32. We have considered the aforesaid submission. The history regarding the patients i.e. the manner in which the injury had been inflicted would normally be recorded as given by the patient or his attendant. It is nowhere recorded that the history had been recorded at the instance of the patient. PW-7 Dr. Gopi Kishan during his cross examination has stated that the patient was brought by Atul Sharma. There is every possibility that the doctor would have asked the attendant Atul Sharma about the history to be recorded who, in any case, was not present at the spot and would not be knowing the name of the person who had caused the injury. The aforesaid omission of name of accused in Discharge Certificate can only assume importance if there is inconsistency in testimonies of eye-witnesses. The aforesaid contention, thus, does not carry any weight and is thus rejected.
33. A perusal of the statement of the complainant PW-4 Ranbir Singh shows that he has stated in tune with his statement Ex.PW4/A on the basis of which FIR was lodged. He has specifically stated that on 19.1.2010 at about 10 AM, he along with his friend Sanjay had started from Village Harewa on a motorcycle while his brother Karambir and Arun Sharma were also coming on another motorcycle for going to Hariyali. He further stated that Karambir and Arun were going ahead of them and they were stopped by a Swift car bearing registration No.HR-06-P-0377 and that Gaurav @ Kalu, Manish Kumar, Ravinder Kumar, Pawan and Dinesh came out of the car. While Kala was

armed with a *patla*, the remaining accused were having country-made pistols and that Kala raised a *lalkara*(exhorted) to eliminate Karambir and Arun and to teach them a lesson for having enmity with them. Kala gave blows with *Patla* on the face, mouth and hands of his brother Karambir. The remaining accused fired shots at Karambir and Arun who fell down and thereafter the accused fled away with their weapons in their car. PW-9 Arun has also given an identical account of the occurrence. Both the witnesses were cross-examined at length but the witnesses remained firm on their statements on all the material aspects of the case. PW-9 Arun is himself an injured witness having sustained firearm injuries as has been specifically stated by PW-7 Dr. Gopi Kishan. In this context, reference may be made to a judgment of Hon'ble the Supreme Court in Balwan and others vs. State of Haryana (2014)13 SCC 560, wherein it has been held as follows:-

“It is trite law that the evidence of injured witness, being a stamped witness, is accorded a special status in law. This is as a consequence of the fact that injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness would not want to let the actual assailant go unpunished.”

34. In view of the aforesaid discussion, this Court has no hesitation in accepting the statements of PW-4 Ranbir Singh and PW-9 Arun who have consistently stated regarding the manner of occurrence, from which it is clearly established that the accused had waylaid Karambir and Arun and had caused injuries to them with *patla* and pistols resulting in death of Karambir and injuries including firearm injury on the person of Arun Sharma.

35. The case of the prosecution is also corroborated from the fact that shortly after

the occurrence, the police came to know about the presence of the accused in the fields and the area was cordoned off. The accused fired at the police party but ultimately upon combing the area, they were nabbed and from their possession, pistols were recovered which were taken into possession by the police. The *patla* used by Gaurav Rana @ Kala was also recovered subsequent to disclosure statement Ex.Ex.PW16/D made by him which as per report of FSL was found to be stained with blood. A *gupti* (long dagger) was also recovered at the instance of the accused Manish which was also found to be stained with blood. A definite opinion as per report of FSL regarding some of the cartridges recovered from the spot having been fired from recovered weapons also supports the case of prosecution. The aforesaid evidence lends ample corroboration to the testimony of eye-witnesses and leave no manner of doubt that it is the accused who had fired at the deceased Karambir and Arun Sharma causing them injuries resulting in death of Karambir.

36. Though specific attribution of injuries is not there, but this Court can not lose sight of the fact that it is a case where a large number of injuries were caused indiscriminately by the accused by use of weapons including pistols. As many as 24 injuries were found on the person of deceased and apart from injuries on the person of Arun Sharma. When a large number of persons fire from their pistols at the victim in quick succession, it is certainly not possible to state as to which of the injuries sustained by the victim had been caused by which of the pistol as it is not possible to track the pistols and the pellets with human eye. Hon'ble the Supreme Court in Abdul Sayeed v. State of M.P., (2010) 10 SCC 259, while considering the effect of omission of specific attribution of injuries to accused held as follows:

“ In the instant case, a very large number of assailants attacked Chand Khan and Shabir (the deceased), caused injuries with deadly weapons to them. The incident stood concluded within few minutes. Thus, it is natural that the exact version of the incident revealing every minute detail i.e. meticulous exactitude of individual acts cannot be given by the eyewitnesses.”

37. In any case the accused were numbering five and were armed with deadly weapons, apparently with a common object to kill the deceased and to cause injuries to others. As such each of the accused in any case would be liable for the act of each other being a member of unlawful assembly. A reference in this context would be made to Om Prakash v. State of Haryana, (2014) 5 SCC 753, wherein it was held as follows:

“In the case at hand, as the evidence would clearly show, all the accused persons had come together armed with lathis. Het Ram, who died during the pendency of the appeal, was armed with a gun. The eyewitnesses who are natural witnesses, being brothers, have deposed in an unequivocal manner about the assault by all the accused persons. The common object is clearly evident. In such a situation, attribution of specific individual overt act has no role to play. All the requisite tests to attract Section 149 IPC have been established by the prosecution.”

38. From the evidence led by the prosecution, it transpires that the car in which the accused had come i.e. car bearing Registration No.HR06-P-0377 was in fact a stolen car with a fake registration number. PW-5 Yash Pal, Registration Clerk produced the record pertaining to registration of vehicle bearing registration No.HR06-P-0377 and as per report Ex.PW-5/B, the vehicle in question was

registered in the name of one Ravinder Kumar and is described as “Discover” which is a motorcycle. The said position is also evident from the recovery memo Ex.PW-10/C and from the statement of PW-6 Rajiv Kumar who stated that his vehicle bearing Registration No.DL9-NCW-1156 had been taken away by miscreants on 30.12.2009 and was subsequently recovered by the police which he identified in the police station and took the same on superdari. Nothing to the contrary could be pointed out by the learned counsel for the accused. As such, the offences under Sections 465, 468 and 471 are also duly made out, as the accused had forged the registration number of the car and had used the same for the purpose of committing crime.

39. The learned counsel for the accused also made an alternative prayer for reduction of sentence by clarifying that the life imprisonment should not be qualified to mean imprisonment till the last breath i.e. till natural death.
40. We have considered the aforesaid submission. Life imprisonment by its literal meaning means imprisonment for remainder of the life. The following question was referred for adjudication to a five Judges' Bench of Hon'ble the Supreme Court in Union of India v. V. Sriharan, (2016) 7 SCC 1 :

“ Whether imprisonment for life means for the rest of one's life with any right to claim remission?”

41. Hon'ble the Supreme Court while answering the aforesaid question held as follows:

“61. Having noted the abovereferred to two Constitution Bench decisions in *Godse* and *Maru Ram* which were consistently

followed in the subsequent decisions in *Sambha Ji Krishan Ji, Ratan Singh, Ranjit Singh, Ashok Kumar and Subash Chander*.

The first part of the first question can be conveniently answered to the effect that imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for rest of the life of the prisoner subject, however, to the right to claim remission, etc. as provided under Articles 72 and 161 of the Constitution to be exercisable by the President and the Governor of the State and also as provided under Section 432 of the Criminal Procedure Code.”

42. In cases, where heinous crimes are committed in an organized manner by gangsters, the matter of sentencing has to be dealt with an iron hand. The punishment should serve as a deterrent. Misplaced sympathy and leniency have no room in such like cases. A sentence commensurate with the gravity of offence is necessary to maintain peace in society. Hon'ble the Supreme Court in a recent judgment rendered in *Birbal Choudhary vs. State of Bihar, 2017 SCC Online SC 1240*, reiterated what had been held earlier in *Swamy Shraddananda (2) @ Murali Manohar Mishra v. State of Karnataka, (2008) 13 SCC 767*, that imprisonment for life would mean full life and not sentence of 14 years which may be grossly disproportionate or inadequate and cannot be called as sentence of life.
43. In any case, the present case where the deceased had been brutally murdered in a well planned manner by causing a large number of injuries with fire-arms, would not warrant taking any lenient view in the matter.
44. No other point has been urged before this Court.

45. In view of the discussion made above, we do not find any infirmity in the findings of conviction as recorded by the learned Trial Court and the same are hereby affirmed. There is no scope even for alteration in the sentence.
46. There is no merit in either of the two appeals and the same are hereby dismissed.

(Rajesh Bindal)
Judge

(Gurvinder Singh Gill)
Judge

November 10, 2017
kamal

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No