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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. L.P. 267/2016

% *Date of Judgment: 19th September, 2017*

RAJESH

..... Petitioner

Through: Mr. Rajiv Mohan, Mr. Tejasva Mehra
and Mr. Lakshya Gupta, Advocates

versus

STATE & ORS

..... Respondents

Through: Mr. Rajat Katyal, APP for the State
along with SI Sandeep P.S. Sarita
Vihar.
Ms. Inderjeet Sidhu, Amicus Curiae
for respondents no.2 and 3.

+ CRL.L.P. 297/2016 & CrI.M.As.8690-8691/2016

STATE (GOVT. OF NCT OF DELHI)

..... Petitioner

Through: Mr. Rajat Katyal, APP for the State
along with SI Sandeep P.S. Sarita
Vihar.

versus

RAVI & ANR.

..... Respondents

Through: Ms. Inderjeet Sidhu, Amicus Curiae
for respondents no.1 and 2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE CHANDER SHEKHAR

G.S.SISTANI, J. (ORAL)

Crl.M.A. 8084/2016(delay) in Crl.L.P. 267/2016

1. By this application, the petitioner seeks condonation of 35 days delay in filing the leave to appeal.
2. For the reasons stated in the application, the delay in filing the leave to appeal is condoned.
3. The application stands disposed of.

Crl.M.A.8690/2016(Exemption) in Crl.L.P.297/2016

4. Exemption allowed, subject to all just exceptions.
5. The application stands disposed of.

Crl.M.A. 8691/2016(delay) in Crl.L.P. 297/2016

6. By this application, the petitioner seeks condonation of 09 days delay in filing the leave to appeal.
7. For the reasons stated in the application, the delay in filing the leave to appeal is condoned.
8. The application stands disposed of.

CRL. L.P. 267/2016

CRL. L.P. 297/2016

9. Crl. L.P. No. 267/2016 has been filed by the complainant (son of the deceased) under Section 372 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.'), while Crl. L.P. No. 297/2016 has been filed by the State under Section 378 of Cr.P.C.
10. Challenge in both the leave to appeals is to the judgment dated 03.02.2016 passed by the learned Trial Court in Sessions Case No. 47/14 arising out of the FIR No. 351/2010, registered at Police Station Sarita Vihar, by which respondent No.1 Ravi and respondent No. 2 Kamlesh in Crl. L.P. No. 297/2016 who are also respondent No. 2 and

3 in Crl. L.P. No. 267/2016 have been acquitted for the offences punishable under Section 302/120-B of the Indian Penal Code (hereinafter referred to as 'IPC'). The respondent Ravi has also been acquitted for the offence punishable under Section 25/27 of the Arms Act.

11. The case of the prosecution, as set up and noticed by the learned Trial Court reads as under:

“1. As per case of prosecution, on 24.12.10 at about 9:40 PM, HC Brij Raj Singh, duty officer (PW31) received information from control room, which was regarding shouting of a person in the Aali Gaon, jungle Area of U.P. Government Irrigation Department, behind Metro Workshop. The said information was recorded vide DD No.38A. The said DD was handed over to SI Satish Chander Singh for necessary action, who left for the spot with HC Kartar. SI Parvesh Kasana, SI Virender Pakhre, HC Samay Singh, Ct. Kamal and Ct. Satish were also asked to go to the spot.

2. PW31 HC Brij Raj Singh informed about the aforesaid information i.e. DD No.38A to Inspector K.L. Yadav (PW28), the then SHO of Police Station Sarita Vihar. On receipt of the said information, PW28 Inspector K.L. Yadav reached at the spot, where he was informed that one Bhim Singh Nagar was shot and his son and servant had taken him to Apollo Hospital. He found at the spot two shoes, one loi (woolen shawl), one empty cartridge of 315 bore. He also found one magazine of a pistol and a barrel of a country made katta. In the barrel of katta, one cartridge was stuck in. Two more empty cartridges of pistol, two pieces of led of bullet, one screw driver and one motorcycle make Hero Honda Red Colour bearing No.DL9SX4103 was also found lying at the spot. The blood stains were also noticed at the spot. Pubic witness Pradeep Mishra met at the spot whose statement Ex. PW5/A was recorded by SI Virender Pakhre (PW25). SI Virender Pakhre alongwith Ct. Satish went to Apollo Hospital and collected MLC of Bhim Singh Nagar, who was reported as brought dead. PW25

SI Virender Pakhre made endorsement Ex. PW25/A on the statement of Pradeep Mishra Ex. PW5/A and gave the same to Ct. Satish for registration of FIR. Ct. Satish went to the Police Station, got the FIR registered in the case and thereafter, came back to the spot and handed over the copy of FIR and asal tehrir to Inspector K.L. Yadav, IO as further investigation was handed over to him.

3. Inspector K.L. Yadav (PW28) prepared site plan Ex. PW28/A at the instance of Pradeep Mishra (PW5). He prepared sketches of cartridges and magazine Ex. PW25/D, sketch of barrel Ex. PW25/B and sketch of screw driver Ex. PW25/C. He also seized various incriminating articles/material found at the spot vide seizure memo Ex. PW25/I to Ex. PW25/K respectively. Crime Team was called and spot of occurrence was inspected by them. The photographer took photographs of the scene of crime.

4. Matter was investigated as per law. On conclusion of investigation, the investigating officer filed challan in the court. Accused Rahul @ Pradhan was found to be juvenile, therefore, he was produced before Juvenile Justice Board for trial in accordance with law. Accused Lokesh, Ravinder and Devender @ Tape are proclaimed offenders (P.O.) in the case. On production of accused Ravi and Kamlesh, they were supplied copy of charge sheet and complete set of documents and thus, compliance of section 207 of The Code of Criminal Procedure, 1973 (in short "Cr.P.C.") was made."

12. Charge for the offence punishable under Section 302/120-B of IPC was framed against both the respondents. A separate charge under Section 25/27 of the Arms Act was framed against the respondent Ravi. The respondents pleaded not guilty and claimed to be tried.
13. In order to prove its case, the prosecution examined 43 witnesses in all. The statement of the respondents was recorded under Section 313 of Cr.P.C whereby they denied all the incriminating circumstances

against them and claimed to be falsely implicated in the present case. No witness was examined by the respondents in their defence.

14. Mr. Mohan, learned counsel appearing for the petitioner Rajesh submits that the learned Trial Court has failed to appreciate that the case of the prosecution is based on the statement of an eye witness as well as on circumstantial evidence. Counsel contends that the chain of circumstances was so complete that the only inference indicating the guilt of the respondents would be established. Counsel contends that the evidence of PW5 Pradeep Mishra is truthful and reliable. Based on the statement of PW5, it stands duly established that on 24.12.2010 the deceased died because of gunshot injuries at a place near U.P. Government Irrigation Department, behind Metro Workshop, jungle area of Village Aali. Counsel submits that there is no reason that the complainant PW5 Pradeep Mishra would falsely implicate the respondents and allow the real culprits to go scot free, a factor that has not been considered by the learned Trial Court.
15. Counsel for the petitioner also contends that PW10 Rajesh (son of the deceased) and PW11 Moharram Ali reached at the spot immediately on receipt of information. The deceased was taken to Apollo Hospital by PW10 Rajesh (son of the deceased) and PW11 Moharram Ali. Counsel submits that the deceased had made a dying declaration to his son (PW10 Rajesh) and there is no cogent reason as to why the testimony of PW10 should be disbelieved, especially when the presence of PW10 stands duly established and corroborated by the testimonies of PW11 Moharram Ali and PW20 Hanok Nathaniel. It is further contended that the deceased was taken to the Hospital at 9:45

P.M. which would show that at the time when the dying declaration was made, the deceased was alive and he was in a position to give the names of the assailants to his son.

16. Mr. Mohan submits that the weapon of offence i.e. pistol was recovered at the instance of the respondent Ravi. Counsel further submits that the evidence of PW42 Ballistic Expert V.R. Anand would show that the empty cartridges which were found at the spot matched with the pistol. As per the testimony of PW42, on comparison of the cartridges *“individual characteristics of firing pin and breech face marks present on EC-3 and EC-4 and TC-1 to TC-3 were compared and examined under comparison microscope and were found identical. The cartridges EC-3 and EC-4 had been fired through the improvised pistol 7.65 m.m. bore Mark-F1”* meaning thereby that the empty cartridges found at the spot were fired through the pistol recovered at the instance of the respondent Ravi. Thus, the respondents stand duly connected with the crime.
17. Mr. Mohan also clarifies that human blood was found on the clothes of the respondent Ravi which was of Group-A and had matched with the blood group of the deceased, which would show that the respondent Ravi was involved in the incident. The respondents had failed to give any plausible explanation for the presence of human blood on his clothes.
18. Mr. Katyal, learned counsel for the State has supported the arguments addressed by Mr. Mohan. He submits that the place of crime, the manner in which the deceased sustained gun-shots and the entire sequence of events narrated by PW5 Pradeep Mishra is not disputed.

It is not in dispute that the son of the deceased (PW10) had reached the place of the incident and removed his injured father along with PW11 Moharram Ali on the motorcycle to Apollo Hospital. At the time when PW10 reached the spot, the deceased was alive and was fit to make dying declaration wherein he had named all the assailants. Mr. Katyal contends that the presence of PW10 and PW11 stands corroborated by the fact that the name of PW10 finds mentioned in the MLC of the deceased. PW20 Hanok Nathaniel has also deposed on similar lines as PW11. Thus, the presence of PW10, 11 and 20 thus stands duly established.

19. *Per contra*, Ms. Sidhu, learned counsel for the respondent No.1 and 2 in Crl. L.P. 297/2016 submits that there is no infirmity in the judgment of the learned Trial Court, which requires interference by this Court. The judgment is a well-reasoned judgment and the issues sought to be raised have been carefully analysed and based on the testimonies of the witnesses, the learned Trial Court has acquitted the respondents. She submits that in case PW5 was an eye witness, he would have surely named the assailants for the reason that this witness has testified that he was working with the deceased for past 10-12 years and he was aware of the names of the assailants. She also submits that it is highly unusual that in case the deceased had made a dying declaration to his son, his son would not name the assailants at the time of preparation of the MLC. Additionally, Ms. Sidhu submits that after receiving nine wounds including five gunshot injuries, the deceased would not have survived or that he would have been in a position to make a dying

declaration. She relies on the MLC as per which the deceased was brought dead.

20. As to the findings of the Ballistic Expert, counsel for the respondents contends that the learned Trial Court has considered the arguments sought to be raised by Mr. Mohan in para 47 of the judgment, wherein the learned Trial Court has referred to the opinion of PW42 V.R. Anand. She submits that out of the two weapons which were recovered at the instance of the respondent Ravi, one of the *kattas* was broken and thus, no opinion could have been given that any shot was fired from the said *katta*. As far as the recovered magazine is concerned, Ms. Sidhu contends that the Expert has given the opinion that the bullet magazine could have been fired from any pistol of 7.65 mm.
21. We have heard learned counsels for the parties, considered their rival submissions, perused the impugned judgment rendered by the learned Trial Court and also given our thoughtful consideration to the matter. Learned Trial Court while acquitting the respondents made following observations in para 56 which reads as under:

“56. The prosecution has miserably failed to prove on record that accused Ravi and Kamlesh shared common intention in committing the murder of deceased. It has also failed to establish on record that the accused persons had hatched conspiracy to commit the murder of deceased and in pursuance of said conspiracy murdered the deceased. No material has been produced on record to prove that accused Kamlesh was actively or even remotely involved in conspiring for the murder of deceased Bhim Singh Nagar. Accused Kamlesh did not run away from her residence after commission of offence in the case. She was only treated as suspect by the investigating officer prior to the date of her arrest i.e. till 15.03.11. She was not

called by the investigating officer for the purpose of investigation in the matter. The police reached at the place of her residence i.e. stay on 15.03.11 and arrested on the same date itself.”

22. At the outset, we deem it appropriate to discuss the relevant testimonies including the testimonies of PW5 Pradeep Mishra who was the complainant in the instant case.
23. PW5 Pradeep Mishra testified in his examination-in-chief that the deceased was the uncle of PW5 and he was working as a caretaker of the buffaloes and the agricultural land belonging to the deceased. On 24.12.2010 at about 9:15 PM, he alongwith the deceased were going towards his house, on a motorcycle bearing No. DL-9SX-4103 via Aali Vihar, Peer Baba and PAC Camp. PW5 deposed that when they reached the agricultural field and had covered half the way, he noticed that four persons came on two motorcycles from behind. The first motorcycle hit their motorcycle on the back and the second motorcycle stopped in front of them blocking their way. As a result of the impact of the hit, he lost his balance and they fell alongwith the motorcycle. The deceased Bhim Singh Nagar got up and while getting up, PW5 saw that accused persons Ravinder (facing trial) and Lokesh (declared as ‘PO’) were on a motorcycle which was behind them and had hit their motorcycle. The other motorcycle, which was stopped in front of their motorcycle, was driven by the respondent Ravi and one more boy who could be identified if shown to him. PW5 could not tell the name of the boy, who had shot at him but as per his deposition, the gun did not fire. Thereafter, he ran and saw that the deceased was running behind him, who was chased by accused Lokesh, Ravinder

and the respondent Ravi alongwith the fourth boy. It was further deposed by PW5 that the respondent Ravi was continuously firing at the deceased. The respondent Ravi was correctly identified by PW5 in the Court as the person who had fired at the deceased. It was further deposed by PW5 that he immediately called Rajesh (PW10/son of the deceased) on his mobile phone and informed him about the incident. PW5 also informed Chhotu (PW11/servant of the deceased) about the same. PW5 also told Rajesh the names of the assailants, who were involved in the attack on the deceased. After firing at the deceased, all the four assailants ran towards PAC Camp. In the meantime, Rajesh (PW10) and Chhotu (PW11) also reached the spot. He further deposed that the deceased was lying in an injured condition and was '*chat pata raha tha*'. Thereafter, the deceased was taken to the hospital by Rajesh and Chhotu while he remained at the spot. After sometime, the police reached at the spot and took PW5 to the police station where his statement Ex.PW5/A was recorded. On the basis of the statement of PW5, an FIR was registered. PW5 deposed that he had pointed out the place of incident to the police on the first day itself.

24. In his cross-examination, PW5 admitted that the incident took place during the winter season i.e. on 24.12.10 at about 9:15 PM and it was cold on that day. He further admitted that on the fateful night, it was dark and there was fog also. PW5 admitted that he had narrated the entire sequence of the events to the police at the first opportunity. PW5 claimed that he had mentioned the names of the assailants to the police in his statement which was proved as (Ex.PW5/A). PW5 knew the respondent Ravi since he got his employment with the deceased

and stayed in his neighbourhood. PW5 further stated that on the fateful night of the incident, neither PW5 nor deceased raised any alarm at the time of the incident. Similarly, the assailants did not raise any alarm. PW5 further admitted that it was correct that there was no occasion to raise any alarm. The site plan Ex.PW28/A was prepared and proved by Insp. K.L. Yadav (PW28). The site plan was made at the instance of PW5. PW5 admitted that he had duly informed Rajesh and Chhotu from his mobile phone immediately after the incident and the incident was also narrated to 1-2 persons/shopkeepers of the area. PW5 claimed to have seen the occurrence from behind the wall. Thereafter, PW5 ran towards the residential area shouting as '*shooting incident had taken place*'. PW5 admitted that he had stated in his examination-in-chief that the respondent Ravi was continuously firing at the deceased. PW5 further stated that he heard about 6-7 gun-shots in total. It was admitted by PW5 in his cross-examination that Investigating Officer had read over the statement to him and it was the same statement which he had made before the Investigating Officer and only after hearing the same; he signed it. He admitted that in his statement Ex.PW5/A, the name of the respondent Ravi was not mentioned. PW5 further admitted that he was on talking terms with the respondent Ravi. PW5 also admitted that he knew the family members of the accused persons.

25. PW10 Rajesh (son of the deceased) deposed in his examination-in-chief that on 24.12.10 at about 9.20 to 9.21, after receipt of call from his servant Pradeep Mishra (PW5) on his mobile phone regarding his father being surrounded by bad elements in the fields. He took his

motorcycle and reached fields via PAC Camp, where his father was lying in an injured condition. PW10 further deposed that he picked his father on his lap when their servant Chhotu (PW11) also reached the spot. It was further stated by PW10 that his father told him that he was beaten and injured by the accused persons Ravi, Lokesh, Ravinder and another boy. PW10 further deposed that he alongwith Chhotu took his injured father to the hospital, where he was declared as brought dead.

26. The next material witness who claimed that he had seen the accused persons before and after the incident is PW11 Moharram Ali @ Chhotu who testified in his examination-in-chief that for the last 23 years, he had been working as *Munshi* for the deceased. On 24.12.2010 at about 8.25 P.M., he left the office of the deceased for his house. When PW11 reached at a distance of 150 meters away from the office, he saw accused persons Kamlesh, Ravi, Lokesh, Ravinder, Devender @ Tape and one more boy aged about 20-21 years old present alongside the wall and heard respondent Kamlesh saying as '*aaj Bhim Singh ka ant ho jana chahiye*'. On reaching home at about 8.35 PM, PW11 made a call to the deceased on his mobile phone but he did not pick up his call. PW11 made repeated calls to him but it was not picked. Thereafter, PW11 tried to contact Rajesh (PW10) but his phone was not reachable. At about 9.25 PM, PW11 received a call from Pradeep (PW5) and asked him to reach in the field near Peer Baba Mazar, PAC Camp as the accused persons Ravi, Lokesh, Ravinder and one more boy attacked upon the deceased. PW11 rushed immediately to the spot and saw at the Ali Vihar two motorcycles were coming from the side of the field. The respondent Ravi was

driving one motorcycle and the boy who had been seen with them earlier was sitting behind him. The other motorcycle was driven by the accused persons Lokesh, and Ravinder was pillion rider. At some distance, PW11 saw respondent Kamlesh running towards Ali Vihar from the field area. Thereafter, he reached at the spot and found the deceased and Rakesh (PW10) in an injured condition. It was again deposed by PW11 that the deceased was in an injured condition and Rajesh was holding him on his lap. PW11 further deposed that the deceased told Rajesh that accused persons Ravi, Lokesh, Ravinder and one more boy caused injuries to him. The deceased was taken to hospital on his motorcycle. The deceased was declared as brought dead by the doctors of Apollo Hospital. The respondent Kamlesh and her family members wanted to usurp the properties of the deceased and same was the reason that she alongwith her family members committed murder of the deceased. The respondents Kamlesh and Ravi were identified by him in Court.

27. In his cross-examination, PW11 stated that he made a statement to the police on the fateful day of 25.12.2010. Police officials did not mention some facts in his statement which he had deposed in Court. It was further stated by PW11 that on 25.12.2010, Rajesh (PW10) was not present with him. When PW11 was confronted with the statement (Ex. PW11/DA) made to the police, the names of the assailants as told by Pradeep (PW5) on his mobile phone were not found mentioned in the same.
28. Another public witness PW20 Hanok Nathaniel who made a call on 100 number and set the criminal machinery into motion, deposed in

his examination-in-chief that on 24.12.10 at about 9.15-9.30 pm, when he was present outside his room, Chhotu (PW11) came and was shouting that some miscreants had surrounded *Chacha* (Bhim Singh/deceased) in the forest. PW20 further deposed that he immediately ran towards the same direction to which Chhotu was pointing i.e. towards the Mazar of Peer Baba. It was further deposed by PW20 that he saw the deceased lying on the ground and some fired cartridges cases were also lying near his body and also blood was oozing out from the chest portion of the deceased. He further deposed that in the meantime, Rajesh (PW10) also reached the spot and subsequently, Chhotu and Rajesh took the deceased to the hospital on their motorcycle.

29. On a careful reading of the statement of the complainant (Ex.PW5/A) shows that it has been signed by him and his statement has also been attested by SI Virender Pakhre (PW25). It is noteworthy to mention that as per the evidence of PW5, he had given the names of the assailants to the police on the basis of which an FIR in the present case has been registered. PW5 also deposed in his deposition in Court that he had named the assailants to the police, but it was not correctly recorded by the police. PW5 further deposed that he also informed the name of assailants to PW10 Rajesh and PW11 Moharram Ali @ Chhotu, who had taken the deceased to the hospital. It is evident from the complaint that the names of the assailants were not found mentioned in it. It is also difficult to believe as to why PW5 did not name the respondent Ravi in his statement Ex.PW5/A when given to police despite the fact that he knew respondent Ravi from the date of

his employment with the deceased. Additionally, in the site plan (Ex.PW28/A), which was prepared at the instance of PW5, it has not been shown from where PW5 Pradeep had allegedly seen the occurrence and also not even signed by him. It is also evident from the testimony of PW20 Hanok Nathaniel that PW11 Moharram Ali reached his place while shouting that some miscreants had surrounded *Chacha*. Despite knowing the names of the assailants, PW11 did not name the assailants, which make his evidence not trustworthy. Thus, the testimony of PW5 is falsified by the absence of names of the assailants in *rukka*, FIR and MLC of the deceased. In view of the defects in the testimony of PW5, PW10, PW11 and PW20, we need to scrutinize other evidence available on record.

30. Besides the above public witnesses, PW31 HC Brij Singh was posted as duty officer from 4.00 pm to 12.00 mid night on the day of occurrence at PS Sarita Vihar. PW31 deposed that on 24.12.2010 at about 9.40 pm, he received information regarding shooting of a person in the Aali Gaon jungle area, near Metro workshop. He recorded the said information vide DD No. 38/A. At about 10.15 pm, PW31 received another information from control room regarding admission of the deceased Bhim Singh Nagar in Apollo hospital. He recorded this information vide DD No.39A which was proved as Ex PW28/N. PW28 Insp. K. L. Yadav was the Investigating Officer in the present case.

Medical Evidence:

31. PW21 Dr. Apoorva Sharma, Emergency Medical Officer, Indraprastha Apollo Hospital deposed that on 24.12.2010 at about 9.45 PM, he was on duty alongwith Dr. Ashwini in the above-mentioned hospital. One person namely Bhim Singh Nagar (deceased) was brought by Rajesh (PW10) with an alleged history of gun-shot injury. Dr. Ashwini medically examined the deceased in his presence and prepared MLC No. 598/2010 which was proved by PW21 as Ex PW21/A whereby the deceased was declared as brought dead. As per the MLC following injuries were found on the deceased:

- “1. Multiple punctured wound on the body.*
- 2. Two wounds on the left forearm.*
- 3. One wound on left clavicle region.*
- 4. Three punctured wounds at left side of back and chest region.*
- 5. One punctured wound at epigastric region.*
- 6. Multiple lacerated wound at back of head alongwith one punctured wound.”*

32. Dr. Ashish Jain conducted post-mortem examination on the dead body of the deceased on 25.12.2010 at about 1.00 PM. However, the post-mortem report (Ex PW39/A) was proved by PW39 Dr. Asit Kumar Sikary. As per the post-mortem report the following nine ante-mortem injuries were found on the body of the deceased:

- (i) A firearm entry wound, circular in shape of size 0.5cm x 0.5 cm was present over the back of the neck on left side.
- (ii) A firearm exit wound, triangular in shape of size 1.5cm x 1 cm was present over the right side of neck.
- (iii) A firearm entry wound, circular in shape of size 0.5cm x 0.5 cm was present over the left side of the upper back.

- (iv) A firearm entry wound, circular in shape of size 0.5 cm x 0.5 cm was present over mid back on left side.
 - (v) A firearm entry wound, circular in shape of size 0.5 cm x 0.5 cm was present over the left side of lower back.
 - (vi) A firearm exit wound, oval in shape of size 4 cm x 2 cm was present over the left clavicular region (shoulder).
 - (vii) A firearm entry wound, circular in shape of size 0.5 cm x 0.5 cm was present over the back of the left forearm.
 - (viii) A firearm exit wound, circular in shape of size 0.5 cm x 0.5 cm was present over front aspect of left forearm.
 - (ix) Multiple lacerated wounds of size 3 cm x 0.5 cm to 10 cm x 0.5 cm bone deep were present over the occipital region in an area of 12 cm x 10 cm and were associated with haematoma.
33. As to the cause of death, Dr. Ashish Jain opined as haemorrhagic shock caused by multiple fire arms injuries. He further opined that injury No. 1 to 6 are individually as well as collectively sufficient to cause death in the ordinary course of nature. Time since death was about one day prior to the examination. In his cross examination, PW39 Dr. Asit Kumar admitted that injuries mentioned in the PM report at Sr. No. 1, 3, 5 and 7 are entry wounds while injury No. 2 is the exit wound corresponding to the fire arm entry wound of injury No. 1. Two metal bullets were removed from the body of deceased.
34. Besides the aforementioned medical evidence, the next important witness to decide the present leave petitions is PW42 V. R. Anand, Assistant Director, Ballistic, FSL, Delhi. In his cross-examination, PW42 admitted that there was no complete country-made pistol and

there were two parts of the country made pistol. He fairly admitted that he had not conducted test fire from the *katta* as the same was in two parts. He admitted that two parts of country-made pistol cannot be used as fire arm unless and until joined together. PW42 further admitted that any magazine of 7.65 mm may be inserted in the improvised pistol examined by him. The detailed report by PW42 was proved as Ex PW42/A.

35. Reading of the evidence of PW42 would show that there was no opinion rendered by the ballistic expert with regard to the three bullets found at the spot and two bullets recovered from the dead body of the deceased. It is also evident from the cross-examination of PW42 V. R. Anand that he had not test fired from the *katta* and he could not tell as to whether the recovered *katta* was in working condition or not. PW42 also admitted that the recovered magazine can be inserted in any instrument/pistol of 7.65 mm. Thus, the FSL report with regard to the weapon of offence used in the instant case is of no help.
36. As far as the contention raised by the counsel for the petitioner with regard to the deceased having made a dying declaration to his son (PW10 Rajesh) disclosing the names of the assailants is concerned. We may note the evidence of PW20 Hanok Nathaniel whereby PW20 reached at the spot in the first opportunity and thereafter, Rajesh (PW10) reached at the spot and subsequent thereto, PW11 Moharram Ali reached at the spot. If we go by the evidence of PW10 Rajesh, he deposed that he reached first at the spot. Further, in his cross-examination, PW20 Hanok Nathaniel stated that Rajesh (PW10) reached the spot within seconds of their reaching at the spot. PW20

further stated that Rajesh (PW10) and Moharram Ali (PW11) took the deceased to the hospital immediately after reaching there. PW11 Moharram Ali has also admitted in his cross-examination that there was no talk between them and the deceased, while they took them to the hospital. Had any such dying declaration been made by deceased to PW10 Rajesh, the same would have also been heard by PW11 and PW20. PW20 Hanok Nathaniel has nowhere stated that any such statement as alleged by PW10 Rajesh was made before him. Furthermore, it is evident from the medical evidence extracted hereinabove that the deceased sustained nine ante-mortem injuries and the cause of death was opined as haemorrhagic shock caused by multiple fire arms injuries. In view of the nature of injuries, we find force in the argument raised by the counsel for the respondents that after receiving injuries, the deceased would not have been in a position to make a dying declaration. We also find force in the argument made by the counsel for the respondents that it is highly unusual that in case the deceased had made a dying declaration to his son, his son would not name the assailants at the time of preparation of the MLC. Thus, the contention with regard to dying declaration made to PW10 Rajesh stands rejected.

37. So far as the recovery of weapon of offence i.e. *katta* at the instance of the respondent Ravi is concerned, we deem it proper to mention para 41 to 44 of the impugned judgment which read as under:

“41. On 27.12.10, Inspector K.L. Yadav (PW-28) and recovery witnesses SI Virender Pakhre (PW-25), SI Rajender Singh Dagar (PW-32) alongwith accused Ravi and Rahul went to Village Garhi, Kalengeri, Police Station Chandi Nagar, District Bagpat, U.P., where accused Rahul was residing. The aforesaid

police officials deposed that they requested public persons to join in the investigation, but they refused. They reached at the house of Rahul. As per them, as soon as they entered his house, on the right side, there was a room, where a sofa was lying, from underneath the cushion of sofa, Ravi produced one pistol which on checking was found to be written as automatic made in USA from one side. The pistol was sealed in a pullanda sealed with the seal of KL and was seized vide seizure memo Ex. PW-27/E. The site plan Ex. PW-27/F of place of recovery was prepared.

42. The above police officials have further deposed that on the same day, they alongwith both the accused reached at Village Chhalera near Sector-44, Noida. They reached at the house of Subhash where on the back portion of his house, there was a chajja near the wall and from the said chajja, Ravi produced one desi katta which was not having its barrel. They deposed that after checking the katta, sketch of the same Ex. PW-27/G was prepared. The katta was sealed in a pullanda with the seal of KL and seized vide seizure memo Ex. PW-27/H.

43. Admittedly, neither the police officials of local Police Station within whose jurisdiction, the alleged recovery of weapon of offence was effected at the instance of accused persons were called nor joined in the investigation at the time of alleged recovery. The IO of the case also did not inform the local police either at the time of their arrival or at the time of departure from the place, where the alleged recovery was effected. No intimation was given to the local police. The owner or occupier of the premises from where the alleged recovery was effected have also not been joined in the investigation. The Pradhan of the village or respectable members of the locality have also not been joined in the investigation of the matter. As per provisions of Cr.P.C., local police needs to be intimated regarding arrival and departure of police outside their jurisdiction whenever they conduct any raid, or apprehend any person or conduct investigation of criminal matter. The provisions as contained in Section 100 and 165 Cr.P.C. have not been followed by investigation officer of the case. The

provisions pertaining to making of arrival and departure entry by the police as required under Punjab Police Rules as applicable to Delhi have also not been followed by the investigation officer in this case. No plausible explanation has been furnished by the investigating officer as to why the local police or Pradhan of the village, or respectable members of the locality or the owners/occupiers of the premises from where the alleged recovery has been effected have been joined in the investigation at the time of alleged recovery of weapon of offence. In view of above, the alleged recovery effected at the instance of accused persons, from the place and the manner in which it has been shown to be recovered is doubtful.

44. Moreover, the sketch of katta Ex PW-27/G prepared by IO shows that it bears the signature of Rahul, while the seizure memo of katta Ex PW-27/H bears the signature of Ravi. The case of prosecution is that the said katta was got recovered at the instance of Ravi. No reason has been mentioned as to why the signature of accused Ravi on the sketch of katta was not obtained. On bare look of both the documents, it appears that the signature of accused persons was obtained on blank papers and thereafter the same was written or alternatively same has been manipulated by the IO of the case.”

38. Having regard to the observations made by the learned Trial Court extracted in the above paragraphs, we concur with the view taken by the learned Trial Court and disbelieve the recovery of weapon of offence which was allegedly made at the instance of the respondent Ravi. We find that the contradictions in the testimonies relied upon by the petitioners casts a shadow of doubt in the case of the prosecution. Furthermore, the blood found on the clothes worn by the respondent Ravi at the time of commission of offence did not match with the blood of the deceased which is evident from the report (Ex. PW34/B) prepared by PW34 Dr. Sunita Suman Gupta. On a conjoint reading of

the medical evidence, FSL report, contradictions in the eye-witness account, we do not find any infirmity in the view taken by the Trial Court.

39. Even otherwise, it is settled law that the appellate court may only interfere in an appeal against acquittal when there are substantial and compelling reasons to do so [See *Sheo Swarup v. King-Emperor*, AIR 1934 PC 227 (2); *M.G. Agarwal v. State of Maharashtra*, AIR 1963 SC 200 (paragraph 16 and 17); *Tota Singh and Anr. v. State of Punjab*, AIR 1987 SC 108: (1987) 2 SCC 529 (paragraph 6); *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180 (paragraph 7); *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415 (paragraph 42); *Ghurey Lal v. State of U.P.*, (2008) 10 SCC 450 (paragraph 73); and *Muralidhar @ Gidda v. State of Karnataka*, (2014) 5 SCC 730 (paragraph 12)].
40. Accordingly, we find no illegality or infirmity in the judgment of the Trial Court warranting interference. The present leave petitions are dismissed. The personal bonds and the sureties under Section 437-A Cr.P.C. stand discharged. In view of the above, all the applications pending in Crl. L. P. 297/2016 stand dismissed.

G.S.SISTANI, J.

CHANDER SHEKHAR, J.

SEPTEMBER 19, 2017

//pst