

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-1369-DB-2013 (O&M)

Date of decision: 05.10.2018

Sohanvir @ Sonu

.....Appellant

versus

State of Haryana

.....Respondent

CRA-D-1447-DB-2013 (O&M)

Rajbir @ Chinni and another

.....Appellants

versus

State of Haryana

.....Respondent

**CORAM: Hon'ble Mr.Justice A.B.Chaudhari
Hon'ble Mr.Justice Kuldip Singh**

Present: Mr.D.S.Brar, Advocate for appellant no.1
in CRA-1447-DB-2013
Mr.S.K.Garg Narwana, Senior Advocate with
Mr.Naveen Gupta, Advocate for appellant no.2
in CRA-1447-DB-2013
Mr.R.A.Sheoran, Advocate for the appellant
in CRA-1369-DB-2013
Mr.Vivek Saini, DAG Haryana

- 1. Whether Reporters of Local newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

This judgment will dispose of two appeals bearing CRA-1369-DB-2013 filed by Sohanvir @ Sonu and CRA-1447-DB-2013 filed by Rajbir @ Chinni and Rohit, against the judgment of conviction dated 11.10.2013 and order of sentence passed by learned Additional Sessions Judge (Exclusive Court), Jhajjar, vide which the appellants were convicted

under Section 302, 120-B and 25 of the Arms Act and sentenced as under:-

(1) To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each, for the commission of offence under Sections 302/120-B IPC and in default of payment of fine to undergo rigorous imprisonment for one year

(2) To undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- to Sohanvir and Rohit for the commission of offence under Section 25 of the Arms Act and in default of payment of fine to undergo simple imprisonment for six months.

All the sentences were directed to run concurrently.

The facts of the case are that on 5.6.2007, a dead body of Jaipal was brought to Rao Tula Ram Memorial Hospital, Jaffarpur, Delhi (in short, 'RTR Hospital'), due to gun shot injury. ASI Braham Parkash of Police Station Jaffarpur Kalan, New Delhi reached the spot and prepared the inquest report (Ex.PW11/B). He also moved an application (Ex.PW11/A) for postmortem of Jaipal son of Balwan Singh resident of village Badli, District Jhajjar. The postmortem was accordingly got conducted. ASI Braham Parkash recorded the statement of Main Pal (Ex.P9) and Raja (Ex.D1) respectively, regarding identification of dead body, which is reproduced as under:-

Identification statement

Statement of Shri Main Pal s/o Balwan Singh, R/o Village Badli District Jhajjar, Haryana, aged 35 years.

Stated that I am residing at above mentioned address, and do the work of agriculturist. Today, some unknown person has

fired the bullet shots to my brother Jai Pal, who had been got admitted at RTR Hospital Bahadurgarh from village Badli due to receive the said bullet shot, where he has been got expired, I have identified the dead body has kept at the mortuary of RTR Hospital, this dead body is of my brother. I have heard my statement which is correct.

*LTI Main Pal
Attested
Sd/- in English
Braham Parkash ASI
PS Jafferpur New Delhi
Dated 5.6.07*

Identification statement

Statement of Sh. Raja s/o Balwan Singh, R/o Village Badli District Jhajjar (Hr.), Police Station Sadar Bahadurgarh, aged 40 years.

Stated that, I am residing at above mentioned address, and do the agriculture work, today, some unknown person has fired a bullet shot of my brother Jai Pal, who has been got admitted at RTR Hospital Jaffer Pur Kalan Delhi, from village Badli where he got expired which dead body has identified by me kept at the mortuary of RTR Hospital, the same dead body is of my brother. Heard, my statement which is correct.

*LTI Raja
Attested by.
Sd/- in Hindi
Braham Parkash ASI
PS Jaffer Pur Kalan New Delhi
Dated 5.6.07*

Thereafter, a telephonic information was received from Police Station Jaffarpur, Delhi by the police of Police Station Sadar, Bahadurgarh

that Jaipal has been brought dead at Rao Tula Ram Memorial Hospital, Jaffarpur due to gun shot injuries. Request was made to send the investigating officer. Accordingly, a police party led by SI Ranjit Singh incharge police post Badli visited RTR Hospital, where Main Pal, complainant made the statement to SI Ranjit Singh on 5.6.2007 itself, wherein he stated that they are three brothers. His elder brother Jaipal was Sarpanch of the village. Today on 5.6.2007, at about 8 a.m. in the morning, his brother Jaipal and Rakesh @ Rakkey son of Mahi Pat, were going in common street from their houses towards Bus Stand. When they reached at *chowk* near the *Chaupal* of the *Chaudhran Pana*, he (Mainpal), his elder brother Raja and his wife Shakuntla, were also going behind them. At that time, from the upper side of the street towards market side, on one motorcycle Jasbir @ Bhulla and Ranbir Singh son of Daya Ram, on second motorcycle Chinni (Rajbir) son of Daya Ram, Sohanvir son of Sunder Pal and Sunder Pal son of Sardare, on third motorcycle Rohit son of Ramesh, Karnail Khatik and Rinku son of Karnail and on fourth motorcycle Dharamveer son of Sewa Ram, Vijay son of Mohinder and Satyawar Pahlwan, all residents of Badli came there. All the assailants stopped their motorcycles and after getting down from the motorcycles, raised exhortation (lalkara) that today Jaipal Sarpanch should not escape. Chinni (Rajbir), Bhulle (Jasbir), Vijay and Karnail Khatik took out their weapons and started indiscriminate firing on Jaipal, on which Jaipal fell down at the spot. Rakesh @ Rakkey son of Mahipal also received bullet injuries. The motive for the crime is the election of the Sarpanch, due to which Jaipal was being threatened. Rakesh @ Rakkey had good relations with Jaipal and used to help his brother. On hue and cry (*raula*) raised by the witnesses, assailants

fled away from the spot. Complainant could not read the registration number of the motorcycles. Thereafter, he along with his co-villagers removed Jaipal to RTR Hospital, where Jaipal was brought dead. Rakesh was taken by his heirs at Bahadurgarh for treatment. SI Ranjit Singh made the endorsement which was completed at 11.50 a.m. in the hospital itself and sent the same to the police, where formal FIR No.141 dated 5.6.2007 was registered at 12.15.

After the postmortem, report (Ex.PW12/B) was prepared, one envelope containing cloths, one parcel of blood sample and one parcel of bullet metallic was handed over to ASI Braham Parkash by the attending Medical Officer, which was later on taken into possession by SI Ranjit Singh vide recovery memo (Ex.P5). Thereafter, the police visited the spot and prepared rough site plan (Ex.PW15/A), from where blood stained earth, from two separate places, was lifted. Four empty shells and one live cartridge were also lifted from the spot and taken into possession through recovery memo (Ex.PW15/B).

Rakesh Kumar, who was taken to the Civil Hospital, Bahadurgarh, also succumbed to the injuries. His postmortem was got conducted. Postmortem report (Ex.PW20/B) was prepared. One sealed envelope containing cloths of the deceased and empty shell were handed over by the doctor to the police.

On 18.6.2007, Sohanvir and Rajbir were arrested. They suffered disclosure statements but they retracted from the same. On 21.6.2007, accused Sohanvir suffered disclosure statement (Ex.P10), wherein he disclosed that he had kept concealed revolver used in the crime near the wall situated at Badli-Bahadurgarh-Jargadpur Chowk.

Accordingly, he got recovered the .38 bore revolver along with three empty cartridges, which were taken into possession through recovery memo (Ex.P12). Rough site plan of place of recovery was prepared (Ex.PW10/A). Accused Rajbir also suffered disclosure statement (Ex.P13), wherein he offered to get recovered the motorcycle used in the crime.

On 1.7.2007, .38 bore revolver and three empty cartridges were got mechanically examined from Armourer, who submitted the report (Ex.PW19/B). Revolver was then again sealed.

During investigation, accused Jasbir, Ranbir, Rinku, Karnail, Satyawan and Dharamvir were found innocent. Section 120B IPC was added against the accused Vijay. Accused Vijay and Rohit could not be arrested and were put in column no.2 of the challan. Challan was filed initially against Sohanvir and Rajbir.

On 10.10.2007, accused Vijay was arrested and on 13.11.2007 accused Rohit was also arrested. Accused Rohit suffered a disclosure statement (Ex.PW21/A) that he had kept concealed the pistol used in the crime in a fodder room of his house and can get the same recovered. Accordingly, he got .32 bore WEBLEY and SCOT pistol recovered, which was taken into possession through recovery memo (Ex.PW21/C). Rough site plan (EX.PW22/A) of place of recovery was prepared.

Since, complainant Main Pal was not satisfied with the investigation, he moved an application on 9.6.2008 for re-investigation. After re-investigation, a direction was given to arrest Jasbir and file challan against him under Section 173(8) Cr.P.C., which was done. The case was committed to the Court of Sessions. The charges against Sohanvir and Rajbir were framed under Section 302, 120B IPC and 25 of the Arms Act.

However, after examination of one witness, on application under Section 319 Cr.P.C., accused Ranbir, Rinku, Sunder Pal, Dharamvir, Karnail and Satyawar were also summoned as additional accused. However, Karnail and Satyawar died and proceedings against them were dropped. It also comes out that two more accused, namely, Vijay and Jasbir alias Bhulla also died during proceedings and ultimately proceedings against them also abated on 1.7.2010. Remaining accused were charge sheeted, to which they pleaded not guilty.

In support of its case, prosecution examined Harkesh son of Mahipal (PW1), Satbir Singh, SI (PW2), Naresh Kumar, HC (PW3), Jasbir Singh, ASI (PW4), Jai Bhagwan, Constable (PW5), Mainpal son of Balwan (PW6), Raja son of Balwan (PW7), Jai Chand, EHC (PW8), Shyam Narain, SI (since retired) (PW9), Rohtash Singh, Inspector (since retired) (PW10), Braham Parkash, ASI (PW11), Dr.Parvinder Singh (PW12), Rajender Singh, ASI (PW13), Tatbir Singh, SI (PW14), Ranjit Singh, SI(PW15), Dr.R.Sankaranarayanan (PW16), Mahabir Singh, DSP (PW17), Kanwar Singh, Reader to District Magistrate, Jhajjar (PW18), Rattan Singh, SI (PW19), Dr.Dinesh (PW20), Jagbir Singh, HC (PW21) and Umed Singh, SI (PW22).

In the statement under Section 313 Cr.P.C. accused claimed that they are innocent and stated that they have been falsely implicated in the case.

Accused examined Constable Sunil Kumar (DW1) and ASI Sat Bhagwan (DW2) and closed defence evidence.

After hearing the prosecution and the accused and going through the evidence, learned Additional Sessions Judge (Exclusive Court),

Jhajjar convicted and sentenced the accused aforesaid.

We have heard learned counsel for the parties and have also carefully gone through the record.

First of all, we proceed to examine the medical evidence.

Medical Evidence

As per statement of Dr.Parvinder Singh (PW12), on the postmortem of Jaipal Singh son of Balwan Singh deceased on 5.6.2007 at 12.30 a.m., he recorded the following injuries:-

a. Gun shot entry wound of size 1 x 1 cm circular in shape with 2 cm abrasion collar around the wound, margins are inverted situated over front of upper part of right side of chest in the second intercostals space. 6 cm above right nipple, 8.5 cm from mid line and 38 cm above from umbilicus.

b. Gun shot entry wound of size 8 x 8 cm circular in shape with 2 cm abrasion collar around the wound, margins are inverted situated over right hypogastrium over anterior abdominal wall, 14 cm below right nipple, 4 cm from mid line, 19 cm from umbilicus.

c. Gun shot entry wound of size 1 x 1 cm with 2 cm abrasion collar around the wound, margins are inverted, 27 cm below right nipple, 2.5 cm from mid line, 7 cm above umbilicus present over anterior abdominal wall in umbilical region.

d. Gun shot entry wound of size 2.8 x 1.2 cm oval shaped with abrasion collar around the wound, margins are inverted, situated over lateral thoracic wall in mid axillary region, 25 cm above umbilicus, 23 cm below right nipple, 23 cm from mid

line.

e. Gun shot exit wound of size 2 x 1 cm oval shaped with everted margins situated over back of chest on lower part of right scapula 13 cm from mid line.

f. Gun shot exit wound of size 2 x 1 cm oval shape with everted margins present over lower part of nape of the neck at C7 level in the mid line, 11.5 cm from left ear lobule, 15 cm from right ear lobule.

g. Gun shot exit wound of size 1 x 1 cm circular in shape with everted margins situated at the level of 7th Thoracic vertebrae in the mid line. 17 cm from C7 vertebrae, a part of bullet C through the wound, on the section one metallic bullet recovered from the wound preserved and sealed.

h. Gun shot exit wound of size 1 x 1 cm circular in shape with everted margins situated over back of lower part of right side of chest, 15 cm below C7 below, 8 cm from mid line.

i. Abrasion 4 x 1 cm over back of chest. 1 cm above injury no.8 Peritoneal Cavity contains about 1 – 1 1/5 ltr. Partly clotted blood. Stomach contains some yellowish pasty digested food material with pale mucosa. Liver – right lobe of liver lacerated Haematoma size 8 x 6 cm present posteriorly over right lobe of liver, 5-6 cm thick a metallic bullet recovered from the haematoma and pressured and sealed. Ribs- second and third ribs were fractured on right side. Pleura – Right Pleural cavity contains blood, right lung lacerated (upper lobe), right thoracic filled with partly clotted blood Spinal

column – Vertebrae fractured C7 and T7 level and spinal cord lacerated on corresponding levels.

Doctor further observed that in his opinion the cause of death in this case was due to hemorrhage and shock following multiple fire arms injuries. All the injuries were antemortem and recent and sufficient to caused death in ordinary course of nature.

The doctor also handed over two metallic bullets recovered from the dead body to the police. In this way, Jaipal received four bullet injuries. The dimensions of the injury shows that two bullets are of the same bore, whereas two bullets are of different bore.

Dr.R.Sankaranarayanan (PW16), who initially examined Jaipal son of Balwan Singh stated about the initial condition of Jaipal and the fact that he was declared brought dead on 5.6.2007 at 8.40 a.m. and the dead body was sent for autopsy.

Dr.Dinesh Chillar, Medical Officer, Civil Hospital, Jhajjar (PW20) proved the postmortem report of Rakesh son of Mahipal. He found following injuries on the dead body:-

1. A lacerated wound of size 0.5 cm circular was present over the left side of chest 4 cms obliquely above the left nipple. Margins were inverted and floor of wound was radish in colour

On dissection:- scalp, skull and vertebrae were healthy.

Larynx and Trachea were healthy and filled with liquefied blood.

Pericardium was punctured from anterior and posterior side.

Left atrium was punctured. Heart was empty. Thoracic cavity

was full of blood.

The tract of the bullet:- Bullet was entered in the body of deceased through lacerated wound described above as injury no.1 in-between IInd and IIIrd of space and punctured the pericardium left atrium and got entangled in between the fascia of thoracic vertebrae. A bullet was dissected out, which was sealed and handed over to police

Pharynx and esophagus were healthy

I also examined the Stomach and its contents. It was healthy and contained semi digested food.

I also examined the Small intestines and their contents. They were healthy and contained chyme.

I also examined the large intestines and their contents. They were healthy and contained fecal matter.

I also examined the liver, spleen, kidney, bladder and organ of generation and found them healthy.

In my opinion the cause of death in this case was injury to thoracic cavity including heart which result in cardiac failure, hemorrhage and shock caused by fire arm. All the injuries were ant mortem in nature and sufficient to cause death in natural course of life.

The probable time that elapsed between injury and death was within few minutes and in between the death and post mortem was within 12 hours.

The doctor handed over the two sealed packets containing dissected out bullet in one packet and shirt and T-shirt in another packet to

the police.

Forensic Evidence

Forensic Science Laboratory, on the examination of the bullets and pistols, made the following report:-

- 1. Countrymade revolver marked W/1 (Chambered for .38" cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.*
- 2. 7.62 mm x 25/.30" fired cartridge cases marked C/1 to C/3 have been fired from one and the same firearm.*
- 3. 7.65 mm cartridge case marked C/4 was found to be a 7.65 mm caliber fired cartridge.*
- 4. .38" fired cartridge cases marked C/5 to C/7 have been fired from countrymade revolver marked W/1 (Chambered for .38" cartridges) and not from any other firearm even of same make and bore/ caliber, because every firearm has got its own individual characteristics marks.*
- 5. .38" fired bullets marked BC/2 and BC/3 have been fired from countrymade revolver marked W/1 (Chambered for .38" cartridges) and not from any other firearm even of same make and bore/ caliber, because every firearm has got its own individual characteristics marks.*
- 6. 7.62 mm/ .30" fired bullet marked BC/1 has been fired from rifled barrel firearm.*
- 7. Report in original from Serology division is enclosed herewith.*

Above noted report shows that three kinds of weapons were

used in the crime i.e. .38 bore, 7.62 mm and 7.65 mm.

Following report (Ex.PZ/2) was also made regarding pistol (chambered for 7.65 mm cartridge):-

- 1. Pistol marked W/2 (Chambered for 7.65 mm cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.*
- 2. 7.65 mm fired cartridge case already marked C/4 (in case FSL No.F-07/3246) has been fired from pistol marked W/2 (chambered for 7.65 mm cartridges) and not from any other firearm even of same make and bore/caliber, because every firearm has got its own individual characteristics marks.*

In this way, it was established that 7.65 mm cartridge was fired from pistol W2 recovered from Rohit @ Astal. .38 bore cartridge was fired from revolver W1 recovered from Sohanvir.

Ocular Testimony

The star witnesses of this case are Main Pal and Raja, brothers of the deceased Jaipal. Main Pal appearing as PW6 stated on the lines of the complaint made to the police. He stated that on 5.6.2007 at about 8.00 a.m., when he along with his brother Raja and wife Shakuntala was going behind his brother Jaipal and Rakesh, four motorcycles came there. On first motorcycle there were two persons Bhulla and Vijay. On second motorcycle Sohanvir, Sunder Pal and Dharambir. On third motorcycle Rinku, Karnel and Rohit and on fourth motorcycle Sunder, Rajbir and Rinku came. Accused Jasbir, Vijay, Rajbir, Sohanvir and Rohit took out their pistols and opened fire at his brother Jaipal. As a result of which, Jaipal fell down and Rakesh also received injuries. Jaipal was taken to RTR

Hospital, Delhi where he was declared brought dead. Rakesh also succumbed to the injuries. Occurrence took place due to elections of the Sarpanch.

It is to be noted that in the version before the police, which formed the basis of the FIR, he had named eleven persons. In the statement made before the Court, name of Rohit has been added for the first time. More or less, similar is the statement of Raja eye witness (PW7). Their cross-examination, revealed that one of the accused Sunder is employed in village. It was suggested to the witnesses that Jaipal has been murdered by unknown persons due to his own enmity.

Another development took place during trial is that probably the Panchayat of 24 villages gathered and both the parties agreed to put an end to the litigation and dispute and accordingly moved an application under Section 311 Cr.P.C., which was though dismissed by the trial Court but allowed by the High Court on 28.1.2013 and accordingly, Main Pal and Raja were recalled for further cross-examination, though their earlier cross-examination was complete. This time, Main Pal and Raja changed their mind. Though they admitted the gathering of the Panchayat and compromise but now they stated that they had lodged the complaint against the accused persons on suspicion. They further stated that Sohanvir etc. accused were not involved in the murder of Jaipal and Rakesh.

In any case, this Court is required to separate the wheat from the chaff and find out which part of the statement of the witnesses is to be believed and which is to be disbelieved. The mere fact that the parties have compromised and after their examination and cross-examination, they were recalled, in which they made a different statement, is no ground to hold that

their statements made in the later cross-examination is correct. Therefore, this Court will independently examine merits of the statements made by the witnesses.

PW10 Rohtash Singh, retired Inspector stated that on 18.6.2007, when he was posted as Inspector at CIA Staff Bahadurgarh. Sohanvir and Rajbir were produced before him by Shamsheer Singh Sarpanch and Dilbag Singh and that they had suffered extra judicial confession before Shamsheer Singh Sarpanch and Dilbag Singh, wherein they admitted their involvement in the crime. They also suffered disclosure statements. He also proved the disclosure statement by Sohanvir and recovery of .38 bore revolver with three empty cartridges by him. He also proved the disclosure statement of Rajbir.

PW11 ASI Braham Parkash of Delhi police proved initial recording of statement of Main Pal and Raja and preparing of inquest report and getting postmortem done.

PW15 SI Ranjit Singh Inspector testified that on 5.6.2007, when he was posted at Police Station Badli, he received a telephonic message from Police Station Sadar, Bahadurgarh regarding the incident and he reached the spot. He reached near the dead body of Jaipal, where ASI Braham Parkash of Delhi Police and Raj Singh son of Balwan were present. ASI Braham Parkash prepared inquest report (Ex.PW11/A). After postmortem doctor handed over him one envelope of cloths, two parcels of blood samples and one parcel of bullet, which were taken into possession by him through recovery memo (Ex.P5). He proved other formalities of investigation and preparation of site plan and recovery of empty shell and one live cartridge from the spot. He also proved recording of complaint

(Ex.P8) by Main Pal.

Learned counsel for the appellant has vehemently argued that in this case, it was a blind murder. The initial statement recorded by ASI Braham Parkash of Delhi Police in RTR Hospital, Delhi shows that Main Pal and Raja has not witnessed the occurrence, as claimed by them and that according to them, unidentified person had fired at Jaipal and Rakesh and killed them. However, later on after the postmortem, when Haryana police reached there, Main Pal became wise and named as many as 11 persons in the crime, attributing specific role to them. It is stated that the first version given to ASI Braham Parkash is the correct version and the statement made in FIR (Ex.PA) is a concocted version, due to enmity with the accused, on account of elections rivalry. It is stated that after making first statement to ASI Braham Parkash and before making subsequent complaint (Ex.PA), the witnesses got sufficient time for consultation and making up their mind as to who are to be named in the case, though it is claimed in Ex.PA that four persons indiscriminately fired at Jaipal and Rakesh. However, seven other persons were named as accomplices. In the statement in Court name of another person Rohit was added in addition to four persons who fired at Jaipal and Rakesh. It is stated that name of Rohit was added since recovery of weapon was effected from him by the police. It has been further argued that later on, on account of allegations or counter allegations, Panchayat of 24 villages gathered. The suspicions of both the parties were got removed and accordingly on being recalled under Section 313 Cr.P.C., for further cross-examination, both Main Pal and Raja stated that they had named the accused on the basis of suspicion only, which corroborate their earlier statement made to ASI Braham Parkash.

Now, leaving aside the ocular testimony, this Court will examine as to whether the accused are connected with the crime on the basis of scientific and medical evidence or not?

Admittedly, .38 bore revolver was recovered from Sohanvir and .32 bore Pistol was recovered from Rohit. As per FSL report, discussed above, .38 bullet recovered from the dead body of Jaipal and Rakesh, matched with the country made revolver W1 .38 bore recovered from Sohanvir. .38 bore revolver was found to be in working order. Bullet mark C1 to C3 of 7.62 mm and 7.65 mm recovered from the spot, were fired from one weapon. One pistol 7.65 mm was recovered from Rohit @ Astar mark W2 and fired cartridge C4 was found to be fired from said weapon. Therefore, it is established that the bullets recovered from the dead body as well as recovered from the spot, were fired from .38 bore pistol and 7.65 pistol recovered from accused Sohanvir and Rohit.

Now, further question would arise as to whether these weapons are connected with the accused or not?

The first parcel containing bullet recovered from the spot and from the dead body and country made pistol .38 bore revolver recovered from Sohanvir were sent to FSL through constable Jai Bhagwan on 9.7.2007 and received by the laboratory on 10.7.2007.

Learned counsel for the appellants has disputed the veracity of the said report on the ground that as per affidavit of Jai Bhagwan (Ex.P7), the said articles were handed over to him on 9.7.2007 and that he has deposited the case property with FSL on 9.7.2007.

We are of the view that much importance cannot be given to said error which appears to be a clerical one. The fact remains that the said

parcels were received by FSL on 10.7.2007 with the seals intact.

Learned counsel for the appellants has also referred to affidavit of ESAI Rajinder Singh (Ex.PW13/A). ESAI Rajinder Singh was posted as Maalkhana Mohrar in Police Station Bahadurgarh. According to him, on 5.6.2007, two parcels containing blood stained earth, one parcel of empty shells and live shells, one parcel containing bullet led, two parcels of blood sample, one parcel containing bullet led and one parcel of clothes of deceased and one parcel of revolver .38 bore along with three shells of empty cartridges were deposited with him. On 1.7.2007 Insp. SHO Rohtash has taken on parcel of recovered from Maalkhana for the report of Moharrar. On 25.11.2007, EHC Hem Chander deposited one parcel of revolver duly marked with monogram SN with sample sealed to him. Therefore, it is sought to be impressed that revolver .38 bore and three empty cartridges were already with the police on 5.6.2007 and later on shown to have been recovered from Sohanvir.

The perusal of site plan as well as recovery memo shows that .38 bore revolver was never recovered by the police at the time of spot inspection on 5.6.2007. In fact .38 bore revolver along with three cartridges was recovered from Sohanvir @ Sonu on the basis of his disclosure statement later on after his arrest on 18.6.2007. It was thereafter that on 1.7.2007 that the revolver was taken from *maalkhana* for examination by the Armourer. It appears that affidavit Ex.PW13/A is defective, in which in the parcel, .38 bore revolver had been wrongly mentioned, whereas per recovery memo and site plan said revolver was not recovered on the day of crime. Therefore, the accused cannot be allowed to take benefit of the said lapse on the part of ESAI Rajinder Singh on furnishing some wrong

particulars in his affidavit.

So far as oral statement is concerned, Main Pal and Raja in their first statement before ASI Braham Parkash had categorically stated that Jaipal was fired upon by unknown persons. It was thereafter that when the local police came, they named as many as 11 persons. Even during trial, they kept changing their stand. In the earlier statement recorded before the Court they supported the prosecution case in examination-in-chief and cross-examination. However, when they were recalled under Section 311 Cr.P.C., they stated that it was due to suspicion that they named the accused. It has also come on record that Panchayat of 24 villages gathered and got the matter compromised. The offence under Section 302 IPC is non-compoundable. Statement of Main Pal and Raja regarding their being eye witnesses is otherwise unreliable. Therefore, this Court has to fall upon the scientific evidence.

In this case, one .38 bore revolver was recovered from Sohanvir @ Sonu and FSL report confirmed that the bullets used in the crime BC/2 and BC/3 were fired from the said pistol. One pistol chambered for 7.65 mm cartridge was recovered from accused Rohit. The said pistol was also used in crime and as per FSL report, bullets used in the crime matched with the pistol recovered from the accused Rohit. Accused Sohanvir @ Sonu and Rohit @ Astal have not explained as to how this weapon, which was used in the crime, came in their possession. Therefore, it is proved that Sohanvir @ Sonu and Rohit @ Astal fired upon the deceased Jaipal and Rakesh, resulting in their death.

Therefore, there is no illegality or infirmity in the judgment of the Court below so far as role of Sohanvir @ Sonu and Rohit @ Astal is

concerned.

So far as Rajbir @ Chinni is concerned, statement of complainant Main Pal and Raja are found to be undependable. There is no other evidence to connect him with the crime. Therefore, he is granted benefit of doubt and acquitted of the charges framed against him.

Accordingly, we pass the following order:-

Order

1. CRA-1369-DB-2013 filed by Sohanvir @ Sonu is dismissed.
2. CRA-1447-DB-2013 filed by appellant No.1 Rajbir @ Chinni is allowed and he is acquitted of the charges framed against him. He be released forthwith, if not required in any other case.
3. CRA-1447-DB-2013 filed by appellant No.2 Rohit @ Astal is dismissed.
4. A copy of the order be placed on the connected case file.

(A.B.Chaudhari)
Judge

(Kuldip Singh)
Judge

05.10.2018

gk

Whether speaking/ reasoned:	Yes
Whether Reportable:	Yes