

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 30.7.2018

CRA-D-177-DB-2016 (O/M)

Taqdir

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-D-201-DB-2016 (O/M)

Rambir and another

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-D-204-DB-2016 (O/M)

Anil

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-D-205-DB-2016 (O/M)

Arun

..... Appellant (

Versus

State of Haryana

..... Respondent (s)

CRA-D-206-DB-2016 (O/M)

Jyoti Parkash

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-D-207-DB-2016 (O/M)

Kuldeep alias Bhandari

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-D-236-DB-2016 (O/M)

Karambir alias Chhota and others

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. R.S. Rai, Senior Advocate, with,
Mr. D.S. Brar, Advocate, for appellant in CRA-D-177-DB-2016.

Mr. N.S. Shekhawat, Advocate,
for appellants in CRA-D-201-DB-2016.

Mr. S.S. Verma, Advocate,
for appellants in CRA-D-204-DB-2016, CRA-D-206-DB-2016,
CRA-D-207-DB-2016.

Mr. Bijender Dhankar, Advocate,
for appellants in CRA-D-205-DB-2016.

Mr. J.S. Bedi, Senior Advocate, with,
Mr. Sonpreet Singh, Advocate,
for appellants in CRA-D-236-DB-2016.

Ms. Tanisha Peshawaria, DAG Haryana.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

-. -

-. -

KULDIP SINGH, J.

By this common judgment, we shall dispose of CRA-D-177-DB-2016, filed by accused Taqdir, CRA-D-201-DB-2016, filed by accused Rambir and Devender, CRA-D-204-DB-2016, filed by accused Anil, CRA-D-205-DB-2016, filed by accused Arun, CRA-D-206-DB-2016, filed by accused Jyoti Parkash, CRA-D-207-DB-2016, filed by accused Kuldeep alias Bhandari and CRA-D-236-DB-2016, filed by accused Karambir alias Chhota, Ashok, Naresh alias Neshi, against judgment of conviction dated 30.1.2016 and order of sentence dated 1.2.2016, vide which 10 accused/appellants, named above, except Taqdir, were convicted under Sections 302, 307, 120-B, 149 IPC. Accused/appellant Taqdir was held guilty under Sections 120-B IPC read with Sections 302, 307 IPC. Accused/appellants Kuldeep alias Bhandari, Anil and Arun were held guilty under Section 25 of the Arms Act, whereas accused/appellants Kuldeep

alias Bhandari, Anil, Arun, Jyoti Prakash, Karambir, Ashok and Naresh were also held guilty under Section 27 of the Arms Act and were accordingly convicted.

All the accused/appellants were sentenced as under, vide order of sentence dated 1.2.2016 :-

“(1) Convicts Kuldeep alias Bhandari, Anil, Arun, Jyoti Prakash, Karambir, Naresh, Devender, Rambir and Ashok shall undergo rigorous imprisonment for life and pay a fine of Rs. 10,000/- each for the commission of offence under Sections 302/120-B/149 IPC and in default of payment of fine shall undergo rigorous imprisonment for one year.

(2) Convicts Kuldeep alias Bhandari, Anil, Arun, Jyoti Prakash, Karambir, Naresh, Devender, Rambir and Ashok shall undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/- each for the commission of offence under Sections 307/120-B/149 IPC and in default of payment of fine shall undergo rigorous imprisonment for six months.

(3) Convict Taqdir shall undergo rigorous imprisonment for life and pay a fine of Rs. 10,000/- for the commission of offence under Section 120-B read with Section 302 IPC and in default of payment of fine shall undergo rigorous imprisonment for one year.

(4) Convict Taqdir shall undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,000/- for the commission of offence under Section 120-B read with Section 307 IPC and in default of payment of fine shall undergo rigorous imprisonment for six months.

(5) Convicts Kuldeep alias Bhandari, Anil and Arun shall undergo rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- each for the commission of offence under Section 25 of the Arms Act and in default of payment of fine shall undergo simple imprisonment for six months.

(6) Convicts Kuldeep alias Bhandari, Anil, Arun, Jyoti Prakash, Karambir, Ashok and Naresh shall undergo rigorous

imprisonment for three years and to pay a fine of Rs. 1,000/- each for the commission of offence under Section 27 of the Arms Act and in default of payment of fine shall undergo simple imprisonment for six months.

All the sentences shall run concurrently.”

Facts of the case are that on 22.6.2010, SI Dhanpat Rai, accompanied by his fellow officials, was present in a Government vehicle at Najafgarh road, which is just half kilometer away from Delhi Hospital, Bahadurgarh, in connection with patrol duty. A telephonic information was received that Rakesh alias Kala, resident of Naya Gaon, has been murdered in Delhi Hospital, Bahadurgarh. On this, SI Dhanpat Rai accompanied by his fellow officials reached at Delhi Hospital, Bahadurgarh and inspected the spot where the murder was committed. There, Dharambir son of Braham Dutt (PW3) met him and made a statement (Ex.PW3/A), wherein he stated that his son Rakesh alias Kala, aged 31 years, was elected as a Sarpanch of the village on 12.6.2010 after defeating Taqdir son of Rati Ram, resident of village Naya Gaon. After the declaration of result, Taqdir and his family members, namely, Yogender son of Jage Ram, Manoj son of Dharambir Nambardar, Shamsheer son of Attar Singh and Suraj Bhan son of Mauji Ram as well as their supporters Rohtash son of Mange Ram Jat, had openly threatened that they will eliminate Rakesh alias Kala before he take oath of the office. On 21.6.2010, Rakesh alias Kala was hospitalized due to illness and was admitted in Delhi Hospital, Bahadurgarh. On 22.6.2010, at about 11:15 AM, when complainant alongwith his nephew Surender son of Tariff Singh, had come to hospital on a motorcycle with meals for Rakesh alias Kala, they noticed that co-accused Devender son of Mange Ram and Rambir son of Raghbir Jat, were standing outside the hospital on their separate motorcycles with its ignition on. At that time, accused Naresh alias Neshi

son of Hawa Singh, Ashok son of Dhire, Mukesh son of Suraj Bhan and Karambir alias Chhota son of Mukhtiare, came out of hospital while armed with firearms. On seeing them (complainant and his nephew Surender), Naresh and his companions started firing indiscriminately with intention to kill them. They proclaimed that they have already committed murder of Rakesh alias Kala by firing at him and now, complainant will also not be spared. Complainant and his nephew Surender, however, saved themselves by taking shelter of the parked vehicles and raised alarm, on which Naresh alias Neshi and his companions fled away on the motorcycles of Devender and Rambir. Thereafter, complainant alongwith his nephew Surender rushed inside the hospital and found that his son Rakesh alias Kala was lying down on the floor with face downwards and blood was oozing out of it. There were several marks of firearm shots on his body and Rakesh alias Kala had already succumbed to firearm injuries.

After recording the said statement of Dharambir, which was completed at 3:05 PM, SI Dhanpat Rai made his endorsement (Ex.PW1/B) and sent the same to police station, on which formal FIR (Ex.PW1/A) was registered. The Sub Inspector then inspected the spot. One country made pistol 7.65mm bore loaded with six live cartridges was recovered from underneath the pillow of deceased, 6 empty cartridges of 7.65mm bore, 6 empty cartridges of 9mm bore, 3 live cartridges of 9mm bore, 3 bullet leads, 2 mobile phones mark Samsung and Reliance, which belong to deceased, were recovered and taken into possession. In addition to this, 2 pillows and jeans pant of deceased were also taken into possession through different recovery memos. The inquest report was prepared.

On 23.6.2010, post mortem of dead body was got conducted. In the opinion of doctor, the cause of death was multiple firearm injuries

and its complications. 5 bullets were recovered from the body of deceased, which were also taken into possession.

On 23.6.2010, accused Taqdir and Yogender were arrested. On 24.6.2010, Section 216 IPC was added. Accused Taqdir and Yogender were interrogated and they suffered disclosure statements (Ex.PW10/B and Ex.PW10/A), wherein they admitted that due to defeat in the panchayati elections, they had entered into a criminal conspiracy and Rakesh alias Kala was killed by accused as per the version given by complainant in his statement. Thereafter, accused Mukhtiar Singh and Dhire were also arrested. On 25.6.2010, accused Taqdir and Yogender retracted from their earlier statements (Ex.PW10/B and Ex.PW10/A).

Thereafter, the police turned to conduct the scientific investigation. It was found that there were as many as 8 CCTV cameras in hospital at various places, including one outside the deluxe room in which Rakesh alias Kala was admitted. On 26.6.2010, hard disk of CCTV recordings of Delhi Hospital, Bahadurgarh, was taken into possession through memo (Ex.PW12/A) and as a result of examination of CCTV footage, police came to know that accused Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun were seen entering the room of deceased alongwith weapons and thereafter, rushing out of the room. Therefore, said 4 persons were nominated as accused.

On 3.7.2010, accused Mahender was arrested. On 9.7.2010, DSP Baljeet Singh took over the investigation. On 10.7.2010, accused Kuldeep Singh was arrested, whereas accused Sandeep and Mukesh were arrested on 14.7.2010 and 17.7.2010 respectively.

Accused Mukesh suffered a disclosure statement (Ex.PW35/A), in which, while stating about defeat in elections, he stated that he

alongwith his father Suraj Bhan, Yogender, Manoj Numberdar, Shamsher, Rohtash, Taqdir, Devender, Rambir, Naresh, Ashok and Karambir alias Chhota, gathered in the house of Taqdir and that they had entered into a conspiracy with his companions Arun son of Kuldeep, Kuldeep alias Chhotu and Anil son of Parkash to commit the murder of Rakesh alias Kala. He further stated that on 22.6.2010, son of his brother Paramjit was admitted in Delhi Hospital, Bahadurgarh, due to fever. He went there and saw the car of Rakesh alias Kala outside the hospital and on inquiry, found that Rakesh alias Kala was admitted in hospital. Then, Jyoti Prakash called Anil and Kuldeep as per plan and all 5 of them sat in the Santro car of Kuldeep and Arun, which had no number plate and reached hospital. Anil was having pistol of 315 bore, Arun was having pistol of 32 bore and Jyoti was having pistol of 9 mm and he was also having his licenced pistol. He stood outside. He further stated that when Jyoti, Anil, Arun and Kuldeep alias Chhotu came out of hospital after killing Rakesh, on hearing the noice of gunshots, some people gathered. He stopped the people by firing gunshots as per plan and thereafter they fled away in their Santro car. He further disclosed that his pistol is with his wife Neelam at home. Kuldeep alias Chhotu and Anil have taken the car with them to Ajmer, Rajasthan.

On 19.7.2010, the said pistol was produced in the Court of Illaqa Magistrate, which was identified by Mukesh on 20.7.2010 and same alongwith 25 live cartridges and Arms Licence was handed over to DSP Baljeet Singh by accused Mukesh, after taking the same from his wife. The pistol and live cartridges were taken into possession through recovery memo Ex.PW21/B.

On 1.8.2010, accused Zora Singh was arrested. On 2.8.2010, accused Prakash Chand and Nar Singh were arrested. On 5.8.2010, accused

Kuldeep alias Bhandari, Anil, Bijender and Monu were arrested.

On 12.8.2010, accused Kuldeep alias Bhandari suffered a disclosure statement (Ex.PW15/B), wherein he stated that he, Anil and Ajay are friends. He and Anil were introduced to Mukesh by Ajay, resident of Naya Gaon, Arun, resident of Mor Kehri and Jyoti, resident of Najafgarh, who were working in LI Bahadurgarh. A dispute of Anil was arisen with Moni and Chhotu and Anil had asked Mukesh for getting the same settled. Mukesh told them that firstly, they should do their work and then he will get the compromise effected.

Giving the details of commission of crime, Kuldeep alias Bhandari disclosed to police that on 22.6.2010, at about 10:00 AM, Mukesh had called him and Anil at LI Bahadurgarh. Then, he alongwith Anil went to LI Bahadurgarh in a Santro car, which was without number plate. Mukesh resident of Naya Gaon, Arun resident of Mor Kehri and Jyoti resident of Najafgarh met them outside outside LI Bahadurgarh. Mukesh told them that Rakesh alias Kala Sarpanch, resident of Naya Gaon is admitted in Delhi Hospital, Bahadurgarh and that his murder has to be committed today. Jyoti had given pistol alongwith bullets to him and Anil both. After consultation, Kuldeep alias Chhotu took them to Delhi Hospital, Bahadurgarh, in a Santro car. Mukesh stood outside hospital with ignition on. He was also having a licenced pistol. He further stated that all 4 of them had separate pistols. First, Mukesh sent him inside hospital to see the room and bed of Rakesh alias Kala. He came back after knowing the location. Thereafter, he alongwith Jyoti, Arun and Anil went inside the hospital and came back after committing murder of Rakesh alias Kala by firing gunshots. Then mob started gathering at the spot after hearing the firing of bullets. Then, Mukesh opened fire on the mob. Then, all 5 of them

went in the Santro car to Najafgarh. He further stated that he had gone to Bijender and Monu in village Surakhpur after keeping his pistol concealed in the bed of his home. Mukesh, Arun and Jyoti separated from them at Najafgarh after taking car from them and their weapons. He further stated that on 20.6.2010, at about 8:00/9:00 PM, he alongwith co-accused Anil and Monu had snatched one white coloured Santro car on gun point, which was bearing temporary number. They had also snatched mobile and money at Kharkhodha bypass. Said Santro car was used in the murder of Rakesh alias Kala. Now, said Santro car is in possession of Jyoti, resident of Najafgarh.

In pursuance to the statement, accused Kuldeep alias Bhandari, got recovered one 32 bore pistol from his residential house, which was taken into possession through recovery memo Ex.PW15/D.

On same day, accused Anil also suffered a disclosure statement (Ex.PW15/A) giving same details of crime as given by accused Kuldeep alias Bhandari and stated he had also fired gunshots at Rakesh alias Kala. He has kept the gun at his home.

Accused Anil, in pursuance to his disclosure statement, also got recovered one 32 bore pistol from a room of his residential house, which was taken into possession through recovery memo Ex.PW15/F. The sketch of said pistol was prepared.

The rough site plans of place of recoveries were also prepared. On 10.9.2010, the scaled site plan (Ex.PW8/A) was got prepared from ASI Jai Chand. On 12.11.2010, one compact disc developed from CCTV camera and an album, containing 49 photographs in total, were taken into possession through recovery memo Ex.PW17/A. These were produced by Dharambir (complainant). The incriminating articles recovered from the spot were sent to FSL, Madhuban, for analysis.

Accused Manoj son of Dharam Singh, Shamsheer son of Attar Singh, Suraj Bhan son of Mauji Ram, Devender and Rohtash, both sons of Mange Ram, Rambir son of Raghbir, Naresh alias Neshi son of Hawa Singh, Ashok son of Dhire and Karambir alias Chhota son of Mukhtiar Singh as well as Arun and Jyoti Prakash could not be arrested as they were evading their arrest. Therefore, after obtaining warrants of arrest against aforesaid accused from the Court of Illaqa Magistrate, they were arrested. Report under Section 173 Cr.P.C. was prepared on 11.9.2010 and same was presented in the Court on 17.9.2010 against accused No. 1 to 15. Accused Jyoti Prakash and Arun were declared proclaimed offenders on 28.2.2011 and challan against them was presented. On 12.5.2011, Jyoti Prakash, who was already in custody in FIR No. 86, dated 12.3.2011, under Sections 364-A, 392 read with Section 34 and under Section 25 of Arms Act, registered at Police Station City Bahadurgarh, was taken into custody in this case and was interrogated. Accused Jyoti Prakash suffered a disclosure statement (Ex.PW27/A), in which he has disclosed the fact as disclosed by accused Kuldeep alias Bhandari. He has further stated that pistol of 9mm, through which he had fired gunshots on Rakesh alias Kala, has been kept concealed in the room of his friend Sonu in Guwahati (Assam) and he can get the same recovered. Jyoti Prakash later on took the police to place of occurrence and demarcated the room where the occurrence had taken place.

On 17.5.2011, accused Arun was arrested after obtaining permission as Arun was confined in Tihar jail by Delhi Police. He suffered a disclosure statement (Ex.PW27/B) and also demarcated the place of occurrence. Later on 22.5.2011, accused Arun suffered another disclosure statement stating that in the previous statement, he has got recorded that he has concealed the pistol in the rented room of his friend Pardeep at Raipur

in Chattisgarh. He stated that he had 2 pistols of 32 bore at the time of committing murder of Rakesh alias Kala. He had also got one extra magazine, in which 6 rounds of 32 bore were loaded. He has concealed the 32 bore pistol under the pillow of bed of Rakesh alias Kala, from which he has fired gunshots upon Rakesh alias Kala after loading extra magazine in the same, after unloading empty magazine from the same so that original pistol used in crime could not be recovered from him. The second pistol of 32 bore which he was carrying at the time of commission of crime has been concealed in the clothes kept in the bed of his room and he can get the same recovered. Accordingly, on 22.5.2011, accused Arun got recovered said 32 bore pistol, which was taken into possession through recovery memo Ex.PW27/E. He also demarcated the place of occurrence.

On 19.5.2011, accused Jyoti Parkash suffered a disclosure statement (Ex.PW28/A). During interrogation of accused, he disclosed that 9mm pistol, which was used in the commission of crime, had already been recovered from his village by police of Police Station Kundli on 26.3.2011 in FIR No. 118 dated 26.3.2011, registered under Sections 420, 468, 471 IPC and under Section 25 of Arms Act. The said pistol was also taken into possession in this case.

During investigation by DSP Mahabir Singh, some culprits, namely, Manoj, Shamsher, Suraj Bhan, Devender, Rohtash, Rambir, Naresh alias Neshi, Ashok and Karambir alias Chhota were found innocent. Therefore, they were not arrested and were called upon report filed under Section 173 Cr.P.C. Various sanctions of District Magistrate for prosecution under Sections 25 and 27 of Arms Act, were already obtained. After presentation of challan, case was committed to the Court of Sessions, which framed the charges against accused. It comes out that after cross

examination of Dharambir, application under Section 319 Cr.P.C. was filed to summon more accused, namely, Manoj, Shamsher, Karambir, Rambir, Devender, Rohtash, Ashok, Naresh and Suraj Bhan. Another application was also filed under Section 319 Cr.P.C. to summon Sanjay. Both these applications were allowed on 5.7.2013 by learned Additional Sessions Judge, Jhajjar, and said persons were also summoned to stand trial.

Accused Kuldeep alias Bhandari, Anil, Karambir alias Chhota, Jyoti Parkash, Rambir, Devender, Ashok, Naresh, Sanjay and Arun were chargesheeted under Sections 302/307/149/120-B IPC, accused Mukhtiar Singh, Dhire, Mahender, Kuldeep Singh, Sandeep, Zora Singh, Prakash Chand, Nar Singh, Bijender and Monu were chargesheeted under Section 216 IPC, accused Kuldeep alias Bhandari, Anil and Arun were chargesheeted under Section 25 of Arms Act and accused Kuldeep alias Bhandari, Anil, Karambir alias Chhota, Sumit alias Sem, Ashok, Naresh alias Neshi and Arun were chargesheeted under Section 27 of Arms Act by learned Additional Sessions Judge, Jhajjar. Accused pleaded not guilty to charges framed against them and claimed trial.

It is to be added here that accused Mukesh absconded and was declared a proclaimed offender and it is stated that he has now been arrested and is facing trial.

The prosecution in support of its case examined as many as 37 witnesses, beside relying upon report of FSL and other documents.

In the statements recorded under Section 313 Cr.P.C., accused denied their involvement in crime.

Accused examined DSP Mahabir Singh (DW1) in defence to prove innocence of accused Manoj, Shamsher, Suraj Bhan, Rohtash, Rambir, Naresh alias Neshi, Devender, Karambir and Chhota and Ashok.

After hearing the prosecution and learned defence counsel and going through the evidence, the learned Additional Sessions Judge, Jhajjar, convicted and sentenced the accused as aforesaid.

We have heard the learned senior counsel/counsel for all the appellants and have also carefully gone through the lower Court file and the documents attached with the same.

In this case, there are two versions, one put forward by Dharmbir when he made the statement to police, sometime after commission of crime wherein he had stated that his son had won elections of Sarpanch after defeating Taqdir. He had further stated that said Taqdir had entered into a criminal conspiracy with Yogender, Manoj, Shamsheer, Suraj Bhan and Rohtash to eliminate Rakesh alias Kala before he take the oath of the office. Said conspiracy was entered into the house of Taqdir one day prior to commission of crime and Jitender (PW4) witnessed the same. He had further stated that when on 22.6.2010, at about 11:15 AM, when he had come to hospital alongwith his nephew on motorcycle with meals for Rakesh, then he saw Devender and Rambir standing outside the hospital on separate motorcycles, with ignition on. Then, he saw that Naresh alias Neshi son of Hawa Singh, Ashok son of Dhire, Mukesh son of Suraj Bhan and Karambir alias Chhota son of Mukhtiare, came out of the hospital, armed with firearms and on seeing Dharambir and Surender, said accused started indiscriminate firing upon them with intention to kill them after proclaiming that they have already committed the murder of Rakesh alias Kala, and now will not spare us. Dharmbir and Surender saved themselves by taking shelter of the parked vehicles. Thereafter, all said assailants sped away on the motorcycles of Devender and Rambir. It was thereafter that he alongwith his nephew entered the hospital and found his

son dead with bullet injuries. This statement was made on 22.6.2010 and recording of same was completed by SI Dhanpat Rai at 3:05 PM. This statement formed the basis of FIR, which was registered at 3:30 PM.

Later on, it came out that there were as many as 8 CCTV cameras in the hospital. On 23.6.2010, after getting the post mortem of body, some of accused were arrested. However, on 26.6.2010, that police recovered hard disc containing the video recording of CCTVs around said time. Later on, it appears that Dharambir had also got the copy of CCTV recording and produced 49 photographs and CD to police. Now, a different version has come from CCTV footage. The details of CCTV footage as noticed by the trial Court is reproduced as under :-

“ **First Floor**

1. 10.43.01 : Kuldeep alias Bhandari goes upstairs.
2. 10.43.05 : Kuldeep alias Bhandari standing in front of the gate. Wearing white T-shirt with blue stripe over shoulder.
3. 10.44.02 : Kuldeep alias Bhandari comes inside.
4. 10.44.33 : Kuldeep alias Bhandari goes outside.
5. 10.47.58 : Kuldeep alias Bhandari standing at the reception.
6. 10.49.35 : Kuldeep alias Bhandari comes inside.
7. 10.49.51 : Kuldeep alias Bhandari goes outside while talking on mobile phone.
8. 11.02.18 : Kuldeep alias Bhandari comes inside.
9. 11.06.45 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun seen coming.
10. 11.06.47 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun come inside. Kuldeep alias Bhandari, Anil and Arun wearing white colour T-shirt while Jyoti Prakash wearing white shirt.
11. 11.06.49 : Jyoti Prakash going upstairs towards the room of deceased.
12. 11.07.35 : Kuldeep alias Bhandari, Anil, Jyoti Prakash
to 11.08.31 and Arun go to the Deluxe room. One of them takes out firearm. After monitoring, all come

back.

13. 11.08.41 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun again go to the Deuxe room while carrying firearms.
14. 11.09.14 : Kuldeep alias Bhandari, Anil, Jyoti Prakash
11.09.15 and Arun come out running. Anil, Jyoti
11.09.16 Prakash and Arun carrying firearms in their
hands. All the four running downstairs.

Deluxe Room

1. 11.02.34 : Kuldeep alias Bhandari watching from the gate of lobby.
2. 11.07.37 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun moving towards the room of deceased, assessing the situation and then leaving in a hurry.
3. 11.08.47 : Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun again entering the lobby, moving towards the room of deceased on after another and of all four, the first three so moving were holding firearms in their hands.
4. 11.09.07, : Kuldeep alias Bhandari, Anil, Jyoti Prakash
11.09.08 and Arun coming running out of room and
leaving the lobby.”

It goes to show that at about 10.43.01, Kuldeep alias Bhandari goes upstairs and done recce of the deluxe room. Thereafter, at 10.49.51, he talked on mobile phone, then at about 11.06.45, Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun were seen coming. Then, at 11.07.35 to 11.08.31, Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun go to Deluxe room. One of them takes out firearm and after monitoring, all come back, then at 11.08.41, all said assailants again go to deluxe room while carrying firearms and come back running downstairs at 11.09.14 to 11.09.16, which shows that crime was committed by said Kuldeep alias Bhandari, Anil, Jyoti Prakash and Arun between 11.08.41 to 11.09.16. The record of deluxe room also shows the commission of crime by said 4 assailants.

If this scientific evidence is taken to be correct, then it will contradict the statement of Dharambir regarding involvement of accused Naresh alias Neshi son of Hawa Singh, Ashok son of Dhire, Mukesh son of Suraj Bhan and Karambir alias Chhota son of Mukhtiare in the crime, regarding their coming out of hospital, then firing at him and his nephew Surender outside hospital and then running away on the motorcycles of Devender and Rambir. However, according to investigation coming out from the CCTV cameras, four accused i.e. Kuldeep alias Bhandari, Jyoti, Mukesh, Arun and Anil fled away in a Santro car, which was stolen on 20.6.2010 and that Mukesh (accused) was with them. Now, this Court is to examine, which version is correct.

We are of the view that during investigation, police did not find any trace of gunshot being fired at the complainant Dharmbir and his nephew Surender outside hospital. In the parking lot, no bullets were found, nor any vehicle or building was hit. The scientific evidence recorded in CCTV cameras shows otherwise. The crime was committed between 11.08.41 to 11.09.16 AM. However, it comes out Dharambir had infact come later around 11.39 AM and that infact he was not present when crime was committed and when accused fled away from the spot. The CCTV footage placed on file further shows that immediately after commission of crime, two doctors were seen rushing to deluxe room of deceased at 11.11.08. At 11.11.52, Dr. Bansal and other staff members of hospital rushed to deluxe room. At 11.12.50, Dr. Dheeraj Diwan, Senior Doctor and other staff members of hospital are seen going to deluxe room. At 11.13.45, Dr. Dheeraj Diwan alongwith other hospital staff members are seen coming out of room. At 11.13.58, the door of deluxe room was closed. As per CCTV footage, it was at 11.22.27 that Rakesh alias Banka, a cousin of Rakesh alias

Kala entered the lobby and goes to the room of deceased and comes back at 11.22.40 and seen making phone call to somebody and a few seconds later, the deluxe room was again closed at 11.22.52. As per CCTV footage, it was at 11.35.18 that the police enter the lobby of the deluxe room. It was at 11.36.06 that 2 brothers of Rakesh alias Kala, namely, Sanjay and Kuldeep arrived and enter the lobby of the deluxe room and then with the police entered the room. At 11.36.12, Krishan Kumar, cousin of Rakesh alias Kala entered the lobby of deluxe room and goes to deluxe room of deceased. At 11.36.21, another person of village Naresh Kumar enters the room of deceased. At 11.36.42, 2 brothers of deceased come out of the room. At around same time, Krishan Kumar, cousin of deceased and Naresh Kumar, co-villager come from room through lobby. At 11.37.08, the door of deluxe room is closed. Thereafter, at 11.39.22, Surender, cousin of Rakesh alias Kala and another person enter the lobby of deluxe room. It was at 11.39.36 that Dharambir, father of Rakesh alias Kala, enter the deluxe room through lobby. Surender and Dharambir come out of room at 11.40.19. The CCTV footage clearly establishes that it was Dr. Bansal followed by Dr. Dheeraj Diwan alongwith other staff members of hospital, who had first rushed the room immediately after the crime and at 11.13.58, the door of deluxe room was closed. About 9 minutes later, Rakesh alias Banka, a cousin of Rakesh alias Kala is first to enter the lobby of deluxe room at 11.22.27. The police arrived at the spot at 11.35.18. It was thereafter that Sanjay and Kuldeep, two brothers of Rakesh alias Kala arrived at spot at 11.36.06. Sometime later, Krishan Kumar, cousin of Rakesh alias Kala also arrived at the spot. Thereafter, one Naresh, co-villager also arrived at room. Surender, cousin of Rakesh alias Kala and Dharambir Singh, father of Rakesh alias Kala arrived only around 11.39.23 to 11.39.36. The CCTV footage clearly shows

that at the time of crime, none of the family members of Rakesh alias Kala were present in and around the room where the crime was committed. It appears that after 11.13 AM when doctors came to know about crime, they informed police and thereafter, 9 minutes later, Rakesh alias Banka, cousin of brother of Rakesh alias Kala, rushed at the spot. He can be the person, who could be around the hospital, but Rakesh alias Banka was not examined to state about his location and whether he had seen any of the assailants. The police arrived at 11.35.18 i.e. about 27 minutes after the crime and it is to be noticed that SI Dhanpat Rai was only half kilometer away from the hospital, which is on the main Delhi-Rohtak highway. Therefore, he appears to have arrived within 27 minutes at the spot of crime. Before that, Rakesh alias Banka had arrived at the spot within 9 minutes of commission of crime. Sanjay and Kuldeep, two brothers of Rakesh alias Kala had arrived at spot within one minute of arrival of police at spot, which means that they were also not around the hospital when crime was committed. Krishan Kumar, a cousin of Rakesh alias Kala also arrived at same time. The witness, who could be around, could only be Rakesh alias Banka, but he was not examined. The CCTV footage clearly rules out the story put forward by complainant regarding Naresh alias Neshi, Ashok, Mukesh and Anil, coming out of hospital, firing on them and then running on the motorcycles of Devender and Rambir. Therefore, we tend to believe the scientific evidence.

In the light of said evidence, now we will proceed to determine as to what roles were played by each of accused. So far as, accused Kuldeep alias Bhandari, Arun, Jyoti Parkash and Anil are concerned, their involvement in the crime is proved. The weapons of offence were also recovered from them. Not only this, 6 cartridges of 9mm and 6 cartridges of

7.65mm were recovered from the spot. 5 bullet leads were recovered from the spot. 5 bullet leads were found in the dead body of deceased.

As per the FSL report, bullets marked as BC/4 to BC/7, extracted from the dead body of deceased, was fired from pistol marked as W/1, which was recovered from the place of occurrence underneath the pillow of deceased and as per disclosure statement, it was recovered from accused Anil, who left the pistol at the spot to avoid recovery. The FSL report further proves that pistol, which was marked W/5, recovered from accused Arun and pistol marked W/1, recovered from accused Anil, which was used for firing. The bullets of 9mm and 7.65mm calibre were recovered from the spot, were fired from 9mm pistol marked W/6. The pistols were recovered from all said 4 persons, namely, Kuldeep alias Bhandari, Jyoti Prakash, Arun and Anil. Therefore, their involvement in the commission of crime is proved beyond all reasonable doubts. All of them had disclosed before the police that they fled away in a Santro car, which was stolen on 20.6.2010 i.e. 2 days before the commission of crime and that accused Mukesh was driving the same. Accused Mukesh, who was declared a proclaimed offender, was also arrested in this case later on and is now facing separate trial. Mukesh son of Suraj Bhan is the same person, who is supporter of Taqdir and was involved in conspiracy with Taqdir to eliminate Rakesh alias Kala before he can take oath of the office.

Now, we come to the role of Taqdir. Accused Taqdir had lost the elections of Sarpanch to Rakesh alias Kala on 12.6.2010 and was nursing a grudge against him.

Accused Mukesh is stated to be the person, who arranged for hired assassins to commit the crime. The said 4 assailants otherwise had no personal enmity with deceased. Accused Mukesh belongs to the party of

Taqdir.

So far as criminal conspiracy is concerned, it is always to be inferred from circumstances.

Accused Taqdir had a motive and accused Mukesh, who was found involved in the crime, was the man of party of Taqdir. He was involved in the commission of crime with said 4 assailants and as per investigation, he fled away with them from the spot in a stolen Santro car. The said Santro car was stolen 2 days before the crime i.e. on 20.6.2010. Accused Taqdir lost elections on 12.6.2010. It appears that conspiracy was hatched, as suspected by Dharambir (complainant), to eliminate Rakesh alias Kala. A robbery of a mobile phone and money was committed and a Santro car was stolen, which was ultimately used in the crime.

In this case, Jitender (PW4), who had seen Taqdir entering into a criminal conspiracy, turned hostile and did not support prosecution case.

Further evidence on file shows that a recce was done before the commission of crime to see that Rakesh alias Kala was admitted in a particular room and information was supplied accordingly. The details of CCTV footage placed on file shows that Sanjay, resident of Najafgarh, who is nephew of Taqdir, had visited the hospital at 9.40.01 AM. At 10.43.01, Kuldeep alias Bhandari was found present and also come in front of reception. At 10.54.25, Wazir, who is son of uncle of Taqdir, was also found present in hospital. At 10.58.36, Surender son of Mir Singh, who is nephew of Taqdir was also found present. 1 minute before the crime at 11.06.18, Sanjay was seen waiting outside the gate. Sanjay is a co-villager of Taqdir. It was thereafter that at 11.06.45, accused Kuldeep alias Bhandari, Arun, Jyoti Parkash and Anil came and committed the crime within two minutes.

The police during investigation found some of accused innocent, as discussed above. However, later on, they were summoned under Section 319 Cr.P.C. The involvement of other relations of Taqdir was ruled out on account of admission of one of the family members i.e. son of Paramjit in the hospital.

We are of the view that police/investigating officer lost sight of the fact that relations and friends of Taqdir could be the persons, who tipped of Taqdir and his associates about presence of Rakesh alias Kala in a particular room in the hospital, though it may not have been done intentionally or in conspiracy. Kuldeep alias Bhandari was seen at the gate at 11.02.34 as if he was waiting for somebody. The assailants Kuldeep etc. were moving towards room of deceased at 11.07.37. In this way, the evidence on file clearly indicates that crime was committed at the behest of Taqdir. Though, he was not physically present at the place of occurrence, but his party man Mukesh was present and some of his relations were present to do the recce and informed him about the factual situation at spot.

The learned senior counsel appearing for appellant Taqdir has argued that statement of complainant Dharambir is not believable in view of CCTV footage and the only witness Jitender who overheard the conspiracy has turned hostile. Therefore, conspiracy against Taqdir is not proved.

We are of the view that, as observed above, the conspiracy is always to be inferred from the circumstances. In the present case, even if the evidence of complainant Dharambir is discarded, there is sufficient evidence on file to show that accused Taqdir was the main conspirator, who hatched a conspiracy to eliminate his opponent Rakesh alias Kala. Rakesh alias Kala was assaulted in hospital in broad day light and several bullets were fired upon him to ensure that he does not survive. Therefore, the guilt of Taqdir

is also proved beyond all reasonable doubts.

Now, we come to the role of other accused, namely, Rambir and Devender, who according to complainant, were waiting outside the hospital on separate motorcycles with ignition on. Since the version of complainant is disbelieved and not proved from the record and it has come in investigation that assailants had infact fled away from the spot in a stolen Santro car, in which accused Mukesh was also riding, therefore, role of Rambir and Devender in the crime also becomes highly doubtful. Accordingly, they are entitled to benefit of doubt.

The version of complainant Dharambir that he saw Naresh alias Neshi, Ashok, Mukesh and Karambir alias Chhota, coming out of hospital with firearms has been disbelieved. The role of Mukesh in the crime, who was declared a proclaimed offender, is being separately tried. Once the version of complainant regarding accused Naresh alias Neshi, Ashok and Karambir alias Chhota is not proved, therefore, they are also entitled to benefit of doubt and entitled to be acquitted.

The learned senior counsels/counsels for appellants have vehemently argued that video footage relied upon by trial Court is not permissible in evidence.

We are of the view that in order to prove the video footage, the prosecution examined PW19 Sanjay Nagar, who also issued the certificate under Section 65-B of the Indian Evidence Act, 1872. Therefore, said CCTV footage is admissible in evidence and was rightly relied upon by the trial Court.

The learned senior counsels for appellants have pointed out certain discrepancies in the statements of witnesses, which are immaterial.

The learned senior counsels/counsels for appellants have argued

that as admitted by Dharambir, Rakesh alias Kala was also facing 5 criminal cases. However, cross examination of Dharambir shows that these pertain to panchayat elections prior to year 2005 and one criminal case was registered against him later on.

We are of the view that if Rakesh alias Kala was facing 5 criminal cases regarding panchayat elections, this does not mean that anybody has got the licence to kill him in the manner it was done. There was an apparent motive for commission of crime. It was a well planned conspiracy, which was well executed after doing recce of the place where Rakesh alias Kala was admitted and time was also chosen when any of his family member was not around. The assailants were hired assassins.

In view of the foregoing discussion, we make the following order :-

- (1) CRA-D-201-DB-2016, CRA-D-236-DB-2016, filed by Appellants Karambir alias Chhota, Rambir, Devender, Naresh alias Neshi and Ashok are allowed. The impugned judgment dated 30.1.2016 and order dated 1.2.2016 SC No. 131/2013 (RBT) qua them is set aside, and they are acquitted of the charges framed against them. They be released forthwith, if not required in any other case.
- (2) CRA-D-177-DB-2016, CRA-D-204-DB-2016, CRA-D-205-DB-2016, CRA-D-206-DB-2016 and CRA-D-207-DB-2016, filed by accused/appellants Taqdir, Kuldeep alias Bhandari, Anil, Jyoti Parkash and Arun, all are dismissed.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

30.7.2018
sjks

Whether speaking / reasoned	:	Yes	/	No
Whether Reportable	:	Yes	/	No