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

**Reserved on: May 10, 2018**

**Date of decision: July 27, 2018**

**CRA-D-917-DB of 2013 (O&M)**

Shiv Kumar

.....Appellant

Versus

U.T. Chandigarh and another

....Respondents

**CRA-D-834-DB of 2013 (O&M)**

Kanav Arora

.....Appellant

Versus

State of U.T. Chandigarh

....Respondent

**CRA-D-971-DB of 2013 (O&M)**

Ishwinder Singh

.....Appellant

Versus

State of U.T. Chandigarh

....Respondent

**CRA-D-1029-DB of 2013 (O&M)**

Mandeep Singh

.....Appellant

Versus

State of U.T. Chandigarh

....Respondent

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI  
HON'BLE MR. JUSTICE B.S. WALIA**

**Present:** Mr. Akshay Bhan, Senior Advocate with  
Mr. Harpreet Multani, Advocate for the appellant  
(in CRA-D-917-DB of 2013 and CRA-D-834-DB of 2013).

Mr. J.S. Bedi, Senior Advocate with  
Mr. Sunil Sihag, Advocate for the appellant  
(in CRA-D-971-DB of 2013).

Ms. Baljit Mann, Advocate for the appellant  
(in CRA-D-1029-DB of 2013).

Mr. Rajiv Sharma, Addl. Public Prosecutor  
for U.T., Chandigarh.

Mr. Bhupinder Singh Thind, Advocate  
for the complainant (in all the appeals except  
CRA-D-1464-DB of 2014)  
and for the appellant (in CRA-D-1464-DB of 2014).

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**A.B. CHAUDHARI, J**

By this common judgment, above said all the appeals are being disposed of.

The appellant(s), in **CRA-D-917-DB of 2013, CRA-D-834-DB of 2013, CRA-D-971-DB of 2013** and **CRA-D-1029-DB of 2013** have put to challenge the judgment/order dated 04.07.2013/08.07.2013 passed by the learned Sessions Judge, Chandigarh, in Sessions Case No.88 of 19.10.2007, by which appellant(s), namely Shiv Kumar son of Ram Naresh, Kanav Arora son of Krishan Kumar Arora, Ishwinder Singh son of Amarjeet Singh and Mandeep Singh son of Sukhwinder Singh, were convicted for commission of offence punishable under Section 302 of Indian Penal Code, 1860 (for short 'IPC') and sentenced them to undergo Rigorous Imprisonment for life and to pay fine in the sum of ₹20,000/- each; in default of payment of fine, to further undergo Rigorous Imprisonment for two years each; and also convicted for commission of offence punishable under Section 449 of IPC and sentenced them to undergo Rigorous Imprisonment for ten years and to pay fine in the sum of ₹10,000/- each; in default of payment of fine, to further undergo Rigorous Imprisonment for one year each.

**FACTS**

Briefly stated, the case of the prosecution was that the informant/complainant-Kamlesh reported to the police station officer, Sector 26, Chandigarh that he was working as a Peon with Rajesh Rattan and

Associates and Chartered Accounts, a firm, in SCO No.46, 2<sup>nd</sup> Floor, Sector 42, Chandigarh, for the last 7-8 months. On 22.05.2007 at about 6:30 P.M., two Hindu gentlemen aged about 25/30 years came to his office and talked with his employer Rajesh Goyal, the deceased. He served them water. After about 15/20 minutes, one Sikh boy and one clean shaven boy, aged about 30/32 years also came to the office. Rajesh Goyal gave a plain paper to the complainant for making photostat. At that time, one boy out of two who were already sitting in the office came out and gave him a piece of paper for photostat. When he was making the photostat, the Sikh boy and clean shaven boy went inside the cabin of Rajesh Goyal. The Sikh boy and other boy came outside and after obtaining photostat copy, again went inside and one of the boy who had come earlier, stood by him near the cabin and after some time, he heard some noise of quarrel in the cabin of Rajesh Goyal. He, therefore, saw from the windowpane that two clean shaven boys had caught hold of Rajesh Goyal and were slapping and giving fists blows to him. The Sikh boy was having a knife gave its blow on the neck of Rajesh Goyal, who fell down and the fourth boy pulled the complainant asking him to keep quiet. After some time, all the three boys who were inside came out having blood on their hands and clothes and they asked water from him. The complainant brought water in three glasses and they took the water and washed their hands. Before leaving, they threatened the complainant that if he raised any *raula*, he will meet the same fate. Thereafter, they ran away and he saw Rajesh Goyal dead on the floor with blood. The complainant immediately called Sangeet Singla, the partner of Rajesh Goyal and informed him. It is on this information, offence under Section 302, 452,

506/34 of IPC was registered. During investigation, the investigating agency prepared site-plan and got the postmortem conducted. Accused-Mandeep Singh alias Lali son of Sukhwinder Singh, resident of House No.609, Phase-X, Mohali (Punjab), Kanav Arora son of Krishan Kumar Arora, resident of House No.1143, Sector 21-B, Chandigarh, Shiv Kumar son of Ram Narain, resident of House No.650, Adarsh Nagar, Naya Gaon, District Mohail (Punjab) and Ishwinder Singh son of Amarjeet Singh, resident of House No.1232, Sector 21, Chandigarh were arrested on 23.05.2007. After completion of investigation, the challan was presented in the Court of JMIC, Chandigarh.

Thereafter, the trial before the Sessions Court commenced and since the charge was denied by the accused persons. The prosecution witnesses were examined. The prosecution examined number of witnesses and defence also examined some witnesses. Finally, the learned trial Court heard the arguments of the counsel for the parties and recorded the judgment and order of conviction and sentence as aforesaid. Hence, these appeals.

### **ARGUMENTS**

In support of the appeals, learned counsel for the accused/appellants made the following submissions:-

- (i) The learned trial Court committed an error on facts as well as in law in convicting the accused/appellants for the offence of murder of Rajesh Goyal, in the absence of legal, cogent and proper evidence and by placing reliance on the testimony of the alleged star witness of the prosecution, namely Arvinder Singh Bedi-PW2, whose evidence was not at all truthful, trustworthy and he was a got-up witness. At any rate, even the evidence of PW2-Arvinder Singh Bedi did not anywhere indicate that he was

an eye-witness to the incident. On the contrary, the nature of his evidence was that he did not know any of the accused persons but while going up from the staircase on the first floor to the office of the deceased-Rajesh Goyal, he saw the accused persons going down with blood stained clothes and a handle in the *dub* of Sikh accused who was leading the other accused persons while escaping from the staircase. Admittedly, PW2-Arvinder Singh Bedi did not claim that previously he knew any of the accused persons. His evidence was liable to be rejected for more than one reason. In the first place, the prosecution admittedly, did not hold any Test Identification Parade and therefore, it was very risky to rely on his evidence of identification for the first time in the Court. Not only that, it is the evidence of the witness itself that the accused persons were shown in the police station by the police officers and therefore, the identification aspect assumes significance and his evidence was liable to be wholly rejected;

- (ii) The informant in this case was the complainant-Kamlesh, peon of the deceased Rajesh Goyal and it is on the basis of his statement that the investigation was set in motion. Kamlesh had claimed to be the eye-witness when he had given information to the police. But then the said witness Kamlesh was declared hostile by the prosecution and he did not support the prosecution case at all. In the absence of evidence of Kamlesh who did not support the prosecution case, the case in question became a case of no evidence or at-least a doubtful case fastened on the appellants. In order to make a show or solving the murder case, the police have involved the accused/appellants in the serious offence of murder;
- (iii) The prosecution case thus, being based on circumstantial evidence in the absence of any ocular testimony of any witness, the motive played a crucial role. But the prosecution miserably failed to prove the motive against each and every accused in this

case as to why they would kill Rajesh Goyal, particularly, because they had no concern with him nor had any sort of transactions with him. The prosecution did not elaborate the theory of conspiracy and thus, refused to tell the genesis of the crime when the entire burden was on the prosecution to disclose the same. The other evidence by the prosecution on record in order to show the transactions relating to share market, i.e. share selling-purchase etc. does not have anything to do with the accused persons and therefore, instead of prosecuting other persons who were responsible, the appellants have been made scapegoat;

- (iv) The evidence of PW19-K.K. Aggarwal, father-in-law of the deceased has wrongly been accepted by the trial Court, when as a matter of fact, the major part of his evidence was by way of improvement and as such, liable to be discarded;
- (v) The document Exhibit PA, if carefully seen would reveal that the same was tampered and therefore, the finding of conviction recorded against accused/appellant-Kanav Arora on the basis of the said document Exhibit PA is perverse. At any rate, the finger-prints, which were taken during investigation did not yield any result nor was the same produced before the trial Court;
- (vi) All the recoveries alleged to have been made by the investigating officers, which have been relied upon by the trial Court were not supported by the witnesses as they had turned hostile and therefore, there was reason to believe that the recovery was planted;
- (vii) The evidence of PW25-A.S. Shergill would not advance the case of the prosecution as it is settled law that even statement under Section 164 of Cr. P.C. by Kamlesh could only be utilized as a previous statement for the purpose of bringing contradictions etc. and nothing more;
- (viii) The prosecution failed to prove any motive on the part of the

accused persons for the alleged commission of murder and in the absence of any ocular evidence on the basis of such weak circumstantial evidence, the trial Court erred in recording the conviction against all the accused/appellants;

- (ix) The prosecution has shown that the *kirpan* that was discovered had human blood of 'B' group, but then the blood group of blood that was taken from the spot has not been made known. The size of the *kirpan* is said to be 43 centimeters and, if compared with the injuries, one can easily come to the conclusion that the injuries on the person of the deceased were not possible by such a *kirpan*. Even otherwise, there is inconsistency as the length of the weapon is said to be 52 centimeters and there is serious doubt about the recovery of the weapon;
- (x) The car in which the assailants are said to have run away is of green colour as against the golden colour as stated by the witness. Star witness of the prosecution PW2-Arvinder Singh Bedi was not named in the FIR as PW2-Arvinder Singh made a claim that Kamlesh had told him about the incident. At any rate, evidence of PW2-Arvinder Singh is untrustworthy as can be seen that PW5-Sangeet Singla did not name PW2-Arvinder Singh. It is thus, seen that the evidence of PW2-Arvinder Singh is concocted and cannot be relied upon;
- (xi) In so far as the accused/appellant-Ishwinder Singh is concerned, he was never shown in the police lock-up and was for the first time identified in the Court and therefore, benefit of doubt is required to be given to accused-Ishwinder Singh as there is no evidence against him. Learned counsel for the accused/appellants, therefore, prayed for setting aside the impugned judgment/order.

*Per contra*, learned counsel for the respondents supported the impugned judgment and order. Learned State counsel submitted that the trial Court has carefully marshalled the evidence and thereafter, has recorded the

cogent and convincing reasons for accepting the prosecution case. The trial Court has recorded findings point by point on each and every aspect and it is seen that the evidence of PW2-Arvinder Singh has been accepted by the trial Court as there is corroboration by other evidence tendered by the prosecution. Learned State counsel submitted that the informant was Kamlesh on whose information FIR was registered and the police had immediately swung into action and consequently, the arrests were immediately made without any loss of time. Kamlesh turned hostile to the prosecution. He did not support the prosecution case before the trial Court. His statement under Section 164 Cr. P.C. was also recorded by the Magistrate. Kamlesh also admitted signatures on FIR and other documents. The fact that Kamlesh was informant and he was an eye-witness to the incident has been proved by the evidence before the trial Court. He is liable to be dealt with according to law for perjury and is liable to be punished for offence under Section 193 IPC for giving false evidence.

The prosecution has also proved the discovery or recovery of the weapon and the other incriminating circumstances including the blood group that was found on various articles, which were collected and recovered. The prosecution has proved its case beyond reasonable doubt. Learned State counsel therefore, submitted that there is no substance in the appeals and the same are liable to be dismissed.

### **CONSIDERATIONS**

We have heard learned counsel for the rival parties. We have perused the entire record carefully. We have seen the entire evidence of prosecution witnesses, which we have read with the assistance of learned

counsel for the rival parties.

In so far as the medical evidence regarding injuries caused to the deceased is concerned, the same was duly proved by PW1-Dr. Rajwinderjit Singh. Instead of reproducing the nature of injuries, we find that the cause of death was shock and hemorrhage due to injury to vital organs in the neck, i.e. Trachea and Carotid vessels and the death was immediate. Exhibit PA/1 is the postmortem report showing total 7 incised and punctured injuries. Perusal of those injuries shows that the deceased had tried to save his life by struggling, but then ultimately had succumbed to the injuries. The prosecution case is that the deceased was caught hold of with hands and thereafter, the injuries were inflicted on him. Looking to the nature of injuries, it is clear that the deceased had struggled and received injuries on the left hand left mastoid etc. However, the death was caused due to injuries on Trachea and carotid vessels were cut due to injuries caused by sharp weapon.

PW2-Arvinder Singh Bedi is the star witness of the prosecution. This witness is totally independent and no connection has at all been shown anywhere as to his interestedness or otherwise. He was a regular visitor to the deceased Rajesh Goel as deceased was his Chartered Accountant. On 22.05.2007, at about 6:45 P.M. when he was going to meet him, he saw the accused persons coming down from the stairs hastily and with fast speed from the stair case. The Sikh gentleman, namely Mandeep Singh was in front and was leading them and others were clean shaven. The clothes of Sikh gentleman were stained with blood and he saw a handle in his *dub*. Having seen them, he went up and was informed by Kamlesh, the Peon, who

met him at the door of the office. Kamlesh told him that the accused had injured Rajesh Goel. He came down from the stairs by raising *raula*, but they ran away in Santro Car of golden colour. Thereafter, on 23.05.2007, he went to the police station at 11:00 A.M. when police told them that they had arrested three persons previous night. He identified that they were the same persons whom he had met on the stair case the earlier day. Fourth person was also identified by him.

We have carefully perused the cross-examination of PW2-Arvinder Singh Bedi. His evidence was criticized by the defence. From the reading of his evidence, what we find is that there is no challenge to the fact that the deceased Rajesh Goel was his Chartered Accountant and that he used to visit his office and that on the fateful evening, at 6:45 P.M., he had gone to his office lastly. His statement was immediately recorded by the police. After saying four persons coming down from the stair case with fast speed and the blood stained clothes of Sikh person, he went up and met Kamlesh and Kamlesh told him that those persons had injured Rajesh Goel and fled away. He came down from the stairs raising *raula* to catch them, but they ran away in a Santro Car. This evidence has also gone unchallenged in the cross-examination. What Kamlesh told PW2-Arvinder Singh Bedi, as argued, is not admissible in evidence. We however, find that four persons who met PW2 in the stair case and there being no other person at that time, the evidence that Kamlesh told him that those persons had injured Rajesh could be utilized by way of corroboration to the sworn testimony of PW2-Arvinder Singh Bedi. The inconsistency that he had described the Santro Car as of golden colour and the car that was seized was of green colour, is minor.

We do not think that description of car as golden colour or green colour would make any difference, particularly when the make of the car, namely Santro car has been duly described by him. The incident having taken place in a short time, we do not think that any importance could be attached to the green colour or golden color as contended. The submission that other witnesses, namely PW5-Sangeet Singla, PW22-Rajan Jain, PW23-SI Ved Parkash, PW24-Ishwar Singh, retired Inspector and PW19-K.K. Aggarwal did not name PW2-Arvinder Singh Bedi and therefore, his evidence is untrustworthy, in our opinion, is misconceived. There is no such requirement in law about other witnesses should name PW2. In the present case, it appears to be not necessary also as all those witnesses do not claim to have seen Arvinder Singh Bedi on the spot and at the place of incident nor that is the case of the prosecution. The omissions in the evidence of PW2-Arvinder Singh that the Sikh person was trying to button his clothes or that he saw the handle in the *dub* of Sikh person or that he had raised *raula* and that he had mentioned 3 to 4 persons coming down the stairs and not the four persons, are by way of improvement. Looking to the entire manner in which incident took place, we do not think these insignificant improvements would do any harm to the prosecution case.

Learned counsel for the accused/appellants, in all these appeals were vehement on the aspect of identification by PW2-Arinvder Singh Bedi in the Court. Absence of Test Identification Parade according to them was fatal as was argued. Learned counsel for the appellants have cited number of judgments in support of the above preposition. The trial Court has considered number of judgments on this aspect in the impugned judgment.

We have carefully considered those aspects regarding Test Identification Parade and identification in the Court.

At the outset, we find that it is settled legal position that the evidence by way of Test Identification Parade is enough regarded as a substantive evidence. But it is in the form of corroborative evidence. What is substantive evidence is the evidence in the Court. We, therefore, do not propose to refer to various judgments of the Apex Court for the said proposition of law. In the present case, the month of the incident was May, 2007 and the time was 6:45 P.M. when PW2 saw all the accused persons coming down from the stair case and were running. PW2-Arvinder Singh had enough time to memorize the faces etc. of all those four accused persons when he was climbing the stair case and when they went towards Santro car and ran away. There was good day light at the time of the incident and in the absence of any cross-examination on this issue as to the capacity of PW2 to memorize and identify the accused persons, we do not think that the trial Court made any mistake in holding that all the persons were clearly identified by PW2. We have carefully perused the cross-examination on the question of identification, but we do not find that the said aspect regarding identification has been in any manner disturbed in the cross-examination. To repeat, PW2-Arvinder Singh Bedi is an independent witness and has nothing to do with either of the parties. He deposed honestly before the trial Court and also identified the accused persons.

In so far as the submission regarding all the four arrested accused being seen by him in the police station is concerned, we find that in order to verify whether the same persons were arrested by the police or not

and eventually, the PW2 had come to the police station, they were seen by him. We do not think this could be termed as any defect in the investigation to dub the prosecution case as false.

The next aspect argued by the learned counsel for the appellants was that the prosecution did not enlighten the Court with the motive for which the appellants committed the offence. In this connection, it is necessary to have look at the evidence of PW19-K.K. Aggarwal, father-in-law of the deceased. We have carefully perused the evidence of this witness and cross-examination and the most material part of his evidence is reproduced below (record page-2635):-

*“Rajesh Kumar deceased was my son-in-law. He met me on 19.05.2007 for the last time at my house. On that day he seems to be under tension and on my enquiry, he told that 4 boys came to his house. That my son in law had power of attorney of shares of some companies for its sale and purchase with Satyam Investment Company. He told that he asked Satyam Investment Company for the sale of share and he was not receiving the payment thereof. He told that 4 boys came to him 2-3 days prior on 19.5.2007. He told that Mandeep Singh, Shiv Kumar, Kanav Arora and Ishvinder Singh came to him. He further told me that they asked him to settle the shares and otherwise result would be bad. I advised him to settle the account to have a told with the owner of the share. Then my son in law returned to his house.....”*

The fact that the deceased had told the names of four boys specifically, namely, Mandeep Singh, Shiv Kumar, Kanav Arora and Ishwinder Singh as the persons giving threats to him, has gone unchallenged. In our opinion, it clearly appears from the evidence that all the four

accused/appellants were acting hand in hand atleast to the incident 2-3 days prior to 19.05.2007 and for the reasons stated in the above evidence had also threatened him. We think this would sufficiently answer the arguments raised by the learned counsel for the appellants. Apart from that, we find that the evidence of PW19-K.K. Aggarwal is most natural in that his son-in-law had gone to him and told the names of four accused as persons who had threatened him with serious consequences. The same four persons were identified by PW2-Arvinder Singh Bedi as the assailants as discussed by us above. We, therefore, find that there is a very strong corroboration to the evidence of PW2 from the evidence of PW19-K.K. Aggarwal. The evidence of both these witnesses is most natural, particularly, in the backdrop of the fact that there was no communication between PW2 and PW19 at any point of time. The statement made by the deceased to his father-in-law, PW19-K.K. Aggarwal disclosing the names of these appellants is admissible legal evidence. The same accused were seen by PW2-Arvinder Singh in the stair case.

The submission that the document about Kanav Arora appeared to be tampered does not impress us. The photograph of appellant-Kanav Arora on torn paper was seized from the spot.

In the light of the above discussion, we hold that the evidence of PW2-Arvinder Singh Bedi and PW19-K.K. Aggarwal is clinching and there is absolutely no cause or reason to look at their evidence with any suspicion.

Apart from that, as regards recovery of articles, clothes, weapons etc. is concerned, after hearing the learned counsel for the rival parties, we find that the finding recorded by the learned trial Judge in that behalf in

Para-52 of the judgment is a well reasoned finding based on evidence. We quote Para 52 of the impugned judgment in entirety, which reads thus:-

*“52. Still further, recovery of articles, clothes and weapon stand proved on the basis of disclosure statement suffered by accused Kanav Arora, Mandeep Singh and Ishwinder Singh. Learned Public Prosecutor has rightly referred to the statements of SI Ved Parkash, PW-23 as well as Inspector (Retd.) Ishwar Singh, PW-24. It is evident that on 24.05.2007 on interrogation accused Kanav Arora made disclosure statement Ex.P-GG that his clothes were got stained with blood at the time of incident and he had kept concealed those clothes on a kacha path near Nada village in the bushes. Thereafter, accused Mandeep Singh was interrogated and he made disclosure statement Ex.P-HH that the sword used by him in the commission of offence along with his clothes and shoes was kept concealed near the wall of water works of village Maloya in the bushes and could get the same recovered. It also stands established that Kanav Arora led the police party on the Kacha Path by the side of village Nada and close to Dhillon Farm and got recovered pant Ex.P-11 and shirt Ex.P-12 from the bushes which were reduced in the parcel and sealed with the seal of 'VP' and were taken into police possession. Thereafter, Mandeep Singh led the police party and demarcated the place and got recovered small kirpan Ex.P-1, pant Ex.P-9, shirt Ex.P-10 and a pair of shoes Ex.P-13/1 & Ex.P-13/2. It also stands established that on 25.05.2007 accused Ishwinder Singh was interrogated after taking him out from the lock up who made disclosure statement Ex.P-JJ that the pant and shirt and shoes he was wearing at the time of incident were kept by him beneath the bed in the last room of his house. Then he got recovered one pant, shirt and shoes Ex.P-14/1-2 from the last room of his house. Further, it stands established that Inspector (Retd.)*

*Ishwar Singh, PW-24 found torn pieces of paper lying in dust-bin and some papers outside the dust-bin in the cabin along with photograph at the place of occurrence. Those pieces were fixed on another paper along with photograph and it was made out to be a form in the name of Kanav Arora showing his parentage and other particulars. On seeing the photograph Kamlesh PW-3 told that the person of whom the photograph on the form is found, is one of the assailants. The photograph on the form is proved as Ex.P-Q which was taken into police possession vide Ex.P-G. Sh. Sangeet Singla, PW-5 has fully corroborated and supported the version of the prosecution on this aspect. Further, it stands established from the statement of Dr. Ravinder Sharma, PW-18 that writing and signatures in the red enclosed portions stamped and marked on form Ex.PQ and documents Ex.PDD/1 to Ex.PDD/9 have been written by one and the same person. The recovery of weapon of offence, articles, clothes, shoes etc. and the recovery of a form of Kanav Arora accused is also a strong piece of evidence to connect the accused with the present crime. Furthermore, learned Public Prosecutor for the State has rightly placed reliance on the statement of Dr. Tithi Dey, Junior Scientific Officer, Central Forensic Science Laboratory, Sector 36, Chandigarh PW-4 which shows human blood of group 'B' was detected on Exhibit 1 (stained cotton swab), 2A, 2C, 2D, 2E, 2F, 2G (all stained pieces of gauze), 3A (Deep Grey Colour Pant), 3B (stained shirt), 3C (stained baniyan) and 4 (stained gauze), which were taken into police possession from the scene of crime and Human blood of group 'B' was also detected in Exhibits 1B (shirt Ex.P-10), 2A (Pant Ex.P-11), 2B (Shirt Ex.P-12), 3 (Kirpan with wooden handle) and 4 (a pair of sport shoes) which were taken into possession from the accused persons. Therefore, it is vehemently contended that it has come in evidence that blood group 'B' of the deceased was also found on the articles, clothes*

*and weapon recovered from the accused on their disclosure statement.....”*

The submission about the tampering of the torn document that was collected from the spot would not give any weight because the document collected from the spot did have the photograph of the accused-Kanav Arroa, which was proved on the form as Exhibit PQ supported by evidence of PW5-Sangeet Singla. The prosecution has thus, been able to prove its case beyond reasonable doubt from the independent witnesses. It was possible to collect all the important evidence as the police immediately reached the spot having been informed about it.

The accused/appellants examined defence witnesses DW1-Vinod Kumar, DW2-Jagjit Singh, DW3-Major N.S. Bhangu, DW4-Rajinder Singh, DW5-Sunil Rana, DW6-Chander Shekhar and DW7-Aman Menta. Of course the evidence of these witnesses is not on the incident proper. Since the prosecution has proved its case on the incident proper, we do not think that the evidence of these witnesses could be of any use. Nevertheless, we agree with the finding recorded by the trial Court on the defence witnesses, in Para 54 of the impugned judgment. We reproduce Para 54 completely of the impugned judgment as under:-

*“54. Now a word about defence needs to be recorded. SO far as defence version unfolded by the accused is concerned, the same has already been discussed above. DW-1 Vinod Kumar Swami has proved the accused opening form along with relevant documents of Shiv Kumar as Ex.DW1/1 to Ex.DW-1/6 and his accounts statement as Ex.DW-1/7. DW-2 Jagjit Singh son of Late S. Mohinder Singh testified that on 23.05.2007 at 5:00 a.m., mother of accused Ishwinder Singh*

*came to his house and told him that the police was searching for Ishwinder Singh in a murder case. Accused Ishwinder Singh used to give Injection Vovran whe he used to have pain. Accused Ishwinder Singh came to him on 18.05.2007. Ishwinder Singh came to administer him medicines as his sons are settled abroad. On 23.05.2007 at 6:36 a.m., he called Inspector Satbir Singh from his phone and told him that Ishwinder Singh was with him. On that Inspector Sabir Singh send SI Amanjot Singh who came to his house at 4:15 p.m. and took Ishwinder Singh along with his wallet containing driving licence of Ishwinder Singh. He further deposed that SI Amanjot Singh took his signatures on the arrest memo. DW-3 Major N.S. Bhangu also supported the version of DW-2 Jagjit Singh being his neighbour. DW-4 Rajinder Singh proved the record of mobile No.9417143258 which belongs to Jagjit Singh son of Mohinder Singh as DW-4/1. DW-5 Sunil Rana proved the details of mobile No.9872281713 as DW-5/A which belongs to Vivek Singal. DW-6 Chander Shekhar, Senior Executive, Master Capital proved the certified copy of account opening form of Rajan Jain as Ex.DW-6/A, certified copies of financial statement from 30.03.2005 to 27.03.2008 as Ex.DW-6/C, certified copies of the statement of accounts from 30.03.2005 to 31.03.2010 as Ex.DW-6/D. He further proved the certified copy of the account opening form of Shiv Kumar as Ex.DW-6/E, certified copies of financial statements for the period 30.03.2005 to 31.03.2011 as Ex.DW-6/F, certified copies of the daily transaction report for the period of 01.04.2005 to 27.03.2008 as Ex.DW-6/G, certified copy of the financial statement of transaction of Shiv Kumar from 30.03.2005 to 31.03.2011 as Ex.DW6/H, certified copy of the daily transaction of Shiv Kumar for the period 01.04.2005 to 27.03.2008 as Ex.DW-6/J. DW-7 Aman Mehta, Branch Manager, Karvy Stock Broking Limited has also proved the account opening record of Shiv Kumar as Ex.DW-7/A and*

*record of the transactions between Shiv Kumar and Karvy Com Trade Limited as Ex.DW-7/B. However, the statements of above referred defence witnesses do not extend any help to the accused in as much as the witnesses examined by the accused are the witnesses of record only. It is a matter of common knowledge that it is not difficult for the accused to procure such type of evidence in support, in order to escape from the criminal liability. It has not surfaced on the record as to why the accused did not approach the higher authorities of the police or any other competent authority complaining their false implication in this case. To say the least, the defence version is quite a patch of lies and figment of imagination spun out after presentation of challan. As such, it is rejected as a whole.....”*

We, therefore, do not find any substance in the defence version as above nor does it any way damage the prosecution case.

### **PERJURY**

The next aspect is about the first informant Kamlesh turning hostile to the prosecution.

It is very serious that the person who was the eye-witness and the informant turned hostile. There is no witness protection law as yet.

Kamlesh was examined as PW3 before the Court. In the examination-in-chief, he turned hostile and was declared, accordingly. Learned prosecutor then cross-examined him and we quote the following portion, which is relevant in the present matter:-

“XXXXXXX

*It is incorrect that I made statement Ex.PD to the police. The said statement bears my signatures. It is incorrect that I fix my signatures on my statement after the same was read over to me. My statement was not written at the time when my*

*signatures were obtained.....*

*It is incorrect my statement Ex.PE was recorded by the police.....*

*The memos Ex.PG, Ex.PH, Ex.PJ and Ex.PK bear my signatures. However, my signatures were obtained on blank papers. The memos Ex.PL, Ex.PM and Ex.PN bear my signatures. However, my signatures were obtained on blank papers. I did not lodge any protest with any authority for obtaining my signatures on blank papers. It is incorrect that all the said documents were properly prepared in my presence and I signed the same after admitting the contents. It is incorrect that the accused had given money to me.”*

Kamlesh had informed PW2 as stated earlier and he had also made a phone call to PW5-Sangeet Singla, who stated thus, in his evidence:-

*“I was working with Rajesh Goel as Chartered Account in at SCO No.46, Sector 42-C, Chandigarh. We had two firms. On 22.5.2007 at about 6:45 PM I received a call from our Peon Kamlesh who told that 4 persons came who had killed Rajesh and asked me to reach in the office.....”*

Kamlesh was produced before the learned Magistrate for recording statement under Section 164 of Cr. P.C.

PW25-A.S. Shergill, Additional Civil Judge (Sr. Division), Kapurthala stated thus in his evidence:-

*“On 30.05.2007, I was posted as Judicial Magistrate Ist Class, Chandigarh. On that day application Ex.PMM was moved before me for recording the statement of Kamlesh who was brought by the police. On that application I passed the order. I recorded the statement Ex.PMM/1 which bears my signature. It was read over to Kamlesh Kumar who signed the same after admitting the same to be correct. Thereafter I passed*

*the order Ex.PMM/2 and sealed the statement.*

*x x x x x x*

*..... I enquired about this from Kamlesh and he told that he wanted to suffer the statement voluntarily and he is not under any pressure. I did not take any other step to rule out the possibility of tutoring. I did not mention the above said fact in my order. I cannot tell the reason for this. I recorded the statement as per the version given by Kamlesh and I did not ask him any question during the recording of his statement.....”*

From the above evidence, it is manifest that Kamlesh was an eye-witness and it is at his instance, the names of assailants and the knowledge of the incident was received. We are of the firm opinion that Kamlesh has deliberately given false evidence before the Court when he turned hostile and thus, did not support the prosecution case. The trial Court, however, did not proceed to take any action against Kamlesh, who clearly had given a false evidence in the Court, which is punishable under Section 193 of IPC with imprisonment for 7 years. We are satisfied that Kamlesh is required to be brought to justice. However, necessary procedure will have to be followed by the learned District Judge, Chandigarh by ordering the Registrar to file a complaint before the Chief Judicial Magistrate. We will have to fix a time bound programme for his trial.

The upshot of the above discussion is that the following order is inevitable:-

### **ORDER**

- (i) **CRA-D-917-DB of 2013, CRA-D-834-DB of 2013, CRA-D-971-DB of 2013 and CRA-D-1029-DB of 2013** are dismissed;
- (ii) Issue bailable warrants for the arrest of Kamlesh son of Har Khyali Dass, who shall be released upon furnishing solvent

security in the sum of ₹50,000/- (Rs. Fifty Thousand) by two persons for his appearance before this Court on 13.08.2018 at 2:00 P.M.;

- (iii) The District Judge, Chandigarh is directed to call upon the Registrar, District Court, Chandigarh to file a complaint case before the Chief Judicial Magistrate, Chandigarh with relevant certified copies of documents by supplying a copy to Kamlesh son of Har Khyali Dass on or before 31.08.2018. Failure to act within the time shall result into disciplinary action against all the concerned;
- (iv) The Chief Judicial Magistrate, Chandigarh himself, shall after filing a complaint before him proceed according to law and complete the trial on or before 31.10.2018, if necessary, on day to day basis; and submit compliance report to this Court on 12.11.2018.

**(A.B. CHAUDHARI)**  
**JUDGE**

**(B.S. WALIA)**  
**JUDGE**

**July 27, 2018**

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**