

222, 322
IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 23.8.2018

CRA-D-1706-DB-2015 (O/M)

Joginder alias Jogad and others

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-D-1621-DB-2015 (O/M)

Ravinder

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-D-1725-DB-2015 (O/M)

Naresh alias Polar

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-S-4948-SB-2015 (O/M)

Himmat Singh

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-S-4957-SB-2015 (O/M)

Naresh alias Pappu

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-S-4958-SB-2015 (O/M)

Pawan Kumar

..... Appellant (s)

Versus

State of Haryana

..... Respondent (s)

CRA-S-5153-SB-2015 (O/M)

Jitender alias Billa 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. Vinod Ghai, Senior Advocate, with,
Mr. Ankit Kumar, Advocate, for appellant
in CRA-S-4948-SB-2015, CRA-S-4958-SB-2015.

Mr. Devinder Arya, Advocate,
for appellant in CRA-S-4957-SB-2015, CRA-S-5153-SB-2015.

Mr. Balraj Singh Rathee, Advocate,
for appellant in CRA-D-1725-DB-2015.

Mr. N.S. Shekhawat, Advocate,
for appellant No. 4 in CRA-D-1706-DB-2015.

Mr. Vivek Saini, 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 ?
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- .-

KULDIP SINGH, J

By this common judgment, we shall dispose of abovenoted 7 connected appeals, arising out of the same judgment of conviction and order of sentence dated 3.11.2015 and 4.11.2015, passed by the learned Additional Sessions Judge, Narnaul. All abovenoted 13 appellants were convicted and sentenced as under :-

<u>Name of convicts</u>	<u>Offence</u>	<u>Sentence awarded</u>
Baboo alias Bablu, Ravinder s/o Bhola Ram, Joginder alias Jogad, Sandeep alias Bagri, Ashok alias Shoki, Naresh alias Polar and Parveen s/o Sahi Ram	U/s 120-B IPC	RI for life and to pay fine of Rs. 10,000/- (ten thousand) each and in default of payment of fine, to undergo further RI for three years.
Ravinder, Joginder alias Jogad, Sandeep alias Bagri, Ashok alias Shoki, Parveen, Naresh alias Polar	U/s 148 IPC	RI for two years each.
Naresh alias Polar, Parveen, Joginder alias Jogad, Sandeep alias Bagri, Ashok alias Shoki, Ravinder s/o Bhola Ram	U/s 302/120-B/149 IPC	RI for life and to pay fine of Rs. 10,000/- (ten thousand) each and in default of payment of fine, to undergo further RI for three years.

<u>Name of convicts</u>	<u>Offence</u>	<u>Sentence awarded</u>
Ashok alias Shoki,	U/s 201 IPC	RI for five years and to pay fine of Rs. 5,000/- (five thousand) and in default of payment of fine, to undergo further RI for one year.
Rajesh s/o Hari Ram, Himmat Singh, Naresh alias Pappu, Jitender Singh alias Billa, Pawan Kumar, Ami Chand alias Chandgi	U/s 216 IPC	RI for five years and to pay fine of Rs. 5,000/- (five thousand) each and in default of payment of fine, to undergo further RI for one year.
Ashok alias Shoki, Parveen, Joginder alias Jogad	U/s 25 of Arms Act, 1959.	To undergo further RI for three years.

All the sentences were directed to run concurrently.

The present case was registered on the basis of written complaint dated 7.11.2012 (Ex.PW2/A), filed by Baljeet alias Bablu (PW2), addressed to the Station House Officer, Police Station Mahendergarh. In the said complaint, Baljeet alias Bablu stated that on 7.11.2012, at about 3:00/3:15 PM, he alongwith his maternal cousin brother Manoj son of Satpal, resident of Godh, was taking meals in Jitu's Hotel, situated in front of Petrol Pump at Nangal Sirohi. At that time, his co-villagers Rajbir, Naveen and Sher Singh, residents of village Kuksi were also present there. In the meanwhile, accused Joginder alongwith two other boys (who were later on identified to be Sandeep alias Bagdi and Ashok alias Shoki) came on a motorcycle. Complainant knew Joginder Singh by face and name. Joginder remained seated on the motorcycle, whereas two pillion riders alighted from the motorcycle and one of them asked to Baljit alias Bablu (complainant) as to how he is and even he does not shake hand. Upon which Bablu (complainant) replied that he is already asking him for taking meals. Joginder told that he is going to meet Abhey Bhai (since deceased) and he

went away towards village. After taking meals, they came to their liquor vend, situated near hotel of Jitu. Amit Kumar (PW1) son of Vijay Singh and Ashok Kumar son of Sheo Ram were also there. All of them while sitting there started talking with each other. After about 10/15 minutes, Abhey Singh (deceased) came on his Bolero vehicle. As Abhey parked his vehicle, complainant on seeing him, came out of his liquor vend. At the same time Joginder also came from the village side on his motorcycle. In his presence, Joginder asked Abhey Singh for some conversation and thereafter, they both sat on the tea stall. Amit and Ashok came out of the liquor vend and started talking with him. In the meanwhile, a Bolero camper came from their village Nangal Sirohi side, in which Parveen Rao, resident of Khaira, Naresh alias Polar, resident of Khaira, Surender alias Chiku, resident of Mohanpur, Rahul, resident of Surjanwas, Sandeep, resident of Sayana, alighted alongwith one more boy, whom he does not know. On reaching there, all said persons started firing upon Abhey Singh with the country made pistols, which they were carrying in their hands. At the same time Joginder and his two associates took out their pistols and started firing on Abhey Singh. Abhey received many bullet injuries. On seeing the occurrence, he hid himself behind the wall constructed near the liquor vend and witnessed the occurrence. On hearing the sound of firing, many people gathered on the spot. On seeing them, all assailants fled away from the spot with their respective weapons on Bolero camper and motorcycle. After departure of all assailants, complainant alongwith his associates Amit Kumar son of Vijay Singh and Ashok Kumar son of Sheo Ram reached near Abhey Singh and found that Abhey Singh had received many bullet injuries and his body was lying in pool of blood. They put Abhey Singh in their vehicle, parked near the liquor vend and took him to

Government Hospital, Mohindergarh, where after checking Abhey Singh, doctor declared him brought dead. It was further alleged that prior to this occurrence, these persons had also attacked/tried to kill Abhey Singh, about which a case is already registered at Police Station Mahendergarh. After the occurrence, Daya Ram, who is uncle of Babbu; Lala Ram, who is uncle of Parveen and Naresh alias Polar, Surender alias Sunder, residents of Khaira were giving threats to Abhey Singh to kill him. Appropriate legal action may be taken against all the accused.

Thereafter, SI Ran Singh, who was present at Government Hospital, Mahendergarh, made endorsement (Ex.PW7/A) and thereafter, formal FIR (Ex.PW9/A) under Sections 148, 149, 302, 120-B IPC and under Section 25 of Arms Act, 1959, was registered at Police Station Mahendergarh. It also comes out that on 7.11.2012, doctor sent the intimation (Ex.PW4/A) to the police regarding receipt of dead body of Abhey Singh, which was brought by many persons and police. The intimation was sent on 7.11.2012 at 4:25 PM. It is also recorded in the intimation that the dead body was taken by person's attendants. As per another intimation (Ex.PW4/B), the dead body was brought back by attendants at 4:35 PM and shifted to mortuary. The police prepared inquest report Ex.PW7/B. One .315 fired bullet was recovered from the clothes of deceased. From the dead body, three 7.65 mm fired bullets were recovered. The site plan of place of occurrence was prepared. From the spot, 4 live cartridges of 7.65mm, 4 fired cartridges of 7.65 mm, 1 cartridge of unfired bullet of 7.65mm and 1 fired bullet of .315 were recovered. The post mortem of dead body was got conducted.

During the course of investigation, accused Joginder alias Jogad, Sandeep alias Bagri, Ashok alias Shoki were arrested on 9.12.2012.

Accused Parveen Kumar and Dharamvir alias Tiger were arrested on 16.11.2012. Accused Ravinder was arrested on 21.11.2012. Accused Naresh alias Polar was arrested on 10.4.2013 and accused Baboo alias Bablu was arrested on 21.12.2013. All the accused suffered different disclosure statements and disclosed about the manner of occurrence. In pursuance to disclosure statement, Joginder alias Jogad got recovered 7.65mm pistol on 11.12.2012 and as per disclosure statement of Parveen Kumar, one 3.15 bore country made pistol was recovered on 16.11.2012. The police found that Bolero camper belongs to accused Ravinder. All other accused were found to have been harboured the main accused. Therefore, they were arrested under Section 216 IPC. The pistol and bullets recovered from the accused as well as from the clothes of deceased and other articles were sent to Forensic Science Laboratory. The FSL, vide report Ex.PX, reported that one country made pistol .315 bore marked W/1, one country made pistol 7.65 bore marked W/2 and one broken country made pistol 7.65 bore marked W/3, recovered from accused Joginder, Parveen Kumar and Ashok, were used in firing. Pistol marked W/3 recovered from accused Ashok alias Shoki was recovered in broken condition and was found to be not in working order. Regarding the bullets recovered from dead body and from the spot, it was reported that bullets 3.15mm, marked BC/2 and BC/3, have been fired from country made pistol .315 bore. However, no definite opinion could be formed regarding their linkage with respect to country made pistol marked as W/1 due to lack of sufficient comparable individual characteristic marks. Further, 7.65mm fired bullets, marked BC/4 to BC/6, have been fired from one and the same firearm, but no definite opinion could be formed regarding their linkage with respect to country made pistols marked W/2 and W/3, recovered from accused Ashok and Joginder due to lack of sufficient

comparable individual characteristic mark. Similarly, fired cartridge, marked C/3 is found to be fired from 7.65 bore country made pistol, but no definite opinion could be formed that it is marked W2 and W3 for lack of sufficient comparable individual characteristic marks. However, the FSL was of the definite opinion that fired cartridge 7.65mm, marked C/4 has been fired from contry made pistol marked W/2, recovered from accused Joginder. From the blood stained clothes and earth, human blood was found.

After completion of the investigation, challan was presented in the Court and accused were chargesheeted under Sections 148, 149, 216, 302 read with Section 201, 120-B IPC and under Section 25 of Arms Act, 1959. In support of its case, prosecution examined as many as 26 witnesses.

When examined under Section 313 Cr.P.C., accused Ravinder denied as incorrect the evidence led against him and claimed that he is innocent and he has been implicated in a false case. All remaining accused took the same plea. However, accused Baboo alias Bablu took the plea that on 19.10.2012, he was assaulted by Kuldeep Singh alias Doctor of his village alongwith his companions. He remained admitted in Medanta Hospital, Gurgaon, upto 27.10.2012 and thereafter remained confined to bed and stayed at Gurgaon itself. The police security guards were also provided to him. He has no connection whatsoever with present case.

In defence, accused examined Sher Singh alias Abhey Singh son of Balbir Singh and closed the defence evidence.

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

First of all, it is necessary to reproduce medical evidence which will show the extent of assault and injuries.

Dr. Aman Yadav (PW3), who conducted post mortem alongwith Dr. Vikash Tekwani and Dr. Suresh Chand, on dead body of deceased Abhey Singh, vide Ex.PW3/A, found following injuries on the person of deceased :-

- '1. Firearm entry wound over mid partial region of skull over grease collar present, fracture of bone seen, beveling of inner table present.
2. Firearm exit wound over Left parietal region of skull. Brain tissue coming out, beveling outer table present.
3. Firearm entry wound over (L) partial region of skull grease collar present.
4. Firearm exit wound over parito-occipital region of skull present, bursting of skull and brain matter present.
5. Two firearm entry wound over thoracic region of spine and 2cm (RT) of spine with fracture of vertebra. Grease collar present.
6. One firearm entry wound present over (L) chest over mid clavicular line 4cm above the nipple. Abrasion collar present, grease collar present (0.3x0.3) cm in size.
7. One firearm entry wound present over (Rt) chest over anterior auxiliary line of upper chest near nipple. Abrasion collar present, grease collar present (0.3x0.3) cm in size.
8. Two exit firearm wound present over (L) side lower chest, Larger then entry wound.
9. Firearm entry wound over medial aspect of (L) Elbow. (0.3x0.3) cm in size.
10. Firearm exit wound over medial aspect of (L) elbow.
11. Firearm entry wound over back side of (Rt) lower leg, Bullet found inside the tissue over anteromedial aspect.
12. Abrasion present over lateral aspect of (L) lower thigh (2x2) cm
13. lacerated wound over 2x0.5 cms. Over chin.
14. Fraction abrasion present over abdomn 4x1 cms.
 - (i) One bullet found in to tissue at costclavicular junction right side.
 - (ii) Second bullet found in right side chest.

(iii) Third bullet found in right lower leg.

Cause of death in our opinion due to injury to vital organs (Brain,Lungs,Heart) of body along with hamerrogic shock due to anti mortem gunshot injuries. Probable time between injury and death was within few minutes and between death and post mortem with in 24 hours.

Handed over to Police :-

1. Three bullets recovered from body packed in small plastic container, bearing 3 seals.
2. Plastic container bearing 5 seals containing 3 skin pieces surrounding firearm wounds for chemically examination.
3. Sealed packet of clothes of deceased bearing 9 seals.
4. Sealed packet of X-rays of body of deceased 6 in numbers with 5 seals.'

The statement of doctor clearly shows that 3 bullets were recovered from dead body and were sealed and handed over to the police. The examination of injuries shows that deceased received as many as 8 bullets injuries. In cross examination, the doctor has made it clear that he has not noticed gun powder or blackening injury. It is otherwise the case of complainant that shot was fired from some distance and not from point blank.

Now, it is necessary to examine the evidence of material witnesses, namely, complainant Baljit alias Bablu and Amit Kumar, who is witness of occurrence.

Baljit alias Bablu (complainant) son of Dharam Pal appeared as PW2 and recounted the entire occurrence. He stated that he was running a liquor vend at village Nangal Sirohi. On 7.11.2012, at about 3:00 PM, he alongwith Amit son of Vijay Singh, resident of village Nangal Sirohi and Ashok Kumar son of Sheo Ram, resident of Nangal Sirohi, was present at

his shop. Joginder alias Jogad came there on a motorcycle. Accused Sandeep alias Bagri, resident of village Barda and Ashok alias Shoky were sitting on the rear seat of the motorcycle. Sandeep and Ashok alighted from the motorcycle at his liquor vend. Joginder went on his motorcycle towards the village saying that he was going to meet Abhey Singh. After about 10/15 minutes, Abhey Singh son of Sube Singh (since deceased) came there on a Bolero vehicle. Accused Joginder also reached there on his motorcycle. He and Amit came out of the shop and when they were talking with Abhey Singh, accused Joginder stated that he had to talk with Abhey Singh. There was a tea stall at a distance of about 20 feet from his shop. Accused Joginder, Sandeep, Ashok and deceased Abhey Singh went to tea stall whereas he alongwith Amit remained outside his shop. In the meanwhile, a vehicle make Bolero camper came from village Nangal Sirohi side. Accused Parveen, resident of village Khaira, Naresh alias Polar, Surender alias Chiku, resident of village Mohanpur, Dharamvir alias Tiger, resident of Nangal Sirohi, Sandeep, resident of village Saiyana, Rahul, resident of village Surjanwas alighted from said vehicle. Accused Dharamvir alias Tiger, Surender alias Chiku, Sandeep, resident of village Saiyana and Rahul resident of village Barda, were not present at the time of examination of witnesses. It was stated that all said persons, namely, Joginder, Sandeep and Ashok started firing on Abhey Singh with pistols. He and Amit hid themselves behind a wall of his shop. In the meanwhile, some villagers gathered there and thereafter, all assailants fled from there in their Bolero camper and motorcycle. It is stated that a Fortuner vehicle was stationed at a distance of about half kilometer from there. The Bolero camper vehicle of accused stopped near the above Fortuner vehicle. One person alighted from Bolero camper vehicle and went away in Fortuner vehicle. Abhey

Singh sustained multiple bullet injuries. He alongwith Amit took Abhey Singh in his Bolero vehicle to Government hospital, Mohindergarh, where doctor declared him brought dead. He proved his complaint (Ex.PW2/A). He further stated that 5-7 days prior to occurrence, he had come to know from Naveen son of Lal Chand, resident of village Nangal Sirohi that some persons had attacked on Abhey Singh and had fired on him with pistols and bullet had hit his vehicle. He further stated that Bolero camper vehicle, in which assailants reached the spot was not having registration number plate and stated he don't know who is the owner of that vehicle.

Amit Kumar (PW1) also more or less made similar statement stating that 4 persons, namely, Parveen, Naresh alias Polar, Surrender alias Chiku and Dharamvir, who had alighted from Bolero camper vehicle, started firing on Abhey Singh from their pistols. Joginder, Sandeep and Ashok were also having pistols and they started firing on Abhey Singh from behind. He hid himself behind a wall. Baljit and Ashok also hid with him behind the wall of liquor vend. Many people reached the spot. He also stated that Fortuner vehicle was parked at a distance of about 100/150 yards on village Berawas turning. One person alighted from Bolero camper vehicle and boarded said Fortuner vehicle and went away in that vehicle. He alongwith Baljit and Ashok took Abhey Singh to Government hospital, Mohindergarh, in Bolero vehicle of Abhey Singh where doctor after examining him declared him dead. He further stated that Bolero camper vehicle is owned by Ravinder (accused) and that Abhey Singh told him that he has been receiving threats from accused Babbu (accused). In cross examination, Amit stated that according to him, Ravinder Singh is involved in murder of Abhey Singh. He further stated that on the day of occurrence, people had jammed traffic at Tularam Chowk, Mohindergarh. He further stated that his

signatures were obtained on a white paper at the time of recording his statement. He admitted that in the statement Ex.D1, he has not named Sandeep and Ashok. He further stated that accused Dharamvir alias Tiger had come in Bolero camper vehicle wherein it was not recorded in his statement (Ex.D1), recorded under Section 161 Cr.P.C. The factum of Fortuner vehicle parked at a distance was also not recorded in his statement recorded under Section 161 Cr.P.C. The factum regarding Babbu (accused) having earlier threatened Abhey Singh is not recorded in his statement (Ex.D1), recorded under Section 161 Cr.P.C. He stated that 50 persons had gathered at the spot. More than 100 persons had gather in the hospital. He denied that people, who had taken dead body of Abhey Singh, had demanded arrest of culprits. He admitted that he is facing trial in 3-4 criminal cases, out of which two cases were registered before the occurrence, one case was got registered by Babbu and one case was got registered against him by accused Dharamvir alias Tiger. In the said two cases, Baljit alias Bablu (PW) is his co-accused and so was Abhey Singh (deceased). He admitted that prior to occurrence, one incident had taken place in village Khaira in which accused Babbu sustained bullet injuries, in which witness Amit was named as accused. However, he was found innocent during investigation. He does not know that said occurrence had taken place on 19.10.2012.

The cross examination of complainant Baljit alias Bablu son of Dharam Pal shows that Abhey Singh was partner of Baljit alias Bablu in the liquor vend. He also admitted that 20-30-50 persons had gathered at the spot. He further stated that police arrived after about 2/4 minutes of their arrival in hospital. Abhey Singh was declared dead before arrival of police. His statement was recorded by police in the police station. His statement

was recorded after about half an hour of arrival in the hospital. He further stated that 500-700 people had gathered in the hospital. He denied that people had taken dead body of Abhey Singh from hospital to Tularam Chowk, Mohindergarh and it was kept there and traffic was jammed and traffic was restored by police. However, he admitted that he had not named Sandeep and Ashok alias Shoki in the complaint. He also claimed that he had named Dharamvir alias Tiger, which is not so recorded in his complaint (Ex.PW2/A). He admitted that he is facing trial in 4-5 criminal cases prior to registration of this case regarding assault etc. In one criminal case, accused Babbu is complainant and in another case, Dharamvir alias Tiger is complainant. One case was got registered by Vikram son of Amar Singh, resident of his village and one case was got registered by a person, who is resident of Rajasthan, but he does not know his name. Naveen son of Lal Chand was also accused in said case, which is pending in Narnaul Courts. After the registration of present case, one more case under Section 302 IPC was got registered against him by one person, resident of Biharipur village, Police Station Nangal Sirohi. He is in judicial custody in said case and has been produced at the time of recording of evidence from Nasibpur jail. He denied the suggestion that Abhey Singh used to purchase disputed property in Mohindergarh on lesser price and used to get the same vacated by use of muscle power.

PW5 EHC Rohtash Kumar had proved investigation of Dharamvir alias Tiger and Ravinder and making of disclosure statements by them.

PW6 ASI Babu Lal, proved recording of supplementary statement of Baljit alias Bablu under Section 161 Cr.P.C. and also recording of statements of HC Krishan Kumar, HC Yogesh Kumar, MHC Gunpal,

Mahesh Kumar draftsman, HC Kuldeep Singh and Leela Ram, proprietor of Payal Photo Studio.

PW7 Ran Singh, Retired Sub Inspector, proved that on 7.11.2012, while working as Sub Inspector in Police Station Mohindergarh, he had received application of Baljit alias Bablu (complainant) and after making endorsement sent same to police station for registration of case. He also prepared inquest report. He had collected blood stained earth from place of occurrence and pair of slippers (chappals) and sealed them into a parcel. He also recovered 4 live cartridges, four cases of used cartridges, one bullet, and one missed cartridge from the spot.

In cross examination, he clarified that when he arrived hospital, Baljit alias Bablu (complainant) was present there and he had made application after 10-15 minutes. He stated that petrol pump is opposite to hotel across the road. The petrol pump is in working order.

PW8 HC Yogesh Kumar stated about delivery of special report to Area Magistrate and Senior Officers.

PW9 Lal Chand son of Heera Singh, Retired ASI, proved the recording of FIR.

PW10 ASI Dharam Singh proved interrogation of accused Ashok Kumar, Joginder and Sandeep and making of disclosure statements by them. He also proved that on 11.12.2012, accused Joginder got recovered a pistol from his house at village Barda which was taken into possession. Accused Ashok got recovered a country made pistol from the hills of village Tatarpur (Rajasthan). He further stated that he recorded supplementary statement of Manoj Kumar (PW) under Section 161 Cr.P.C. on 7.4.2013 and on 8.4.2013, he arrested accused Rajesh under Section 216 IPC allegedly for providing financial assistance to accused Naresh alias

Polar, Surender alias Chiku. He also proved the disclosure statement of accused Naresh alias Polar and recovery of vehicle from him.

PW11 HC Gunpal proved the taking of sample to FSL. He also proved interrogation of accused Babbu alias Bablu and making of disclosure statement by him.

PW12 Ajit Singh, Reader to District Magistrate, Mohindergarh at Narnaul, proved sanction for prosecution of accused Parveen, Ashok and Joginder (Ex.PW12/A).

PW13 ASI Mahesh Kumar, proved the preparing of scaled site plan (Ex.PW13/A).

PW14 Bijender Singh, Retired SI, proved that on 16.11.2012, he had arrested accused Dharamvir alias Tiger, who is now declared proclaimed offender. He also proved arrest of accused Parveen and suffering of disclosure statement by accused Dharamvir alias Tiger. He also proved the disclosure statement made by accused Ravinder. He further stated that in pursuance to statement, accused Parveen Kumar got recovered a country made pistol on 23.11.2012 which was taken into possession. He also proved arrest of accused Jitender alias Billa under Section 216 IPC. He proved further disclosure statement of accused Joginder, Sandeep and fact that Sandeep got recovered a motorcycle make Pulsar which was allegedly used in crime.

PW15 Constable Anil Kumar proved recovery of one Fortuner vehicle No. HR34F-1000 from accused Naresh alias Polar, which was taken into possession.

PW16 Sub Inspector Rajender Singh proved the disclosure statement of accused Pawan Kumar.

Same is the statement of PW17 EHC Karampal.

PW18 Constable Pardeep Kumar proved the disclosure statement by accused Rajesh, who is declared proclaimed offender.

PW19 Sub Inspector Jasbir Singh, Incharge Special Staff, Mohindergarh, proved the interrogation of accused Babbu alias Bablu.

PW20 ASI Devender Singh proved some formalities of investigation.

PW21 ASI Surender proved the disclosure statement of accused Naresh alias Polar.

PW22 Constable Ravinder proved the recovery memo Ex.PW22/A.

PW23 HC Kuldeep proved that case property was deposited with him by SI Ran Singh from 5.11.2013 to 23.11.2013 when he was posted as Incharge of Malkhana in Police Station Mohindergarh.

PW24 Constable Guldin Khan proved regarding handing over him sealed parcel of articles by MHC Gunpal Singh for sending same to FSL.

PW25 Constable Krishan Kumar proved the delivery of country made katta and pistol by MHC Gunpal Singh for further handing over to FSL for analysis.

PW26 Lila Ram, Photographer, proved the photographs from Ex.P1 to Ex.P22.

We have heard the learned senior counsel, learned counsel appearing for appellants, learned State counsel and have also carefully gone through the lower Court file.

First of all, we will examine the role of Baboo alias Bablu and Ravinder.

The allegations against Ravinder son of Bhola Ram are that

Bolero car used in the crime belongs to him. It is not claimed that accused Ravinder was present at the spot. He was not named in the FIR. Bijender Singh, Retired SI, who was then posted at CID, stated that he did not collect the documents regarding ownership of Bolero vehicle, which was recovered from accused Dharamvir alias Tiger. It goes to show that Bolero vehicle was recovered from accused Dharamvir alias Tiger. There was no document of ownership of Bolero, which could prove that he is owner of said vehicle. Therefore, the oral evidence cannot be believed that Bolero vehicle, which was recovered from accused Dharamvir alias Tiger does, belongs to Ravinder. Therefore, his role for having connived with co-accused is not proved beyond all reasonable and he cannot be held guilty under Section 120-B read with Section 302 IPC.

Now, coming to role of accused Baboo alias Bablu, it comes out that he had enmity with deceased and eye witnesses. Accused Baboo alias Bablu is not alleged to be present at the time of crime.

PW1 Amit (eye witness) has stated in his cross examination that he had received threat from accused Baboo alias Bablu. He admitted in cross examination that according to him, Ravinder is not involved in the murder of Abhey Singh.

In the statement made before the police under Section 161 Cr.P.C., the witness had not recorded that accused Baboo alias Bablu had threatened deceased Abhey Singh. Amit admitted that he is facing trial in 3-4 criminal cases, out of which 2 cases were registered before present occurrence. One case was got registered by accused Baboo alias Bablu and one case was got registered by accused Dharamvir alias Tiger. In the said 2 cases, Baljit alongwith Abhey Singh were co-accused.

Baljit (PW2), who is complainant, has admitted that he is facing

trial in 4-5 criminal cases regarding assault etc. one case was registered against him by accused Baboo alias Bablu. Another case was registered against him by accused Dharamvir alias Tiger. One case was got registered by Vikram son of Amar Singh, resident of his village and one case was got registered by a person, who is resident of Rajasthan, but he does not know his name. Naveen son of Lal Chand was also accused in said case, which is pending in Narnaul Courts. After the registration of present case, one more case under Section 302 IPC was got registered against him by one person, resident of Biharipur village, Police Station Nangal Chaudhary. He is in judicial custody in said case and has been produced at the time of recording of evidence from Nasibpur jail.

In this case, it is admitted that accused Baboo alias Bablu got registered criminal cases against both witnesses, namely, Baljit alias Bablu and Amit. Therefore, their statement that accused Baboo alias Bablu had threatened the deceased and that crime has been committed at the behest of accused Baboo alias Bablu cannot be believed. Accused Baboo alias Bablu was not present at the time of occurrence. Therefore, role of accused Baboo alias Bablu is also not proved beyond all reasonable doubts and he cannot be held guilty for offense under Section 120-B IPC.

Now, we discuss the role of Rajesh son of Hari Singh, Himmat Singh, Naresh alias Pappu, Jitender Singh alias Billa, Pawan Kumar, Ami Chand alias Chandgi, who have been convicted under Section 216 IPC in harbouring co-accused.

We are of the view that evidence of harbouring against accused Rajesh son of Hari Singh, Himmat Singh, Naresh alias Pappu, Jitender Singh alias Billa, Pawan Kumar, Ami Chand alias Chandgi is very weak and cannot be made basis of their conviction under Section 216 IPC.

It is stated that accused Naresh alias Pappu was present in his Fortuner near the place of crime and that said Fortuner was used to give lift to one of the accused. However, in the complaint and in the statement of witnesses, there is no mention about use of Fortuner. There are disclosure statements of co-accused that they had gone to Dimipur and that they had taken a house on rent and that said accused had helped them. We are of the view that on the basis of confession of co-accused and in the absence of independent evidence, it cannot be held that Rajesh son of Hari Singh, Himmat Singh, Naresh alias Pappu, Jitender Singh alias Billa, Pawan Kumar, Ami Chand alias Chandgi, had harboured co-accused. Therefore, they all are entitled to benefit of doubt.

Now, we discuss role of main accused, namely, Joginder alias Jogad, Sandeep alias Bagri, Ashok alias Shoki, Naresh alias Polar and Parveen son of Sahi Ram. We will not discuss the role of accused, who were declared proclaimed offenders.

The statement of Dr. Aman Yadav shows that as many as 8 bullet injuries were found in dead body of deceased. 3 bullets were recovered from dead body. 4 live cartridges of 7.65mm, 4 fired cartridges of 7.65 mm, one cartridge of unfired bullet of 7.65mm and one fired bullet of .315 were recovered from the spot. The medical evidence clearly shows that it was a deadly assault and assailants did not want that Abhey Singh should survive. Therefore, indiscriminate firing was done, in which .315 bore and 7.65 bore pistols were used. From accused Joginder alias Jogad, Naresh alias Polar and Ashok alias Shoki, country made pistols were recovered. The bullets recovered from dead body matched with pistol W/1, recovered from accused Joginder alias Jogad. However, no definite opinion could be given by FSL about 2 other bullets. One country made pistol was

found broken, which appears to have been intentionally broken to destroy the evidence. However, the FSL found that all 3 country made pistols were used in firing. The accused have not explained as to from where they procured these weapons and where these were fired.

Now, when MLR and FSL report are corroborated with the testimonies of Amit and Baljit, it comes out that Baljit alias Bablu and deceased Abhey Singh were partner in liquor vend. Initially, Joginder alias Jogad accompanied by Sandeep alias Bagri and Ashok alias Shoki reached the spot. Accused Sandeep alias Bagri and Ashok alias Shoki were left at the liquor vend. Joginder alias Jogad left for village to talk to Abhey Singh. Abhey Singh came in Bolero vehicle. After 15 minutes, when Joginder alias Jogad returned, he sat with Abhey Singh for talk at a tea stall near the liquor vend. In the meanwhile, Bolero camper came from the side of village. Accused Parveen, Naveen alias Polar and some others alighted from vehicle. Rajesh and Dharamvir alias Tiger are declared proclaimed offenders. All said persons started firing. However, Parveen son of Sahi Ram and Naresh alias Polar have been convicted by trial Court. He stated that accused Joginder alias Jogad, Sandeep alias Bagri and Ashok alias Shoki, who were already present at spot, also started firing from their pistols on Abhey Singh from behind. The same is statement of Baljit alias Bablu (PW2). It clearly shows that accused Joginder alias Jogad, Sandeep alias Bagri and Ashok alias Shoki came as an advance party to ensure the presence of Abhey Singh at the spot and that other co-accused came later in Bolero camper and then all of them started indiscriminately firing to kill Abhey Singh instantaneously. From 3 of accused, namely, Joginder alias Jogad, Sandeep alias Bagri and Ashok alias Shoki, country made pistols were recovered, for which they have no explanation. These pistols were

used in firing and bullets matched with pistol recovered from accused Joginder alias Jogad. Therefore, statement of Amit and Baljit alias Bablu in this regard cannot be brushed aside.

The learned counsel for accused-appellants have vehemently argued that in this case, there is inordinate delay. It has come in evidence of doctor that dead body was brought by people and police. Then, it was taken by people accompanying him and again brought back. It also come in evidence that people had gathered at Tularam Chowk to press for registration of case. The said occurrence had taken place on 7.11.2012 at 3:15 PM and that statement of complainant was endorsed at 8:15 PM and FIR was registered at 8:20 PM. Therefore, there is delay of about 5 hours in lodging the FIR.

We are of the view that on account of delay in lodging the FIR, entire prosecution case cannot be thrown out. Only a duty is cast upon Court to scrutinize the evidence with more care and caution. We have scrutinized the case with due care and caution. It is usual in this part of country that whenever there is occurrence, people gather and hold dharnas with dead body on the roads and chowks to press for registration of FIR and take action against guilty persons. Same appears to have been done in this case. We also do not agree that complainant was not present in hospital as dead body was initially brought by people and police and then dead body was taken to Tularam Chowk and thereafter, dead body was again taken back to hospital. Many people on hearing the firing gathered at spot though, complainant might have taken initiative to take Abhey Singh to hospital. When, large number of people gathered there, doctor might have mentioned that it was brought by people and police. Baljit alias Bablu was attending the liquor vend and his presence at spot cannot be discarded.

The motive of crime is that there was enmity between Baboo alias Bablu and other accused. Some criminal cases were registered against Abhey Singh. Therefore, he was having enmity. Therefore, the opposite group has motive to attack him.

The learned counsel for accused Sandeep alias Bagri and Ashok alias Shoki have contended that they were not named in the FIR. Therefore, their identity is not established.

We are of the view that it was specifically mentioned in the FIR that Joginder alias Jogad was accompanied by 2 persons. The witness has specifically named that Sandeep alias Bagri and Ashok alias Shoki were the persons, who were with accused Joginder alias Jogad. They were identified in Court. Even during investigation, they were arrested and country made pistol was recovered from Ashok alias Shoki. Therefore, their involvement in crime is proved beyond all reasonable doubts. The pistols recovered from accused were found to be used in crime. The bullets recovered from dead body were found to be fired with pistols, recovered from accused Joginder alias Jogad, for which he has no explanation.

So far as role of accused Parveen son of Sahi Ram is concerned, .315 country made pistol was recovered from him which was used in firing. The mere fact that FSL could not give definite opinion whether the lead recovered from dead body was fired from said pistol is no ground to hold that accused Parveen son of Sahi Ram was not present at the spot. The identity of accused Parveen was established from the statement of eye witness. Naresh alias Polar and Parveen were among those persons who came on Bolero camper and indiscriminately fired on Abhey Singh. Therefore, role of accused Naresh alias Polar is also proved.

The learned counsel for accused contends that Surender was

tried separately, but he was acquitted on the ground that witness did not support the role of Surender alias Chiku.

We are of the view that case against accused Parveen is at different footing. The case against him is proved beyond all reasonable doubts without being influenced by the fact that witness in the said case did not support the role of Surender alias Chiku.

From the foregoing discussion, we make the following order :-

- (i) CRA-D-1621-DB-2015 filed by Ravinder, CRA-S-4948-SB-2015, filed by Himmat Singh, CRA-S-4957-SB-2015, filed by Naresh alias Pappu, CRA-S-4958-SB-2015, filed by Pawan Kumar, CRA-S-5153-SB-2015, filed by Jitender Singh alias Billa, Ami Chand alias Chandgi, Rajesh s/o Hari Ram, are allowed and they are acquitted of the charges framed against them. They be released forthwith, if not required in any other case. The fine, if any paid, be refunded to them.
- (ii) CRA-D-1725-DB-2015, filed by Naresh alias Polar is dismissed.
- (iii) Criminal appeal i.e. CRA-D-1706-DB-2015, filed by accused-appellant No. 5 Babbu (Baboo) alias Bablu, is allowed and he is acquitted of the charges framed against him. Appellant Babbu (Baboo) alias Bablu be released forthwith, if not required in any other case. The fine, if any paid, be refunded to him whereas CRA-D-1706-DB-2015, filed by accused-appellant No. 1 Joginder alias Jogad, accused-appellant No. 2, Sandeep alias Bagdi, accused-appellant No. 3 Ashok alias Shoki

and accused-appellant No. 4 Parveen, criminal appeal is
dismissed.

(A.B. CHAUDHARI) (KULDIP SINGH)
JUDGE JUDGE

23.8.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No