

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

1. CRA-D-1352-DB-2015

Ravinder

... Appellant

Versus

State of Haryana

... Respondent

2. CRA-D-1450-DB-2015

Bhim Singh

... Appellant

Versus

State of Haryana

... Respondent

3. CRA-D-1513-DB-2015

Sanjay

... Appellant

Versus

State of Haryana

... Respondent

4. CRA-AD-62-2015

Maya Devi

... Appellant

Versus

Parvinder @ Bablu and others

... Respondents

**Reserved on : 02.09.2019
Date of decision : 06.09.2019**

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARNARESH SINGH GILL***

Present: Mr.Atul Lakhanpal, Senior Advocate with
Mr.Arvindpal Singh Grover, Advocate
for the appellant in CRA-D-1352-DB-2015 &
CRA-D-1513-DB-2015.

Mr.M.S. Joshi, Advocate for the appellants
in CRA-D-1450-DB-2015.

Mr. K.D.S. Hooda, Advocate
for the appellant in CRA-AD-62-2015.

Mrs. Shubhra Singh, Addl.A.G. Haryana.

Mr.S.S. Sahu, Advocate
for respondents no.12 & 13 in CRA-AD-62-2015.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the aforesaid appeals, therefore, these are taken up together and disposed of by a common judgment.

2. These appeals are instituted against the judgment dated 31.07.2015 and order dated 05.08.2015 rendered by the Additional Sessions Judge, Fatehabad, in Sessions Case no.RBT-58 of 2012 whereby the appellants Ravinder, Bhim Singh and Sanjay along with co-accused Parvinder @ Bablu, Pardeep Kumar, Sandeep Nain, Manoj Kumar, Sushil Kumar, Ajay @ Kala @ Kaithaliya, Surender Kumar, Ashok Kumar @ Bablu, Suresh Kumar and Virender were charged with and tried for offences under Sections 120-B, 148, 341 and 302 read with Section 149 of the Indian Penal Code (in short 'IPC'). Co-accused Badho Devi, Sumer Singh and Rampati were charged with and tried for offence under Section 216 IPC. In addition to offences under Sections 120-B, 148, 341 and 302 read with Section 149 IPC, appellant Sanjay was further charged and tried for

offence under Section 25 of the Arms Act.

3. Appellants Ravinder, Bhim Singh and Sanjay were convicted and sentenced as under:-

U/s 120-B IPC	Imprisonment for life and to pay fine of Rs.5000/- (Rs. Five thousand only) each. In default of payment of fine, each convict shall further undergo rigorous imprisonment for six months.
U/s 148 IPC	Rigorous imprisonment for a period of 2 ½ years.
U/s 341 read with Section 149 IPC	Simple imprisonment for a period of one month.
U/s 302 IPC read with Section 149 IPC	Imprisonment for life and to pay fine of Rs.20,000/- (Rs. Twenty thousand only) each. In default of payment of fine, each convict shall further undergo rigorous imprisonment for two years.

Appellant Sanjay was further convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.3000/- (Rs. Three thousand only) and in default of payment of fine, to further undergo rigorous imprisonment for a period of one month, for offence punishable under Section 25/54/59 of the Arms Act.

Co-accused Parvinder @ Bablu, Pardeep Kumar, Sandeep Nain, Manoj Kumar, Sushil Kumar, Ajay @ Kala @ Kaithaliya, Surender Kumar, Ashok Kumar @ Bablu, Suresh Kumar and Virender were acquitted of the charges framed against them under Sections 120-B, 148, 341 and 302 read with Section 149 IPC. Co-accused Sumer Singh, Badho Devi and Rampati were also acquitted of the charge framed against them under Section 216 IPC.

4. Criminal appeal no.CRA-AD-62-2015 has been filed by Maya Devi against the acquittal of co-accused in the same trial.

5. The case of the prosecution in a nutshell is that statement of Rakesh Kumar was recorded to the effect that they were three brothers. The eldest was Vijay Pal followed by Dharampal. He was the youngest. His

brother Dharampal died of heart attack about 10 years ago. Vijay Pal had purchased 20 marla plot in February from Balwant Godara, resident of village Karnoli. The plot was adjoining the house of Sanjay Kumar and Bhim Singh sons of Ranjit Singh near Maharaja Aggarsain Colony, Sirsa Road. Sanjay Kumar and Bhim Singh had illegally occupied the plot. After purchasing the plot, his brother got sanctioned mutation from the concerned Patwari. As per record, he was in possession. After purchase of plot by his brother, Sanjay Kumar and Bhim Singh started nursing grudge against Vijay Pal saying that he would have to suffer the consequences. On 07.05.2012 at about 6.00 P.M. he, his brother Vijay Pal and Ashok Kumar son of Diwan Singh were sitting in SBI Computer Centre. After 5-10 minutes of conversation, they all started for Bhodia. Vijay Pal drove away his bullet motorcycle. He and Ashok Kumar followed him in Zen car. At about 6.30 P.M., when they reached in front of Rangoli Palace, two Verna cars crossed the Zen car and motor cycle of Vijay Pal. One of the Verna cars intercepted the motorcycle of Vijay Pal. The other Verna car hit the motorcycle of Vijay Pal. He fell down. Sanjay Kumar and his brother Bhim Singh along with 3-4 persons got down from the second Verna car. Ravinder Sai resident of Bighar Road, Fatehabad, accompanied by 3-4 persons got down from the first car. They were armed with *dandas*, rods and *lathis*. Sanjay Kumar and Bhim Singh were armed with iron rods. Sanjay Kumar raised lalkara that Vijay Pal would be taught a lesson for purchasing plot and he would not be spared. Sanjay Kumar gave rod blow on the head of Vijay Pal. Bhim Singh gave iron rod blow on his legs and Ravinder Sai gave iron rod blow on his back. The other persons accompanying also gave indiscriminate blows with *dandas* and *lathis* to Vijay Pal. He and Ashok Kumar witnessed the incident

while sitting in Zen car. Out of fear, they did not get out of the car. After some time, they gathered courage and came out of the car. They raised alarm. Sanjay Kumar and his brother Bhim Singh put the iron rods in the vehicle. They took out a pistol to create panic. Thereafter they ran away from the spot. His brother Vijay Pal was bleeding profusely. He and Ashok Kumar could recognise the other accused. His brother Vijay Pal was taken to the hospital. He died on 08.05.2012. The body was sent for post-mortem examination. Accused were arrested. They made disclosure statements. Investigation was completed. Challan was put up after completing all the codal formalities.

6. Prosecution examined a number of witnesses. The statement of appellants were also recorded under Section 313 Cr.P.C. They have denied the case of the prosecution. One of the accused Sanjay had taken the plea of *alibi*. The accused also examined three witnesses in their defence. The appellants were convicted and sentenced as noticed hereinabove. Hence these appeals.

7. Learned counsel appearing for the appellants in CRA-D-1352-DB-2015, CRA-D-1450-DB-2015 and CRA-D-1513-DB-2015 have vehemently argued that the prosecution has failed to prove the case against the appellants.

8. Learned counsel appearing on behalf of the State has supported the prosecution case.

9. Learned counsel for appellant Maya Devi in CRA-AD-62-2015 has also argued that respondents no.1 to 13 (co-accused) be convicted and sentenced and sentence of appellants Ravinder, Sanjay and Bhim Singh be enhanced and his client be paid compensation.

10. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

11. PW-20 Dr.Naresh Nagpal had conducted the post-mortem examination on the dead body of Vijay Pal. He also filed his affidavit Ex.PW20/A. He noticed the following injuries on the body of Vijay Pal:-

“1. Redish contusion 4” x 3/4” on left forearm with elbow on postero-lateral side obliquely placed on disectio huge amount of blood comes out with infil of blood underlying tissues.

2. Lacerated wound of size 2½” x 1/3” bone deep with blood clots on the elbow posterior side. Right on dissection infiltration of the blood underlying tissues with incised wound.

3. Lacerated wound 3” x 1/2” with fracture of humerus bone lower 1/3 of left arm (upper posterior side obliquely placed with blood clots and on dissection huge amount of blood comes out. Wound is dressed with splint on the right upper limb.

4. Lacerated wound 2 in number size varying 3” x 1/2” upper middle third of right leg with fracture both bones (tibia & fibula) with blood cots. On dissection huge amount of blood comes out & there is infiltration of the blood underlying tissues wound incised & there is splint on right lower limbs. Wound was present on the anterior side of leg & obliquely placed.

5. Reddish contusion 4” x 1” on the right thigh obliquely place middle third anterior lateral side. On dissection huge amount of blood comes out & infiltration of tissues comes out.

6. Lacerated wound 4 in number on the left leg four in number on upper & lower 1/3 of leg.

-2 wound size varying 2” x 1/2”, 1 ½” x 1/2” below the

knee upper third of leg & on anterior side on dissection huge amount of blood underlying tissues & there is fracture of tibia.

(Upper third)

- Two wound size varying 3" x 3/4" and 2" x 1/2" placed on middle third of leg & fractures bones (tibia & fibia) on anterior side muscles on the fracture bone ends are coming out from the wound. On dissection huge amount of blood comes out infiltration of tissues underlying it.

-The wounds are dressed & with splint on the left lower limb.

7. Reddish swelling in are of 3 1/2" x 1 1/2" on lower third of middle third anterior side of right side of chest. On dissection huge amount of blood comes out & infiltration of blood underlying tissues present, with fracture of 7th & 8th rib. With lacerated wound of the right lung. Blood present in the right side thoracic cavity.

8. Contusion reddish in colour obliquely placed on back right scapula & below it. Middle are size 3" x 1". On dissection infiltration of the blood underlying tissues.

9. Reddish contusion obliquely placed in the middle of back which is present on the right & left side size 5" x 1". On dissection infiltration of the blood underlying it.

10. Reddish contusion size 3" x 1" on the lumber region right side obliquely placed middle are on dissection infiltration of blood underlying tissues.

11. Reddish contusion 3 1/2" x 3/4" on right buttock obliquely placed in middle area. On dissection infiltration of blood underlying tissue.

12. Swelling in area of 2 1/2" x 1 1/2" on the posterior side of left hand. On dissection amount of blood comes

out & infiltration of the blood underlying tissues.”

The cause of death was haemorrhage and shock due to multiple injuries which were ante mortem in nature and sufficient to cause death in course of nature. In his cross-examination, he admitted that during the investigation of this case, the police has never shown him the weapons produced in the Court nor his opinion was taken by the police that the injuries on the person of Vijay Pal were possible by these weapons. He further deposed that none of the single injury was sufficient to cause death. He also deposed that life of Vijay Pal could be saved if the medical aid had been given in time to him. The possibility of all the injuries in this case with a single weapon cannot be ruled out.

12. PW-15 Dr.Gunjan Bansal deposed that on 07.05.2012 she was posted as Medical Officer at General Hospital, Fatehabad. Vijay Pal son of Balbir Singh was brought in injured condition at General Hospital, Fatehabad at 7.30 P.M. on that day. She sent ruqa Ex.P30. The patient was referred to Agroha Medical College and higher medical centre. In her cross-examination, she deposed that she mentioned the detail of injury separately in Ex.P31. She admitted that the patient was brought by Subhash son of Hardwari Lal and Ashok Kumar son of Diwan Singh.

13. PW-2 Madan Lal deposed that he visited the spot and prepared scaled site plan Ex.P2 on the pointing of Rakesh Kumar.

14. PW-3 ASI Des Raj deposed that Inspector Virender Singh produced one sealed parcel of pistol along with application Ex.P3 and case file with the seal of VS. He opened the seal of the parcel and took out the pistol .12 bore and one live cartridge of .12 bore. He compared pistol with its rough sketch Ex.P4. He mechanically examined the pistol and cartridge.

He found the pistol in working order and cartridge was live. He prepared test report Ex.P5. In his cross-examination, he deposed that he had not mentioned in his report Ex.P5 regarding firing of any shot from this pistol. He did not test this pistol by firing a shot from it. There was no mark of identification on the body of pistol and cartridge.

15. PW-4 HC Ram Sarup had mechanically examined motor-cycle Royal Enfield.

16. PW-7 Pardeep Kumar deposed that he was student of B.A. 2nd year in 2012. His brother-in-law Vijay Pal had purchased a plot of 20 marlas in the month of February 2012 from Balwant Godara of village Karnolli. It was situated near the Kothi of accused Sanjay and Bhim. Accused Sanjay and Bhim occupied that plot illegally. His brother-in-law Vijay Pal got this plot mutated in his favour. He had taken the possession of said plot. Accused Sanjay and his brother Bhim started having a grudge against Vijay Pal. They used to threat him. On 07.05.2012 at about 6.30 P.M. when he was going to village Bhodia Khera from Fatehabad after attending tuition and when he reached near Rangoli Palace, Bhattu Road, Fatehabad, he saw a big crowd had gathered there. He saw the motorcycle of his brother-in-law Vijay Pal lying on the road. He saw accused Sanjay, Ravinder and Bhim having iron rod in their hands. Accused Manoj Khatri, Sandeep Nain, Bablu Malik, Bablu Meel, Pardeep Phogat were having *danda* and *bindas*. Accused Surender @ Golden was riding on a motorcycle. Virender was carrying *danda* and Ajay Kaithalia was carrying a *danda*. Accused Sanjay, Ravinder and Bhim were causing injuries to his brother-in-law Vijay Pal but he could not see due to crowd. His brother-in-law Vijay Pal was crying for help. Rakesh Kumar and Ashok Kumar were also present on the spot.

Accused ran away from the spot.

17. PW-8 Rakesh deposed that on 07.05.2012 at about 6.00 P.M. he and his brother Vijay Pal were sitting in the Computer Centre of Ashok Kumar at Fatehabad. Vijay Pal departed for Bhodia on his motorcycle. He along with Ashok Kumar departed in Zen car. They were following Vijay Pal. When they reached near Rangoli Palace, Fatehabad at about 6.30 P.M., two Verna cars overtook their car and the motor cycle of Vijay Pal. The first Verna car stopped ahead of his brother's motor cycle. The first car was being driven by Ravinder Sai. 3-4 persons were occupying the said car. The other car smashed against the motorcycle of Vijay Pal. It was driven by Sanjay. Bhim along with 3-4 other persons were present in this car with Sanjay. Accused Sanjay got down from the car and raised lalkara that Vijay Pal would be taught a lesson for purchasing the plot. Accused Sanjay gave an iron rod blow on the head of his brother Vijay Pal. Accused Bhim also gave an iron rod blow on the legs of Vijay Pal. Accused Ravinder Sai gave rod blow on the back of Vijay Pal. All the accused with Sanjay and Bhim started causing injuries to his brother Vijay Pal. He and Ashok Kumar were seeing the occurrence while sitting in the car. Many injuries were caused to his brother Vijay Pal. They took a courage and got down from the car. They raised alarm. Bhim and Sanjay took out pistols from their dub and extorted that if anybody would come near them, he would be killed. Vijay Pal became unconscious. He was shifted to General Hospital, Fatehabad, in Zen car. In his cross-examination, he deposed that he came to know about the sale deed of the plot measuring 20 marlas by his brother Vijay Pal when he got registered the sale deed. He might have given the copy of sale deed to the police. He could not tell the consideration of this plot. He did not

remember whether he handed over the copy of mutation of this plot to the police or not. Only his brother was knowing about the possession of Sanjay and Bhim over the plot. He was agriculturist. He did not know the date, month on which his brother had taken the possession of said plot. He had not accompanied his brother Vijay Pal when he had gone to take the possession over the said plot. They had stopped their vehicle from Vijay Pal at the time of assault at a distance of five feet and they remained sitting in their car at that time for 5 to 10 minutes. When they got down from the car, the injuries had already been caused to his brother. They did not try to save Vijay Pal. Similarly, they did not throw any bricks or stones on the assailants. Accused Sanjay did not fire any shot from his pistol either in the air or towards them. They stayed on the spot for about 15-20 minutes. He admitted that he named three persons namely, Sanjay, Bhim and Ravinder in his statement Ex.P1 before the police. Volunteered the other persons were not known to him by name. He admitted that he did not give the physical description, age, parentage and address of other persons except three persons. He was summoned in the police station after arrest of remaining accused who were not named by him in Ex.P1. The police had shown him those persons in the police station. He did not make any supplementary statement to the police disclosing the identity of other persons.

18. PW-9 ASI Banwari Lal deposed that accused Sushil made disclosure statement Ex.P14 regarding his involvement in the commission of crime. Accused Sandeep Kumar got recovered *binda of kassi* (handle of spade) from his residence.

19. PW-10 ASI Inder Singh deposed that accused Ashok suffered disclosure statement Ex.P15 admitting his guilt. Ashok Kumar got the

handle of spade recovered from the vacant plot. Accused Suresh also made disclosure statement Ex.P17 that he had kept concealed motor cycle used in the incident in the house of his maternal uncle Bhim. He got the same recovered. Accused Ravinder also made disclosure statement Ex.P19 that he had kept concealed iron rod along with RC of the car in his field of village Mehuwala. He got the RC and iron rod recovered.

20. PW-13 E/ASI Ram Chander deposed that accused Manoj Kumar got recovered handle of spade from his house in Adarsh Nagar, Hisar.

21. PW-14 ASI Ramesh Kumar deposed that accused Suresh made disclosure statement Ex.P27 regarding his involvement in the crime. Accused Sanjay also made disclosure statement Ex.P28. Accused Ravinder made disclosure statement Ex.P29. In his cross-examination, he admitted that no recovery was effected in pursuance of disclosure statements Ex.P27 to Ex.P29 from Suresh, Sanjay and Ravinder respectively.

22. PW-16 SI Subhash Chander deposed that on receiving the information, he along with other police officials in order to record the statement of injured went to Medical College, Agroha. Rakesh Kumar, brother of Vijay Pal met him near Bus Stand, Fatehabad. He made statement Ex.P1. He went to place of occurrence. He prepared rough site plan Ex.P33. He recorded the statements of witnesses under Section 161 Cr.P.C. He arrested Rampati, mother of Ravinder, under Section 216 IPC, on 12.07.2012. Accused Sanjay made disclosure statement Ex.P36 to the effect that the pistol and *gandasi* used in the occurrence were concealed by him at his residence at Uggarsain Colony, Fatehabad. The disclosure statement Ex.P36 was signed by accused Sanjay. Accused Sanjay led the police party

to the disclosed place and got recovered .12 bore pistol along with one live cartridge and an irod rod. These were taken into possession.

23. PW-17 Kuldeep Singh deposed that accused Ajay made disclosure statement Ex.P38.

24. PW-18 Virender Singh deposed that he moved application Ex.P13 to conduct the post-mortem examination. He arrested accused Parvinder @ Bablu on 18.05.2012. Accused Parvinder @ Bablu made disclosure statement Ex.P44 regarding his involvement and concealment of baseball bat which was kept concealed by him in his house in village Bhojraj, District Hisar. Accused Pardeep also made disclosure statement Ex.P45 regarding his involvement and concealment of a *danda*. He also took into possession a motor cycle bearing registration no.HR-22C-4647 which was driven by accused Parvinder @ Bablu. Accused Parvinder @ Bablu got recovered baseball bat from the vacant plot. Accused Pardeep got recovered baseball bat which was converted into sealed parcel. He arrested accused Sandeep Nain and Manoj Kumar on 23.05.2012. Accused Sandeep was interrogated. He made disclosure statement Ex.P54. He had concealed *kassi binda* used by him in the incident. Accused Manoj also made disclosure statement Ex.P55 and disclosed that he had concealed *kassi binda* used by him in the incident. Recovery of *kassi binda* was got effected by accused Sandeep and Manoj. On 31.05.2012 accused Ajay @ Kala @ Kethalia led the police party to disclosed place but on the way, he retracted from his earlier disclosure statement. He disclosed that he had concealed the baseball bat at his house at Ratia. It was taken into possession. He prepared rough site plan Ex.P62. Accused Surender @ Golden made disclosure statement Ex.P64. Motor cycle bearing registration no.HR-19G-1601 was

got recovered from accused Surender @ Golden. Accused Ashok Kumar was arrested on 06.06.2012. He made disclosure statement qua concealment of *kassi binda*. He also arrested Badho Devi under Section 216 IPC. Accused Suresh Kumar also made disclosure statement Ex.P27 regarding his involvement in the case and concealment of motor cycle at Shri Ganganagar (Rajasthan). Accused Sanjay Kumar also made disclosure statement Ex.P28 regarding concealment of iron rod and pistol. Accused Ravinder Sai also made disclosure statement Ex.P29 about concealment of iron rod. Accused Sanjay Kumar got recovered one country made .12 bore pistol along with one live cartridge and one iron rod. In his cross-examination, he categorically deposed that there was no other evidence against other co-accused except the statement of Pardeep when other accused were arrested. He did not record the supplementary statement of Rakesh after recording the statement of Pardeep. He also admitted that no physical description and other particulars of accused were mentioned.

25. PW-19 ASI Mahender Singh deposed that accused Pardeep made disclosure statement Ex.P45. Accused Parvinder @ Bablu made disclosure statement Ex.P44. Accused Sandeep made disclosure statement Ex.P54. Accused Manoj made disclosure statement Ex.P55. Recoveries were effected from the accused.

26. PW-21 Rajeev Kawatra deposed that he examined the case property and prepared his report Ex.P89.

27. DW-1 Subhash Chander Bishnoi deposed that on 07.05.2012 at about 6.30 P.M., he was going from Fatehabad to village Bhodia in his car. When he reached near Rangoli Palace, Vijay Pal was lying near a motor cycle. As soon as he reached on the spot, the assailants who were 4-5 in

numbers had boarded the car and fled away from the spot. He did not recognize any of the assailants. The accused present in the Court were not those persons who were seen by him while leaving the spot.

28. DW-2 Dr.Ajay Kumar Vyas deposed that he had brought the original register of OPD of Primary Health Centre, Cherai, dated 06.05.2012. On that day, vide OPD no.1620 dated 06.05.2012, Sanjay Kumar son of Ranjit Singh was admitted in Primary Health Centre, Cherai, at about 9.30 P.M. He was suffering from chronic gastritis and hyper tension. He was treated by him and was discharged on 07.05.2012 at about 7.00 P.M. He issued certificate of admission and discharge to Sanjay Kumar vide Ex.DW2/B. He prescribed the medicines Ex.DW2/C. In his cross-examination, he deposed that he did not remember when he issued certificate Ex.DW2/B as it did not contain the date of its issuance. He had not brought the original application on which he issued certificate Ex.DW2/B. He admitted that on certificate Ex.DW2/B, there was no counter sign of CMO nor any order was made by CMO for issuance of certificate. He also admitted that OPD register brought by him did not bear any certificate of Senior Doctor/CMO certifying the total number of pages in the beginning or in the end of the register. He also admitted that on page no.1, the OPD entries pertained to 15.07.2012 and 16.07.2012. The entry of OPD pertaining to Ex.DW2/B was in the middle page of the register brought by him and register had no page number. They had no separate register for the indoor admission of patient. He admitted that he had not mentioned in register whose copy was Ex.DW2/A regarding admission of Sanjay Kumar with date and time. He also admitted that the instant entry was the only entry made by him in his handwriting in the entire register. He did not

prepare any bed head ticket. Volunteered he issued only OPD slip Ex.DW2/C. He also admitted that there was overwriting at Mark A in Ex.DW2/C. He also admitted that in Ex.DW2/C, he did not mention the father's name, address and identification mark of the patient. Volunteered there was no such practice in their Primary Health Centre. He also admitted that he had not mentioned the medicines in the slip Ex.DW2/C which he mentioned in the register Ex.DW2/B.

29. DW-3 Inspector Ajit Singh deposed that the investigation of this case was with him since 10.08.2012 to December, 2012. In his investigation, accused Bhim Singh and Virender were found innocent.

30. The FSL report is Ex.P89. According to which, the blood was found on exhibit-1 (blood stained earth), exhibit-22a (shirt), exhibit-2b (banian/vest), exhibit-2c (kachha/underwear) and exhibit-2d (pants)

31. The case of the prosecution precisely is that PW-8 Rakesh was sitting with Ashok Kumar in Computer Centre. His brother Vijay Pal was also with them. He left the place on motorcycle. They followed him. In the meantime, two cars overtook them. Accused came down from the car. Sanjay gave rod blow on the head of Vijay Pal. Bhim Singh gave iron rod blow on his legs. Ravinder gave iron rod blow on his back. The other assailants also administered beatings to him. Rakesh and Ashok Kumar witnessed the incident while sitting in the car. Sanjay and Bhim took out a pistol. The assailants ran away from the spot. PW-8 Rakesh had not given the description, age, parentage and address of remaining persons. The injured was taken to the hospital. He succumbed to the injuries.

32. PW-8 Rakesh deposed that he had seen accused Sanjay giving an iron rod blow on the head of his brother Vijay Pal, Bhim Singh giving

iron rod blow on the legs of Vijay Pal and accused Ravinder giving rod blow on the back of Vijay Pal. He was with Ashok Kumar. Surprisingly they kept on sitting in the car instead of saving Vijay Pal. Their conduct was unusual. They had not even raised alarm when Vijay Pal was administered beatings. PW-8 Rakesh should have tried to save his brother. They got down from the car only when accused administered beatings to Vijay Pal. PW-15 Dr. Gunjan Bansal examined Vijay Pal. She noticed the injuries on his person. The post-mortem was conducted by PW-20 Dr.Naresh Nagpal. The cause of death was haemorrhage and shock due to multiple injuries which were ante mortem in nature and sufficient to cause death in course of nature. The injuries caused to Vijay Pal were not on any vital organ. PW-8 Rakesh deposed that Sanjay gave an iron rod blow on the head of his brother Vijay Pal. Most of the injuries were on the non-vital organs of the deceased.

33. The motive attributed to the appellants was that Vijay Pal had purchased a plot. Appellants Sanjay and Bhim Singh were in possession of the same. They warned Vijay Pal of dire consequences. The copy of mutation was not placed on record. Sanjay and Bhim Singh are brothers. Ravinder had no connection with them. He was not interested in possession of the plot. The only role of Ravinder was that he had administered rod blow on the back of the deceased.

34. The further case of the prosecution is that Sanjay had taken out pistol to scare the people at the spot. The pistol was examined by PW-3 Des Raj. He also submitted his report Ex.P5. In his cross-examination, he deposed that he had not mentioned in his report Ex.P5 regarding firing of any shot from this pistol. He did not test this pistol by firing a shot from it.

There was no mark of identification on the body of pistol and cartridge. PW-20 Dr.Naresh Nagpal in his cross-examination deposed that the police had not shown him the weapon of offence. He had categorically deposed that none of single injury was sufficient to cause death. The life of Vijay Pal could be saved if the medical aid was given in time to him. PW-8 Rakesh in his cross-examination deposed that Sanjay had not fired any shot from his pistol either in the air or towards them. They stayed on the spot for about 15-20 minutes. PW-18 Virender Singh had categorically admitted that there was no other evidence against other accused except the statement of Pardeep when the other accused were arrested. In the FIR the motive was alleged to be a dispute over the plot between deceased Vijay Pal and Sanjay. He also admitted that no physical description and other particulars of accused were mentioned.

35. Accused Sanjay had taken the plea of *alibi*. According to him, he was admitted in Primary Health Centre, Cherai, on 06.05.2012. He relied upon the statement of DW-2 Dr.Ajay Kumar Vyas. DW-2 Dr.Ajay Kumar Vyas has categorically admitted that he did not remember when he issued certificate Ex.DW2/B. He also admitted that on certificate Ex.DW2/B there was no counter sign by CMO. The OPD register brought by him did not bear any certificate of senior doctor/ CMO of page numbers. On page no.1, the OPD entries pertained to 15.07.2012 and 16.07.2012. The register has no pagination. He also admitted that the instant entry was the only entry made by him in his handwriting in the entire register. He had not prepared any bed head ticket. He also admitted that there was overwriting at Mark A in Ex.DW2/C. He did not mention the father's name, address and identification mark of the patient. He did not mention the medicines in the

slip Ex.DW2/C which he mentioned in register Ex.DW2/B. Thus, the plea taken by Sanjay is false. It is settled law that when the accused takes the plea of *alibi*, his presence on the spot is presumed.

36. What emerges from the facts hereinabove is that, Sanjay and Bhim Singh administered beatings to Vijay Pal. Vijay Pal succumbed to his injuries. However, the fact of the matter is that no injury was inflicted on the vital organ of the body. It has come in the statement of PW-20 Dr.Naresh Nagpal that if the medical aid had been given to Vijay Pal in time, his life could be saved. No single injury could result in the death of Vijay Pal. The weapon of offence was not shown to him. Sanjay and Bhim Singh have given beatings to Vijay Pal with iron rod. The role attributed to Ravinder is only that he had given iron rod blow on the back of the deceased. Though PW-8 Rakesh has categorically deposed that Sanjay had given rod blow on the head of deceased but there is no medical record that blow was given on the head of Vijay Pal with iron rod. The case of prosecution is that appellant Sanjay was armed with pistol. In case he wanted to kill Vijay Pal, appellant Sanjay would have used the pistol which he was carrying.

37. However, the fact of the matter is that appellants Sanjay and Bhim Singh had the knowledge that if the injuries are caused on the person with iron rod, it may cause death. Thus, they are liable to be convicted under Section 304 Part II IPC instead of Section 302 IPC. Since only three accused have been convicted by the trial Court, the appellants could not be sentenced under Sections 148 and 149 IPC.

38. Accordingly, the appeal bearing no. CRA-D-1352-DB-2015 is allowed. Appellant Ravinder is acquitted of the charges framed against him.

39. Appeals bearing no.CRA-D-1450-DB-2015 and CRA-D-1513-

DB-2015 are partly allowed. The conviction of appellants Sanjay and Bhim Singh are altered from Section 302 read with Section 149 IPC to Section 304 Part II. Their conviction and sentence under Section 341 IPC is upheld but without aid of Section 149 IPC. The conviction and sentence of appellant Sanjay under Section 25 of the Arms Act is upheld. State is directed to produce the appellants Sanjay and Bhim Singh in Court on 24.09.2019 to hear them on quantum of sentence under Section 304 Part II IPC and Section 120-B IPC.

40. The co-accused in the Sessions trial have rightly been acquitted by the trial Court. As discussed hereinabove, there was no evidence against them. Neither they were named in Ex.P-1 nor their description, age, parentage were given by PW-8 Rakesh. PW-16 SI Subash Chander, investigating officer has also admitted that description of other accused including age and parentage was not given by the complainant party.

41. Accordingly, the appeal bearing no.CRA-AD-62-2015 is dismissed.

(RAJIV SHARMA)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

September 06, 2019.
Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No