

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

CRA-D-479-DB-2016 (O&M)

Reserved on : May 28, 2019

Date of Decision: July 10, 2019

Naveen @ Bhandra

...Appellant

Versus

State of Haryana

...Respondent

2.

CRA-D-320-DB-2016 (O&M)

Kuldeep

...Appellant

Versus

State of Haryana

...Respondent

3.

CRA-D-336-DB-2016 (O&M)

Narender Kumar @ Nandu

...Appellant

Versus

State of Haryana

...Respondent

4.

CRA-D-352-DB-2016 (O&M)

Parveen s/o Govind Singh

...Appellant

Versus

State of Haryana

...Respondent

5.

CRA-D-625-DB-2016 (O&M)

Pawan s/o Charan Singh

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Vinod Ghai, Senior Advocate with

Ms. Kanika Ahuja, Advocate for the appellant in
CRA-D-352-DB-2016.

Mr.Deepender Singh, Advocate and
Mr.Ram Krishan Rana, Advocate for the appellant in
CRA-D-320-DB-2016 and CRA-D-336-DB-2016.

None for the appellants in CRA-D-479-DB-2016 and
CRA-D-625-DB-2016.

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

...

HARINDER SINGH SIDHU, J.

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

2. These five Criminal Appeals have been filed by the appellants
against their conviction and sentence vide judgment and order dated
19/23.02.2016 of the learned Additional Sessions Judge, Sonapat in
Sessions case Nos.25 of 2011, 28 of 2012, 27 of 2012, 26 of 2012 and
Sessions case No.29 of 2013 whereby they were charged with and tried for
offences punishable under Sections 302 read with Section 34 IPC and 120-B
of the Indian Penal Code (in short 'IPC') along with Davender alias Lilu.
Appellant Naveen alias Bhandra was also charged with and tried for the
offence under Section 25 of the Arms Act. The appellants were convicted
and sentenced as under:-

Name of Convict-Appellant	Sentence
Naveen @ Bhandra, Parveen s/o Govind Singh, Narendra Kumar @ Nandu, Kuldeep and Pawan s/o Charan Singh	Imprisonment for life under Section 302 IPC and to pay fine of Rs.10,000/-, each. Imprisonment for life under Section 120-B IPC and to pay fine of Rs.5,000/-, each.

	In default of payment of fine, to undergo further RI for one month.
Naveen alias Bhandra	Rigorous imprisonment for one year under Section 25 of the Arms Act and to pay fine of Rs.2,000/-

The sentences were ordered to run concurrently. Accused Davender has been declared Proclaimed Offender on 10.10.2014.

3. Criminal Appeal Nos.CRA-D-320-DB-2016, CRA-D-336-DB-2016, CRA-D-352-DB-2016, CRA-D-479-DB-2016 and CRA-D-625-DB-2016 have been filed by Kuldeep, Narender Kumar @ Nandu, Parveen, Naveen @ Bhandra and Pawan, respectively.

4. The case of the prosecution in a nutshell is that on 21.6.2011 ASI Bir Singh was posted as Incharge Police Post Sector 15, Sonapat. He was present on the barricade in front of the police post when he received information that there has been some firing near H.U.D.A. office. He along with other officials reached the spot and found the dead body of deceased Sunil s/o Diwan Singh on the driver seat of Car No.HR-10P-8182 Cruze. Brother of deceased Anil Kumar got his statement (Ex.PA) recorded to the effect that he was resident of 251-A, Model Town, Sonapat and operating a water plant in his house. They were three brothers, the eldest was Sunil, who was running the business of cable and was residing with his family in H.No.2580, Sector-15, HBC, Sonapat on rent. On 12.12.2007 Kuldeep s/o Mehar Singh r/o Bhatgaon had picked up quarrel in their house at Model Town, Sonapat, in which brother-in-law of Kuldeep had died. Regarding that incident court cases are pending in Sonapat Court and were fixed for 25.7.2011. On 21.6.2011 at about 11.15 AM Sunil after completing his

personal work was going to his house in Sector-15, Sonapat in his car No.HR-10P-8182 Cruze. Complainant had been informed that when the deceased reached near HUDA Office, Sector-15, Sonapat then two motorcyclists stopped the vehicle and fired shots from driver and conductor side on his head and shoulder and fled away. On receiving this information, complainant Anil Kumar reached the spot and saw that dead body of his brother Sunil was lying on the driver seat and bent towards the conductor seat. Signs of the fire shots were present on the head and shoulder of the deceased. He suspected that Kuldeep had hatched a conspiracy due to grudge and had got him murdered. ASI Beer Singh sent ruqa Ex.PW14/A on the basis of which formal FIR Ex.PW1/A was lodged on 21.6.2011 at 2.35 PM. Team of FSL and photographer was called to the spot. On inspection of dead body a bullet found in the clothes of the deceased and a piece of the blood stained seat of the car were taken into possession vide recovery memo Ex.PB. Inquest proceedings Ex.PD were conducted. The car and the documents lying in it were taken into possession vide memo Ex.PC. The body was sent for postmortem examination. The accused were arrested. They made disclosure statements. After completion of investigation challan was present in the court.

5. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. Each of them took an identical plea. They denied the allegations levelled against them and pleaded innocence. They stated that they have been falsely implicated in the present case. Each one stated that that he along with Rajesh had filed a criminal complaint No.134/2013 under Section

302/307 and 34 IPC against complainant Anil, his brothers Parveen and Sunil (deceased). The complaint is pending before the learned Additional Sessions Judge, Sonapat. Complainant and his brother Parveen have lodged false case against him as they are inimical to him. In defence, they tendered documents Ex.D1 to D9 and Mark-A to G and closed their evidence.

6. The appellants were convicted and sentenced as referred to above. Hence, this appeal.

7. We have heard learned counsel for the parties and have gone through the judgment and record.

8. PW1 Azad Singh stated that on 21.06.2011 he was posted as SI at P.S. Civil Lines, Sonipat. On that day, he received ruqa through Constable Ram Niwas on the basis of which he registered formal FIR Ex. PW1/A. He also sent the special report through EHC Sat Narain without any delay on my part.

9. PW2 Anil Kumar (complainant) stated that they are three brothers. Sunil was the eldest one. He was doing the work of cable and property dealing and was residing in a rented House No.2580, Sector-15, Housing Board Colony, Sonipat along with his children. On 12.12.2007 Kuldeep accused who is resident of Sector-23, Sonipat had came to their house in Model Town Sonipat and started a quarrel. In that altercation the brother-in-law of Kuldeep died. Litigation was pending regarding that occurrence between the brothers and Kuldeep .

10. On 21.06.2011 at about 11.15 AM Sunil was going in his Car No.HR-10P-8182 from his house. When he reached near the Gurudwara,

two motorcyclists stopped the car and fired shots at him which hit upon the back of the right side of the head and left side of the shoulder. On learning this complainant reached the spot and saw that dead body of his brother Sunil was lying on the driver seat. There were bullet injuries on his head and left shoulder. Complainant suspected that due to previous enmity Kuldeep hatched a conspiracy with other persons to murder his brother. He further stated that his brother Sunil was running a cable in partnership with one other person. There was a dispute regarding transaction of money with his partner. Accused Naveen and Parveen had come to the house of his brother and threatened him to leave the cable work otherwise he would face the consequences. Accused Naveen, Parveen, Davender alias Lilu and Bijender were roaming near the house of his brother. At that time the complainant and his brothers did not take the matter seriously. He firmly believed that accused Kuldeep, Parveen, Naveen, Bijender and Davender had hatched a conspiracy and murdered his brother Sunil. He identified the accused in Court.

11. He also deposed that on 21.06.2011 from the place of occurrence the police had taken into possession a bullet and piece of seat cover vide recovery memo Ex.PB. Police had also taken into possession car No.HR-10P-8182 and the documents, affidavits, fard jamabandi, etc. Ex.P-1 to Ex.P-22 vide recovery memo Ex.PC. He stated that he had handed over to the police copy of FIR No.310/2007 under Sections 302 IPC and 25 of Arms Act, P.S. Civil Lines, Sonipat Ex.P-25 and the copy of application under Section 482 Cr.P.C. Crl. Revision No.3384 of 2010 titled as Sunil vs. State Ex.P-26 of Haryana and others.

12. In cross-examination he admitted that in his first statement recorded by the police at the spot at 2.30 PM which was signed by him he had not disclosed the fact that accused Naveen and Parveen had threatened his brother. However, on the same day the police had recorded another statement wherein, he had disclosed the fact. He admitted that in the earlier statement he had also not disclosed that accused Parveen, Naveen, Lilu and Bijender used to move around the house of his brother. But had disclosed these facts in subsequent statement recorded on the same day. He stated that he could not give the date when the accused had extended the threat to his brother. However, it was in the same month just few days prior to the occurrence. His brother had taken the threat lightly as he had no intention of continuing with the business. He had only asked for his share of money. No complaint was lodged by his brother regarding the threat. He admitted that except for Kuldeep there was no litigation/dispute between the three brothers and the other accused. He stated that his second statement was recorded at the spot few minutes after his first statement. He denied the suggestion that his brother had enmity with some other criminal elements regarding property dispute or that due to some other reason some criminal had murdered his brother.

13. PW3 Parveen Kumar (the other brother of the deceased) stated that he was residing with his brother Anil in Model Town, Sonipat and running a water plant. Sunil was the eldest of the three brothers. He was in the business of cable network besides property dealing and was residing in a rented house in Housing Board Colony in Sector-15, Sonipat. On 12.12.2007 Kuldeep accused along with his brother-in-law and son had

come to thier house after a fight with his son at Sai Market. At the time of fight at Sai Market, Kuldeep and his brother-in-law were not present there. Accused Kuldeep along with his brother-in-law and son had attacked them in thier house. In said incident brother-in-law of Kuldeep had suffered bullet injuries and had died because of which Kuldeep had a grudge against them. Sunil had a partnership with Sandeep Rohilla in cable network. Sandeep owed his brother some amount. As Sandeep did not pay the amount his brother had retained the share of Sandeep. Accused Naveen and Parveen had come to his brother and they told him that they had purchased the share of Sandeep. Deceased told the accused Naveen and Parveen that they should first settle the amount that Sandeep owed him. On 20.06.2011 at about 07.00/08.00 P.M. Naveen and Parveen came to his brother and threatened him that they would forcibly take the share of Sandeep.

14. Narrating the events of the day of the murder of his brother he stated that on 21.06.2011 at about 8.00 AM he along with his brother Sunil had gone to the Tehsil Sonipat to get fards of some land. In the tehsil compound accused Parveen, Naveen and Kuldeep were standing. Kuldeep was telling accused Parveen and Naveen that they had taken the amount from him but had not done his work. Upon this Parveen and Naveen assured Kuldeep that his work would be done that day itself. After that he (PW3) along with his brother came to their house. At about 11.00 AM his brother sent him to bring some documents regarding the land. He was going to hand over the documents to his brother. When he reached near Gurudwara Sector 15, Sonipat he that saw his brother Sunil was sitting in car No.HR-10P-8182. Accused Davender was sitting by his side. Bijender accused was

standing near the window by the side of the driver. He knew both of them as they were confined in District jail with his brother. After handing over the documents to his brother he went to the Tehsil. When he returned home at about 02.30 PM. he received a message that Sunil had been murdered. He immediately reached the place at 03.00 PM where the dead body of his brother was lying in the car. He stated that he was certain that his brother Sunil had been murdered by accused Davender and Bijender who were seen talking with the deceased. He denied having stated to the police anything beyond what was stated above (At this stage Public Prosecutor submitted that witness was suppressing the truth. His request to cross-examine PW 3 was allowed.)

15. In cross-examination by the counsel for the accused he stated that he had not stated in his statement Ex.PF that a fight with son of Kuldeep had taken place in Sai Market or that at the time of fight at Sai Market Kuldeep and his brother-in-law were not present there. He had told the police that he along with his brother had come back to their house on 21.6.2011 from Tehsil. He was confronted with Ex.PF wherein it was not so recorded. He had also told the police that his brother had sent him to bring some documents at 11.00 AM. He was confronted with statement Ex.PF where no time was mentioned. He admitted that he was lodged in prison in two cases. One pertained to the year 2007 under Section 307 IPC and second in FIR No.241 dated 28.09.2011 under Section 307, 323, 186 IPC and Arms Act at Police Station Sadar Sonipat. He also admitted that he along with his brothers Anil and Sunil was facing criminal complaint for offence under Section 302 IPC. He remained a proclaimed offender from

August 2011 to April 2013. He admitted that his brother Anil was also proclaimed offender for the aforesaid period. He admitted that after 12.12.2007 till the date of occurrence, none of the three brothers had lodged any complaint against accused Kuldeep before any police station. He admitted that all the three brothers and accused Kuldeep were residing in Sonipat from 2.12.2007 till the date of the incident. Questioned about his visit to the tehsil he stated that he could not tell as to whose seat he and his brother Sunil had gone to in the Tehsil on 21.6.2011. He could also not tell the time when the Tehsil opened. He stated that he was not concerned with the working of Tehsil as his brother used to go there. He had not given any document to the police. However he had given papers regarding Khewra land to his brother Sunil deceased.

16. PW4 Dr. Hemant Kumar stated that on 21.06.2011 at 4.30 PM he along with Dr. Neha Chaudhary conducted post mortem examination on the dead body of Sunil Kumar s/o Diwan Singh. The body was identified by Satyaprakash S/o Sukhbeer Singh and Sandeep S/o Rajender Singh.

He found following injuries:-

- 1. One punctured, lacerated wound on right side of skull, just below right ear measuring 1.5cm in diameter (wound of entry), inverted margins. The track of the wound is going towards left side piercing skin, subcutaneous tissue, skull bones, dura matter, cortex and lacerating brain tissue and coming out of left side causing lacerated wound of size 5cm x 5cm, brain matter coming out causing multiple fractures of skull bones, everted (exit wound). Haematoma present in middle cranial fossa.*
- 2. Wound 1.5 cm with inverted margins on left shoulder in the back piercing skin, subcutaneous tissue injury scapula, piercing heart and lung on left side and abdominal structures. There is*

haematoma on left side. Track is going downwards and coming out of left side of lower abdomen causing wound of exit with everted margins measuring 2 cm in diameter.

17. The cause of death was shock and haemorrhage as a result of injuries described in PME. The injuries were ante-mortem in nature and sufficient to cause death in normal course of life. Injury by gunshot cannot be ruled out.

18. PW5 ASI Jagdev Kumar stated that on 21.06.2011 he was posted as Malkhana Moharrar. He deposed that on 21.06.2011 he received one sealed parcel containing blood stains sealed with the seal of B.S., one sealed parcel containing clothes sealed with the seal of B.S., one sealed parcel containing pallet of cartridge sealed with the seal of BS, one sealed parcel containing pants sealed with the seal of V.S.

On 28.06.2012 the above case property was sent to FSL Madhuban for analysis vide RC No.58 dated 25.06.2011 through C.Satpal, 1273 who had handed over the receipt to him on the same day.

On 05.09.2011, one sealed parcel containing pistol 315 bore was deposited by Rajbir Singh, ASI sealed with the seal of B.S.

On 28.06.2012, one sealed parcel containing pistol was deposited by SI Rajpal.

On 07.01.2013 the sealed parcel containing pistol 315 bore was sent to FSL Madhuban for analysis vide RC No.3 dated 07.01.2013 through ASI Surender Singh 448. Till the case property remained under his supervision he did not tamper with it nor allowed anyone else to tamper with it.

19. PW7 EASI Sat Narayan EHC in P.S. Civil Lines, Sonapat deposited regarding delivery of three special reports to the concerned authorities on 21.06.2011 without any delay.

20 . PW8 Ct. Satpal Police Station Civil Lines, Sonapat tendered his affidavit Ex.PW8/A regarding taking the case property i.e., one sealed parcel containing pellet of cartridge sealed with the seal of B.S. along with sample seal, one sealed parcel containing clothes blood stained shirt of deceased Sunil, one plastic vial sealed piece blood stained sealed with the seal of B.S. along with sample seal, one sealed parcel containing clothes blood stained pants, shirt and vest sealed with the seal of VR along with sample seal of doctor to FSL Madhuban on 28.06.2011.

21. PW9 EASI Hari Krishan stated that on 13.11.2011, IO had moved an application Ex.PW-9/A before him for testing the country made pistol along with cartridge. He prepared the test report Ex.PW-9/B as per which on inspecting the pistol and checking with guages and demi cartridge the pistol was fit for firing. But there was rust inside the barrel and there was danger of barrel blast if fired in this condition. Then he put a X sign under the barrel of the country made 315 bore pistol and re-sealed the parcel.

22. PW10 Satya Parkash deposited that on 21.06.2011 he had identified the dead body of Sunil son of Diwan Singh in the hospital.

23. PW11 DSP Yashpal stated that on 09.11.2011 he was posted as incharge at SIT Staff, Sonapat. On that day he conducted the investigation of this case and recorded the statement of draftsman Inderpal. On 13.11.2011 he recorded the statement of EASI Hari Kishan Mohrar Police Line, Sonapat. Thereafter the investigation was entrusted to some other

official.

24. PW12 Inderpal deposed regarding preparing the scaled site plan Ex.PW-12/A of the place of occurrence on the demarcation of ASI Bir Singh.

25. PW13 HC Anil Kumar took photographs on 21.06.2011 Ex.PW13/1 to Ex.PW-13/8 on the asking of ASI Bir Singh.

26. PW14 ASI Bir Singh stated that on 21.06.2011 he was posted as Incharge Police Post Sector-15, Sonapat. He was present on the barricade when he came to know that incident of firing had happened near HUDA Office, Sector-15, Sonapat. He along with other staff went to spot and found one cruize car bearing No.HR-10P-8182 of white colour. The dead body of a young person was found in it. After some time Anil Kumar brother of deceased came at the spot and got recorded his statement Ex.PA. He conducted police proceedings Ex.PW-14/A. The same was sent to the police station through Ct. Ram Niwas for registration of FIR. He called the team of FSL and photographer at the spot. The photographer took photos which are Ex.PW-13/1 to Ex.PW-13/8. He inspected the dead body and found a bullet in the clothes of deceased, which was taken into possession vide recovery memo Ex.PB. There was blood on the seat of the car. He took a piece of the blood stained seat into possession vide memo Ex.PB which was sealed by the seal of 'BS'. He conducted the inquest proceedings Ex.PD. He took into possession the car and documents lying in it vide memo Ex.PC. He prepared a rough site plan Ex.PW-14/B. The sealed parcel of clothes of deceased given by the doctors was taken into possession vide recovery memo Ex.PD. The case property was deposited with Mohrar in police station.

27. On 02.09.2011, he was with SHO Ram Kumar who had arrested accused Naveen and he was interrogated. On his interrogation again on 05.09.2011 in P.S. Civil Lines, Sonapat he suffered disclosure statement Ex.PW-14/C. In pursuance to the disclosure statement accused Naveen got demarcated the place House No.320, Sector -23, Sonapat where they hatched conspiracy as per memo of demarcation Ex.PW-14/D. Accused also demarcated the place of occurrence vide memo Ex.PW-14/E. In pursuance to the disclosure statement accused Naveen got recovered a pistol of 315 bore alongwith live cartridge, which were taken into possession vide recovery memo Ex.PW-14/F. Thereafter, accused Naveen also got recovered currency notes amounting to Rs.20,000/- which were taken into possession vide recovery memo Ex.PW-14/H.

28. A sealed parcel was produced which contained a country made pistol 315 bore. He identified it as being the same pistol which was got recovered from accused Naveen, which was Ex.PW-14/201.

29. In cross examination he stated that the bullet which was recovered from the car was blood stained. He stated that at the time of inspecting the car he had noticed that a shot was fired from the driver side window and a hole was present. The glass however was not taken into possession for sending the same to FSL.

30. PW16 Sandeep stated that on 21.06.2011 on coming to know that Sunil son of Diwan Singh had been murdered he reached in front of the HUDA Office, Sonapat where he had identified the dead body which was lying on the driver seat of the car.

31. PW18 SI Dalvir Singh stated that on 08.02.2012 he was posted

at SIT 3rd, Sonapat. On that day he arrested the accused Parveen Kumar who on interrogation made disclosure statement. In pursuance thereof he demarcated the place of occurrence vide demarcation memo Ex.PW-18/A. On 10.02.2012 Parveen was again interrogated and he suffered disclosure statement Ex.PW-8/B wherein he admitted his guilt. After completion of the investigation against accused Parveen Insp. Ram Kumar prepared report under Section 173 Cr.P.C. which is signed by him. He identified his signature being his subordinate.

32. PW19 SI Subhash Chander stated that on 25.08.2012 he was posted at SIT Staff, Sonapat. On that day he arrested the accused Narender @ Nandu who on interrogation suffered disclosure statement Ex.PW-19/A wherein he admitted his guilt. After completion of investigation qua accused Narender, Inspector Rishi Kant prepared report under Section 173 of Cr.P.C. which was signed by him. He identified his signatures.

33. PW20 SI Satbir Singh stated that on 25.08.2012 he was posted at SIT Staff, Sonapat. On that day SI Subhash Chander had interrogated accused Narender in his presence and he suffered disclosure statement Ex.PW-19/A wherein he admitted his guilt.

34. PW21 SI Phool Kumar stated that on 04.01.2013 he was posted at SIT Staff, Sonapat. On that day SI Rajpal arrested accused Pawan who during his interrogation suffered disclosure statement Ex.PW-21/A. On 23.11.2012 accused Davender was interrogated by the SI Rajpal in his (PW 21) presence and he suffered disclosure statement Ex.PW-21/B in pursuance whereof he got recovered one country made pistol of 315 bore which was taken into possession vide recovery memo Ex.PW-21/C and its sketch is

Ex.PW-21/D. Accused Devender also demarcated the place of occurrence vide demarcation memo Ex.PW-21/E. Challan was prepared by Insp. Pardeep Kumar. He identified his signatures as he had worked with him. Challan was prepared against accused Devender and Pawan.

35. PW22 ASI Surender Singh stated that on 11.10.2012 he was posted at PP Sector -15, Sonapat. On that day, ASI Jai Parkash had arrested accused Kuldeep who during interrogation suffered disclosure statement Ex.PW-22/A wherein admitted his guilt. He got demarcated the place of occurrence vide demarcation memo Ex.PW-22/B.

36. PW23 SI Jai Parkash stated that on 11.10.2012 he was posted at PP Sector-15, Sonapat. On that day he arrested accused Kuldeep who during interrogation suffered disclosure statement Ex.PW-22/A wherein had admitted his guilt. He also got demarcated the place where the conspiracy was hatched vide memo Ex.PW-22/B. After completion of investigation qua accused Kuldeep, Inspector Om Parkash prepared the report under Section 173 of Cr.P.C.

37. PW24 ASI Anand Singh stated that on 09.02.2012 he was posted at SIT 3rd, Sonapat. On that day accused Parveen had demarcated the place of occurrence vide memo Ex.PW-18/A. He along with HC Sabbal had attested the memo. On 10.02.2012 accused Parveen was interrogated by the IO and he suffered his disclosure statement Ex.PW-18/B. After completion of the investigation Insp. Ram Kumar prepared the additional challan.

38. PW25 Ram Kumar stated that on 02.09.2011 he was posted as SHO, Civil Line, Sonapat. On that day, accused Naveen was arrested. On

05.09.2011, accused Naveen was interrogated and he suffered disclosure statement Ex.PW-14/C. In pursuance thereof he got demarcated the place where they hatched the conspiracy. He got recovered a country made pistol from outer road of Sector-15, which was taken into possession vide memo Ex.PW-14/F and its sketch is Ex.PW-14/H. Accused had also got demarcated the place of occurrence vide memo Ex.PW-14/E. The same day accused Naveen got recovered Rs.20,000/- from the house of Parveen, which were taken into possession vide recovery memo Ex.PW-14/G.

On 18.11.2011 he had prepared the challan against accused Naveen. He also prepared supplementary challan against accused Parveen on 20.03.2012.

One sealed parcel was produced which contained one country made pistol along with one cartridge. He identified it as being the same pistol which was got recovered by accused Naveen. The pistol is Ex.MO/1 and cartridge is Ex.MO/2.

39. PW26 Retd. Inspector Om Parkash stated that on 21.11.2012 he prepared the report under Section 173 Cr.P.C. against accused Kuldeep.

40. PW27 Kaptan Singh stated that on 13.11.2012 he was posted as Inspector at I/C SIT, Sonapat, On that day accused Devender and Pawan were interrogated in case FIR 401 dated 13.11.2012 under Sections 186/353/307 IPC and 25 Arms Act, P.S. Sadar, Sonapat. Accused Devender suffered disclosure statement Ex.PW27/A and accused Pawan present in the court suffered disclosure statement Ex.PW27/B vide which they admitted their guilt about the present case. Accused also appended their signatures on their respective disclosure statements. They were interrogated in the

presence of SI Rajpal, who also appended his signatures on the disclosure statements.

41. PW28 Inspector Rajpal stated that on dated 13.11.2012 he was posted as SI at SIT, Sonapat. On that day, accused Devender and Pawan were interrogated in his presence in case FIR No.401 dated 13.11.2012 under Sections 186/353/307 IPC and 25 Arms Act, P.S. Sadar, Sonapat by Kaptan Singh Inspector. Accused Devender suffered disclosure statement Ex.PW27/A and accused Pawan t suffered disclosure statement Ex.PW27/B vide which they admitted their guilt about the present case. Accused also appended their signatures on their respective disclosure statement. He also appended his signatures on the above said disclosure statements.

42. He stated that both Devender and Pawan were arrested by him in the present case on 23.11.2012 & 04.01.2013 respectively. On 23.11.2012, accused Devender suffered disclosure statement Ex.PW21/B in pursuance whereof he got recovered one country made pistol of 315 bore. He had prepared its sketch Ex.PW21/D. After converting into a sealed parcel it was taken into police possession vide memo Ex.PW21/C. He affixed seal 'KS' on the parcel. Accused also demarcated the place of occurrence vide memo Ex.PW21/E.

43. One sealed parcel was produced which contained one pistol Ex.P1. He identified it as the same which was got recovered by accused Devender. He stated that the parcel of above said pistol was sent to FSL through EASI Surrender on 07.01.2013.

44. PW29 ASI Surrender stated that on 07.01.2013 he was posted in Police Station C.L. Sonapat. On 07.01.2013 ASI Jagdev handed over to him

case property; one sealed parcel containing country made 315 bore sealed with the seal of 'KS' along with sample seal vide R.C. No.3 dated 07.01.2013 in proper condition for depositing the same in FSL Madhuban. On 07.01.2013 he deposited the case property in FSL Madhuban and handed over the receipt to the Malkhana Moharrar on the same day. Till the case property remained under his supervision, he did not tamper with it nor allowed anyone else to tamper with it.

45. PW30 DSP Pardeep Kumar stated that on 31.01.2013 he was posted as SHO, at P.S. Civil Line, Sonapat. On that day after completion of investigation he prepared challan against accused Devender @ Lilu and Pawan which bears his signatures.

46. The case of the prosecution primarily rests on the deposition of PW2 Anil Kumar and PW3 Parveen Kumar. PW2 deposed that the deceased Sunil was the eldest of three brothers. He was in the business of cable network and property dealing. He was residing in a rented house No 2580 Sector-15, Housing Board Colony, Sonapat along with his children. On 12.12.2007 accused Kuldeep who is residing in Sector-23 Sonapat had come to their house in Model Town Sonapat. A quarrel took place there between them in which the brother-in-law of Kuldeep sustained injuries and died. Because of that incident Kuldeep nurtured a grudge against the brothers (deceased and PW2 and PW3). There was litigation between them regarding that incident. On 21.6.2011 at 11.15 AM the deceased left his house in car No. No.HR-10P-8182. When he reached near the Gurudwara, two motorcyclists stopped the car and fired at him. One shot hit the back side of his head and the other hit the left side of his shoulder. Sunil died due

to the injuries. Immediately on receiving the information PW2 reached the spot and got his statement Ex.PA recorded. PW2 further stated that his brother Sunil was running a cable business in partnership with one other person. There was a dispute regarding transaction of money with his partner. Accused Naveen and Parveen had come to the house of his brother Sunil and threatened him to leave the cable work otherwise he would face the consequences. Accused Naveen, Parveen, Davender alias Lilu and Bijender were seen roaming near the house of his brother. At that time the complainant and his brothers did not take the matter seriously. He suspected that accused Kuldeep, Parveen, Naveen, Bijender and Davender had hatched a conspiracy and had murdered his brother Sunil.

47. From the place of occurrence police took into possession a bullet and piece of blood stained seat cover vide recovery memo Ex.PB. The car No.HR-10P-8182 and documents, affidavits, fard jamabandi, etc. Ex.P-1 to Ex.P-22 were taken into possession vide recovery memo Ex.PC. These were sent to FSL.

48. PW3 Parveen Kumar (the other brother of the deceased) deposed on similar lines as PW2 with regard to the incident of 12.12.2007 in which the brother-in-law of accused Kuldeep had died and that Kuldeep Singh nursed the grudge against the deceased and his other brothers (PW2 and PW3) because of that incident and the litigation that was pending between them in regard thereto. He also deposed regarding the partnership of his deceased brother with Sandeep Rohilla in the cable business, the dispute between deceased and his partner regarding some money due to the deceased, the threat executed by accused Naveen and Parveen to the

deceased to leave the cable business or face consequences. He specifically mentioned that accused Naveen and Parveen had come to his brother on 20.06.2011 (i.e., a day before the incident) at about 07.00/08.00 P.M and threatened him that they would forcibly take the share of Sandeep.

49. Detailing the events of the day of the murder of his brother he stated that on 21.06.2011 at about 8.00 AM he along with his brother Sunil had gone to the Tehsil Sonipat to get fards of some land. In the tehsil compound accused Parveen, Naveen and Kuldeep were standing. Kuldeep was telling the accused Parveen and Naveen that they had taken the amount from him but had not done his work. Upon this Parveen and Naveen assured Kuldeep that his work would be done that day itself. After that PW3 along with his brother came to their house. At about 11.00 AM his brother sent him to bring some documents regarding the land. He was going to hand over the documents to his brother. When he reached near Gurudwara Sector 15, Sonipat he that saw that his brother Sunil was sitting in car No.HR-10P-8182. Accused Davender was sitting by his side. Bijender accused was standing near the window by the side of the driver. PW3 claimed that he knew both of them as they were confined in District jail with his brother. After handing over the documents to his brother he went to the Tehsil. When he returned home at about 02.30 PM. he received a message that Sunil had been murdered. He immediately reached the place at 03.00 PM where the dead body of his brother was lying in the car. He stated that he was certain that his brother Sunil had been murdered by accused Davender and Bijender who were seen talking with the deceased.

50. Accused Naveen was arrested on 02.09.2011. He suffered

disclosure statement Ex.PW14/C pursuant where to a countrymade pistol .315 bore with cartridge was recovered vide memo Ex.PW14/F. This pistol however was not sent to the Forensic Science Laboratory. Accused Parveen was arrested on 08.02.2012. Accused Narender @ Nandu was arrested on 25.08.2012. Kuldeep was arrested on 11.10.2012. Pawan was arrested on 04.01.2013. However, no recovery was effected from any of them. Accused Devender was arrested on 23.11.2012. He made disclosure statement Ex.PW-21-B, pursuant where to pistol .315 bore was recovered. This was sent to FSL.

51. As per the FSL report Ex.PX, the .315 fired bullet marked BC/1 recovered from the clothes of the deceased at the spot had been fired from a countrymade firearm. Blood was detected on the bullet but as the material was disintegrated so no serological analysis was possible.

52. As per FSL Report PX/1 the countrymade pistol (Chambered for .315 cartridges) stated to have been recovered from accused Devender @ Lilu (marked as W/1) was a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order. It had been fired through. However, scientifically, the time of its last firing could not be given. The .315 fired bullet marked as BC/1 (recovered from the clothers of the deceased) has been fired from a countrymade firearm but no definite opinion could be formed regarding its linkage with countrymade pistol marked as W/1 due to lack of sufficient comparable individual characteristic marks.

53. Thus the FSL report does not establish a conclusive link between the .315 pistol recovered from Devinder and the bullet found in the

clothes of the deceased.

54. As per PW3 Davender and Bijender were seen with the deceased at 11.00 AM i.e., just before his death.. Devinder was arrested but later absconded and was declared P.O. Bijender was never arrested. Thus it has not been proved that the deceased died at the hands of accused Devinder and Bijender.

55. The question for consideration is as to whether the murder of Sunil was pursuant to a conspiracy by accused Kuldeep, Naveen, Parveen, Devender and Bijender. The evidence of the prosecution to prove the conspiracy is the statement of PW2 and PW3. The motive for Kuldeep to join the conspiracy is that he bore a grudge against the deceased on account of the death of the former's brother-in-law in the incident on 12.12.2007. As regards Parveen and Naveen, they had bought the share of Sandeep who was in partnership with the deceased in the cable business. They had threatened the deceased to leave the business or face consequences. The deceased had asked them to settle the amount owed to him by his partner.

56. PW2 claimed that accused Naveen, Parveen, Davender alias Lilu and Bijender were roaming near the house of the deceased. PW3 stated that on 21.06.2011 at about 8.00 AM he along with his brother Sunil had gone to the Tehsil Sonipat to get *fards* of some land. In the tehsil compound accused Parveen, Naveen and Kuldeep were standing. Kuldeep was telling to accused Parveen and Naveen that they had taken the amount from him but had not done his work. Upon this Parveen and Naveen assured Kuldeep that his work would be done that day itself. In cross examination he stated

that accused Parveen, Naveen and Kuldeep were standing near the car parking of the Tehsil. At that time 10/15 vehicles were parked. Many persons were standing there.

57. The aforesaid oral evidence of PW 2 and PW 3 is not sufficient to sustain the charge of conspiracy. PW3 in his cross-examination has admitted that after the incident of 12.12.2007 till the date of occurrence, none of the three brothers had lodged any complaint against accused Kuldeep before any police station. He admitted that all the three brothers and accused Kuldeep were residing in Sonipat from 12.12.2007 till the date of the incident. Apart from the fact that the dispute with Kuldeep pertained to an incident about four years before the present occurrence, it is not possible to believe that conspirators would openly discuss about their plans at a public place and within the hearing of the members of the public and even that of the brother of the subject of their conspiracy.

58. Hon'ble the Supreme Court in ***Darshan Singh v. State of Punjab***, (1983) 2 SCC 411 held that such kind of evidence with regard to conspiracy is very weak and untrustworthy.

It was observed :

“6..... On the question of conspiracy, the prosecution led the usual kind of puerile evidence, as for example, of someone overhearing something while on way to answering a call of nature. Here the strain was changed by alleging that Suran Singh (PW 27) heard a most damaging conversation between the accused while he was negotiating the purchase of a tractor. Evidence was also produced to show that a wallet was found at the scene of offence, containing a letter (Ex. P-53) sent by one

of the accused to another of them, discussing the threads of conspiracy.

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8. The evidence regarding conspiracy is as weak as the evidence about the dying declaration of Sohan Singh. Surat Singh (PW 27) speaks of a meeting between the co-conspirators in the house of Accused 1, Darshan Singh alias Bhasuri. We cannot believe that in the presence of an utter stranger like Surat Singh, the conspirators would discuss their plans to commit these murders, throwing all caution to the winds. The answer of the High Court is that the conspirators were taking liquor while discussing the conspiracy and,

“When liquor is taken, then under its influence sometimes most secret things are divulged in the presence of a person who is not so intimately connected. It is often said, when liquor goes in, truth comes out.”

This is somewhat artless. Liquor is no lie-detector and we cannot assume that Accused 1 and 2 were so drunk as to overlook the presence of a stranger in their midst and yet not so drunk so as to be unable to discuss the execution of their criminal design. Besides, Surat Singh forgot all about the incident and was contacted by the police a few days later. The learned Sessions Judge was right in holding that Surat Singh's evidence suffers from certain infirmities, because of which one could not place implicit reliance upon him. We would go further and say that his evidence is too unnatural to merit serious attention. Apart from the evidence of motive, Surat Singh's evidence in regard to the conspiracy is the only evidence against Accused 1 Bhasuri and Accused 2 Joga Singh. It is on that evidence that these two accused have been convicted under Section 120-B read with Section 302 of the Penal Code, the former being sentenced to death and the latter, because of his young age, to life imprisonment.

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59. The Kerala High Court in **Joseph @ Baby v. S.I. Of Police, (Kerala)(DB) 2005(1) KAJ 432** observed thus:

“36. The evidence of a person over hearing a conversation is too weak an evidence to prove conspiracy as held by the Supreme Court in Darshan Singh & ors. v. State of Punjab, AIR 1983 Supreme Court 554. The Apex Court observed :

"On the question of conspiracy, the prosecution led the usual kind of puerile evidence, as for example, of someone over-hearing something while on way to answering a call of nature. Here the strain was changed by alleging that Suran Singh (PW27) heard a most damaging conversation between the accused while he was negotiating the purchase of a tractor. Evidence was also produced to show that a wallet was found at the scene of offence, containing a letter (Ext.P53) sent by one of the accused to another of them, discussing the threads of conspiracy."

It is not safe to rely on PW60, as the alleged conspirators would not have spoken about their plan so loudly in a busy bus stand, so that it could be heard by others, so clearly as spoken to by PW60. So the alleged conversation between accused Nos. 1 and 2 as perceived by PW60, and kept it to himself till PW97 came into the picture belatedly could not be relied on to prove conspiracy. That evidence revolts against commonsense and prudence.”

60. To the same effect is the judgment of the Madhya Pradesh High Court in **Jattha @ Aziz Khan v. State of M.P. 1986(3) Crimes 163:**

“4. So far as the evidence of conspiracy is concerned, the prosecution has examined P.W. 8 Jagannath, P.W. 12 Narbada,

P.W. 13 Baijnath and P.W. 15 Surendra Prasad. All these witnesses are chance witnesses and they have merely stated that they over-heard the appellants conspiring to kill Deonarayan. The entire evidence has been perused by us in this regard' and we are not satisfied that such evidence is reliable and sufficient to hold the alleged conspiracy proved. We, therefore, hold that the charge of conspiracy is not proved against the appellants and they are entitled to acquittal under section 302/120-B, I.P.C. We are supported in our view by the decision of the Supreme Court in Darshan Singh v. State of Punjab, A.I.R. 1983 S.C. 554.”

61. Reverting to the aforesaid statement of PW3, if the accused Kuldeep, Parveen and Naveen had indeed discussed their plans within the hearing of PW3 he ought to have alerted his brother-Sunil regarding this and cautioned him. This was more so considering that as per his statement on the evening of 20.06.2011 accused Naveen and Parveen had come to his brother and they threatened him that they would forcibly take the share of Sandeep. Moreover the aforesaid conversation is between Kuldeep and Naveen and Parveen. There is no reference to Bijender and Devinder. Thus no conspiracy between Kuldeep, Naveen, Parveen Bijender and Devinder to murder Sunil can be inferred. Nor can the assertion of PW2 in his evidence that accused Naveen, Parveen, Davender alias Lilu and Bijender were roaming near the house of the deceased suffice to infer a conspiracy between them to murder Sunil. It is also significant that there is no similar assertion in the evidence of PW3 Parveen that Naveen, Parveen, Davender alias Lilu and Bijender were roaming near the house of the deceased .

Moreover in the absence of accused Devinder and Bijender and

it being established that the deceased had been murdered by them the charge that the accused had entered into a conspiracy with accused Devinder and Bijender for the murder of deceased Sunil cannot be made out.

62. Accordingly, the appeal is allowed. The appellants are acquitted of the charges framed against them. Appellants-Naveen @ Bhanda, Pawan, Parveen, Kuldeep are in custody. They be released forthwith if not required in any other case. The sentence of appellant-Narinder Kumar @ Nandu has been suspended vide order dated 18.05.2018. His bail bonds and surety bonds are discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 10, 2019

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No