



2. The case of the prosecution in a nutshell is that on 21.09.2016 telephonic information was received at Police Post Hailymandi, P.S. Pataudi that one Surender Sharma had been shot in Ward No.3, Sita Ram Colony, Hailymandi. On this information, ASI Anil Kumar along with other police officials reached the place of occurrence where they learnt that the injured had been taken to Fortis Hospital, Gurugram for treatment. Thereafter ASI Anil Kumar along with the police officials reached Fortis Hospital, Gurugram. After obtaining fitness certificate from the doctor they recorded the statement of Surender Sharma. He stated that he was a resident of Rathiwas, Distt. Mewat and was presently at Ward No.3, Sita Ram Colony, Hailymandi, Gurugram. Today i.e. 21.09.2016 he was coming to his house in his vehicle No. HR-76A-0999 from Sampka. At about 8.30 p.m. when he reached in front of the gate of his house and blew the horn for opening the gate, at that time two young persons who were riding a motorcycle without a number came from behind. The driver of the motorcycle was wearing a helmet and the other person had muffled his face. The person with the muffled face fired two rounds at him after coming near to his vehicle which hit him on his right arm and wrist. After that both the persons fled away on the motorcycle. He stated that he had got FIR No.174 dated 18.06.2005 u/s 302 IPC at P.S. Bilaspur, District Gurugram. Ajay Kumar son of Jaiveer resident of Rathiwas Thethar, District Mewat who was an accused in that case had come out on parole from Bhondsi Jail. Instead of returning to jail he had absconded. He fully suspected that the same Ajay had fired upon him with intention to kill. He suspected that the driver of the motorcycle may be the brother-in-law of Ajay who was resident of Badshahpur, District

Gurugram whose name he did not know. On the basis of the above statement FIR Ex.P37 was registered. ASI Anil Kumar visited the place of occurrence from where one empty cartridge, one live cartridge and one iron lead were recovered and taken into possession. The complainant Surender got recorded a supplementary statement on 25.09.2016 to the effect that after reaching home on 25.09.2016 after discharge from the hospital he had seen the CCTV footage installed in front of his house. The persons who attacked him had come riding on motorcycle bearing No.HR 27-E 7626. The motorcycle was driven by Raj Kumar s/o Jaiveer resident of Rathiwas Thethar. The pillion rider was Ajay son of Jaiveer resident of Rathiwas Thethar. Ajay had fired on him with illegal weapon.

3. Accused Raj Kumar was arrested on 28.09.2016. He suffered disclosure statement and got recovered the motorcycle bearing No. HR 27-E 7626 from his H.No.402, Sector 9 Bhiwadi, Rajasthan. On 16.10.2016 the complainant handed over one CD (Ex. PW 1/B) containing footage of the incident to ASI Anil Kumar which was taken into police possession. On 27.10.2016 the case property was deposited with FSL, Madhuban. On completion of investigation challan was presented against accused Raj Kumar as accused Ajay Kumar could not be arrested. Charges u/s 307 IPC read with Section 34 IPC were framed against him. During pendency of the trial accused Ajay Kumar was arrested on 02.01.2017. He suffered disclosure statement pursuant where to a country made pistol was got recovered on 02.01.2017. However its firing pin had been removed. The pistol was sent to FSL Madhuban on 03.02.2017. Supplementary challan was filed against accused Ajay Kumar. Offence u/s 201 IPC was added

against him.

4. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them and pleaded innocence. They examined Constable Sandeep as DW1.

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

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

7. PW1 Surender Sharma- complainant stated that on 17.06.2005 his brother Bhagirath and his nephew Parmod were murdered by accused Raj Kumar, Ajay alongwith their family members and supporters. He got FIR No.174 dated 18.06.2005, u/s 302 IPC registered at P.S.Bilaspur, Gurugram against 15 persons including the accused. In that case, 14 accused were convicted and sentenced to life imprisonment including accused Raj Kumar. Accused Ajay remained absconding for about eight years and was declared proclaimed offender. Gurugram police had arrested him from Chandigarh in 2012. That case was pending in the court ASJ, Gurugram. Statement of the complainant had already been recorded but the statement of his brother Shyam Sunder was yet to be recorded. PW 1 stated that after the above mentioned incident he had started residing in Haily Mandi, Gurugram.

8. On 21.09.2016 he came to his house in his Innova vehilce No.HR-76-A-0999 at about 8.30 p.m. He blew horn for opening the main gate. At that very moment, two persons on a motorcycle came there. The

driver of the motorcycle was wearing a helmet and the pillion rider had covered his face with a cloth (saafi). The pillion rider after alighting from the motorcycle fired two shots at him. One shot hit at his right forearm and the other hit his right wrist. After firing at him accused Ajay ran towards the motorcycle on foot. The complainant then recognized him. Thereafter both of them fled away on the motorcycle. Complainant further stated that accused Ajay had come on parole as per order of Hon'ble High Court on or about 01.04.2016 but he had jumped parole and was again declared a proclaimed offender.

9. After the incident the complainant was taken to Fortis Hospital, Gurugram by his relatives where his statement Ex.PW1/A was recorded by the police. He identified his signatures on the statement. On 24.09.2016, he was discharged from the Hospital. He then came to know from his relatives that accused Ajay and his brother Raj Kumar had fled away from their houses at Bhiwadi since the day of the occurrence. On 25.09.2016, he saw CCTV footage from the camera which was installed in the house of his neighbour Yogesh which re-confirmed that the driver of the motorcycle was accused Raj Kumar. Thereafter, he informed the police of police post Haili Mandi which recorded his statement in this regard.

10. On 16.10.2016, he with the help of a computer operator got prepared a CD of the video footage of the day of incident and handed over the CD Ex.PW1/B to the police which was taken into police possession vide memo Ex.PW1/C. He identified the accused in court.

11. PW2 Constable Sandeep Kumar deposed that on 22.09.2016 MHC of P.S.Patadui, handed over to him Special Reports of this case and he

delivered them the same day to the Illaqa Magistrate and higher police officers without delay.

12. PW3 Girish Kumar Draftsman C.P. Office, Gurugram deposed that on 26.10.2016 he visited the spot and prepared scaled site plan Ex.P1 on the asking and demarcation of ASI Anil.

13. PW4 Head Constable Subhash Chand submitted affidavit Ex.P2 regarding deposit of case property at FSL Madhuban on 27.10.2016 through H.C.Sube Singh.

14. PW5 EHC Vijay Kumar, stated that on 28.09.2016 he joined the investigation in the present case with ASI Anil Kumar. On that day, Investigating officer arrested accused Raj Kumar who on interrogation suffered disclosure statement Ex.P5 and got recovered black coloured motor-cycle bearing registration No. HR-27-E-7626 make (Hero HF delux) from his H.No.409, Sector 9 Bhiwadi, Rajasthan which was taken into police possession, vide memo Ex.P6. He also deposed that on 03.10.2016, he alongwith ASI Anil went to Fortis Hospital, Gurugram, where Sawan Dahiya AOS Security fortis Hospital, Gurugram gave a yellow coloured envelop having three seals to ASI Anil which was taken into police possession, vide memo Ex.P7. The sealed yellow coloured envelop was identified by him in Court. He also identified its contents, a plastic container having one lead piece Ex.MO/1. He identified accused Raj Kumar in court.

15. PW6 Head Constable Sube Singh tendered his affidavit Ex.P8 regarding safe deposit of case property with FSL Madhuban on 27.10.2016. He further deposed that on 22.09.2016, he joined the investigation in the present case with Investigating officer ASI Anil Kumar. They visited the

place of occurrence and recovered a lead from the driver seat of 'Innova' car of the injured, one empty cartridge and one live cartridge having impression of KF 7.65 on its base from near the main gate of the house of the injured. They were put in a plastic container and the same was converted into a sealed parcel and taken into police possession vide memo Ex.P9. The sealed parcel was opened. He identified the lead Ex.MO/2, empty cartridge Ex.MO/3 and live cartridge Ex.MO/4.

16. PW7 Shiv Kumar (Retd. Inspector) stated that on 01.11.2016, he was posted as Inspector SHO in P.S.Pataudi, Gurugram. On the completion of investigation of this case he prepared challan u/s 173 Cr.P.C. against accused Raj Kumar which bears his signature.

17. PW8 Dr.Rakesh Kumar Gupta, Radiologist, Fortis Hospital, Sector 44, Gurugram tendered his affidavit Ex. P-10 to the effect that the patient Surender Sharma, aged 45 years, Resident of Village Rathiwas Tetar, Tehsil Tauru, District Mewat, Nuh, was admitted on 21.09.2016 with alleged history of gun shot injury over right forearm and injuries at right shoulder and right side chest. He examined the X-Ray forearm of the patient on 22.09.2016 and reported a comminuted fracture of lower shaft of ulna with retained radio opaque foreign body in the soft tissue in the vicinity of the fracture. He proved X-ray film taken before surgery i.e. Ex.P11, X-ray films taken after surgery Ex.P12 and Ex.P13 and report Ex-P14. He stated that X-ray films of right shoulder Ex.P15 and Ex.P16 did not reveal any fracture.

18. PW9 Dr.Raman Kant Aggarwal, Orthopaedic Surgeon, Fortis Hospital, Sector 44, Gurugram stated that the patient Surender Sharma was

admitted on 21.09.2016 with alleged history of gun shot injury over right forearm and injuries at right shoulder and right side chest. He had a comminuted fracture of the right ulna with foreign body present in the right forearm, laceration over anterior aspect of right shoulder. Patient also had wound present over anterior aspect of right mid forearm, contused lacerated wound over dorso-ulnar aspect of right distal forearm, decreased sensation in ulnar nerve distribution and decreased power in interossei. The patient was taken for the debridement plus removal of foreign body+ exploration ulnar nerve (found to be intact) in the right forearm on 22.09.2016 under GA. Patient was discharged on 24.09.2016 on antibiotic and pain killers and was advised to come later for definitive treatment of his right ulnar comminuted fracture. He had operated upon the right forearm of patient Surender Sharma on 22.09.2016 for the debridement of the wound on the dorso-lateral aspect of the right forearm and removed the foreign body and explored the ulnar nerve which was found to be intact. He handed over the foreign body to the nurse for sealing the same and handing over to the appropriate authority of the hospital.

19. PW10 Dr.Nagarajul, EMO, Fortis Hospital, Gurugram tendered affidavit Ex.P-19 that the patient Surender Sharma came to emergency department at around 10.10 pm on 21/09/2016 with alleged history of gunshot injury. Local Examination revealed following injuries:

*“4x2x2 cm entry from right shoulder and exit abrasion present on the right side of chest*

*2x2x2 cm entry from right forearm lateral aspect and 5x2x2 cm exit from right medial wrist.”*

The patient was given I/V pain killers & antibiotic. X ray of Right shoulder

and forearm was done which showed Comminuted Fracture of Right Ulna. Orthopedics Consultation was taken and patient was admitted under Dr.Ramankant Aggarwal for further evaluation and management.

20. Deposing in Court he stated that on 21.09.2016 he sent the medical ruqua Ex.P20 to police regarding admission of patient Surender Sharma with alleged history of gun shot injury. On 22.09.2016, Investigating Officer moved application Ex.P22, regarding whether patient Surender Sharma is fit for statement or not, on which, he opined that he is fit for giving statement. He prepared/conducted MLR of patient Surender Sharma Ex.P23. He handed over the above said documents to Investigating Officer.

21. PW11 SI Gauri Dutt proved the sanction order bearing No.145/JCP dated 08.04.2017.

22. PW12 Jitender Kumar, Inspector stated that on 05.02.2017 while posted as inspector SHO, PS Patuadi on completion of investigation he prepared the final report under Section 173 Cr.P.C. against the accused Ajay.

23. PW13 ASI Amit Kumar CIA Bilaspur, Gurugram stated that on 02.01.2017 he joined accused Ajay Kumar in the investigation of the present case in court premises at Pataudi after taking permission from the court. After his formal arrest vide arrest memo Ex.P24 he interrogated the accused. Accused suffered disclosure statement Ex.P25 in pursuant where to he got recovered a country made pistol. After recovery a sketch Ex.P27 of the pistol was prepared. Thereafter the country made pistol was taken into possession vide recovery memo Ex.P28. The pistol was sealed with the seal of MS. The pistol was also checked by him before being converting into

sealed parcel. The firing pin of the pistol was found missing. He identified the pistol in Court as Ex.P30. He stated that on further interrogation accused suffered another disclosure Ex.P31 regarding the firing pin. Accused was taken to the fields of village Rathiwas Thethar but the missing firepin could not be recovered. Accused was thereafter produced in the court and sent to judicial custody. He deposited the case property with the Malkhana Moharir. He identified the accused Ajay in court.

24. PW14 EHC Pardeep Kumar Police Academy, Madhuban, Karnal deposed that on 02.01.2017 he was posted as MM in P.S.Pataudi, Gurugram. On that day ASI Amit had deposited the case property i.e. country made pistol with him. On 03.02.2017, he handed over the said case property to Ct.Sandeep for depositing the same in FSL, Madhuan. Ct.Sandeep after depositing the same in FSL, Madhuban had handed over him the receipt thereof on the same day.

25. PW15 ASI Anil Kumar PS Pataudi, Gurugram stated that on 21.09.2016 information was received about bullet injury caused to injured Surender Sharma. On this information he reached at the spot where he came to know that the injured was admitted in Fortis Hospital, Gurugram. Thereafter he reached Fortis Hospital and moved seeking opinion as to whether the injured was fit to make the statement on which doctor opined him to be fit to make statement. He obtained the MLC of the patient and recorded statement of injured Surender Sharma Ex. PW1/A. He sent a tehrir Ex.P32 for lodging FIR through EHC Vijay. He went to the place of occurrence, inspected the spot and prepared the rough site plan on the pointing of witness Santosh (Ex.P33). He took photographs of the spot

Ex.P33/1 to Ex.P33/4. He took into possession one lead from the driver seat of Innova car and one empty cartridge and one live cartridge from the lane. All these articles were put in a plastic container, converted into a sealed parcel and taken into possession vide recovery memo Ex. P9. He proved the plastic container in which he had put lead Ex.MO/2, empty cartridge Ex.MO/3 and live cartridge Ex.MO/4. He deposed that on 25.09.2016, complainant Surender Sharma gave a supplementary statement u/s 161 Cr.P.C. On 28.09.2016 accused Raj Kumar was produced in the Chowki Hailymandi by his father-in-law. Raj Kumar was arrested. On interrogation he recorded his disclosure statement Ex.P5 in pursuance whereof he got recovered one motorcycle bearing no. HR-27E-7626, Hero HF deluxe black color from his house No. 402 Sector 9 Bhiwadi, Rajanstan. It was taken into possession vide recovery memo Ex. P6. He also prepared site plan of the place of recovery Ex.P35. The case property was deposited with Malkhana Mohrir and the accused was put behind bars. On 29.09.2016 the accused was produced before the Illaqa Magistrate and sent to judicial custody. On 03.10.2016 he took into possession a sealed envelop of yellow color duly sealed with three seals vide recovery memo Ex.P7. On 16.10.2016, complainant Surender Sharma handed over to him one CD containing footage of the incident which was taken into police possession vide recovery memo Ex.PW1/C which was attested by complainant. He proved the CD Ex.PW1/B. On 01.11.2016 on completion of investigation, challan of this case was filed. He further deposed that on dated 04.02.2017, when the file pertaining to accused Ajay came back to the police station he recorded the statement of witnesses Ct. Sandeep and EHC Pardeep regarding

depositing the case property at FSL Madhuban. On 05.02.2017 after completion of the investigation against accused Ajay he put up the file before SHO for further proceedings and on 04.06.2017 after obtaining sanction order regarding this FIR he filed the challan in court. He identified the accused in court.

26. PW16 Meenu, Additional Ahlmad to the court of Sh.S.K.Duggal, AD&SJ, Gurugram brought the original judicial file titled as "State Vs. Ajay" u/s 302, 323,148,149 IPC trial of which was pending in the court of Sh.S.K.Duggal, Learned Additional AS&DJ, Gurugram. She proved copy of the order dated 19.07.2016 whereby accused Ajay was declared proclaimed offender Ex.P36.

27. PW17 ASI Sandeep Kumar CIA Bilaspur, Gurugram stated that on 02.01.2017 he joined the investigation of the present case with IO (ASI) Amit Kumar. On that day accused Ajay Kumar was joined in the investigation of the present case in court premises at Pataudi after taking permission from the court. After his formal arrest vide arrest memo Ex. P24 he was interrogated. Accused suffered disclosure statement Ex.P25. On the basis of the said disclosure statement, one day police remand of accused was sought. He got the place of occurrence demarcated vide demarcation memo Ex.P26. Thereafter accused got recovered a country made pistol. After recovery a sketch Ex.P27 of the pistol was prepared. The pistol was taken into possession vide recovery memo Ex.P28. The pistol was checked by IO before being converted into sealed parcel. On checking, the firing pin of the pistol was found missing. IO prepared the rough site plan of the place of recovery Ex.P30. Accused was again interrogated the same day and he

suffered another disclosure Ex.P31. Police remand of accused was again sought. Accused was taken to the fields of village Rathiwas Thethar but the missing firing pin could not be recovered. Accused was then produced in the court and sent to judicial custody. IO deposited the case property with the Malkhana Moharir and also handed over the seal to him. He identified accused Ajay in court.

28. PW18 Constable Sandeep PP Haily Mandi, Police Station Pataudi, Gurugram deposed regarding handing over the case property to him on 03.02.2017 by EHC Pardeep Malkahna Moharir which he deposited in FSL Madhuban on the same day.

29. PW19 SI Surender deposed that he recorded formal FIR Ex. P-37 on 22.09.2016 on the receipt of tehrir Ex.P32 through EHC Vijay. On registration of the FIR, he had sent the special report to senior police official as well as Illaqa Magistrate.

30. PW20 Constable Vijay GGM, P.S Manesar, Gurugram brought the original FIR register containing FIR No.174 dated 18.06.2005, U/s 148, 149, 302 IPC read with Section 25/27 Arms Act registered in PS Bilaspur against Ajay S/o Jaibir R/o Village Rathiwas with other co-accused. As per the record accused Ajay was arrested on dated 13.12.2012 in the above said case and challan was presented against him on 07.03.2013. He proved copy of FIR Ex.P39.

31. PW21 Lavkesh Registration Clerk, Nuh, Mewat brought the record i.e registration details of motorcycle bearing registration No.HR27- E 7626. As per record the motorcycle was registered on 26.03.2014 in the name of Jaibir S/o Sahzad Singh R/o Village Rathiwas Tehsil Tawdu,

District Mewat. He proved copy of RC Ex.P40.

32. The Investigating Officer tendered FSL report Ex. PX.

33. From a perusal of the evidence it is clear that the case against the accused was registered on the statement Ex PW1/A of the complainant Surender Sharma (PW 1) recorded by PW 15-ASI Anil Kumar in Fortis Hospital, Gurugram on 21.9.2016. In his statement PW 1 had stated that on 21.09.2016 he was coming to his house in his vehicle No. HR-76A-0999 from Sampka. At about 8.30 p.m. when he reached in front of the gate of his house and blew the horn for opening the gate, at that time two young persons who were riding a motorcycle came from behind. The driver of the motorcycle was wearing a helmet and the other person had muffled his face. The person with the muffled face fired two shots at him after coming near to his vehicle which hit him on his right arm and wrist. After that both the persons fled away on the motorcycle. He stated that he had got FIR No.174 dated 18.06.2005 u/s 302 IPC at P.S. Bilaspur, District Gurugram. Ajay son of Jaiveer resident of Rathiwas Thethar, District Mewat who was an accused in that case had come out on parole from Bhondsi Jail and instead of surrendering he had absconded. He fully suspected that the same Ajay had fired upon him with intention to kill. He suspected that the driver of the motorcycle was the brother-in-law of Ajay who was resident of Badshahpur, District Gurugram. But he did not know his name. On the basis of the above statement FIR Ex P-37 was registered. The complainant Surender got recorded a supplementary statement on 25.09.2016 to the effect that, after reaching home on 25.09.2016 after discharge from the hospital he had seen the CCTV footage installed in front of his house. Based thereon he

could firmly state that the accused had come riding on motorcycle No. HR 27-E 7626. He asserted that the motorcycle was driven by Raj Kumar s/o Jaiveer resident of Rathiwas Thethar. The pillion rider was Ajay son of Jaiveer resident of Rathiwas Thethar. Ajay had fired on him with illegal weapon. He stated that he would hand over the CD to the police soon.

34. While deposing in court complainant PW 1 gave details about the earlier case registered by him against the accused. He stated that on 17.06.2005 his brother Bhagirath and his nephew Parmod were murdered by accused Raj Kumar, Ajay alongwith their family members and supporters. He got FIR No.174 dated 18.06.2005, u/s 302 IPC registered at P.S.Bilaspur, Gurugram against 15 persons including the accused. In that case 14 accused were convicted and sentenced to life imprisonment including accused Raj Kumar. Accused Ajay remained absconding for about eight years and was declared proclaimed offender. Gurugram police had arrested him from Chandigarh in 2012. That case was pending in the court of ASJ, Gurugram. PW 1 stated that in that case his statement had already been recorded but the statement of his brother Shyam Sunder was yet to be recorded. PW 1 stated that after the above mentioned incident, he had started residing in Haily Mandi, Gurugram. In his deposition he again narrated about the accused Ajay having fired at him and that accused Raj Kumar was driving the motorcycle. He stated that after firing at him Ajay started running on foot towards the motorcycle and thus he was able to identify Ajay. He also stated that on 24.09.2016 he was discharged from hospital. On inquiry he got to know from his relatives that accused Ajay and Raj Kumar had fled away from their houses at Bhiwadi since the day of occurrence. He deposed about

his having seen the CCTV footage from the camera which was installed in the house of his neighbour Yogesh and that the CCTV footage re-confirmed that the driver of the motorcycle was accused Raj Kumar. In the cross examination of PW1 it came out that there was light at the time of the incident. The accused were known to him as they were co-villagers and that he had seen the accused some time before the alleged occurrence.

35. The CD was handed over to the Investigating Officer by PW 1 on 16.10.2016 and was taken into police possession vide recovery memo Ex PW 1/C. PW 15 ASI Anil Kumar proved the CD which had been handed over to him by complainant as Ex.PW1/B. It is true that the neighbour of the complainant, Yogesh in whose house the CCTV camera was installed was not cited as a witness nor were the camera and hard disk taken into possession and sent to FSL to verify the authenticity of the CD handed over to the police by the complainant. This may be taken as a lapse on the part of the investigating agency. However it is significant that the accused have not denied the existence of the CCTV. In his cross examination by counsel for the accused, PW1 had stated that the police had on its own gone to the house of his neighbour Yogesh and seen the CCTV footage. PW 1 further stated that he had got the CD prepared as the police had directed him to collect the record of the same through some expert. There was no suggestion to PW1 either that there was no CCTV camera, or that its footage had not been viewed by the police or that the CD was not obtained from the said CCTV. So there is absolutely no doubt about the identity of assailants.

36. Accused Raj Kumar was produced before the police by his father-in-law on 28.09.2016. This is clear from the deposition of PW 15

ASI Anil Kumar who stated that accused Raj Kumar was produced in the Chowki Hailymandi by his father-in-law on 28.09.2016 and was arrested. On interrogation accused recorded his disclosure statement Ex.P5 in pursuance whereof he got recovered one motorcycle bearing no. HR-27E-7626, Hero HF deluxe black color from his house No.402 Sector 9 Bhiwadi, Rajasthan.

37. It is also significant to note that the supplementary statement of the complainant PW1 was recorded on 25.09.2016 i.e., before the surrender/arrest of Raj Kumar. In this statement he gave the number of the motorcycle that the accused were riding after viewing the CCTV footage of the incident. The same motorcycle was got recovered by accused Raj Kumar on 28.09.2016. Surely PW 1 could not have given the number of the motorcycle before its recovery if he had not actually seen the same in the CCTV footage. It is not the case of the accused that PW 1 had prior knowledge of the number of the motorcycle (which was registered in the name of the Jaiveer- the father of accused as proved by PW 21 Lavkesh Registration Clerk, Nuh Mewat ) and had given it to the police to falsely implicate the accused. This also confirms the involvement of the accused and the use of the motorcycle by them.

38. The version of the complainant is supported by the medical evidence. PW8 Dr.Rakesh Kumar Gupta, Radiologist, Fortis Hospital, Sector 44, Gurugram tendered his affidavit Ex. P-10 to the effect that the patient Mr.Surender Sharma, was admitted on 21.09.2016 with alleged history of gun shot injury over right forearm and injuries at right shoulder and right side chest. He examined the X-Ray of forearm of the patient on

22.09.2016 and reported a comminuted fracture of lower shaft of ulna with retained radio opaque foreign body in the soft tissue in the vicinity of the fracture. PW9 Dr.Raman Kant Aggarwal, Orthopaedic Surgeon, Fortis Hospital, Sector 44, Gurugram stated that the patient Mr.Surender Sharma was admitted on 21.09.2016 with alleged history of gun shot injury over right forearm and injuries at right shoulder and right side chest. He had a comminuted fracture of the right ulna with foreign body present in the right forearm, laceration over anterior aspect of the right shoulder. He stated that he had operated upon the right forearm of the patient Surender Sharma on 22.09.2016 for the debridement of the wound on the dorso-lateral aspect of the right forearm and removed the foreign body and explored the ulnar nerve which was found to be intact. He handed over the foreign body to the nurse for sealing the same and handing over to the appropriate authority of the hospital.

39. Similarly PW10 Dr.Nagarajul, EMO, Fortis Hospital, Gurugram tendered affidavit that the patient Surender Sharma came to emergency department at around 10.10 pm on 21/09/2016 with alleged history of gunshot injury. Local Examination revealed following injuries:

- *4x2x2 cm entry from right shoulder and exit abrasion present on the right side of chest*
- *2x2x2 cm entry from right forearm lateral aspect and 5x2x2 cm exit from right medial wrist.*

Patient was admitted under Dr.Ramankant Aggarwal for further evaluation and management. Thus entry wound from right shoulder and exit abrasion on the right side of the chest was observed. There was a second entry from right forearm lateral aspect and exit from right medial wrist.

40. PW15 ASI Anil Kumar visited the place of occurrence immediately after the incident and took into possession one lead from the driver seat of the Innova and one empty cartridge and one live cartridge from the lane. They were sent for FSL examination on 27.10.2016. The country made pistol was separately sent for FSL examination on 03.02.2017. The results of the examination were as under:

*“1. The country made pistol marked as W/1 (chambered for 7.65 mm cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was not found in working order in the present condition.*

*2. The Countrymade pistol marked as W/1 had been fired through. However, scientifically the time of its last firing cannot be given.*

*3. The 7.65 mm fired cartridge case marked as C/1 has been fired from a Countrymade firearm. However, no definite opinion could be formed regarding its linkage with respect to Countrymade pistol marked as W/1 due to lack of sufficient comparable individual characteristic marks.*

*4. The .315” bullet marked as BC/1 has been fired from a Countrymade firearm.*

*5. The lead piece marked as BC/2 contained in parcel II is very small in size. Therefore no definite opinion could be formed regarding its bore/caliber.”*

41. No definite opinion could be formed regarding the linkage of the fired cartridge with respect to Countrymade pistol due to lack of sufficient comparable individual characteristic marks. Its firing mechanism was not found in working order in the present condition. It was however established the country made pistol had been fired through.

42. The accused Anil had fired two shots at the complainant with a

country made pistol. The shots hit him at the right forearm and right shoulder. The intent of the accused to kill the complainant is evident. Accused Raj Kumar was driving the motorcycle and accused Anil was riding pillion. After firing the shots at the complainant accused sat on the motorcycle and escaped. The offence under Section 307/34 IPC is clearly made out against the accused and they have been rightly convicted for the same. Further the accused Anil has also been rightly convicted under Section 201 IPC.

43. However the sentence of imprisonment for life awarded to the appellant accused for the offence under Section 307/34 appears to be harsh and not warranted in the facts of this case. A sentence for seven years would be more appropriate.

44. Thus the appeal is partly allowed. The conviction of the accused Raj Kumar and Ajay under Section 307/34 IPC is maintained. However their sentence is reduced to rigorous imprisonment for seven years.

45. The conviction and sentence of accused Ajay under Section 201 IPC is maintained.

46. Both the sentences shall run concurrently.

**(RAJIV SHARMA)**  
**JUDGE**

**(HARINDER SINGH SIDHU)**  
**JUDGE**

**October 18, 2019**

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|-----------------------------|----------|
| Whether Speaking / Reasoned | Yes      |
| Whether Reportable          | Yes / No |