

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)	CRA-D-212-DB of 2017
Lalit	 Appellant
State of Haryana	Versus
	 Respondent
(2)	CRA-D-234-DB of 2017
Sunil Rawat alias Gyani	 Appellant
State of Haryana	Versus
	 Respondent
(3)	CRA-D-248-DB of 2017
Hitesh Kumar	 Appellant
State of Haryana	Versus
	 Respondent
(4)	CRA-D-270-DB of 2017 (O&M)
Vinod alias Kaika	 Appellant
State of Haryana	Versus
	 Respondent
(5)	CRA-D-296-DB of 2017
Yashpal alias Shakti	 Appellant
State of Haryana	Versus
	 Respondent
(6)	CRA-D-315-DB of 2017
Akash Togar alias Chumma	 Appellant
State of Haryana	Versus
	 Respondent

(7) CRA-D-333-DB of 2017 (O&M)
Dharmender Appellant
Versus
State of Haryana Respondent

Reserved on : 05.07.2019

Date of decision : 12.07.2019

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 appellants
in CRA-D-212-DB of 2017 and CRA-D-315-DB of 2017.

Mr. A.P.S.Deol, Senior Advocate, with
Mr. H.S. Deol, Advocate,
for the appellant in CRA-D-234-DB of 2017.

Mr. Deepender Singh, Advocate,
for the appellants
in CRA-D-248-DB of 2017, CRA-D-270-DB of 2017 and
CRA-D-296-DB of 2017.

Mr. J.S. Bedi, Senior Advocate, with
Mr. Sunil Sihag, Advocate,
for the appellant in CRA-D-333-DB of 2017.

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

* * *

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in the
instant seven appeals, therefore, these are taken up together and being

disposed of by a common judgment.

2. These appeals are instituted against judgment dated 30.01.2017 and order dated 31.01.2017, rendered by learned Additional Sessions Judge, Faridabad, in Sessions Case No. 05 of 2013, dated 01.11.2013. Initially, the appellants along with co-accused Anil alias Bhola were charged with for the offences punishable under Sections 148/302 read with Section 149/120-B IPC and Section 25 of the Arms Act. Subsequently, additional charge for commission of offences punishable under Sections 420/468/471 IPC was also framed against them. Vide the impugned judgment and order, the appellants were convicted and sentenced as under :-

<i>Sections</i>	<i>Sentence</i>
U/s 120-B IPC read with sections 302/148/420/468/471 IPC.	Rigorous imprisonment for life and fine of ₹ 50,000/- each and in default of payment of fine, to undergo simple imprisonment for two years.
U/s 149 IPC read with sections 302/148/420/468/471 IPC.	Rigorous imprisonment for life and fine of ₹ 50,000/- each and in default of payment of fine, to undergo simple imprisonment for two years.
U/s 148 IPC read with section 149 IPC.	Rigorous imprisonment for three years and fine of ₹ 10,000/- each and in default of payment of fine, to undergo simple imprisonment for six months.
U/s 302 IPC read with section 149 IPC and read with section 120-B IPC.	Rigorous imprisonment for life and fine of ₹ 50,000/- each and in default of payment of fine, to undergo simple imprisonment for two years.
U/s 417 IPC read with section 120-B IPC.	Rigorous imprisonment for one year and fine of ₹ 5,000/- each and in default of payment of fine, to undergo simple imprisonment for two months.
U/s 471 IPC read with section 120-B IPC.	Rigorous imprisonment for one year and fine of ₹ 5,000/- each and in default of payment of fine, to undergo simple imprisonment for two months.

Appellants Hitesh Kumar, Sunil Rawat alias Gyani, Yashpal alias Shakti and Akash Togar alias Chumma were also convicted and sentenced as

under:-

<i>Sections</i>	<i>Sentence</i>
U/s 25 (1B) (a) of the Arms Act.	Rigorous imprisonment for one year and fine of ₹ 5,000/- each and in default of payment of fine, to undergo simple imprisonment for two months.
U/s 27 of the Arms Act.	Rigorous imprisonment for three years and fine of ₹ 10,000/- each and in default of payment of fine, to undergo simple imprisonment for six months.

Appellant Vinod alias Kaika was also convicted and sentenced as under :-

<i>Section</i>	<i>Sentence</i>
U/s 25 (1B) (a) of the Arms Act.	Rigorous imprisonment for one year and fine of ₹ 5,000/- and in default of payment of fine, to undergo simple imprisonment for two months.

All the sentences were ordered to run concurrently.

3. Co-accused Anil alias Bhola was enlarged on bail. He absconded during trial. Thereafter, he was declared proclaimed offender vide order dated 14.11.2014.

4. The case of the prosecution, in a nutshell, is that Brijpal (PW.1) had lodged complaint to the effect that his younger brother Madan Pal was having some money transaction with Hitesh son of Nanak. In the evening of 12.07.2013, Hitesh called Madan Pal to village Atali to take the payment. The complainant instead of sending Madan Pal sent his son Jitender to take the money. However, Hitesh refused to make the payment and insisted on sending Madan Pal. Complainant along with Madan Pal and Kuldeep went by a Swift car. When they reached near wine shop, Sector 2, they stopped their car to answer the call of nature. When Madan Pal was going towards wine shop, meanwhile, a Scorpio vehicle came from the back side. Hitesh, Dharmender, Gyani and Lalit started firing upon Madan Pal with their country made pistols and revolvers. Madan Pal died on the spot. He along

with Kuldeep raised alarm. The other persons accompanying the accused persons had muffled their faces. However, they could be identified, if shown to him. The body was sent for post mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. One of the accused, namely Dharmender, took the plea of alibi. He examined three witnesses.

6. The appellants were convicted and sentenced, as noticed herein-above. Hence, this appeal.

7. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below.

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

9. PW.1 Brijpal deposed that on 13.07.2013, he along with his nephew Kuldeep was present at their house in village Kurali. His brother Madan Pal came there and told him that Hitesh had made a telephone call to him and had called him to Sector 2, Faridabad, to make payment. He told Madan Pal that he had also received call from Hitesh yesterday. He was called to village Atali for making the payment. He had sent his son Jitender to collect the money. Hitesh told that account was to be settled with Madan

Pal. He told Madan Pal that he and Kuldeep will also accompany him. They started for Sector 2 in the Swift car of Madan Pal. It was being driven by Madan Pal. They parked their car under a tree near liquor shop in Sector 2, Faridabad, after crossing bye pass road. He along with Kuldeep went towards a pile of bricks on the other side of the road to urinate. Madan Pal started going towards the liquor shop. In the meanwhile, one white coloured Scorpio vehicle bearing registration No. HR 99 (Temporary) 5533 came from behind and stopped about 20 feet away from their car. Hitesh, Dharmender, Gyani, Lalit Pandit and three more persons, who had muffled their faces alighted from the vehicle. All of them were armed with pistols. They all started firing at Madan Pal indiscriminately. He suffered several bullet injuries on his head, chest and other parts of the body. He collapsed. He and Kuldeep raised alarm. All the assailants ran away from the spot in their car along with their weapons. His brother died at the spot. Many persons gathered at the spot. The police was informed. The incident took place at about 3.00/3.15 PM. The police reached at the spot. His statement was recorded vide Ex.P3. Kuldeep disclosed the names of three other persons who had kept their faces muffled as Shakti alias Yashpal, Vinod alias Kaika and Akash alias Chumma. His supplementary statement was recorded by the police at the spot. He identified the accused in the court. He came to know after two days that Bhola son of Ravinder had conspired to get Madan Pal murdered, as Hitesh and Bhola belonged to same village, who were good friends with criminal background. He also came to know that his brother Madan Pal had a quarrel with Bhola about 2-3 months ago in a party in village Nehrawali. Bhola had sworn to kill his brother Madan

Pal. In his cross-examination, he deposed that he did not know how much amount was to be collected by Madan Pal. The amount was not lent in his presence. The shops were situated at a distance of about 50 yards. He and Kuldeep were about 35-36 feet from the liquor vend at the time when the assailants came there. Madan Pal was at a distance of 6-7 feet from the liquor vend at that time. Madan Pal had not gone to take liquor there. He might have gone to take water. He did not disclose the registration number of the Scorpio vehicle in his supplementary statements recorded at the spot itself on 13.07.2013, 17.07.2013 and 19.07.2013. His brother was hit with the bullets at about 3.00/3.15 PM. The police had reached there within 10-15 minutes. Out of the assailants, three had muffled their faces. He had told the police that only three assailants had their faces muffled but the police may have recorded it to be four. Kuldeep disclosed the names of other three assailants with muffled faces after his statement had been completed. His supplementary statement in this regard was recorded by the police after about 5-7 minutes of his earlier statement. He had not told the police in his supplementary statement that Kuldeep had disclosed the names of other three assailants. He had mentioned that he had enquired about the names of assailants. The shots were fired at Madan Pal from a close range of 3-4 feet. They did not chase the assailants due to fear. He did not know accused Vinod by name but recognised him by face as he used to visit their village. Three assailants had not completely covered their faces. They had partly wrapped their faces with cloth. He admitted that in his statement Ex.P3, he specifically mentioned that three assailants had kept their faces completely covered. He also admitted that Madan Pal was sentenced to undergo

imprisonment for life in a murder case. He was released on bail by the High Court. He had not disclosed the physical built, complexion and age of three assailants with muffled faces as the police had not enquired the same from him.

10. PW.2 Deepak Kumar deposed that the Joint Commissioner of Police, Faridabad, had accorded sanction to prosecute Hitesh, Sunil alias Gyani, Yashpal alias Shakti, Akash alias Chumma and Vinod alias Kaika, under the Arms Act.

11. PW.3 Sarwan Kumar, Draftsman, prepared the scaled site plan Ex.P5 of the place of occurrence.

12. PW.4 Kuldeep Singh testified that on 13.07.2013, he along with Brijpal and Madan Pal was going in a Swift car towards Sector 2, Ballabgarh. Hitesh had made a phone call to his uncle Madan Pal that he should come to collect money. When they reached near liquor vend of Sector 2, Ballabgarh, Madan Pal stopped the car on the road side. He along with Brijpal went towards the pile of bricks in front of the liquor vend to urinate. Madan Pal was going towards the liquor vend. In the meanwhile, one Scorpio vehicle came from the side of bye pass road and stopped about 20 feet ahead of their car. Hitesh, Dharmender, Lalit, Gyani, Shakti alias Yashpal, Akash alias Chumma and Vinod alias Kaika alighted from the Scorpio vehicle. He recognised them in the court. They were armed with country made pistols. All of them started firing indiscriminately at Madan Pal. Madan Pal collapsed. He and Brijpal raised alarm. Many people started gathering there. All the assailants ran away from the spot in their vehicle along with the weapons. Someone made a telephone call to Police Control

Room. The police reached at the spot after 10-15 minutes. Madan Pal died at the spot. The police lifted from the spot four big empty cartridges of .315 bore, four empty cartridges 9 mm and one live cartridge 7.65 mm. These were converted into a parcel sealed with seal 'DP'. The police firstly recorded the statement of Brijpal and then he made the statement. He disclosed the names of the persons who had kept their faces partly muffled as Shakti alias Yashpal, Akash alias Chumma and Vinod alias Kaika. In his cross-examination, he deposed that Madan Pal was to collect an amount of ₹ three or four lacs from Hitesh. He was not aware the details of the dealing between them regarding which the amount was to be paid. He was not present when Madan Pal had received telephone call from Hitesh. They reached near the liquor vend at about 3.00/3.15 PM. He had given registration number of the Scorpio vehicle to the police in his statement Ex.D1. He was confronted with his statement Ex.D1, where it was not so recorded. They were at a distance of about 30-32 feet from the place where Madan Pal was fired upon. Madan Pal had gone to the liquor vend for taking a bottle of water. The firing lasted for about 2-3 minutes. He admitted that the assailants hail from different villages, like Behbalpur, Devli, Chhainsa, Machhgar. He had not told to the police that the assailants used to come to Madan Pal and that he knew them previously. He could not tell how many fires were shot by each accused and the seat of injuries attributed to each accused. Voluntarily stated that the firing was indiscriminate. Three assailants had kept their faces partly muffled. He was confronted with portion B to B1 of his statement Ex.D1 where the word 'partly' was not recorded.

13. PW.7 ASI Vijay Pal deposed that on 15.07.2013, he was associated in investigation of this case. Accused Hitesh, Shakti and Sunil Rawat alias Gyani were arrested. Scorpio vehicle bearing registration No. HR 99 Temporary 5533 was recovered from their possession. It was taken into possession vide memo Ex.P11. Accused Shakti alias Yash Pal made disclosure statement on 16.07.2013 vide Ex.P13. He disclosed that he had kept concealed a country made pistol behind a hotel in Rishikesh in a pit and he could get the same recovered. Sunil Rawat alias Gyani also made disclosure statement Ex.P14. He disclosed that he had kept concealed one country made pistol at the same place, i.e. behind a hotel on Rishikesh Road. Accused Hitesh Kumar made disclosure statement Ex.P15 disclosing that he had kept concealed a polythene bag containing pistol beneath a pit behind a dhaba on Rishikesh Road. Hitesh was again interrogated on 18.07.2013. He made disclosure statement Ex.P16. He disclosed that the pistol had been kept concealed in the plot of Dharambir, uncle of co-accused Chumma. Sunil made disclosure statement Ex.P17 on 18.07.2013 that a country made pistol was kept concealed by him at Gautambudh Nagar in the house of his aunt. Again said, from the tubewell of his aunt. Shakti also suffered disclosure statement Ex.P18 that he had kept concealed country made pistol at the tubewell of Gautambudh Nagar. Shakti got recovered a country made pistol of .315 bore, which was taken into possession vide memo Ex.P19. Hitesh got recovered a country made pistol of .32 bore from Jaitpur. It was taken into possession vide memo Ex.P21. Accused Gyani alias Sunil got recovered a country made pistol, which was taken into possession vide memo Ex.P23.

14. PW.8 Dr. Lokesh Gupta led his evidence by filing affidavit Ex.PW.8/A. He along with Dr. Manish Dayal and Dr. Amardeep Singh conducted post-mortem examination on the body of Madan Pal on 14.07.2013. They noticed 11 injuries on the person of the deceased. According to their opinion, the cause of death was shock and haemorrhage due to the injuries sustained by the bullet over the vital organs, like brain matter, which were ante mortem in nature and sufficient to cause death in ordinary course of nature. In his cross-examination, he deposed that there were nine wounds in this case which were entry wounds, whereas one wound was exit wound. It was at serial No.10. In all, six bullets were recovered from the dead body. There was blackening and tattooing around all the wounds. He could not tell about the distance of firing. He could not tell the type of fire arms and ammunition used in this case.

15. PW.9 ASI Randhir Singh deposed that on 22.07.2013, accused Chumma was interrogated. He made disclosure statement Ex.P31. Chumma got demarcated the place of occurrence vide memo Ex.P32.

16. PW.10 Dharam Pal deposed that he was posted as SI/Incharge in Police Post Aggarsain Chowk, PS City Ballabgarh, on 13.07.2013. He received information regarding firing in the area of Sector 2, near liquor vend. He reached at the spot. Brijpal met him at the spot and made statement vide Ex.P3. FIR was registered. The inquest proceedings were conducted. The body was sent for post mortem examination. The vehicle bearing registration No. HR-99 Temporary 5533 was taken into possession vide memo Ex.P11.

17. PW.11 Jasbir Singh deposed that accused Hitesh, Sunil Rawat

alias Gyani and Yashpal alias Shakti were interrogated by SI Sandeep Singh in his presence on 20.07.2013. They made disclosure statements Ex.P35 to Ex.P37, respectively. Accused Anil alias Bhola also suffered disclosure statement on 21.07.2013 vide Ex.P38. Hitesh, Yashpal alias Shakti and Sunil alias Gyani again made disclosure statements Ex.P39, Ex.P40 and Ex.P41 on 23.07.2013. Anil alias Bhola was again interrogated on 24.07.2013. He made disclosure statement Ex.P42. Accused Akash made disclosure statement Ex.P44 on 27.07.2013 that he had kept concealed one pistol near IMT bridge in the bushes. Accused Akash got recovered one 9 mm country made pistol. It was taken into possession vide memo Ex.P46. In his cross-examination, he deposed that none of the accused, except Akash alias Chumma, had got recovered any article in pursuance of their disclosure statements. He admitted that the place of occurrence was already in the knowledge of the police.

18. PW.12 Bhim Singh led his evidence by way of affidavits Ex.PW.12/A and Ex.PW.12/B.

19. PW.13 Sandeep Inspector partly carried investigation in this case. According to him, accused Hitesh, Sunil Rawat alias Gyani and Yashpal alias Shakti made disclosure statements Ex.P35 to Ex.P37 on 20.07.2013. Accused Anil alias Bhola also made disclosure statement vide Ex.P38 on 21.07.2013. Accused Hitesh, Yashpal alias Shakti and Sunil alias Gyani were again interrogated on 23.07.2013. They made disclosure statements Ex.P39, Ex.P40 and Ex.P41, respectively. Accused Anil alias Bhola was again interrogated on 24.07.2013 and he made disclosure statement vide Ex.P42. Accused Akash suffered disclosure statement

Ex.P44 on 27.07.2013. Accused Vinod also made disclosure statement Ex.P49 on 28.07.2013. Accused Vinod was again interrogated on 31.07.2013. He made disclosure statement Ex.P51 that he had kept concealed one country made pistol near Chandawali bridge in the bushes. Accused Vinod got recovered one country made pistol .315 bore. It was taken into possession vide memo Ex.P53. Accused Lalit and Dharmender were arrested on 06.08.2013. They made disclosure statements Ex.P54 and Ex.P55. In his cross-examination, he deposed that none of the accused, except Akash and Vinod, had got recovered any article in pursuance of their disclosure statements.

20. PW.14 Rajbir Singh had registered FIR Ex.P57.

21. PW.15 Constable Amrit Lal deposed that on 13.08.2013 ASI Bhim Singh had handed over to him 10 sealed parcels containing piece of ply, one plastic box, one empty and live cartridge sealed with seal 'DP', sealed parcel containing clothes of deceased Madan Pal and one sealed parcel containing clothes of deceased sealed with seal 'BKH', one plastic container having swab sealed with seal 'DP', one country made pistol .315 bore recovered from accused Shakti, one country made pistol of .32 bore recovered from accused Hitesh, one country made pistol of .315 bore recovered from accused Vinod and one pistol 9 mm recovered from accused Akash sealed with seals 'DP' and 'JS'. He deposited the same at FSL and handed over the receipt to MHC.

22. PW.19 Shakir Hussain also investigated the matter. He recorded the supplementary statement of Brij Pal and statement of Tejbir on 13.07.2013. He prepared the rough site plan Ex.P59 of the spot. He prepared

the memo of dead body of Madan Pal vide Ex.P6. He took into possession four empty cartridges of .315 bore, five empty cartridges of 9 mm and one live cartridge of 7.65 mm mentioned on the bottom of the cartridge. He arrested accused Shakti, Hitesh and Sunil alias Gyani on 15.07.2013. Sketches of the weapons recovered were made by him. In his cross-examination, he had recorded supplementary statement of Brijpal at about 5.00 PM followed by statement under Section 161 Cr.P.C. of Kuldeep. No cash was recovered from Hitesh, Sunil and Shakti at the time of their arrest. They remained at the spot for about three hours on 13.07.2013.

23. PW.20 SI Teeka Ram deposed that he was posted at Police Control Room, Faridabad, on 13.07.2013. One Bharat Mann had called the PCR and informed that a white coloured Scorpio bearing Temporary registration No. HR 99-5533 was carrying 5-6 boys who had fired shots near some liquor vend in the area of Ballabgarh. He intimated SHO, Police Station City Ballabgarh and Incharge of Police Post. He made entry in Log Book in this regard, which was destroyed after the expiry of one year as per rules.

24. DW.1 Ashok deposed that he knew accused Dharmender. In July, 2013, he and Dharmender were running a hair saloon in the name and style of Hipop Men Saloon, near Ghantaghar Chowki, Ballabgarh. On 13.07.2013, Dharmender had come to the saloon at 9.15 AM and remained there till 4.30 PM. Thereafter, he left for taking cake to celebrate birthday of his daughter Deepika on the same day.

25. DW.2 Lala Ram testified that he was running a confectionary shop in Chhainsa. On 13.07.2013 at 5.00 PM, accused Dharmender had

come to his shop and took a cake.

26. DW.3 Ram Gopal deposed that on 13.07.2013, there was birthday celebration of his daughter Deepika from 5.30 PM to 11.00 PM. Dharmender was also present throughout the function.

27. According to the FSL report Ex.P1, four empties of 9 mm, marked as C/5 to C/8 were fired from country made pistol marked as W/5 and not from any other fire arm even of the same mark and bore/caliber. 9 mm fired bullets marked as BC/3 to BC/5 were fired from country made pistol marked as W/5 and not from any other fire arm even of the same make and bore/caliber. This 9 mm pistol was recovered from appellant Akash Togar alias Chumma. A pistol of .315 bore was recovered from appellant Yashpal alias Shakti. As per the FSL report, two empty cartridges marked as C/1 and C/4 matched with .315 bore country made pistol marked as W/2. A country made pistol of .315 bore was recovered from appellant Vinod alias Kaika. In this FSL report, there is no mention qua this .315 bore country made pistol recovered from appellant Vinod alias Kaika. 7.65 mm pistol was recovered from appellant Hitesh Kumar. One empty cartridge marked as BC/2 matched with 7.65 mm pistol marked as W/3. Another .315 bore country made pistol was recovered from appellant Sunil Rawat alias Gyani. Two empty cartridges marked as C/2 and C/3 matched with .315 bore country made pistol marked as W/1.

28. According to the contents of the FIR, Ex.P57, which was lodged on the basis of statement of PW.1 Brijpal, a Scorpio vehicle came from the back side. Hitesh, Dharmender, Gyani, Lalit Pandit and four other persons got down. They started indiscriminate firing on his brother Madan

Pal with country made pistols and pistol. He and Kuldeep shouted loudly. His brother Madan Pal died on the spot. He and Kuldeep could identify those four persons, if they were produced before them. The statement of Brijpal, Ex.P3, was recorded by PW.10 SI Dharam Pal on the spot. It is specifically mentioned in the FIR as well as statement Ex.P3 dated 13.07.2013 that faces of four persons were covered. When Brijpal appeared in the court as PW.1, he deposed that one white coloured Scorpio vehicle bearing registration No. HR 99 (Temporary) 5533 stopped about 20 feet away from their car. Hitesh, Dharmender, Gyani, Lalit Pandit and three more persons with muffled faces got down from the Scorpio vehicle. All of them were armed with pistols. They fired indiscriminately at his brother Madan Pal. PW.4 Kuldeep Singh in his statement Ex.D1, recorded on 13.07.2013, deposed that when Madan Pal went towards the wine shop, a Scorpio vehicle came from the back side, from which Hitesh, Dharmender, Gyani, Lalit Pandit, Vinod, Chumma alias Akash and Shakti alias Yashpal got down. The young boys had covered their faces. PW.1 Brijpal, in his cross-examination, deposed that three assailants had covered their faces. He had told the police that only three assailants had muffled their faces but the police may have recorded it to be four. He was confronted with portion A to A1 in his statement Ex.P3, where four assailants were mentioned to be with muffled faces. According to him, Kuldeep was not standing with him, when his statement was recorded. He voluntarily stated that Kuldeep was standing with other family members who had also arrived at the spot. PW.1 Brijpal further deposed that Kuldeep disclosed the names of three assailants with muffled faces after his statement was completed. His supplementary

statement in this regard was recorded by the police after about 5-7 minutes of his earlier statement. He had not told the police in his supplementary statement that Kuldeep had disclosed the names of other three assailants, but he had mentioned that he had enquired about the names of assailants. Statement of Kuldeep was also recorded at the spot itself. The shots were fired at Madan Pal from a close range of 3-4 feet. They did not chase the assailants. He further deposed in his cross-examination that three assailants had not completely covered their faces. They had partially covered their faces. He did not disclose the physical built, complexion and age of three assailants with muffled faces as the police had not enquired the same from him. According to PW.4 Kuldeep Singh, firing lasted for about 2-3 minutes. The police had reached the spot within 15 minutes of the incident. The police had recorded the statement of his uncle Brijpal within 15 minutes of their arrival. At that time, he was standing with other family members. He further deposed in his cross-examination that statement of Brijpal was not recorded within his hearing and sight. He could not tell the number of shots fired. The firing was indiscriminate. He could not tell how many shots were fired by each accused and the seat of injuries attributed to each accused. Three assailants had kept their faces partly muffled. He had told this fact to the police. He was confronted with portion B to B1 of his statement Ex.D1, wherein the word 'partly' was not recorded. He had not stated to the police that he as well as Brijpal made enquiries about three assailants with partly muffled faces and then they told their names. He was confronted with portion C to C1 of his statement Ex.D1, wherein it was so recorded.

29. PW.1 Brijpal, in his examination-in-chief had also deposed that

after two days of the occurrence, he came to know that Bhola had conspired to get Madan Pal murdered as Hitesh and Bhola belonged to same village who were good friends with criminal background. He also came to know that his brother Madan Pal had a quarrel with Bhola about 2-3 months ago in a party in village Nehrawali. In his cross-examination, he admitted that he was not present in village Nehrawali when the quarrel had taken place between Bhola and Madan Pal. Madan Pal had also not disclosed about the quarrel to him. He also admitted that no information was given to the police regarding this incident. Bhola had also not got himself medico legally examined. PW.1 Brijpal had disclosed this incident to the police on 19.07.2013, but had not mentioned the name of the person who had given information to him. He had also not mentioned in his statement Ex.D1 that the assailants with muffled faces were not known to him previously. PW.4 Kuldeep Singh also deposed that he did not know the details of the dealings between Madan Pal and Hitesh, regarding which the amount was to be paid. He did not know that the amount was borrowed from Madan Pal as loan. He was not present when Madan Pal had received telephone call from Hitesh for collecting money. Madan Pal had no apprehension from Hitesh. PW.4 Kuldeep Singh admitted that the assailants hailed from different villages, like Behbalpur, Devli, Chhainsa, Machhgar. He knew them even prior to the occurrence as they had been coming to Madan Pal. He did not state before the police that the assailants used to come to Madan Pal and that he knew them previously. PW.4 Kuldeep Singh further deposed that three assailants had kept their faces partly muffled.

30. PW.10 Dharam Pal in his cross-examination deposed that

statement of Brijpal was recorded at about 3.45 PM. PW.19 Shakir Hussain deposed that supplementary statement of Brijpal was recorded at about 5.00 PM, followed by statement of Kuldeep recorded under Section 161 Cr.P.C. In the FIR, Ex.P57, as well as statement of complainant Brijpal, Ex.P3, it has come that four persons had muffled their faces. However, when Brijpal appeared as PW.1, as noticed above, he deposed that only three persons had muffled their faces. Kuldeep, in his statement Ex.D1, recorded under Section 161 Cr.P.C., named all the seven appellants, who got down from the Scorpio vehicle. In his statement under Section 161 Cr.P.C., PW.4 Kuldeep mentioned that he and Brijpal verified about three persons who had covered their faces and those persons were Yashpal alias Shakti, Akash alias Chumma and Vinod alias Kaika.

31. The motive attributed by the prosecution is that appellant Hitesh owed money to deceased Madan Pal. The other appellants were not involved in this money transaction. PW.1 Brijapl, who is none else but brother of deceased Madan Pal, did not know how much amount was to be collected by Madan Pal. The amount was never lent in his presence. According to the prosecution, earlier Jitender had gone to collect money, but appellant Hitesh refused to give money to him and insisted that Madan Pal should come. Jitender was never examined.

32. The prosecution has proved that appellants Hitesh Kumar, Yashpal alias Shakti, Sunil Rawat alias Gyani and Akash Togar alias Chumma were present on the spot. 7.65 mm pistol and 9 mm pistol were recovered from Hitesh Kumar and Akash Togar alias Chumma, respectively. Country made pistols of .315 bore were recovered from Yashpal alias Shakti

and Sunil Rawat alias Gyani.

33. Scorpio vehicle bearing registration No. HR 99 (Temporary) 5533 was recovered from appellants Hitesh Kumar, Sunil Rawat alias Gyani and Yashpal alias Shakti on 15.07.2013, but later on its registration number was said to be HR-99T-1599, which belonged to appellant Lalit. In the recovery memo Ex.P11, Engine or Chassis numbers of the Scorpio vehicle were not mentioned. PW.1 Brijpal had not disclosed the colour or registration number of the Scorpio vehicle in his statement Ex.P3 as well as in the FIR Ex.P57. His statement was recorded on 13.07.2013. Statement of Kuldeep was also recorded on 13.07.2013 vide Ex.D1. He also did not mention colour or registration number of the Scorpio vehicle. PW.19 Shakir Hussain parked the Scorpio on 15.07.2013 at 11.55 PM in Police Station Ballabgarh, as stated by PW.12 Bhim Singh in his affidavit Ex.PW.12/B. However, he mentioned the number of the vehicle which was deposited as HR-99 (T) 1599. The Scorpio car was taken on Superdari by Raghubir Singh, father of appellant Lalit. Raghubir Singh was not examined. PW.13 Sandeep Inspector moved application Ex.PW.13/A to PCR Faridabad for supplying copy of VT dated 13.07.2013. He moved another application Ex.PW.13/B to the Manager of Sterling Company, Faridabad, to ascertain to whom vehicle bearing registration No. HR-99 (T) 5533 was sold and to ascertain the whereabouts of Scorpio bearing registration No. HR-99 (T) 1599. The report of VT, Ex.P20A, was submitted by PW.20 SI Teeka Ram that a person, namely Bharat Mann, called PCR stating that firing had taken place at Sector 2, HUDA, HUDA Market, near wine shop. There was no corresponding Log Book entry. Bharat Mann was never examined. Sterling

Company, Faridabad, gave report Ex.PW.13/C that vehicle bearing registration No. HR-99 (T) 5533 was not disposed of by them. PW.20 SI Teeka Ram deposed that when he was posted at Police Control Room, Faridabad, on 13.07.2013, one person, namely Bharat Mann, had called the PCR and informed that a white coloured Scorpio bearing Temporary registration No. HR 99-5533 was carrying 5-6 boys who had fired shots near some liquor vend in the area of Ballabgarh. He intimated SHO, Police Station City Ballabgarh and Incharge of Police Post. He made entry in Log Book in this regard, which was destroyed after the expiry of one year as per rules. In his cross-examination, he categorically admitted that he had submitted the report prior to 30.11.2013. There was no expiry period for destruction of the Log Book on the said date.

34. PW.13 Sandeep Inspector deposed that on 29.11.2013, he was posted as Incharge/SI, Crime Branch, Badarpur Border, Faridabad. He moved application Ex.PW.13/A to DRO, PCR, Faridabad, seeking VT details of 13.07.2013, which was the date of incident, regarding receipt of VT in their office and number of Scorpio vehicle, whether it was HR 99-5523 or 5533. SI Teeka Ram submitted his report Ex.PW.20/A on 30.11.2013 that the number was 5533.

35. PW.12 Bhim Singh led his evidence by filing affidavits Ex.PW.12/A and Ex.PW.12/B. His statement under Section 161 Cr.P.C. was also recorded by PW.13 Sandeep Inspector. He categorically deposed that on 13.07.2013 at the time of incident, the vehicle number HR 99 (T) 5533 was taken in police possession on 15.07.2013 by Shakti Hussain SHO. It was recovered from Hitesh etc. He had not seen the registration number of

the vehicle on that day. It was night time. When in the morning, he wanted to make entry of Scorpio vehicle in Register No. 19, he noticed that there was no registration number on the front and back of the car. When he searched into the car, documents of Sterling Motor Company, 14/5, Mathura Road, Faridabad, temporary Certificate of Registration, were found, on which Temporary No. HR-99PF-1599 was written. Scorpio Engine Number was MXD4C 10888 and Chassis No. DLC 33502. It was purchased on 21.03.2013 by Lalit Gaur son of Raghubir. The Scorpio vehicle was handed over to original owner Raghubir Singh. According to the order of Superdari, registration number of the Scorpio vehicle was HR-99PF-1599. He came to know that registration number of the Scorpio vehicle which was taken in police possession was HR-99-5533. The fake number plate was never got recovered by the police. It is in these circumstances that PW.13 Sandeep Inspector added offences under Sections 420, 467, 468, 471 IPC with allegation that original number of the Scorpio vehicle was HR-99PF-1599 but the accused had used fake number plate of HR-99 (T) 5533. The recovery memo of Scorpio vehicle is Ex.P11. According to the contents of the recovery memo, on 15.07.2013, Scorpio vehicle No. HR-99 Temp. 5533, colour white, was taken in possession by the police from accused Hitesh Kumar, Shakti alias Yashpal and Sunil Rawat alias Gyani. It is not believable that the Log Book could be destroyed before one year. The police has not produced the Log Book.

36. No evidence has been led by the prosecution to prove that the appellants entered into criminal conspiracy. There was supposed to be meeting of minds of the appellants. It has come in the statement of PW.4

Kuldeep Singh that the appellants belonged to different villages. They had no grudge against deceased Madan Pal. As per the prosecution case, there was money dispute between deceased Madan Pal and appellant Hitesh. Though PW.1 Brijpal has given a new version that it was accused Bhola, who had got his brother Madan Pal killed because a quarrel took place between accused Anil alias Bhola and Madan Pal in village Nehrawali. However, no evidence was led to prove this quarrel. Learned counsel appearing on behalf of the parties have placed on record photo stat copy of the certified copy of the judgment dated 16.10.2017 rendered by learned Additional Sessions Judge, Faridabad, whereby accused Anil alias Bhola, who was tried separately for the offences punishable under Sections 148/302 read with Section 149, 120-B, 420, 468 and 471 IPC, was acquitted of the charges.

37. Their Lordships of the Supreme Court in **State (Delhi Admn.) vs V. C. Shukla and another AIR 1980 SC 1382**, have held that in order to prove a criminal conspiracy which is punishable under Section 120- B IPC, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. Their Lordships have held as under:-

“8. Before we proceed further, we might indicate that it is well settled that in order to prove a criminal conspiracy which is punishable under Section 120-B of the Indian Penal Code, there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence. This clearly envisages that there must be a meeting of minds

resulting in an ultimate decision taken by the conspirators regarding the commission of an offence. It is true that in most case it will be difficult to get direct evidence of an agreement to conspire but a conspiracy can be inferred even from circumstances giving rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence. After having gone through the entire evidence, with the able assistance of Mr. Rajinder Singh, learned counsel for A-1 and of learned counsel for the State, we are unable to find any acceptable evidence connecting either of the appellants with the existence of any conspiracy. We are further of the opinion that even taking the main parts of the prosecution case at their face value, no connection has been proved with the destruction of the film and the two appellants. The prosecution has, of course, produced some witnesses to show the existence of the alleged conspiracy or some sort of connection of the appellants with the destruction, of the film but that evidence, as we shall show, falls short of the standard of proof required in a criminal case. We realise that the prosecution was seriously handicapped because the investigation started only after the Janata Government came into power in March 1977, that is to say, about a year and a half after the offences in question were allegedly committed, by when naturally much of the evidence would have been lost and even some of the important witnesses examined by the prosecution had turned hostile and refused to

support its case. Despite these difficulties, the prosecution has to discharge its onus of providing the case against the accused beyond reasonable doubt. We, therefore, propose to deal only with that part of the evidence led by the prosecution which has been relied upon to prove some sort of a connection of the appellants with the alleged destruction of the film.”

38. Appellant Dharmender produced DW.1 Ashok, DW.2 Lala Ram and DW.3 Ram Gopal to prove that he was not present on the spot. According to DW.1 Ashok, Dharmender had come to the saloon on 13.07.2013 at 9.15 AM and remained there till 4.30 PM. Thereafter, he left for taking cake to celebrate birthday of his daughter Deepika on the same day. DW.2 Lala Ram deposed that Dharmender had come to his confectionary shop on 13.07.2013 at 5.00 PM and took a cake. According to DW.3 Ram Gopal, appellant Dharmender is his nephew and on 13.07.2013, there was birthday celebration of his daughter Deepika from 5.30 PM to 11.00 PM. Dharmender remained present throughout the function. Thus, in our opinion, presence of Dharmender at the spot is doubtful. Even otherwise, no recovery was effected from him.

39. The first disclosure statement was made by appellants Hitesh Kumar, Sunil Rawat alias Gyani and Yashpal alias Shakti on 16.07.2013. The second disclosure statement was made by them on 18.07.2013. They made third statement on 20.07.2013. The disclosure statement of appellant Akash Togar alias Chumma was recorded. Thereafter, fourth disclosure statement of appellants Hitesh Kumar, Sunil Rawat alias Gyani and Yashpal alias Shakti was recorded on 23.07.2013. Disclosure statement of appellant

Vinod alias Kaika was recorded on 28.07.2013. The disclosure statement of appellant Lalit was recorded on 06.08.2013.

40. Though .315 bore pistol was recovered on the basis of disclosure statement made by appellant Vinod alias Kaika, but he was not connected with the same through FSL report. He was also convicted and sentenced for the offence under Section 25 (1B) (a) of the Arms Act.

41. No recovery was effected from appellants Dharmender and Lalit, though their names were mentioned in the FIR.

42. Initially, Scorpio vehicle bearing registration No. HR (T) 5533 was recovered, but later on the number was changed to HR-99 (T) 1599. The prosecution has failed to prove that Scorpio vehicle No. HR-99 (T) 1599 was recovered and not HR (T) 5533.

43. In order to prove the charge under Section 417 IPC, there should be fraudulent or dishonest inducement of a person by deceiving him. The person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any person, or the person so deceived should be intentionally induced to do or not to do anything which he could not do or until he was not so deceived.

44. In order to prove offence under Section 420 IPC, there must be deception i.e. the accused must have deceived someone. By that deception, the accused must induce a person, to deliver any property; or to make, alter or destroy the whole or part of the valuable security or any thing which is signed or sealed and which is capable of being converted into a valuable property, and the accused did so dishonestly. It is required to be established not only that the accused has cheated someone but also that by doing so, he

dishonestly induced the person who was cheated to deliver any property.

45. Section 468 IPC has two ingredients, i.e. (i) that the accused committed forgery; and (ii) that he did so intending that the document or electronic record forged shall be used for the purpose of cheating.

46. In order to prove charge under Section 471 IPC, the prosecution is required to prove the fraudulent or dishonest use of a document as genuine, and the person using it must have knowledge or reason to believe that the document was a forged one.

47. The aforesaid essential ingredients are lacking in the present case qua Sections 417, 420, 468 and 471 IPC.

48. The prosecution has failed to prove its case for the offences punishable under Sections 120-B, 417, 420, 468, 471, 148 and 149 IPC against the appellants.

49. Accordingly, CRA-D-212-DB, CRA-D-270-DB and CRA-D-333-DB of 2017, filed by Lalit, Vinod alias Kaika and Dharmender, respectively, are allowed. Their conviction and sentence, recorded by the learned trial court, are set aside. They are acquitted of all the charges framed against them. They are in custody. Their release warrants be issued forthwith.

50. CRA-D-234-DB, CRA-D-248-DB, CRA-D-296-DB and CRA-D-315-DB of 2017, filed by Sunil Rawat alias Gyani, Hitesh Kumar, Yashpal alias Shakti and Akash Togar alias Chumma, are partly allowed to the extent that their conviction and sentence, recorded by the learned trial court, for the offences punishable under Sections 120-B, 420, 468, 471, 417, 148 and 149 IPC, are set aside. However, their conviction and sentence for

the offences punishable under Section 302 IPC and Sections 25 (1B) (a) and 27 of the Arms Act, recorded by the learned trial court, are upheld.

(**RAJIV SHARMA**)
JUDGE

July 12, 2019
ndj

(**HARINDER SINGH SIDHU**)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No