

CRA-D-755-DB of 2003;
CRA-D-800-DB-2003;
CRA-D-420-DBA-2004; and
CRR-48-2004

1

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

- (1) **CRA-D-755-DB of 2003**
Raghubir and others
...Appellants
Versus
State of Haryana
...Respondent
- (2) **CRA-D-800-DB-2003**
Ram Dhan and another
...Appellants
Versus
State of Haryana
...Respondent
- (3) **CRA-D-420-DBA-2004**
State of Haryana
...Appellant
Versus
Chiman Lal and others
...Respondents
- (4) **CRR-48-2004**
Hanuman
...Petitioner
Versus
Raghubir and others
...Respondents

Date of decision:26.11.2019

CRA-D-755-DB of 2003;
CRA-D-800-DB-2003;
CRA-D-420-DBA-2004; and
CRR-48-2004

2

**CORAM : HON'BLE MR. JUSTICE JITENDRA CHAUHAN
HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.Amit Sheoran, Advocate for
Mr.B.S. Walia, Advocate
for the appellants in CRA-D-755-DB-2003 and
for the respondents in CRA-D-420-DBA-2004.

Mr. K.D.S.Hooda, Advocate
for the appellants in CRA-D-800-DB-2003.

Mr.Deepinder Singh, Advocate with
Mr.R.K. Rana, Advocate
for the petitioner in CRR-48-2004.

Mr.Vikrant Pamboo, DAG, Haryana.

H.S. MADAAN, J.

Vide this judgment, we propose to dispose of three appeals i.e. **CRA-D-755-DB of 2003** filed by appellants Raghubir and others, **CRA-D-800-DB-2003** filed by appellants Ram Dhan and another and **CRA-D-420-DBA-2004** filed on behalf of State of Haryana and one criminal revision i.e. **CRR-48 of 2004** filed by petitioner Hanuman.

On 2.1.2001, a police party from Police Station Sadar, Hisar led by SI Kartar Singh was present near General Hospital turning in the area of City, Hisar having done patrol duty at village Kaimari etc. when UGC Jai Kishan, Incharge of Police Post General Hospital, Hisar met SI Kartar Singh along with three ruqas from General Hospital, Hisar with regard to arrival of three dead

bodies there. SI Kartar Singh along with other police officials accordingly went to General Hospital, Hisar and came across complainant Hanuman, who had got his statement recorded with SI Kartar Singh.

Complainant – Hanuman son of Mani Ram, aged about 46 years, resident of village Mangali Surtia, an agriculturist by avocation in his statement, narrated that about 20 years earlier, Dalip, Om Parkash, Atma Ram, Ram Murti son of Hazari and Krishan son of Mani Ram, residents of village Mangali Surtia and Rameshwar, resident of Rawat Khera had a dispute with Ram Dhan son of Khey Raj etc with regard to *KHAL* (water channel) and a quarrel had taken place in which Ram Dhan etc. had received injuries; that Dalip and others were prosecuted under Sections 324, 325, 326, 148 and 149 IPC and they were convicted and sentenced to three years imprisonment; an appeal against the judgment of conviction and sentence is pending in the Court and convicts were on bail as per order of the High Court, for that reason Ram Dhan etc. nursed a grudge against Dalip etc. He further stated that on that day i.e. on 2.1.2001 at about 5:30 p.m. in the evening, when complainant Hanuman along with Dalip and Om Parkash sons of Hazari was returning home from their agricultural land, going on foot and were at a distance of about four killas from the road, then accused Chiman Lal and Raghubir alias Rugha, Kuldeep, Om Parkash, Lal Chand son of Ram Rikh, Ram Dhan son of Khey Raj,

Mahabir son of Ram Dhan, Jagdish and Rajender sons of Ram Sarup, Sugriv son of Raghubir, Karan Singh son of Ram Kishan and Phusa son of Mani Ram, all from Bishnoi community, residents of village Mangali Surtia travelling in a tractor trolley, which was being driven by Chiman Lal came from the side of village *abadi*; Raghubir was having a double barrel gun, whereas Kuldeep was armed with a single barrel gun, Ram Dhan was carrying a double barrel gun, whereas others were having country-made pistols; all of them got down from the tractor trolley and raised a *lalkara* (exhortation) that on that day, the enemy was encircled and they should not be allowed to escape; Raghubir, Ram Dhan and Karan Singh fired shots from their respective weapons; Dalip received a shot each in the chest, stomach and in the thigh; the complainant and other persons accompanying him raised alarm (*MAAR DIYA MAAR DIYA*); Raghubir fired a shot at the complainant and persons going along with him, with an intention to kill them but they had a miraculous escape; out of fear the complainant and the persons accompanying him ran towards the field; thereafter the complainant and Om Parkash arranged for a jeep and took Dalip to General Hospital, Hisar, where the doctor declared him brought dead; in the meanwhile, Ravinder son of Dalip and Bhoop Singh son of Mani Ram brought the dead bodies of Ram Murti son of Hazari and Krishan son of Mani Ram in the hospital and those two were also declared dead by the doctor. The complainant stated that he had

come to know that those 12 accused/assailants had murdered Ram Murti and Krishan also. He sought taking of action against those accused.

The said statement was signed by the complainant Hanuman. His signatures were attested by SI Kartar Singh, who had appended his endorsement below it sending ruqa to the police station on the basis of which formal FIR No.11 of 2.1.2001 for the offences under Sections 302/307/149/148 IPC and 25 of the Arms Act was registered at Police Station Sadar, Hisar.

After sending of ruqa, SI Kartar Singh carried out inquest proceedings with regard to deaths of Dalip, Ram Murti and Krishan preparing inquest reports in that regard and deputed ASI Hawa Singh and Constable Jagdish Chander handing over the applications for postmortem examination along with dead bodies to them. The police officials were sent to the place of occurrence to secure it.

On reaching the spot where Dalip had been killed, SI Kartar Singh had found three empty shells of 315 bore, which were converted into a parcel, that was sealed and taken into police possession. A scooter, *loi*, RC and driving licence etc. found at the spot were taken into possession by the Investigating Officer. Rough site plan was prepared.

Thereafter, the Investigating Officer went to the place where Ram Murti had been murdered. He found one empty shell of

12 bore there. It was converted into a parcel, that was sealed and taken into possession vide recovery memo. Blood stained earth was lifted from that place, converted into sealed parcel and taken into possession vide a seizure memo. Rough site plan of the place was also prepared.

Then, the Investigating Officer went to the place where Krishan had been murdered and he carried out the spot inspection. He found two empty shells of 12 bore and three empty shells of 315 bore lying there. All the three empty shells were converted into a parcel, which were sealed and taken into possession vide a seizure memo. Blood stained earth was lifted therefrom and converted into a sealed parcel. It was taken into possession vide that very memo. Rough site plan was also prepared.

The Investigating Officer recorded statements of witnesses and on return to the police station deposited the case property with MHC. Thereafter, the investigation of this case was entrusted to Inspector Sube Singh.

On 3.1.2001, accused Raghbir, Chiman Lal, Lal Chand, Sugriv, Charan Singh, Jagdish and Rajender Singh were arrested in this case. A single barrel gun with four live cartridges was got recovered by Raghbir in pursuance of disclosure statement made by him before the Investigating Officer. The said gun along with cartridges was taken into police possession vide a seizure memo.

The other six accused were interrogated but no weapon was recovered from their possession. On return to the police station, the Investigating Officer deposited the case property with MHC.

Accused Raghubir, Chiman Lal, Karan Singh, Rajender and Lal Chand had also suffered disclosure statements before the Investigating Officer.

Accused Om Parkash was arrested in this case from a *DHANI* in Adampur and on being interrogated on 5.1.2001, he suffered a disclosure statement that he had kept concealed a pistol in the fields in the area of Adampur. On that very day, remaining accused were again interrogated. Some of them reaffirmed the contents of the disclosure statements made by them on 4.1.2001, whereas others disowned the same. Accused Sugriv, Jagdish, Karan Singh, Rajender Singh and Lal Chand had also made statements under Section 27 of the Evidence Act before the Investigating Officer.

Accused Sugriv had got recovered a pistol of 315 bore from his possession. A rough sketch of the recovered pistol was prepared by the Investigating Officer, then it was converted into a sealed parcel and seized vide a memo. Rough site plan of the place of recovery was also prepared.

Accused Chiman Lal had got recovered the tractor and trolley, which were taken into possession vide a recovery memo.

Accused Om Parkash had got recovered a pistol from the area of village Adampur, which was converted into a sealed parcel and taken into possession vide recovery memo. Rough site plans of the places of recovery were prepared. Single barrel gun of Kuldeep was recovered by Ram Dhan from his possession, whereas a pistol each was got recovered by Phusa Ram and Mahabir. The recovered weapons were converted into the sealed parcels and taken into possession vide separate recovery memos. During the course of investigation, the Investigating Officer got scaled site plan of the places of occurrence prepared.

After completion of investigation, challan against the accused Raghubir, Chiman Lal, Lal Chand, Sugriv, Jagdish, Karan Singh, Rajender, Om Parkash, Kuldeep, Mahabir, Ram Dhan and Phusa Ram was prepared and filed in the Court of Additional Chief Judicial Magistrate, Hisar.

On presentation of Challans in the Court of Additional Chief Judicial Magistrate, Hisar, he supplied copies of documents relied upon in the challan to all the accused free of costs as provided under Section 207 Cr.P.C. Then finding that offences under Sections 302 and 307 IPC are exclusively triable by the Court of Session, learned Additional Chief Judicial Magistrate, Hisar vide his order dated 12.4.2001 committed the cases to the Court of learned Sessions Judge, Hisar.

On receipt of cases in the Court of learned Sessions

Judge, Hisar, he observing that charge for offences under Sections 148/302 IPC read with Section 149 IPC, 307 read with Section 149 IPC for the murder of Dalip, Ram Murti and Krishan and attempted murder of Hanuman, Om Parkash, Atma Ram, Ravinder, Bhoop Singh and Mahabvir, was disclosed against all the accused and for the offence under Sections 25, 27 and 30 of the Arms Act was disclosed against the accused Sugriv, Om Parkash, Ram Dhan and Kuldeep, charge-sheeted them accordingly, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

During the course of its evidence, the prosecution examined as many as twenty four witnesses as per details below:

PW1 Dr.J.R. Verma had send the intimation with regard to arrival of dead bodies of Dalip, Ram Murti and Krishan in the hospital to the police on 2.1.2001.

PW2 Dr.V.K. Kawatra, who had conducted postmortem examination of the dead body of Ram Murti on 3.1.2001 deposed in that regard.

PW3 Dr.Joginder Kapoor, who had conducted the postmortem examination on the dead body of Dalip son of Hazari on 3.1.2001 testified about that.

PW4 Dr.R.P. Singal, who had radiologically examined the dead bodies of Dalip, Krishan and Ram Murti to locate bullets etc. in the dead bodies deposed in that regard.

PW5 HC Miya Singh had deposed regarding taking of photographs of different places in village Mangali Surtia.

PW6 Constable Amrik Singh, who had examined the scooter mechanically on 23.1.2001 testified in that respect.

PW7 Hem Raj, Patwari had prepared the scaled site plans on 20.1.2001.

PW8 HC Mahender Singh and PW9 ASI Hawa Singh both formal witnesses tendered their affidavits in their statements.

PW10 Dinesh Kumar, Clerk SDM Office, Hisar proved driving licence of Dalip son of Hazari.

PW11 Ashok Kumar, Clerk has proved the registration of the tractor.

PW12 Ram Chander, Clerk has proved the gun licence of Kuldeep Kumar.

PW13 Dr.D.N. Bagri, who had conducted postmortem examination on the dead body of Krishan proved the postmortem report.

PW14 Hanuman – complainant supported the case of prosecution on material aspects.

PW15 Om Parkash, PW16 Ravinder, PW17 Atma Ram, PW18 Bhoop Singh and PW19 Mahabir provided the eye witness account of the incident.

PW20 Subhash Chander, Draughtsman deposed that he prepared two scaled site-plans.

PW21 HC Kewal Singh proved the FIR of the previous case.

PW22 SI Kartar Singh, who had investigated the case partly deposed in that regard.

PW23 HC Om Parkash is a formal witness, who tendered in evidence his affidavit and deposed regarding his part.

PW24 Inspector Sube Singh, who had carried out investigation in this case later and to a major extent deposed in that regard proving various documents.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations of the prosecution including the making of the disclosure statements and getting the recoveries made.

In addition to that, accused Jagdish took up the plea of *alibi* stating that on 2.1.2001 from 5:00 p.m. to 9:00 p.m., he was present in Shanti Sudharak Committee Umed Vihar Colony, Hisar and was not present at any such place of occurrence.

Further, accused Rajender took up a plea that his father was a witness against the opposite party in previous criminal litigation and after his death, he has been falsely implicated in this case to take revenge from them.

Accused Ram Dhan took up a plea that his gun was

already in possession of the police since the previous hurt case and now the gun has been planted on him and he has no concern with any such occurrence.

Accused Phusa Ram, Kuldeep, Om Parkash, Mahabir, Karan Singh, Chiman Lal, Lal Chand, Sugriv and Raghubir stated that they had no concern with such occurrence and due to party faction in the village they have been falsely implicated in this case.

During their defence evidence, the accused had examined six witnesses, namely, DW1 Saheb Singh, DW2 DSP Man Singh, DW3 HC Jagdish Parshad, DW4 Raghubir Singh, DW5 Gulzari Lal and DW6 Sh.Ajit Singh, District Nazir DC Office, Hisar.

The trial Court framed following points for determination:

1. Was there any motive for the crime, if so, who are the accused having the motive?
2. What is the cause of death of Dalip and the number of injuries and nature thereof?
3. Who were the persons actually responsible for causing the injuries and death of Dalip?
4. What is the nature of injuries and their number on the body of Ram Murti?
5. Who are the persons responsible for actually causing the injuries and death of Ram Murti ?
6. How many injuries with nature thereof were found on the dead body of Krishan, causing his death?
7. Who are the persons responsible for causing of these injuries

actually and physically to Krishan and for his death?

8. Did the accused persons make disclosure statements, if so, to what effect ?

9. Did the accused persons get recovered incriminating materials including the weapons of the offence and ammunition etc. from their possession?

10 What incriminating materials were recovered from the places of murder of Dalip, Ram Murti and Krishan and whether these stand connected with accused persons?

11. Were different eye witnesses present at three different places and the accused attempted to murder them also?

12. Whether there were glaring inconsistencies and contradictions in the ocular version and medical and ballistic findings, if so , to what effect ?

13. Was there any unlawful assembly formed by the accused persons if so, who were the members of the assembly with common object?

14.Did the accused persons commit the offence of rioting?

15.Are any of the accused liable to punishment for possession of illegal fire arms and ammunition etc, if so, who are those persons ?

16.Whether the licenced gun of Kuldeep has been used by another accused for illegal act, if so, to what effect?

17. Is there delay in lodging the report with the police and the formal FIR reaching the Magistrate, if so, to what effect?

18. Is the conduct of the eye-witnesses in this case not natural?

19. Is there any effort to rope in innocent persons as accused in this case?

20 Was any accused present in the Shanti Sudharak Smiti, if so, to what effect?

After hearing arguments, learned trial Court convicted

accused Raghubir, Sugriv, Om Parkash, Mahabir, Ram Dhan and Phusa Ram for the offences under Sections 148 IPC, 302 read with Section 149 IPC separately for the murders of Dalip, Ram Murti and Krishan, 307 read with Section 149 IPC separately for attempting to murder and in addition to that accused Sugriv, Om Parkash, Ram Dhan and Mahabir under Section 25 of the Arms Act and accused Kuldeep under Sections 27 and 30 of the Arms Act and they were sentenced vide order dated 5.8.2003 as under:

Name of accused	Under Sections	Sentence
Raghubir, Sugriv, Om Parkash, Mahabir, Ram Dhan and Phusa Ram	302 read with Section 149 IPC on three counts for the murders of Dalip, Ram Murti and Krishan	Imprisonment for life and to pay a fine of Rs.1 lakh each and in default of payment of fine to further undergo rigorous imprisonment for five years. Out of the amount of fine Rs.1 lakh payable by each accused, a sum of Rs.50,000/- each shall be payable to the heirs of the deceased, Dalip, Ram Murti and Krishan and rest of Rs.3 lakhs shall go to the State.

The sentences of imprisonment for murder of Dalip, Ram Murti and Krishan were ordered to run concurrently.

Name of accused	Under Sections	Sentence
Raghubir, Sugriv, Om Parkash, Mahabir, Ram Dhan	307 read with Section 149 IPC for attempt of murder of	Rigorous imprisonment for seven years each.

and Phusa Ram	Hanuman and Om Parkash.	
Raghubir, Sugriv, Om Parkash, Mahabir, Ram Dhan and Phusa Ram	307/149 IPC for attempt to murder of Atma Ram and Ravinder	Rigorous imprisonment for seven years each.
Raghubir, Sugriv, Om Parkash, Mahabir, Ram Dhan and Phusa Ram	307/149 IPC for attempt to murder of Bhoop Singh and Mahavir	Rigorous imprisonment for seven years each.

The sentences of seven years each awarded to these six accused under Section 307/149 IPC were ordered to run concurrently. But this sentence would be consecutive with the sentence of life imprisonment awarded to them.

Name of accused	Under Sections	Sentence
Raghubir, Sugriv, Om Parkash, Mahabir, Ram Dhan and Phusa Ram	148 IPC	Rigorous imprisonment for three years each.

Name of accused	Under Sections	Sentence
Sugriv, Om Parkash, Ram Dhan and Mahavir	25 of the Arms Act	Rigorous imprisonment for one year each.

Name of accused	Under Sections	Sentence
Kuldeep	27 of the Arms Act	Rigorous imprisonment for three years each.
-do-	30 of the Arms Act	Rigorous imprisonment for six months.

The judgments of conviction and orders of sentence left the accused/convicts aggrieved and they have filed separate appeals i.e. CRA-D-755-DB of 2003 and CRA-D-800-DB-2003 before this Court praying that the same be accepted, the impugned judgments of their conviction and sentence be set aside and they be acquitted of the charge framed against them.

The complainant has also filed CRR-48-2004 for enhancement of sentence of convicts and awarding of adequate compensation, in addition to that for reversing the judgment regarding the accused who were acquitted.

The State has filed CRA-D-420-DBA-2004 challenging the judgment with regard to acquitted accused.

We have heard learned counsel for the appellants-accused- convicts and learned Deputy Advocate General for the State of Haryana, learned counsel for the revisionist and learned counsel for the acquitted accused besides going through the record.

In this case three persons were murdered one after the other at three different places and the persons named as assailants are also the same. The trial Court on analysis of the factual and legal position has concluded that Raghubir, Sugriv, Om Parkash, Mahabir, Ram Dhan and Phusa Ram were members of an unlawful assembly having common object indulging in rioting committing the murders of Dalip, Ram Murti and Krishan and attempting to kill Hanuman and Om Parkash at the place where Dalip had been

murdered, attempting to murder Atma Ram and Ravinder at the place where Ram Murti had been murdered, attempting to murder Bhoop Singh and Mahabir at the place where Krishan had been murdered; in addition to that Sugriv was found guilty for the offence under Section 25 of the Arms Act for keeping in his possession country made pistol 315 bore on 4.1.2001, Om Parkash accused guilty of offence under Section 25 of the Arms Act for keeping in his possession country made pistol of 315 bore on 5.1.2001, Ram Dhan accused guilty of offence under Section 25 of the Arms Act for illegal possession of licenced gun of Kuldeep on 6.1.2001, Kuldeep accused guilty of the offence under Sections 27 and 30 of the Arms Act for unlawful use of his licensed gun for commission of crime by Ram Dhan, whereas Mahabir was guilty under Section 25 of the Arms Act for having kept in his possession one country made pistol on 6.1.2001.

Whereas remaining accused Chiman Lal, Lal Chand alias Madan, Jagdish, Karan Singh, Rajender and Kuldeep had been acquitted of the charge framed against them.

To arrive at the conclusion that the six accused so convicted were involved in the incident, whereas the others were not, following factors were taken into consideration:

- (i) Due to previous criminal litigation between the two parties, there could be a motive for the murder and simultaneously there could be motive for roping in innocent persons of the

family of the present accused to take revenge.

(ii) Motive for the crime was there with some of the accused persons especially those injured in the previous case under Section 326 IPC, namely, Ram Dhan, Kuldeep, Om Parkash and Ram Sarup (since dead).

(iii) The bullet recovered from the body of Dalip during his postmortem examination marked as BC/2 was found by FSL to have been fired from the pistol which accused Sugriv had got recovered in pursuance of his disclosure statement under Section 27 of the Evidence Act, which had been taken into police possession. That pistol was marked as W/3 by the FSL, whereas the empties C/6 and C/7 were found near dead body of Dalip. Those were found to have been fired from .315 bore pistol W/3 of Sugriv accused. The pistol of Sugriv stood connected with empty cartridges C/6 and C/7 and bullet recovered from the dead body of Dalip, which was BC/2 and also the bullets recovered from the other dead bodies, namely BC/1 recovered from the dead body of Krishan and BC/3 recovered from the dead body of Ram Murti. In that way, Sugriv appeared to have fired shots from his pistol .315 bore out of which one bullet was found embedded in the dead body of Dalip (BC/2) in the body of Ram Murti (BC/3) and in the body of Krishan (BC/1).

(iv) Accused Om Parkash during the course of investigation by

Inspector Sube Singh on 5.1.2001 had suffered a disclosure statement and in pursuance thereof had got recovered a pistol of .315 bore said to have been used by him in the incident from fields in the area of Adampur. That pistol was taken into possession and sent to FSL, Madhuban, which had numbered it as W/2 and as per the report Ex.P137 that pistol was found to have fired and the empty shell numbered C/8, which was recovered as one of the three empty shells from near the dead body of Dalip. Thus, it came out that Sugriv and Om Parkash in all fired three or four shots and three empties shells of two pistols used by them were found near the dead body of Dalip and may be one or two of the shots fired by them did not hit Dalip. One bullet was embedded in the body while the other entered the body and left through the exit hole. In that way, Om Parkash and Sugriv accused stood directly connected with murder of Dalip.

(v)As regards murder of Ram Murti, two bullets of .315 bore had been recovered from the dead body of Ram Murti during his postmortem examination. Those bullets as well as pistols of .315 bore got recovered by accused Om Parkash and Sugriv had been sent to FSL. The FSL vide their reports Ex.P137 and P138 gave the number as W/2 to the weapon recovered from Om Parkash and the numebr W/3 to the weapon of Sugriv, finding that bullet recovered from the

body of Ram Murti and numbered as BC/4 had been fired from pistol W/2 recovered from Om Parkash accused and second bullet found in the dead body of Ram Murti and numbered as BC/3 had been fired from the pistol W/3 of Sugriv. In that way, accused Om Parkash and Sugriv were connected with the murder of Ram Murti. One empty shell of 12 bore had been lifted from the spot of murder of Ram Murti by the police on the day of incident vide recovery memo Ex.P-107. The FSL found the empty shell to have been fired from the gun of Raghubir numbered as W/1 by the FSL.

(vi)Raghubir accused had been interrogated by Inspector Sube Singh, during the course of which, he had suffered a disclosure statement stating therein that his licenced gun along with other live cartridges had been kept concealed by him in a box in his residential house and he had got his gun and cartridges recovered. Raghubir accused stood connected with the actual firing on Ram Murti from his licenced gun in view of the recovery of empty shell of the cartridge fired from his gun at the spot where Ram Murti had been murdered.

(vii)Keeping in view the medical evidence six or seven shots could have been fired from different weapons including weapons of .315 bore as well as that of 12 bore and it is quite possible that some of the empty shells were either not

traceable at the spot or had been kept safe by the assailants.

(viii) As regards death of Krishan, one bullet was found by the doctor in his dead body during postmortem examination, which was handed over to the police. Keeping in view the number of injuries found on the dead body of Krishan, three or four shots would have been fired. Three empties of .315 bore and 2 empties of 12 bore were recovered by the police from the spot where Krishan had been murdered. The bullet recovered from the dead body of Krishan and numbered as BC/1 was found by the FSL to have been fired from the pistol W/3 by Sugriv of .315 bore whereas the empty shells of 12 bore marked by FSL as C/4 and C/5 in report Ex.P-137 were connected with Raghubir accused having been fired from his licensed gun numbered as W/1. In that way Om Parkash, Sugriv and Raghubir were connected with murder of Krishan. Ram Dhan had got recovered one gun 12 bore single barrel which had been taken into possession. Mahabir had got recovered one pistol of 12 bore in pursuance of his disclosure statement which had been taken into possession vide a recovery memo. Phusa Ram had got recovered pistol of 12 bore, Kuldeep had got recovered his license for 12 bore gun along with two live cartridges. The pistol recovered from Phusa Ram was sent to FSL, which was marked as W/6, however, as per report received the weapon had been fired

but time of such firing could not be ascertained. Similarly 12 bore pistol of Mahavir was marked as W/5 by the FSL and opinion was given that firing had been done from the pistol but time of such firing could not be given. Similar was the opinion with regard to single barrel gun recovered from Ram Dhan accused Marked as W/4. In that way, there is ballistic evidence of firing having been done with the weapons of Mahavir son of Ram Dhan, Phusa Ram son of Mani Ram and gun of Kuldeep having been recovered from the possession of Ram Dhan. In that way, the three weapons used by Raghubir, Sugriv and Om Parkash stood directly connected with the murder of Dalip, Ram Murti and Krishan and three other weapons which could be fired at the time of the incident because the FSL found that these weapons had been used in firing.

(ix) Phusa Ram was not injured in the previous case but he was a witness, who had appeared before the Court in support of Ram Dhan and others. The recovery of pistol from him, which had been used in firing connected Phusa Ram with the crime.

(x) The Court had kept in mind the tendency in the northern part of the country of roping in innocent persons with the guilty so as not to take only revenge but also to put the near relation of the actual assailants also in the same category so that there is

nobody to look after even the defence of the actual assailants and such tendency seems to have been in action in the present case also. Chiman Lal, Lal Chand, Jagdish, Rajender, Karan Singh were not found responsible for murder of Dalip Singh. Kuldeep can be said to be responsible for handing over his single barrel licenced gun to Ram Dhan for the crime, as such could be held guilty under the Arms Act but not directly responsible for murder of Dalip.

(xi) The trial Court had observed that there was delay of about two hours in all in recording and despatch and the delivery of the FIR at the residence of the concerned *Illaq*a Magistrate but the prosecution case could not be taken to be doubtful for that very reason alone.

(xii) The trial Court had observed that in this case truth is mixed with falsehood, however that can be separated with the help of other material on record even though the eye witnesses have tried to rope in several innocent persons along with the guilty, taking benefit of the delay.

(xiii) Considering the evidence adduced in defence, it was observed that Jagdish accused was not present at the scene of occurrence at the relevant time, rather he was busy in meeting of Shanti Vikas Smiti, Kaimari Road, Hisar in Azad Nagar. No incrimination material or illegal item was recovered from Chiman Lal, Lal Chand, Rajender son of Ram Sarup,

Kuldeep son of Ram Rikh and Karan Singh son of Ram Kishan, though there are disclosure statements of these accused on record. Though some live cartridges were recovered from the possession of Kuldeep but he was having a licence for gun as well as ammunition and those accused seem to have been wrongly involved in this case.

The trial Court has given valid reasons for conviction of accused Raghubir, Sugriv, Om Parkash, Mahabir, Ram Dhan and Phusa Ram and for acquittal of Chiman Lal, Lal Chand @ Madan, Jagdish, Karan Singh @ Kalu, Rajender son of Ram Swaroop and Kuldeep.

We do not see any reason to upset such judgment.

On telephonic instructions from Inspector Sukhjeet Singh, SHO PS Azad Nagar, learned State counsel submits that appellant No.4 – Kuldeep in CRA-D-755-DB-2003 and both the appellants i.e. Ram Dhan and Mahabir in CRA-D-800-DB-2003 and respondent Nos.3,5 and 6, namely, Jagdish, Rajender and Kuldeep have died during pendency of the appeals. Therefore, CRA-D-755-DB-2003 filed by appellant No.4 – Kuldeep abates and such appeal filed by remaining appellants stands dismissed. CRA-D-800-DB-2003 filed by the appellants also stands abated.

CRA-D-420-DBA-2004 qua respondent Nos.3, 5 and 6, namely, Jagdish, Rajender and Kuldeep abates and the same qua the remaining respondents does not call for any interference and the

CRA-D-755-DB of 2003;
CRA-D-800-DB-2003;
CRA-D-420-DBA-2004; and
CRR-48-2004

25

same is dismissed qua them.

Learned counsel for the petitioner/claimant Hanuman states that he does not press the criminal revision.

Therefore, CRR-48-2004 is dismissed being not pressed.

Appellants/accused Raghubir, Sugriv, Om Parkash and Phusa Ram in CRA-D-755-DB-2003 are stated to be on bail granted to them by this Court while suspending their sentence. Their bail bonds are cancelled. Chief Judicial Magistrate, Hisar is directed to issue arrest warrants to get them arrested immediately so as to make them undergo the remaining sentence.

A copy of this judgment be sent to Sessions Judge, Hisar for information and further necessary action.

26.11.2019
Brij
(JITENDRA CHAUHAN)
JUDGE

(H.S.MADAAN)
JUDGE

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