

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

(1) CRA-D-234-DB of 2004

State of Haryana

.... Appellant

Versus

Ishwar Singh and another

..... Respondents

(2) CRA-D-292-DB of 2004

Satta alias Satte

.... Appellant

Versus

State of Haryana

..... Respondent

Reserved on : 13.01.2020

Date of decision : 20.01.2020

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. H.S. Grewal, Advocate (Legal Aid Counsel)
assisted by Mr. Rahul Deswal, Advocate,
for the appellant in CRA-D-292-DB-2004 and
for respondent No.2 in CRA-D-234-DB-2004.

Mr. Vivek Saini, DAG, Haryana,
for the appellant in CRA-D-234-DB-2004 and
for the respondent in CRA-D-292-DB-2004.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in these

appeals, i.e. CRA-D-292-DB and CRA-D-234-DB of 2004, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 18.12.2003 and order dated 24.12.2003, rendered by learned Sessions Judge, Hisar, in Sessions Case/Trial No. 45 of 1999. Ishwar Singh and Satta alias Satte along with co-accused Nihal Singh, Krishna and Sushma Rani were charged with and tried for the offences punishable under Sections 302/307/201/120-B IPC and Section 25 of the Arms Act.

3. Ishwar Singh and Satta alias Satte were convicted and sentenced to undergo imprisonment for life and to pay fine of ₹ 2,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of three months under Section 302 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay fine of ₹ 1,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of one month for the offence punishable under Section 307 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of two years and to pay fine of ₹ 500/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of one month for the offence punishable under Section 201 IPC. Co-accused Nihal Singh was convicted and sentenced to undergo rigorous imprisonment for a period of two years on each count. Co-accused Krishna and Sushma Rani were acquitted of the charge framed against them. All the substantive sentences were ordered to run concurrently.

4. CRA-D-292-DB of 2004 is instituted by Satta alias Satte

against his conviction and sentence. CRA-D-234-DB of 2004 has been filed by the State of Haryana seeking enhancement of sentence of Ishwar Singh and Satta alias Satte. Ishwar Singh died during the pendency of the appeal. Hence, appeal qua him stood abated.

5. The case of the prosecution, in a nutshell, is that on 18.03.1999, Inspector Udey Singh received a telephonic message at 3.30 AM from one Om Parkash that 5-6 young men were firing shots in the house of Ishwar, due to which Prahalad, Roshni and Naveen had died. The firing was still continuing. He along with other police officials proceeded towards the spot. He reached the spot. He found that the room of Chander was on fire. Prahalad and Roshni were lying below the bed, whereas Naveen was lying on the bed. He went to the back side of the house of accused Ishwar. He found Krishan alias Giani and Satpal sons of accused Ishwar lying dead on two different cots. The dead body of Krishna wife of accused Ishwar was lying on a different bed in another room. All the dead bodies, except that of Krishna, were lying in burnt condition. He got the fire extinguished. He recorded the statement of Om Parkash (Ex.DB). According to the contents of Ex.DB, on hearing the shots from the house of Ishwar, he, his son Amardeep and wife Giano Devi woke up. They went towards the house of Ishwar. They saw the dead bodies of Roshni and Naveen, the wife and son of Chander as well as Chander in injured condition. He noticed 4-5 assailants, who threatened them to run away. They woke Shamsheer and also informed the police on telephone. Chander was in injured condition. Shamsheer, Kuldeep and Krishan removed Chander to the hospital. Chander told him that the assailants after murdering his father Prahalad, wife Roshni

and son Naveen, and also causing injuries to him, put all the four in the room, poured kerosene and set them on fire. On account of the heat, he regained consciousness. Thereafter, the dead body of Krishna with fire arm injuries was noticed. They also noticed the dead bodies of Krishan and Satpal in burnt condition and also having fire arm injuries. Inspector Udey Singh went to hospital to record the statement of Chander. He sought opinion of the doctor whether Chander was fit to make statement or not vide application Ex.PT/4. Dr. Ramesh Jain vide his opinion Ex.PT/5 opined that he was fit to make statement. He recorded the statement of Chander vide Ex.DA. He narrated the manner in which the incident had happened. Thereafter, Udey Singh came back to the spot. He got the photographs of the spot clicked. He lifted one DBBL gun (Ex.P119) which was in broken and burnt condition having empty cartridges (Ex.P120 and Ex.P121) loaded in it. It was lying near the dead body of Prahalad. The cartridges were taken out from the chamber of the gun. A 12 bore country made pistol (Ex.P129) slightly in burnt condition with wooden portion missing, containing one cap of cartridge (Ex.P130) and empty cartridges (Ex.P122 to Ex.P128), one country made pistol of 315 bore (Ex.P131) which was also in burnt condition and one cartridge (Ex.P132) were also found lying near the dead body of Roshni. Mutilated pallets (Ex.P133 to Ex.P135) and wads (Ex.P136 to Ex.P139) were recovered from the verandah. Pieces of pellets (Ex.P141 and Ex.P142) embedded in the southern wall were also recovered. A container of wheat, which was of tin metal, was lying in the verandah. The blood stained earth lying near the container was lifted with the help of cotton swab. The other recoveries were also made from the spot. Inquest

reports were prepared. The bodies were sent for post mortem examination. Arrests were made. Inspector Udey Singh moved application Ex.PU to the Magistrate for recording the statement of Chander under Section 164 Cr.P.C. Shri Sanjiv Arya, the then Judicial Magistrate Ist Class, Hisar, went to Jain Hospital, Hisar. He sought the opinion of the doctor whether he was fit to make statement. Dr. Ramesh Jain vide his opinion Ex.PU/1 at 4.00 PM opined that Chander was fit to make statement. The Judicial Magistrate put his signatures below the opinion at point Ex.PU/2. He then recorded the statement of Chander under Section 164 Cr.P.C. vide Ex.PU/3. Inspector Om Parkash moved an application Ex.PE/1 for recording the statement of Om Parkash on 25.03.1999. Ms. Ranjana Sabharwal, the then Judicial Magistrate Ist Class, Hisar, recorded his statement Ex.PE. Appellant Satta alias Satte was arrested on 26.03.1999. Two separate FIRs under Section 25 of the Arms Act were registered against accused Nihal Singh. All codal formalities were completed and challans were put up. The cases were consolidated.

6. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. All the accused, except Satta alias Satte, denied the case of the prosecution. Satta alias Satte admitted the case of the prosecution to some extent.

7. The appellants along with co-accused Nihal Singh were convicted and sentenced, as noticed here-in-above. Hence, these appeals.

8. Learned counsel appearing on behalf of the appellants has vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment of conviction

and order of sentence passed by the learned trial court.

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

10. PW.3 Raju prepared the scaled site plan on 13.05.1999 vide Ex.PC. In his cross-examination, he deposed that the house in question was situated on the outskirts of the village. He admitted that the house in question opened in all the sides, except in the northern side. Shamsheer Singh was found present in that very house. The house was double storeyed.

11. PW.4 Miya Singh had taken the photographs Ex.P1 to Ex.P30.

12. PW.6 Ms. Ranjana Sabharwal, JMIC, Hisar, deposed that she recorded the statement under Section 164 Cr.P.C. of Om Parkash on 25.03.1999. The contents of the statement were read over to Om Parkash and he had put his signatures after accepting the same to be correct. In her cross-examination, she admitted that she did not get Om Parkash identified after getting his signatures on his statement. However, he was identified by the police official who had brought him.

13. PW.7 Pat Ram ASI prepared inquest report Ex.PF on the dead body of Giani. In his cross-examination, he deposed that the dead body of Giani was lying near the dead body of his brother Satpal. SHO had directed him at 3.00 PM to prepare the inquest. He handed over the papers back to the SHO at about 4.30 PM.

14. PW.10 Shri Balraj Singh, SDM, deposed that on the request of the police, the District Magistrate, Hisar, had passed the order directing him to conduct identification parade. The police request is Ex.PJ. He recorded the statement of Kuldeep Singh witness vide Ex.PJ/4. Nine persons apart

from Satte had participated in the identification parade. The police officials were also present on the spot. PW Kuldeep immediately prima facie identified accused Satte. He told that accused Satte was the same person who was seen by him on a motor cycle. In his cross-examination, he admitted that he had conducted the identification parade for the first time as a Magistrate.

15. PW.11 Prem Chand Hooda testified that he received a sealed parcel through Constable Rajinder Singh on 30.03.1999. A sealed envelope was received by him on 23.06.1999 through Constable Balbir Singh on 23.06.1999. The sealed parcels were opened. One iron sheet bearing alleged bloody finger prints processed by Narain Parshad, Finger Prints Expert, was found. The iron sheet is Ex.P61. He proved his reports Ex.PK/21 and Ex.PK/22.

16. PW.12 Dr. R.P. Singal had radiologically examined Chander on 18.03.1999. He proved his report Ex.PL. He noticed a radio opaque metallic dense shadow in left side of chest with fracture on left scapula. In his cross-examination, he admitted that signatures or thumb impressions of the patient who was examined were not obtained. Voluntarily stated that same were not taken because the patient was serious and the X-ray was taken in emergency.

17. PW.13 Dr. Suresh Kumar medico legally examined Om Parkash on 21.03.1999. He found following injury on his person :-

- (1) There was one abrasion on the medial aspect of right foot size was 3 x 1 cm.

Nature of the injury was simple. Kind of weapon used was blunt. Probable

duration of injury could not be ascertained.

18. PW.14 Dr. Vijaypal Khanagwal deposed that he conducted the post mortem examination on the body of Roshni on 19.03.1999. He noticed following injuries on her body :-

- (1) A punctured wound of size 4 x 2.5 cms situated over left side of face, one cm away from ala of nose and 2 cms above angle of mouth in oblique plane. It was lying open. On dissection the underlying muscles were ecchymosed and the left zygomatic bone, inferior orbital margins and condyle and coronoid process of the mandible were fractured just below their tips with infiltration of blood.
- (2) An entrance wound of fire arm projectile (missile) of size 3.5 x 3 cms, present over the anterior aspect of chest on left side situated 3 cm away from midline and 3 cms medial to the left nipple and 127 cms above left heel. Muzzle impression was evident around the wound and the margins of the wound were ragged and contused. On dissection the wound was located at the fourth intercostal space, the muscles being ecchymosed and the third and fourth ribs were fractured with bony spicules directed inwards to pierce the upper lobe of left lung in below upward and oblique direction. Multiple greyish metallic missiles were recovered from the lung parenchyma and sub-cutaneous tissues corresponding to second and third intercostal spaces on the back. Left side of chest cavity contained about 250 cc blood with a few firm blood clots.
- (3) An entrance wound of fire-arm projectile, of size 3.5 x 3 cms was present over front of chest on left side being 1 cm apart (inferolateral) to injury No.2. Around the wound muzzle impression was seen. The margins of the wound were reddish, inverted, ragged and contused. On

dissection the wound was found to be directed below upward and in oblique direction laterally. On its way the fourth and fifth ribs were fractured with infiltration of blood and the lung parenchyma was pierced at its upper lobe.

The cause of death in his opinion was cumulative effect of fire arm injuries and burns, which were ante mortem in nature. The death in this case was immediate. The probable time that elapsed between death and autopsy was between 36 to 48 hours. He proved the post mortem report.

On the same day, he conducted post mortem examination on the body of Satpal. He noticed following injury on her body :-

An entrance wound of fire arm missile of size 5 x 3 cms over the front of chest on left side 5 cm above costal margins and 2.7 cms away from midline and 111 cms above left heel. The margins of the wound were reddish, inverted and showed tattooing effect all around. On dissection, the underlying seventh and eighth intercostal spaces were involved, the muscles being ecchymosed and the underlying sixth, seventh and eighth ribs were fractured at the depth of wound with spicules of the bone piercing lower lobe of left lung. The wound was further directed from below upwards, antero posterior and from left to the right towards midline. On its way, the left ventricle of heart and lower lobe of left lung were pierced through and through along with pleura and pericardium left side of chest cavity was full of blood with a few blood clots. Multiple greyish deformed missile were recovered from the pericardial sac, paravertebral muscles and lung parenchyma.

The cause of death was shock and haemorrhage as a result of fire arm

injuries via injury over the chest as described. However, the burns over the body were post mortem in nature. The death was immediate. The time that elapsed between death and autopsy was between 36 to 48 hours. He proved the post mortem report.

On the same day, he also conducted the post mortem examination on the body of Krishna. He noticed following injuries on her body :-

- (1) An entry wound of fire arm projectile size 3.5 x 3 cm over the front of chest 0.5 cm away from midline on the left and 9.5 cms medial to left nipple and 129 cms above left heel. The impression of the muzzle was evident around the wound. The margins of the wound were reddish inverted, ragged and contused. On dissection the underlying muscles were ecchymosed and fifth and sixth ribs were fractured. The left and right ventricles of heart were pierced through and through along with the upper lobe of left lung and the wound was directed from left to right after crossing over the vertebral column at the level of fifth thoracic vertebra which was also fractured. The track of the wound being slightly below upwards left to right and laterally. From the pericardial sac, left side chest cavity and lung parenchyma multiple greyish metallic deformed missiles were recovered along with card board wads. Left side of chest cavity was full of blood.
- (2) An entry wound of fire arm ammunition-missile, size 3.5 x 2 cms over the front of chest, one cm apart from injury No.1 (infer medial) being 3 cm away from midline 6 cm infer medial to left nipple and 128 cms above left heel. The impression of muzzle was present around the wound. The margins of the wound being reddish, inverted,

ragged and contused. The wound was directed below upwards in slightly oblique direction from left to right towards mid line. On its way the fifth and sixth ribs were fractured and the heart and upper lobe of left lung were pierced through and through. The soft tissues were ecchymosed.

- (3) An exit wound of size 5 x 3.5 cms over the back of right side 2.5 cms away from midline and 132 cms. above right heel. The margins of the wounds were reddish, everted and irregular. From sub-cutaneous tissue underneath this wound card board wad and a greyish deformed missile was recovered.

The cause of death was shock and haemorrhage. The death in this case was immediate. The probable time that elapsed between death and autopsy was between 36 to 48 hours. He proved the post mortem report.

19. PW.15 Dr. Basant Lal Sirohiwal conducted post mortem examination on the body of Naveen. The cause of death was shock and haemorrhage as a result of fire arm injury on the left side of chest. The burns were post mortem in nature. Injury was sufficient to cause death. He proved the post mortem report. He also conducted the post mortem examination on the body of Prahalad. He noticed following injuries on his body :-

- (1) Fire-arm missile/projectile wound measuring 7 x 6 cm situated on the right side of face just anterior to pinna and 3 cm lateral to the supra orbital margins. The margins were ragged and were contused showing muzzle impressions. The right temporal bone was showing entry wound with inner table was bevelled. Effusion of blood was present. The injuries depicted in the form of diagram on the side of the post mortem report. The bones were

showing multiple, radiating fracture of skull bones. Entry side brain was blackened.

- (2) There was an exit wound on the top middle area slightly placed to the left side 10 cm above the root of nose. Margins were Everett, bones were coming out and visible measuring 9 to 6 cm. Brain tissue was exposed and visible. Missiles were recovered from the substance of brain and from left temporal area. The missiles/projectiles were whitish metallic lead type (greyish). Injuries were depicted in the diagram.

The cause of death was due to craniocerebral damage as a result of head injury consequent upon fire-arm injury to head via injury No.1, which was ante mortem and recent in duration. Burns were post-mortem in nature. The injuries were sufficient to cause death in ordinary course of nature. The probable time that elapsed between injuries and death was immediate and between death and post mortem was between 36 to 48 hours. He proved the post mortem report. He also conducted post mortem examination on the body of Krishan alias Giani. He noticed following injury on the body of the deceased :-

A fire-arm missile/projectile entry wound measuring 3.5 x 3 cm situated on the front of chest on left side one cm from midline and four cms below left clavicle inner and margins were ragged, inverted and showing muzzle impression. Fourth rib area was fractured and showing effusion of blood in the underneath tissues.

The cause of death in this case was shock and haemorrhage as a result of fire arm injury on chest via injury No.1, which was ante mortem in nature and recent in duration. It was sufficient to cause death in ordinary course of nature. The burn injuries were post-mortem in nature. The probable time

that elapsed between injury and death was immediate and between death and post mortem was between 36 to 48 hours. He proved the post mortem report. In his cross-examination, he denied the suggestion that body of Naveen was not identifiable.

20. PW.16 Dr. Ramesh Jain deposed that Chander was brought to his hospital on 18.03.1999 at 7.30 AM. He noticed following injuries on his person :-

- (1) Lacerated wound was present in the frontal region in midline of scalp. It was 1.5 cm x 1 cm in size.
- (2) There was a lacerated wound present on left side of chest 2.5 cm x 1.5 cm. It was freshly bleeding.
- (3) Lacerated wound was present on the left forearm with margins of the wound showing blackening discolouration. Wound was 2 x 1 cm in size.
- (4) There was abnormal mobility and crapitus present on the right thigh with multiple wound lacerated present on the anterio medial and lateral aspect of the thigh. Muscles exposed and bleeding. Another wound 10 cm x 5 cm in size present in the poplital of the same knee with fresh bleeding.
- (5) Lacerated wound was present in the same leg on the posterior aspect.
- (6) There was a burn injury on the right pinna and surrounding area of ear and face.
- (7) There was an injury of burn on the left leg on the anterior aspect.

He sent ruqa Ex.PT/1 to the police. On 14.06.1999, the police sought his opinion vide application Ex.PT/2. He handed over complete bed head ticket file to the police. On 18.03.1999, the police sought his opinion vide application Ex.PT/4 whether Chander was fit to make statement or not. He

gave his opinion Ex.PT/5 declaring Chander fit to make statement. He again examined Chander on 20.03.1999 and gave opinion that Chander was fit to make statement. His opinion is Ex.PT/6. On 18.03.1999, the patient was operated. One metallic foreign body was removed from left axilia of the patient. In his cross-examination, he admitted that it was not recorded who had brought Chander in his hospital. However, he was not brought by the police. He deposed that in injury No.3, there was no mention of charring or tattooing. In injuries No.4 and 5, it was not written whether there was blackening, charring or tattooing. He also admitted that during the whole period of stay in the hospital, the patient did not show any sign of danger to his life.

21. PW.17 Satbir Singh Tehsildar deposed that he had gone to Jain Hospital, Hisar, on 12.06.1999. He had taken thumb and finger impressions of Chander Singh son of Prahalad Singh vide Ex.PT/17 and Ex.PT/18. In his cross-examination, he admitted that he had not taken permission of the District Magistrate or SDM for going to Jain Hospital for taking thumb and finger impressions, since he had gone there as an Executive Magistrate. He had talked to Chander and took his willingness of giving his thumb impressions. The willingness was taken verbally.

22. PW.18 Dr. Daya Nand medico legally examined Chander. He noticed following injuries on his person :-

- (1) There was lacerated wound on frontal region of scalp in midline of size 1.5 cm x 1 cm and it was scalp deep. Fresh bleeding was present.
- (2) There was wound with ragged and inverted margins over left side of chest lying just medial to anterior axillary

fold of size 2.5 cm x 1.5 cm and the depth was not probed. Fresh bleeding was present. There was abrasion collar present around the wound.

- (3) There was gutter like lacerated wound on anterior aspect of left forearm lying 7 cm below elbow joint. There were multiple pin head size abrasions over anterior aspect of left forearm.
- (4) There was wound with ragged and inverted margins over anterior medial aspect of right thigh at level of lower 1/3rd of size 1.5 cm x 1.3 cm and the depth was not probed. Abrasion collar was present around the wound.
- (5) There was wound with ragged and inverted margins lying 6 cms below wound No.4 of size 2.5 cms 2.2 cms and it was bone deep. There was a piece of fractured bone embedded in the wound. Fresh bleeding was present.
- (6) There was wound with ragged and inverted margins over anterior aspect of right thigh of size 1.8 cm x 1.6 cm and the depth was not probed. Abrasion collar around the wound was present.
- (7) There was wound with ragged margins lying 5 cm below wound No.6 of size 2.2 x 2 cm and the depth was not probed. Fresh bleeding was present.
- (8) There was wound with ragged and everted margins over back of right thigh lying just above knee joint of size 10 cm x 8.5 cm and its depth was not probed. Fresh bleeding was present.

The injuries were kept under observation. The probable duration of injuries was within six hours. Injury No.1 was caused by blunt weapon. Rest of the injuries were caused by fire arm weapon. In his cross-examination, he deposed that the patient was brought by Shamsheer, Kuldeep and Krishan Lal. Patient was conscious when he was brought to General Hospital, Hisar.

The patient had not told as to who had assaulted him with fire arm weapons.

23. PW.19 Shri Sanjeev Arya, JMIC, Hisar, deposed that an application Ex.PU was made by SHO for recording the statement of Chander. He obtained the opinion Ex.PU/1 from the doctor whether the patient was fit to make statement or not. The doctor opined that the patient was fit to make statement. He recorded the statement Ex.PU/3. He also signed the same.

24. PW.20 Chander is the eye witness. He testified that he had two brothers. The name of his elder brother is Ishwar. The name of younger brother is Shamsher. He identified his brother Ishwar accused in the court. His son was murdered. Krishna wife of Ishwar accused was also murdered. Giani and Satpal sons of Ishwar were also murdered. On the night intervening 17/18.03.1999, he along with his wife Smt. Roshni Devi and son of Naveen Kumar was sleeping in one room of his house. At 1.30 AM, accused Ishwar knocked at the door of his room. He switched on the light. He opened the door of his room and came out. Ishwar accused was standing in the verandah. He was holding a gun. One fat boy was also standing with him. He was holding a pistol. That boy was not present in the court on the day of his deposition. Two well built boys were also standing behind him. He pointed towards Sattu. The fat boy fired from his pistol. The shot hit his chest on the left side. He again fired from his pistol. However, he caught hold the barrel of the pistol. The shot hit his left arm. Accused Ishwar fired from his gun. He was shot in right thigh. He collapsed. Three assailants accompanying accused Ishwar went inside his room and dragged his wife Roshni and his son Naveen out of that room. Two of the assailants held his

wife. Accused Ishwar fired shot towards his wife. Accused Ishwar also fired shot towards his son Naveen. Both of them died on the spot. His father came to his house. When his father just entered the house, accused Ishwar fired shot towards him. His father died. Accused Sattu had given a *kulhari* blow on the head of his father. All of them were put on a double bed. He was conscious. Accused Ishwar and other assailants sprinkled kerosene over them and the bed was set on fire. The assailants ran away from the house. He regained consciousness. He went to the verandah. He reached near a wheat container (Tanki) lying in the verandah. He concealed himself behind that wheat container. He heard sound of 4-5 fire shots from the house of Ishwar accused. He thought that some innocent person may not be involved, therefore, he wrote the name of Ishwar on the wheat container with the help of his blood. After about 20 minutes, Ishwar and other assailants came inside his house again. They threw the blood stained clothes on the bed in the room, which was already set on fire. Thereafter, the assailants went away. After 15-20 minutes, he heard the sound of starting of a motor cycle. At 3.30/3.45 AM, his younger brother Shamsheer, cousin Kuldeep and uncle Kishan Lal came. He narrated the incident to them. He was removed to Civil Hospital, Hisar. He was medico legally examined at Civil Hospital, Hisar. From Civil Hospital, Hisar, he was taken to Jain Orthopedic Hospital, Hisar. The police came to him at about 11.00 AM. Magistrate recorded his statement. He signed the same. He was operated upon three times at Jain Hospital. After 7-8 days of his admission in Jain Hospital, one Tehsildar came to him. He had taken his specimen handwriting on five sheets. Accused Ishwar had illicit relations with one Krishna, who was one of the

accused. Accused Ishwar had also illicit relations with Sushma daughter of Krishna. Accused Ishwar was asked to resist from extra marital affairs. Panchayat was also convened. His brother Shamsher told him that his sister-in-law Krishna, Satpal son of Ishwar and Giani son of Ishwar were also murdered on the same night. Each of his brother was owner of 32-33 killas of land. He had also made statement before the Magistrate without any pressure or coercion. In his cross-examination, he admitted that his house and house of accused Ishwar were situated in a joint plot. He had no enmity of any kind with Ishwar. He came to know at 5.30-5.45 AM on 18.03.1999 at Civil Hospital, Hisar, that wife and children of accused Ishwar had been murdered. According to him, his statement was not recorded by the police on 18.03.1999. He had written the word "Ishwar" on the Tanki (wheat container) with the help of middle finger of his left hand. He work with his right hand. He could not assign any reason why he wrote with his middle finger instead of using other finger. He had seen Ishwar and three others, when they came to his room. However, two out of them fired shots towards his room. They were Ishwar and one fat boy. The fat boy fired three shots and the remaining shots were fired by accused Ishwar. Primarily, the wife of Ishwar and brothers were opposing the illicit relations of accused Ishwar with Krishna and Sushma. After the assailants left his room, he heard the sound of shots from the house of Ishwar. He had told the police on 20.03.1999 that behind accused Ishwar and fat boy, two more assailants were standing. He was confronted with his statement Ex.DX, where it was not so recorded.

25. PW.21 Shamsher testified that his house was situated in the

middle of the village abadi of village Matersham. The houses of accused Ishwar and Chander were situated at a distance of about 4 killas from his house. Chander and Ishwar had separate houses. However, they had a common boundary. He had a gun licence. On the intervening night of 17/18.03.1999 at about 3.00 AM, his uncle Om Parkash, Smt. Giano Devi wife of Om Parkash and Amar Deep son of Om Parkash came to his house. They told him that shots were being fired at the houses of Ishwar and Chander. He went to the house of his uncle Amar Chand. They asked his cousin Kuldeep to get up. He was asked to bring Kishan Lal. They proceeded towards the houses of Chander and Ishwar. He along with Kishan Lal, Raj Kumar son of Kishan Lal and Kuldeep went inside the houses of Ishwar and Chander. The house of Chander was on fire. In the room where Chander used to sleep with his family members, dead bodies of Roshni, Naveen, Prahalad were on fire. They called "Chander, Chander". Chander told them that only he was alive. All the remaining persons had been killed by Ishwar and 3-4 other persons. He also told that Ishwar was holding a gun and the remaining assailants were holding pistols. He had heard sounds of shots of fire arm from the house of Ishwar also. Raj Kumar and Kuldeep lifted Chander and took him in a Maruti car. He went to the house of Ishwar. He found two bullets injuries on the chest of Smt. Krishna wife of Ishwar. Her dead body was lying in a room. He went to another room situated on the back side, where the dead bodies of Satpal and Krishan sons of Ishwar were lying. He, Kuldeep and Krishan Lal took Chander to Civil Hospital, Hisar. Medico legal examination of Chander was conducted. Police came to Jain Hospital, Hisar, to record the statement of Chander. His

brother Ishwar had illicit relations with Smt. Krishna accused. Ishwar was also having illicit relations with Smt. Sushma daughter of Smt. Krishna. In his cross-examination, he deposed that his statement was recorded by the police only on 20.03.1999. He had told the police that Chander told them that only he was alive and all the remaining persons had been killed by accused Ishwar and 3-4 other persons and that Ishwar was holding a gun. He was confronted with his statements Ex.DY and Ex.DY/1, where it was not so recorded. The entire land of the sons of Ishwar and his wife Smt. Krishna had been transferred in the name of Smt. Sunita daughter of Ishwar. He had not heard the sound of shots because his house was situated at sufficient distance from the scene of occurrence.

26. PW.25 Ramesh Chander HC deposed that the dead body of Smt. Roshni was identified by Om Parkash and Ram Niwas. He prepared inquest report Ex.PN/1.

27. PW.27 Kailash Chander HC deposed that the dead body of Naveen was identified by Shamsher and Mahabir. He prepared the inquest report Ex.PR/1.

28. PW.29 Balbir Singh SI prepared inquest proceedings qua Satpal son of Ishwar. The dead body was identified by Om Parkash and Mahabir.

29. PW.30 Om Parkash Inspector deposed that accused Ishwar made confessional statement that he had murdered his wife Krishna, his sons, his brother's wife Smt. Roshni, his nephew Naveen and his father Prahalad. His statement is Ex.PAA. He arrested accused Sattu on 26.03.1999. Sattu made a confessional statement Ex.PBB that he had

committed the aforesaid murders. Accused Nihal Singh was arrested on 29.03.1999. Accused Sushma was arrested on 30.03.1999.

30. PW.31 Pawan Kumar testified that he had good relations with accused Ishwar. On 17.03.1999, he requested accused Ishwar to give his Maruti car. Kishan son of Ishwar, Chander brother of Ishwar and Rakesh son of maternal uncle of Ishwar had come to hand over that car to him. They took his motor cycle bearing registration No. HR-20D-7229.

31. PW.32 Johra Singh HC mechanically examined pistol Ex.P-115. It was found to be in working order. His report in this regard is Ex.PJJ/1.

32. PW.33 Satyawar HC deposed that ASI Mewa Singh produced one 12 bore pistol and one cartridge of 12 bore before him on 28.08.1999. He mechanically examined the pistol Ex.P-117. He found it to be in working order. His report is Ex.PKK/1.

33. PW.34 Uday Singh, retired Inspector, testified that he received a telephonic message from Om Parkash on 18.03.1999 at 3.30 AM. He went to the spot. The room of Chander was on fire. Prahalad and Roshni were lying below the bed and Naveen was on the bed. He found Krishan alias Giani and Satpal lying dead on two different cots. Both of them were sons of accused Ishwar. The dead body of Smt. Krishna wife of accused Ishwar was lying on a different bed in another room. He got the fire extinguished. He recorded the statement of Om Parkash. He recorded the statement of Chander after obtaining the opinion of the doctor vide Ex.PT/5. Photographs were got clicked on the spot. He went inside the house of Chander. On entering the house, there was a courtyard. One 12 bore gun,

two fired cases and one empty cartridge of 12 bore were lying near the dead body of Prahalad. He also found two pistols of 12 bore and 315 bore loaded, lying near the dead body of Roshni. Four wads were recovered from the courtyard. He went to another room. One bullet was found in the room. In the verandah, pieces of bullets were lying. Blood stained earth was lifted. The spot was also examined by the team of FSL. The photographs of the wheat container, whereupon words "Isher and Ishwar" were written, were also taken. In one room of the house of accused Ishwar, where dead body of Krishna was lying, there were marks of bullets/pallets on the wall. He went inside the room, where the dead bodies of Giani and Satpal were lying. All the articles were converted into parcels. He identified the case property in the court. He prepared inquest report of the dead body of Smt. Krishna vide Ex.PQ/1. Rough site plan Ex.POO of the place from where *kulhari* was recovered was prepared. The *kulhari* is Ex.P-158. Accused Ishwar was arrested on 21.03.1999. An application was made before Tehsildar, Hisar, on 23.03.1999, for taking specimen handwriting of Chander. In his cross-examination, he deposed that he had correctly recorded the statement of Chander vide Ex.DX and the statements of Shamsher vide Ex.PDY and Ex.DY/1.

34. PW.36 Ram Kumar ASI took six dead bodies to PGIMS Rohtak for post-mortem examination. He had taken sample finger impressions of Chander on 12.06.1999 vide Ex.PK/17 and Ex.PK/18.

35. PW.38 Perhlad Singh ASI deposed that a secret information was received on 29.03.1999 that accused Nihal Singh was coming from bus towards village Bahbalpur. Accused Nihal Singh was arrested. His personal

search was carried out. One .12 bore pistol, which was loaded, was recovered. It was taken into possession along with cartridge.

36. PW.39 ASI Rattan Singh testified that he interrogated accused Nihal Singh on 30.03.1999. Nihal Singh made a disclosure statement that he had kept concealed a pistol in the fields located in village Bahbalpur, on the basis of which pistol Ex.P-115 and the live cartridge Ex.P-116 were recovered.

37. Statements of DW.1 Dr. Vinod Khanna, DW.2 Mange Ram and DW.3 Man Singh are qua accused Nihal Singh. Statements of DW.4 and DW.5 Narinder pertain to accused Ishwar.

38. According to DW.12 Om Parkash, he was present in his house on the night of the occurrence. At about 2.00 AM, he heard sound of firing from the side of house of Ishwar accused. Ishwar came to his house and called him. He then proceeded towards the house of Krishan Lal. He along with his wife Gaindo Devi and son of Amardeep came out. They found the dead bodies of wife and son of Chander. Chander was also injured. He had noticed a wheat container in the verandah of Chander. Something was written on it with red ink. The police had not taken any piece of the said wheat container in his presence. His statement was recorded under Section 164 Cr.P.C. vide Ex.PE. He had not made any representation to any of the higher authorities that Ishwar and other accused were falsely implicated.

39. DW.13 Krishan Lal deposed that Ishwar had come to him at about 12.00/1.00 AM. He told him that he should be saved, otherwise he would be done to death by many people who had surrounded his house.

40. DW.15 Murti Devi is the mother of Ishwar, Shamsher and

Chander. She testified that she met Chander next day of the occurrence along with her other sisters. Chander PW had told her that there was one person looking like Kapoora and others could not be identified, as they had muffled their faces. Initially, Mahabir etc. were arrested.

41. DW.16 Dr. R.J. Bishnoi medico legally examined Krishan Lal as well as Om Parkash.

42. DW.17 Mayawati deposed that her brother Ishwar had no illicit relations with any body. Shamsher had dissuaded her from helping Ishwar and to give evidence in his favour.

43. DW.18 Shapati deposed that after the occurrence, the property belonging to Ishwar was in possession of Shamsher.

44. Appellate Satta alias Satte, in his statement under Section 313 Cr.P.C., admitted that on the night intervening 17/18.03.1999, Chander Singh (PW.20) along with his wife Smt. Roshni (deceased) and his son Naveen Kumar (deceased) was sleeping in one room of the house. He also admitted that Chander Singh saw co-accused Ishwar standing in the verandah of his house. At that time, Ishwar was armed with a DBBL gun. He also admitted that one boy was standing with co-accused Ishwar and that boy was holding a pistol. He also admitted that two well built boys were also standing behind co-accused Ishwar and one, out of them, was he himself. He also admitted that co-accused Ishwar gave barrel blows with DBBL gun to Chander Singh. He also admitted that after receiving the fire arm shots, Chander collapsed. In answer to question No.19, he stated that one fire was shot by Ishwar at Roshni. However, he did not know whether Roshni died on the spot or not, but she fell on the ground. He admitted that

co-accused Ishwar fired shot toward Naveen, as a result of which Naveen died at the spot. He also admitted that on hearing the sound of fire, when Prahalad Singh went towards the house of Chander Singh, co-accused Ishwar fired shot upon Prahalad Singh, and he gave a *kulhari* blow on the head of Prahalad Singh, as a result of which Prahalad Singh died on the spot. In answer to question No.22, he stated that he did not put the dead bodies of Roshni, Naveen, Prahalad Singh and Chander Singh on the double bed. He admitted that on the night intervening 17/18.03.1999, few persons reached the spot and informed Shamsheer Singh (PW.21). The persons who reached the spot called Chander but he did not know where he was sitting. He also admitted that ASI Balbir Singh (PW.29) prepared inquest report of the dead body of Satpal on 18.03.1999. He also admitted that HC Pat Ram (PW.7) prepared inquest report of the dead body of Krishan alias Giani on 18.03.1999. He also admitted that dead bodies were sent for post mortem examination by Inspector Uday Singh. He also admitted that Dr. Ramesh Jain radiologically examined Chander Singh and found metallic foreign body in the axilla with fracture of scapula. He also admitted that Dr. Ramesh Jain had removed multiple foreign body from the body of Chander Singh. He also admitted that Dr. Ramesh Jain had sent information Ex.PT/1 to SHO P.S. Sadar Hisar. He also admitted that Inspector Uday Singh arrested Mahabir, Sube, Hanuman, Kuldeep, Mohinder, Balbir and Jaibir on the basis of statement of co-accused Ishwar, but the statement of co-accused Ishwar was found false. He also admitted that Dr. Vijay Pal had conducted the post mortem examination on the dead body of Roshni on 19.03.1999. He also admitted that Dr. Vijay Pal conducted post mortem examination on the

dead body of Satpal. He also admitted that Dr. Vijay Pal found that the injuries received were ante mortem in nature and sufficient to cause death. She died due to shock and haemorrhage. He also admitted that the post mortem examination was conducted by Dr. Basant Lal on the dead body of Naveen on 19.03.1999. He also admitted that Naveen died due to shock and haemorrhage due to fire arm injuries which were ante mortem in nature and were sufficient to cause death in ordinary course of nature. He also admitted that Dr. Basant Lal conducted post mortem examination on the dead body of Prahalad Singh on 19.03.1999. He also admitted that Prahalad Singh died due to shock and haemorrhage as a result of fire arm injuries. He also admitted that Dr. Basant Lal conducted the post mortem examination on the dead body of Krishan alias Giani. He also admitted that Krishan alias Giani died due to fire arm injuries, which were ante mortem in nature. He also admitted that the case property was deposited with MHC PS Sadar Hisar by Inspector Udey Singh on 19.03.1999. In answer to question No. 166, he categorically admitted that the occurrence had taken place in his presence, but he did not participate in the occurrence. The crime was committed by Ishwar Singh.

45. Ex. PK/21 is the opinion of the Additional Director, Finger Print Bureau, Haryana, Madhuban. According to the opinion, the photograped print marked E on photograph III mentioned in para-III (1) was superimposed but comparable and identical with left middle finger print of Chander Singh marked I on his sample paper dated 12.06.1999.

46. The Laboratory examination and result of FSL Ex. PCCC read

as under :-

LABORATORY EXAMINATION

Products of combustion of smokeless powder were detected from the barrels of weapons marked 12 bore DBBL gun W/1, country made pistol (chambered for 12 bore cartridges) W/2 and country made pistol (chambered for .315” cartridges) W/3. Test firings from W/1, W/2 and W/3 were done in the laboratory. Their firings mechanism were found in working order.

The class as well as individual characteristic marks present on cartridge cases C/1 to C/2 and bullet jacket pieces BC/1, BC/2, BC/3 were examined and compared with those of test fired cartridge cases and bullets of weapons marked W/1 to W/3 under stereo and comparison microscope.

Wads/pellets contained in parcels Nos. I, II, V, IX, XVII, XVIII, XXVIII, XXXV, XXXVIII, XXXXI, XXXXIV and XXXXVI were washed, dried, weighed and examined.

Clothes contained in parcels No. XVIII, XXIX were examined to detect the presence of gunshot discharge residue. Lead was detected from the margins of holes on Chunni and clothes in parcel XXIX and XXVIII. Clothes were also examined under stereo microscope.

Wads and pellets/bullets contained in parcels No. I, II, V, IX, XVII, XVIII, XXVIII, XXXII, XXXV, XXXVII, XXXXI, XXXXIV, XXXXVI were washed, dried, weighed and examined for their shape, size and bore.

RESULT

1. 12 bore DBBL gun W/1, country made pistol W/2 (chambered for 12 bore cartridges), country made pistol

W/3 (chambered for .315” cartridges) are fire arms as defined in Arms Act 54 of 1959. Their firing mechanism was found in working order.

2. 12 bore metal head of cartridge case (marked C/4) had been fired from country made pistol W/2 and not from any other fire arm even of same make and bore.

3. .315” fired cartridge case C/5 and bullet marked BC/3, Jacket BC/1 had been fired from country made pistol W/3 (chambered for .315” cartridges) and not from any other fire arm even of same make and bore/calibre because every fire arm has its own individual characteristic marks.

4. Jacket pieces marked BC/1 and BC/2 could form part of a .315” bullet.

5. Partially burnt cartridge case C/12 was found to be having percussion cap intact.

6. 12 bore fired cartridge cases C/2, C/6, C/7, C/10, C/11 have been fired from right barrel and cartridge cases C/1, C/3, C/8, C/9 have been fired from left barrel of DBBL gun W/1 and not from any other fire arm even of same make and bore because every fire arm has got its own individual characteristic marks.

7. The Holes of Chunni contained in parcel No. XVIII and ladies shirt contained in parcel No. XXIX have been caused by lead projectiles.

8. Wads/pellets contained in parcels Nos. I, II, V, IX, XVII, XVIII, XXVIII, XXXII, XXXV, XXXVIII, XXXXI, XXXXIV, XXXXVI were found to be of shotgun cartridges normally loaded in 12 bore cartridges.

9. Reports in original from Chemistry Division, Documents Division, Physics Division and Serology Divn. are enclosed herewith.

47. The Laboratory examination of FSL Ex.PDDD reads as under :-

“Laboratory examinations were carried out to detect the presence of blood on the exhibits. Blood thus detected was subjected to serological tests to determine its species of origin and group. Based upon these examinations the results obtained are given below :-

1. Exhibit-11 (Doga) was stained with blood stains.
2. Blood was detected in exh. 12 (Blood); exh. 13 (Blood) and exh. 14 (Blood).
3. Exh. 18 (Chunni) was stained with a few small blood stains.
4. Exh. 20 (Bed Sheet) was stained with large and small blood stains.
5. Blood was detected in exh. 3 (Blood Stained Earth); exh. 24 (Blood) and exh. 25 (Blood).
6. Traces of blood too small for serological analysis were detected on exhibit-26 (Kulhara).
7. Exhibit-27a (Pyjama) and exh. 27B (Banian) were stained with large and small blood stains.
8. Blood was detected on exhibit 28 (Pellets).
9. Exhibit-29a (Shirt); exh. 29b (Salwar); exh. 29c (Banian) and exh. 29d (Underwear) were stained with blood stains.
10. Blood was detected in exhibit 31 (Blood); exh. 32 (Bullet); exh. 34 (Blood) and exh. 37 (Blood); exh. 40 (Blood); exh. 43 (Blood) and exh. 45 (Blood).
11. Blood could not be detected on exh. 47a (Chappals); exh. 47b (Banian); exh. 47c (Underwear); exh. 48a (Chappal) and exh. 48b (Underwear).
12. Traces of blood too small for serological analysis were detected on exhibit-49a (Cover of Speedometer).

13. Blood could not be detected on exhibit 49b (Foot rests).
14. Exhibit-50 (Metallic Sheet) was stained with blood stains/smears.

48. The Laboratory examination of FSL Ex.PFFF reads as under :-

“Pieces of broken glass bangle marked exhibit-3 (a), exhibit-3 (b) exhibit-19, exhibit-30 (a) and exhibit-33 (a) were examined physically and under optical microscope. The following observations were made :

1. Pieces of broken glass bangles marked exhibit-3 (a) were found similar to the pieces of broken glass bangles marked exhibit-33 (a) in respect of colour, diameter, design, thickness, width, physical and microscopic appearance. They have same U.V. fluorescence.
2. Pieces of broken glass bangles marked exhibit-19 were found similar to the pieces of broken glass bangles marked exhibit-30 (a) in respect of colour, design, diameter, thickness, width, physical and microscopic appearance. They have same U.V. fluorescence.”

49. The opinion of FSL Ex.PGGG reads as under :-

“The questioned writings marked Q1 has been written in multiple operations with finger as writing instrument and it has not been possible to study the characteristics of writing in them. As such, it has not been possible to express a definite opinion regarding the authorship of writings 'ishwar' marked Q1 in comparison with standards marked S1 to S5.”

50. The result of Laboratory examination of FSL Ex.PHHH reads as under :-

- “1. Residues of kerosene were detected in exhibits-10, 21, 22, 33, 36 & 42.
2. Inflammable material could not be detected in exhibit-39.
3. No common poison could be detected in exhibit-16.”

51. The case of the prosecution, as discussed here-in-above, is that on 18.03.1999, Inspector Udey Singh was informed about the incident. He went to the spot. He saw dead bodies of Prahalad and Roshni lying below the bed. Naveen's body was lying on the bed. He went towards the back side of the house of accused Ishwar. He noticed Krishan alias Giani and Satpal sons of accused Ishwar lying dead on two different cots. The dead body of Krishna wife of accused Ishwar was lying on a different bed. Statement of PW.20 Chander was recorded in the hospital. The statement is Ex.DA. The police made recoveries. Bodies were sent for post mortem examination.

52. The post mortem examination on the bodies of Roshni, Satpal and Krishna was conducted by PW.14 Dr. Vijaypal Khanagwal. According to the post mortem report of Roshni, the cause of her death was cumulative effect of fire arm injuries and burns, which were ante mortem in nature. The death was immediate. The probable time that elapsed between death and post mortem was between 36 to 48 hours. The cause of death of Satpal was shock and haemorrhage as a result of fire arm injuries. The burn injuries were post mortem in nature. The death was immediate. The time between death and post mortem was between 36 to 48 hours. The cause of death of Krishna was also shock and haemorrhage. The death was immediate. The probable time that elapsed between death and post mortem was between 36

to 48 hours.

53. PW.15 Dr. Basant Lal Sirohiwal conducted post mortem examination on the bodies of Naveen, Prahalad and Krishan alias Giani. The cause of death of Naveen was shock and haemorrhage as a result of fire arm injury on the left side of chest. The burns were post mortem in nature. Injury was sufficient to cause death. According to the post mortem report of Prahalad, he died due to craniocerebral damage as a result of head injury consequent upon fire-arm injury to head. The probable time between injuries and death was immediate and between death and post mortem was between 36 to 48 hours. He proved the post mortem report. The cause of death of Krishan alias Giani was shock and haemorrhage as a result of fire arm injury to chest via injury No.1. This injury was ante mortem. However, the burn injuries were post-mortem in nature. The probable time between injury and death was immediate and between death and post mortem was between 36 to 48 hours.

54. PW.16 Dr. Ramesh Jain medico legally examined PW.20 Chander. He noticed as many as seven injuries on his body. He gave his opinion Ex.PT/5 opining Chander fit to make statement on application Ex.PT/4 made by the police. One metallic foreign body was removed from left axilia of the patient.

55. PW.17 Satbir Singh Tehsildar had taken thumb and finger impressions of PW.20 Chander. PW.19 Shri Sanjeev Arya, JMIC, Hisar, had recorded statement of Chander vide Ex.PU/3. The incident was witnessed by PW.20 Chander. He had categorically deposed that accused Satte had given a *kulhari* blow on the head of his father. The assailants piled up the

bodies and put them on fire. However, he regained consciousness and was removed to hospital. He also deposed that his statement was recorded by the Magistrate and the same was without any pressure or coercion. There was no occasion for Chander to falsely implicate his brother Ishwar Singh along with Satta. Satta alias Satte had made confessional statement Ex.PBB that he had committed the crime. The *kulhari* Ex.P-158 was recovered.

56. The prosecution has duly proved FSL reports Ex.PCCC, Ex.PDDD, Ex.PFFF, Ex.PGGG as well as Ex.PHHH. As per the report Ex.PDDD, traces of blood were detected on *kulhari* exhibit-26.

57. In his statement recorded under Section 313 Cr.P.C., appellant Satta alias Satte admitted that on the night intervening 17/18.03.1999, PW.20 Chander Singh was sleeping in one room of his house. He also admitted that he was also accompanying accused Ishwar Singh, who was armed with a DBBL gun. He also admitted that accused Ishwar Singh had fired at PW.20 Chander Singh. Chander Singh collapsed. Thereafter, Ishwar also fired at Roshni, Naveen and Prahalad Singh. He himself had given a *kulhari* blow on the head of Prahalad Singh, when he was entering the house of Chander. He admitted the preparation of inquest reports, including sending of bodies for post mortem examination as well as recovery of foreign from the body of Chander Singh. He also admitted that PW.14 Dr. Vijaypal Khanagwal and PW.15 Dr. Basant Lal Sirohiwal had conducted the post mortem examination. In answer to question No. 166, he admitted his presence on the spot.

58. Their Lordships of the Supreme Court in **Rafiq Ahmad alias Rafi Vs. State of Uttar Pradesh, (2011) 8 Supreme Court Cases 300** have

held that though statement of accused under Section 313 Cr.P.C. cannot be sole basis of his conviction, but it can be a relevant consideration for court, particularly when prosecution is able to establish chain of events in a case based on circumstantial evidence. Their Lordships have held as under :-

“66. The above circumstances have to be examined along with the statements of Ved Prakash (PW2) and Gyan Chand (PW4), the witnesses who had last seen the deceased with the appellant. The statements of the investigating officer (PW11) and the witnesses including Pyare Lal (PW3), in whose presence the dead body was recovered at the behest of the appellant, by means of recovery memo Ext. PW, Ex-Ka 3 are the other material pieces of evidence which would complete the chain of events and point undoubtedly towards the guilt of the accused. The accused, for the reasons best known to him, had taken up a stand of complete denial in his statement recorded under Section 313 Cr.P.C. dated 20.2.1981 and opted not to explain his whereabouts at the relevant time. Furthermore, he was a regular taxi driver at the stand of Agency Chauraha.

67. It is true that the statement under Section 313 Cr.P.C. cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of events. It is clearly established from the evidence on record that the deceased was a regular trader and used to come to Nehtaur from where he was picked up

by the appellant on the fateful day. These were certain definite circumstances clearly indicating towards the involvement of the appellant in the commission of the crime. The prosecution has been able to establish its case beyond reasonable doubt on the basis of the circumstantial evidence. There is no significant link which is missing in the case put forward by the prosecution.

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70. For the reasons afore-recorded, we are of the considered view that no prejudice has been caused to the appellant by his conviction for an offence under Section 302 IPC though he was initially charged with offences punishable under Section 396 IPC read with Section 201 IPC. Further, the nature of injuries, namely, three incised wounds, three abrasions and severing of the trachea, caused by a sharp-edged weapon as noticed by the High Court in para 34 of its judgment, indicate that the accused knew that the injury inflicted would be sufficient in the ordinary course of nature to cause death.

71. The 'prejudice' has to be examined with reference to the rights and/or protections available to the accused. The incriminating evidence had been clearly put to the accused in his statement under Section 313 Cr.P.C. The circumstances which constitute an offence under Section 302 were literally put to him, as Section 302 IPC itself is an integral part of an offence punishable under Section 396 IPC. The learned counsel appearing for the appellant has not been able to demonstrate any prejudice which the

appellant has suffered in his right to defence, fair trial and in relation to the case of the prosecution.”

59. Their Lordships of the Supreme Court in **Raj Kumar Singh alias Raju alias Batya V. State of Rajasthan, (2013) 5 Supreme Court Cases 722** have reiterated the principle to determine the extent to which statement recorded under Section 313 Cr.P.C. may be used against the accused. Their Lordships have held as under :-

“18. The evidence of Daulat Ram (PW.7), the driver had been to the extent that on 22.5.2001, the appellant had travelled with him to certain places and had slept in his jeep that night and did not go to his house, and the appellant could not furnish any explanation as to why he had slept in the jeep and did not go to his house. Therefore, his conduct was suggestive of the fact that the offence had been committed by him.

19. The trial court also doubted the conduct of the appellant for the reason that he had slept in the jeep though he was neither the driver of the jeep nor the servant of Daulat Ram (PW.7), the driver. The High Court had taken note of the appellant’s statement under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), wherein the appellant had replied that the aforesaid deposition was wrong, and held that explanation furnished by him was false.

20. The courts below have proceeded on the basis that there was no evidence of enmity against any of the witnesses which may lead to the presumption that the appellant has been falsely

implicated in the case.

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30. In a criminal trial, the purpose of examining the accused person under Section 313 Cr.P.C. is to meet the requirement of the principles of natural justice i.e. audi alteram partem. This means that the accused may be asked to furnish some explanation as regards the incriminating circumstances associated with him, and the court must take note of such explanation. In a case of circumstantial evidence, the same is essential to decide whether or not the chain of circumstances is complete. No matter how weak the evidence of the prosecution may be, it is the duty of the court to examine the accused, and to seek his explanation as regards the incriminating material that has surfaced against him. The circumstances which are not put to the accused in his examination under Section 313 Cr.P.C., cannot be used against him and have to be excluded from consideration.

*31. In **State of Maharashtra v. Sukhdev Singh (1992) 3 SCC 700**, this Court observed as under : (SCC p. 741, para 49)*

“49... if there is no evidence or circumstance appearing in the prosecution evidence implicating the accused with the commission of the crime with which he is charged, there is nothing for the accused to explain and hence his examination under Section 313 of the Code would be wholly unnecessary and improper. In such a situation the accused cannot be questioned

and his answers cannot be used to supply the gaps left by witnesses in their evidence.”

32. In **Mohan Singh v. Prem Singh (2002) 10 SCC 236**, this Court held : (SCC p. 245, para 30)

“30. The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution ... if the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

33. In **Dehal Singh v. State of H.P. (2010) 9 SCC 85**, this Court observed : (SCC p. 92, para 23)

“23. Statement under Section 313 of the Code of Criminal Procedure is taken into consideration to appreciate the truthfulness or otherwise of the case of the prosecution and it is not an evidence. Statement of an accused under Section 313 of the Code of Criminal Procedure is recorded without administering oath and, therefore, the said

statement cannot be treated as evidence within the meaning of Section 3 of the Evidence Act. The appellants have not chosen to examine any other witness to support this plea and in case none was available they were free to examine themselves in terms of Section 315 of the Code of Criminal Procedure which, inter-alia, provides that a person accused of an offence is a competent witness of the defence and may give evidence on oath in disproof of the charges. There is reason not to treat the statement under Section 313 of the Code of Criminal Procedure as evidence as the accused cannot be cross-examined with reference to those statements. However, when an accused appears as a witness in defence to disprove the charge, his version can be tested by his cross-examination.”

34. *In **State of M.P. v. Ramesh (2011) 4 SCC 786**, this Court held as under : (SCC p. 796, para 28)*

“28. The statement of the accused made under Section 313 CrPC can be taken into consideration to appreciate the truthfulness or otherwise of the prosecution case. However, as such a statement is not recorded after administration of oath and the accused cannot be cross-examined, his statement so recorded under Section 313 CrPC cannot be treated to be evidence within the

meaning of Section 3 of the Evidence Act. 1872. Section 315 CrPC enables an accused to give evidence on his own behalf to disprove the charges made against him. However, for such a course, the accused has to offer in writing to give his evidence in defence. Thus, the accused becomes ready to enter into the witness box, to take oath and to be cross-examined on behalf of the prosecution and/or of the accomplice, if it is so required.”

35. In **Rafiq Ahmad v. State of U.P. (2011) 8 SCC 300**, this Court observed as under : (SCC p. 331, para 67)

“67. It is true that the statement under Section 313 CrPC cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of events.”

36. In **Dharnidhar v. State of U.P. (2010) 7 SCC 759**, this Court held : (SCC p. 775, para 29)

“29. The proper methodology to be adopted by the Court while recording the statement of the accused under Section 313 CrPC is to invite the attention of the accused to the circumstances and substantial evidence in relation to the offence, for which he has been charged and invite his explanation. In other words, it provides an opportunity to an accused to state before the court as to what is the truth

and what is his defence, in accordance with law. It was for the accused to avail that opportunity and if he fails to do so then it is for the court to examine the case of the prosecution on its evidence with reference to the statement made by the accused under Section 313 CrPC.”

37. In **Ramnaresh v. State of Chhattisgarh (2012) 4 SCC 257**, this Court held as under :
(SCC p. 275, para 52)

“52. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 CrPC is upon the court. One of the main objects of recording of a statement under this provision of CrPC is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 CrPC, insofar as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law.”

38. In **Munish Mubar v. State of Haryana (2012) 10 SCC 464**, this Court, while dealing with the issue of the examination of the accused under Section 313 Cr.P.C. held, that the accused has a duty to furnish an explanation in his

statement under Section 313 Cr.P.C. as regards any incriminating material that has been produced against him. Such a view was taken in light of the fact that there existed evidence to show that the accused had parked his car at the Delhi Airport, and that the same had remained there for several hours on the date of commission of the crime in question. Thus, in light of the fact that such a fact had been established, and that such circumstances also simultaneously existed, the accused was expected to explain the reason for which he had gone to the airport, and why the car had remained parked there for several hours.

39. In **Ramnaresh**, this Court had taken the view that if an accused is given the freedom to remain silent during the investigation, as well as before the Court, then the accused may choose to maintain silence or even remain in complete denial, even at the time when his statement under Section 313 Cr.P.C. is being recorded. However, in such an event, the Court would be entitled to draw an inference, including such adverse inference against the accused, as may be permissible in accordance with law. While such an observation has been made, this part of the judgment must be read along with the subsequent observation of the court stating that if he keeps silent or furnishes an explanation, in both cases, the same can be used against him for rendering a conviction, in so far as it supports the case of the prosecution.

40. In **Brajendrasingh v. State of M.P.(2012) 4 SCC 289**, this Court held, that it is equally true

that a statement under Section 313 CrPC simpliciter cannot normally be made the basis for convicting the accused. But where the statement of the accused under Section 313 CrPC is in line with the case of the prosecution, then the heavy onus of providing adequate proof on the prosecution that is placed is to some extent reduced.

41. In view of the above, the law on the issue can be summarised to the effect that statement under Section 313 Cr.P.C. is recorded to meet the requirement of the principles of natural justice as it requires that an accused may be given an opportunity to furnish explanation of the incriminating material which had come against him in the trial. However, his statement cannot be made a basis for his conviction. His answers to the questions put to him under Section 313 Cr.P.C. cannot be used to fill up the gaps left by the prosecution witnesses in their depositions. Thus, the statement of the accused is not a substantive piece of evidence and therefore, it can be used only for appreciating the evidence led by the prosecution, though it cannot be a substitute for the evidence of the prosecution. In case the prosecution evidence is not found sufficient to sustain conviction of the accused, the inculpatory part of his statement cannot be made the sole basis of his conviction. The statement under Section 313 Cr.P.C. is not recorded after administering oath to the accused. Therefore, it cannot be treated as an evidence within the meaning of Section 3 of the Evidence Act, though

the accused has a right if he chooses to be a witness, and once he makes that option, he can be administered oath and examined as a witness in defence as required under Section 315 Cr.P.C. An adverse inference can be taken against the accused only and only if the incriminating material stood fully established and the accused is not able to furnish any explanation for the same. However, the accused has a right to remain silent as he cannot be forced to become witness against himself.

42. *We have considered the case in the light of the aforesaid settled legal propositions and reached the following inescapable inferences :*

42.1 to 42.5 x x x x x x x x x

42.6. *The High Court has taken the view that the appellant has also furnished a false explanation. Daulatram (PW.7) was a prosecution witness and the appellant has submitted that he has deposed falsely. Such a statement made by the appellant could not be held to be a false explanation.*

42.7 to 42.13 x x x x x x x x x”

60. In **Khairuddin and others Vs. State of West Bengal (2013) 5 Supreme Court Cases 753**, their Lordships of the Supreme Court have held that statement of the accused recorded under Section 313 Cr.P.C. may be used against him, not only because of what Section 313 (4) Cr.P.C. provides, but also because of law laid down by the Supreme Court in several pronouncements. Their Lordships have held as under :-

“14. That brings us to the cases of three other appellants viz. Monglu, Hafijuddin and Motilal Motin. None of them admittedly was named in the

FIR, which was lodged by PW1 Budhu Md. who was present on the spot and claims to have witnessed the occurrence. Absence of the names of these three appellants from the FIR which gave details of the incident and named several others who were allegedly participating in the occurrence assumes importance and would require a cautious approach towards the evidence. That is because omission of the names of those who are alleged to have participated in the commission of the crime would be a significant circumstance which cannot be lightly ignored. Possible false implication by subsequent deliberations and consultations to cast the net wider and accuse even those who may not have been actually present on the spot, cannot be ruled out. No explanation is in any case coming forth from the witnesses for the omission of the names of these appellant-accused. Having said that, we cannot ignore the fact that out of these three appellants, appellant Monglu Md. has in his statement under Section 313 CrPC answered Question No.14, as under :

“I am also a pattadar. A few days (4/5) before I had sown ‘tisi’ in my lands. On the day of the occurrence I heard that the gang of Akalu was ploughing our land. Then Isa Haque, myself, Hafij, Kusrat and Tamij went. We asked them not to do so. There began fighting. I was assaulted on my finger. Darbaru, Betu and Sudhu were ploughing. Kusrat (my elder brother) had a great fight with Darbaru. Then I also hit

Darbaru. Then I fled away.”

The above shows that appellant Monglu Md. was present on the spot at the time of the occurrence according to his own admission. Not only that, he had according to his own statement, participated in the incident and even assaulted the deceased Dabaru, before fleeing from the spot.

*15. That the statement of an accused made under Section 313 Cr.P.C. can be taken into consideration is not in dispute; not only because of what Section 313 (4) of the Code provides but also because of the law laid down by this court in several pronouncements. We may in this regard refer to the decision of this Court in **Sanatan Naskar v. State of W.B. (2010) 8 SCC 249** where this Court observed : (SCC pp. 258-59, paras 21-24)*

“21. The answers by an accused under Section 313 CrPC are of relevance for finding out the truth and examining the veracity of the case of the prosecution. ...

22. As already noticed, the object of recording the statement of the accused under Section 313 CrPC is to put all incriminating evidence to the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime

.... Once such a statement is recorded, the next question that has to be considered by the Court is to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

23. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) CrPC explicitly provide that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence for or against the accused in any other enquiry into or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.

24. Another important caution that courts have declared in the pronouncements is that conviction of the accused cannot be based merely on the statement made under Section 313 CrPC as it cannot be regarded as a substantive piece of evidence.”

*To the same effect is the decision of this Court in **Ashok Kumar v. State of Haryana (2010) 12 SCC 350.***

*16. Reference may also be made to the decision of this Court in **Brajendrasingh v. State of M.P. (2012) 4 SCC 289** where this Court said : (SCC p. 297, para 15)*

“15. It is a settled principle of law that the statement of an accused under Section 313 CrPC can be used as evidence against the accused, insofar as it supports the case of the prosecution. Equally true is that the statement under Section 313 CrPC simpliciter normally cannot be made the basis for conviction of the accused. But where the statement of the accused under Section 313 CrPC is in line with the case of the prosecution, then certainly the heavy onus of proof on the prosecution is, to some extent, reduced.”

17. Time now to examine whether Monglu’s participation in the crime is proved by the prosecution evidence adduced at the trial. PW-4 Samsul has in his deposition specifically stated that Monglu was one of those who had assaulted deceased Darbaru. Similarly, PW-5 Monglu Md.,

an injured witness, has also implicated Appellant 16, and stated that “Darbaru was assaulted by Yusuf, Bhaka, Monglu and Jabbar. I also stated to the IO the fact regarding assault on Darbaru...” PW-6 Lal Khan is yet another injured witness who incriminates Appellant 16 Monglu. He stated, “At first Jabbar, Yusuf Amin and Monglu assaulted Darbaru with a dagger, ballam, etc. who sustained multiple injuries on his person and succumbed to such injuries...” PW-17 Bholu Md. is also an injured witness who corroborated the version given by the other eye-witnesses and stated “Sabdul, Khairuddin, Ishahaque, Nasiruddin, Monglu and others assaulted Darbaru severely.”

18. It is evident from the above that Appellant 16 Monglu’s presence on the spot and participation in the commission of the offence is proved by the evidence led by the prosecution and supported by his own statement recorded under Section 313 CrPC. That is not, however, true about the remaining two appellants, namely, Hafijuddin and Motilal who were neither named in the FIR nor is there any cogent evidence to suggest their complicity or participation in the commission of the offence. In the circumstances, therefore, while the appeal filed by Monglu shall have to be dismissed, that filed by Hafijuddin and Motilal shall have to be allowed giving to the said two appellants also the benefit of doubt.”

61. Their Lordships of the Supreme Court in **Ashok Debbarma alias Achak Debbarma Vs. State of Tripura (2014) 4 Supreme Court**

Cases 747 have held that statements recorded under Section 313 Cr.P.C. can be used for corroboration along with other evidence for conviction. Their Lordships have held as under :-

“23. The learned counsel appearing for the accused has raised the question that incriminating questions were not put to the accused while he was examined under Section 313 CrPC. The object of Section 313 CrPC is to empower the court to examine the accused after evidence of the prosecution has been taken so that the accused is given an opportunity to explain the circumstances which may tend to incriminate him. The object of questioning an accused person by the court is to give him an opportunity of explaining the circumstances that appear against him in the evidence. In the instant case, the accused was examined in the Court on 23.4.2005 by the Additional Sessions Judge, West Tripura, Agartala, which, inter alia, reads as follows :-

Question : It transpires from the evidence of PWs 10, 11 and 13 that they had recognised you amongst the extremists. Is it true?

Answer : False.

Question : It transpires from the evidence of the above witnesses that Dulal, Ajit, Saraswati and Hemender sustained severe bullet injuries by the firing of you and your associates. What do you have to say regarding this?

Answer : Yes

Question : It is evident from the evidence of these witnesses and other information that on that night Sachindra Sarkar, Archana Garkar, Dipak Sarkar, Gautam Sarkar, Shashi Sarkar, Prosenjit Sarkar, Saraswati Biswas, Tulsi Biswas, Narayan Das, Mithu Das, Bitu Das, Khelan Sarkar, Sujit Sarkar, Bipul Sarkar and Chotan Sarkar were killed by the bullets of firearms and fire. What do you have to say regarding this?

Answer : (blank).

The second question put to the accused was that, from the deposition of PW10, PW11, PW13, it had come out in evidence that it was due to the firing of the accused and his associates that Dulal, Ajit, Saraswati and Hemender had sustained severe bullet injuries, to which the answer given by the accused was “Yes”. In other words, he has admitted the fact that in the incident, Dulal, Ajit, Saraswati and Hemender had sustained severe bullet injuries by the firing of the accused and his associates. Further, for the question that from the evidence of those witnesses and other information, on that night, Sachindra Sarkar, Archana Garkar, Dipak Sarkar, Gautam Sarkar, etc. were killed by the bullets of firearms and fire, the accused kept silent.

24. We are of the view that, under Section 313

*statement, if the accused admits that from the evidence of various witnesses, four persons sustained severe bullet injuries by the firing by the accused and his associates, that admission of guilt in Section 313 statement cannot be brushed aside. This Court in **State of Maharashtra v. Sukhdev Singh (1992) 3 SCC 700** held that since no oath is administered to the accused, the statement made by the accused under Section 313 CrPC will not be evidence stricto sensu and the accused, of course, shall not render himself liable to punishment merely on the basis of answers given while he was being examined under Section 313 CrPC. But, sub-section (4) says that the answers given by the accused in response to his examination under Section 313 CrPC can be taken into consideration in such an inquiry or trial. This Court in **Hate Singh Bhagat Singh v. State of Madhya Bharat, AIR 1953 SC 468** held that the answers given by the accused under Section 313 examination can be used for proving his guilt as much as the evidence given by the prosecution witness. In **Narain Singh v. State of Punjab (1963) 3 SCR 678**, this Court held that when the accused confesses to the commission of the offence with which he is charged, the court may rely upon the confession and proceed to convict him.*

25. This Court in **Mohan Singh v. Prem Singh (2002) 10 SCC 236** held that : (SCC p. 244, para 27)

“27. The statement made in defence by the accused under Section 313 CrPC can

certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 CrPC cannot be made the sole basis of his conviction.”

*In this connection, reference may also be made to the judgments of this Court in **Devender Kumar Singla v. Baldev Krishan Singla (2005) 9 SCC 15** and **Bishnu Prasad Sinha v. State of Assam (2007) 11 SCC 467**. The above-mentioned decisions would indicate that the statement of the accused under Section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but all the same the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.*

26. We may, however, indicate that the answers given by the accused while examining him under Section 313, fully corroborate the evidence of PW10 and PW13 and hence the offences levelled against the appellant stand proved and the trial court and the High Court have rightly found him guilty for the offences under Sections 326, 436 and 302 read with Section 34 IPC.”

62. In the instant case, evidence adduced by the prosecution is duly corroborated by the statement made by appellant Satta alias Satte under Section 313 Cr.P.C. The answer offered by him, in his statement under Section 313 Cr.P.C., to some questions were evasive and in answer to

certain questions, he has admitted his involvement in the crime, including his presence and use of weapon, i.e. *kulhari*, by him.

63. Accordingly, the prosecution has proved its case against appellant Satta alias Satte beyond reasonable doubt. The trial court has rightly convicted and sentenced him. No ground is made out for enhancement of sentence, as sought in CRA-D-234-DB of 2004 filed by the State of Haryana.

64. Consequently, the impugned judgment dated 18.12.2003 and order dated 24.12.2003 qua Satta alias Satte are upheld. CRA-D-234-DB of 2004 qua Ishwar Singh, filed by the State of Haryana, already stood abated, as he died during the pendency of the appeal. However, CRA-D-234-DB of 2004, filed by the State of Haryana, qua Satta alias Satte is dismissed. CRA-D-292-DB of 2004, filed by appellant Satta alias Satte, is also dismissed. He is on bail. His bail bond and surety bond are cancelled. He is directed to surrender before the concerned Chief Judicial Magistrate forthwith to undergo remaining part of his sentence.

(RAJIV SHARMA)
JUDGE

January 20, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes