

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

(1)

CRA-911-DB of 2005

Subhash alias Billu

.... Appellant

Versus

State of Haryana

..... Respondent

(2)

CRA-D-145-DB of 2006

Akhilesh

.... Appellant

Versus

State of Haryana

..... Respondent

(3)

CRA-D-489-DB of 2007

Rajesh

.... Appellant

Versus

State of Haryana

..... Respondent

Reserved on : 19.02.2020

Date of decision : 02.03.2020

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. N.S. Shekhawat and Mr. Sahil Gupta, Advocates,
for the appellants
in CRA-911-DB-2005 and CRA-D-145-DB-2006.

Mr. J.S. Dahiya, Advocate,
for the appellant in CRA-D-489-DB-2007.

Mr. Vivek Saini, DAG, Haryana.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-911-DB-2005, CRA-D-145-DB-2006 and CRA-D-489-DB-2007, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment dated 16.12.2005 and order dated 17.12.2005, rendered by learned Additional Sessions Judge, Panipat, in Sessions Case No. 35 of 2004, dated 05.02.2003/24.11.2004. Appellants Subhash alias Billu, Akhilesh and Rajesh were charged with and tried for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (for short, 'IPC') and Section 25 of the Arms Act. They were convicted and sentenced under Section 302 read with Section 34 IPC to undergo rigorous imprisonment for life and to pay a fine of ₹ 10,000/- each, and in default of payment of fine to undergo further rigorous imprisonment for a period of two years. Appellant Rajesh was also convicted and sentenced under Section 25 of the Arms Act to undergo rigorous imprisonment for one year and to pay a fine of ₹ 2,000/-, and in default of payment of fine to undergo further rigorous imprisonment for a period of six months. The substantive sentences awarded to appellant Rajesh were ordered to run concurrently.

3. The case of the prosecution, in a nutshell, is that on 23.10.2002,

Rajdeep complainant along with his friends Naveen son of Subhash, Manish son of Umed Singh and Subhash son of Bhim Singh was harvesting paddy in the field of Rajiv son of Subhash. At about 6.15 PM, the complainant along with deceased Rajiv was going to the fields of the former in order to take a bath on the tubewell. When they reached near the school under construction, accused Rajesh, Akhilesh and Billu were found standing inside the gate of the school with a motor-cycle. Rajesh called Rajiv in order to talk to him. Rajiv proceeded towards the boundary of the school. The complainant followed him. Immediately after Rajiv entered the school premises, Akhilesh caught hold of him from behind and Billu exhorted that it was the right time to finish him. He should not escape. Rajesh took out a knife from the right side of his pant and stabbed Rajiv in the left side of abdomen. Rajiv raised alarm. The complainant got puzzled. Billu also hurled a *lathi* towards the complainant. However, the complainant snatched the same from him. Rajiv fell down. In the meantime, Manish son of Umed Singh also reached the place of occurrence. Rajesh along with knife and his companions ran away from the spot. The complainant started to look after Rajiv. Subhash son of Bhim Singh and Shamsher son of Anoop Singh also reached the spot. The motor-cycle of the assailants remained at the spot. The motive of the crime was that about ten days prior to the occurrence, Nanha son of Ranbir, who was a friend of the assailants, had abused Rajiv under the influence of liquor. Rajiv gave him beatings. He wanted to take revenge. The injured was taken to Civil Hospital, Panipat. He was declared 'brought dead'. Statement of complainant Rajdeep was recorded vide Ex.PA. FIR Ex.PA/1 was registered. The police visited the place of occurrence and

prepared its rough site plan Ex.PO. Body was sent for post-mortem examination. The knife recovered from accused Rajesh was sent for FSL examination. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They also examined four witnesses in their defence.

5. The appellants were convicted and sentenced, as noticed above. Hence, these appeals.

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

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

8. PW.8 Dr. Arun Sehgal testified that on 23.10.2002 at 9.20 PM, he sent ruqa Ex.PG to Incharge Police Post Bus Stand, Panipat.

9. PW.10 Dr. Y.P. Singhmar along with Dr. Jai Parkash conducted the post-mortem examination on 24.10.2002 at 11.00 AM. They noticed the following injuries on the body of the deceased :-

- “1. Multiple abrasions of varying size and shape on left foot medial aspect and medial aspect of ankle joint left.
2. Incised wound 3.0 cm x 1.5 cm over left hypochondriac region, 1.5 cm below left sub-costal margins and 7 cms lateral to umbilicus. A portion of small intestine was

coming out of the wound. Wound was obliquely placed. Corresponding cut was present on shirt. Corresponding cut was present in underlying muscles, mesentery and vessels. Abdominal cavity was full of dark fluid blood. 2 cms long and 1 cm deep cut was present on anterior surface of left kidney.”

The cause of death was shock and haemorrhage. The injuries were ante-mortem in nature. The probable time that elapsed between injuries and death was variable and between death and post-mortem examination was within 4 hours to 36 hours. He proved the post mortem report Ex.PJ/1. In his cross-examination, he admitted that the inquest proceedings were not conducted in his presence. He also admitted that in column No.10 of the inquest report, only one injury was mentioned. He did not remember whether the knife shown to him at the time of presentation of application Ex.PM, was stained with blood or not. The knife was in sealed condition when it was produced before him. Injury No.1 did not contribute to death. Injury No.1 was possible on account of a fall after receipt of injury No.2.

10. PW.1 Rajdeep deposed that on 23.10.2002, he along with Rajiv, Naveen, Manish and Subhash was harvesting the paddy crop in the fields of Subhash. They were free by 5.45 PM. He and Rajiv were going to take bath at the tubewell in his fields. Government Middle school was in the way. When they reached there, they saw all the three accused namely Rajesh, Akhilesh and Subhash alias Billu standing inside the school. They were having motor-cycle. When they reached near the gate of the school, Rajesh accused called Rajiv inside stating that he had some work with him. Rajiv entered the school. He also followed him. When Rajiv went inside the

school, Akhilesh accused caught hold of him from behind and Billu accused gave a *lalkara* that he should not be spared. Thereafter, Rajesh accused took out a knife from the right side pocket of his pants and inflicted knife blow in the abdomen on the left side of Rajiv. Rajiv collapsed. Thereafter, Subhash alias Billu accused, who was armed with *lathi*, came towards him and assaulted him with *lathi*. He warded off the *lathi* blow and snatched the *lathi* from Subhash alias Billu. Manish also reached the spot. Accused ran away from the spot. In the meanwhile, Subhash, father of Rajiv, and Shamsheer also came there. They lifted Rajiv and took him to Civil Hospital, Panipat in a tractor. He further deposed that one Nanha son of Ranbir resident of Puthar was friend of the accused. About ten days prior to the occurrence, Nanha had abused Rajiv after consuming liquor. Rajiv had given him beatings. Accused wanted to take revenge of that incident. In his cross-examination, he deposed that Rajiv was not his relative. He was his friend. He had noticed the accused standing in the school at a distance of about 8-10 *lathis* i.e. 35 feet. The motor-cycle was parked inside the school. When Rajiv went inside the school, he was at a distance of 20 feet from him. Akhilesh had caught hold of Rajiv from his both arms from behind. Subhash accused was at a distance of about 15 feet at that time. Rajesh had inflicted only one knife blow to Rajiv. He had not received any injury in the occurrence. The incident lasted for about 4-5 minutes. He denied the suggestion that Rajesh and Akhilesh were attacked by Rajiv and two unknown persons and in exercise of right of their self defence, Rajiv was given injury.

11. PW.2 Manish Kumar deposed that on 23.10.2002 at about 6.30

PM, he went towards the side of school for stroll. He heard the noise. He saw Akhilesh accused had caught hold of Rajiv by his hands from behind. Rajesh took out a knife from the pocket of his pants and inflicted blow with the same on the left side of abdomen of Rajiv. On receipt of knife blow, Rajiv collapsed. Billu alias Subhash accused inflicted *lathi* blow on the person of Rajdeep, who snatched it and gave its blow to that accused in his self defence. When accused were fleeing, he also threw stones on them which hit them. Accused left their motor-cycle on the spot. Rajiv was shifted to Civil Hospital in a tractor. In his cross-examination, he deposed that his statement was recorded by the police on the next morning. He had stated before the police that Rajdeep after snatching the *lathi* from Subhash accused had inflicted injury to Subhash and Rajesh accused in his self defence. He was confronted with his statement Ex.DA, wherein it was not so recorded. He did not inform the police regarding the occurrence.

12. PW.9 Jagbir Singh Constable prepared the scaled site plan Ex.PH.

13. PW.11 SI Rohtash Singh deposed that he was present at bus stand Israna along with HC Ramesh Kumar. A V.T. message was received that Rajesh and Akhilesh were admitted in Government Hospital, Panipat. He went to Government Hospital, Panipat. Rajdeep complainant met him at the gate of the hospital. He presented an application Ex.PA before him. He made endorsement Ex.PA/3 over the same and sent it to police station Israna. He went to the mortuary. Inquest report Ex.PL was prepared. He went to the hospital and moved an application to the Medical Officer about the fitness of Rajesh and Akhilesh accused for making statement. The

doctor informed that the accused had been referred to PGI Rohtak. Then he went to village Puthar to inspect the scene of occurrence. Photographer was summoned. Complainant Rajdeep produced one *lathi*. On 24.10.2002, he reached Bus Stand Israna. Thereafter, he went to PGIMS Rohtak. He moved an application seeking opinion of the doctor about the fitness of accused Rajesh and Akhilesh to give statement. The doctor reported that they had been discharged from the hospital. On 26.10.2002, he along with HC Ramesh Kumar and Constable Daya went to village Puthar. He arrested accused Subhash from his house. Accused Rajesh was interrogated on 17.11.2002. He made disclosure statement Ex.PQ, on the basis of which knife Ex.P10 was recovered. Its rough sketch was prepared. On 11.12.2002, on the instructions of SHO, he took the knife from the MHC and went to General Hospital, Panipat, to seek opinion. He moved an application Ex.PM and produced the same along with the parcel containing the knife before the doctor. The doctor, after opening the parcel and after examination of the knife, gave his opinion Ex.PM/1 on application Ex.PM. The knife was again sealed by the doctor with his seal and handed over back to him. He deposited the same with the MHC. In his cross-examination, he admitted that he received the V.T. message regarding the admission of accused Rajesh and Akhilesh in Civil Hospital with multiple injuries. He also collected the ruqa regarding the aforesaid accused from Police Post Bus Stand, Panipat. Ex.DB is the V.T message and Ex.DA is the ruqa. Ex.DD is the application moved by him before the Medical Officer, Government Hospital, Panipat, seeking opinion regarding the fitness of accused Rajesh and Akhilesh. The doctor concerned made his endorsement at point A on

application Ex.DD that both the injured were referred to PGIMS Rohtak. He did not collect the MLRs of injured Rajesh and Akhilesh from Civil Hospital, Panipat on that day or thereafter. He also moved an application Ex.DC in PGIMS Rohtak seeking opinion regarding the fitness of Akhilesh and an application Ex.DE regarding accused Rajesh. He did not collect the medical record of accused Rajesh and Akhilesh from PGIMS, Rohtak. Volunteered stated that the doctor had told him that after the treatment, accused Rajesh and Akhilesh had left PGIMS, Rohtak. He neither collected any medical evidence concerning the injuries on the persons of accused Rajesh and Akhilesh nor he could tell how many injuries were sustained by both these accused and what was the nature of those injuries. A court question was put to him during his cross-examination, whether he had collected any evidence during the period the investigation remained with him as to how accused Rajesh and Akhilesh sustained injuries. His answer was that he had not collected any evidence in this regard nor recorded the statement of any person, including the accused. However, it came in his investigation that accused had received injuries while running away from the spot. He did not seek opinion of any doctor whether the injuries on the person of accused Rajesh and Akhilesh were possible on account of fall while running. Though he had seized the motor-cycle, but he did not collect any documentary evidence regarding its ownership. He did not verify the ownership of the motor-cycle from the Registration Authority.

14. PW.12 Naresh Kumar SI/SHO, Police Station Sadar Panipat testified that on 28.10.2002, he was posted as SHO, Police Station Israna. A secret information was received that accused Akhilesh was standing at

Mandi Puthar crossing. He was arrested. He was interrogated. Accused Rajesh was arrested from Civil Hospital, Gohana. His foot was plastered. During interrogation, he made a disclosure statement Ex.PQ, on the basis of which he got recovered the knife. Sketch of the knife was prepared vide Ex.PR. The knife was taken into possession vide memo Ex.PR/1. On 10.12.2002, site plan of the scene of occurrence was got prepared. In his cross-examination, he admitted that there was no mention of the injuries in the disclosure statement made by accused Rajesh. The place of recovery was at a distance of about 30 paces from the office of Tehsildar and 20 paces from the metalled road. No body was joined prior to the recovery from any of the villages falling between Gohana to Israna or from the houses nearby the place of recovery. The earth was dug by the accused with the help of stones lying nearby. No blood stains were visible on the blade of the knife. He moved an application to the doctor for medico legal examination of accused persons. The doctor gave in writing that the accused had already been medico legally examined and they were having the same very injuries as mentioned in the MLRs. He did not take any specific opinion from the doctor about the weapon of injuries and duration of injuries on the persons of the accused. He admitted that the ruqa sent by the doctor about the admission of accused Akhilesh and Rajesh was not attached with the report under Section 173 Cr.P.C. The same was lying in the police file. Ex.DA is the ruqa. The photo copies of the MLRs of the accused were lying in the police file. Copies of the MLRs are Mark A and Mark B, which relate to Rajesh and Akhilesh, respectively. He admitted that as per MLRs, accused Rajesh was having five injuries on his person. Accused Akhilesh was

having eight injuries on his person. The V.T message received from Police Post Bus Stand was also lying in the police file. That V.T message is Ex.DB. The application moved by the earlier Investigating Officer before the doctor for taking opinion about the fitness of the accused was also lying in the police file. Separate applications were made in Civil Hospital, Panipat and PGIMS, Rohtak. Those applications are Ex.DC, Ex.DD and Ex.DE. He did not take into possession the medical record of the accused persons from PGIMS, Rohtak. After arresting the accused, he also got them medico legally examined. Those MLRs were also available in the police file. The Medical Officer had given his reports Mark C, Mark D and Mark E on the applications Ex.DF, Ex.DG and Ex.DH, moved by the police.

15. DW.1 Dr. Shiv Kumar deposed that he was posted at Civil Hospital, Panipat on 23.10.2002. Rajesh son of Mahabir was brought in the hospital. He medico legally examined the patient at 7.50 PM on 23.10.2002. There was alleged history of assault on 23.10.2002. He noticed the following injuries on the person of Rajesh :-

- “1. A lacerated wound 1 cm x 1 cm bone deep over the anterior surface of lower part of right leg. Fresh bleeding was present. It was 7 cms above the right medial malleolus. The injury was advised for X-ray examination.
2. A reddish diffused swelling 7 cms x 7 cms over the upper 1/3rd of right shin was present. Movement of right knee joint was restricted. Advised X-ray examination.
3. A lacerated wound 7 cms x 0.5 cm bone deep over the scalp, over the left anterior quadrant starting from 2 cms above the hair line. Fresh bleeding was present. Advised for X-ray examination.

4. A lacerated wound 7 cms x 0.5cm bone deep over the right parietal eminence 9 cms above the right pinna. Fresh bleeding was present. Injury was advised for X-ray examination.
5. A reddish diffused swelling over the upper 1/3rd of dorsal aspect of right forearm of the size 5 cms x 3.5 cms. Local tenderness was present. Injury was advised for X-ray examination.”

All the injuries were caused by blunt weapon within probable duration of six hours. All the injuries were kept under observation. He proved MLR Ex.DJ. On the same day, Akhilesh son of Sehaj Ram was also medico legally examined with alleged history of assault on 23.10.2002. He noticed following injuries on the person of Akhilesh :-

- “1. A lacerated wound 2.5 cms x 0.5 cm bone deep over the right mastoid region. Fresh bleeding was present. Injury was advised for X-ray examination and kept under observation.
2. A diffused reddish swelling 5 cms x 5 cms over the dorsal aspect of lower 1/3rd of right forearm, 2 cms above the wrist joint. Local tenderness was present. Injury was advised for X-ray examination and kept under observation.
3. A reddish contusion 7 cms x 2.5 cms over the dorsal aspect of upper 1/3rd of left forearm.
4. A reddish abrasion-cum-contusion 3.5 cms x 3.5 cms over upper 1/3rd of right shin, 5 cms below the lower border of patella. Injury was advised for X-ray examination.
5. A reddish diffused swelling 3.5 cms x 3.5 cms over the dorsal aspect of upper 1/3rd of right forearm. Local tenderness was present. Injury was advised for X-ray examination.

6. A reddish contusion 5 cms x 5 cms over the lateral aspect of upper 1/3rd of left arm.
7. A reddish contusion 7 cms x 2.5 cms over the lower part of left back 2 cms lateral to midline.
8. A diffused reddish swelling over vertex 3 cms x 3 cms. Local tenderness was present. Injury was advised for X-ray examination.”

All the injuries were result of blunt weapon and the probable duration of injuries was within six hours. Injuries No.3, 6 and 7 were declared simple, while rest of the injuries were kept under observation. He proved MLR Ex.DK. Since condition of Akhilesh was serious, therefore, he was referred to PGIMS, Rohtak, for management, on 23.10.2002. Patient Rajesh was referred to PGIMS, Rohtak, for management, on his request. Ex.DA ruqa was sent by him to the police regarding admission of Rajesh and Akhilesh in Civil Hospital, Panipat, with the alleged history of assault with multiple injuries. It was sent by him at 8.10 PM on 23.10.2002. The injuries received by both the patients were possible with *lathis* and *dandas* and iron rod as well. In his cross-examination, he admitted that no time was mentioned in both the bed head tickets at the time of referring the patients to PGIMS, Rohtak. He also admitted that if Rajesh injured had not requested for referring him to PGIMS, Rohtak, they would not have referred him to PGI, Rohtak, or any other hospital. Injuries No.1 and 8 on the person of Akhilesh mentioned in MLR Ex.DK are the head injuries and on account of the aforesaid injuries, Akhilesh was referred to PGIMS, Rohtak.

16. DW.2 Dr. S.S. Gupta deposed that on 24.10.2002, he was posted as Medical Officer in Civil Hospital, Gohana. Patient, namely Rajesh, was admitted in Civil Hospital, Gohana with diagnosis of multiple

injuries with compound and comminuted fracture tibia right with injuries on scalp. He was admitted vide C.R No. 2869. As per the past history of the patient, he had got treatment from Civil Hospital, Panipat and thereafter from PGIMS, Rohtak. The patient was discharged on 08.11.2002. In his cross-examination, he deposed that he had not brought the file regarding the admission of Rajesh in Gohana Hospital. He admitted that he had not seen the X-ray report in the Court.

17. DW.3 Dr. R.C. Siwach deposed that on 23.10.2002, he was the head of unit 12/3 of Ortho Department in PGIMS, Rohtak along with Dr. Vikas Yadav and Dr. Neeraj Gupta. As per the discharge card Ex.DO, patient Rajesh was admitted on 23.10.2002 in the aforesaid unit with the diagnosis of fracture tibia right side comminuted. He was discharged on 24.10.2002. Similarly, Akhilesh was admitted on 23.10.2002. He was discharged on the same day.

18. DW.4 Sumir Kumar deposed that patients bearing C.R. No. 289830 and 289831 were admitted in Medical College Hospital, Rohtak, on 23.10.2002 in Emergency ward.

19. The case of the prosecution is that on 23.10.2002 at about 6.15 PM, PW.1 Rajdeep and deceased Rajiv were going to take bath on the tubewell. When they reached near the Government Middle School, appellant Rajesh summoned Rajiv inside the school compound. Thereafter, appellant Akhilesh caught hold of arms of Rajiv from behind. Appellant Subhash alias Billu exhorted to kill him. Thereafter appellant Rajesh gave a knife blow in the abdomen of Rajiv. Rajiv was removed to Civil Hospital, Panipat. The motive attributed to the appellants is that Nanha, the friend of the

appellants, had abused Rajiv under the influence of liquor. Rajiv gave beatings to Nanha. In order to settle the score, the appellants attacked Rajiv. This incident had happened ten days before 23.10.2002.

20. PW.1 Rajdeep is the eye witness. He had seen appellant Rajesh giving knife blow on the abdomen of Rajiv. According to him, PW.2 Manish Kumar also came on the spot and Rajiv was removed to Civil Hospital, Panipat. In his examination-in-chief, he deposed that he had snatched *lathi* from Subhash alias Billu and inflicted *lathi* blow on the person of Rajesh. PW.2 Manish Kumar, in his examination-in-chief, deposed that Rajesh gave a knife blow to Rajiv. Rajiv fell down. Billu alias Subhash inflicted *lathi* blow on the person of Rajdeep. Rajdeep snatched the *lathi* and gave its blow to that accused in his self defence. He also threw stones on the appellants, which hit them.

21. The case set up by the appellants is that Rajesh and Akhilesh were attacked by Rajiv and two un-known persons. They received multiple injuries and in exercise of their right to self defence, Rajiv was given injuries by them.

22. PW.11 Rohtash Singh SI deposed that a V.T. message was received that Rajesh and Akhilesh were admitted in Government Hospital, Panipat. He went to Government Hospital, Panipat. Rajdeep complainant met him at the gate of the Government Hospital, Panipat. He submitted application Ex.PA. He also went to the hospital and moved an application before the Medical Officer about the fitness of Rajesh and Akhilesh for making statement. The doctor informed that they had been referred to PGIMS, Rohtak. In his cross-examination, he admitted that he had received

V.T message regarding admission of Rajesh and Akhilesh in Civil Hospital with multiple injuries. He collected the ruqa. Ex.DB is the V.T. message and Ex.DA is the ruqa. An application Ex.DD was moved by him before the Medical Officer, Government Hospital, Panipat, seeking opinion regarding the fitness of Rajesh and Akhilesh. The doctor concerned made his endorsement at point A on the application Ex.DD that both the injured were referred to PGIMS, Rohtak. He did not collect the medical record of Rajesh and Akhilesh from PGIMS, Rohtak. A court question was put to him whether he had collected any evidence during the period the investigation remained with him as to how accused Rajesh and Akhilesh sustained injuries. His answer was that he neither collected any evidence in this regard nor recorded the statement of any person, including the accused. He did not seek opinion of any doctor as to whether the injuries on the person of Rajesh and Akhilesh were possible on account of fall while running.

23. PW.12 Naresh Kumar SI deposed that he had moved application to the doctor for medico legal examination of the accused persons. The doctor gave in writing that the accused had already been medico legally examined and they were having the same very injuries, as mentioned in their MLRs. He did not take any specific opinion from the doctor about the weapon of injuries and duration of injuries on the persons of the accused. He admitted that as per the MLRs, appellant Rajesh was having five injuries on his person and appellant Akhilesh was having eight injuries on his person. The V.T message received from Police Post Bus Stand was lying in the police file. That V.T message is Ex.DB. The application moved by the earlier Investigating Officer before the doctor for

taking opinion about fitness of the appellants was also lying in the police file. Separate applications were submitted in Civil Hospital, Panipat and PGIMS, Rohtak. He did not take into possession the medical record of the appellants from PGIMS, Rohtak. After arresting the appellants, he also got them medico legally examined. The applications moved by the police are Ex.DF, Ex.DG and Ex.DH and the reports made by the Medical Officer on the same are Mark C, Mark D and Mark E. He did not collect any proof of ownership of the motor-cycle used in the occurrence.

24. DW.1 Dr. Shiv Kumar had noticed as many as five injuries on the person of appellant Rajesh and eight injuries on the person of appellant Akhilesh. The injuries received by them were due to assault on 23.10.2002. Since condition of Akhilesh was serious, he was referred to PGIMS, Rohtak. Ex.DA ruqa was sent to the police regarding admission of Rajesh and Akhilesh in Civil Hospital, Panipat. DW.2 Dr. S.S. Gupta deposed that appellant Rajesh was admitted in Civil Hospital, Gohana, on 24.10.2002 with diagnosis of multiple injuries with compound and comminuted fracture tibia right with injuries on scalp. He was treated earlier in Civil Hospital, Panipat and PGIMS, Rohtak. He was discharged on 08.11.2002. The discharge slip is Ex.DL.

25. The police though had received information about the injuries suffered by appellants Rajesh and Akhilesh and ruqa Ex.DA was sent by DW.1 Dr. Shiv Kumar to the police, but FIR was not registered. Appellant Rajesh had received five injuries and appellant Akhilesh had received eight injuries. These injuries are not self inflicted. These were declared to be result of assault made on 23.10.2002. Appellant Rajesh was diagnosed of

multiple injuries with compound and comminuted fracture tibia right with injuries on scalp.

26. The plea taken by the appellants is that it was a case of self defence. They have relied upon the statements of DW.1 Dr. Shiv Kumar, DW.2 Dr. S.S. Gupta, DW.3 Dr. R.C. Siwach and DW.4 Sumir Kumar to establish that appellants Rajesh and Akhilesh had also received numerous injuries, including fracture.

27. It appears from the evidence discussed above that a free fight had taken place. Rajiv was inflicted a knife blow by appellant Rajesh. The knife was recovered on the basis of disclosure statement made by Rajesh. The cause of death was shock and haemorrhage. PW.1 Rajdeep in his examination-in-chief admitted that he had inflicted *lathi* blow on the person of appellant Rajesh. However, the fact of the matter is that the prosecution has not explained the injuries received by appellants Rajesh and Akhilesh in the same incident on 23.10.2002. The police was required to register a cross FIR on the basis of ruqa sent to it by DW.1 Dr. Shiv Kumar. The motive attributed is that Rajiv had given beatings to Nanha, friend of the appellants, about ten days prior to the occurrence. However, Nanha was not cited as witness. The plea raised by the appellants that the injury was inflicted by Rajesh in self defence cannot be accepted. The appellants have exceeded their right to private defence, since Rajiv was given knife blow in the abdomen by appellant Rajesh.

28. Learned counsel appearing on behalf of the appellants have vehemently argued that this case would fall within the ambit of Section 304 Part II IPC. However, we are of the considered opinion that the appellants

had the common intention to cause the death of Rajiv. Thus, this case would fall within the ambit of Section 304 Part I IPC.

29. Accordingly, all these appeals are partly allowed. The conviction of the appellants, as recorded by the learned trial court, for the offence under Section 302 read with Section 34 IPC, is converted to Section 304 Part-I read with Section 34 IPC. However, the conviction and sentence of appellant Rajesh for the offence punishable under Section 25 of the Arms Act are upheld. The appellants are on bail. The State is directed to produce them before this Court on 20.03.2020 to be heard on quantum of sentence under Section 304 Part-I IPC.

(RAJIV SHARMA)
JUDGE

March 02, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes