

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

CRA-D-1-DB-2015 (O&M)
Reserved on : January 09, 2020
Date of Decision: July 15, 2020

Krishan

...Appellant

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr. Vinod Ghai, Senior Advocate assisted by
Ms. Kanika Ahuja, Advocate for the appellant.

Ms. Shubhra Singh, Addl. AG, Haryana.

Mr. Sanjay Vashisth, Advocate for
the complainant.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 21/26.11.2014 rendered by the Additional Sessions Judge, Narnaul in Sessions Case No.53 of 2013 whereby the appellant, who was charged with and tried for offence punishable under Section 302/120-B of the Indian Penal Code (for short 'IPC') and Section 25 of the Arms Act, has been convicted and sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine to undergo further simple imprisonment for one year under Section 302/34 IPC. Under Section 120B IPC, he has been sentenced to undergo imprisonment for life and to pay fine of Rs.5,000/-, in default of payment of fine, to undergo

under simple imprisonment for one year. The word 'imprisonment for life' was

ordered to be treated as rigorous imprisonment for the whole of the remaining period of the appellant's natural life. The sentences were ordered to run concurrently.

2. It needs mention here that there were other accused also in the same FIR, who were tried and the evidence in their cases was recorded independently and judgment passed on 29.09.2014. Later, the present – appellant was separately tried and the impugned judgment was passed in his case.

3. The case of the prosecution in a nutshell is that on 14.09.2012 Jaiparkash (now deceased) son of Duli Chand was admitted in Govt. Hospital, Bhiwani in injured condition, from where he was referred to PGIMS Rohtak. A telephonic message in this regard was received in the Police Station. Upon this information ASI Kuldeep reached PGIMS Rohtak on 15.09.2012 but the Doctor declared the patient unfit for making statement. On 21.09.2012 Jaiparkash was declared fit to make statement. His statement was recorded by ASI Kuldeep Singh. Jaiparkash stated that on 14.09.2012 at about 11:00 a.m., while he was present in the village Satyawar received a telephonic call from Krishan s/o Daya Ram asking him to bring two bottles of wine to the fields. At that time he was present with Satyawar. Both of them reached the fields of Krishan on a motorcycle with the bottles of liquor. At that place Krishan son of Daya Ram, Moji alias Manoj, Jawahara alias Rajesh and three unknown boys whose names and addresses he did not know were sitting and consuming liquor. Jaiparkash remained sitting with them for about one hour and then he went to the fields leaving Satyawar there. At about 01:00 p.m., he again went there and found they were all consuming liquor.

He again sat with them for about one hour and then went to Savitri, the mother of

Krishan for taking tea at the house of Krishan. He again joined the drinking group

at about 3:00 p.m. At about 07:00 p.m., there was exchange of hot words between Satyawar, Manoj alias Moji and Jawahara alias Rajesh. He took Satyawar away and left him at a distance of about 2-3 killas and returned to take his motor cycle. When he was at a distance of about 20 feet then one out of Krishan son of Daya Ram, Manoj alias Moji, Jawahara alias Rajesh and three other boys whose name and address he did not know fired at him. He did not know who out of them fired at him. The bullet hit him in his stomach. Thereafter, Mauji alias Manoj Jawahara alias Rajesh and three other boys fled away in a vehicle. Only Krishan remained there. Thereafter he (Jaiparkash) raised noise and went about one killa towards the tubewell of Krishan. On hearing his cries Savitri mother of Krishan came and took him to Mittal Hospital after arranging a vehicle from Mahipal. Thereafter he was referred to G.H. Bhiwani and from there to PGIMS Rohtak.

4. After recording of the above statement case was registered under Section 307/34 IPC. However, section 302 was added subsequently, when Jaiparkash injured died on 07.10.2012 during treatment. During investigation accused were arrested. On completion of investigation report under Section 173 CrPC was filed.

5. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. He denied the allegations levelled against him and pleaded that he was not present at the spot at the time of occurrence. In defence, he examined DW1 Savitri Devi (his mother).

6. The appellant was convicted and sentenced as referred to above. Hence, this appeal.

7. We have heard learned counsel for the parties and have gone through

the judgment and record.

8. PW1- Dr. Kuldeep Panchal, Department of Forensic Medicine, Pandit B. D. Sharma Post Graduate Institute of Medical Sciences (PGIMS), Rohtak tendered in evidence his affidavit Ex.PW1/C deposing to the effect that on 08.10.2012 at 12:15 PM, post-mortem was conducted on the body of Jaiparkash S/o Dulichand, by a Board including him and Dr. Tarun Dagar. The said body was brought by ASI Kuldeep Singh and it was identified by Krishan Kumar and Satyapal. As per Police Inquest report, the apparent cause of death in this was "Goli lagne se". During postmortem examination, he noted his findings/observations as under:-

"Received dead body of a male individual was wrapped in a white sheet of cloth. Body was wearing only a cream color knikkar with 3 parallel white vertical strips over both lateral boarder. A brownish bandage strapped around abdomen (abdominal binder). A white surgical bandage underneath it. A drainage tube with bag (plastic) was present over left lateral aspect of abdominal wall. A colostomy bag containing semisolid yellowish (fecal) material was present over rt. Side of iliac fossa region in situ. Eyes were closed and mouth was closed. Rigor mortis was present all over the body. PM staining was present over back of body except pressure point and fixed in character.

On opening the white bandage (strapping), a linear scar of stitched wound of length 21 cm was present over anterior abdominal wall in midline, 7.5 cm below the xiphoid and 9 cm above the pubis symphysis. The margins of the wound was easily separated with some force and 2 defect, one on upper end second lower end was seen with both ends were separated (gaping).

Scabbed off stitched mark 12 in number were seen along the above described old stitched wound.

On removal of ileostomy bag, a infected pus containing foul smelling drainage wound of size 5x 4.5 cm was present over the anterior abdominal wall in region of rt. Lliac fossa. A surgically debrided wound

of 4x1.7 cm having 2 stitch mark was placed obliquely over the rt. Iliac fossa region at ant. Abdominal wall, 1.5 cm below ileostomy bag wound, it was situated 88 cm above the rt. Heal. Margins were regular. On removal of drainage tube a circular shaped drainage wound was present over left lateral aspect of lower abdominal wall. A single stitched was present and it was of 2x2 in size. A foul smelling pus containing fistula/wound of size 3x3.5 cm, with irregular margin was present just above the ileostomy wound. Loop of intestine was seen protruding out upto 1 cm from the wound.

On dissection of abdominal cavity, U/L peritoneum was found adherent to the mesentery, loop of small intestine and large intestine and laterally to the inner abdominal wall. On removal of the peritoneum, foul smell was coming out from the cavity. Multiple stitches were present between sigmoid and descending colon. On rt. Side the ileostomy was done and surrounded area was containing thick purulent yellowish colored fluid admixed with fecal matter (semisolid), which was seen coming out with ileostomy wound when removed. Peritoneum was contused at places and loop of small and large intestine, ie., ileum was found blackened, softened (gangrenous). On further exploration the muscle around the left hip joint were found ecchymosed and on further dissection a yellowish metallic bullet was found lodged in the muscles around the left hip joint. The hip bone was intact.”

On internal examination of the body, he observed :-

“Vertebrae were healthy. The ribs were healthy. Pleurae was adherent to anterior internal thoracic wall. Pericardium and heart were healthy. Stomach contained about 50 cc of dark brownish semisolid material. Mucosa showed patchy hemorrhages at places.”

He further observed that the cause of death would be given after receipt of chemical analysis report and HP examination of viscera report and Microbiological

Examination of pus and blood sample of deceased. The probable time that elapsed

between death and autopsy was between 12-24 hours.

9. PW1 further stated that the following articles were handed over to the police:

- 1. Duly stitched body after completing autopsy along with clothes;*
- 2. A copy of the Post-Mortem Report No. PMR/12/10/17 dated 08/10/2012;*
- 3. Police (inquest) papers 13 in number, duly initialed;*
- 4. A sealed packet bearing 2 seals containing a yellowish metallic bullet.*
- 5. A sealed packed bearing 10 seals containing viscera for chemical analysis;*
- 6. An envelope bearing 5 seals addressed to the Director, F.S.L. Madhuban (Karnal) containing forwarding memo and copy of the post mortem report;*
- 7. A sealed parcel bearing 2 seals containing pieces of brain, lungs, liver, spleen and kidney for histopathological examination in the jars duly labeled & sealed (To be sent to the Senior Professor & Head, Deptt. Of Pathology, Pt. B. D. Sharma PGIMS, Rohtak).*
- 8. A sealed parcel bearing 2 seals containing loop of intestine (operated part) for histopathological examination in the jars duly labeled & sealed (To be sent to the Senior Professor & Head, Deptt. Of Pathology, Pt. B. D. Sharma PGIMS, Rohtak)*
- 9. A sealed envelope bearing 5 seals containing:*
 - 1. Forwarding memo to the Senior Professor & Head, Deptt. of Pathology, Pt. B.D.Sharma PGIMS, Rohtak*
 - 2. A copy of the post-Mortem Report.*
- 10. Sample of the seal used (Fm).*
- 11. A sealed jar bearing 2 seals containing blood in culture sent to microbiology.*
- 12. A sealed jar bearing 2 seals containing culture bottle having pus from drainage tube.*
- 13. A envelope having 5 seals containing PMR copy sent to*

Microbiology.

14. X ray films of pelvic with B/L hip joint, AP view signed by me. (no. 7496).

10. PW2 Sanjeet Kumar MHC deposed that on 21.11.2012, he had handed over the case property namely one parcel of viscera with seal of doctor, one sample seal, one envelope of documents to Constable Anand for depositing the same at FSL Madhuban who deposited the case property the same day and handed over the receipt to him on 22.11.2012. He further deposed that on 8.2.2013 he sent 9 mm pistol sealed with seal of RS through EHC Satbir for depositing in FSL Madhuban who after depositing it on 9.2.2013 handed over receipt to him.

11. PW3 Constable Anand Kumar tendered in evidence his affidavit PW3/A deposing that on 12.11.2012 on receipt of articles from Malkhana, he deposited the same at FSL Madhuban and handed over receipt to MHC Rajesh on 13.11.2012.

12. PW4 EHC Satbir Singh tendered in evidence his affidavit Ex.PW4/A regarding deposit of 9 mm pistol duly sealed with FSL Madhuban.

13. PW5 EHC Jagdish deposed that on 27.11.2012 he was posted in PS Satnali. He was associated in the investigation alongwith ASI Ram Kishan. He deposed regarding the disclosure statement Ex.PW5/A made by Ajay on the basis whereof he got demarcated the place of occurrence.

14. PW6 ASI Ram Kishan deposed that on 27.11.2012 he was posted in CIA Narnaul. That day accused Ajay was interrogated and he suffered disclosure statement Ex.PW5/A to the effect that he could get the pistol recovered which was used by him and had been concealed in a house in village Saharnpur, District

Bulandshahar (UP). He also demarcated the place of occurrence and memo Ex.PW5/B was prepared on 28.11.2012. During interrogation, accused Ajay made another disclosure statement Ex.PW6/A that first disclosure made by him on 27.11.2012 was not correct. The pistol which he had used in crime of Jai Parkash was already recovered by Hisar police in a bank dacoity in Dhighawa Mandi, District Bhiwani.

15. PW7 Inspector Pawan Kumar, SHO PS Mahendergarh deposed that on 22.10.2012 he was posted as Inspector CIA Staff Narnaul. On that day, investigation of case was entrusted to him. On 27.11.2012 he arrested accused Ajay who on interrogation made disclosure statement Ex.PW5/A. He also got demarcated place of occurrence vide memo Ex.PW2/B. He also deposed that on 22.11.2012 accused Ajay made another disclosure statement Ex.PW2/C.

16. In cross examination, he stated that in the investigation conducted by him accused Krishan was not found to be involved in the case in any manner and he was found to be innocent. He admitted that accused Ajay was facing trial separately from accused Krishan. On a representation made by complainant party, DSP Headquarter Narnaul conducted an inquiry in which he found only accused Ajay guilty. Rest of accused namely Krishan, Jawara, Manoj alias Mauji, Pardeep and Sudesh alias Gandhi were found innocent.

17. PW8 HC Bijender Singh deposed that on 5.3.2013 he interrogated accused Pardeep who made disclosure statement PW8/A. He also deposed regarding disclosure statement Ex.PW8/B made by accused Rajesh alias Johara and disclosure statement Ex.PW8/C made by accused Manoj regarding the murder of Jai Parkash.

receipt of telephonic message from SI Kailash Chand, SHO PS Satnali he went to place of occurrence and prepared scaled site plan Ex.PW9/A on the demarcation of SI Kailash Chand.

19. PW10 ASI Ravi Kumar deposed that on 13.10.2013 he was posted as ASI PS Satnali. On that day, he interrogated accused Krishan Kumar who suffered disclosure statement PW10/A on the basis whereof memo Ex.PW10/B regarding demarcation of place of occurrence by accused Krishan Kumar was prepared.

20. In cross examination he stated that no recovery was effected pursuant to the disclosure statement.

21. PW11 Inspector Meer Singh deposed that on 16.10.2013 he was posted as SI/SHO PS Satnali. On 30.10.2013 accused Krishan was produced by Surender Kumar. He was arrested. On interrogation he suffered disclosure statement Ex.PW10/A. As per disclosure statement he demarcated place of occurrence Ex.PW10/B. Thereafter accused was produced before Illaqa Magistrate. He further deposed that after completion of investigation challan was prepared and presented before Illaqa Magistrate.

22. In cross examination he stated that no recovery was effected pursuant to the disclosure statement of accused Krishan Kumar.

23. PW12 ASI Bhushan Kumar deposed that on 2.11.2012 he was posted as ASI STF Hisar Range. On that day accused Ajay was interrogated. He made disclosure statement Ex.PW12/A. On 8.11.2012 he was again interrogated and he made disclosure statement Ex.PW12/B and Ex.PW12/C. On the basis of said disclosure statements he got recovered Rs.4.5 lac and one 9.9 mm pistol and one

dated 26.9.2012 under Sections 395/397/212 IPC and Section 25 of Arms Act PS Loharu. The same were taken into possession vide recovery memo Ex.PW12/D.

24. PW13 HC Rajesh Kumar tendered affidavit Ex.PW13/A deposing that on 12.11.2012 case property one plunda duly sealed envelope documents , one cartridge which was taken out from the stomach of Jaiparkash duly sealed was sent to FSL, Madhuban through Constable Anand who had handed over the receipt after depositing the same. He also deposed regarding sending one viscera duly sealed with seal of doctor, one envelope document and sample seal to FSL, Madhuban.

25. PW14 ASI Satbir Singh deposed that on 6.2.2013 he alongwith Constable Sajjan Kumar moved an application Mark 'A' for taking case property on superdari. On receiving the order of learned SDJM, Loharu, the case property was handed over to him by MHC and the same was deposited by him in PS Satnali to MHC whose statement was recorded under Section 161 Cr.P.C.

26. PW15 Harish Branch Manager Birla Sun Life Insurance, Charkhi Dadri deposed that he had attested recovery memo Ex.PW15/A prepared by I.O. in respect of vehicle No. HR16K-1551.

27. PW16 Satyawar son of Ram Kumar (wrongly written as Satpal) deposed that on 14.9.2012 Jaiparkash came to his residence at his tubewell and asked him to accompany him to the house of Krishan who was Sarpanch of the village. Then he alongwith Jaiparkash went to house of Krishan. Smt. Savitri mother of Krishan was present there. On their inquiring as to where Krishan Sarpanch was she told that he has gone to village. She asked them to wait. They then sat on the chairs. Smt. Savitri served them tea. At that time, Ajay Bura

When was also sitting with them. Meanwhile, it became twilight. 5/7 persons

wearing khaki clothes came from hilly side area and asked 'Ajay Bhurakheri wala Hai Kya'. Ajay replied, 'ha main hun'. One of those persons fired a gun shot. Ajay saved himself by jumping. That shot hit Jaiparkash. Thereafter Savitri Devi mother of Krishan arranged a pick up vehicle of Mahipal and shifted Jaiparkash to CHC Satnali. Then he (PW16) left for his house. On the request of the Ld. Public Prosecutor he was declared hostile.

28. In cross examination by learned PP, he stated that police recorded his statement in case. Police has taken his signatures on some papers. He denied that he had made statement Ex.PW16/A. He was confronted with his statement where it was recorded that on 14.9.2011 at about 11 am he had received a mobile call from Krishan Kumar sarpanch to bring a bottle of liquor, that he had sent Jaiparkash to bring liquor from Satnali and thereafter he alongwith Jaiparkash had gone to tubewell of Krishan Kumar alongwith two bottles of liquor where Krishan Sarpanch, Moji alias Manoj, Jawara and three other persons who were not known to him were taking liquor. He also started taking liquor with them. At about 7/8 pm, Moji took his cellphone and abused someone on phone under the influence of liquor on which he, Moji and Jawara started to exchange hot words. After that Jaiparkash took him 2/3 killas away and left him there. At that time Krishan was under the influence of liquor and was sleeping on the cot. When Jaiparkash returned someone fired a shot at him. After sometime he came to know that Ajay son of Ramphal had fired at Jaiparkash as he possessed a pistol.

29. He denied that Jaiparkash had not supported Krishan Sarpanch but had supported Laxmi Devi wife of Basant Kumar and due to this reason, Jaiparkash was murdered by Ajay by hatching conspiracy with other co- accused facing trial in connected cases. He stated that Krishan was Sarpanch of the village

in the previous term. He denied that Smt. Laxmi Devi wife of Basant Kumar was also a candidate for the post of Sarpanch of the village. He stated that on 14.09.2012 Ajay was not having any pistol. He admitted that Ajay was known to him for the last 5/7 years. He admitted that Krishan Sarpanch was his uncle in the village is in his relationship.

30. In cross examination by learned counsel for accused, he admitted that family of Jaiparkash and Krishan accused were having cordial relations in village and were attending the marriage and other functions of each other. He admitted that when Krishan contested the election of Sarpanch Jaiparkash and his family had supported him.

31. PW17 ASI Kuldeep Singh deposed that on 14.9.2012 he was posted at PS Satnali. That day, telephonic message was received from GH Bhiwani that Jaiparkash was admitted in the hospital in injured condition and he was referred to PGIMS Rohtak. On 15.9.2012 he went to PGIMS Rohtak. He moved application PW17/A to Medical Officer seeking opinion regarding the fitness of Jaiparkash to make statement. The doctor opined that he was unfit to make statement. On 18.9.2012 he again went to PGIMS Rohtak and doctor opined that injured was unfit to make statement. On 21.9.2012 he again went to PGIMS Rohtak. The doctor opined that injured was fit to make statement. He recorded statement of Jaiparkash which was thumb marked by Jaiparkash. His endorsement is Ex.PW17/C. Thereafter, formal FIR Ex.PW17/D was registered by him. On 26.9.2012 he went to place of occurrence and on demarcation of Savitri wife of Dayaram he prepared rough site plan Ex.PW17/E.

On 7.10.2012, Jaiparkash died. He got post mortem of dead body conducted on

8.10.2012. Thereafter investigation of case was handed over to SI Kailash

Chand.

32. In cross examination by learned counsel for accused he stated that on 21.9.2012 he reached at PGIMS Rohtak at 4 pm. The family members and some relatives of Jaiparkash were present with him. When he asked Jaiparkash about his condition, Jaiparkash said that he was fit and ready to make statement. Jaiparkash conveyed his regards to him and asked him to sit near him. He had recorded the facts as narrated by Jaiparkash. Jaiparkash told him that he could not identify as to who had fired gun shot on him. He (PW17) had read out and explained the statement made by Jaiparkash and after admitting the same to be true he affixed his left thumb impression as token of its correctness. Throughout the recording of statement, Jaiparkash was in full senses. His relatives also remained present there. As per his investigation, Savitri was an eye witness to occurrence. She has her residence at the tubewell where the occurrence allegedly took place. He did not find any wad or empty or live cartridge at the place of occurrence. When he went to PGIMS Rohtak and the injured Jaiparkash was unfit to make statement he did not make any arrangement for the presence of Magistrate for recording the statement of Jaiparkash. He stated that it has not come in his investigation that any of accused has any enmity with Jaiparkash.

33. PW18 Satpal deposed that Jaiparkash was his nephew in neighbourhood. He has identified the dead body. He had signed the inquest report Ex.PW18/A.

34. PW19 Darshan Singh deposed that on 5.3.2013 he was present in Court campus Mahendergarh. On that day, Pardeep, Manoj alias Moji and Rajesh alias Jawara were interrogated by police in his presence and they made their

signed by him as well as accused.

35. PW20 Krishan son of Mange Ram deposed that on 14.9.2012, Jaiparkash received firearm injury. He was taken to PGIMS Rohtak. After one week he regained consciousness. Police recorded his statement in PGIMS Rohtak. Then, he (PW20) and Satpal inquired from Jaiparkash as to where he had received the fire arm injury. Jaiparkash told that Manoj, Krishan, Rajesh, Pardeep, Sudesh and Ajay under a conspiracy had fired at him. He had not informed the police due to fear. Thereafter, Jaiparkash was discharged and came to village Barda. On 6.10.2012, Jaiparkash was again taken to PGIMS Rohtak. He came back on same day. On 7.10.2012 he was taken to Mahendergarh Hospital where he died soon after entry in hospital. Police had reached GH Mahendergarh and recorded his statement and of Satpal. Thereafter Jaiparkash was taken to PGIMS Rohtak for post mortem examination. He and Satpal had signed the receipt of dead body Ex.PW17/F and inquest report Ex.PW18/A.

36. In cross examination he stated that on 14.09.2012 he was present at this tubewell when he received a telephone of Darshan on his mobile that Jaiparkash had received a gun shot injury. He thereafter went to PGIMS Rohtak. The family members of Jaiparkash and 10-15 other persons were present with Jaiparkash when he reached there. He stayed with Jaiparkash for 2/3days. He along with Satpal, Darshan and Duli Chand remained at PGIMS Rohtak from 14.09.2012 to 16.09.2012 while the others had left. The police had also visited during that period but made no inquiry from him. He alongwith several co-villagers had gone to police 2/3 police when they were summoned by police in connection with the case. His statement was recorded by police for first time at

recorded only once. He had been informed by Jaiparkash that he had received firearm injury after his (Jaiparkash's) statement was recorded by police. He had stated before police that he and Satpal had inquired from Jaiparkash as to where he had received firearm injury then Jaiparkash informed that Manoj, Krishan, Rajesh, Pardeep, Sudesh and Ajay had fired under a conspiracy. He was confronted with his statement Ex.PW20/B where it was not so recorded.

37. PW21 Inspector Kuldeep Singh deposed that on 2.11.2013 he was posted as Sub- Inspector in STF Hisar Range. That day he arrested accused Ajay and interrogated him in FIR No.169 dated 26.9.2012 under Section 395/397/212 IPC and Section 25 of Arms Act and he suffered disclosure statement Ex.PW12/B and another disclosure statement Ex.PW12/C on 8.11.2012 on the basis of which he got recovered Rs.4.5 lac and one 9 mm pistol and one pistol of .315 bore and 8 live cartridges of .315 bore which were taken into possession vide recovery memo Ex.PW12/D.

38. PW22 SI Kailash Chand deposed that on 7.10.2012 he was posted as SHO PS Satnali. On that day, he received a telephonic message from CH Mahendergarh regarding death of Jaiparkash. He recorded DDR No.24 dated 7.10.2012. Offence under Section 302 IPC was added. He conducted inquest proceedings under Section 174 IPC Ex.PW20/B. He got post mortem of dead body of Jaiparkash conducted at PGIMS Rohtak. He arrested accused Krishan, Pardeep and Manoj on 21.9.2013 under Section 216 IPC. On 16.2.2013 he arrested accused Suresh alias Gandhi. On 18.2.2013, he arrested Harish resident of village Kakrolli. He produced Ritz car No. HR16K-1551 which was taken into possession vide memo Ex.PW13/A.

investigation in this case was not conducted by him prior to 7.10.2012 and as such he was not aware of facts collected in investigation before 7.10.2012. During the course of investigation conducted by him it had not come to his notice as to who had fired the shot at Jaiparkash. During investigation conducted by him, he found accused Manoj, Jawara, Pardeep and Krishan triable for commission of offence under Section 216 IPC. After addition of Section 120 B IPC he had not conducted any investigation. He had prepared the report under Section 173 Cr.P.C.

40. PW23 Dr. Sachin Sehgal Medical Officer, Government Hospital, Bahadurgarh stated that he medico-legally examined Jai Prakash S/o Duli Chand on 14/09/2012. Patient was accompanied by Duli Chand (his father).

He observed as under:-

*“Alleged h/o firearm injury on 14/09/2012 at Barda at 06:00 p.m,
Mahendergarh.*

Patient conscious, oriented, cooperative

B.P.-120/78 mm hg Pulse-84/min afebrile

CVS=wnl, P/A=wnl R/S=

nad;tender right side C. N. S= No focal

Neurosensory deficit

1) Left flank entry wound of 0.9 cm with no blackening and tattooing present (oozing of blood on manipulation) approximately 22 cms from umbilicus laterally and 52 cms from mid-clavicular line. (non-inverted margins).

Injury was kept under observation and surgeon and firearm and ballistic expert opinion was asked for alongwith x-ray of abdomen. Nature of force was blunt and of duration less than 24 hrs.

Handed over to police.

1) Copy of MLR

2) Five sealed packet containing clothes addressed to FSL.

- 3) *Five sealed envelope addressed to FSL containing*
- a) *Forwarding letter to F.S.L. ; for ballistic expert*
 - b) *Copy of M.L.R.*
 - c) *Sample seal*
- 4) *Sample seal.*”

In cross examination by counsel for the accused he stated that the patient was conscious and well oriented and was answering the questions put to him properly. He himself had given the consent for his medico-legal examination and had appended his signatures on the MLR. He had thoroughly examined the patient and found only one injury on his person which he had mentioned in the MLR. There was no blackening or tattooing around the wound. After his medico-legal examination the patient was never brought before him nor any police official ever contacted him for obtaining his opinion etc. regarding the case.

41. DW1 Smt. Savitri Devi wife of Dayaram deposed that their residential house was constructed at their tubewell which is situated near the drains and hilly area of their village. About 2 years ago, at 5.30/6.00 pm when she was present at her residence a young boy who she did not know earlier but later came to know was Ajay resident of village Burakheri came there. He asked about her son Krishan who was ex- sarpanch of village. She told him that Krishan had gone to the village. She asked Ajay Bura Kheri sit there and wait for Krishan. She served him tea. Meanwhile, Jaiparkash son of Dhuli Chand and Satyawan son of Ram Kumar from her village came there on a motorcycle. They also inquired about Krishan. She asked them also to sit there and to take tea and wait for Krishan. They sat near Ajay Bura Kheri. She got busy in household work.

Meanwhile, 5/7 unknown persons came from the side of hillock and asked 'Ajay

GIANENDER
2020.07.23 13:57
I attest to the accuracy and
integrity of this document
high court chandigarh

Bhurakheri wala Hai Kya'. Ajay replied, 'ha main huin'. One of those persons fired a gun shot at Ajay. That shot hit Jaiparkash. Those unknown persons fled away from there. Jaiparkash shouted that he was hit by police. On hearing his voice she alongwith her daughter- in- law and one shepherd went to Jaiparkash. They put him on a cot, arranged a vehicle of Mahipal, her nephew and took Jaiparkash to the clinic of Dr. Mittal in Satlani. They also made a telephone call to Kalia, brother of Jaiparkash and asked him to reach Satnali. Kalia alongwith his father reached said clinic. They asked them (Savitri and her companions) to leave the hospital and said that they would manage all things. They also said that they would take Jaiparkash to Bhiwani. Police visited the place of occurrence and made inquires from her after she reached her house. She narrated the incident to the police. DSP Mahendergarh visited the place of occurrence twice. SP Narnaul visited the place once. She narrated the entire incident to them. Jaiparkash and Krishan were on good terms with each other. Jaiparkash and Krishan used to attend the functions of family and relatives of each other. When Krishan contested the election of Sarpanch Jaiparkash supported him.

42. In cross examination by learned PP, she stated that she was not a summoned witness and had come on her own.

43. The case was registered on the statement of Jaiparkash (deceased). On 14.09.2012 Jaiparkash was admitted in Govt. Hospital, Bhiwani in injured condition. From there he was referred to PGIMS Rohtak. Upon receipt of this information ASI Kuldeep reached PGIMS Rohtak on 15.09.2012 but the doctor declared the patient unfit for making statement. On 21.09.2012 Jaiparkash was declared fit to make statement whereupon his statement was recorded by ASI

Kuldeep Singh. Jaiparkash stated that on 14.09.2012 at about 11:00 a.m., while he

was present in the village Satyawar received a telephonic call from Krishan s/o Daya Ram asking him to bring two bottles of wine to the fields. At that time he was present with Satyawar. Both of them reached the fields of Krishan on a motorcycle with the bottles of liquor. At that place Krishan son of Daya Ram, Moji alias Manoj, Jawahara alias Rajesh and three unknown boys whose names and addresses he did not know were sitting and consuming liquor. Jaiparkash remained sitting with them for about one hour and then he went to the fields leaving Satyawar there. At about 01:00 p.m., he again went there and found they were all consuming liquor. He again sat with them for about one hour and then went to Savitri, the mother of Krishan for taking tea at the house of Krishan. He again joined the drinking group at about 3:00 p.m. At about 07:00 p.m. there was exchange of hot words between Satyawar, Manoj alias Moji and Jawahara alias Rajesh. He took Satyawar away and left him at a distance of about 2-3 kallas and returned to take his motor cycle. When he was at a distance of about 20 feet then one out of Krishan son of Daya Ram, Manoj alias Moji, Jawahara alias Rajesh and three other boys whose name and address he did not know fired at him. He did not know who out of them fired at him. The bullet hit him in his stomach. Thereafter Manoj alias Manoj Jawahara alias Rajesh and three other boys fled away in a vehicle. Only Krishan remained there. Thereafter he (Jaiparkash) raised noise and went about one kalla towards the tubewell of Krishan. On hearing his cries Savitri mother of Krishan came and took him to Mittal Hospital after arranging a vehicle from Mahipal. Thereafter he was referred to G.H. Bhiwani and from there to PGIMS Rohtak. Initially case was registered under Section 307/34 IPC. However, section 302 was added subsequently, when Jaiparkash injured died on 07.10.2012

44. Mr. Vinod Ghai, Ld. Senior Counsel has argued that the statement Ex.P17/A of Jaiparkash cannot be taken to be a dying declaration. When it was recorded the patient was not under imminent fear of death. The statement has been recorded before ASI Kuldeep Singh. He made no effort to get it recorded before a Magistrate. It has not been signed by any doctor. The doctor who allegedly gave opinion regarding fitness of the patient has not been examined.

45. Though there are a number of lacunae in the recording of the statement Ex.P 17/A as rightly pointed out by Mr. Ghai but it is not possible to reject the statement altogether on that account and not treat it as a dying declaration. Though Hon'ble Supreme Court in various cases has stressed on the importance of recording of dying declaration before a Magistrate and other requirements to be complied with to obviate any doubt about its correctness and voluntary nature, but is equally well settled that the lapse on the part of the investigating officer in not bringing the Magistrate to record the statement of the deceased should not be taken in favour of the accused. A statement of the deceased recorded by a police officer in a routine manner as a complaint and not as a dying declaration can also be treated as dying declaration after the death of the injured and relied upon if the evidence of the prosecution witnesses clearly establishes that the deceased was conscious and was in a fit state of health to make the statement.

46. In this regard reference may be made to the decision of Hon'ble Supreme Court in **Paras Yadav v. State of Bihar, (1999) 2 SCC 126** where it was observed as under:

“8. It has been contended by the learned counsel for the appellants that the investigating officer has not bothered to record the dying declaration of the deceased nor is the dying declaration recorded by

the doctor. The doctor is also not examined to establish that the deceased was conscious and in a fit condition to make the statement. It is true that there is negligence on the part of the investigating officer. On occasions, such negligence or omission may give rise to reasonable doubt which would obviously go in favour of the accused. But in the present case, the evidence of the prosecution witnesses clearly establishes beyond reasonable doubt that the deceased was conscious and he was removed to hospital by bus. All the witnesses deposed that the deceased was in a fit state of health to make the statements on the date of the incident. He expired only after more than 24 hours. No justifiable reason is pointed out to disbelieve the evidence of the number of witnesses who rushed to the scene of offence at Ghogha Chowk. Their evidence does not suffer from any infirmity which would render the dying declarations as doubtful or unworthy of the evidence. In such a situation, the lapse on the part of the investigating officer should not be taken in favour of the accused. It may be that such lapse is committed designedly or because of negligence. Hence, the prosecution evidence is required to be examined de hors such omissions to find out whether the said evidence is reliable or not. For this purpose, it would be worthwhile to quote the following observations of this Court from the case of Ram Bihari Yadav v. State of Bihar (SCC pp. 523-24, para 13)

“In such cases, the story of the prosecution will have to be examined de hors such omissions and contaminated conduct of the officials otherwise the mischief which was deliberately done would be perpetuated and justice would be denied to the complainant party and this would obviously shake the confidence of the people not merely in the law-enforcing agency but also in the administration of justice.”

The manner of recording of the statement has been deposed to by PW17 ASI

moved application PW17/A to Medical Officer seeking opinion regarding the fitness of Jaiparkash to make statement. The doctor opined that he was unfit to make statement. On 18.9.2012 he again went to PGIMS Rohtak and doctor opined that injured was unfit to make statement. On 21.9.2012 he again went to PGIMS Rohtak. The doctor opined that injured was fit to make statement. He recorded statement of Jaiparkash which was thumb marked by Jaiparkash. He made endorsement Ex.PW17/C. Thereafter, formal FIR Ex.PW17/D was registered by him.

47. In cross examination by learned counsel for accused he stated that on 21.9.2012 he reached at PGIMS Rohtak at 4 pm. The family members and some relatives of Jaiparkash were present with him. When he asked Jaiparkash about his condition, Jaiparkash said that he was fit and ready to make statement. Jaiparkash conveyed his regards to him and asked him to sit near him. He had recorded the facts as narrated by Jaiparkash. Jaiparkash told him that he could not identify as to who had fired gun shot on him. He (PW17) had read out and explained the statement made by Jaiparkash and after admitting the same to be true he affixed his left thumb impression as token of its correctness. Throughout the recording of statement, Jaiparkash was in full senses. His relatives also remained present there. He admitted that when he went to PGIMS Rohtak and the injured Jaiparkash was unfit to make statement he did not make any arrangement for the presence of Magistrate for recording the statement of Jaiparkash.

48. Thus the statement is liable to be as the dying declaration of deceased Jaiparkash.

49. But what is significant in the said statement (dying declaration) and

which ensures to the advantage of the appellant herein is that there does not seem to

be any ill will between the appellant and the deceased. From the statement it emerges that the deceased and Satyawar went to the fields of Krishan (appellant) on a motorcycle with the bottles of liquor which the appellant had requested Satyawar to get. At that place Krishan (appellant) Moji alias Manoj, Jawahara alias Rajesh and three unknown boys whose names and addresses were not known to the deceased were sitting and consuming liquor. Jaiparkash (deceased) remained sitting with them for about one hour and then he went to the fields leaving Satyawar there. At about 01:00 p.m., he again went there and found they were all consuming liquor. He again sat with them for about one hour and then went to Savitri, the mother of Krishan (the appellant) for taking tea at the house of the appellant. He again joined the drinking group at about 3:00 p.m. At about 07:00 p.m. there was exchange of hot words between Satyawar, Manoj alias Moji and Jawahara alias Rajesh. He took Satyawar away and left him at a distance of about 2-3 killas and returned to take his motor cycle. When he was at a distance of about 20 feet then one from amongst the appellant, Manoj alias Moji, Jawahara alias Rajesh and three other boys whose name and address he did not know fired at him. The bullet hit him in his stomach.

50. Thus, the deceased willingly chose to remain in the company of Krishan (the appellant) and the others for the better part of the day. During this period he also went to Savitri, the mother of the appellant for taking tea at his house. The exchange of hot words was between Satyawar and Manoj alias Moji and Jawahara alias Rajesh and the three unknown boys. This exchange was not with the deceased. The deceased took away Satyawar and left him at a distance of 2-3 killas and came back to take his motorcycle when he was allegedly shot by one out

of the persons present there. The shot hit him in the stomach. He categorically

stated that he did not know who had fired at him.

51. PW16 Satyawar son of Ram Kumar (wrongly written as Satpal) who as per the the aforesaid statement was present there though at some distance e has not supported the prosecution case. He was declared hostile.

52. The only other evidence against the appellant is the deposition of PW20 Krishan son of Mange Ram who stated that on 14.9.2012, Jaiparkash received firearm injury and was taken to PGIMS Rohtak. After one week he regained consciousness and the police recorded his statement in PGIMS Rohtak. Then, he (PW20) and Satpal inquired from Jaiparkash as to where he had received the fire arm injury. Jaiparkash told them that Manoj, Krishan (appellant) Rajesh, Pardeep, Sudesh and Ajay under a conspiracy had fired at him and that he had not informed the police due to fear.

53. In cross examination by counsel for the accused he stated that his statement was recorded by police for first time at GH Mahendergarh at the time of death of Jaiparkash. His statement was recorded only once. He had been informed by Jaiparkash that he had received firearm injury after his (Jaiparkash's) statement was recorded by police. In his statement before police he had stated that he and Satpal had inquired from Jaiparkash as to where he had received firearm injury then Jaiparkash informed that Manoj, Krishan, Rajesh, Pardeep, Sudesh and Ajay had fired under a conspiracy. He was confronted with his statement Ex.PW20/B where it was not so recorded. It is also important to note that PW 20 Krishan was also a witness at the inquest proceedings. In his statement under Section 175 Cr. P.C he did not mention a word that deceased had informed that Manoj, Krishan, Rajesh, Pardeep, Sudesh and Ajay had fired under a conspiracy.

Satpal in his statement under Section 175 Cr. P.C. Also did not make any such

mention. Consequently this assertion of PW 20 Krishan son of Mange Ram that the deceased had told him and Satpal that Manoj, Krishan, Rajesh, Pardeep, Sudesh and Ajay had fired under a conspiracy clearly appears to be an after thought and cannot form the basis to convict the appellant. Moreover Satpal the other person before whom the deceased allegedly made that assertion has not been examined.

54. PW7 Inspector Pawan Kumar, SHO PS Mahendergarh who partly investigated the case in cross examination stated that in the investigation conducted by him accused Krishan was not found to be involved in the case in any manner and he was found to be innocent.

55. Further, there is no evidence that the relations between the deceased and the appellant were strained. Thus there was no motive for the appellant to be involved in any conspiracy to kill him. PW17 ASI Kuldeep Singh in his cross examination has categorically stated that it had not come in his investigation that any of accused has any enmity with Jaiparkash. PW16 Satyawar son of Ram Kumar (wrongly written as Satpal) who was declared hostile in his cross examination by the Ld. Public Prosecutor denied that Jaiparkash had not supported Krishan Sarpanch but had supported Laxmi Devi wife of Basant Kumar and due to this reason, Jaiparkash was murdered by Ajay by hatching conspiracy with other co- accused facing trial in connected cases. In cross examination by counsel for the accused he admitted that family of Jaiparkash and Krishan accused were having cordial relations in village and were attending the marriage and other functions of each other. He admitted that when Krishan contested the election of Sarpanch, Jaiparkash and his family had supported him.

that he was an assailant or had conspired with the others. Even as per the statement Ex. P 17/A of Jaiparkash while the others fled from the spot, Krishan remained there. Jaiparkash was taken to the hospital by Savitri mother of Krishan after arranging a vehicle of Mahipal.

57. Accordingly, the appeal is allowed. Accused – appellant Krishan is acquitted of all the charges framed against him. Vide order dated 8.9.2016, his sentence was suspended. His bail bonds stand discharged.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

July 15, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No