

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

CRA-D-923-DB-2018 (O&M)
Reserved on : January 10, 2020
Date of Decision: March 17, 2020

Rambir @ Ajay

...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.

Mr. Vivek Saini, DAG, Haryana.

HARINDER SINGH SIDHU, J.

1. This appeal is instituted against the judgment and order dated 31.08.2018/01.09.2018 rendered by the Additional Sessions Judge, Palwal in Sessions Case No.04 of 2015, whereby, the appellant who was charged with and tried for offence punishable under Section 148, 149, 323, 302 of the Indian Penal Code (in short 'IPC') and Section 25 of the Arms Act, has been convicted and sentenced to undergo rigorous imprisonment for life and to pay fine of Rs.20,000/- and in default to further undergo RI for two years under Section 302 IPC. Hem Raj, Jeeta, Ranbir @ Nikku, Kapil, Rahul, Parveen who were tried with the appellant, were acquitted of the charges. Lalit @ Kaku, son of Ajay was declared juvenile by the Court vide order

dated 4.8.2018.

2. The case of the prosecution in a nutshell is that on 29.09.2014 one telephonic message was received in Police Station from village Deeghot that some firing has taken place in the area of Mitrol Deeghot Road near Railway crossing. On that information ASI Laxmi Narain alongwith HC Rajesh Kumar, HC Sandeep Kumar, ASI Chajju Ram reached the spot. They came to know that Lala resident of Deeghot was injured with firearm, a PCR vehicle had already reached there and Lala was taken to hospital in the PCR vehicle. Then ASI Laxmi Narain went to the General Hospital, Palwal where near the mortuary Harpal (brother of Lala) and some other villagers were present. After some talking with each other Harpal made the statement that on 28.08.2014 at about 6.00/6.30 PM, Harkesh son of Ramesh Chand had come to him and told him that he had received a telephone call from Lala @ Charan Singh that at Old Shyam Hotel, Lalit son of Ajay and 3-4 persons had quarreled with him and in that quarrel Shakti Singh Rawat resident of village Bahin had also received injuries. On that information he (Harpal-complainant), Harkesh and Vikram went to Deeghot- Mitrol Railway crossing. They saw that Lala was standing there and the railway crossing was closed. In the meantime, Rambir @ Ajay (appellant), Ranbir @ Nikku, Kapil, Rahul, Parveen, Kuku, Jeeta came there on one Swift car bearing Regd. No. HR 30D-8201 and one Platina motorcycle Regd. No.A/F. From the side of Mitrol Lalit and 3-4 other unknown persons came at the railway crossing in a Santro Car bearing Regd. No.HR 29-S-6103. Then, Ajay who was having pistol in his hand fired a shot at Lala due to which Lala fell down on the ground. Then, Nikku @ Ranbir and Lalit fired at Lala. The other persons also gave axe and danda blows to Lala. They raised alarm on which Sunil resident of Deeghot came there. Some of the

accused went away on the Swift car. Some ran away. On receiving information a PCR vehicle came to the spot. Lala was taken to Premia Hospital, Palwal in the PCR vehicle where the doctor declared him dead. Complainant alleged that the accused had killed his brother due to enmity. On the basis of this statement, FIR Ex.PW8/A was registered. Accused Hemraj, Jeeta and Lalit were arrested. The remaining accused were found innocent. Report under Section 173 CrPC was presented in Court. The statement of complainant Harpal was recorded on 04.04.2015. Thereafter, an application under Section 319 CrPC was moved which was allowed. Vide order dated 16.05.2015 accused Rambir @ Ajay, Ranbir @ Nikku, Kapil, Rahul, Parveen and Kuku were summoned to face trial along with the other accused.

3. The prosecution examined number of witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them and pleaded innocence. In defence, they examined Satbir Singh, Computer Operator, Dy. SP, Hodal as DW1, Bachu Singh as DW1A and Jitender as DW2. They tendered the following documents:

Ex.DW1/A	Photocopy of inquiry report.
Ex.D1	Certified copy of criminal complaint titled as Hemraj vs. Harkesh and others
Ex.D2	Certified copy of evidence recorded in said criminal complaint.
Ex.D3	Certified copy of the documents.
Ex.D4	Certified copy of order dated 16.03.2018
Ex.D5	Attested copy of RTI report.

4. The appellant was convicted and sentenced as referred to above. The other accused tried along with him were acquitted. Hence, this appeal.

5. We have heard learned counsel for the parties and have gone through the judgment and record.

6. PW1 Harkesh son of Sh. Ramesh Chand, r/o Village Deeghot, District Palwal stated that on 28.08.2014 he was present in his fields. At about 6.00/6.30 PM, he received a phone call from Lala @ Charan Singh that he had been assaulted by Lalit s/o Ajay and 3-4 other persons. Lala @ Charan Singh also informed that Shakti Rawat was with him and he had also been inflicted injuries by the said persons. Lala asked Harkesh to give information at his home regarding his having sustained injuries on his head. PW1 Harkesh then went to the house of Lala @ Charan Singh, but was informed that his brother was in the fields. Harkesh and Vikram then went to the fields of Lala @ Charan Singh and informed his brother Harpal about the incident. Harkesh, Vikram and Harpal then left towards Mitrol. When they reached the road from the katcha path, a Swift car bearing No.HR-30D-8201 crossed them and stopped at the railway crossing. Ajay s/o Mahender came out of the car. Lala @ Charan Singh was standing on the other side of the railway crossing with a motorcycle. Ajay was armed with a pistol or revolver. Again said, it could be a katta also. He chased Lala @ Charan Singh. Lala left his motorcycle and ran towards Mitrol village. Ajay fired a shot from behind which hit Lala @ Charan Singh. Then Nikku @ Ranbir s/o Mahender came out of the car. He also fired a shot at Lala @ Charan Singh who had already fallen down. Lalit came from the other side. There were 3-4 boys in the car of Lalit. Lalit also fired some shots. A large crowd had gathered by then. Kapil, Lalit, Rahul, Jeeta, etc. were also there besides a number of others. Then the Railway crossing (*phatak*) opened.

The assailants also fired towards PW1 Harkesh and others accompanying

him. They cried for help. The assailants then ran away. After some time a PCR vehicle came there. They shifted Lala @ Charan Singh to the said vehicle. Vikram was sent as an attendant with him, whereas, he (PW1 Harkesh) and Harpal came to their house to arrange money for the treatment. Vikram first took Lala @ Charan Singh to Om Hospital, from where he was referred to Government Hospital. They enquired from Vikram over the phone, who informed that he was in Government Hospital. They reached Government Hospital at 9.00 / 9.30 pm. Vikram informed them that Lala @ Charan Singh had been declared dead by the doctors. Harpal became unconscious upon hearing this. Several villagers also came there. Harpal regained his senses around midnight and then got his statement recorded before the Police, on the basis of which FIR was lodged. PW1 deposed that his statement was not recorded by the Police at any stage.

7. In cross-examination by counsel for accused Kapil, Rahul, Hemraj, Parveen, Lalit s/o Rajbir and Jeeta, PW1 stated that village Deeghot was situated at a distance of about 1.5/ 2 km from the railway crossing. About 20/30 persons had come there. They were not from the village, but from the nearby fields. Kapil, Lalit and Rahul were in the crowd which had come to the spot from the fields. These persons had come to the spot after the deceased had already suffered the fire arm injury. No other injury except fire-arm injury was caused to the deceased.

8. In cross-examination by Ld. counsel for accused Ajay @ Rambir and Ranbir @ Nikku, he stated that there were about 12000 inhabitants in their village comprising of various communities. There were five separate localities in the village. Police Station Sadar Palwal was the closest police outpost from the village. It was at a distance of about 13-14

kilometers. Smt. Savitri w/o Kamal Singh was Sarpanch of their village. Sunil was her son. Sunil was cited as a prosecution witness in the case, but was given up as having been won over by the accused. He had heard in the village that accused Ajay owns a college in the village in the name of GVN Institute of Technology. It was in an area of 8-9 acres and there were 70-80 students in the college. He did not know whether Ajay owned any land in the village or not. He however, admitted that Ajay's family was settled in the village from the time of his birth and even before that. The railway crossing is on the road from village Mitrol to their village Deeghot. The railway line adjoining the village is a busy railway line, where passenger and goods trains pass frequently. However, there was no frequency of the opening and shutting of the railway crossing. It may remain closed for 5, 10, 15, 30 or 45 minutes depending on the movement of the trains. Across the railway crossing towards the side of Mitrol, there was a factory. There was non-metalled road upto 10-15 feet of the width between the level crossing and the factory. The guard room at the level crossing was situated towards the side of their village Deeghot. The Police had recorded his statement in the hospital. The statement was recorded after 12.00 pm. He had not accompanied the Police to show them the place of occurrence. The deceased was his friend for the past 8-10 years. He had received a telephone call from Lala @ Charan Singh at about 6/6.30 pm on his mobile number 9671632633. The Police had not demanded the call records for that day and, therefore, he had not provided the same to the Police. No *lathi*, *danda*, *sariya*, sword or knife was used in assaulting Lala @ Charan Singh. Three shots were fired at Lala @ Charan Singh, but only two shots had hit him. Ajay @ Rambir had fired the first shot from a distance of 5-7 paces

when Lala @ Charan Singh was running away. He was running away in the opposite direction from Ajay @ Rambir. Lala @ Charan Singh had run about 10-15 feet towards Mitrol when the first shot hit him. He did not know which part of the body of Lala the first shot had hit. A lot of blood had fallen when Lala @ Charan Singh was inflicted the injury. His pant and shirt had been stained with blood of Lala when he lifted Lala and put him in PCR vehicle. He was standing on one side of the level crossing, whereas, Lala @ Charan Singh was inflicted the gun shot injuries on the other side of the level crossing. The Government Hospital Palwal where Lala @ Charan Singh was taken, is about 13-14 kms from the place of occurrence. He had reached the hospital at about 9/9.15 pm. Probably, some police officials were present at that time. Only on reaching the hospital, he came to know that Lala @ Charan Singh had died. The second shot was fired by Nikku from a distance of about 1-2 feet. At that time Lala @ Charan Singh had his face downwards, while Nikku was standing. The third shot was also fired by Nikku, but he did not know whether it hit Lala @ Charan Singh or not. When the shots were fired, he (PW1) was standing on the other side of the railway crossing towards Deeghot side. After the shots were fired, a passenger train came from the side of Hodal and then the crossing was opened. Thereafter, the police gypsy came from the side of Deeghot. There were three Police officials in it. He did not know whether it was a PCR or it had come from the Police Station. At that time, the Police officials did not pick up any empties from the spot. After they reached the hospital around 9.00/9.15 pm, the persons present there asked the Police officials to visit the spot. Till then, the Police had not made any enquiries from him about the occurrence. They had also not recorded the statement of any other person in

his presence. Harpal is the real brother of Lala @ Charan Singh and had accompanied him (PW1 Harkesh) to the village to arrange money. They had taken Rs.50,000/- to the hospital. He had not signed any statement either under Section 161, 162 CrPC or proceedings under Section 174 CrPC. He, however, admitted that his statement under Section 161 was available on the case file and that statement was correct. The Police had made enquiries from him on the night of occurrence, but he did not know when the Police recorded his statement under Section 161 CrPC. He had not stated to the Police that 3-4 persons were assaulting Lala @ Charan Singh with lathies and dandas. Harpal had dictated an application to the Police. It was dictated by him on his own and he (Harkesh) did not add to the same. Harpal had remained unconscious for about 2 to 2.5 hours. He was given some injection while sitting on the chair in the Government Hospital. No person other than Lalit, Nikku and Ajay had inflicted any injury to Lala @ Charan Singh, nor had participated in the occurrence. He denied that the version by Hemraj in the criminal complaint is the correct version. He denied that the story about Harpal having become unconscious had been fabricated in order to cover up the delay in registration of the case.

9. PW2 Constable Parveen Kumar deposed that on 29.08.2014 the MHC handed over to him a copy of the special report at about 1.15 am, which he delivered at the residence of the Ilaqa Magistrate at about 1.30 am.

10. PW3 Head Constable Gurmukh, Police Station Sadar Palwal tendered his affidavit Ex.PW3/A with regard to case property being handed over to him as Malkhana Mohrar.

11. PW4 Harpal son of Dharampal, aged 35 years r/o Village

Deeghot, District Palwal (brother of the deceased) stated that on 28.08.2014

at about 6.30 pm, Harkesh and Vikram came to him and informed that Harkesh had received a telephonic message from Lala @ Charan Singh that he had a conflict with Lalit at Old Shyam Hotel, GT Road. Thereafter, they (Harpal, Harkesh and Vikram) started from the tubewell. When they reached the pucca road, a Swift car came from the side of Deeghot and overtook them at a fast speed. They proceeded ahead and found the railway level crossing closed. Nikku was driving the Swift car and Ajay was sitting in it. The vehicle was seen parked at the railway level crossing. Ajay came out of the car. He was carrying a weapon. He ran after Lala @ Charan Singh, who was standing on the other side of the railway level crossing towards Mitrol. On seeing Ajay, Lala @ Charan Singh started running. Ajay fired at him from behind. The shot hit Lala and he fell down. Thereafter, Nikku fired a shot at Lala. After few minutes a Santro car came from the side of Mitrol. Lalit s/o Ajay came out of that car. He snatched the weapon from Nikku and fired a shot at Lala. Kapil, Parveen, Rahul, Kukku and Jeeta who were armed with Dandas and Kulharis also inflicted injuries to Lala with their respective weapons. They cried out for help. The accused fired shots at them, which did not hit them. Meanwhile, persons from the nearby factory came there. On seeing them, the accused fled away with their respective weapons and vehicles as the railway level crossing had opened by that time. A Police gypsy came from the side of Deeghot. He (Harpal) along with Harkesh and Vikram put Lala @ Charan Singh in Police gypsy. Vikram accompanied Lala in the gypsy to Palwal hospital. He (PW4) and Harkesh went to the village to arrange for money. When they started back after arranging the money, they received a call from Vikram that they should

Hospital, Palwal, they were informed that Lala @ Charan Singh had died. On hearing that, he (PW4) became perplexed. He got recorded his statement (Ex.PA) around midnight, which bears his thumb impression at point 'A'. Many persons from the village had also gathered there. One Sunil from their side was contesting the election of Sarpanch against Ajay from the other side. That was the cause of enmity which led to the murder of his brother.

12. In cross-examination by Ld. Counsel for the accused, he stated that he was present at his tubewell when he received information from Vikram and Harkesh. His tubewell was about 3 killas from the main road. At that time, he did not possess any mobile phone. He along with Harkesh and Vikram went to the place of the incident from his field on his motorcycle. He did not know its registration number. There were two persons in the Swift car. The other assailants had come on motorcycle. He could not tell the number of the motorcycle as he was illiterate. The registration number of the Swift car and the Santro car had been dictated by Harkesh who was with him when he was getting his statement (Ex.PA) recorded. The Swift car had come from the side of Deeghot. The Santro car had come from the side of Mitrol. Both the vehicles were standing on the opposite sides of the railway crossing. The occupants of the Santro car came about 3 minutes after the Swift car. The occupants of the motorcycle came after 6-7 minutes. At the railway crossing, there was a railway light as well as the light of the factory. He never visited the place of occurrence to identify it and show their position at the place of occurrence to the Police. He could not tell about the nature of the fire arms. His brother had sustained

lathies, dandas and kulharis. His brother was lying face downwards. He along with Harkesh and Vikram had picked up Lala @ Charan Singh and put him in the Police gypsy. Their clothes were stained with Lala's blood. The rear seats of the gypsy where his brother was laid, were also stained with blood. He did not hand over his blood stained clothes to the police and the same were washed after he reached home. The PCR had come to the spot on its own. There were three Police officials in it. They stayed there for about five minutes. He, Harkesh and Vikram were also present with them at that time. He had not made any statement to the Police about the occurrence, but the Police might have recorded the statement of Harkesh at the spot. He had affixed his thumb impression on the statement of Harkesh recorded at the spot by those Police officials. He had not stated to the Police that 3-4 unknown persons had accompanied Lalit in a Santro car from Mitrol side. He was confronted with his statement Ex.PA where it was so recorded. His brother had run for a distance of about 10 paces from the railway crossing towards village Mitrol on the katcha portion of the road on the right side. Only one person namely Sunil had come from the fields of the village, whereas, the other 30 to 35 persons had come from the Company which is adjacent to the crossing. None of those employees of the Company was from his village. The Police officials had come to him at about 10/10.30 pm. He had told them that he would make his statement regarding the occurrence after consulting his family members. After that Police had given them 2-3 hours. Then after midnight, he made his statement Ex.PA. Harkesh and other family members were present at that time. The registration numbers of the vehicles as mentioned in Ex.PA were dictated by

Harkesh. Harkesh had also signed his statement made to the Police

regarding the occurrence. The level crossing was at a distance of about two kilometers from their village. When they reached the level crossing, there was no other person or vehicle than the Swift car and their motorcycle. The Swift car had reached the level crossing about 5 minutes before their reaching there. They were about half a killa behind the Swift car. Accused Ajay did not see him at that time. There was no wire mesh below the barrier pole. Ajay had bent below the pole to cross. He (PW4) had attempted to catch hold of Ajay, but was unsuccessful. Meanwhile, Ajay had reached Lala. Lala was alone on his motorcycle. There was no other person present on the other side of the crossing. Seeing Ajay, Lala started running towards Mitrol. Ajay was at a distance of about 10-15 paces from Lala when he fired the first shot, which hit Lala on his back. At that time, he (PW4 Harpal) was standing at the railway crossing towards Deeghot. The second shot was fired by Nikku after 3-4 minutes of the shot fired by Ajay. His brother did not get up after receiving the first gun shot injury. Three shots were fired at his brother Lala and 2-3 shots were fired towards them by Ajay and Nikku. The entire occurrence took about 5-7 minutes. The PCR came from the side of Deeghot about 10-15 minutes after the accused had run away from the place with their respective vehicles. The guard at the railway crossing did not come to the spot even when the Police had come there.

13. On 28.08.2014, he and Harkesh had reached Government Hospital Palwal at 9.00/9.30 pm. It takes about 20-25 minutes to reach the hospital from their village. They had brought about Rs.50,000/- from their home to the hospital. About 20-25 persons from their village had already reached the hospital by then. He, Harkesh, Vikram and his cousin Virender

statement Ex.PA. Sunil, who had contested the election of Sarpanch was not related to him. The wife of Ajay was contesting the election from the other side. Sunil had won the election. The election had taken place many months ago. After the election, there had been no fight and altercation between them and Ajay. He did not notice any empty shells at the spot as he was more concerned about his brother. The Police had not brought him to the spot to inspect the place of occurrence.

14. PW5 Ravinder Singh Dahiya, Draftsman, District Court Compound, Palwal stated that on 21.09.2014, he had prepared the scaled site plan Ex.PW5/A on the direction and demarcation of ASI Lakshi Narayan after visiting the place of occurrence.

15. PW6 Dr.Deep Kishore, Medical Officer, Government Hospital, Palwal tendered in evidence his affidavit Ex.PW6/A stating that he alongwith Board members Dr.Naveen Kumar & Dr.J.P.Parsad conducted postmortem examination of deceased Charan Singh @ Lala S/o Dharampal R/o Dighot. Following were the postmortem findings:

“Eyes semi-open, mouth semi-open, tongue inside mouth, OCB left nostrill, lips pale, RM present, PMS present, Nail beds were pale. Body smeared with dry blood. Multiple reddish blue bruises of varying sizes present over right arm.

On dissection extravasation of blood present in underlying tissue.

A 3cm x 1cm x skin deep lacerated wound right parietal region 5” above right pinna.

A 2.5cm x 1cm x skin deep lacerated wound right occipitoparietal region 4” behind right pinna, horizontally placed.

A 5cm x 1cm x skin deep lacerated wound right occipital region, vertically placed.

A 7cm x 1.5cm x skin deep lacerated wound left occipitoparietal region.

A punctured wound of size 1cm diameter, round shaped at level of 10th intercostal cartilage right side in midclavicular line, tattooing present.

Margins of wound taken for GSR examination at FSL.

On dissection penetrating skin, fascia, muscle, peritoneum, right lobe of liver (scattered), diaphragm, pleura, large vessels of thorax, lower lobe of right lung and right lateral chest wall alongwith multiple fracture of ribs. Haemothorax and haemoperitoneum present. Directed anteroposteriorly and obliquely, laterally size of wound 1"x 1", margins everted present over right midaxillary line at level of nipple.

A punctured, irregular shaped wound with irregular margins at level of left midscapular line 4cm below angle of scapula. On dissection penetrating sign, fascia, muscles, multiple ribs fractured, left pleura, left lung, stomach and spleen, anterior ICMs.

A metallic foreign body found at level of 8th costal cartilage of midclavicular line. FB sent to FSL. Two small contusions over 4th metacarpal of left hand, dorsal aspect. On dissection extravasation of blood present in underlying tissue. On further dissection 4th metacarpal found fractured.

IMPRESSION: In the opinion of the board the cause of death in this case was shock and haemorrhage due to antemortem firearm injury over chest and abdomen. However metallic foreign body and clothes handed over to police for other medicolegal aspects alongwith X-ray films."

He proved the T-shirt Ex.MO/1, the lower Ex.MO/2, the skin of the deceased Ex.MO/3, Ex. MO/4, Ex.MO/5 the mettalic foreign body taken out from the body of the deceased Ex.MO/6.

16. He deposed that in his opinion the cause of death was shock and haemorrhage due to ante mortem firearm injury over chest and abdomen. As per FSL report the foreign body was 1.32 inch fired bullet. He stated that the injuries were possible with the foreign body Ex.MO/6.

17. PW7 EASI Fateh Singh, Police Station Sadar, Palwal tendered affidavit Ex.PW7/A regarding deposit of case property at FSL Madhuban.

18. PW8 Assistant Sub Inspector Laxmi Narayan, Police Station City, Rewari stated that on 29.08.2014 he was posted in Police Station Sadar, Palwal. On that day, telephonic information was received in the Police Station that a firing incident was going on at Mitrol - Deeghot road. On receipt of this information, he along with other police officials reached the place of occurrence. No one was found present there. They were informed that the injured had been taken to the Hospital. He then reached General Hospital, Palwal where brother of the deceased met him and got his statement Ex.PA recorded. He made his endorsement Ex.PA/1 and sent it to Police Station for registration of FIR. He then conducted inquest proceedings Ex.PW8/C. The doctor handed over to him sealed parcel containing viscera and other articles, which were taken into possession vide memo Ex.PW8/B. He then visited the place of occurrence and prepared rough site Ex.PW8/C. He collected blood stained earth which was taken into possession vide memo Ex.PW8/D. He also took into possession empty cartridges vide memo Ex.PW8/E. Rough sketch of the empty cartridges Ex.PW8/F was prepared. On 29.08.2014 he arrested accused Jeeta, who on 31.08.2014 suffered disclosure statement Ex.PW8/G, pursuant thereto, he got recovered a danda, which was taken into possession vide memo

30.08.2014, his disclosure statement Ex.PW8/K, pursuant where to, he got recovered country-made pistol which was taken into possession vide memo Ex.PW8/M. He also deposed regarding arrest of accused Hemraj on 30.08.2014 and recovery of an iron rod on his disclosure statement Ex.PW8/O, which was taken into possession vide memo Ex.PW8/P. He identified the danda recovered from accused Jeeta Ex.MO/7, the iron rod recovered from Hemraj Ex.MO/8 and the country-made pistol recovered from accused Lalit Ex.MO/9.

19. In cross-examination by Ld. counsel for accused Kapil, Rahul and Parveen, he admitted that the said accused had been found innocent during investigation.

20. In cross-examination by Ld. counsel for accused Jeeta, Hemraj, Rambir and Ranbir, he stated that names of Parveen, Rahul and Kapil, who had been found innocent were mentioned in the FIR. This implied that the complaint Ex.PA was a manipulated document. He stated that intimation regarding the occurrence had been received in the Police Station on 28.08.2014 at about 9/10 PM. Soon thereafter he reached the place of occurrence and made general enquiries at the railway level crossing, but no eye witness or other witness who knew about the occurrence was found available. However, he had come to know that the parties belong to village Deeghot. He admitted that during the course of investigation, it was revealed that on 28.08.2014 accused Ajay had made a phone call on the Police Helpline number '100' and had informed that his car had been intercepted by some boys at Mitrol level crossing and they had engaged in a fight with him. This entry had been recorded in the Register maintained in

course of investigation. He had reached GH Palwal on 29.08.2014 at about 12.15 (midnight). There he met the complainant who was accompanied by 50-60 boys. He volunteered to make statement Ex.PA stating that the deceased was his brother and therefore, he wanted to make the statement to the Police. The inquest proceedings were conducted in GH Palwal the next morning. He visited the place of occurrence on 29.08.2014 at about 12.00 noon. He admitted that the railway level crossing where the occurrence was stated to have taken place was a busy place as number of trains pass from the route daily and hundreds of vehicles and the passers-by use the crossing. When the site plan Ex.PW8/C was prepared, no person from general public was present with him.

21. On 29.08.2014 on receiving information from Sarvodaya Hospital, Faridabad regarding admission of Hemraj with a gun shot injury, he along with Head Constable Rajesh reached Sarvodaya Hospital, where, the concerned doctor made an endorsement on his application Ex.PW8/W that injured Hemraj had left the hospital against medical advice. He procured the MLR of Hemraj Ex.PW8/X, which is a carbon copy of the original MLR.

22. On 30.08.2014, he along with HC Rajesh reached village Karimpur, where he met Hemraj, who voluntarily got recorded his statement Ex.PW8/Y and signed the same. The statement Ex.PW8/Y made by Hemraj was regarding the occurrence in which he had received gun shot injuries at the hands of Harkesh with a country-made pistol and how he and his accomplices were assaulted. According to the statement, the complainant party in case FIR No.459/2014 were in fact the aggressors. Even the

attending doctors at Sarvodaya Hospital where Hemraj obtained the medical

attention confirmed that Hemraj had suffered gun shot injuries which is also mentioned in the MLR Ex.PW8/X.

23. All phone calls to number '100' at Police Control Room are entered in a Register maintained in that office. The call record pertaining to call made by Ajay Chairman to the PCR was entered at Sr.No.12 dated 28.08.2014. Its correct photocopy was Ex.PW8/DX. This record is a public record. The factum of this call made by accused Ajay was revealed during investigation of the case. Ex.PW8/DX bears the attestation stamp of Assistant SPIO, District Palwal.

24. PW9 Sanjay Kumar son of Shri Narender Kumar, resident of H.No.548 Housing Board Colony, Palwal deposed that he was running a photo studio by the name of Ashoka Photo Studio at GT Road, Palwal. The photographs PW9/1 to PW9/10 had been taken by him.

25. PW10 Dr.R.S.Sangwan, Senior Scientific Officer (Ballistics), FSL, Madhuban appeared through Video Conferencing and proved the FSL report Ex.P10. As per this report:

“1. The Countrymade pistol marked as W/1 (Chambered for .315” cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.

2. The Countrymade pistol marked as W/1 had been fired through. However, scientifically, the time of its last firing cannot be given.

3. The .315” fired cartridge cases marked as C/1 & C/2 have been fired from one and the same firearm but not from Countrymade pistol marked as W/1.

4. The .32” fired bullet marked as BC/1 has been fired from a rifled barrel/standard firearm.

5. *Report in original from Serology Division is enclosed herewith.*

Note: i) Exhibits examined in the Ballistics Division were resealed alongwith their original wrappers with the seal of R.S.S.SSO (BALL)FSL(H)MBN.”

In cross-examination, he stated that on 21.11.2014 he had done the test firing. The weapon was found in working order. He admitted that the cartridges Ex.C1 and C2 were not fired from the country-made pistol sent for FSL examination.

26. PW11 Dr.Surjit, Senior Scientific Officer (Serology), FSL, Madhuban deposed that the FSL report Ex.P11 was prepared by him.

27. PW12 Head Constable Rajesh Kumar deposed that on 29.08.2014 he was posted as IHC in Police Station Sadar Palwal. He and other staff members accompanied ASI Lakshmi Narain and reached the place of occurrence. None was found present there. They were informed that the injured had been taken to the Hospital. Then they reached General Hospital, Palwal, where brother of the deceased met ASI Lakshmi Narain and got recorded his statement Ex.PA. The IO made his endorsement Ex.PW 8/A and sent it to Police Station for registration of case. He proved the FIR Ex.PW12/A. He then deposed about conducting the inquest proceedings, the visit to the place of occurrence and preparation of rough site plan Ex.PW8/C, collection of blood stained earth vide memo Ex.PW8/B, taking into possession the empty cartridges vide memo Ex.PW8/E, the arrest of accused Jeeta, Lalit, Hemraj and the recoveries pursuant to the disclosure statements made by them.

28. In cross-examination by Ld. Counsel for accused Kapil, Rahul

and Parveen, he admitted that when they reached the hospital, complainant Harpal stated that he would make the statement after consultation. After consulting the villagers and his family members, complainant made statement before the IO.

29. PW13 Rakesh Record Keeper, Sarvodaya Hospital, Faridabad brought the summoned record i.e. MLR of Hemraj s/o Brijlal. Ex.PW8/X was the carbon copy of original MLR of Hemraj.

30. DW1 Satbir Singh Computer Operator, Office of DSP Hodal, deposed that on a representation made by Sunita d/o Dhan Singh inquiry in relation to FIR No.459 dated 29.08.2014 was marked to DSP Hodal. As per records, a detailed enquiry was conducted by DSP, Hodal, according to which Ajay and Ranbir both sons of Mahender Singh were found innocent. The Inquiry report also endorsed the enquiry conducted by Jaibir Singh Inspector/SHO, PS Sadar Palwal, who had found various accused including Ajay and Ranbir innocent. He proved a photocopy of the report Ex.DW1/A.

31. DW1A Bachchu Singh son of Shyam Lal, aged 67 years, resident of village Dighot, Tehsil Hodal, District Palwal stated that his land was situated near the railway crossing of village Deeghot-Mitrol road. On the day of occurrence, he was present in his fields situated near the place of occurrence. A car parked at Mitrol side of the railway crossing was being damaged. After hearing the noise, he went near the car. He found the car abandoned. Thereafter, three persons came in a car. He did not know them. Lala had intercepted the car. He was having a danda in his hand. One of the occupants of the car alighted from the car and fired a shot towards Lala. Another occupant of the car took the danda of Lala, which had fallen from

upon Lala. The person who fired first shot at Lala, again fired at him. Thereafter, the assailants escaped leaving Lala dead at the spot. At that time no family member of Lala was present at the spot. However, several persons from the surrounding fields and passers by had gathered there. Harpal had not come to the spot. After 10-15 minutes of the incident, police arrived and took away the dead body of Lala. After receiving information about the death of his brother Lala, Harpal reached the Hospital. When he was present at the spot Kapil and Rahul sons of Devi Singh, Parveen and Kukku @ Lalit sons of Rajbir, were not present there. He had informed the police that these persons were not involved in the crime.

32. In cross-examination by Ld. Public Prosecutor, denied that Ajay @ Rambir and Nikku @ Ranbir had fired a shot at Lala. He stated that he had no concern with the real facts of the case. He was distantly related being the uncle of the accused. Police did not arrive in his presence as he had left by then. He did not know who had informed the Police. He had reached the place of occurrence on hearing the sound of damage to the car. He could not tell the make of the Car.

33. DW2 Jitender son of Dharambir, resident of village Dighot, Tehsil Hodal, District Palwal stated that he was Sarpanch of village Deegot for the last 2½ years. He was also Lambardar of the village. He knew Lala @ Charan Singh, who was a resident of the same village. He deposed that on the day of occurrence, he was at Palwal. He reached his village at about 8.30 pm and came to know that Lala had been injured in a gun shot. After that he reached the Hospital. He met Virender, a cousin of Lala. Police reached the Hospital 10-15 minutes after the dead body of Lala was brought

there. Police wanted to record the statement of Harpal, but the family

members of Lala stated that they would narrate about the incident on their own. DW2 Jitender was asked to leave.

34. The case was registered on the statement Ex.PA of PW4 Harpal (brother of deceased Lala @ Charan Singh) recorded by PW8 ASI Laxmi Narain at General Hospital Palwal at about 00.50 AM on 29. 08.2014. In his statement PW4 stated that on 28.08.2014 at about 6.00/6.30 PM Harkesh son of Ramesh Chand had came to him and told him that he had received a telephone call from Lala @ Charan Singh that at Old Shyam Hotel, Lalit son of Ajay and 3-4 persons had quarreled with him and in that quarrel Shakti Singh Rawat resident of village Bahin had also received injuries. On that information he (Harpal-complainant), Harkesh and Vikram went to Deeghot-Mitrol Railway crossing. They saw that Lala was standing there and the railway crossing was closed. In the meantime Rambir @ Ajay, Ranbir @ Nikku, Kapil, Rahul, Parveen, Kuku, Jeeta came there on one Swift car bearing Regd. No.HR 30D-8201 and one Platina motorcycle Regd. No.A/F. From the side of Mitrol Lalit and 3-4 other unknown persons came at the railway crossing in a Santro Car bearing Regd. No.HR29-S-6103. Then Ajay who was having pistol in his hand fired at Lala due to which Lala fell down on the ground. Then Nikku @ Ranbir and Lalit fired at Lala. The other persons also gave axe and danda blows to Lala. On alarm being raised the accused fled away. A PCR vehicle came to the spot. Lala was taken to Premia Hospital, Palwal in the PCR where the doctor declared him dead. Complainant alleged that the accused had killed his brother due to enmity.

35. While deposing in Court as PW4 Harpal deviated from his statement Ex.PA regarding the occupants of the Swift car. In his deposition

was sitting in it. Ajay came out of the car. He was carrying a weapon. He ran after Lala @ Charan Singh, who was standing on the other side of the railway level crossing towards Mitrol. On seeing Ajay, Lala @ Charan Singh started running. Ajay fired at him from behind. The shot hit Lala and he fell down. Thereafter, Nikku fired a shot at Lala. After few minutes a Santro car came from the side of Mitrol. Lalit s/o Ajay came out of that car. He snatched the weapon from Nikku and fired a shot at Lala. Kapil, Parveen, Rahul, Kukku and Jeeta who were armed with Dandas and Kulharis also inflicted injuries to Lala with their respective weapons. The accused fired shots at them, which did not hit them. Meanwhile, persons from the nearby factory came there. The accused fled away with their respective weapons and vehicles as the railway level crossing had opened by that time. A Police gypsy came from the side of Deeghot. He (Harpal) along with Harkesh and Vikram put Lala @ Charan Singh in Police gypsy. Vikram accompanied Lala in the PCR gypsy to Palwal hospital. He (PW4) and Harkesh went to the village to arrange for money. When they started back after arranging the money, they received a call from Vikram that they should reach Government Hospital, Palwal. When they reached Government Hospital, Palwal, they were informed that Lala @ Charan Singh had died. On hearing that, he (PW4) became perplexed. He got recorded his statement (Ex.PA) around midnight, which bears his thumb impression at point 'A'. One Sunil from their side was contesting the election of Sarpanch against Ajay from the other side. That was the cause of enmity which led to the murder of his brother.

36. PW1 Harkesh who was with PW4 and witnessed the incident

deposed on similar lines. He also deposed that the Swift car bearing

No.HR-30D-8201 crossed them and stopped at the railway crossing. Lala @ Charan Singh was standing on the other side of the railway crossing with a motorcycle. Ajay s/o Mahender came out of the car. He was armed with a pistol or revolver or katta also. He chased Lala @ Charan Singh. Lala left his motorcycle and ran towards Mitrol village. Ajay fired a shot from behind which hit Lala @ Charan Singh. Then Nikku @ Ranbir s/o Mahender came out of the car. He also fired a shot at Lala @ Charan Singh who had already fallen down. Nikku fired a third shot also but he did not know whether it hit Lala. Lalit came from the other side. There were 3-4 boys in the car of Lalit. Lalit also fired some shots. A large crowd had gathered by then. Contrary to what was deposed by PW 4 Harpal he (PW 1) did not attribute any role to Kapil, Lalit, Rahul, Jeeta. He merely stated that they were present there besides a number of others. In his cross examination he asserted that no person other than Lalit, Nikku and Ajay had inflicted any injury to Lala @ Charan Singh, nor had participated in the occurrence. His deposition was identical with that of PW4 in regard to the arrival of PCR vehicle, shifting of injured Lala @ Charan Singh to the said vehicle, Vikram going as an attendant with him, and he (PW1 Harkesh) and Harpal going to the village to arrange money, their reaching Government Hospital at 9.00 / 9.30 pm where they were informed that Lala @ Charan Singh had been declared dead by the doctors. He further deposed that Harpal became unconscious upon hearing this. Harpal had remained unconscious for about 2 to 2.5 hours. He was given some injection while sitting on the chair in the Government Hospital. Several villagers also came there. Harpal regained his senses around midnight and then got his statement recorded before the

Police, on the basis of which FIR was lodged.

37. No doubt in his cross examination by Counsel for the accused PW 4 Harpal had stated that the Police officials had come to the hospital at about 10/10.30 pm. He had told them that he would make his statement regarding the occurrence after consulting his family members. After that Police had given them 2-3 hours. Then after midnight, he made his statement Ex.PA. He, Harkesh, Vikram and his cousin Virender had conferred and deliberated among themselves before he made his statement Ex.PA. Similarly PW 12 HC Rajesh Kumar who had accompanied the PW 8 ASI Laxmi Narain, the Investigating Officer to the General Hospital when the statement of PW 4 was recorded in his cross-examination by Counsel for accused Kapil, Rahul and Parveen, admitted that when they reached the hospital, complainant Harpal stated that he would make the statement after consultation. After consulting the villagers and his family members, complainant made statement before the IO. But merely from this it cannot be concluded that the entire version in the FIR is false and manipulated.

38. In this context it is important to note that PW8 ASI Laxmi Narain, the Investigating Officer, in his cross examination deposed that intimation regarding the occurrence had been received in the Police Station on 28.08.2014 at about 9/10 PM. Soon thereafter he reached the place of occurrence and made general enquiries at the railway level crossing, but no eye witness or other witness who knew about the occurrence was found available. He had reached GH Palwal on 29.08.2014 at about 12.15 (midnight). There he met the complainant who was accompanied by 50-60 boys. He volunteered to make statement Ex.PA stating that the deceased was his brother and therefore, he wanted to make the statement to the

examination that PW 4- Harpal had sought time to deliberate and consult his family members before making the statement. Even otherwise the complainant was an illiterate villager. His younger brother had died due to gun shot injuries. He had specifically stated that he got perplexed on hearing about his brother's death. PW 1 Harkesh had also stated that Harpal had remained unconscious for about 2 to 2.5 hours and was given some injection while sitting on the chair in the Government Hospital. The entire incident had occurred in a short span of time- he first received the news of the attack on his brother at Old Shyam Hotel, then he saw his brother being fired upon at the railway crossing, from where he was taken to hospital, he then went home to arrange money and on reaching the hospital he was informed that his brother had died. Two- three vehicles were involved in the attack. Number of assailants were involved. In these circumstances if he sought time to compose himself and consult his family members his entire testimony cannot be doubted on that score. In his cross examination he had stated that he, Harkesh, Vikram and his cousin Virender had conferred and deliberated among themselves before he made his statement Ex.PA. This candid admission on his part rather enhances his credibility. Harkesh and Vikram were with him when the incident took place. He was a simple rustic. It was but natural that he ascertain/ be sure about the details of the cars and the assailants before rushing into making a crucial statement involving his brother's death without proper thought.

39. No doubt there are certain contradictions and improvements and gaps in the prosecution case particularly regarding the involvement of the other accused, relying on which the Ld. Trial Court has acquitted them.

The three police men who were in the PCR van which took the injured to

the hospital have not been examined. The blood stained clothes of PW 1 and PW 4 were not taken into possession. As they had gone home to collect money for the treatment of the injured Lal it was natural for them to use the occasion to remove their blood stained clothes. PW 4 has explained after he had gone home his blood stained clothes were washed. Sunil who as per PW 1 and PW 4 had come to the place of occurrence after the firing has not been examined. He was given up as having been won over as deposed by PW 1. Vikram who allegedly accompanied the injured Lala to the hospital has also not been examined. But despite these lapses and lacunae the core issue regarding the role of Ajay- appellant has not been dented.

40. The consistent version in the statement Ex.PA before the police by PW4 Harpal, and the deposition of PW1 Harkesh and PW4 Harpal in the Court is that the first gun shot injury was caused to deceased Lala by Ajay. The presence of appellant at the spot is evidenced from Ex.D5 which is an extract of the police record where a call made by Ajay on the police emergency No. 100 claiming that some boys had stopped his car at Mitrol Railway crossing and snatched cash is entered. The time of this call is 18.55 hrs on 28.08.2014. This coincides with time of the incident as per the prosecution. PW 8 ASI Laxmi Narayan in his cross examination admitted that during the course of investigation, it was revealed that on 28.08.2014 accused Ajay had made a phone call on the Police Helpline number '100' and had informed that his car had been intercepted by some boys at Mitrol level crossing and they had engaged in a fight with him. This entry had been recorded in the Register maintained in the Police Control Room and the copies thereof had been obtained during the course of investigation. He

further stated that all phone calls to number '100' at Police Control Room are entered in a Register maintained in that office. The call record pertaining to call made by Ajay Chairman to the PCR was entered at Sr.No.12 dated 28.08.2014. Its correct photocopy was Ex.PW8/DX. This record is a public record. The factum of this call made by accused Ajay was revealed during investigation of the case. Ex.PW8/DX bears the attestation stamp of Assistant SPIO, District Palwal.

41. No doubt no recovery was made from Ajay. One country made pistol was recovered on the disclosure statement of accused Lalit but the same could not be connected with the empty cartridges recovered from the spot. But the non recovery of the weapon of offence from the accused can of itself be no ground to acquit him in the face of direct testimony of two eye witnesses on the point that the first shot was fired by Ajay which hit the deceased causing him to fall down. Moreover, as held by the Ld. Trial Court the non-recovery of weapon is understandable as he was found innocent in the police inquiry.

42. As per the Medical board the cause of death in this case was shock and haemorrhage due to ante-mortem firearm injury over chest and abdomen.

43. The motive is also clear. Apart from the rivalry on account of the Panchayat Elections, the immediate provocation for the incident was the altercation between the deceased on the one side and Lalit s/o Ajay (appellant) and Hemraj on the other at the Old Sham Dhaba that evening. That such an altercation took place is also clear from the complaint titled as "Hemraj vs. Harkesh and others" Ex.D1 tendered in evidence by the

by the deceased. The present incident took place immediately thereafter.

44. Thus, the prosecution has proved the case against accused Ajay beyond reasonable doubt.

45. Accordingly there is no merit in the appeal and the same is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

March 17, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No