

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(1) CRA-D-944-DB of 2014
Vijender alias Mota
.... Appellant

Versus

State of Haryana
..... Respondent

(2) CRA-D-994-DB of 2014
Dinesh Kumar
.... Appellant

Versus

State of Haryana
..... Respondent

(3) CRA-D-1023-DB of 2014 (O&M)
Sandeep Sheokand
.... Appellant

Versus

State of Haryana
..... Respondent

(4) CRA-S-2450-SB of 2014
Ashok
.... Appellant

Versus

State of Haryana
..... Respondent

(5)

CRA-S-2487-SB of 2014

Anil Kumar and another

.... Appellants

Versus

State of Haryana

..... Respondent

(6)

CRA-S-2514-SB of 2014

Shamsher Singh

.... Appellant

Versus

State of Haryana

..... Respondent

Reserved on : 06.01.2020

Date of decision : 14.01.2020

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

**Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate,
for the appellant in CRA-D-944-DB-2014.**

**Mr. N.S. Shekhawat, Advocate,
for the appellant in CRA-D-994-DB-2014.**

**Mr. J.S. Bedi, Senior Advocate, with
Mr. Sunil Sihag, Advocate,
for the appellant in CRA-D-1023-DB-2014.**

**Mr. Sailender Singh and Mr. Abhajeet Singh, Advocates,
for the appellant in CRA-S-2450-SB-2014.**

**Mr. S.S. Mor, Advocate, for the appellants
in CRA-S-2487-SB-2014 and CRA-S-2514-SB-2014.**

Mr. Vivek Saini, DAG, Haryana.

Mr. Ashok Arora, Advocate, for the complainant.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in these appeals, i.e. CRA-D-944-DB, CRA-D-994-DB, CRA-D-1023-DB, CRA-S-2450-SB, CRA-S-2487-SB and CRA-S-2514-SB of 2014, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 12.05.2014 and order dated 17.05.2014, rendered by learned Additional Sessions Judge, Hisar, in Sessions Case No. 27 dated 22.12.2008. Appellants along with co-accused Ram Parshad were charged with and tried for the offences punishable under Sections 302/212/216/34 IPC and Section 25/54/59 of the Arms Act.

3. Appellants Vijender alias Mota, Dinesh Kumar and Sandeep Sheokand were convicted and sentenced to undergo life imprisonment and to pay fine of ₹ 50,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of one year for the offence punishable under Section 302/34 IPC. They were also convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay fine of ₹ 10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of three months for the offence punishable under Section 25/54/59 of the Arms Act. Appellants Ashok, Anil Kumar, Rakesh alias Rocky and Shamsher Singh were convicted and sentenced to undergo rigorous imprisonment for a period of four years and to pay fine of ₹ 10,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of three months for the offence punishable under Section 212 IPC. All the sentences were ordered to run concurrently. Co-accused Ram Parshad was acquitted of the charges framed

against him.

4. The case of the prosecution, in a nutshell, is that as per the complaint made by PW.2 Rattan Singh Dhania vide Ex.P1, he was blessed with two sons and two daughters. His younger son Sandeep, aged about 20 years, used to study in B.A. IInd year. A marriage reception party of his elder son Prince was being organized in Community Centre, Urban Estate, Hisar, on 19.07.2008. He along with his family members, relatives and friends was present. In the meanwhile, at about 11.20 PM, Sandeep Sheokand son of Jagdish, resident of 227, Type-II, and Suresh son of Mahabir, residents of Housing Board Colony, Vidyut Nagar, Hisar, also came to the marriage venue. They were not invited. They had quarreled with his son Sandeep on various occasions. The function was over. He came back to his home. However, his younger son Sandeep alias Ajju did not come back. On the next day, they came to know that dead body of one boy was lying on Raipur Road. Thereafter, he along with his family members and friends reached the disclosed place. The dead body of his son Sandeep was lying with bullet injuries. According to the averments made in Ex.P1, Sandeep Sheokand and Suresh Sihag had taken away his son from the party venue. They had committed his murder. FIR Ex.P31 was registered. Police visited the spot. Blood stains were lifted with cotton swab along with two cartridges of 9 mm from the spot. Inquest proceeding were completed. The dead body was sent to General Hospital, Hisar, for conducting post mortem examination. The post mortem examination was conducted vide Post Mortem Report Ex.P4. On 28.07.2008, accused Anil Kumar, Rakesh alias Rocky and Vijender were arrested. Anil Kumar and Rakesh alias Rocky made disclosure statements vide Ex.P38 and Ex.P39 respectively. Vijender

also suffered disclosure statement vide Ex.P17. On 29.07.2008, accused Shamsher Singh and Ashok were arrested. They also made disclosure statements. Dinesh was arrested on 02.08.2008. Sandeep Sheokand was arrested on 19.09.2008. He also made disclosure statements Ex.P63 and Ex.P64. One pistol 9 mm was got recovered at his instance. Rough site plan of the place of recovery of the pistol was prepared vide Ex.P67. Ram Parshad was also arrested. One country made pistol of .315 bore along with one live cartridge of the same bore was recovered from his possession. The investigation was completed and challan was put up after completing all the codal formalities.

5. The prosecution examined as many as 26 witnesses in support of its case. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution.

6. The appellants were convicted and sentenced, as noticed herein-above. Co-accused Ram Parshad was acquitted by the trial court. Hence, these appeals.

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

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

9. PW.1 Surjit testified that marriage of his younger nephew Goldy son of Rattan Singh was solemnized on 18th of the last year. He was present in the reception party. He was sitting on chair in the reception party.

It was about 8.00/9.00 PM. He had seen Dinesh alias Mota, Sheokand, again said at about 9.00/10.00 PM, accused Sheokand, Mota and Dinesh were taking his nephew Ajju from the reception party. He was taken away in a car. Thereafter, what happened, he did not know. He enquired about Ajju. He was told to keep mum. His statement was recorded by the police. In his cross-examination by the learned defence counsel appearing on behalf of accused Dinesh, he deposed that his nephew Ajju had disclosed him about the names of the accused earlier. He had never visited the house of Dinesh. He did not give name of father of Dinesh in his statement before the police. They came to know about the names of the accused later on. He did not disclose their names to his brother Rattan Singh or any other family member or to any other relation. He did not visit the house of Rattan Singh after conclusion of the party. He did not disclose to anybody about taking away of Ajju in his presence. When he visited the house of his brother after 15 days, he came to know that Ajju had died. On that day also, he had not disclosed any thing to his brother. He had not visited police station to disclose that he had seen accused going in a car. He had disclosed this fact first time to the police after 1 $\frac{3}{4}$ months of the occurrence. Prior to this, he had not disclosed this fact to anybody. The distance between Ladwa village and Hisar is about 4 Kose (8 miles). He was not present at the house of his brother Rattan Singh for condolence. He did not attend the last rites of his nephew. He was also cross-examined by the learned defence counsel appearing on behalf of accused Vijender alias Mota. He deposed that he had disclosed to the police that after taking dinner at 8.30 PM, he had seen that his nephew was being taken away by the accused. He was confronted with his statement Ex.D1, wherein it is not so recorded. He had not gone to the

place where the dead body of his nephew was found. In his cross-examination by the learned defence counsel appearing on behalf of accused Sandeep, Anil and Rakesh, he testified that he was sitting inside the Shamiana near the gate. He could not give the description and colour of the car. He could not describe the clothes which were being worn by Ajju as well as three accused.

10. PW.2 Rattan Singh testified that the name of his elder son was Prince alias Goldy. His younger son Ajju alias Sandeep was aged about 20 years. He was studying in BA IInd year. He had arranged the marriage of his elder son Prince on 18.07.2008. A reception party was organized on 19.07.2008. At about 11.00 PM, again said at 11.15 PM, Sandeep Sheokand and Sihag came along with two unknown youngsters, again said Sandeep Sheokand came with Suresh Sihag along with two other youngsters. They were uninvited. Sandeep Sheokand used to come in their locality and a quarrel took place between Sandeep Sheokand and his son. Two young boys were also present with him. He could identify them by face. He did not know their names. They came at about 11.15 PM and stayed for 15 minutes. Two persons, again said three persons, took away his son Ajju. Suresh Sihag stayed in the party. Other three persons, including Sandeep Sheokand, took away his son Ajju. At about 1.00 AM on 20.07.2008, Rakesh alias Rocky came. He remained with them. He along with his brother-in-law went to the police station. Rocky was present in the police station. They searched for his son throughout the night on 19th. He received telephonic message from Arjun Dev, Incharge, Cantt Police Post, in the morning of 20.07.2008. He was asked to reach at Bye-Pass, Raipur Road, as his son Sandeep alias Ajju was lying dead there. He had received fire arm injury. He went to the

spot with his relatives. He found that dead body of his son Ajju was lying with bullet injuries. He noticed two empty cartridges lying near the dead body of his son. The police recorded his statement Ex.P1. He signed the same. The police completed documentation at the spot. Body of his son was delivered to him. On 24/25.07.2008, again said 22/23.07.2008, his brother Surjit told him about the names of Vijender alias Mota and Dinesh, who had taken his son from Community Centre. Thereafter, he went to Police Post Cantt. He identified accused Sandeep Sheokand, Dinesh and Vijender alias Mota. In his cross-examination by the learned defence counsel appearing on behalf of accused Dinesh, he deposed that when he made statement to the police, 15-20 persons were present there. He admitted that in his statement Ex.P1, he had stated about arrival of two uninvited persons in the reception party. He had not narrated before the police about arrival of anybody else. He had stated in his statement Ex.P1 that his son Ajju was taken by three persons. He was confronted with his statement Ex.P1, where the fact of taking away of his son by three persons is missing. He had told the police about the arrival of two other young boys in the reception party. He was confronted with his statement Ex.P1, where this fact was not stated. Again stated, he had named only Sandeep Sheokand about visiting the reception party. He had not named Dinesh and Vijender accused in his statement. Surjit was searching for his son separately and they were searching separately. He had instructed Surjit to find out his son. He received information from Arjun Dev SI at about 8.00 AM on 20.07.2008. Surjit was not present with him when he had gone to see the dead body. Surjit came after they reached Raipur Road, near the dead body. He had arrived there when the writing work was going on. His brother Surjit being elder to him

used to sit along with him for 13 days for condolence at his house. Occasionally, his brother used to go to his house at Ladwa to look after his cow. His brother used to return in the morning to sit with him. He had stated in his statement Ex.DB recorded on 25.07.2008 about disclosing names of three accused to him by his brother Surjit. He was confronted with his statement Ex.DB, where this fact is not recorded. He had taken his brother Surjit before the police after 2-3 days of the death of his son. He was also cross-examined by the learned defence counsel appearing on behalf of accused Vijender alias Mota. He deposed that the name of Vijender was disclosed to him by residents of the colony after 2-3 days of the murder of his son. He could not disclose the names of the persons who disclosed him about Vijender. In his cross-examination by learned defence counsel appearing on behalf of Sandeep Sheokand, Anil and Rakesh, he deposed that they had not raised any objection after seeing Sandeep Sheokand and Suresh Sihag uninvited in the marriage party. He had not disclosed to the police about the disputes pending between his son Sandeep and Sandeep Sheokand and Suresh Sihag. He was confronted with portion B to B of his statement Ex.P1, where it is so recorded. The empty cartridges were lying at a distance of 2-3 feet from the dead body, but he could not tell the direction. In his presence, police did not inquire from the mother of Sandeep Sheokand about giving a sum of ₹ 4,000/- to Rocky for Sandeep Sheokand.

11. PW.3 Dr. Y.P. Singh led his evidence by filing affidavit Ex.PW.3/A. He along with Dr. Devender Sindhu conducted post mortem examination on the body of Sandeep. They had noticed the following injuries on the body of the deceased :-

(1) Oval shaped 1.8 cm x 0.5 cm (wound of entry) with collar

of abrasion, margins were inverted 2.0 inches above right wrist, anterior surface in right forearm. On dissection, a track going posterior medial upward direction, on further dissection fracture right radius bone was present, track went to exit wound-size 2.0 cm x 1.5 cm oval shaped, 3 inches above right wrist joint on posterior surface right forearm, clotted blood was present in track, margins were everted in exit wound.

- (2) Oval shaped entry wound with inverted margins and collar of abrasion of size 1.25 cm x 1.0 cm just below the junction of medial 2/3rd and lateral 1/3rd and of left clavicle, a track went posterior-lateral and upward direction, up to exit wound with everted margins of size 1.5 cm x 1.0 cm just below lateral end of left clavicle with fracture, clotted blood was present in whole track. A metallic, golden coloured foreign body was recovered from baniyan (bullet).
- (3) Oval shaped 1.25 cm x 1.0 cm with collar of abrasion with inverted margins (wound of entry) 3 inches medial, ½ inch above left anterior superior iliac spine, a track went posterior lateral and downward to exit wound 1.25 cm x 1.0 cm with everted margins 2 inches lateral to left anterior superior iliac spine fracture of left iliac bone was present, clotted blood was present in track.
- (4) Oval shape entry wound with inverted margins and collar of abrasion just below middle of right clavicle of size 2.0 cm x 1.0 cm, a track went medial downward and posterior, on dissection, upper lobe right lung was contused. Aorta was ruptured, trachea was ruptured, left pleural cavity ruptured and was full of blood. On further dissection a metallic golden coloured bullet was recovered from left paravertebral tissue, clotted blood was present in whole track.

He also averred in the affidavit that the cause of death was shock and

haemorrhage due to injury to vital organs of the body which was ante mortem in nature due to fire arm injury, which was sufficient to cause death in natural course of life. In his cross-examination, he deposed that there were four injuries in all on the dead body with three exit wounds. The death occurred within 3 to 12 hours prior to post mortem.

12. PW.4 ASI Bhana Ram led his evidence by filing affidavit Ex.P13. According to the averments made in the affidavit, on 20.07.2008, Arjun Dev SI deposited one parcel containing cotton swab stained with blood, one parcel containing two empty cartridges duly sealed with seal AD, one parcel of clothes of deceased Sandeep and one parcel of vial containing coins of cartridge sealed with seal of doctor along with sample seal. On 02.08.2008, Arjun Dev SI deposited one parcel of country made pistol 0.32 bore duly sealed with seal AD along with sample seal. On 29.08.2008, Ram Kishan Inspector/SHO deposited one parcel of 9 mm pistol along with four live cartridges of 9 mm duly sealed with seal RK. On 22.09.2008, Ram Kishan Inspector/SHO deposited one parcel of pistol 9 mm along with two cartridges of 9 mm, duly sealed with seal IS along with sample seal. On 02.10.2008, Subhash Chand SI deposited one parcel containing pistol and one cartridge of 0.315 bore duly sealed with seal LC and DN along with sample seal. These were deposited by him in intact condition in the Malkhana. The parcels containing cotton swab stained with blood, two empty cartridges duly sealed with seal AD, clothes and the parcel of vial containing coins of cartridge sealed with seal of doctor along with sample seal were handed over by him to Constable Manoj after taking out from the Malkhana vide RC No. 878 dated 11.09.2008 for depositing at FSL Madhuban. The parcel containing country made pistol 32 bore duly sealed

with seal AD, parcel containing pistol 9 mm along with four live cartridges of 9 mm duly sealed with seal RK were handed over vide RC No. 876 dated 09.09.2008. One parcel of pistol 9 mm along with two cartridges of 9 mm, duly sealed with seal IS along with sample seal, and the parcel containing pistol along with one cartridge of 315 bore duly sealed with seal LC and DN along with sample seal, vide RC No. 1021 dated 06.10.2008 were handed over to Constable Naveen Kumar for depositing at FSL Madhuban. In his cross-examination, he had denied the suggestion that the pistol was fired in the police station and the fired bullet and pistol were sent to FSL.

13. PW.5 SI Wazir Singh deposed that SI Arjun Dev handed over the dead body of Sandeep alias Ajju to him for getting the post mortem examination conducted. The post mortem was got conducted. Doctor handed over to him one sealed parcel containing clothes of the deceased sealed with the seal of the doctor and another parcel containing fired bullets/ led extracted from the dead body in a vial sealed with the seal of the doctor. He handed over the same to SI Arjun Dev, who took the same into possession vide memo Ex.P24.

14. PW.6 ASI Ramesh Chander deposed that Ashok Kumar MHC had told him on 22.07.2008 that he had received a telephone call from village Bhanbhoru that one Indigo car No. HR-20P-7368 was parked in the Dharamshala. He reached the spot. However, the owner was not found. He took the car into possession and deposited the same in the Malkhana.

15. PW.7 HC Ashok Kumar testified that he received telephonic information on 22.07.2008 from village Bhanbhoru that one Indigo car bearing No. HR-20P-7368 was parked in the verandah of the Dharamshala. He informed Ramesh Chand ASI in this regard, who went to the spot and

took the car into possession.

16. PW.8 ASI Sat Narain testified that Inspector SHO Ram Kishan joined him in the investigation on 29.08.2008. Accused Vijender alias Mota made a disclosure statement to the effect that he had kept concealed the pistol along with four live cartridges in a cardboard box on the roof of liquor shop and he could get the same recovered. The disclosure statement is Ex.P17. Thereafter, accused led the police party and pointed out the place of occurrence. On the same day, accused Vijender alias Mota led the police party to the disclosed place and got recovered one country made pistol and four live cartridges. These were taken into possession. In his cross-examination, he admitted that no public witness was summoned or joined before interrogation of accused Vijender. The jurisdiction of liquor vend from where recovery was effected from Vijender accused might fall in the jurisdiction of Police Station City Jind. No arrival or departure was shown in the local police station of Jind nor any police help was taken from the concerned police station.

17. PW.9 ASI Rohtash Singh led his evidence by filing affidavit Ex.P23. According to the averments made in the affidavit, one parcel containing pistol along with six cartridges duly sealed with seal LC relating to FIR No. 720 dated 01.10.2008 under Section 25-54-59 of the Arms Act, Police Station City Hisar, was deposited with him in the Malkhana. He handed over the parcel containing pistol along with six cartridges to Subhash Chander SI, Police Station Sadar Hisar, on 05.10.2008.

18. PW.10 SI Miyan Singh clicked photographs of the dead body vide Ex.P24 to Ex.P26.

19. PW.12 HC Manoj Kumar led his evidence by filing affidavit

Ex.P27. According to the averments made in the affidavit, on 11.09.2008, MHC Bhana Ram, after taking out the case property in intact condition, i.e. one parcel containing blood stained cotton, one parcel containing two empty cartridges duly sealed with seal AD along with sample seal, one parcel of clothes of deceased and one parcel of vial containing coins of bullets duly sealed with seal of doctor along with sample seal, handed over the same to him vide RC No. 878 dated 11.09.2008. He deposited the same on the same day with FSL Madhuban.

20. PW.15 Inspector Ram Kishan deposed that he was posted as SHO Police Station Sadar Hisar on 28.08.2008. He received information that Vijender alias Mota was sitting in a tea shop at Bus Stand Mundhal. He reached there. He arrested accused Vijender alias Mota. He interrogated him. Accused Vijender alias Mota made disclosure statements Ex.P18. He also made disclosure statement Ex.P17 that he had kept concealed a revolver and could get the same recovered. The recovery of one country made pistol and four live cartridges was effected, which were taken into possession vide recovery memo Ex.P19. In his cross-examination, he admitted that he did not join any public person after receiving the secret information, and even after reaching bus stand Mundhal. He did not try to join any independent witness. He had not called any employee from the liquor vend.

21. PW.16 Subhash Chander testified that he formally arrested Ram Parshad in the case in hand. A pistol of .315 bore and cartridge were recovered. These were taken into possession vide recovery memo Ex.P32.

22. PW.17 ASI Dayanand deposed that ASI Lal Chand had submitted application Ex.P35 on 02.10.2008 in respect of testing of .315

bore pistol and a cartridge. He mechanically examined the same. He submitted report Ex.P36.

23. PW.18 Inspector Arjun Dev deposed that he was posted as Incharge of Police Post Hisar Cantt on 20.07.2008. He received telephonic information that dead body of a person was lying on Raipur Road. He went to the spot. Statement of Rattan Singh was recorded vide Ex.P1. He collected blood stained earth with the help of cotton swab and two blood stained cartridges of 9 mm. He sealed the same. He conducted inquest proceedings. The clothes of the deceased were also taken into possession. The dead body was delivered to the complainant. He prepared rough site plan of the place of occurrence vide Ex.P37 on 20.07.2008. He arrested Anil Kumar and Rakesh alias Rocky on 28.07.2008. Their disclosure statements were recorded vide Ex.P38 and Ex.P39. He also arrested Shamsher and Ashok on 29.07.2008. He recorded their disclosure statements vide Ex.P40 and Ex.P41. He arrested Dinesh on 02.08.2008. A country made pistol of 32 bore was recovered from his possession. He prepared sketch of the country made pistol. He recorded disclosure statement of accused Dinesh vide Ex.P44. He recorded supplementary statement of Rattan Singh complainant on 25.07.2008. In his cross-examination by the learned defence counsel appearing on behalf of accused Dinesh, he deposed that he had not recorded statement of Surjit Singh PW. Nobody from the complainant party disclosed the car number. The investigation of the case remained with him upto 05.08.2008. Till this date, no eye witness contacted him regarding role of Dinesh accused. He had arrested Dinesh only on the basis of disclosure statement of co-accused. Dinesh was not found to be owner or driver of the

car, which was recovered by him from police station Barwala. He was also cross-examined by the learned defence counsel appearing on behalf of accused Sandeep Sheokand. He admitted that Suresh son of Mahabir who was named by Rattan Singh as accused was not challaned.

24. PW.19 Inder Singh DSP testified that he conducted investigation of the case. He recorded statement of PW Surjit Singh under Section 161 Cr.P.C. and also added Section 216 IPC. He arrested accused Sandeep Sheokand on 19.09.2008. He interrogated him on 20.09.2008. His disclosure statement Ex.P63 was recorded. Second disclosure statement was made by Sandeep Sheokand vide Ex.P64. On the basis of his disclosure statement, a pistol of 9 mm made in USA and two live cartridges of KF 67, 9 mm were recovered on the pointing out of accused Sandeep Sheokand. The case property was deposited in the Malkhana. In his cross-examination, he admitted that the pistol was made in US and was manufactured by a standard company.

25. PW.20 Hari Ram Sub Inspector testified that Vijender alias Mota was arrested by Ram Kishan SHO. He made disclosure statement Ex.P17, on the basis of which recoveries were effected. The recovered pistol is Ex.P30 and the cartridges are Ex.P31 to Ex.P34. On 19.09.2008, Inder Singh DSP arrested accused Sandeep. He made disclosure statements Ex.P63 and Ex.P64, on the basis of which recoveries of a pistol, two cartridges and magazine were effected. In his cross-examination by the learned defence counsel appearing on behalf of accused Vijender, he deposed that Vijender was arrested at 9.00 PM. He was also cross-examined by the learned defence counsel appearing on behalf of accused Sandeep Sheokand. He deposed that the IO did not put any mark of identification on

the recovered pistol and cartridges. Only the parcel was prepared. He admitted that the pistol was made in USA and it was manufactured by a standard company.

26. PW.22 Constable Naveen Kumar led his evidence by filing affidavit Ex.P72. According to the averments made in the affidavit, one parcel containing country made pistol of 32 bore sealed with seal AD along with sample seal and one parcel containing pistol 9 mm along with four cartridges of 9 mm duly sealed with seal RK along with sample seal were handed over to him vide RC No. 876 dated 09.09.2008 for depositing at FSL Madhuban. On 06.10.2008, one parcel containing pistol 9 mm and two cartridges of 9 mm duly sealed with seal IS along with sample seal and one parcel of pistol .315 bore and one cartridge of .315 bore sealed with seal LC and DN along with sample seal were handed over to him vide RC No. 1021 dated 06.10.2008. He deposited the parcels on the same day at FSL Madhuban.

27. PW.23 Ravinder Kumar ASI had supplied the call details of mobile No. 9728007698 vide Ex.P73/A.

28. PW.24 Rajesh Kumar had supplied the call details of telephone No. 9215538990 vide Ex.P74/A.

29. PW.25 Amar Singh had taken photographs of the marriage party of Goldy on 18.07.2008 as well as on 19.07.2008.

30. PW.26 Prince alias Goldy testified that his marriage was solemnized on 18.07.2008. The reception party was organized on 19.07.2008. Sandeep Sheokand and Rocky alias Rakesh, though not invited, came to the reception party. Two/three persons also accompanied them. Rakesh alias Rocky and Sandeep Sheokand congratulated him. He was

photographed with Sandeep Sheokand and Rakesh alias Rocky. The photograph is Ex.P75. He identified Sandeep Sheokand and Rocky alias Rakesh. He did not identify other accused.

31. The FSL report is Ex.P73. The laboratory examination and the result are as under :-

LABORATORY EXAMINATION

Products of combustion of smokeless powder were detected from the barrels of country made pistol marked W/1 (chambered for 7.65 mm cartridges) & country made revolver marked W/2 (chambered for .32" cartridges). Test firings were done in the laboratory from country made pistol marked W/1 and country made revolver marked W/2. Their firing mechanism were found in working order.

The class as well as individual characteristic marks present on 9 mm fired cartridge cases marked C/1, C/2 & 9 mm fired bullets marked BC/1, BC/2 were examined and inter compared under stereo and comparison microscope.

Clothes contained in parcel No. V were examined for fire arm hole and discharge residue. Copper was detected from the margins of holes on the front side, chest region on shirt contained in parcel No. V. Lead was detected from the margins of hole on the front lower side of shirt contained in parcel No. V. Margins of holes on the clothes were also examined under stereo microscope.

Based on the examination carried out in the laboratory, the result of analysis is as under :

RESULT

1. Country made pistol marked W/1 (chambered for 7.65 mm cartridges) & country made revolver marked W/2 (chambered for .32" cartridges) are fire arms as defined in Arms Act 54 of 1959. Their firing mechanism were found in working order.
2. Country made pistol marked W/1 (chambered for 7.65

- mm cartridges) and country made revolver marked W/2 (chambered for .32" cartridges) had been fired through.
3. 9 mm fired cartridge cases marked C/1 and C/2 have been fired from one and the same fire arm.
 4. 9 mm fired bullets marked BC/1 and BC/2 have been fired from one and the same non-rifled barrel/country made fire arm.
 5. Holes on the shirt, banian, pant and underwear contained in parcel No. V have been caused by bullets projectiles.
 6. Report in original from Serology division is enclosed herewith.

In continuation of the earlier report, second report Ex.P74 was tendered.

The laboratory examination and the result read as under :-

LABORATORY EXAMINATION

Products of combustion of smokeless powder were detected from the barrels of country made pistols marked W/3 (chambered for 9 mm cartridges) and W/4 (chambered for .315" and .303" cartridges). Test firings were done in the laboratory from country made pistols marked W/3 and W/4. Their firing mechanisms were found in working order.

The class as well as individual characteristic marks present on 9 mm fired cartridge cases marked C/1, C/2, 9 mm fired bullets marked BC/1, BC/2, .315" misfired cartridge marked MC/1 and those on test fired cartridge cases and bullets fired from country made pistols marked W/3 (chambered for 9 mm cartridges) and W/4 (chambered for .315" & .303" cartridges) were examined and compared with their respective bore/caliber under stereo and comparison microscope.

Based on the examination carried out in the laboratory, the result of analysis is as under :

RESULT

1. Country made pistols marked W/3 (chambered for 9 mm cartridges) and W/4 (chambered for .315" and .303"

cartridges) are fire arms as defined in Arms Act 54 of 1959. Their firing mechanism were found in working order.

2. Country made pistol marked W/3 (chambered for 9 mm cartridges) and W/4 (chambered for .315" & .303" cartridges) had been fired through.
3. 9 mm fired cartridge cases marked C/1 and C/2 have been fired from country made pistol marked W/3 (chambered for 9 mm cartridges) and not from any other fire arm even of same make and bore/caliber, because every fire arm has got its own individual characteristic marks.
4. 9 mm fired bullets marked BC/1 and BC/2 have been fired from country made pistol marked W/3 (chambered for 9 mm cartridges) and not from any other fire arm even of same make and bore/caliber, because every fire arm has got its own individual characteristic marks.
5. .315" misfired cartridge marked MC/1 has missed fire from country made pistol marked W/4 (chambered for .315" & .303" cartridges).

Both the reports were in continuation of the case property sent to FSL for examination. According to the report Ex.P74, 9 mm fired cartridge cases marked C/1 and C/2 were fired from country made pistol marked W/3 (chambered for 9 mm cartridges) and not from any other fire arm even of same make and bore/caliber. 9 mm fired bullets marked BC/1 and BC/2 were fired from country made pistol marked W/3 (chambered for 9 mm cartridges) and not from any other fire arm even of same make and bore/caliber. This was the weapon recovered from appellant Sandeep Sheokand.

32. The case of the prosecution is based on circumstantial evidence. According to the prosecution, deceased Sandeep alias Ajju was

seen for the last time in the company of appellants Dinesh, Vijender alias Mota and Sandeep Sheokand. The prosecution has relied upon the statement of PW.1 Surjit, who is brother of complainant - PW.2 Rattan Singh. According to his deposition, at about 9.00/10.00 PM, he had seen Sheokand, Mota and Dinesh talking with his nephew Ajju. He was taken outside and led into the car. Even in Ex.DB, PW.2 Rattan Singh deposed that he came to know about the murder of his son by the accused from his companions and friends. He has not mentioned that his brother ever told him that he had last seen accused Vijender alias Mota and Dinesh in the company of the deceased. In his cross-examination, he admitted that he had not disclosed the names of these persons to his brother Rattan Singh or any other family member or to any other relation. He did not visit the house of Rattan Singh after conclusion of the party. He did not disclose to anybody about taking away of Ajju in his presence. He did not raise any alarm. He had gone to the house of his brother Rattan Singh after 15 days of the marriage. At that time, he came to know that Ajju had died. On that day also, he had not disclosed any thing to his brother. He did not go to the police station to disclose that he had seen accused taking away Ajju in a car. He had disclosed this fact for the first time to the police after 1 $\frac{3}{4}$ months of the occurrence. Prior to that, he had not disclosed this fact to anybody. The distance between Ladwa village and Hisar was about 4 Kose (8 miles). He did not attend the last rites of his nephew. He came to know only at the time of cremation that his nephew was murdered. On the day of cremation, he was not aware who had murdered his nephew. On that day, he had not disclosed to his brother about taking away of Ajju by three persons, as he was not aware of those three persons who took away his nephew. However,

PW.2 Rattan Singh has deposed that Surjit was also searching for his son Ajju separately and they were searching for him separately. He had seen few residents of the colony along with Surjit in search of his son. Surjit was not present with him, when he had gone to see the body. Surjit reached there after their arrival at Raipur Road, near the dead body. His elder brother Surjit used to sit with him for 13 days of mourning. His brother occasionally used to go to his house at Ladwa to look after his cow. He used to come in the morning to sit with him at this house.

33. In the statement Ex.P1 recorded on 20.07.2008, Rattan Singh had mentioned name of Sandeep Sheokand and Suresh. Neither the name of Dinesh nor the name of Vijender alias Mota was mentioned. The supplementary statement of PW.2 Rattan Singh was recorded on 25.07.2008 vide Ex.DB. According to the averments made in Ex.DB, he came to know that murder of his son Ajju was committed by Sandeep Sheokand son of Jagdish Sheokand and his companions Vijender alias Mota and Dinesh. Rakesh and Anil had arranged a sum of ₹ 1,000/- each and the amount of ₹ 4,000/- was arranged from the mother of Sandeep Sheokand. Ashok and Shamsher had also given money and shelter to Sandeep Sheokand.

34. Statement of PW.1 Surjit was recorded by the police on 14.09.2008 vide Ex.D1. According to the contents of Ex.D1, on 19.07.2008, he had come to Hisar to attend the reception party of the marriage of son of his brother Rattan Singh. At about 11.30 PM, he had seen Sandeep Sheokand, Vijender alias Mota and Dinesh taking away Sandeep alias Ajju in a car. These three persons were on visiting terms with Ajju. In case, PW.1 Surjit knew and had seen the above named three accused taking away his nephew, he should have definitely told this fact immediately to his brother

or relatives or to the police. His statement that he was not aware about the death of his nephew cannot be believed. PW.2 Rattan Singh has categorically deposed that PW.1 Surjit was also searching for Ajju. He reached the spot where the dead body was lying. He was in the constant contact of PW.2 Rattan Singh. He stayed with his brother Rattan Singh for 13 days of mourning. Thus, the theory propounded by the prosecution that Ajju was last seen in the company of Dinesh and Vijender alias Mota cannot be believed. The prosecution has not completed the chain, as far as appellants Dinesh and Vijender alias Mota are concerned. However, the fact of the matter is that Ajju was taken away by Sandeep Sheokand. PW.2 Rattan Singh has only mentioned two names, i.e. Sandeep Sheokand and Suresh Sihag, in his statement Ex.P1, on the basis of which FIR was registered. Suresh Sihag was not challaned. Even PW.18 Inspector Arjun Dev, the Investigating Officer, in his cross-examination, has stated that investigation of the case remained with him upto 05.08.2008. Till that date, no eye witness contacted him regarding the role of Dinesh. Even PW.26 Prince alias Goldy has deposed that though Sandeep Sheokand and Rocky alias Rakesh were not invited but they came in the reception party. He identified Sandeep Sheokand and Rocky alias Rakesh in the court. However, he did not identify other accused.

35. The recovery of weapon was effected on the basis of disclosure statement Ex.P64 suffered by appellant Sandeep Sheokand. He led the police party to the place from where 9 mm pistol and two live cartridges of the same bore were recovered. The bullets extracted from the body of the deceased and the empties recovered from the place of occurrence were already sent for FSL examination. The pistol got recovered by Sandeep

Sheokand was sent to FSL later on. According to the FSL report, 9 mm pistol recovered from Sandeep Sheokand was used in the commission of crime. The FSL report is in two parts. According to the report Ex.P73, country made pistol marked W/1 was fired through. 9 mm fired cartridge cases marked C/1 and C/2 were fired from one and the same fire arm. 9 mm fired bullets marked BC/1 and BC/2 were fired from one and the same non-rifled barrel/country made fire arm. Holes on the shirt, banian, pant and underwear contained in parcel No. V were caused by bullet projectiles.

36. The learned counsel appearing on behalf of appellant Sandeep Sheokand has vehemently argued that US made pistol was recovered. He has drawn the attention of the court to the statements made by PW.19 Inder Singh DSP as well as PW.20 Hari Ram Sub Inspector. Both these witnesses have deposed that the recovery was of US made pistol. However, the fact of the matter is that the appellant cannot take benefit of defect in the investigation. The weapon of offence used by Sandeep Sheokand was sealed and was deposited in the Malkhana. Thereafter, it was taken out along with cartridges and sent for FSL examination. It was not tampered with as per the statements made by the witnesses. The weapon which was recovered from appellant Sandeep Sheokand was used in the commission of crime. The mere non-description of the weapon by the witnesses would not effect the case of the prosecution.

37. The deceased had received four injuries. The cause of death as per the statement of PW.3 Dr. Y.P. Singh was shock and haemorrhage due to injury to vital organs of the body which was ante mortem in nature due to fire arm injury, which was sufficient to cause death in natural course of life.

The post mortem team had extracted metallic golden coloured bullets from

the body of the deceased. These were sealed and sent for FSL examination.

38. According to the prosecution, after the murder, appellant Sandeep Sheokand called appellant Anil through his mobile phone No. 9416256053 from his mobile phone No. 9728007698. Appellants Anil and Rakesh alias Rocky also gave a sum of ₹ 1,000/- each to Sandeep Sheokand. They also gave another amount of ₹ 4,000/- to Sandeep Sheokand after taking it from his mother. This is based on disclosure statement Ex.P38. According to the prosecution, Rakesh alias Rocky in his disclosure statement Ex.P39 disclosed that he had handed over his mobile phone to the police. According to the call details of his phone, appellant Sandeep Sheokand had talked with Anil and Rakesh alias Rocky. The call details have not been proved in accordance with Section 65-B of the Indian Evidence Act. The prosecution has relied upon statement of PW.23 Ravinder Kumar ASI to prove the call details Ex.P73/A with respect to mobile No. 9728007698. No certificate was ever produced as required under Section 65-B of the Indian Evidence Act. There was no evidence that the computer was in working order. No independent witness was produced by the prosecution to prove the charges against the co-accused that they had harboured the prime accused. Their Lordships of the Supreme Court in *Sanjiv Kumar Vs. State of H.P.,(1999) 2 Supreme Court Cases 288* have held that to attract the provisions of Section 212 IPC, it is necessary to establish commission of an offence; harbouring or concealing the person known or believed to be the offender; and such concealment must be with the intention of screening him from legal punishment. In the present case, all the ingredients are lacking. The evidence produced by the prosecution is insufficient to establish any of the ingredients mentioned here-in-above,

though as observed by the Supreme Court, all the ingredients are necessary to be proved. Their Lordships have held as under :-

“21. So far as accused Lekh Raj is concerned, we do not find an iota of material to indicate that he knew about the commission of offence by accused Sanjiv Kumar when he took him on his scooter and, therefore, the conviction of accused Lekh Raj of the offence under Section 212 IPC is wholly unsustainable in law. It may be stated that to attract the provisions of Section 212 IPC, it is necessary to establish commission of an offence; harbouring or concealing the person known or believed to be the offender; and such concealment must be with the intention of screening him from legal punishment. The evidence adduced by the prosecution in this regard is wholly insufficient to establish either of the aforesaid ingredients, though all the ingredients are necessary to be proved. In this view of the matter, the conviction of accused Lekh Raj for the offence under Section 212 is unsustainable and we, accordingly, set aside the conviction and sentence and acquit him of the charge.”

39. Accordingly, the prosecution has failed to prove its case against appellants Vijender alias Mota, Dinesh Kumar, Ashok, Anil Kumar, Rakesh alias Rocky and Shamsheer Singh, beyond reasonable doubt. However, the case against appellant Sandeep Sheokand has been duly proved beyond reasonable doubt.

40. Consequently, CRA-D-944-DB, CRA-D-994-DB, CRA-S-2450-SB, CRA-S-2487-SB and CRA-S-2514-SB of 2014 are allowed. The

judgment dated 12.05.2014 and order dated 17.05.2014 qua appellants Vijender alias Mota, Dinesh Kumar, Ashok, Anil Kumar, Rakesh alias Rocky and Shamsheer Singh are set aside. They are acquitted of the charges framed against them. They are on bail. Their bail bonds and surety bonds are discharged. However, CRA-D-1023-DB of 2014 is dismissed. The impugned judgment and order qua appellant Sandeep Sheokand are upheld.

(RAJIV SHARMA)
JUDGE

January 14, 2020
ndj

(HARINDER SINGH SIDHU)
JUDGE

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