

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-D-997-DB-2017 (O&M)
Reserved on : September 20, 2019
Date of Decision: January 09, 2020

Irshad ...Appellant

Versus

State of HaryanaRespondent

2. CRA-D-1043-DB of 2017(O&M)

Sonu Kumar ...Appellant

Versus

State of Haryana ...Respondent

3. CRA-D-1063-DB of 2017(O&M)

Naresh @ Nehru ...Appellant

Versus

State of Haryana ...Respondent

4. CRA-D-1096-DB of 2017 (O&M)

Dharmender ...Appellant

Versus

State of Haryana ...Respondent

5. CRA-D-1161-DB of 2017 (O&M)

Pawan Kumar ...Appellant

Versus

State of Haryana ...Respondent

6. CRA-D-12-DB of 2018 (O&M)

Narender @ Nabbu ...Appellant

Versus

State of Haryana

...Respondent

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

Present: Mr. Sarfraj Hussain, Advocate for the appellant in
CRA-D-997-DB of 2017 & CRA-D-1043-DB of 2017.

Mr. J.S. Hooda, Advocate for the appellant in
CRA-D-1063-DB of 2017.

Mr. Deepender Singh, Advocate for the appellant
in CRA-D-12-DB of 2018.

Mr. S.S. Dhaliwal, Legal Aid Counsel for the appellant(s)
in CRA-D-1161-DB of 2017 and CRA-D-1096-DB of 2017.

Mr. G.S.Wasu, Addl.AG, Haryana.

HARINDER SINGH SIDHU, J.

1. This judgment dispose of the aforesaid six appeals.
2. These appeals have been instituted against the judgment of conviction and the order of sentence dated 06/10.10.2017 passed by the learned Addl. Sessions Judge, Rewari in Sessions Case No.21 of 2016, wherein, the appellants were charged with and tried for offences under Sections 148, 302 read with Section 149 IPC. They have been convicted and sentenced to undergo RI for life and to pay a fine of Rs.10,000/- and in default to undergo RI for a period of ten months. Besides, appellant-Pawan has also been convicted under Section 25 of the Arms Act and sentenced to undergo RI for three years and to pay a fine of Rs.3,000/- and in default to undergo simple imprisonment for three months.
3. The case of the prosecution in nutshell is that on 22.04.2016

when ASI Ramkishan and EHC Om Parkash were present for patrolling duty at 75 feet road then they received a telephonic information regarding murder of a boy by few persons in village Maheshwari. On receiving this information ASI Ramkishan alongwith other police officials reached village Maheshwari where Mohit @ Kala got recorded his statement wherein he stated that on 22.04.2016 at about 6.40 p.m his cousins Ajay and Suraj were talking in front of the house of Ex-Sarpanch Karan Singh on 45 metre road. He was standing at some distance from them near the house of Dharmender. He saw Ajay and Suraj were running towards Dharmender's house. Three boys were following them on a Bullet motorcycle. The Bullet motorcycle was being driven by Ravi. Sohaib Khan was sitting behind Ravi and one more person was sitting behind them whose name he did not know. Two motorcycles having two riders each having batons in their hands were behind them. All the three motorcycle riders were chasing Ajay and Suraj. The third boy sitting on the Bullet motorcycle came down and fired at Ajay with country made revolver which hit Ajay on his head. Ajay fell down in front of the house of Dharmender. Suraj hid himself in Dharmendar's house. He (Mohit) raised alarm whereupon all the assailants sped away on their motorcycles towards Bhiwadi. His father Hansraj and other villagers reached the spot and rushed Ajay to Apex Hospital for treatment. He stated that Ravi used to study in his school and was one class junior to him. Ravi was a bully and used to threaten all. He had a fight with Ajay and Suraj on Dulhandi and had threatened to kill them. Ravi along with his companions had fired at Ajay with intention to kill him.

4. On the basis of this statement FIR under sections 148, 149, 307

of IPC and section 25 of Arms Act was registered. Ajay died on 23.04.2016 at Medanta Hospital, Gurgaon where after Section 302 IPC was substituted in place of Section 307 IPC. Accused Ravi, Dharmender, Pawan, Naresh @ Nehru, Narender @ Nabbu, Irshad and Sonu were arrested. As per the disclosure statement of accused Pawan, a country made pistol was recovered. As per disclosure statement of accused Dharmender wooden rod was recovered. Four motorcycles were also recovered. On completion of the investigation challan was filed against Pawan Kumar, Dharmender, Naresh @ Nehru and Narender @ Nabbu, Irshad and Sonu. Shoaib being Juvenile was produced before the Juvenile Justice Board. Ravi was tried by the Children's Court under the provisions of the Juvenile Justice (Care and Protection of Children) Act, 2015.

5. The prosecution examined a number of witnesses in support of its case. All the accused in their statements separately recorded under Section 313 Cr.P.C pleaded innocence and stated that they had been falsely implicated. Accused Dharmendar denied that he had given any disclosure statement to the police at any point of time. He stated that the police had obtained his signatures on blank papers. All the allegations levelled against him were false and fabricated. The alleged recovery of danda was false and based on concocted story.

6. PW1-EHC Krishan Kumar deposed that on 22.04.2016, he was posted at Police Station, Dharuhera on general duty. On that day SI Dharambir handed over to him special report of this case to deliver the same to the Illaqa Magistrate as well as higher officers of the department which he had delivered within time.

7. PW2-ASI Mahesh Kumar draftsman stated that on 26.5.2016, on the asking of Aman Singh Inspector/SHO Police Station, Dharuhera, he had visited the place of occurrence and prepared scaled site plan Ex.PA.

8. PW3- Sant Lal stated that Ajay Kumar deceased was his nephew. On 22.04.2016 at about 6.45 pm on receiving information that Ajay Kumar had been shot at and was lying in injured condition in village Maheshwari, he along with Hans Raj had reached the spot. They found Ajay Kumar lying in an unconscious state. They shifted him to Apex Hospital Dharuhera from where the doctors referred him to Rockland Hospital, Manesar, However, keeping in view his critical condition they took him to Medanta Hospital, Gurgaon. Ajay Kumar succumbed to his injuries during treatment on 23.04.2016. Inquest proceedings were conducted and he was associated with the same along with Hans Raj. They identified the dead body of Ajay. He proved his statement Ex.PB which bears his signatures at point-A.

9. PW4-HC Dharambir Singh stated that on 23.04.2016, he was posted at Police Station Dharuhera. On that day on the directions of ASI Ram Kishan he got conducted the postmortem examination of deceased Ajay at General Hospital, Rewari. After conducting postmortem examination the doctor handed over to him one parcel containing bullet along with sample seal, one parcel containing clothes of deceased with sample seal, one parcel containing skin with sample seal and one envelope. All parcels were sealed with seal impression 'DV'. He had handed over all the parcels to ASI Ram Kishan which were taken into possession vide recovery memo Ex.PF.

10. PW5-EHC Om Parkash stated that on 22.4.2016 he was posted as driver at Police Post Sector 6, Dharuhera. On that day he along with ASI Ram Kishan was present at 75 metre road on patrolling duty. After receiving the information they reached village Maheshwari, where statement of Mohit @ Kala was recorded by ASI Ram Kishan and it was handed over to him for registration of the case. ASI Ram Kishan lifted one fired cartridge case from the place of occurrence which was converted into a sealed parcel sealed with seal impression 'RS' and taken into possession vide recovery memo Ex.PH. ASI Ram Kishan also prepared a sketch of fired cartridge case Ex.PH/1. He also lifted blood stained earth from the place of occurrence which was converted into a sealed parcel sealed with seal impression 'RS' and taken into possession vide recovery memo Ex.PG. He identified the cartridge case and the cloth vial having blood stained earth as Ex.P1 and Ex.P2. In his cross examination, he denied the suggestion that statement of the complainant had been ante-timed.

11. PW6-SI Dharamveer stated on 26.4.2016 he was posted as SI at Police Station Dharuhera. On that day he had joined the investigation of this case with Inspector Aman Kumar. That day Inspector Aman Kumar had arrested three accused namely Pawan, Dharmender and Ravi in his presence. On 23.4.2016 on receipt of tehrir Ex.PQ written by ASI Ram Kishan he had recorded the formal FIR Ex.PW6/A and made the endorsement Ex.PW6/B. Special report of the case was handed over to EHC Krishan Kumar to deliver the same to Illaqa Magistrate as well as to the higher officers of the department.

12. PW7-Dinesh Kumar, Ahlmad to the District Magistrate, Rewari

brought the case file pertaining to sanction order No.1317 dated 11.05.2016 in FIR No.131 dated 23.04.2016 under Sections 148,149,302 IPC and 25 of Arms Act, 1959, Police Station Dharuhera. He proved the sanction order Ex.PJ.

13. PW8-Ravinder stated that Dharmender son of Attar Singh resident of Village Maheshwari had installed CCTV camera outside his house. He had made video from his mobile of the CCTV footage on 26.4.2016 regarding the occurrence dated 22.4.2016. He downloaded the same in his laptop and prepared CD of the same. He had produced the CD before the police on 01.06.2016 which was taken into possession vide recovery memo, Ex.PK. He identified his signature at point A in Ex.PK. He proved the CD Ex.P3. He had also issued a certificate regarding the authenticity of CCTV footage. He stated that Ex.PL was the correct copy of the original certificate. At the request of the Ld. PP the CD which was taken into possession by the police was played with the help of laptop. After viewing it he replied that it was the correct clip of CD which he had handed over to the police without any addition or alteration.

14. In his cross examination, he stated that he had played the CCTV footage on its TV screen and thereafter he had prepared the video of the said CCTV footage by placing his mobile on video recording mode. He had then prepared CD from his mobile. He had not given any statement to the police. He had only given CD and certificate to the police. He had given certificate to the police on 01.06.2016 at around 4/6.00 pm. Certificate Ex.PL was prepared by police official and he had put his signature on the same. No date was mentioned on Ex.PL. He had prepared

three CDs from his laptop regarding incident. He had handed over only one CD to the police and remaining two CDs were handed over to the parents of deceased. He had given the CD to the parents of the deceased on 01.06.2016. He had not given the CD to the police or the the family of the deceased during the intervening period of 26.04.2016 to 01.06.2016 as nobody had asked for it. Nobody had asked him to prepare CD of the incident from CCTV footage and he had prepared the same at his own. He had gone to the house of Dharmender to see the CCTV footage. Some other persons were also seeing the CCTV footage and at that time he made video of the CCTV footage in his mobile. He volunteered that Dharmender was his neighbour. He had studied upto 10th class. Voluntarily stated that he was doing business of cable net work and had a licence for the same. The house of Dharmender was having four cameras attached to CCTV system. The capacity of the hard disc of CCTV system was about of 1000 GB. As per the said capacity the CCTV system should preserve the recording of about 15 days. There was no specific mark of identification on the CD given by him to the police. Police had not sealed the said CD. He had downloaded the video recording from his mobile to laptop on the same day and on same day CD was prepared. He denied the suggestion that the said CD was manipulated and that he had not prepared the said CD as alleged by him. The family of deceased is their immediate neighbour and he was having cordial relations with them.

15. PW9- Mohit stated that on 22.04.2016 at about 6.40 pm his cousin Ajay son of Umed Singh and Suraj son of Dhir Singh were in conversation near the plot of Ex-sarpanch Karan situated near the road

having width of 45 mtrs. He was standing at a distance of about 15-20 mtrs. from them near the house of Dharmender son of Attar Singh. In the meantime, Ajay and Suraj came running towards the house of Dharmender. They were being chased by four motorcycles. One was Bullet motorcycle driven by Ravi and Nabbu was the pillion rider. Another motorcycle make Pulsar was driven by Shoaib and Pawan who fired at Ajay was the pillion rider. Another motorcycle make Splendor was driven by Nehru and Dharmender was the pillion rider. There was also another motorcycle make Splendor which was driven by two boys whose name he did not know but could identify them if they were brought before him. Suraj ran into the house of Dharmender. Ajay was shot at from behind by Pawan after getting down from the motorcycle. The bullet hit Ajay on the head and he fell down in front of the house of Dharmender. The boy sitting behind Nehru was wielding a danda. From amongst those present in Court he identified Irshad and Sonu as being the two unknown persons who were sitting on the Splendor motorcycle. He also correctly identified Pawan, Naresh @ Nehru, Narender @ Nabbu and Dharmender in the court. Accused Ravi and Shoaib were not present in the Court. He further deposed that on seeing Ajay Kumar fall down he raised alarm on which his father and several other co-villagers came to the spot. His father arranged a vehicle and took Ajay to Apex Hospital Dharuhera. Ajay was in a critical condition.

16. He stated that Ravi was junior to him in Paryag School, Maheshwari. On the day of Dulhandi Ravi and Nabbu had quarreled with Ajay and Suraj and had extended threat to kill them.

17. He proved his statement Ex.PM given to the police on

22.04.2016. At the request of Learned PP the CD Ex.P3 was played with the help of laptop. He stated that in the first clip the two persons seen standing in front of the gate were two labourers who were working at the house of Dharmender where some construction work was going on. He identified the person seen running and entering the house of Dharmender as Suraj. He identified the person seen as having fallen down as Ajay. He identified the boy in red T-shirt as Pawan. He identified the two motorcyclists on the Bullet motorcycle as Ravi and Nabbu. He also identified the driver of the motorcycle on which the boy with the red shirt was seen fleeing. At the end of the CD he identified himself as being the boy in white shirt seen running towards the left side of the frame.

18. On seeing the second clip of the CD containing footage of the same place from a different angle, he identified himself amongst three persons i.e Suraj, Ajay and himself who were seen walking towards the left side of the frame on the road. Thereafter, two motorcycles were seen turning towards the left side and a person was seen getting down from the motorcycle. He identified the said person as Pawan. He identified the man seen wielding a danda and chasing Ajay as Dharmender.

19. (Four motorcycles were seen in the frame out of which two motorcycles took a turn towards the left side of the frame and two motorcycles were seen returning back from the direction they were seen coming from. Thereafter, two motorcycles were seen coming back from the left side of the frame and leaving in the direction of the motorcycles which had earlier returned.) He stated that all the accused present in the court and accused namely Shoaib and Ravi were the occupants of the motorcycles

seen in the frame.

20. At this stage the Court recorded its observation that from the video clips played, the faces of assailants and complainant were not decipherable.

21. In his cross examination, he stated that in his statement Ex.PM to the police he had stated the same as was his deposition before the Court on 09.05.2017. He admitted that in his statement Ex.PM he had stated that three young boys were present on Bullet Motorcycle. He however explained that he was perplexed at that time so he told the police that three young boys were present. He admitted that while making statement Ex.PM he had told that the alleged assailants had come on three motorcycles. He also admitted that he had stated before the police that the third rider on the Bullet motorcycle which was carrying the three persons was the person who had shot at Ajay while running away. He stated that he was standing all alone prior to the occurrence. He had reached there a minute or two before the alleged occurrence. He was present in the alley in which the alleged occurrence had taken place. He was standing just by the corner of the house of Dharmender son of Amar Singh into which Suraj had run into. Ajay and Suraj were standing near the plot of ex-sarpanch Karan Singh which is at the distance of about 10-15 feet across the lane. He had observed only the labourers during the period he was standing there. He did not notice anybody else. The distance between the 45 metre road and the place where he was standing was about 25 ft. He was simply standing without any objective as such. The alleged place of occurrence has houses on both the sides of the lane. Several persons had gathered immediately

after the occurrence. There was a shop opposite the place of occurrence at a distance of about 100 ft. There were 3-4 houses in between the shop and the alleged place of occurrence. 3-4 persons were present at the shop at that time. They were attracted to the spot along with his father. There was a house in between his house and the house of Dharmender. He had not disclosed the fact that 3-4 labourers were working at the house of Dharmender in connection with some construction work to any authority prior to deposing before the Court.

22. He deposed that the police met him for the first time at the place of occurrence at about 10.30-11.00 pm on 22.4.2016. It was dark by then. There were 5-6 members of the police party. His statement was recorded after 10-15 minutes of the arrival of the police party. It took them 5-7 minutes to write his statement. The police party had stayed at the spot for 2-3 hours after that. On that day the police did not record statement of anybody else in his presence. His statement was recorded on the road by police by placing the pen and paper on the vehicle brought by them. At the time of making Ex.PM he had named two persons as being the assailants.

23. He further stated that he had not told the police in his statement Ex.PM that one motorcycle was Pulsar and two motorcycles were of Splendor make. He had not told the police that four motorcycles had come towards the village or that the occupants on four motorcycles were chasing Ajay. He had not told police that Nabbu was pillion rider on Bullet motorcycle. He had not told the police that Pulsar motorcycle was driven by Shoaib and Nabbu was pillion rider. He had not told the police that one Splendor motorcycle was driven by Nehru and Dharmender was pillion rider

on that motorcycle. He had also not told the police that on fourth motorcycle there were two other persons. He had not mentioned the name of Pawan to the police. He had specifically not told that it was Pawan who had alighted from motorcycle and fired a shot on Ajay. He had told the police that accused had gone towards Bhiwadi. He had only named Ravi and Shoaib in his statement before the police. He had not named the other accused persons before the police at any given point of time. He had not stated before the police that at the time when accused were running away three persons namely Shoaib, Pawan and Dharmender had gone on Pulser motorcycle. He had not told the police that Dharmender was running having danda in his hand. He had stated before the police that Shoaib was pillion rider on the Bullet motorcycle and he was sitting in between the first and third person on that motorcycle.

24. He further stated that he was never associated in any TIP proceedings by the police. Accused were not previously known to him. He came to know about the names of the accused when they were arrested by the police and news in this regard was published in the Newspaper. Probably he had come to know about the names of the accused on 27.4.2016. Prior to that he knew the name of Ravi and Shoaib. He knew the remaining accused by face prior to the occurrence. He had not given any physical description of remaining accused to the police. He had never visited police station regarding this case after the occurrence. He had seen Pawan in police custody at the place where recovery of pistol was made. Police had not told him the name of Pawan at that time. He had seen the CCTV footage of the incident in the Juvenile Board about one month back.

He had never seen any CCTV footage in the village regarding the present incident. Police had never shown him any CCTV footage of the occurrence. Dharmender had also not shown him CCTV footage of the incident. None of the accused was having muffled face. But one of the accused had some cloth on his forehead. He had not told this fact to the police. Except for Ravi and Shoaib he had not told the police as to which of the accused was sitting on which motorcycle. He had not mentioned the registration numbers of the motorcycles to the police. He could not tell whether anybody had seen him standing near the place of occurrence. He had not spoken with anybody at the place of occurrence. He did not have any conversation with Ajay or Suraj. He could name only one person- Mahil besides accused in the CCTV footage of the incident. He had not told the police about the presence of Mahil. House of Suraj is at a distance of 10 to 15 houses from the place of occurrence. It takes 5 to 7 minutes to reach his house on foot. Suraj is about 17 to 18 years of age. He is still residing in village Maheshwari. Suraj was the brother of Ajay in village relationship. He had never tried to contact Suraj to ascertain the names of accused. He had come out of his house and stood by the house of Dharmender just prior to the occurrence.

25. At this stage he was shown CCTV Clip- from Ex.P3.

26. He stated he could not identify the two persons seen by the gate picking up and placing stones by the side. He also could not identify the third person who was seen walking in from the left side of the frame after the person whom he identified as Ajay was seen falling down.

27. He was then shown Clip-2 from Ex.P3.

28. He stated that the road visible in the frame was 45 metre road. Out of the three persons who were seen walking there together he identified himself as the one in white T-shirt. He stated that it was incorrect that the person seen in the white T-shirt does not turn back even to notice the two motorcycles which are seen in the frame coming from the right side at a later time. He asserted that he could see in the clip that the person in the white T-shirt had seen the two motorcycles turning to the left and going away.

29. He was recalled for further examination. He then deposed that on 27.4.2016, he along with ASI Ashok Kumar had joined investigation of this case with the Investigating Officer. On that day in pursuance to the disclosure statement of Pawan one country made pistol was got recovered from near the fair of Baba Mohan Ram at village Milakpur. I.O prepared the sketch of the country made pistol Ex.PU/1 which was sealed with seal impression 'AB' and taken into possession vide recovery memo Ex.PU/2. He identified the country made pistol Ex.P4 as being the same which was recovered on 27.4.2016 in pursuance of disclosure statement of accused Pawan. He also deposed about the recovery of danda on the disclosure statement of Dharmendar, which was taken into possession vide recovery memo Ex.PT/1. He identified the *danda* as Ex.P11. He identified accused Pawan and Dharmendar in court.

30. In cross examination stated that it is incorrect that the person seen in white T-shirt does not turn back or that when he is seen running towards the left he disappeared from the frame. He denied that he had wrongly claimed that he was the person appearing in white T-shirt in Clip-2

of Ex.P3. He denied that the CD was manipulated. He stated that as soon as the shot was fired he ran away to his house and returned within few seconds along with his father, mother and aunt. He admitted that in Ex.P3 neither he nor his father or aunt was visible after the incident. Immediately after the incident his father made telephonic call to his uncle Sant Lal to bring a vehicle and Ajay was shifted to Apex Hospital, Dharuhera. He had not accompanied Ajay to the hospital. He had told his father that Ravi and Shoaib were the assailants. After Ajay was shifted to the hospital he had stayed at the spot for about 15 minutes and thereafter went to his house. He made multiple short visits to the spot. The police had reached the village at around 10.00 PM.

31. He stated that he had known Ravi for 2-3 years before the incident. Ravi was studying in 8th class when he was studying in 10th Class in MLP School, Maheshwari. He also knew Shoaib since the time he had come to village regarding some work and he was apprehended and beaten by the villagers. Ajay was shot from a distance of about 20 feet. He and Suraj had not tried to save Ajay. He stated that none of the accused except Pawan had caused injuries. Only single shot was fired. He denied that he had deposed falsely.

32. PW10-EASI Jai Bhagwan, deposed that on 11.5.2016, he was posted as Armourer Police Lines, Rewari. On that day Inspector Aman Beniwal had presented an application Ex.PN along with a sealed parcel with the seal of AB. He unsealed the parcel which contained .32 bore country made weapon. After examination he found the pistol to be in working condition. He identified the pistol Ex.P4 and proved his report

Ex.PN/1.

33. PW11-Dr. Nitu Singh, Medical Officer, Civil Hospital Rewari tendered in evidence her affidavit Ex.PO. She proved the postmortem report Ex.PO/1. She stated that in the opinion of the Board, the cause of death was gun shot injury on the vital part i.e the brain leading to inter cranial hemorrhage and shock. The fire arm injury was ante mortem in nature and was sufficient to cause death in ordinary course of life. The Board comprised of Dr. Anshu and Dr. Ravinder besides her. After post mortem examination the Board had handed over sealed parcels containing clothes of deceased, bullet recovered from the dead body of deceased Ajay, skin surrounding the entry wound etc. She identified the fired bullet Ex.P5 as being the same which was recovered from the body of deceased Ajay at the time of his post mortem examination. She identified the skin Ex.P6 which was taken from area surrounding the entry wound at the time of postmortem examination. She also identified the trouser Ex.P7, underwear Ex.P8, vest Ex.P9, T-shirt Ex.P10 which had been taken into possession at the time of post mortem examination. She proved the inquest report/proceeding under Section 174 Cr.P.C Ex.PP

34. PW12-ASI Ram Kishan stated that on 22.4.2016 he was posted as ASI, Police Post Sector 6, Dharuhera. He received information regarding gun fire in village Maheshwari by some boys. He reached Maheshwari where Mohit @ Kala met him and recorded his statement Ex.PM which was signed by him. Tehrir Ex.PQ was sent to police station for registration of case. He inspected the place of occurrence and prepared rough site plan Ex.PR. He lifted bloodstained earth from the spot which was converted

into sealed parcel sealed with seal impression 'RS' and taken into possession vide recovery memo Ex.PG. He had lifted one empty cartridge case which was converted into sealed parcel with seal impression 'RS' and taken into possession vide recovery memo Ex. PH. He prepared sketch of empty cartridge case as Ex.PH/1. He identified the empty cartridge case Ex.PM. When he was on his way to Dharuhera, he received information from MC Police Post, Sector 6 regarding admission of injured Ajay in Apex Hospital, Dharuhera. He deposited the parcels in the Malkhana Police Station Dharuhera. Thereafter, he received information that injured Ajay was admitted in Medanta Hospital, Gurugram and later learnt that he had expired. Thereafter, he went to Medanta hospital, Gurugram and collected the admit card, summary card, death certificate of deceased Ajay. He conducted proceedings under Section 174 Cr.P.C. He proved the inquest report Ex.PP. Post mortem examination of deceased Ajay was conducted at General Hospital, Rewari. After conducting post mortem, the Doctor handed over one parcel containing bullet along with sample seal, parcel containing clothes of deceased along with sample seal, one parcel containing skin along with sample seal and one envelope containing documents duly sealed. These articles were taken into possession vide recovery memo Ex.PC.

35. In cross examination he stated that complainant had handed over a written statement of Mohit Ex.PM at 11.30 p.m. He stated that the police proceeding Ex.PM was in his handwriting. Some private person had informed that some boys had fired at one boy in village Maheshwari. The informant had not given the name of assailants. He had reached the spot at

around 6.45 to 7.00 p.m. Nobody had given him an eye witness account during the intervening period from 7.00 pm to 11.30 p.m. He had not done anything else during the intervening period. He had not procured CCTV footage of the proceedings done by him on that day. He had left the place of occurrence at 12.30 a.m. (night). He denied that Ex PM had been ante timed.

36. PW13- ASI Ashok Kumar stated that on 27.4.2016 he was posted as ASI at P.S Dharuhera. On that date he had joined the investigation of the case with Inspector Aman Kumar, SHO P.S Dharuhera. Accused Dharmander and Pawan were arrested on that day. During interrogation, accused Dharmander suffered disclosure statement Ex.PT pursuant whereto he led the police party to village Milakpur and got recovered one wooden danda. He identified the danda as Ex.P11. On the same day, accused Pawan was interrogated and suffered disclosure statement Ex.PU in pursuant whereof he got recovered one country made pistol from near Kholi of Baba Mohan Ram beneath a neem tree. The country made pistol was converted into sealed parcel with seal bearing impression AB and taken into possession vide recovery memo PU/2. He identified the country made pistol Ex.P4. The same day Pawan got recovered one motorcycle Splendor No.UP-16K-2561 near fair of Baba Mohan Ram village Milakpur. The same was taken into possession vide recovery memo Ex.PU/5. IO had prepared rough site plan of place of recovery of motorcycle Ex.PU/6. Same day accused Ravi (Juvenile) was arrested. He suffered disclosure statement and led the police party to his residential house. One motorcycle No.DL-3SL-3418 which was parked in a plot near the wall was got recovered. It was taken into possession vide

recovery memo Ex.PV. IO had prepared the rough site plan of the place of recovery of motorcycle Ex.PV/1. Same day accused Narinder @ Nabbu was arrested. He got the site of crime demarcated vide demarcation memo Ex.PW/1. Same day accused Naresh @ Nehru was arrested. He suffered disclosure statement Ex.PX. At the time of his arrest, motorcycle No.RJ-02-SL-3733 was taken into possession from his custody vide recovery memo Ex.PX/1. He also got demarcated the place of occurrence vide demarcation memo Ex.PX/2.

37. In cross-examination, PW13 stated that accused Dharmander and Pawan were arrested from a fair that was being held at village Milakpur, District Alwar. No information was given to Rajasthan Police. Ex.P11 danda did not have any blood stains or any other mark. The pistol recovered from accused Pawan was not having specific mark of identification. It was recovered from open place. The place was accessible to all. The accused had dug up the earth and had thereafter taken out the pistol. He did not know who is the owner of vehicle No.UP-16K-2561.

38. PW14- HC Vijay Singh deposed about depositing of case property with FSL, Madhuban vide affidavit Ex.PY.

39. PW15-Inspector/SHO Aman stated that on 24.04.2016, he was posted as Inspector at P.S Dharuhera. On that day the case was entrusted to him for further investigation. On 24 and 25.04.2016 raid was conducted by him to search the culprits. On 26.04.2016, he received secret information that Dharmander and Pawan, who had murdered Ajay were roaming in village Malikpur. They were arrested as they were coming from Baba Mohan Ram temple. The same day accused Ravi (Juvenile) was arrested. On

27.04.2016, accused Dharmander was interrogated. He suffered disclosure statement Ex.PT. Accused Dharmander, Pawan and Ravi were produced before the Court of Illaqa Magistrate, Rewari and taken on one day police remand. PW15 also deposed about the recovery of danda in pursuant to disclosure statement of Dharmander. He also deposed about the disclosure statement of Pawan (Ex.PU) and the recovery of country made pistol and motorcycle in pursuance thereof. He also deposed about the disclosure statement made by accused Ravi (Juvenile) and the recovery of motorcycle Bullet No.DL-3SL-3418 pursuant thereto. Similarly he deposed about the disclosure statement of Narinder @ Nabbu and Naresh @ Nehru and that at the time of their arrest motorcycle No.RJ-02Z-3733 was taken into possession from their custody. On 28.04.2016, accused Sohaib was arrested and produced in the Court of Principal Magistrate, Juvenile Justice, Rewari and sent to the judicial custody. On 29.04.2016, accused Irshad and Sonu were arrested and at the time of their arrest, motorcycle Splendor No.RJ-40SC-3399 was taken into possession from their custody vide recovery memo Ex.PZ. He deposed about making an application Ex.PN on 11.05.2016 to the Armorer for seeking opinion whether the country made pistol was in working condition or not upon which EASI Jai Bhagwan had inspected the country made pistol and found it to be in working condition. He further deposed that on 01.06.2016, Ravinder resident of Maheshwari produced a CD containing the footage of CCTV dated 22.04.2016 of the place of occurrence which was taken into possession vide recovery memo Ex.PK. At that time, Ravinder also produced certificate under Section 65-B Ex.PL which was taken into possession. He proved the CD Ex.P3. On

completion of investigation, he prepared the report under Section 173 Cr.PC on 05.06.2017. He identified the accused in court.

40. In cross examination he stated that as per his investigation the complainant and the witnesses knew all the accused prior to the occurrence. He had not got conducted test identification parade of the accused. He had not shown the CCTV footage to the witnesses at any point of time. He had not cited Suraj as a witness as his family had refused to do so. He had never met Suraj during investigation though he had tried once or twice to meet him. He had not taken the digital video recorder of the CD. As per his knowledge, the CD was prepared directly from the mobile. Ravinder had prepared only one CD. Thereafter he (PW15) had made 3-4 copies from the CD given by Ravinder. Ravinder had not come in the intervening period between 22.04.2016 to 26.04.2016. He stated that he had seen the CD given by Ravinder. The faces of accused were not identifiable. He however voluntarily added that only those persons who knew the accused could identify them by seeing the CD. He had not shown the CD to any witness.

41. PW16-Dr.R.K.Singh, Medical Officer Apex Hospital Dharuhera, District Rewari tendered in evidence his affidavit Ex.PAA, wherein, he stated that he found the following injuries on the person of Ajay Kumar:-

- “1. *LT Temporal entry wound 0.5 x 0.5 of gun shot wound.*
2. *Frontal region abrasion 2 x 2 cm*
3. *Nose-Ext. Blunt contusion + Abrasion Ext.Nose Air Bleed+*
4. *RT knee abrasion 1 x 1 cm.”*

treatment and referral slip Ex.PAD of Ajay Kumar.

43. In his cross examination, he stated that as per record the patient was brought by one Joginder. At the time of admission no names of the assailants were disclosed by the person who had brought the patient to the hospital. The patient himself was not capable of speaking at the time when he was admitted in the hospital.

44. PW17 Dr. Sudhir, B.S, MO Medanta Hospital, Gurugram, District Gurugram deposed that on 22.4.2016 they received patient Mr. Ajay Kumar son of Sh. Umed Singh aged 16 years VPO Maheshwari District Rewari with alleged history of gun shot injury at around 7:05 pm after receiving initial treatment at Apex Health Care, Dharuhera. He had given the information to the police vide ruqa vide Ex.PAE.

45. PW18-Dr. Ajay Kumar, MO Medanta Hospital, Gurugram stated that on 22.04.2016 they received patient Mr. Ajay Kumar son of Sh. Umed Singh aged 16 years male VPO, Maheshwari District Rewari with alleged history of gun shot injury at around 7:05 pm after receiving initial treatment at Apex Health Care, Dharuhera. Patient was brought in the emergency in intubated stage and on ventilatory support. On 23.04.2016 at 5 am the patient suddenly deteriorated and had bradycardia followed by cardiac arrest. Immediately, CPR was started as per ACLS protocol. In spite of all resuscitative measures, patient could not be revived. He was declared dead at 5:25 am on 23.04.2016. He proved the Death summary Ex.PAF. Cause of death certificate was issued to the parents of the patient, photocopy of which is Ex.PAG. He also proved the death certificate Ex.PAH of Ajay Kumar. As per this certificate, the cause of death was 'Gun

shot Injury/ Intra Cranial Bleed'.

46. The Public Prosecutor tendered in evidence FSL reports Ex PC, Ex PD and Ex. PE.

47. Broadly, the arguments on behalf of the Ld. Counsel for the accused are:

(i) There is delay in the lodging of the FIR. The incident is alleged to have occurred at about 6.40 p.m. PW 12 ASI Ram Kishan had stated that he had reached the spot at around 6.45 to 7.00 p.m. The statement of PW 9 Mohit was recorded at about 11.30 p.m. PW 12 had stated that nobody had given him an eye witness account during the intervening period from 7.00 p.m. to 11.30 p.m. There is no explanation as to why statement of PW 9 not recorded during this period. It is hence argued that the presence of PW9 at the spot is doubtful and he has been introduced later.

(ii) The CCTV footage is doubtful. The CD is inadmissible in evidence as provisions of Section 65-B of the Evidence Act have not been satisfied. As per PW8 Ravinder the CD was prepared by him on 26.04.2016 but he handed it to the police on 01.06.2016. The IO did not seal the CD. The Digital Video Recorder was not taken into possession by the police. On viewing the video clips played in Court, the Ld. Trial Court had recorded its observation that the faces of assailants and complainant were not decipherable. If the faces were not decipherable how could PW9 Mohit identify them in the CD ?

(iii) The statement of PW9 cannot be relied on. There are lot of improvements and inconsistencies between his statement Ex PM

recorded before the police and in his deposition in Court. In his statement Ex.PM he states there were three motorcycles. Yet in his deposition in Court he states there were four motorcycles. In his statement Ex.PM he states that the Bullet motorcycle was being driven by Ravi and Shoaib and another person whom he did not know were sitting behind him. That third person had fired at Ajay. While in his deposition in Court he stated that the Bullet motorcycle was being driven by Ravi and Nabbu was the pillion rider. The motorcycle 'Pulsar' was being driven by Shoaib and Pawan was the pillion rider. It was Pawan who got off the motorcycle and fired at Ajay.

(iv) The fired cartridge case and the deformed fired bullet recovered from the body of the deceased does not match with the country made pistol recovered.

(v) The common object is not proved.

48. Ld. Counsel appearing on behalf of the State on the other hand supported the judgment of conviction and argued that the contentions of the appellants were without merit.

49. The contention of the Ld. Counsel for the appellants that there is an unexplained delay in the lodging of the FIR which renders the version of the prosecution doubtful cannot be accepted. It has come in evidence that the incident had taken place at about 6.30 p.m. and the police had reached the spot at about 6.45 to 7.00 p.m. The statement of PW9 was recorded at 11.30 p.m. This delay stands adequately explained in the light of the statement of PW 9 Mohit who stated that after Ajay was shifted to the

hospital he had stayed at the spot for about 15 minutes and thereafter went to his house. He made multiple short visits to the spot. The police met him for the first time at the place of occurrence at about 10.30 to 11.00 pm and his statement was recorded 10-15 minutes thereafter.

50. The father of PW9 and the father of the deceased had accompanied the injured to the hospital. PW9 was a young boy aged about 17-18 years. He was obviously perplexed and nervous having witnessed such a serious incident. He would certainly not remain at the site of the incident in the absence of elders of his family and would retire to the security of his home. So his statement cannot be doubted merely for the reason that it was recorded at about 11.00 p.m.

51. The argument of the Ld. Counsel that the CD Ex.P-3 was inadmissible in evidence as it was not accompanied by a certificate as per the provisions of Section 65-B(4) of the Evidence Act cannot be accepted.

52. It has come in the evidence of PW8- Ravinder that Dharmender son of Attar Singh resident of Village Maheshwari had installed CCTV camera outside his house. PW 8 had prepared CD from the same. He had produced the CD before the police on 01.06.2016 which was taken into possession vide recovery memo Ex.PK. He proved the CD Ex.P3. He had also issued an undated certificate regarding the authenticity of CCTV footage. He stated that Ex.PL was the correct copy of the original certificate. After viewing the CD which was played with the a laptop in Court he replied that it was the correct clip of CD which he had handed over to the police without any addition or alteration.

53. In his cross examination, he stated that he had played the

CCTV footage on its TV screen and thereafter he had prepared the video of the said CCTV footage by placing his mobile on video recording mode. He had then prepared CD from his mobile. He had given certificate to the police on 01.06.2016 at around 4/6.00 pm. Certificate Ex.PL was prepared by police official and he had put in his signature on the same. No date was mentioned on Ex.PL. He had prepared three CDs from his laptop regarding incident. He had handed over only one CD to the police and remaining two CDs were handed over to the parents of deceased. He explained that he had not given CD to the police or the the family of the deceased during the intervening period of 26.04.2016 to 01.06.2016 as nobody had asked for it. He had gone to the house of Dharmender to see the CCTV footage. Some other persons were also seeing the CCTV footage and at that time he made video of the CCTV footage in his mobile. The house of Dharmender had four cameras attached to CCTV system. The capacity of the hard disc of CCTV system was about of 1000 GB. As per the said capacity the CCTV system should preserve the recording of about 15 days. Police had not sealed the said CD.

54. The certificate under Section 65-B given by PW 8 reads thus:

“Certified that I have knowledge of computer. I had prepared CD of CCTV recording installed outside the house of Dharmender s/o Atar Singh Jat R/o Maheshwari for the time for 22.4.16 for 6.30 PM to 7.30 PM by taking it out from CD drive. CD contains the recording as it was in CD drive”

sd/-

*Ravinder s/o Sh. Niji Singh
Caste Jat r/o Maheshwari”*

Even if the certificate is taken to be not strictly in conformity

with the requirements of Section 65-B(4) of the Evidence Act it is not open to the appellants to raise the objection to the admissibility of the CD at this stage. In **Sonu v. State of Haryana, (2017) 8 SCC 570** Hon'ble Supreme Court has held that if objection to admissibility of the document on account of absence of certificate as required under Section 65-B(4) of the Evidence Act is not taken at the time of marking the document as exhibit it could not be permitted to be taken at a later stage.

56. The relevant observations of the Hon'ble Supreme Court are as under:

“32. It is nobody’s case that CDRs which are a form of electronic record are not inherently admissible in evidence. The objection is that they were marked before the trial court without a certificate as required by Section 65-B(4). It is clear from the judgments referred to supra that an objection relating to the mode or method of proof has to be raised at the time of marking of the document as an exhibit and not later. The crucial test, as affirmed by this Court, is whether the defect could have been cured at the stage of marking the document. Applying this test to the present case, if an objection was taken to the CDRs being marked without a certificate, the Court could have given the prosecution an opportunity to rectify the deficiency. It is also clear from the above judgments that objections regarding admissibility of documents which are per se inadmissible can be taken even at the appellate stage. Admissibility of a document which is inherently inadmissible is an issue which can be taken up at the appellate stage because it is a fundamental issue. The mode or method of proof is procedural and objections, if not taken at the trial, cannot be permitted at the appellate stage. If the objections to the mode of proof are permitted to be taken at the appellate stage by a party, the other side does not have an opportunity of rectifying

the deficiencies. The learned Senior Counsel for the State referred to statements under Section 161 CrPC, 1973 as an example of documents falling under the said category of inherently inadmissible evidence. CDRs do not fall in the said category of documents. We are satisfied that an objection that CDRs are unreliable due to violation of the procedure prescribed in Section 65-B(4) cannot be permitted to be raised at this stage as the objection relates to the mode or method of proof.”

57. In the present case no such objection to its admissibility had been taken at the time of exhibiting the CD. The CD was played in Court and PW 8 Ravinder who had prepared the CD after viewing it stated that it was the same which he had handed over to the police. Both the clips of the CD were played in Court during the deposition of PW 9 Mohit and he identified the assailants and the motorcycles therein. He was also cross examined at length by the Counsel for the accused regarding the presence and identify of accused and the motorcycles in the CD. Thus the objection the admissibility of the CD on the ground of absence of a certificate in conformity with Section 65-4(B) of the Evidence Act cannot be entertained.

58. PW9 Mohit in his deposition in Court stated that on 22.04.2016 at about 6.40 pm his cousin Ajay son of Umed Singh and Suraj son of Dhir Singh were engaged in a conversation near the plot of Ex-sarpanch Karan situated near the road having width of 45 mtrs. He was standing at a distance of about 15-20 metres from them near the house of Dharmender son of Attar Singh. In the meantime, Ajay and Suraj came running towards the house of Dharmender. They were being chased by boys

was the pillion rider. A Pulsar motorcycle was driven by Shoaib and Pawan was the pillion rider. Ajay was shot at from behind by Pawan after getting down from the motorcycle. The bullet hit him on the head and Ajay fell down in front of the house of Dharmender. Suraj ran into the house of Dharmender. Another motorcycle Splendor was driven by Nehru and Dharmender was the pillion rider. The boy sitting behind Nehru was wielding a danda. There was also another motorcycle make Splendor which was driven by two boys whose names he did not know but could identify them if they were brought before him. In Court he identified Irshad and Sonu as being the two unknown persons who were sitting on the Splendor motorcycle. He also correctly identified Pawan, Naresh @ Nehru, Narender @ Nabbu and Dharmender in court. Accused Ravi and Shoaib were not present in the Court as Ravi was facing trial before the Children's Court and Shoaib was facing trial before the Juvenile Justice Board. He further deposed that on seeing Ajay Kumar fall down, he raised alarm hearing which his father and several other co-villagers came to the spot. His father arranged for a vehicle and took Ajay to Apex Hospital Dharuhera. Ajay was in a precarious condition. He stated that Ravi was junior to him in Paryag School, Maheshwari. On the day of Dulhandi Ravi and Nabbu had quarreled with Ajay and Suraj and had extended threat to kill them.

59. At the request of Learned PP the CD Ex.P3 was played with the help of laptop. In the first clip he identified the person seen running and entering the house of Dharmender as Suraj. He identified the person seen as having fallen down as Ajay. He identified the boy in red T-shirt as Pawan. He identified the two motorcyclists on the Bullet motorcycle as

Ravi and Nabbu. He identified himself as being the boy in white shirt seen running towards the left side of the frame.

60. In the second clip of the CD containing footage of the same place from a different angle he identified the three persons who were seen walking towards the left side of the frame on the road as being himself, Suraj and Ajay. Thereafter in this clip two motorcycles were seen turning towards the left side and a person was seen getting down from the motorcycle. He identified the said person as Pawan. He identified the man seen wielding a danda as Dharmender. Four motorcycles were seen in the frame out of which two motorcycles took a turn towards the left side of the frame and two motorcycles were seen returning back from the direction they were seen coming from. Thereafter, two motorcycles were seen coming back from the left side of the frame and leaving in the direction of the motorcycles which had earlier returned. He stated that all the accused present in the court and accused namely Shoaib and Ravi were the occupants of the motorcycles seen in the frame.

61. During his cross examination he admitted that while recording his statement Ex PM to the police he had stated that three boys were riding the Bullet motorcycle. He also admitted that he had stated that the Pulsar motorcycle was being driven by Shoaib and Nabbu was the pillion rider. He had not told the police that one Splendor motorcycle was being driven by Nehru and Dharmender was the pillion rider. He had also not told the police that there was a fourth motorcycle. He also admitted that he had not disclosed the name of the assailant who had got down and fired the shot at Ajay. He admitted that he had only mentioned the names of Ravi and Shoaib

in his statement before the police.

62. Undoubtedly there are the aforesaid discrepancies between his statement Ex PM and his deposition in Court. He has candidly admitted those discrepancies. He has explained that he was perplexed at the time when he got recorded his statement before the police on the night of the incident. This is only to be expected. He was a young boy who had seen his cousin being shot in the head by assailants who came in four motorcycles, fired the shot and went away.

63. Ld. Counsel argued that the faces of the assailants and the complainant were not decipherable in the CD and this was also the observation of the Ld. Trial Judge after viewing the CD. In this regard all that needs to be said is that the accused were previously known to PW9 Mohit. In a situation where the faces are not clearly decipherable in a video clip, while a stranger may not be able to identify the persons, but a person who knows them will certainly be able to identify them. In his deposition PW15 Inspector Aman/ SHO Aman while stating that the faces of accused were not identifiable in the CD had also added that a person who knew the accused could identify them by seeing the CD.

64. The argument of the Ld. Counsel for the appellants based on the FSL report that fired cartridge case and the deformed fired bullet has not been linked with the country made pistol also cannot further their case.

65. As per the FSL report Ex. PC the country made pistol marked as W/1 (chambered for 7.65 mm cartridges) was a firearm within the meaning of the Arms Act, 1954. Its firing mechanism was found in working order. However no definite opinion could be formed regarding the linkage

of the 7.65 mm fired cartridge case with the country made pistol due to “lack of sufficient comparable individual characteristic marks”. Similarly no definite opinion could be formed regarding the linkage of the 7.65 mm deformed fired bullet with the country made pistol due to “lack of sufficient comparable individual characteristic marks”. Clearly as per the FSL report no definite positive opinion could be expressed about the linkage of the fired cartridge case and the fired bullet with country made pistol due to the lack of sufficient comparable individual characteristic marks. Thus while the FSL report does not confirm the use of the country made pistol recovered from accused Pawan to fire the fatal shot, it does not rule it out either.

66. Dr. Neetu Singh PW11 in her affidavit Ex. PO had stated that the cause of death was gun shot injury on the vital part i.e. the brain leading to intera-cranial haemorrhage and shock. She further deposed that firearm injury was ante mortem in nature and was sufficient to cause death in ordinary course of life.

67. The argument of the Ld. Counsel for the appellants that there was no common object shared by all the accused also cannot be accepted.

68. It is well settled as held in **Lalji v. State of U.P. (1989) 1 SCC 437** that:

“Common object of the unlawful assembly can be gathered from the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case.”

69. In the present case from the evidence of PW 9 Mohit it is clear

that eight boys (the six appellants and Ravi and Shoaib) had come riding on four motorcycles (two each on a motorcycle). They were chasing Ajay and Suraj who evidently having sensed danger to their lives were running towards the house of Dharmender in a bid to save themselves. Pawan who was the pillion rider on the Pulsar motorcycle which was being driven by Shoaib, got down from the motorcycle fired the shot at Ajay which hit him on his head because of which he fell down. The intention to kill was manifest. It was not a shot fired at random. It was aimed at the head. Having executed the job Pawan quickly got on to the motorcycle and thereafter all the accused fled away on their motorcycles. The presence of eight assailants on four powerful motorcycles evidences their intention to corner the deceased much in the manner that hunters corner their prey leaving it no escape. On accomplishing their foul deed they as quickly went away.

70. From the evidence there is no doubt about the identify of the assailants and the presence of PW 9 at the site and his having witnessed the incident. The oral testimony of PW 9 Mohit has been fortified by the contents of the CD which were played in Court. The discrepancies between the initial statement Ex. PM and the deposition of PW 9 are not such as to cast a doubt on his testimony. The motive for the crime has also been explained by PW 9 Mohit. There was no reason for PW 9 to implicate any of the accused falsely. None has been suggested by the accused. All the four motorcycles used in the attack have been recovered pursuant to the disclosure statements of the accused.

71. The prosecution has fully established the case against the

