

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

CRA-S-3989-SB-2017 (O&M)
Reserved on : September 20, 2019
Date of Decision: January 09, 2020

Ravi		...Appellant
	Versus	
State of Haryana		...Respondent

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

Present: Mr. APS Deol, Senior Advocate with
Mr. Vishal Lamba, Advocate for the appellant.

Mr. G.S.Wasu, Additional Advocate General, Haryana
for the respondent – State.

HARINDER SINGH SIDHU, J.

1. The present appeal has been instituted against the judgment of conviction and the order of sentence dated 06/10.10.2017 passed by the learned Presiding Officer, Children's Court, Rewari in Sessions Case No.24 of 2016, wherein, the appellant, a juvenile in conflict with law was charged with and tried for offences under Sections 148, 302 read with Section 149 IPC. He has been convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for a period of ten months.

2. It was directed that the District Child Protection Unit or the Probation Officer shall ensure that the child in conflict with law is rehabilitated suitably; is provided reformatory services including educational services, skill development, alternative therapy such as counselling,

behaviour modification therapy and psychiatric support during his stay in place of safety. The Probation Officer or the District Child Protection Unit shall also ensure that there is a periodic follow up report every year, to evaluate the progress of the child in place of safety and to ensure that there is no ill-treatment to the child in any form. On attaining age of twenty one years by the child in conflict with law, Probation Officer shall evaluate if such child has undergone reformatory changes and whether the child can be contributing member of the society. The child shall be sent to a place of safety till he attains the age of twenty one years and thereafter transferred to Jail.

3. The case of the prosecution in a nutshell is that on 22.04.2016 when ASI Ramkishan and EHC Om Parkash were present for patrolling duty at 75 meter road 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 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 day of 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 investigation, challan was filed against Pawan Kumar, Dharmender, Naresh @ Nehru and Narender @ Nabbu, Irshad and Sonu. Challan against Shoaib and Ravi was filed before the Principal Magistrate, Juvenile Justice Board, Rewari.

5. Vide order dated 8.12.2016 passed by the Principal Magistrate, Juvenile Justice Board, Rewari, it was held that on the basis of preliminary assessment under Section 15 of the Juvenile Justice (Care and Protection of

Children) Act, 2015 the case against appellant- Ravi the child in conflict with law, was found fit for trial as an adult by the Children's Court. Therefore, Ravi was tried by the Children's Court under Section 18(3) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

6. The prosecution examined a number of witnesses to support its case. The appellant in his statement under Section 313 Cr.P.C pleaded innocence and stated that he had been falsely implicated.

7. PW1-Sant Lal stated that Ajay Kumar deceased was his nephew. On 22.04.2016 at about 6.45 p.m. he received information that Ajay Kumar had been shot at and was lying in injured state in Village Maheshwari. He along with Hans Raj reached the spot and found that said Ajay Kumar was lying in an unconscious state. They shifted him to Apex Hospital, Dharuhera where the doctors referred him to Rockland Hospital, Manesar. However, keeping in view his critical condition they opted to take 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. His statement Ex.PA was recorded which bears his signatures at point-B.

8. PW2-EHC Krishan Kumar deposed that on 23.04.2016 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.

9. PW3-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 26.04.2016 regarding the occurrence dated 22.04.2016. 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.PE. He proved the CD Ex.P1. He had also issued a certificate regarding the authenticity of CCTV footage. He identified his signature on the original of certificate Ex.PF. He deposed that Ex.PF is 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.

10. In his cross examination, he stated that firstly 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 and thereafter he prepared video on his mobile. He stated that he had not given any statement to the police but had only given CD and certificate to the police. He had told the police that he had prepared the said CD on 26.04.2016. He was confronted with statement Ex.DA where it is not so mentioned. He stated that he had told the police that first of all he had taken the CCTV footage on his mobile while his mobile was on video recording mode and thereafter he had downloaded the same in his laptop and from laptop he had prepared CD. He was confronted with statement Ex.DA where it is not so mentioned. He had given certificate to the police on 01.06.2016 at around 4/6.00 pm. Certificate Ex.PF was prepared by police

official and he had affixed his signature on the same. No date was mentioned on Ex.PF. He had prepared three CDs from his laptop regarding the 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 CD to the parents of the deceased on 01.06.2016. He had not given CD to the police or the family of the deceased during the intervening period of 26.04.2016 to 01.06.2016 as nobody had asked for the CD from him. 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 viewing the CCTV footage and at that time he made video of the CCTV footage on his mobile. He stated that Dharmender was his neighbour and he had cordial relations with him. He had prepared the CD as it was available in the CCTV footage. He could not say whether the faces of accused were visible and identifiable in CD and whether the registration numbers of the motorcycles were visible or not. He had studied upto 10th class. He was doing business of cable network and had licence for the same. He had not brought the laptop in which he had downloaded the video from his mobile and from where he had made CD. He had not given his mobile to the police. The house of Dharmender was having four cameras attached to CCTV system. The capacity of the hard disc of CCTV system was of about 1000 GB. As per the said capacity the CCTV system should preserve the recording of about 15 days. He had not signed the CD which was given by him to the police. He was all alone when he had handed over the CD to the police and no public person was present. There was no specific mark of

identification on the CD given by him to the police. Police had not sealed the said CD. He was not the owner of the DVR. He never produced the same to the police. The DVR must be with Dharmender that day. He denied the suggestion that the said CD was manipulated and that he had not prepared the said CD as alleged by him.

11. PW4-Dr. Nitu Singh, Medical Officer, Civil Hospital Rewari tendered in evidence her affidavit Ex.PG, wherein, she stated that in the opinion of the Board the cause of death was due to firearm injury leading to injury to brain and inter-cranial hemorrhage and shock. Firearm injury was ante-mortem in nature and sufficient to cause death in normal course. She proved the Postmortem Report Ex.PH which was in her hand. The postmortem was conducted by a Board of Doctors comprising Dr.Anshu, Dr.Ravinder and herself. After postmortem examination, she 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.P2, the skin Ex.P3, clothes of the deceased trousers Ex.P4, underwear Ex.P5, vest Ex.P6, T-shirt Ex.P7 which were taken into possession at the time of postmortem examination. She also proved the inquest report Ex.PJ.

12. She was cross examined. She could not tell the approximate distance from which the shot had been fired on the deceased. She stated that there was only one wound on the body of the deceased. The victim had suffered only one fire arm injury. She could not tell whether the recovered bullet had any specific identification mark printed on it. She stated that she could tell only by seeing the bullet. She could not tell the bore of the

weapon used. She stated that she had not mentioned anywhere regarding any specific mark of identification on the recovered bullet.

13. PW5- 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 near the house of Dharmender son of Attar Singh. From the side of Bhiwadi one Bullet motorcycle, one Pulsar and two Splendor motorcycles came towards the village. The motorcycles were chasing Ajay and there were two persons on each motorcycle. The Bullet motorcycle was being driven by Ravi and Nabbu was the pillion rider. Pulsar motorcycle was being driven by Shoiab and Pawan was the pillion rider. One Splendor motorcycle was being driven by Nehru and Dharmender was the pillion rider. On the fourth motorcycle there were two other persons. He could not tell their names but he could identify them. He identified accused Ravi in Court. He deposed that Pawan alighted from the motorcycle and fired shot at the head of Ajay who was running. Ajay fell down in front of the gate of the house of Dharmender whereas, Suraj ran away into the house of Dharmender. Mohit-PW5 raised alarm upon which the accused fled away on their motorcycles towards Rewari. His father and several villagers also gathered there. His uncle and father took Ajay to hospital after arranging a conveyance. Ajay later died.

14. He deposed that on the day of Dullhandi, Ravi and Nabbu had quarreled with Ajay and Suraj and had threatened to kill them. On 22.04.2016, he had given statement Ex.PK to the police. He identified his signatures at point-A of Ex.PK. On 27.04.2016 he was associated in the

investigation of the case. Pawan – accused had led the police party to the place near Baba Mohan Ram Mela, Milakhpur and produced a pistol under a neem tree. Recovery memo Ex.PL and rough sketch of pistol Ex.PL/1 were prepared. He identified the pistol Ex.P8. Accused Dharmender got recovered a wooden baton from near Baba Mohan Ram Mela, Milakhpur. Recovery memo Ex.PL/2 was prepared. He identified the danda Ex.P9.

15. In his cross examination, he stated that in his statement Ex.PK to the police he had stated the same as he had deposed before the Court on 09.05.2017. He admitted that he had told the police while making statement Ex.PK that three young boys were present on Bullet motorcycle. He explained that he was perplexed at that time so he told the police that three young boys were present. He admitted that in his statement Ex.PK 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 pillion rider on the Bullet motorcycle on which three persons were riding was the one who had shot Ajay.

16. 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. 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. The distance between the 45 mtrs road and the place where he was standing was about 25 ft. He was simply standing there without any particular objective. The alleged place of occurrence is having 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 said Dharmender. He had not disclosed 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.

17. He deposed that the police met him for the first time at the place of occurrence at about 10.30-11.00 p.m. 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 apart from himself in his presence. At the time of making statement Ex.PK he had named two persons being the assailants.

18. He further stated that he had not told the police in his statement Ex.PK that one motorcycle was Pulsar and two motorcycles were of Splendor make. He had not told the police that four motorcycles had come towards their village or that the occupants on four motorcycles were chasing Ajay. He had not told the 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 4th motorcycle

two other persons were there. He had not mentioned the name of Pawan to the police. He had not specifically 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 persons were running away three persons namely Shoaib, Pawan and Dharmender had gone on Pulsar 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.

19. He further stated that he was never associated in any TIP proceedings at any point of time 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 27.04.2016. Prior to that he was knowing the name of Ravi and Shoaib. He knew the remaining accused by face prior to the occurrence. He had not told this fact to the Police. He had not given any physical description of remaining accused to the police. 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 come to know about the name of the accused when he read a news article in the Newspaper. None of the accused was having muffled face. One of the accused was having some cloth on his

forehead. Except 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 motorcycle to the police. He is 12th pass. His house is not shown in scaled site plan Ex.PA. He did not have any conversation with Ajay or Suraj. Mahil was present at the time of incidence. 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 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.

20. He further stated that he knew Kettu Jaat. He is the son of his Tau Umed Singh. He denied the suggestion that he was having a mobile at that time and was deliberately concealing that fact, so that his exact location could not be established. As soon as the shot was fired he ran to his house. He returned within few seconds along with his father. His mother and Tai followed them. His father made a call to his uncle Sant Lal, who brought a vehicle and they shifted the injured to Apex Hospital, Dharuhera. He had not accompanied the injured to the hospital. He had told his father that Ravi and Shoaib were the assailants. His father had not informed the Police regarding the incident in his presence. His father had stayed at spot for about ten minutes. The police had not prepared any site plan in his presence. He remained at the spot for about 15 minutes and thereafter, he made multiple visits to and fro from his house to the spot. Suraj had run

away from the spot and did not return after the occurrence. Police had reached the village at about 10.00 P.M. He stated that he knew Ravi (appellant) for the last 2-3 years prior to the occurrence. He did not know as to how many brothers and sisters Ravi had. He stated that he had been his school mate and was resident of village Saidpur. Ravi was studying in 8th class while PW5 was studying in 10th class in MLP School Maheshwari. He knew Shoaib since the time he had come to their village regarding some girl and was apprehended and beaten by the villagers. He did not know the father's name of Shoaib.

21. PW6-ASI Ram Kishan stated that on 22.4.2016 he was posted as ASI, Police Post Sector 6, Dharuhera. He had received information regarding gun fire in village Maheshwari by some boys. After receiving information, he reached Maheshwari where Mohit @ Kala met him and recorded his statement Ex.PK. which was signed by him. Tehrir Ex.PM was sent to police station for registration of case. He inspected the place of occurrence and prepared rough site plan Ex.PM/1. He lifted bloodstained earth from the spot which was converted into sealed parcels sealed with seal 'RS' which was taken into possession vide recovery memo Ex.PM/2. 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 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 and death certificate of deceased Ajay. He conducted

proceedings under Section 174 Cr.P.C. He proved the inquest report Ex.PJ. 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.PM/6.

22. In cross examination he stated that complainant had handed over a written statement of Mohit Ex.PK. It was handed over to him by the complainant at 11.30 PM. He stated that the police proceeding on Ex.PK 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 PM. Nobody had given him an eye witness account during the intervening period of 7.00 pm to 11.30 pm.

23. PW7-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 Ram Kishan ASI was present at 75 mtrs Road on patrolling duty. After receiving the information they reached at Village Maheshwari, where statement of Mohit @ Kala was recorded by Ram Kishan ASI and thereafter it was handed over to him for registration of the case. On the same day, Ram Kishan ASI had lifted one fired cartridge case from the place of occurrence which was converted into a sealed parcel with seal 'RS' impression and taken into possession vide recovery memo Ex.PM/3. ASI Ram Kishan had lifted blood stained earth from the place of occurrence which was converted into a

sealed parcel and taken into possession vide recovery memo Ex.PM/2. He identified the cartridge case and the cloth vial having blood stained earth as Ex.P10.

24. In his cross examination he stated that the place of occurrence was a public place. Several persons had gathered on seeing the police party. None of them were joined. ASI Ram Kishan scribed the statement of Mohit. He denied the suggestion that statement of the complainant had been ante-timed.

25. PW8 HC Dharambir Singh stated that on 23.04.2016 he was directed by ASI Ram Kishan to get conducted the postmortem of Ajay. After conducting postmortem examination, the doctor had 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 'DV' and he handed over all parcels to Ram Kishan ASI which were taken into possession vide recovery memo Ex.PM/6.

26. PW9-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 24.04.2016 and 25.04.2016 raid was conducted by him to search the culprits. On 26.04.2016, he received secret information that Dharmender and Pawan who allegedly 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 27.4.2016, accused Dharmender was interrogated. He suffered disclosure statement Ex.PN. Accused Dharmender, Pawan and Ravi were

produced before the Court of Illaqa Magistrate, Rewari and taken on one day police remand. He deposed about the recovery of danda in pursuant to disclosure statement of Dharmender. He also deposed about the disclosure statement of Pawan Ex.PN/1 and the recovery of country-made pistol and motorcycle pursuant thereto. 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 Board, 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 No.RJ-40SC-3399 Splendor was taken into possession from their custody vide recovery memo Ex.PS. He deposed about making an application on 11.05.2016 to Armorer for seeking opinion whether country made pistol (Ex.P8) was in working condition or not upon which EASI Jai Bhagwan had inspected the country made pistol and found that the pistol Ex.P8 was in working condition. Thereafter it was converted into a sealed parcel and he had deposited the same with MHC P.S. Dharuhera. On 01.06.2016, Ravinder presented a CD containing the footage of CCTV dated 22.04.2016 of the place of occurrence. It was taken into possession vide recovery memo Ex.PE. At that time, Ravinder also produced Certificate under Section 65-B Ex.PW which was taken into possession. He proved the CD Ex.P1. On completion of investigation, he prepared the report under Section 173 CrPC

on 05.06.2017. He identified accused Ravi in court.

27. 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 recorder of the CD. As per his knowledge, the CD was prepared directly from the mobile. Ravinder had prepared only one CD. Thereafter, (PW15) had made 3-4 copies from the CD given by Ravinder. He stated that faces of accused were not identifiable from the CD but volunteered that only those persons who knew the accused could identify them by seeing the CD. He had not shown the CD to any witness.

28. PW10-ASI Mahesh Kumar draftsman stated that on 26.05.2016 on asking of Aman Kumar SHO Police Station, Dharuhera, he had visited the place of occurrence and prepared scaled site plan Ex.PV as pointed out by SHO Aman Kumar.

29. PW11-EASI Jai Bhagwan, deposed that on 11.5.2016, he was posted as Armourer Police Lines, Rewari. He deposed that .32 bore country made pistol was found to be in working condition. He identified the pistol Ex.P8. He proved his report as Ex.PU in this regard.

30. PW12- HC Vijay Singh deposed about depositing of case property with FSL, Madhuban vide affidavit Ex.PX.

31. PW13-SI Dharambir Singh stated that on 26.4.2016, he was posted as SI at police station Dharuhera. On that day Inspector Aman

Kumar had arrested accused Ravi in his presence vide arrest memo Ex.PX/1.

32. In his cross examination, he stated that accused Ravi did not suffer any disclosure statement and no recovery was effected from him in his presence.

33. PW14 Rajinder Singh, Reader to District Magistrate, Rewari brought the case file pertaining to sanction order No.1317 dated 11.5.2016 (Ex.PZ) issued in the case by District Magistrate, Rewari.

34. PW15- ASI Ashok Kumar stated that on 26.4.2016, he was posted as ASI at P.S Dharuhera. On that date, he had joined the investigation of this case with Inspector/SHO Aman Kumar, P.S Dharuhera. Accused Dharmender and Pawan were arrested on that day. On the same day accused Ravi was also arrested. On 27.04.2016 during interrogation, accused Dharmender suffered disclosure statement Ex.PN pursuant where to he led the police party to village Milakpur and got recovered one wooden danda. He identified the danda Ex.P12. On the same day, accused Pawan was interrogated and suffered disclosure statement Ex.PN/1 in pursuance where of he got recovered one country made pistol from near Kholi of Baba Mohan Ram. He identified the country made pistol Ex.P8. 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.PN/3. Same day, accused Ravi (Juvenile) was also interrogated. He suffered disclosure statement (Ex.PO) and led the police party to his residential house. One motorcycle Bullet 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.PO/1. Same day, accused Narinder

@ Nabbu was also arrested. He suffered disclosure statement Ex.PP/1 admitting his involvement in the crime. Same day accused Naresh @ Nehru was arrested. He suffered disclosure statement Ex.PP/2. He identified accused Ravi in Court.

35. PW16 Dr. Sudhir, B.S MO Medanta Hospital Gurugram, District Gurugram stated that on 22.4.2016 patient Mr. Ajay Kumar son of Sh. Umed Singh aged 16 years was received with alleged history of gun shot injury at around 7:05 pm on 22.04.2016 after receiving initial treatment at Apex Health Care, Dharuhera. He had given the information to the police vide ruqa vide Ex.PAA which bear his signature.

36. In his cross examination, he stated that no detail or particular of assailant was given at the time when patient was admitted in the hospital.

37. PW17- 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 on 22.04.2016 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 a.m. Patient's health suddenly deteriorated and he 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 23.4.2016. He proved Death Summary Ex.PAB., photocopy of the Cause of Death Certificate Ex.PAC and Death Certificate of Ajay Kumar Ex.PAE. As per this certificate, the cause of death was 'Gun shot Injury/ Inter Cranial Bleed'.

38. In his evidence, PW18-Dr. R.K Singh, MO, Apex Hospital Dharuhera, District Rewari tendered affidavit Ex.PAF, 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.”*

He proved original MLR of Ajay Kumar Ex.PAB, ruqa sent to police Ex.PAC, Admission and Discharge record of patient Ajay Kumar Ex.PAG, treatment record Ex.PAH and referral slip Ex.PAJ. He had also brought the original record pertaining to patient Ajay Kumar.

39. 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.

40. Mr.APS Deol, learned Senior Advocate appearing for the appellant contended as under:

- (i) There is delay in the lodging of the FIR. The incident is alleged to have occurred at about 6.40 p.m. PW6 ASI Ram Kishan had stated that he had reached the spot at around 6.45 to 7.00 p.m. The statement of PW5 Mohit was recorded at about 11.30 p.m. PW6 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 PW5 not recorded during this period. It is hence argued that the presence of PW5 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 PW3 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.
- (iii) The statement of PW5 cannot be relied on. There are lot of improvements and inconsistencies between his statement Ex PK recorded by the police and in his deposition in the Court. In his statement Ex.PK he states there were three motorcycles. Yet in his deposition in the Court he states there were four motorcycles. In his statement Ex PK 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. Only motorcycle is alleged to have been recovered at the instance of the appellant. It has not been established that the appellant is the owner of the motorcycle.

41. 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.

42. The contention of the Ld. Counsel for the appellant 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 PW5 was recorded at 11.30 p.m. This delay stands adequately explained in the light of the statement of PW5 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.

43. The father of PW5 and the father of the deceased had accompanied the injured to the hospital. PW5 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 return 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.

44. The argument of the Ld. Counsel that the CD Ex.P-1 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.

45. It has come in the evidence of PW3- Ravinder that Dharmender

son of Attar Singh resident of Village Maheshwari had installed CCTV camera outside his house. PW3 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.PE. He proved the CD Ex.P1. He had also issued an undated certificate regarding the authenticity of CCTV footage. He stated that Ex.PF was the correct copy of the original certificate. After viewing the CD which was played with a laptop in the Court he replied that it was the correct clip of CD which he had handed over to the police without any addition or alteration.

46. 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.PF was prepared by police official and he had put in his signature on the same. No date was mentioned on Ex.PF. 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 26.4.2016 to 1.6.2016 as nobody had asked for it. He had gone to the house of Dharmender to see the CCTV footage. Some other persons were also viewing 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 of about 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.

47. The certificate under Section 65-B given by PW3 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”*

48. 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 appellant 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.

49. 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.”

50. In the present case no objection with regard to its admissibility had been taken at the time of exhibiting the CD. The CD was played in Court and PW3 Ravinder who had prepared the CD after viewing it stated that it was the same which he had handed over to the police. Thus, the objection regarding the admissibility of the CD on the ground of absence of a certificate in conformity with Section 65-B(4) of the Evidence Act cannot be entertained at this stage.

51. PW5 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 on four motorcycles. The Bullet motorcycle was driven by Ravi and Nabbu 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. He identified accused Ravi in Court. He deposed that accused Pawan alighted from the motorcycle and fired a shot at Ajay, which hit Ajay on his head. At that time, Ajay was running. Ajay fell down in front of the gate of the house of Dharmender, whereas, Suraj ran into the house of Dharmender. He raised alarm, whereupon, the accused fled away on their motorcycles towards Rewari. His father and several other co-villagers came to the spot. His father arranged for a vehicle and took Ajay to hospital. Because of the injury, Ajay died. He further deposed that on the day of Dulhandi, Ravi had quarreled with Ajay and Suraj and Ravi had extended a threat to eliminate Ajay.

52. During his cross examination, he admitted that while recording

his statement Ex.PK to the police he had stated that three boys were riding the Bullet motorcycle. He explained that he was perplexed at that time so he told the police that three young boys were present. He admitted that in his statement Ex.PK 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 pillion rider on the Bullet motorcycle on which three persons were riding was the one who had shot at Ajay. He admitted that he had not told the police in his statement Ex.PK that one motorcycle was Pulsar and two motorcycles were of Splendor make. He had not told the police that four motorcycles had come towards their village or that the occupants on four motorcycles were chasing Ajay. He had not told the 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 4th motorcycle two other persons were there. He had not mentioned the name of Pawan to the police. He had not specifically 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 persons were running away three persons namely Shoaib, Pawan and Dharmender had gone on Pulsor 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.

53. Undoubtedly, there are the aforesaid discrepancies between his (PW5 Mohit) statement Ex.PK 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 on four motorcycles, fired the shot and went away. It happened all of a sudden leaving him in shock. He could not be expected to recount all the details while getting his statement recorded.

54. 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.

55. As per the FSL report Ex.PB 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.

56. Dr. Neetu Singh PW4 in her affidavit Ex.PG had stated that the cause of death was gun shot injury on the vital part i.e. the brain leading to inter-cranial hemorrhage and shock. She further deposed that firearm injury was ante mortem in nature and was sufficient to cause death in ordinary course of life.

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

58. It is well settled as held in **Lalji v. State of U.P. (1989) 1 SCC 437** (p. 441, para 8) 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.”

59. In the present case from the evidence of PW5 Mohit it is clear that eight boys including the appellant, 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. The Bullet motorcycle was being driven by the appellant, the child in conflict with law at the time of the incident. The Bullet motorcycle had also been recovered pursuant to the disclosure statement Ex.PO of the appellant from the vacant plot near the

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 quickly went away.

60. From the evidence, there is no doubt about the identity of the appellant and the presence of PW5 at the site and his having witnessed the incident. The discrepancies between the initial statement Ex.PK and the deposition of PW5 are not such as to cast a doubt on his testimony. The motive for the crime has also been explained by PW5 Mohit. The appellant had quarrelled with Ajay and Suraj on the day of Dullandi and the appellant had extended a threat to eliminate Ajay. There was no reason for PW5 to implicate the appellant falsely. None has been suggested by the appellant.

61. The prosecution has fully established the case against the accused beyond reasonable doubt.

62. There is no merit in this appeal and the same is dismissed.

(RAJIV SHARMA)

JUDGE

(HARINDER SINGH SIDHU)

JUDGE

January 09, 2020

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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No