

CRA-D-1001-DB-2007 and connected (O&M)

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

1. **CRA-D-1001-DB-2007 (O&M)**
Reserved on : October 01, 2019
Date of Decision: August 27, 2020

Pawan Kumar ...Appellant

Versus

State of Haryana ...Respondent

2. **CRA-D-1045-DB-2007 (O&M)**

Mittal and another ...Appellants

Versus

State of Haryana ...Respondent

AND

3. **CRR-1100-2008 (O&M)**

Naresh Kumar ...Petitioner

Versus

Satish and others ...Respondents

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

Present: Mr. Bhupinder Ghai, Advocate for
the appellant in CRA-D-1001-DB-2007.

Mr.R.K.Agnihotri, Advocate for the
appellants in CRA-D-1045-DB-2007.

Mr.J.S.Mehandiratta, Advocate for
the petitioner in CRR-1100-2008.

Mrs.Shubhra Singh, Addl. Advocate General, Haryana.

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HARINDER SINGH SIDHU, J.

1. Since common questions of law and facts are involved in the aforesaid cases these are taken up together and disposed of by a common judgment.

2. Criminal Appeal No.CRA-D-1001-DB-2007 and CRA-D-1045-DB-2007 have been filed by the accused against their conviction and sentence vide judgment and order dated 17.10.2007 of the learned Additional Sessions Judge, Panipat in Sessions case No.85 of 2005, whereby, they were charged with and tried for offences punishable under Sections 302/120-B/34/216 of the Indian Penal Code (in short 'IPC') and Section 25 of the Arms Act, along with Satish, Devender, Satender, Kavita and Sonu alias DD. The appellants were convicted and sentenced as under:-

Name of Convict-Appellants	Sentence
Pawan, Rishi Pal and Mittal	Imprisonment for life and to pay fine of Rs.5,000/-, each, for the offence under Section 302 read with Section 34 IPC and in default of payment o fine, to further undergo RI for a period of one year.
Rishi Pal and Mittal	RI for a period of one year and to pay fine of Rs.1,000/-, each for the offence u/s 25 of the Arms Act and in default of payment fine, to further undergo RI for a period of three months.

The sentences were ordered to run concurrently. Satish, Devender, Satender, Kavita and Sonu alias DD were acquitted.

3. Criminal Revision No.1100 of 2008 has been filed by Naresh Kumar – the complainant challenging the acquittal of Satish and Sonu @ DD and also

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seeking capital punishment for the accused.

4. The case of the prosecution is that on 19.07.2005 at about 8.30 AM information was received on telephone by ASI Chander Singh P.S. Samalkha that three motorcycle riders had caused fire arm injury to one Ramesh Chander son of Bharat Singh. The injured had been taken to G.H. Panipat. ASI Chander Singh accompanied by other police officials reach GH Panipat. They met Naresh Kumar at the gate who got recorded his statement Ex.PA. He stated that he was a resident of Chulkana and was posted as ASI in Fourth Battalion in the Police Department. He had come to village Chulkana on 15.07.2005 on five days leave. That day (19.07.2005) at about 6.00 AM he and Roshan Lal son of Sadhu Ram were going on village Chadia road for a walk. His elder brother Ramesh Chander was also going for a walk ahead of them. When Ramesh Chander reached at Crusher turn and he and Roshan Lal reached in front of the house of Jeetu, then three boys named Rishi Pal @ Rishi son of Shyam Lal, Satish son of Kitaba resident of Chulkana and Pawan son of Balbir resident of Mahawatti came on a motorcycle from the side of village Chulkana. They stopped their motorcycle near Ramesh Chander. They caught hold of Ramesh Chander. Rishi Pal fired a shot at the temple of Ramesh Chander. On receiving the shot he fell down. He(Naresh Kumar) and Roshan Lal ran towards him. All the three assailants fled away on their motorcycle. The reason for the grudge was that the house of Randhir son of Fattu had been purchased by Ramesh Chander. Rishi Pal wanted to purchase the said house as it adjoined his house. Because of this grudge the three assailants attacked and shot his brother. He and Roshan Lal arranged a conveyance and were taking the injured Ramesh Chander to the Govt. Civil Hospital, Panipat but he died on the way. After recording the statement ASI Chander Singh sent the same to the

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Police Station and formal FIR Ex. PA/2 was registered. ASI Chander Singh conducted inquest proceedings Ex. PC/2. He got the post mortem of the dead body conducted. The investigation was then taken over by SI Ramesh Kumar SHO Police Station Samalkha. SI Ramesh Kumar went to the place of occurrence. He inspected the spot. He took into possession an empty cartridge Ex. P1 and a pair of chappals of the deceased (Ex. P 2 and Ex. P3) and blood stained earth from the spot. He then recorded the supplementary statement of the complainant Ex. DB of PW Naresh. Therein he stated that he was serving in the Police Department and used to come to the village sometimes. The village was a big village. He did not know about every person in the village. He had confirmed that his brother Ramesh Chander had been murdered by three boys. The driver of the black colour Pulsar Motorcycle without number plate was Pawan son of Balbir resident of Mahawatti. The person sitting in the middle was Rishipal son of Shyam Lal. The person sitting on the back side was Mittal son of Roshan Lal resident of Chilkana. Mittal had caused injuries to his brother with a fire shot. Pawan and Rishipal had caught Ramesh Chander. Earlier due to confusion he had wrongly named Satish son of Kitaba along with Pawan and Rishipal.

5. The statement of other witnesses including of Roshan Lal, Mohan Lal @ Monu and Ajaib Singh were also recorded. Mohan Lal stated that on 18.07.2005 when he happened to cross the house of Shama, father of Rishipal he saw accused Pawan, Rishipal Mittal, DD alias Sonu and Satish present there. He overheard them discussing the plan to murder Ramesh Chander. As per that plan accused Pawan, Mittal and Rishipal would go on a motorcycle the next morning. Rishipal and Pawan would catch hold of Ramesh Chander and Mittal would fire. Satish and DD alias Sonu would follow them and intervene in case of need. The

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accused were arrested. On the basis of the disclosure statement of accused Rishipal a .315 bore pistol and three cartridges were recovered. On the disclosure statement of accused Mittal a .315 loaded pistol was recovered. On the disclosure statement of accused Pawan a motorcycle -Make Discover was recovered. During investigation information was received that accused Pawan and DD alias Sonu were being harboured by Satinder, Devinder and Kavita in their house in Karnal. Satinder, Devinder and Kavita were arrested for offence under Section 216 of IPC.

6. On completion of investigation challan was filed against eight accused.

7. Charge for offences under Sections 148, 302 read with Section 149 and Section 302 read with Section 120-B IPC was framed against accused Mittal, Rishipal, Satish, Pawan and Sonu alias DD. Accused Mittal and Rishipal were also charged for offences under Section 25 of the Arms Act. Accused Kavita, Satinder and Devender were charged for offence u/s 216 of IPC.

8. The prosecution examined twelve witnesses in its support. The statement of the accused under Section 313 Cr.P.C. was recorded. They denied the allegations levelled against them and pleaded innocence. It was stated that they have been implicated due to party politics. However, they did not lead any evidence in his defence.

9. Three of the accused were convicted and sentenced, while other five were acquitted, as referred to above. Hence, these appeals and revision.

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

11. PW1 Roshan Lal deposed that on 19.07.2005 at 6 AM, he and PW Naresh Kumar were going for a morning walk at Chadia road, Chulkana. Ramesh

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Chander deceased was going ahead of them on the same road. He too was going for morning walk. At about 6.15 am when Ramesh Chander reached at Crusher turn and he and Naresh Kumar reached in front of house of one Jitu, three persons namely Pawan son of Balbir, r/o Mahoti, Rishipal son of Sham Lal r/o Chulkana and Mittal son of Roshan Lal r/o Chulkana came there on a motor cycle of black colour without registration number plate from the side of village Chuklana. Pawan was driving the motor cycle and remaining two persons namely Rishi Pal and Mittal were pillion riders. They stopped the motor cycle near Ramesh Chander. Pawan and Rish Pal caught Ramesh Chander and Mittal fired from a pistol at temple of Ramesh. On receiving the shot, Ramesh Chander fell down. He and Naresh Kumar ran towards him. All aforesaid three assailants drove away on the same motor cycle towards village Chadia Bhawra. He arranged a private vehicle. He and Naresh took Ramesh Chander in said vehicle. When they reached near Lal Batti Chowk, Panipat, Ramesh Chander succumbed to the injuries. They took his dead body to Civil Hospital, Panipat. Thereafter, he went to village to inform their family members about the occurrence. All the three assailants Pawan, Rishi Pal and Mittal were known to him. He identified them in Court. His statement had been recorded by the police.

12. In cross examination by counsel for the accused he stated that his father and the father of the deceased were real brothers. His brother Ajaib Singh was also a witness in this case. Village Chulkhana was at a distance of 4- 4 ½ Km from Samalkha. Crusher turn where the occurrence took place falls on the road which goes from Gannaur to Samalkha. For going to Chulkana from Panipat, one has to pass through Samalkha. There is a police station as well as Government and Private hospitals in Samalkha. The distance between the Crusher turn and the

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village phirni was about 400/500 yards. There was a sugarcane crusher at that place which was lying abandoned since long. Hence the place was called Crusher turn. The fields of PW Naresh are located near the phirni of the village. His house (i.e., of PW 1 Roshan Lal) was at a distance of about 300 yards from the phirni inside the abadi. The house of Ramesh Chander deceased was at a distance of about 100 yards from the house of PW Naresh Kumar towards the inner side of the village. The distance between them and Ramesh Chander deceased was about $\frac{3}{4}$ killa. Pawan, Rishi Pal and Mittal had crossed them before reaching Ramesh Chander and had seen them while crossing. In his statement to the police he had not stated about the make of the motorcycle. He was confronted with his statement Ex. DA where the make of the motorcycle (Pulsar) is mentioned. Mittal had fired at the deceased from a country made pistol. When he went to arrange for a vehicle he did not go to his house or to the house of Ramesh Chander or PW Naresh to inform about the occurrence. Nobody in the village was informed about the incident. He had no money with him. He also did not go to his house to collect money. For going to Panipat they had passed through Samalkha. On the way clinics of Dr. Nand, Dr. Kapila, Dr. IC Garg and Dr. Goel had fallen. But these were not full fledged hospitals. The deceased was not taken to any doctor or hospital in Samalkha to provide first aid. On the way he and PW Naresh did not have any conversation regarding the assailants. When they reached Lal Batti Chowk Panipat, they found that the body of the deceased had turned cold. It took them 3-4 minutes to reach the Civil Hospital, Panipat from Lal Batti Chowk. On reaching the hospital, the deceased was examined by the doctor. He was declared brought dead. PW Naresh Kumar had told the doctor his name, the name of the deceased and other particulars. No writing work was done by the doctor in his

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presence. He had immediately left for the village to inform his family about the occurrence. Till the time he left the hospital for returning to the village he had no conversation with PW Naresh Kumar about the names of the assailants. The police had arrived at the place of occurrence at about 9.30/ 9.45 AM. A team of FSL Madhuban had visited to examine the scene of crime. PW Naresh Kumar was with the police when they visited the place of occurrence. He had informed the police orally about the names of the assailants. After recording his statement, the statement of PW Naresh Kumar was recorded by the police. He was not informed by the police that the statement of Naresh Kumar had been recorded and he had disclosed the names of the assailants as Pawan, Rishipal and Satish and that the shot had been fired by Rishipal. It is correct that in the FIR the name of the accused who fired at the deceased is recorded as Rishipal and not Mittal. Voluntarily added that the FIR was lodged by PW Naresh Kumar and while lodging the FIR Naresh Kumar had confusion regarding the names.

13. PW2 Naresh Kumar deposed that in the month of July 2005, he was posted as ASI in 4th Battalion, HAP Madhuban. He was resident of village Chulkana. He had come to his village on 15.07.2005 on 5 days leave. On 19.07.2005 at about 6 am he and PW Roshan Lal were going for a walk on Chadia road. His brother Ramesh Chander was going ahead of them. At about 6.15 am when Ramesh Chander reached the Crusher turn and he and Roshan Lal were in front of house of one Jitu, three accused Pawan, Rishipal and Mittal came there from their village side on a motor cycle of black colour which was driven by Pawan accused. The motor cycle had no registration number plate. They stopped the motor cycle near Ramesh Chander. Pawan and Rishi Pal caught Ramesh Chander and Mittal fired from a country made pistol at his temple. On receiving

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shot from the pistol, Ramesh Chander fell down. They ran towards the place of occurrence. On seeing them, all three assailants drove away on same motor cycle towards village Chadia Bhawra. They arranged a private vehicle and took Ramesh Chander to Civil Hospital, Panipat. When they reached near Lal Batti Chowk Panipat, Ramesh Chander succumbed to his injuries. The dead body was taken to Civil Hospital, Panipat.

14. The motive for the crime was that the house of one Randhir son of Fattu was purchased by his brother Ramesh Chander. The said house was adjacent to the house of Rishi Pal accused. Rishi Pal wanted to purchase said house. Police had arrived at hospital and had recorded his statement Ex.PA which was signed by him.

15. The police lifted one empty cartridge, a pair of chappals of Ramesh Chander and blood stained earth from the spot which were taken into possession vide memo Ex.PB. He identified the empty cartridge Ex.P1 as being the same cartridge which was lifted by the police from the spot. He also identified the pair of chappals Ex.P2 and Ex.P3. At the time of lifting of these articles from the spot his statement was again recorded by the police. In his statement Ex.PA before the police, he had named Satish in place of Mittal as one of the assailants. It was due to confusion. In his statement which was recorded at the time of recovery of the articles he had given the correct names of the assailants. At that time, he had no confusion. He identified the assailants, Pawan, Rishi Pal and Mittal in Court.

16. In cross examination he stated that all the assailants were known to him earlier. He was in Government service since 1981. In March 2005 he was promoted as ASI. He knew the difference between a country made pistol and a revolver. In his statement Ex. PA he had stated to the police that the shot had been

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fired from a country made pistol. But the police on its own had recorded it as revolver. He did not get the statement corrected when it was read out to him because at that time he was confused. However in his subsequent statement he had stated that the weapon used was a country made pistol. He was confronted with his statement Ex DB where it was not so recorded. The house of Randhir was purchased by his deceased brother about 1 ½ year before the occurrence. After purchase of the said house till the present occurrence no dispute of any kind had taken place between them and the accused. His deceased brother had met him in a Jagrata at about 8.00 pm on 18.07.2005. From the Jagrata the deceased left for his house and he (PW 2) left for his house. During night time his deceased brother did not come to him and tell him anything. He and Roshan Lal had gone to ease themselves whereas deceased Ramesh Chander had gone for a walk as he had been easing at his own house. They had seen his deceased brother for the first time going ahead of them as soon as they mounted on the village phirni. At that time the distance between them and their deceased brother was 1- 1 ½ killa. They did not call out to him to join them. They had covered a distance of only 1 killa from the village Phirni when the occurrence took place. The assailants did not stop their motorcycle near them. However they (the assailants) had crossed them while reaching his deceased brother. In his statement to the police he had stated that the colour of the motorcycle was black and it was without registration number plate. He was confronted with his statement where it was not so recorded. When they reached near his brother he was gasping. They did not give him water. They did not make any effort to stop bleeding from the wounds by tying a cloth. He did not go to the village to inform about the occurrence as he was alone at that place and Roshan Lal had gone to arrange a vehicle. Blood from the wounds of the deceased

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had fallen on his clothes and those of PW1 Roshan Lal. They did not give the blood stained clothes to the police nor did the police demand the same. During the way to the hospital he and Roshan Lal did not have any discussion about the names of the assailants. They reached the hospital at about 7/7.15 AM. The police arrived at the hospital about 10/15 minutes of their reaching there. Prior to recording his statement Ex. PA by the police he did not tell anybody about the names of the assailants. At the time of the inquest proceedings, the dead body was lying near the dead house. At that time 8/10 persons from his village had arrived. He did not tell anyone of them about the names of the assailants. They had started for the place of occurrence with the police at 8.30/ 8.45 AM. They reached the place of occurrence at about 10.30 AM. Dog squad was not called by the police. However a team from FSL, Madhuban had arrived at the spot to examine the scene of crime. After they reached the place of occurrence other persons also arrived there. He did not tell anyone present there about the names of the assailants stated by him in his statement Ex. PA. He admitted that before recording the statement of PW Roshan Lal he did not ask the police to correct his statement Ex PA.

17. PW3 Dr. S.K Gupta, SMO General Hospital, Panipat deposed that on 19.07.2005 he was posted as Medical Officer in Civil Hospital, Panipat. On that day, he alongwith Dr. J.P Saluja conducted the post mortem examination on the dead body of Ramesh Chander resident of Village Chulkana at 10.20 AM. As per the information supplied by the police, the death was the result of fire arm injury. There was no mark of ligature on the neck. The dead body was of a well built and well nourished male wearing white kurta, white pyjama, white baniyan and grey underwear. Eyes were partially open. Mouth was closed. Rigor mortis was present all over the body except lower half region. Post mortem staining was

present on the dependent parts. They observed the following on the dead body:

“1. A lacerated wound on the left fronto temporal region 6 cm above and anterior to the left pinna, of the size 3.5 cm x 1.0 cm with inverted and irregular margin. Blackening was present around the wound. Red clotted blood was present. On dissection underlying fronto temporal bone on left side were broken at multiple sites. The wounds tracks was through the meninges, frontal lobe of brain, falxcerebri. It was going obliquely towards right side and slightly downward piercing the right frontal lobe of the brain, meninges. There were multiple fractures of right fronto temporal bone from right side. Brain matter and meninges throughout the track were lacerated with red clotted blood.

2. A lacerated wound on the right fronto temporal bone 2 cm above and anterior to right pinna with irregular and everted margins. Red clotted blood was present. The size of the wound was 4 cm x 1.5 cm and it was communicating with track described in injury no.1. X-ray of skull was done.

A small amount of blood was present in the right side of the heart.

Stomach contained semi digested food. Small intestine contained chyme, large intestine contained faecal matter. Bladder contained small amount of urine. Liver and spleen were pale and healthy. Rest of the organs were healthy.

In their opinion the cause of death in this case was haemorrhage and shock due to the injury to the vital organs i.e brain and it was ante-mortem in nature and was sufficient to cause death in ordinary course of life.

18. The probable duration between injury and death was variable, whereas between death and post mortem examination it was 3 to 12 hours. They handed over the following to the police:

“i) Well stitched dead body after post mortem examination,

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- ii) *Copy of post mortem report,*
- iii) *Duly initialed police papers numbering from 1 to 16,*
- iv) *Three X-ray films*
- v) *A sealed parcel with four seals containing clothes of the deceased,*
- vi) *A sample seal.”*

He stated that Ex.PC was the correct carbon copy of the post mortem report. Ex.PC/2 are the inquest papers which were initialed by them. Ex.P4, Ex.P5 and Ex.P6 are the X-ray films which were handed over by them to the police.

19. Injury No.1 mentioned by them in post mortem report Ex.PC was the entry wound while injury no.2 was the exit wound. Injury no.1 was the result of fire arm. He identified Ex.P7 the kurta, Ex.P8 the pyjama, Ex.P9 baniyan and Ex.P10 underwear which were removed from the dead body by them.

20. In cross examination by counsel for the accused he admitted that first it was mentioned by them in the post mortem report that rigor mortis was present all over the body. He also admitted that in the post mortem report the probable time that elapsed between death and post mortem was written as 9 to 24 hours. He also admitted that addition was made on both the points and it was recorded that rigor mortis was present all over the body except lower half portion and the duration between death and post mortem examination was recorded as 3 to 12 hours after scoring of 9 to 24 hours. He added that the cutting was made before the finalization of the report and it was attested by him. He admitted that in case rigor mortis is found present all over the body then the duration between death and post mortem examination could be 9 to 24 hours as originally mentioned in the report. If the duration between death and post mortem examination as 9 to 24

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hours was taken to be true then the time of death would be before 1.20 AM in the night intervening 18/19.07.2005. If the death had taken place before 1.25 AM then the possibility of the contents found in the stomach, small intestine and large intestine of the deceased could be there. It all depends upon the time when the deceased took food and the nature of the food. Normally the semi-digested food is found in the stomach between 3 to 6 hours after ingestion. He denied that the changes had been made by him in the post mortem report subsequently at the instance of the police and the complainant party to support the prosecution version regarding the time of death.

21. PW4 Mohan Lal alias Monu deposed that on 18.07.2005 at about 9 pm, he and Mange Ram were coming back after enquiring about the labourers. When they reached in front of house of Shama son of Dharam Singh, they heard voice coming from his house mentioning the name of Ramesh Chander. They stood near the window. They peeped through the window and saw accused Rishi Pal, Mittal, Satish, DD alias Sonu and Pawan. Accused Rishi Pal who is the ring leader of other accused was saying that Ramesh Chander was creating hurdle in their work. He was also saying that the house which Rishi wanted to purchase was purchased by Ramesh Chander and as such Ramesh Chander has to be finished. The rest of the accused concurred. Accused Rishi Pal further mentioned that Ramesh Chander goes for a morning walk at Chadia road. He further told that he (Rishi Pal), Pawan and Mittal would go there on the next morning on the motor cycle of Pawan. He (Rishi Pal) and Pawan would catch hold of Ramesh and Mittal would fire a shot at Ramesh Chander. If needed he too would fire. He further told that accused Satish and DD alias Sonu would follow Ramesh Chander. They would conceal themselves in the fields and in the event of need they would help

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them. Thereafter he (PW 4) and Mange Ram went to Ramesh Chander and informed him about aforesaid matter. Ramesh Chander replied them that he was not afraid of such people who were talking irrelevant under the influence of intoxication. Thereafter, they returned to their home. His statement was recorded by the police.

22. PW5 Ajaib Singh deposed that about 1¾ years ago Ramesh was murdered. On that day at about 5.30 am he was returning to his house from his gher. The house of Ramesh was on the way. When he reached near the house of Ramesh he saw accused Rishi Pal, Mittal and Pawan standing there with a motor cycle. When he moved a little further, he saw accused Satish and DD alias Sonu walking slowly in the street. Satish was saying that since the light has not been switched on so he (Ramesh Chander) has not arisen. Thereafter, he went to his home.

23. PW6 Constable Manjit Kumar tendered affidavit Ex. PD to the effect that parcels of the case property were handed over to him by ASI Rajender Singh on 29.09.2005 which he deposited in the Forensic Science Laboratory, Madhuban the same day.

24. PW7 ASI Rajender Singh tendered his affidavit Ex. PE to the effect that parcels of case property were deposited with him by SI/ SHO Ramesh Kumar on 19.07.2005 and 28.07.2005 and he handed over the same to Constable Manjit Kumar on 29.07.2005 for deposit in the FSL Laboratory, Madhuban.

25. PW8 Seth Pal deposed that on 25.07.2005 he was present in his house. On that day, at about 2 pm, accused Mittal came to him. He was perplexed at that time and told him "Mamaji I had committed a crime. Since you are acquainted with police, therefore, produce me before the police". Mittal

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disclosed to him that on 18.07.2005, he alongwith accused Rishipal, Satish, Sonu and Pawan hatched a conspiracy at the house of Rishipal to kill Ramesh Chander. All of them were assigned their respective roles in the commission of the murder. Mittal further disclosed that it was decided amongst them that Rishipal and Pawan would catch hold of Ramesh and he (Mittal) would fire the shot on the temple of Ramesh Chander. Sonu and Satish would keep a watch on Ramesh and if needed would help them. He further disclosed that on 19.07.2005 at about 6 am, Ramesh was going out for a walk on Chhadia road. Pawan, Rishi Pal and he (Mittal) went on a motorcycle. They stopped it near Ramesh. Pawan and Rishipal caught hold of Ramesh. He (Mittal) fired at the temple of Ramesh. Then they all fled away on same motor cycle towards Gannaur. He further disclosed that on 25.07.2005, accused Rishipal and Pawan left him at bus stand of village Gola asking him to arrange for some money and to meet them at 5 pm at Railway Station, Panipat. But he had a change of mind and he had come to him (PW 8) for taking him to police.

26. In cross examination he stated that his village Assan Kalan was 30/32 kms from Chulkana. He had never been Sarpanch, Member Panchayat or Numberdar of his village. Before this he had produced 2/4 persons before the police who had confessed their guilt before him. His village falls in the areas of P.S. Madlauda Village Chulkana falls in the area of P.S. Samalkha.

27. PW9 Chander Singh ASI, deposed that on 19.07.2005 he was posted as ASI in Police Station Samalkha. That day he received telephonic information that three motor cyclists had fired at Ramesh who was being taken to Civil Hospital, Panipat. On receipt of said information, he along with other police officials went to Civil Hospital, Panipat. PW Naresh Kumar met him at the gate

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of Civil Hospital Panipat. He made his statement Ex.PA which was read over to him and he signed same in token of its correctness. He made his endorsement Ex.PA/1 and sent it for registration of the case. FIR Ex.PA/2 was recorded. Thereafter he went to dead house and prepared inquest report Ex.PC/2 regarding the dead body of Ramesh. He recorded the statement of Ashok Kumar and Suresh Kumar under Section 175 Cr.P.C. as well as under Section 161 Cr.P.C. He got the post mortem examination on dead body of Ramesh conducted. Thereafter he handed over the file of the case to SI Ramesh Kumar, SHO. On that day, HC Om Parkash produced a parcel containing clothes of deceased before SI Ramesh Kumar which was taken into possession vide memo Ex.PF.

28. On 25.07.2005, PW Seth Pal produced accused Mittal before SI Ramesh Kumar at Bus Stand Samalkha at 2.30 pm in his presence. Accused Mittal was arrested. He was interrogated by SI Ramesh Kumar. On the same day, at about 5 pm accused Rishipal and Satish were arrested at Railway Station Panipat by SI Ramesh Kumar. They were interrogated by SI Ramesh Kumar.

29. On 28.07.2005, accused Rishipal was interrogated again by SI Ramesh Kumar. On interrogation accused Rishipal made disclosure statement Ex. PG that he had kept concealed a country made pistol at Herbal Park near Chhadia convert. Pursuant thereto accused Rishipal got recovered one pistol and three live cartridges of .315 bore which were taken into possession vide memo Ex.PG/2.

30. Thereafter, accused Mittal was interrogated and he made disclosure statement Ex. PH that he kept concealed a pistol near the Southern wall of a water tank in village Chhadia. Pursuant thereto he got recovered a pistol. It was found to be loaded. The pistol and the cartridge found in the chamber were converted into sealed parcel and were taken into possession vide memo Ex.PH/2. He

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identified Ex.P11 as the pistol which was got recovered by accused Rishipal and Ex.P12 the cartridge alongwith pistol. He identified Ex.P13 as pistol which was got recovered by accused Mittal.

31. In cross examination by counsel for the accused he stated that the telephonic message had been received in the police station at 7.00 AM. He could not tell the name of the caller. He reached the gate of the General Hospital, Panipat at 8.00 AM where PW Naresh Kumar met him. He did not go to the Emergency/ Casualty Ward of the Hospital to find out as to when the deceased was brought there and who had brought him there. He recorded the statement of PW Naresh as dictated by him. He did not add or subtract anything from it. He did not change the weapon of offence recorded in the statement from pistol to revolver. He did not find any stain of blood on the clothes of Naresh when he recorded his statement. About 15-20 persons from village Chulkana were present near the dead house when he went there to prepare the inquest report. PW Naresh did not approach him during the inquest proceedings to say that he had named wrong person as the assailant and he wanted to correct his statement. None of the ten persons mentioned in the inquest report told him anything different than Ex. PA during the inquest proceedings. He was free from the hospital at about 10 AM. He along with the SHO reached the place of occurrence at about 11/ 11.15 AM. About 40/45 persons were present there.

32. PW10 SI Ram Kishan, deposed that on 30.10.2005 he was posted as SI/SHO in PS Samalkha. On that day, he was present at Bus Stand Samalkha where PW Satbir Singh met him and got recorded his statement under Section 161 Cr.P.C. He added Section 216 IPC in this case. He went to Ranjit Enclave, Karnal and raided the house of accused Satinder, Devender and Kavita. It was a rented

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house. He arrested them under Section 216 IPC and interrogated them. On 03.11.2005 he came to know that accused Pawan had been arrested in case FIR No.296 and he was admitted in Civil Hospital, Panipat. He reached there and after seeking the permission of doctor he caused arrest of accused Pawan. He interrogated him and during his interrogation he made a disclosure statement Ex. PJ that he had kept concealed a motor cycle make Discover in a rented room situated at Ranjit Enclave, Karnal. Pursuant thereto accused Pawan got recovered motor cycle make Discover which was taken into possession vide memo Ex.PJ/1. He deposited case property with MHC and accused was produced in Court. On 30.12.2005, he caused arrest of accused DD alias Sonu who was arrested by Inspector Prem Singh in some other case and was on police remand. After completion of investigation, he prepared report under Section 173 Cr.P.C. qua accused Pawan, Sonu, Devender, Satinder and Kavita.

33. PW11-SI Ramesh Kumar, deposed that on 19.07.2005, he was posted as SI/SHO in Police Station Samalkha. On that day he took over the investigation of the case from ASI Chander Singh. He reached the spot alongwith ASI Chander Singh, complainant and other police officials. He inspected the spot and took into possession one empty cartridge, bloodstained earth and one pair of chappals. He recorded the statements of the witnesses PW Chain Singh, Mohan Singh, Mange Ram, Azab Singh etc.. He thereafter recorded the supplementary statement of complainant. He prepared the rough site plan Ex.PK of the place of occurrence with correct marginal notes. Thereafter, the team from FSL had come at the spot. They also inspected the spot. He raided the houses of the accused Rishipal etc. However none of the accused was found present.

34. On 25.07.2005, he along with ASI Chander Singh and other police

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officials was present at bus stand, Samalkha. PW Seth Pal met him and produced accused Mittal before him. He arrested accused Mittal in this case and interrogated him. During the interrogation, he disclosed that Rishipal and Satish were present near Railway station, Panipat (Objected to). He went to railway station, Panipat and arrested accused Rishipal and Satish. He interrogated them and recorded their disclosure statements. Thereafter, he brought them to the police station. On 26.07.2005, all the three accused were produced in the court. Accused Satish was sent to judicial custody while accused Rishipal and Mittal were remanded to police custody for three days. They were interrogated in the police station on 26.07.2005 and then on 27.07.2005. On 28.07.2005, PW Pawan came to the police station. He was joined in the investigation of this case. He then deposed regarding the disclosure statement Ex. PG of accused Rishipal pursuant where to he got recovered a .315 bore pistol and three cartridges from near Chhadia mor near Herbal Park under a culvert which were taken into possession vide memo Ex.PG/2. He also deposed regarding the disclosure statement Ex.PF of accused Mittal pursuant where to he got recovered one loaded pistol from near the southern wall of the water tank in village Chhadia which was taken into possession vide memo Ex.PH/2. He deposited the case property with the MHC of the police station on that day.

35. Thereafter, the investigation of this case was handed over to CIA staff. Again on 30.09.2005, the investigation of this case was handed over to him. After the completion of the investigation, he prepared the report under Section 173 Cr.P.C qua accused Mittal, Rishipal and Satish. He identified Ex.P.1 the empty cartridge and Ex.P2 and Ex.P3 as the pair of chappals which were taken into possession from the spot. Ex.P11 and Ex.P13 as the pistols which were got

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recovered by accused Rishipal and Mittal and Ex.P12 the cartridge.

36. In cross examination he admitted that Mittal was not named as an accused in the statement of the complainant handed over to him by ASI Chander Singh. In those documents the firing had been attributed to Rishipal. He had formally verified from PW Naresh at bus stand Samalkha about his statement which was produced before him by ASI Chander Singh. Naresh did not ask for any correction of that statement at that time. He voluntarily added that Naresh was then perturbed. The place of occurrence was at a distance of about ½ km from the village abadi. There were signs of struggle at the place of occurrence. He had recorded the supplementary statement of PW Naresh at 12.30/1.00 PM. After recording the supplementary statement he recorded the statement of Roshan and then of Mohan, Mange, Ajaib Singh and others. He denied that he had got additions and cuttings in the post mortem report as the timing given in the post mortem report did not suit the version prepared by them regarding the occurrence.

37. PW12-Madan Lal Sethi, Dy. Superintendent, District Magistrate, Panipat proved the sanction order Ex.PO pertaining to Rishipal and sanction order Ex.PQ pertaining to Mittal accused for their prosecution under Section 25 of the Arms Act which was issued by DPS Nangal, IAS the then District Magistrate, Panipat.

38. As per FSL Report the Country made pistols marked W/ 1 (stated to have been recovered from accused Mittal) & W/ 2 (stated to have been recovered from accused Rishi Pal) (each chambered for .315 cartridges were firearms as defined in the Arms Act, 1959. Their firing mechanism were found in working order. The countrymade pistol marked as W/2 had been fired through. However, scientifically the time of its test firing could not be given.

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39. .315 fired cartridge case marked C/1 (collected from the place of occurrence) had been fired from country made pistol marked W/1(stated to have been recovered from accused Mittal) and not from any other firearm even of the same make and bore/ calibre, because every firearm has got its own individual characteristic marks.

40. No opinion could be formed regarding the linkage of country made misfired cartridge marked MC/1(stated to have been recovered from accused Rishipal) in respect of country made pistols W/1 & W/2 due to lack of sufficient comparable individual characteristic marks.

41. Blood was detected on Exhibit-2 (blood stained earth), Exhibit- 3a (Kurta), Exhibit- 3b (Pyjama), Exhibit- 3b(Banian) and Exhibit- 3d (underwear).

42. The case was initiated on the statement of PW 2 Naresh Kumar Ex. PA recorded by PW ASI Chander Singh at the gate of Civil Hospital, Panipat at about 8.00 AM on 19.07.2005. He stated that he was a resident of Chulkana and was posted as ASI in Fourth Battalion in the Police Department. He had come to village Chulkana on 15.07.2005 on five days leave. That day (19.07.2005) at about 6.00 AM he and Roshan Lal son of Sadhu Ram were going on village Chadia road for a walk. His elder brother Ramesh Chander was also going for a walk ahead of them. When Ramesh Chander reached at Crusher turn and he and Roshan Lal reached in front of the house of Jeetu, then three boys namely Rishi Pal, Satish son of Kitaba resident of Chulkana and Pawan resident of Mahawatti came on a motorcycle from the side of village Chulkana. They stopped their motorcycle near Ramesh Chander. They caught hold of Ramesh Chander. Rishi Pal fired a shot at the temple of Ramesh Chander. On receiving the shot Ramesh Chander fell down. He(Naresh Kumar) and Roshan Lal ran towards him. All the three assailants fled

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away on their motorcycle. He and Roshan Lal arranged a conveyance and were taking the injured Ramesh Chander to the Govt. Civil Hospital, Panipat but he died on the way.

43. Subsequently, when the complainant went along with the police party to the place of occurrence he got recorded his supplementary statement Ex.DB. Therein, he stated that he was serving in the Police Department and used to come to the village sometimes. The village was a big village. He did not know about every person in the village. He had confirmed that his brother Ramesh Chander had been murdered by three boys. The driver of the black colour Pulsar Motorcycle without number plate was Pawan son of Balbir resident of Mahawatti. The person sitting in the middle was Rishipal son of Shyam Lal. The person sitting on the back side was Mittal son of Roshan Lal resident of Chilkana. Mittal had caused injuries to his brother with a fire shot. Pawan and Rishipal had caught Ramesh Chander. Earlier due to confusion he had wrongly named Satish son of Kitaba along with Pawan and Rishipal.

44. While deposing in Court as PW2 he stated that the three accused Pawan, Rishipal and Mittal came from their village side on a motor cycle of black colour which was driven by Pawan accused. The motor cycle had no registration number plate. They stopped the motor cycle near Ramesh Chander. Pawan and Rishi Pal caught Ramesh Chander and Mittal fired from a country made pistol at his temple. On receiving shot from the pistol, Ramesh Chander fell down. They ran towards the place of occurrence. On seeing them, all three assailants drove away on same motor cycle towards village Chadia Bhawra. They arranged a private vehicle and took Ramesh Chander to Civil Hospital, Panipat. When they reached near Lal Batti Chowk Panipat, Ramesh Chander succumbed to his

injuries. The dead body was taken to Civil Hospital, Panipat.

45. PW1 Roshan Lal deposed similarly as per the deposition of PW2 Naresh.

46. PW2 has sought to explain the discrepancy in the naming of the accused in his statement Ex. PA and the supplementary statement Ex. DB and his deposition in Court by stating that it was due to confusion that in his statement Ex.PA before the police, he had named Satish in place of Mittal as one of the assailants. In his statement which was recorded at the time of recovery of the articles he had given the correct names of the assailants. At that time, he had no confusion. PW 1 Roshan Lal has also given a similar reason for the discrepancy in the statements of PW 2 Naresh.

47. This reason does not appear to be credible. Even the Ld. Trial did not accept that explanation but considering the report of the FSL Madhuban as per which the empty cartridge recovered from the spot had been proved to be fired from the country made pistol recovered on the disclosure statement of Mittal concluded that the shot had indeed been fired by Mittal.

48. What makes the explanation of PW1 and PW2 that it was due to confusion that PW 2 in the statement Ex.PA had named Satish instead of Mittal as one of the accused and Rishipal as the one who fired at the deceased more unconvincing is that in their cross examination both PW 1 Roshan Lal and PW 2 Naresh have stated that while taking the deceased from the place of occurrence to General Hospital, Panipat, they did not have any conversation regarding the assailants. This is most unnatural. The deceased was the real brother of PW 2 Naresh and the first cousin of PW 1 Roshan Lal. Having witnessed the deceased being shot in front of their eyes and having seen the assailants (as claimed by

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them) they would certainly talk about the incident and the assailants during their journey of about 25 Kms from the place of occurrence to Civil Hospital, Panipat. If not that what else did they talk about? Or did they remain totally silent, being shell shocked ? There is no explanation.

49. What is still more intriguing about their conduct is that PW2 in his cross examination stated that not only during the way to the hospital he and Roshan Lal did not have any discussion about the names of the assailants but even at the time of inquest when he claimed that 8/10 persons from his village had arrived he did not tell anyone of them about the names of the assailants. Even after they reached the place of occurrence and other persons also arrived there he did not tell anyone present there about the names of the assailants stated by him in his statement Ex.PA. He admitted that before recording the statement of PW Roshan Lal he did not ask the police to correct his statement Ex PA. In his cross examination PW9 ASI Chander Singh stated that about 10-15 persons from village Chulkana were present near the dead house when he went there to prepare the inquest report. PW2 Naresh did not approach him during the inquest proceedings to say that he had named wrong person as the assailant and he wanted to correct his statement. None of the ten persons mentioned in the inquest report told him anything different than Ex.PA during the inquest proceedings. This casts a grave doubt about the subsequent version of PW2 in naming accused Mittal instead of Satish and substituting Mittal as the person who fired at the deceased in place of Rishipal as stated by him in his statement Ex.PA.

50. Another inexplicable aspect of the behaviour of PW1 and PW2 is that they took the deceased to Panipat which was 25 kms from the place of occurrence. It has been stated by PW 1 in his cross examination that Village Chulkhana was at

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a distance of 4- 4 ½ Km from Samalkha. Crusher turn where the occurrence took place falls on the road which goes from Gannaur to Samalkha. For going from Chulkana to Panipat, one has to pass through Samalkha. There is a police station as well as Government and Private hospitals in Samalkha. They had passed through Samalkha. On the way clinics of Dr. Nand, Dr. Kapila, Dr. IC Garg and Dr. Goel had fallen though these were not full fledged hospitals. The deceased was not taken to any doctor or hospital in Samalkha to provide first aid. No explanation has been offered for the same.

51. In his cross examination PW2 stated that when they reached near his brother he was gasping. They did not give him water. They did not make any effort to stop bleeding from the wounds by tying a cloth. Considering that PW2 Naresh was an ASI and had been in service since 1981, he would know the importance of providing timely first aid to the injured. In any case he would know that preventing excessive blood loss was crucial. In this background their not making any attempt to stop bleeding or stopping for emergency first aid at Samalkha is inexplicable.

52. PW2 Naresh in his cross examination has stated that blood from the wounds of the deceased had fallen on his clothes and those of PW1 Roshan Lal. They did not give the blood stained clothes to the police nor did the police demand the same. PW 9 ASI Chander Singh who recorded the statement of PW 2 Naresh in Civil Hospital, Panipat in cross examination stated that he did not find any stain of blood on the clothes of Naresh when he recorded his statement. This puts a big question mark over the version of PW 1 and PW2.

53. Both PW1 and PW2 have stated that Pawan, Rishi Pal and Mittal had crossed them before reaching Ramesh Chander who was only about 1- 1 ¼ killa ahead of PW1 and PW2. The assailants had also seen them (i.e. PW1 and PW2)

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while crossing. As two of the assailants were from the same village as PW 1 and PW 2 they would certainly know that they had been seen/ recognized by the brother and cousin of the victim. Consequently they were sure to be apprehended and brought to justice. Normally any assailant while executing such an act would make efforts to screen himself to avoid recognition. They would muffle their faces or adopt any other measure to avoid recognition. But if the prosecution version is to be believed the assailants in the present case made no such attempt. Instead they went ahead and executed their plan despite being seen by PW 1 and PW 2. Such behaviour may be expected only if they were desperate to do away with the deceased and this was the only opportunity they had to execute their plan. In the present case there does not appear to be any reason for such conduct of the accused. As per PW2 Naresh, the motive for the crime was that the house of one Randhir son of Fattu was purchased by his brother Ramesh Chander. The said house was adjacent to the house of Rishi Pal accused. Rishi Pal wanted to purchase the said house. In cross examination he stated that the house of Randhir was purchased by his deceased brother about 1 ½ year before the occurrence. After purchase of the said house till the present occurrence no dispute of any kind had taken place between them and the accused. In view of this also, the version of the prosecution does not inspire confidence.

54. The Ld. Trial had disbelieved the conspiracy part of the story of the prosecution as disclosed in the evidence of PW4 Mohan Lal @ Monu. The Trial Court held that it could not be believed that the conspirators would be talking at such a pitch as to be heard by persons passing by the side of the house.

55. The Trial Court has also disbelieved the evidence of PW8 Seth Pal regarding the alleged extra-judicial confession made by accused Mittal. Firstly

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PW8 was a close relation of the deceased and it could not be expected that an accused would confess before a relation of the deceased. Secondly he was not a person in authority who would be in a position to render some help to the accused. The reasoning of the Ld. Trial Court is sound and calls for no interference.

56. A very crucial aspect which further casts doubt on the prosecution version is revealed in the deposition of PW-3 Dr. S.K.Gupta, SMO General Hospital, Panipat who alongwith Dr.J.P.Saluja conducted the post mortem examination on the dead body of Ramesh Chander resident of Village Chulkana on 19.07.2005 at 10.20 AM. He deposed that rigor mortis was present all over the body except lower half region. Post mortem staining was present on the dependent parts. Stomach contained semi digested food. Small intestine contained chyme, large intestine contained faecal matter. The probable duration between injury and death was variable, whereas between death and post mortem examination it was 3 to 12 hours.

57. In cross examination by counsel for the accused he admitted that first it was mentioned by them in the post mortem report that rigor mortis was present all over the body. He also admitted that initially in the post mortem report the probable time that elapsed between death and post mortem was written as 9 to 24 hours. He also admitted that addition was made on both the points and it was recorded that rigor mortis was present all over the body except lower half portion and the duration between death and post mortem examination was recorded as 3 to 12 hours after scoring of 9 to 24 hours. He, however, added that the cutting was made before the finalization of the report and it was attested by him. He admitted that in case rigor mortis is found present all over the body then the duration between death and post mortem examination could be 9 to 24 hours as originally

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mentioned in the report. If the duration between death and post mortem examination as 9 to 24 hours was taken to be true then the time of death would be before 1.20 AM in the night intervening 18/19.07.2005. Though, he denied that the changes had been made by him in the post mortem report subsequently at the instance of the police and the complainant party to support the prosecution version regarding the time of death but other than saying that the cutting had been made before finalization of the report he did not furnish any explanation as to why the changes were necessitated.

58. He further stated that if the death had taken place before 1.25 AM then the possibility of the contents found in the stomach, small intestine and large intestine of the deceased could be there. Normally the semi-digested food is found in the stomach between 3 to 6 hours after ingestion.

59. Regarding the presence of semi-digested food in the stomach of the deceased suggesting that he had consumed his last meal 2-3 hours prior to his death and consequently the death had occurred at about 1.30 AM on the night intervening 18/19.07.2005 instead of about 6.30 AM as per the version of the prosecution, the Ld Trial Court held that it had come in evidence that the deceased had gone to attend a Jagrata and it is common knowledge that in a Jagrata some Parshad is offered in the early morning. But this reason is not supported by the evidence. PW2 in his cross examination had stated that his deceased brother had met him in a Jagrata at about 8.00 pm on 18.07.2005. From the Jagrata the deceased left for his house and he (PW2) left for his house. As the deceased left the Jagrata for his house at about 8.00 PM the question of the deceased consuming Parshad on the early morning of 19.07.2005 does not arise. There is nothing in evidence to suggest that the deceased had eaten something in the early hours of

19.07.2005 to explain the presence of semi- digested food in his stomach. This causes a grave dent in the prosecution version about the death having occurred at about 6.30 AM on 19.07.2005.

60. Undoubtedly, it is true that as per FSL report the empty cartridge Ex.P1 recovered from the spot had been fired from the pistol Ex.P13 got recovered by Mittal and not from any other weapon even of the same bore or caliber. But in our view this fact of itself would not be sufficient in the face of the aforementioned glaring weaknesses in the prosecution case casting grave doubt not only about the manner and the time when the deceased was done to death and who actually were the accused on the motorcycle and who among them fired the fatal shot.

61. Thus it is held that the prosecution has not been able to prove the case beyond reasonable doubt.

62. Accordingly, the appeals are allowed. The accused are acquitted of the charges framed against them. Their sentence has already been suspended. Their bail bonds stand discharged.

63. As the appeals have been allowed, the Criminal revision is dismissed.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

August 27, 2020
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Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No