

2023:PHHC: 086188-DB

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

1.

CRA-D-158-2020 (O&M)
Date of Decision: July 5, 2023

Manjeet @ Malkit

..... Appellant

VERSUS

State of Haryana

..... Respondent

2.

CRA-D-224-2020 (O&M)

Amit Rana @ Meeta and another

..... Appellants

VERSUS

State of Haryana

..... Respondent

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr. Kartar Malik, Advocate
for the appellant in CRA-D-158-2020

Mr. Pawan Singh, Advocate
for the appellant in CRA-D-224-2020

Mr. Saurabh Mago, DAG, Haryana.

Mr. Krishan Sharma, Advocate for the complainant.

LISA GILL, J.

1. This judgment shall dispose of CRA-D-158-2020 and CRA-D-224-2020 as both the appeals arise out of judgment dated 18.12.2019 whereby appellants in both the appeals have been convicted for the offence punishable under Section 307 IPC read with Section 34 IPC. Vide separate

order dated 19.12.2019, they have been sentenced to undergo imprisonment for fourteen years besides pay a fine of ₹1,50,000/- for the offence punishable under Section 307 IPC read with Section 34 IPC and in default thereof undergo simple imprisonment for six months.

2. CRA-D-158-2020 has been filed by appellant - Manjeet @ Malkit and CRA-D-224-2020 has been filed by appellants - Amit Rana @ Meeta and Ravinder alias Susa challenging their conviction and sentence vide impugned judgment and order dated 18.12.2009 and 19.12.2019, respectively.

3. Brief facts necessary for adjudication have been culled out from CRA-D-158-2020 for the sake of convenience.

4. As per prosecution case, FIR No. 104 dated 09.06.2016 was registered on the statement of injured witness Mangtu Ram, who has deposed as PW6. It is alleged that complainant had been residing in Italy for the last 32 years. He was married with one Priyanka Gupta and two children were born from this wedlock. However, Priyanka Gupta developed illicit relations with one Hari Om, who was also residing at Italy and visiting the house of injured. Relationship of the injured with his wife Priyanka Gupta became strained due to this reason and he started living separately. About one month prior to the incident in question, complainant returned to India and started residing at his native village, Ranila. Priyanka Gupta and Hari Om threatened to kill the complainant on arrival at India. It is further stated that complainant on 09.06.2016 was sitting inside his house at village Ranila when two young boys entered his house on the pretext of seeking to take his land on lease. Complainant refused to give his land on lease and when he stood up to bring chairs for the said boys, one of them fired upon him with

the bullet hitting him on his back at the spine. He fell down. On hearing the sound of firing, family members and other persons arrived at the spot, on which the boys fled.

5. Complainant was shifted to PGIMS, Rohtak where his statement (Ex. P8) was recorded by investigating Officer (PW9) SI Dalbir Singh and formal FIR (Ex.PW12/A) was registered for offences punishable under Section 307 IPC read with Section 34, 120B IPC and Section 25 Arms Act. Spot of occurrence was inspected with empty cartridge case, blood stained earth lifted from the spot and taken in police possession (Ex. P9). Site plan (Ex.P14) was prepared. CD (Mark A) of CCTV footage given by the complainant were taken in police custody, vide recovery memo Ex.P16. Audio CD handed over by Lokender (PW8) in respect to conversation which had allegedly taken place on 8/9.06.2019 with Hari Om and Priyanka Gupta for 11 minutes regarding delivery of motorcycle to Ravinder @ Susa, who is stated to be the relative of Hari Om, was taken in police custody on 13.06.2016.

6. The three accused (present appellants) were arrested in another FIR, i.e. No. 134 dated 30.06.2016 under Sections 398, 401 IPC and Section 25 of Arms Act. Accused Manjit @ Malkit, Ravinder @ Susa and Amit @ Koka suffered separate disclosure statement (Exs. P2, P3 and P4 respectively) wherein they revealed that qua payment of Rs.3 lakhs, crime in question had been commissioned. Motorcycle was arranged by Ravinder @ Susa from Lokender. Appellants revealed that in common concert, they had proceeded to the house of complainant, parked the motorcycle in the main street. With Ravinder @ Susa remaining outside, Amit @ Koka and Malkit went inside and shot was fired at by Manjit @ Malkit. Amit @ Koka stated

that he also wanted to shoot but his pistol was not working. Manjeet @ Malkit revealed that he knew Hari Om son of Dharam @ Dharamveer resident of Chuliyana, who was at Italy in contact with Priyanka Gupta @ Naveen wife of Mangtu Ram and that the incident was carried out in concert by all the three appellants as per plan of Hari Om and Priyanka against payment of ₹30 lakhs. Rarvinder @ Susa in his subsequent disclosure statement (Ex.P18) stated that one Satyawan son of Hawa Singh had provided payment for arranging pistol for causing death of Mangtu Ram.

7. Three pistols of .315 bore and three cartridges were recovered in FIR No. 134 dated 30.03.2016. Same were taken in possession in the present case by SI Dalbir Singh (Ex. P19) on 27.07.2016. All three accused were arrested in the present case on 30.06.2016. Sanction for prosecution (Ex.P15/A) is on record. Recovered country made pistol alongwith cartridges, blood stained earth, blood stained clothes and bullet recovered from the person of the injured were sent for forensic examination. FSL Report is on record as Ex.P/A. After conclusion of investigation, challan was prepared and submitted. The case was committed to the Court of Sessions on 04.10.2016. Charges were framed against the accused under Section 307, 120B, 34 IPC and accused Manjit @ Malkit was also charge sheeted under Section 25 of the Arms Act on 02.12.2016. All of them pleaded not guilty and claimed trial.

8. Prosecution examined as many as 17 witnesses to buttress its case. Proof of documents, as are succinctly detailed in para 7 of the judgment of the learned trial Court, were tendered in evidence. Statements of the accused under Section 313 Cr.P.C. were recorded. Entire incriminating evidence was put to them, which was denied. They pleaded innocence and

false implication. Statement of PW7, Kamla wife of Om Parkash, recorded under Section 161 Cr.P.C. was produced as Ex.D1. No other evidence was led.

9. Learned trial Court on considering the evidence on record as well as facts and circumstances of the case concluded that prosecution had proved its case beyond reasonable doubt and that all the accused while acting in furtherance of their common intention caused fire arm injury to the complainant (PW6) with the intention and having knowledge and under such circumstances that if they by that act caused death, they would be guilty of murder.

10. Learned trial Court in para 55 of its judgment especially noted that the CD mark A and others were played and watched before the Court with the assistance of the System Officer/Assistant. It is observed that faces of Amit @ Koka and Malkit @ Manjeet are evident and visible when they after leaving the motorcyclist outside the main gate of the injured went inside the premises of the complainant as also when they are running from the spot after firing upon him and fleeing on the motorcycle with the accused Ravinder @ Susa. Offence punishable under Section 120B IPC, it was held, was not proved. As accused had already been tried for possession of illegal arms and stood convicted, vide judgment (Ex.DA) and sentence (Ex.DC) imposed upon them in FIR No. 134 dated 30.06.2016, learned trial Court held that they could not be convicted and sentenced under the Arms Act. It was concluded by the learned trial Court that ocular version is duly corroborated by the medical evidence and FSL reports. Aggrieved from their conviction and sentence, present appeals have been filed by the three accused.

11. Learned counsel for the appellants had vehemently argued that learned trial Court has proceeded on the basis of presumptions and conjectures without appreciating the evidence on record in correct perspective. It was contended that it was only one injury on the person of the complainant, which is attributed to Malkit Singh, therefore, conviction of all three accused for the offence in question that too with a sentence for 14 years is totally unjustified and uncalled for. It was urged that material contradictions have surfaced in the statement of the complainant himself, which create serious doubt on the prosecution case, apart from the fact that Priyanka Gupta, wife of complainant and her alleged paramour Hari Om have not been arrested till date. No action has been taken against them. It was also contended that there is no evidence on record to link the present accused with said Priyanka Gupta and Hari Om or to show that any amount as alleged has been transferred to the accounts of the accused. Conviction of present appellants is claimed to be illegal and unjustified. Reference has also been made to the statement of one of the witnesses Kamla (PW7) wife of Om Parkash (PW7) to submit that the same is riddled with discrepancies and on the basis of evidence on record, identity of the accused cannot be established. It was contended that there can be no reliance on CCTV footage of the incident due to non-compliance of Section 65 of the Indian Evidence Act. It was also submitted that accused were in fact known to the complainant, as is evident, from his testimony before the learned trial Court, therefore, not naming them at the outset is fatal to the prosecution case. In view of no evidence on record to show passing of any amount between accused and Priyanka Gupta or Hari Om, accused are left with no motive to attack the complainant. Prosecution case, it is submitted, is totally bereft of

any merit, therefore, all the appellants should be acquitted in this matter. It was submitted by learned counsel for the appellants that Dilbag cousin of the complainant, who allegedly took him to the hospital has not been examined for reasons best known to the prosecution and that there is infact no independent witness worth the name to corroborate the prosecution version.

12. Learned counsel for the accused Ravinder @ Susa additionally submitted that conviction of said appellant with the aid of Section 34 IPC is clearly unjustified as he was only standing outside the house of the complainant even as per the prosecution version. He had no knowledge whatsoever regarding the intention of other co-accused to fire upon the complainant. There is no evidence on record to indicate such knowledge, therefore, his conviction under Section 307 IPC read with Section 34 IPC and imposition of sentence of 14 years, is unjustified.

13. In respect to accused Amit @ Koka, it was also urged that he has not been attributed with any overt act or injury to the complainant, therefore, his conviction under Section 307 read with Section 34 IPC is not made out specifically in the absence of any evidence to show common intention between the parties. It is, thus, prayed that both the appeals be allowed and judgment and order dated 18.12.2009 and 19.12.2019 be set aside with the appellants being acquitted of all the charges against them.

14. Learned counsel for the State while refuting the arguments raised on behalf of the appellants submitted that prosecution case has been proved beyond reasonable doubt on the basis of evidence on record. Identity of the accused is duly established. Mere non arrest of Priyanka Gupta and Hari Om cannot be a ground for acquittal of the present appellants, who are accused in multiple cases, apart from the present case. All the three accused,

it is submitted, were arrested in FIR No. 134 dated 30.06.2016 under Sections 398, 401 IPC and under Section 25 of the Arms Act. Their acquittal in FIR No. 134 in respect to offences under Section 398, 401 IPC with benefit of doubt being afforded to them is of no avail in the present case. It is further submitted that complainant as well as PW7 Kamla have clearly supported the prosecution version. Common intention between the appellants is clearly proved from the evidence on record. FSL Report (Ex.P/A) cements the prosecution case against the appellants. It is, thus, prayed that both the appeals be dismissed.

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

16. It is the case of the complainant, who testified as PW6, that relations between him and his second wife Priyanka Gupta became strained while living in Italy. It is stated that he had got married in June, 2016 with Priyanka Gupta, aged 36 years old, who earlier carried the name, Naveen. Complainant was 66 years old. During his stay at Italy, Hari Om @ Kala son of Dharam Singh resident of village Chalana started visiting his home and developed illicit relations with wife. It is further stated that complainant lived separately from his wife for two years in Italy and thereafter decided to come back to his native village Ranila. He claimed to have been threatened by Priyanka Gupta and Hari Om to be killed if he returned to India, which, in any case, he did on 12.05.2016. After receiving telephonic call from Italy whereby complainant was threatened with death, he installed CCTV cameras at his house at village Ranila. PW6, complainant has faithfully reiterated the version as recorded by him at the time of registration of the FIR. He stated that two CDs of CCTV footage were given by him to the police and that he

could identify the CDs. Learned trial Court ordered the CDs to be played on its official computer. PW6 duly identified the CD's and he duly identified all the accused as well, while submitting that third accused, who did not enter his house, was recognised by him through CCTV footage.

17. PW7 Kamla, neighbour of the complainant, (admittedly living adjacent to the complainant's house) has stated that her husband, who was handicapped was present in their house on 09.06.2016 and it being a little cloudy on that day, she came out to see whether it had started raining when she noticed one boy standing outside with a motorcycle, carrying a pistol. She went inside to tell her husband about the boy carrying a pistol, when she heard a loud sound like a blast. When she rushed outside to see what had happened she saw two boys coming outside the complainant's gate. She went inside complainant's house and found him lying on the ground on which she called Dilbag, brother of the complainant. Dilbag called for a vehicle and took Mangtu to the hospital. She duly identified all the accused persons with Ravinder @ Susa being the one standing outside and Manjit @ Malkit and Amit @ Koka as the boys whom she saw coming out of the complainant's house. PW11 Om Parkash has also identified the accused.

18. At this stage, it is relevant to note that as per evidence on record, it is apparent that the complainant suffered gun shot wound on his spine. As per the MLR (Ex. PW14/A), entry wound was present over the mid back, 3cm lateral to the spinal cord to the right side of the body with tatoo marks present in the other wound. Fire from close range is, thus, evident. As per PW17, Dr. Isha Sharma, who radiologically examined the complainant on 09.06.2016, proved that CT scan and MRI was conducted,

reports of which are on record as Ex.P20 and Ex.P21, respectively. Foreign body with metallic density was seen at the level of T 11 vertebrae.

19. PW5 Dr. Sahil, Medical Officer, PGIMS, Rohtak proved that complainant was admitted at PGIMS, Rohtak from 09.06.2016 to 02.07.2016 with history of gun shot injury and that PW5 alongwith Dr. Subham removed the foreign body from the spine of Mangtu Ram. It is not denied by learned counsel for the appellants that complainant has become paralysed due to said spinal injury. It is pertinent to note that as per FSL Report (Ex.P/A), .315 bore, fired cartridge case lifted from the place of occurrence marked as C1 and .315 bore fire bullet removed from the person of the injured Mangtu Ram marked BC1 matched with the pistol W1 recovered from Malkit Singh. This fact in itself proves the culpability of the accused/appellant.

20. The so called material discrepancies in the statement of the complainant do not in any manner impinge upon the veracity of the prosecution case. It was vociferously argued by learned counsel for the appellants that the complainant knew the accused. This is so inferred by learned counsel on the basis of the statement of the complainant (in his cross examination) to the extent that he had visited the house of the 'accused'. Perusal of testimony of the complainant reveals that this aspect has been correctly dealt with by the learned trial Court while observing that this has been so stated by the complainant in respect to Priyanka and Hari Om (resident of Chalana), who have been duly named as the accused by the complainant.

21. Argument raised on behalf of the appellants that their identity has not been established is devoid of any merit. Undoubtedly, the flag of

non-compliance of Section 64 of Indian Evidence Act in respect to the CD recording CCTV footage at the house of the complainant or audio CD handed over by Lokender (PW8) has been raised on behalf of the appellants. However, it is to be noted that first and foremost it is not the case of the defence that no cameras were installed at the house of the complainant. Furthermore, correctness of the contents of CD has not been agitated.

22. It is to be noted that conduct of the Investigating Officer PW9 Dalbir Singh has been correctly deprecated by the learned trial Court while observing that some omissions and lacunae seem to have been deliberately left by the Investigating Officer for extraneous considerations. DVR despite being available at the complainant's residence was not taken in custody as was certificate under Section 65B of the Indian Evidence Act not obtained and neither were some of the recovery memos attested from witnesses whose names are otherwise found mentioned. Challan/final report of the case was not checked from the office of the competent Law Officer in the office of District Attorney but from the then DSP who was not competent or was moved by extraneous considerations. Learned trial Court directed copy of the judgment to be sent to the Home Secretary, Director Prosecution, Director General of Police, Panchkula and Inspector General of Police Dadri, Rohtak range to initiate and take necessary action.

23. Be that as it may, even if the said CD is to be ignored, we take note of the fact that the accused have been duly identified by the complainant and PW7. PW11 Om Parkash neighbour of the complainant had also identified all the three accused while stating that they were found conducting surveillance of the place of occurrence on 11.05.2016 and yet again after one week. Thus, their identification by the said witnesses

including injured witness does not leave an iota of doubt regarding identity of the appellants. There is no explanation or reason on record for the complainant to falsely implicate the appellants and let the real culprits go scot free. Commission of offence is proved by the evidence on record.

24. Ocular version is duly corroborated by medical evidence as well as the FSL report. We find no merit in the argument raised on behalf of the appellants that recovery of weapon in question, in FIR No. 134 dated 30.06.2016 is not relevant for adjudication in the present case. It is to be noted that the appellants have been duly convicted for the offences punishable under Section 25 of the Arms Act in FIR No. 134 dated 30.06.2016. This argument being completely devoid of any merit in the face of sufficient evidence on record is rejected.

25. Similarly, argument that no action has been taken against Priyanka and Hari Om cannot be of any avail to the appellants. Said accused have been duly named in FIR and in the challan presented i.e. Ex. P12/A, it is duly mentioned that Hari Om and Priyanka being NRIs could not be arrested and separate proceedings were being taken against them and as and when material was available, supplementary challan would be presented.

26. Learned counsel for the appellants - Amit Rana @ Meeta and Ravinder @ Susa had vehemently argued that role of said appellants in commission of the offence under Section 307 IPC read with Section 34 IPC is not proved. At this stage, it is relevant to refer to Section 34 IPC which reads as under:-

“34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons in furtherance of the common intention of all, each of such

persons is liable for that act in the same manner as if it were done by him alone.”

27. Admittedly, Section 34 IPC does not constitute a substantive offence in itself. Hon’ble Supreme Court in **Nand Kishore versus State of M.P. 2011 (12) SCC 120** held that:-

“ For the application of Section 34 Indian Penal Code, it is difficult to state any hard and fast rule which can be applied universally to all cases. It will always depend upon the facts and circumstances of the given case whether the persons involved in the commission of the crime with a common intention can be held guilty of the main offence committed by them together. Provisions of Section 34 Indian Penal Code come to the aid of law while dealing with cases of criminal offence committed by a group of persons with common intention.

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A bare reading of this section shows that the section could be dissected as follows :-

(a) Criminal act is done by several persons;

(b) Such act is done in furtherance of the common intention of all; and

(c) Each of such persons is liable for that Act in the same manner as if it were done by him alone.

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once criminal act and common intentions are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The criminal act, according to Section 34 Indian Penal Code must be

done by several persons. The emphasis in this part of the section is on the word 'done'. It only flows from this that before a person can be convicted by following the provisions of Section 34, that person must have done something along with other persons. Some individual participation in the commission of the criminal act would be the requirement. Every individual member of the entire group charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity. Under Section 34, every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally, i.e., he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between 'common intention' on the one hand and 'mens rea' as understood in criminal jurisprudence on the other. Common intention is not alike or identical to mens rea. The latter may be coincidental with or collateral to the former but they are distinct and different.”

28. Gainful reference can be made to the judgment of the Hon’ble Supreme Court in **Virendra Singh versus State of Madhya Pradesh 2010 (8) SCC 407**, wherein it is held as under:-

“16. According to the appellant, in the facts and circumstances of this case, section 34 Indian Penal Code could not have been invoked. In order to deal with this argument, it has become

imperative to deal with section 34 Indian Penal Code. It reads as under :

"34. Acts done by several persons in furtherance of common intention.- When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

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39. In **Girija Shankar v. State of U.P. 2004(1) RCR (Criminal) 839 : 2004(2) Apex Criminal 411 : (2004) 3 SCC 793**, it was observed that section 34 has been enacted to elucidate the principle of joint liability of a criminal act.

"Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true concept of the section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision."

40. In **Ramesh Singh @ Photti v. State of A.P. 2004(2) RCR**

(Criminal)) 732 : 2004(3) Apex Criminal 33 : (2004) 11 SCC 305, it has been observed as under :

"12. As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code the legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration."

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42. Under the Indian Penal Code, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible."

29. Hon'ble Supreme Court in **Jasdeep Singh @ Jasu versus State of Punjab** (CRA-1584-2021) decided on 07.01.2022, while referring to the abovesaid judgments held that:-

"22. What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34 IPC does not get attracted.

23. It is a team effort akin to a game of football involving several positions manned by many, such as defender, midfielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

24. The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offense.

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26. The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

27. There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offense. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid."

30. It is borne out from the evidence that all three appellants had come together to the residence of the complainant on 09.06.2016. In a well thought out plan, one of them had remained posted outside the complainant's residence, while two of them inside. All the appellants were armed. Firearm injury was caused to the complainant. PW11 Om Parkash, a neighbour of the complaint has testified about all three appellants conducting surveillance of the area on 11.05.2016 and once again after one week. Three of the appellants were admittedly arrested together in FIR No.

134. Though the hypothesis of conspiracy as such between the accused and Priyanka as well as Hari Om is not proved, it is evident from the record that all three appellants with common intention came together to commit the crime. In this regard, evidence of PW8 Lokender is relevant. PW8 Lokender testified that the motorcycle was arranged for the accused on the asking of some lady who had talked to Lokender. Recording of said conversation (Ex.P15) was taken in police custody vide memo Ex.P16. Therefore, common intention to cause fire arm injury to the complainant is borne out from the evidence on record. Appellants have been correctly convicted for the offence punishable under Section 307 read with Section 34 IPC.

31. Alternate prayer for reduction of sentence imposed upon the appellants was also addressed. Perusal of custody certificates of all the three appellants reveals antecedents of the appellants. Ravinder @ Susa is facing trial in two other cases i.e. FIR 499 dated 10.09.2021 under Sections 302 IPC and Section 25A of Arms Act and FIR No. 134 dated 30.06.2016 under Sections 398, 401 IPC and Section 25 of Arms Act. He stands acquitted in nine cases, details of which are as under:-

1. FIR No. 473 dated 10.12.2014
2. FIR No. 310 dated 10.06.2011
3. FIR No. 274 dated 29.07.2015
4. FIR No.228 dated 11.06.2011
5. FIR No. 227 dated 10.06.2011
6. FIR No. 116 dated 16.03.2012
7. FIR No. 33 dated 121.01.2011
8. FIR No. 19 dated 16.01.2011
9. FIR No. 02 dated 02.01.2013

32. Appellant – Amit @ Koka stands convicted in one case FIR No. 134 dated 30.06.2016 under Sections 398, 401 IPC and Section 25, 54, 59

of Arms Act and acquitted in another case i.e. FIR No. 225 dated 07.06.2014 under Sections 323, 324, 506, 34 IPC.

33. Appellant – Manjit @ Malkit stands convicted in FIR No. 134 dated 30.06.2016 and acquitted in FIR No. 210 dated 30.05.2010.

34. It is pertinent to note, at this stage, that the complainant has been paralysed waist downwards, due to spinal injury with firearm, caused by the appellants with common intention. Therefore, keeping in view the factual matrix as above, we do not find any ground to reduce the sentence imposed upon the appellants as had been urged before us in the alternate, by learned counsel. No mitigating circumstance which call for imposition of lesser punishment has been pointed out.

35. Learned counsel for the appellants are unable to point out any illegality, perversity or infirmity in judgment and order dated 18.12.2009 and 19.12.2019 passed by learned Additional Sessions Judge, Charkhi Dadri, which calls for interference by this Court. No mitigating circumstance which calls for imposition of a lesser offence has been pointed out.

36. No other argument was addressed.

37. Both the appeals i.e. CRA-D-158-2020 and CRA-D-224-2020 are, accordingly, dismissed.

38. Pending application(s), if any, stands disposed of.

(LISA GILL)
JUDGE

July 5, 2023
Rts

(RITU TAGORE)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No