



CRA-D-245-DB-2016 (O&M) and other connected appeals

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

Decided on:- 31.05.2024

(1) CRA-D-245-DB-2016 (O&M)

Suresh @ Tittu

....Appellant

Versus

State of Haryana

...Respondent

(2) CRA-D-288-DB-2016 (O&M)

Suraj and Another

....Appellants

Versus

State of Haryana

...Respondent

(3) CRA-AD-599-2019 (O&M)

Meera Bai

....Appellant

Versus

State of Haryana and others

...Respondents

(4) CRA-AD-176-2022 (O&M)

State of Haryana

....Appellant

Versus

Suresh and others

...Respondents

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE AMARJOT BHATTI**

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Present: Mr. Lajpat Rai Sharma, Advocate for
Mr. Vivek Khatri, Advocate
for the appellant in CRA-D-245-DB-2016.

Mr. Pardeep Singh Poonia, Amicus Curiae and
Mr. Gurbhagat Singh Gill, Advocate and
for applicant-appellant No. 1 in CRA-D-288-DB-2016.

Mr. Pardeep Singh Poonia, Advocate and
Mr. R.K. Doon, Advocate
for appellant No. 2 in CRA-D-288-DB-2016.

Mr. Mandeep Singh Bedi, Senior Advocate with
Mr. Abhishek Thakur, Advocate
for the appellant/complainant in CRA-AD-599-2019.

Mr. Sukhdeep Parmar, Senior DAG, Haryana
for the appellant in CRA-AD-176-2022.

Mr. Pardeep Singh Poonia, Advocate
for respondents in CRA-AD-599-2019 and
CRA-AD-176-2022.

AMARJOT BHATTI, J.

1. All the four appeals, CRA-D-245-DB-2016, CRA-D-288-DB-2016, CRA-AD-599-2019 and CRA-AD-176-2022 as referred above arising out of common judgment dated 03.02.2016 and order of sentence dated 06.02.2016 passed by learned Additional Sessions Judge (Exclusive Court), Jhajjar were taken up together with the consent of learned counsel for the appellants.

2. Appellants/convicts in CRA-D-245-DB-2016 and CRA-D-288-DB-2016 namely Suresh alias Tittu, Suraj and Virender have filed their respective appeals against judgment of conviction dated 03.02.2016 and order of sentence dated 06.02.2016 passed by learned Additional Sessions Judge (Exclusive Court), Jhajjar in Sessions Case bearing



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No.52 of 2012, title “State Vs. Suresh and others” vide which Suresh alias Tittu, Suraj and Virender are sentenced as under :-

Name of Convict(s)	Offence U/s	Sentence of Imprisonment	Fine	In default of fine
1. Suresh @ Tittu 2. Suraj 3. Virender	302 read with Section 120-B IPC	To undergo rigorous imprisonment for Life	Rs. 10,000/- each	To undergo rigorous imprisonment for one year
1. Suresh @ Tittu 2. Suraj 3. Virender	307 read with Section 120-B IPC	To undergo rigorous imprisonment for seven years	Rs. 5,000/- each	To undergo rigorous imprisonment for six months
1. Suraj 2. Virender	302 IPC	To undergo rigorous imprisonment for Life	Rs. 10,000/- each	To undergo rigorous imprisonment for one year
1. Suraj 2. Virender	25 (1-B) (a) of the Arms Act	To undergo rigorous imprisonment for three years	Rs. 1,000/- each	To undergo rigorous imprisonment for six months

Whereas, appellant (wife of complainant) Meera Bai filed appeal i.e. CRA-AD-599-2019 and appellant-State of Haryana filed appeal i.e. CRA-AD-176-2022 against the judgment dated 03.02.2016 passed by learned trial Court, acquitting accused Suresh, Monu, Raju, Surender, Sukhvinder and Ashish, giving them benefit of doubt.

3. Brief facts as per prosecution case are that on 02.03.2012, SI/SHO Jai Kishan along with other police officials was on patrol duty at Bus Stand Bahadurgarh, where he received information regarding gun shots fired at two boys in Kashmeeri Colony, Ballaur Road, Bahadurgarh, who were already shifted to Delhi Nursing Home, Bahadurgarh. On receipt of information, he along with police party reached hospital where Jai Narayan s/o Sh. Ram Narayan, father of

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deceased Rohit and Himanshu met him. Statement of complainant was recorded wherein he stated that he was posted as Extension Officer in Industrial Centre, Bahadurgarh and was working in Sub Officer, Beri Gate, Jhajjar. He had two sons and one daughter. His eldest daughter Swati was doing Engineering from Kanpur (U.P.). His younger son Rohit age 20 years was studying in BBA final year in Jat College, Rohtak, whereas, his youngest son Himanshu age 12 years was studying in 8th class in HPS Bahadurgarh. On 02.03.2012, at about 07:45 pm, the main gate of his house was closed and somebody knocked at the door. When complainant's son Rohit opened the door, two young boys entered their house. One of them fired gun shot at the head of Rohit, due to which he fell down. Thereafter, said boys entered the room where Himanshu was lying on the bed and second boy also fired gun shot at the head of Himanshu. Complainant went towards them, on this both boys fired shots towards him but he escaped and shots hit on the wall. On hearing firing, his wife Meera Bai came rushing to the room from kitchen. Meanwhile, both boys fled away on a motorcycle parked outside the house. Injured Rohit and Himanshu were rushed to Delhi Nursing Home, Bahadurgarh. However, they succumbed to the injuries. Complainant disclosed that two boys had earlier visited his house at about 05:00 pm and enquired about him from his wife. He was having a plot of 350 yards in Vijay Nagar, Jhajjar Road, Rohtak. About nine months ago, Virender made an attempt to encroach the said plot by stating that he had registered sale deed of the year 1992 in his favour, though sale deed of said plot was already registered in his name

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(complainant) in the year 1975. Regarding this plot, civil case was pending in Rohtak Court. Virender had been threatening them from time to time. He (complainant) was having another plot measuring 300 Sq. Yards in Vikas Nagar, Bahadurgarh but Suresh was not delivering possession of same which he had purchased from the mother of Suresh in the year 2000. On Saturday/Sunday, he had gone to talk to Suresh regarding possession of that plot, but he had refused. Complainant suspected that above-named Virender and Suresh hatched criminal conspiracy with someone and got killed his both sons. There was a prayer for legal action.

4. On this complaint, formal FIR No. 103 dated 02.03.2012 was registered under Section 302/307/34/120-B Indian Penal Code, 1860 (for short 'IPC') and under Section 25/54/59 of Arms Act at Police Station City Bahadurgarh. Investigation was initiated. During investigation, Section 449 IPC was added. Inquest reports were prepared and dead bodies were sent for postmortem examination. Rough site plan of place of occurrence was prepared. During further investigation, accused Suresh s/o Balak Ram, Suresh alias Tittu s/o Jagbir, Monu s/o Umed Singh and Monu s/o Suresh Chander were arrested on 05.03.2012. They suffered disclosure statements on 06.03.2012 and 07.03.2012. Pistol .315 bore alongwith one empty cartridge and two live cartridges, motorcycle Splendor bearing registration No. HR-12R-4639 and motorcycle CBZ bearing registration No. DL-8ST-8478 were recovered as per disclosure statements. On 08.03.2012, supplementary statement of Sanjay Rohilla was recorded and Section 216 IPC was added. On

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09.03.2012 accused Raju was arrested under Section 216 IPC. Thereafter, on 17.03.2012, accused Suraj s/o Mewa Ram was arrested and on 18.03.2012 he suffered disclosure statement, as per which one country made pistol .32 bore containing one fired cartridge case in its chamber as well as two live cartridges were recovered and same were taken in police possession. Thereafter, on 12.05.2012, accused Surender was arrested. The other co-accused Sukhvinder, Virender and Ashish could not be arrested and in order to secure their presence, warrant of arrest were issued. Statements of witnesses were recorded under Section 161 Cr.P.C. After completion of investigation, challan was presented in the Court of Illaqa Magistrate, Bahadurgarh against accused Suresh, Suresh alias Tittu, Monu s/o Umed, Monu s/o Suresh Chander, Suraj, Raju and Surender.

5. During further investigation, on 25.05.2012, accused Sukhvinder was arrested, whereas, on 25.01.2013, accused Virender and Ashish were arrested. On the basis of disclosure statement suffered by accused Ashish, motorcycle 'Discover' bearing registration No. DL-35AW-8463 was recovered on 28.01.2013 and same was taken in police possession. On 01.02.2013, pursuant to disclosure statement suffered by accused Virender, revolver 'Sixer' as well as two live cartridges were recovered from the disclosed place of concealment and same were taken into police possession. After completion of necessary formalities, supplementary challan report was filed in the Court of Illaqa Magistrate.

6. All the accused were supplied complete set of copies of challan report as provided under Section 207 of Cr.P.C. Since the

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offence under Section 302 and 307 IPC are exclusively triable by the Court of Sessions, learned Magistrate, Bahadurgarh committed the case to the Court of learned Sessions Judge, Bahadurgarh for trial vide commitment order dated 15.06.2012 qua accused Suresh, Suresh alias Tittu, Monu s/o Umed Singh, Monu s/o Suresh Chander, Suraj, Raju and Surender, commitment order dated 20.09.2012 qua accused Sukhvinder and commitment order dated 29.04.2013 qua accused Virender and Ashish.

7. Learned Additional Sessions Judge, Bahadurgarh, after hearing the arguments, framed amended charge-sheet against all the accused. Accused Suresh, Suresh alias Tittu, Monu s/o Umed Singh, Monu s/o Suresh Chander, Suraj, Sukhvinder, Virender and Ashish were charge-sheeted for the commission of offence punishable under Section 302/307/120-B IPC, accused Suraj and Virender were charge-sheeted for the commission of offence punishable under Section 302 IPC, accused Raju and Surender were charge-sheeted for the commission of offence punishable under Section 216 IPC, whereas, accused Suresh s/o Balak Ram, Suraj and Virender were charge-sheeted for the commission of offence punishable under Section 25 (1-B)(i) of Arms Act, which was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

8. In order to prove the facts of the case, prosecution examined Meerabai as PW-1, Sunil Kumar as PW-2, Constable Raju as PW-3 Constable Satyawan Singh as PW-4, Dr. Vinay Kumar, Medical Officer, Government Hospital, Bahadurgarh as PW-5, HC Parvinder as PW-6,

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HC Jitender as PW-7, EASI Surender Kumar as PW-8, ASI Jai Chand, Draftsman as PW-9, HC Ashok Kumar as PW-10, EASI Dharmender as PW-11, ASI Dharambir as PW-12, ASI Rakesh Kumar as PW-13, Wazir Singh as PW-14, SI Jai Kishan as PW-15, SI Satbir Singh as PW-16, Inspector Jugal Kishor as PW-17, SI Randhir Singh as PW-18, ASI Mahender Singh as PW-19, HC Rajesh Kumar as PW-20 and ASI Satbir Singh as PW-21. Thereafter, learned Public Prosecutor for the State closed prosecution evidence on 15.07.2015.

9. During the pendency of trial, when the case was fixed for prosecution evidence, accused Monu son of Suresh Chander was declared proclaimed offender vide order dated 03.01.2015.

10. Statements of all the accused were recorded under Section 313 Cr.P.C. While denying all incriminating evidence put to them, they pleaded innocence and false implication.

11. The accused persons closed their evidence on 01.02.2016 without examining any witness in defence.

12. After hearing arguments advanced by learned Public Prosecutor for the State assisted by learned counsel for complainant and learned counsel representing the accused persons, accused Suresh s/o Balak Ram, Monu, Sukhvinder and Ashish were acquitted of the charged offence under Section 302/307/120-B IPC, accused Suresh s/o Balak Ram was further acquitted for the commission of offence punishable under Section 25 (1-B)(a) of Arms Act and accused Raju and Surender were acquitted for the commission of offence punishable under Section 216 IPC vide judgment dated 03.02.2016 passed by learned trial Court.

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On the other hand, accused Suresh alias Tittu, Suraj and Virender were convicted for the commission of offence punishable under Section 302 read with Section 120-B IPC, 307 read with Section 120-B IPC and accused Suraj and Virender were further convicted for the commission of offence punishable under Section 302 IPC and Section 25 (1-B)(a) of Arms Act vide judgment of conviction dated 03.02.2016 and order of sentence dated 06.02.2016 passed by learned trial Court.

13. Feeling aggrieved of this judgment of conviction and order of sentence, two separate appeals have been filed by the convicts and regarding acquittal of aforesaid accused, wife of complainant Meera Bai and State of Haryana have filed separate appeals, as referred above.

14. Learned counsel representing appellant/convict Suresh alias Tittu in CRA-D-245-DB-2016 argued that judgment of conviction dated 03.02.2016 as well as order of sentence dated 06.02.2016 passed by learned trial Court qua Suresh alias Tittu is based on conjectures and surmises. There is no proper appreciation of facts and evidence on record regarding the role played by present appellant/convict. FIR was registered on the statement of Jai Narayan, which is Ex.PA, according to which two persons fired shots at deceased Rohit, Himanshu as well as complainant. During investigation it came to light that said two persons were namely Suraj and Virender. He also referred to statement of Meera Bai wife of complainant examined as PW-1 who stated that two persons came at about 05:30 pm to inquire about her husband. One of them asked for water and thereafter, they left their house. In the evening, at about 07:45 pm, two young boys came who fired shots, as a result, her two

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sons were shot dead, whereas, her husband escaped. Said two persons were identified by her as Suraj and Virender. She was duly confronted with her statement recorded under Section 161 Cr.P.C. Ex.DA where she has given improved version referring the names of accused who had come to her house and she further alleged that she rushed towards two boys who fired at her sons and husband and on this she saw five other boys standing in the street who managed to escape on three motorcycles. At this stage, Meera Bai as PW-1 claimed that present appellant/convict was seen standing outside in the street. Learned trial Court acquitted other accused namely Suresh, Monu, Sukhvinder and Ashish who were allegedly standing in the street. Same role is attributed to appellant Suresh alias Tittu, even then he has been convicted by learned trial Court. Said appellant/convict has been falsely involved in present case. As per the case of prosecution, it was Virender who had property dispute with complainant Jai Narayan. Suresh alias Tittu present appellant/convict had no concern with Jai Narayan. Prosecution claimed that present appellant suffered disclosure statement on the basis of which motorcycle bearing No. HR-12R-4639 was recovered. Mere recovery of motorcycle in the absence of any evidence on record that it was used in crime will not help the case of prosecution. No proper investigation was carried out by Investigating Officer. The testimony of Meera Bai PW-1 cannot be safely relied upon. She has concocted a false story to implicate him in the present case. Learned trial Court has failed to consider material contradictions in her statement and other evidence led by prosecution. Therefore, judgment of conviction and order of sentence

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passed against Suresh alias Tittu is not sustainable and same is liable to be set aside. Therefore, appellant/convict Suresh alias Tittu be acquitted of the charge frame against him by accepting the present appeal.

15. Learned counsel/Amicus Curiae representing appellants/convicts namely Suraj s/o Mewa Ram alias Ganga Prasad and Virender s/o Balbir Singh in CRA-D-288-DB-2016 argued that evidence led by prosecution to prove the guilt of accused was not rightly appreciated by learned trial Court. FIR was registered on the statement of Jai Narayan father of deceased Rohit and Himanshu who claimed that on 02.03.2012 at about 07:45 pm, somebody knocked at the main door and on this Rohit went to open the door. Two young persons entered their house. One of them fired shot in the head of Rohit who fell down and other person fired shot at head of his son Himanshu who was lying on the bed. They also fired shots towards complainant but he luckily escaped. On hearing shots, his wife Meera Bai rushed to room from kitchen. Said complainant Jai Narayan was sole eye witness to aforesaid occurrence but he expired before deposing in Court as witness. Meera Bai wife of complainant was examined as PW-1. She has narrated the facts as told by her husband. Therefore, her testimony is not admissible in the eyes of law being hearsay. Meera Bai as PW-1 had given improved version as if she was eye witness to said occurrence. In-fact there is no independent corroboration to her statement. The place of occurrence is situated in thickly populated area, even then no independent witness has come forward to support the prosecution case. It is further pointed out that motive to commit alleged crime has not been

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proved on record. Proper investigation was not carried out by police.

Learned counsel referred to report of Forensic Science Laboratory (FSL) dated 16.05.2012 Ex.PC, according to which two bullets recovered from place of occurrence and one bullet recovered from the body of Rohit were sent to FSL alongwith country made revolver .32 bore allegedly recovered from appellant/convict Suraj and as per report of FSL, all three bullets were fired from country made revolver recovered from appellant/convict Suraj. Later on, from the possession of Virender, another country made revolver of .32 bore was allegedly recovered which was again sent to Forensic Science Laboratory alongwith aforesaid three bullets recovered by Investigating Officer. There is another report of FSL dated 02.04.2013 Ex.PE, according to which one of the bullet recovered from place of occurrence was fired from country made revolver allegedly recovered from appellant/convict Virender. In the light of this, aforesaid reports given by FSL are not trustworthy and same cannot be relied upon. Learned trial Court while holding them guilty for the offence failed to consider aforesaid facts and circumstances of present case. Therefore, judgment of conviction and order of sentence passed by learned trial Court is not on sound footing and it is liable to be set aside and appellants may be acquitted of the charge framed against them, by accepting their appeal.

16. Learned counsel representing respondent-State argued that judgment of conviction regarding Suresh alias Tittu, Suraj and Virender does not require any interference. There is statement of Meera Bai PW-1 who has fully proved prosecution case. FIR was registered on the

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statement of Jai Narayan husband of PW-1 Meera Bai, which is Ex.PA. Unfortunately, before his statement could be recorded in the Court, Jai Narayan expired. Even otherwise, Meera Bai PW-1 is wife of Jai Narayan complainant, who was present in the house when occurrence took place. She has specifically named appellants/convicts Suraj and Virender who fired shots with their respective weapons, as a result of which, her two sons Rohit and Himanshu died, whereas, her husband Jai Narayan escaped from fire shots. Meera Bai PW1 duly identified aforesaid accused as well as Suresh alias Tittu who had come to her house along with Virender at about 05:30 pm to inquire about her husband Jai Narayan. At the time of occurrence, Suresh alias Tittu was present outside the house in support of assailants who entered house and fired shots at her husband and sons. Weapons of offence were recovered on the basis of their disclosure statements. The investigation carried out by police is proved on record by examining SI Jai Kishan Investigating Officer as PW-15, Inspector Jugal Kishore as PW-17, SI Randhir Singh as PW-18 and other relevant police officials are also examined who were part of investigation in this case. The postmortem reports of Rohit and Himanshu are Ex.PW5/E and Ex.PW5/B respectively, which are proved on record by examining Dr. Vinay Kumar PW-5. Therefore, aforesaid appeals preferred by appellants Suresh alias Tittu, Suraj and Virender are without merits and same deserve dismissal.

17. Learned counsel representing the appellant-State in CRA-AD-176-2022 along with learned counsel for appellant Meera Bai (wife of deceased complainant) in CRA-AD-599-2019 pointed out that

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judgment of acquittal in favour of Suresh s/o Balak Ram, Monu s/o Umed Singh, Raju s/o Mewa Ram, Surender s/o Balbir, Sukhvinder s/o Rajender Singh and Ashish s/o Krishan is not on sound footing. All accused hatched criminal conspiracy to kill the entire family. There is a strong motive for commission of offence. There was a dispute regarding plot measuring 350 Sq. Yards between Jai Narayan husband of appellant Meera Bai and Virender co-accused. Said Virender tried to encroach upon said plot, ultimately civil litigation started between the parties and on account of this, occurrence took place. Respondents/accused who are acquitted by learned trial Court had suffered their disclosure statements which led to recoveries as well as demarcation of place of occurrence. Learned trial Court has overlooked the aforesaid evidence and wrongly acquitted respondents/accused named in appeal preferred by appellant Meera Bai and appeal preferred by State of Haryana. Therefore, judgment of acquittal in their favour may be set aside and respondents/accused be convicted for the charges framed against them by learned trial Court by accepting their appeals.

18. We heard arguments advanced by learned counsel for appellant(s) and learned counsel representing the State and have gone through the record carefully with their able assistance. FIR was registered on the statement of Jai Narayan complainant who is father of deceased victims namely Rohit age about 20 years and Himanshu age about 12 years. Complainant alleged that on the fateful day of occurrence on 02.03.2012 at about 07:45 pm, somebody knocked at their gate and on this his elder son Rohit had gone to open the door. Two

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young boys entered the house and one of them fired shot at the head of Rohit, as a result, he fell down. Thereafter, said boys entered the room and fired shot at the head of his younger son Himanshu who was lying on the bed. Thereafter, they fired shots towards him but he escaped. On hearing fire shots, his wife Meera Bai rushed to room. Said boys managed to flee on their motorcycles. Thereafter, complainant arranged vehicle to take his sons to hospital. Both his sons succumbed to firearm injuries suffered by them. Complainant explained enmity with Virender who was trying to encroach upon his plot, area measuring 350 Sq. Yards in Vijay Nagar, Jhajjar Road, Rohtak which was in his name since 1975, whereas, Virender was claiming that he had purchased it in the year 1992. Regarding this plot, litigation was already going on in the Court of Rohtak. He also referred to name of Suresh who was not handing over possession of plot area measuring 300 Sq. Yards in Vikas Nagar, Bahadurgarh which he had purchased from his mother Saraswati in the year 2000. Complainant had stated that he could indentify the assailants on seeing them. During the course of investigation, accused Suresh s/o Balak Ram, Suresh alias Tittu, Monu s/o Umed Singh, Monu s/o Suresh Chander, Suraj, Raju, Surender, Sukhvinder, Virender and Ashish were named. Raju and Surender were charge-sheeted for the offence under Section 216 IPC, whereas, other were charge-sheeted under Section 302, 307 read with Section 120-B IPC and under Section 25 of Arms Act.

19. Statement of Jai Narayan was material to prove the aforesaid occurrence. However, during pendency of trial, before his statement could be recorded, he expired on 28.11.2013. Victims Rohit

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and Himanshu succumbed to fire arm injuries suffered in the occurrence. Therefore, there is testimony of Meera Bai wife of Jai Narayan to prove the occurrence. Meera Bai as PW1 fully supported the prosecution case. She deposed that on 02.03.2012 at about 05:30 pm, two boys had come to their house to inquire about her husband Jai Narayan. During her examination-in-chief, she stated that said boys were namely Virender and Suresh who had come to their house in the evening. Thereafter, at about 07:45, she was present in the house alongwith her husband Jai Narayan and sons namely Rohit and Himanshu when somebody knocked at the door and her elder son Rohit went outside to open the gate. On this, two boys came inside. One of them shot at her son Rohit hitting in his head and said boys came inside the room and fired shot at her son Himanshu who was lying on the bed and was playing mobile game. Her husband was also shot at by assailants but luckily he escaped. She rushed to the room and saw her son Rohit lying in a pool of blood. She chased said boys who went out and managed to escape on their motorcycles. She saw Suresh standing outside in the street who had come to their house in the evening. The witness stated that there were eight accused persons who fled away on three motorcycles. Witness categorically stated that Suraj and Virender had fired shots at her sons and husband Jai Narayan.

20. Learned counsel for appellants/convicts in CRA-D-245-DB-2016 and CRA-D-288-DB-2016 referred to cross-examination of Meera Bai PW1 where she was confronted with her statement Ex.DA recorded under Section 161 Cr.P.C. and it was pointed out that testimony of Meera Bai PW1 cannot be relied upon as she has given an improved

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version. We have considered this aspect of present case. It is matter of record that Jai Narayan was present along with his sons when said occurrence took place. Initially, Meera Bai PW1 was not present in that room. She entered the room from the kitchen on hearing the shots fired at her sons and husband. Presence of Meera Bai PW1 in the house cannot be doubted. She is not a chance witness. The occurrence took place at about 07:45 pm and she was working in kitchen when the occurrence took place in which she lost her two sons and her husband was also attacked but he escaped. Thus, testimony of Meera Bai PW1 cannot be ignored and there is no valid reason to doubt the same. She has specifically named Virender, Suresh alias Tittu s/o Jagbir, how they visited her house in the evening to enquire about her husband and later on Suraj and Virender attacked her family, whereas, Suresh alias Tittu was present outside the house in the street. Specific role is attributed to each one of them and were duly identified by Meera Bai wife of the complainant as PW1.

21. Learned counsel representing appellants/convicts further raised the issue that there is no independent corroboration to prosecution story. No doubt house of complainant is situated in populated area. It has come in the statement of SI Jai Kishan Investigating Officer PW15 that when the police party reached at the spot, many people had collected there. In such like occurrence, neighbors usually avoid to become witnesses to avoid lifelong enmity. It is not a blind murder case. Testimony of Meera Bai PW1 is sufficient to prove the facts of case as well as identity of assailants who have been convicted by trial Court.

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22. The ocular version of Meera Bai PW1 is supported by medical record. Prosecution examined Dr. Vinay Kumar, Medical Officer, Government Hospital, Bahadurgarh as PW5. He filed his detailed affidavit Ex.PW5/G. He categorically stated that on 03.03.2012, he along with Dr. Lalit Chopra conducted postmortem examination of Himanshu age 12 years on police request Ex.PW5/A. Detailed postmortem report is Ex.PW5/B, according to which he suffered following injuries:-

“A. A round .5 cm diameter fire arm entry wound located at head/scalp at right parietal area, 2 cm above the upper root/attachment of right ear pinna, 151 cm above the right heel. Very little bloody fluid is oozing from this wound. Its margins are inverted and bear a contusion rim/abrasion collar, there is no tattooing seen around the wound. On deep dissection-underlying subcutaneous tissues and those immediately adjacent and around this wound are found heavily ecchymosed and hemorrhagic. Skull is found fractured under the wound in irregular shape and fragments of bone are carried in side cranial cavity. On opening cranial cavity a path is traced going almost straight towards left slightly downwards piercing – the membranes which are hemorrhagic at path site, right and left cerebral hemispheres and exits below the left mastoid process as described below in exit wound “B”. Here again membranes are ecchymosed and hemorrhagic and penetrated by projectile.

B. A triangular shape, 0.6 x 0.8 x 0.8 cm size wound, with its rough margins everted outward is located 2 cm postero-inferior to left mastoid process and 146 cm from the left heel. Copious amount of blood/bloody fluid is oozing from

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this wound. On deep dissection-underlying subcutaneous tissues and those immediately adjacent and around this wound are found heavily ecchymosed and hemorrhagic. Skull is found fractured under the wound in irregular shape. Wound is in continuity of projectile path described above in “A”.”

As per the opinion of doctor, cause of death in this case was due to fire arm injury and its complications. Probable time between injuries and death is mentioned as instantaneous.

Deposing witness has proved postmortem report of Rohit age about 20 years on police request Ex.PW5/D. Postmortem was conducted on 03.03.2012 by him along with Dr. Lalit Chopra. Postmortem report is Ex.PW5/E, according to which he suffered following injuries:-

“Injuries:- Wounds, bruises, position size & tenure etc:- A single round .5 cm diameter fire arm entry wound located at back of head/scalp 158 cm above the left heel, 1 cm left to mid line and in the line joining two external ear orifices. Copious amount of fluid blood coming out of this wound on moving the head position. Its margins are inverted and bear a contusion rim/abrasion collar, there is no tattooing seen around the wound. On deep dissection- deeper tissues underlying and immediately adjacent and around found heavily ecchymosed. Skull is found fractured under the wound and fragments of bone are carried in side cranial cavity. On opening cranial cavity a path is traced at inferior cranial fosse at base of skull only on inner table of skull base, which runs upto posterior end of foramen magnum lacerating the inferior aspect of left cerebellum & its membranes and inner table of skull is traversed anteriorly

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and a small grayish deformed metallic body, clearly identifiable as bullet is found lodged at brain stem – spinal cord junction site. Surrounding brain matter and membranes are ecchymosed and hemorrhagic.”

Cause of death in this case is again fire arm injuries and its complications and probable time between injuries and death is mentioned as immediate.

23. In this case, place of occurrence is the house of complainant Jai Narayan. Rough site plan prepared by Investigating Officer SI Jai Kishan PW15 is Ex.PW15/B and scaled site plan Ex.PW9/A is proved by examining ASI Jai Chand, Draftsman as PW9. On the day of occurrence, Investigating Officer called EASI Surender Kumar PW8 who took photographs of place of occurrence which are Ex.PW8/1 to Ex.PW8/8. Aforesaid record proved on file further supports the ocular version of Meera Bai examined as PW-1.

24. Motive behind the occurrence is explained by Jai Narayan when his statement was recorded by the police Ex.PA. He categorically stated that there was dispute with Virender regarding a plot situated in Vijay Nagar, Jhajjar Road, Rohtak. Complainant claimed that he was owner of plot since 1975, whereas, Virender claimed that he had purchased the plot in year 1992 and regarding this dispute, case was already pending in the Court of Rohtak. Jai Narayan in his complaint Ex.PA further stated that he was receiving threats on account of this dispute. However, Jai Narayan complainant could not be examined on account of his death prior to recording of prosecution evidence. There is

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a strong motive behind the occurrence.

25. Appellants Virender and Suraj are further connected with crime of shooting and murdering Rohit and Himanshu, on the basis of recovery of weapons on the basis of their respective disclosure statements. As per record, Virender was arrested on 25.01.2013. SI Randhir Singh PW18 has proved disclosure statement of Virender recorded on 27.01.2013 Ex.PW18/A, on the basis of which no recovery was effected. Thereafter, on 31.01.2013, he suffered another disclosure statement Ex.PW18/E that he had kept concealed revolver in an abandoned room of dairy situated in the fields of village Mandauthi and that place was known to him alone and he could recover the same. On the next day, he led police party to disclosed place and recovered one country made revolver sixer with two live cartridges. Outer sketch of revolver and cartridges is Ex.PW18/F. Weapon and cartridges were sealed in parcel with seal bearing impression "RS" and were taken into police possession vide recovery memo Ex.PW18/G. Site plan of place of recovery is Ex.PW18/H. Said revolver was also produced in the Court as Ex.PW18/1 and cartridges are Ex.PW18/2.

Similarly, prosecution examined SI Jai Kishan PW15 as well as recovery witness ASI Rakesh Kumar PW13 and both witnesses confirmed that Suresh alias Tittu s/o Jagbir had suffered disclosure statement that he had kept concealed motorcycle bearing No. HR-12R-4647 used in occurrence in the fields of Dhare son of Shish Ram in village Dabodha Kala. Said disclosure statement is Ex.PW13/B.

Similarly, Monu s/o Suresh Chander who is proclaimed offender in this

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case had also suffered disclosure statement Ex.PW13/D. Thereafter, on the identification of spot by aforesaid accused persons, motorcycle bearing No. HR-12R-4647 and motorcycle bearing No. DL-8-ST-8478 were recovered from Kothra and were taken into police possession vide recovery memo Ex.PW13/G and Ex.PW13/H. Aforesaid witnesses also proved disclosure statement of Suraj recorded on 18.03.2012 but when police party proceeded to effect recovery, he retracted from said disclosure statement and got recorded another disclosure statement Ex.PW13/J on the basis of which a revolver concealed in an iron box lying in the rented house at Mohan Nagar, Bahadurgarh was recovered along with one cartridge in case and two live cartridges in chamber of said revolver. Outer sketch of revolver is Ex.PW13/K which was taken into police possession vide recovery memo Ex.PW13/L and same was concealed in a parcel with a seal bearing impression "JK". Site plan of place of recovery is Ex.PW15/D. Therefore, on the basis of aforesaid disclosure statements of Virender and Suraj, two weapons were recovered and on the disclosure statement of Suresh alias Tittu s/o Jagbir, two motorcycles were recovered, which further connect appellants/convicts with said crime.

26. Prosecution has also tendered into evidence report of Forensic Science Laboratory (FSL) dated 16.05.2012 Ex.PC, according to which country made revolver of .32 bore recovered from Suraj marked as W/1 was found to be in working order. The bullets marked BC/1 and BC/2 were recovered from place of occurrence, whereas, bullet marked BC/3 was recovered from body of deceased Rohit. It is

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further reported that .32 bore fire cartridge case marked C/1 and bullets marked BC/1, BC/2 and BC/3 have been fired from country made revolver marked W/1 and not from any other fire arm, even of the same make and bore/calibre because every fire arm has got its own individual characteristic marks. There is another report of FSL dated 02.04.2013 Ex.PE which pertains to country made revolver .32 bore alongwith two live cartridges of the same bore recovered from Virender. Weapon along with bullets recovered from body of deceased Rohit marked BC/1 and two deformed and mutilated lead bullets recovered from spot marked BC/2 and BC/3 were also sent for the purpose of analysis. As per report, country made revolver of .32 bore marked W/1 was found to be in working condition. It was further reported that mutilated lead bullet marked BC/3 was fired from country made revolver of .32 bore marked W/1 and not from any other firearm even of the same make and bore/calibre because every firearm has got its own individual characteristic marks.

Discrepancy in the aforesaid reports by Forensic Science Laboratory regarding bullet marked BC/3 having been fired from both weapons had been highlighted by learned counsel for the appellants/convicts to submit that they are also entitled to benefit of doubt. Evidently, there was no effort on the part of prosecution to examine Dr. R.K. Koshal, Assistant DIR, FSL, Madhuban who had given both reports to clarify this discrepancy. Be that as it may, in the given factual matrix, the ocular version given by Meera Bai PW1 cannot be ignored. The gruesome murder of both her sons took place in their

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house when Jai Narayan complainant was present in the same room and Meera Bai PW-1 was present in the kitchen. Since Jai Narayan died before his statement could be recorded. Meera Bai, mother of deceased victims who was present at the time of occurrence has given a complete description of the said incident. There is no reason or ground to doubt the credibility of this witness. Learned counsel for appellants/convicts were unable to refer to any material on record to impeach her credibility.

Considering facts and circumstances of the case and evidence led by the prosecution, the arguments advanced by learned counsel for appellants Suresh alias Tittu, Suraj and Virender do not hold any ground. Learned trial Court rightly held appellants/convicts Suresh alias Tittu, Suraj and Virender guilty for commission of offences punishable under Section 302, 307 read with Section 120-B IPC and appellants/convicts Suraj and Virender additionally guilty for commission of offence punishable under Section 25(1-B)(a) of the Arms Act and were rightly convicted thereunder.

27. We have considered the arguments advanced by learned counsel for appellant-Meera Bai and learned counsel representing the State, in CRA-AD-599-2019 and CRA-AD-176-2022 respectively challenging acquittal of accused as described in foregoing paras. As per facts of case as referred above, Meera Bai PW1 is the sole witness to prove the occurrence. Accused who are acquitted by learned trial Court were not named by complainant in statement Ex.PA nor they were named by Meera Bai PW1. Neither any specific role is attributed to them nor prosecution has been able to establish criminal conspiracy or enmity



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towards the complainant. During the course of investigation, prosecution has tried to connect respondents/accused on the basis of their disclosure statements. Section 26 and 27 of The Indian Evidence Act, 1872 reads as under:-

“26. Confession by accused while in custody of police not to be proved against him. - No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

XXX XXX XXX

27. How much of information received from accused may be proved. - Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

Therefore, disclosure statements recorded by Investigating Officers from time to time during course of investigation about occurrence are not admissible. Gainful reference can be made to the judgment of Hon’ble the Supreme Court in ***Criminal Appeal No. 1030/2023***, case title “**Manoj Kumar Soni Versus State of Madhya Pradesh**”. Relevant paras No. 22 and 24 thereof read as under :-

“22. A doubt looms: can disclosure statements per se, unaccompanied by any supporting evidence, be deemed adequate to secure a conviction? We find it implausible. Although disclosure statements hold significance as a contributing factor in unriddling a case, in our opinion, they are not so strong a piece of evidence sufficient on its own



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and without anything more to bring home the charges beyond reasonable doubt.

xxx	xxx	xxx
xxx	xxx	xxx

24. The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in *Emperor vs. Lalit Mohan Chuckerburty*, to “lend assurance to other evidence against a co-accused”. In *Haricharan Kurmi vs. State of Bihar*, this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:

13. ...In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.”

In the case in hand, prosecution has examined HC Jitender PW7 who has proved on record disclosure statements of Suresh s/o Balak Ram, Suresh alias Tittu s/o Jagbir, Monu s/o Umed Singh and Monu s/o Suresh Chander Ex.PW7/A to Ex.PW7/D dated 06.03.2012 respectively and during cross-examination, this witness confirmed that no recovery was effected from accused in pursuance of said disclosure statements. Rather, Monu s/o Umed Singh and Monu s/o Suresh Chander

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(proclaimed offender in this case) retracted said disclosure statements. SI Satbir Singh PW16 has also proved on record disclosure statement dated 20.01.2013 of Virender Nehra alias Fouji Ex.PW16/A and of Ashish alias Chotu Ex.PW16/B regarding number of occurrences, which is again hit by provision of Section 27 of the Indian Evidence Act, thus not admissible. HC Rajesh Kumar PW20 has proved disclosure statement of Sukhvinder dated 25.05.2012 about the occurrence Ex.PW20A, which is again not admissible in evidence. SI Randhir Singh PW18 has proved disclosure statement of Ashish Ex.PW18/B which led to recovery of one motorcycle. However, said disclosure statement and recovery of motorcycle alone in the absence of any further corroborative piece of evidence is not sufficient to connect accused with said crime.

Other accused namely Raju and Surender were charge-sheeted under Section 216 IPC with the allegation that they harbored accused Virender, Sukhvinder, Suresh, Monu s/o Umed and Monu s/o Suresh Chander. There is no direct, admissible evidence on record as to when and where Raju and Surender helped them in evading the legal process. Prosecution was required to lead convincing evidence on record to establish role of each and every accused played in the commission of offence, coupled with their identification. Considering the facts and circumstances on record, judgment of acquittal dated 03.02.2016 passed by learned trial Court in favour of respondents/accused does not require any interference.

28. It is to be noted at this juncture that an order of acquittal is not to be interfered with lightly because presumption of innocence of the



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accused is further strengthened by acquittal. Interference is called for only under compelling circumstances, where impugned findings are perverse, unreasonable and convincing material on record is ignored unjustifiably by the trial Court. Reference in this regard can be made to judgment of **Hon'ble the Supreme Court** in '**Mahamadkhan Nathekhan vs. State of Gujarat**' **2014 (14) SCC 589**.

29. Consequently, judgment of conviction dated 03.02.2016 and order of sentence dated 06.02.2016 passed against appellants/convicts Suresh alias Tittu s/o Jagbir, Suraj s/o Mewa Ram and Virender s/o Balbir are upheld and appeals bearing Nos. CRA-D-245-DB-2016 and CRA-D-288-DB-2016 preferred by them are accordingly, dismissed. Whereas, acquittal of respondents/co-accused namely Suresh s/o Balak Ram, Monu s/o Umed Singh, Raju s/o Mewa Ram, Surender s/o Balbir, Sukhvinder s/o Rajender Singh and Ashish s/o Krishan vide judgment dated 03.02.2016 calls for no interference. Accordingly, appeals bearing Nos. CRA-AD-599-2019 and CRA-AD-176-2022 preferred by appellant-Meera Bai and State of Haryana also stand dismissed.

30. Pending application(s) if any, also stands disposed of accordingly.

31. Original/photocopy of trial Court record be sent back to the concerned quarter.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

31.05.2024
lalit

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No