

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Decided on:- 24.4.2024
CRA-D-300-DB-2014

Kuldeep and Anr.....Appellants

Versus

State of Haryana...Respondent

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

Present:- Mr. S.S. Mor, Advocate
for the appellants.

Mr. Anshuman Dalal, Advocate
for the complainant.

Mr. Sukhdeep Parmar, Senior DAG, Haryana.

AMARJOT BHATTI, J.

1. Appellants/convicts Kuldeep and Sandeep have filed present appeal against judgment of conviction dated 03.01.2014 and order of sentence dated 08.01.2014 passed by learned Additional Sessions Judge, Rohtak in Sessions Case bearing No. 13 of 24.12.2010, titled as “State Vs. Kuldeep and others” vide which appellants/convicts were sentenced as under:-

Name of appellant/convict	Offence	Sentence of Imprisonment
Kuldeep & Sandeep	Under Section 302 read with Section 34 of IPC	To undergo Rigorous Imprisonment for life each and to pay fine of ₹10,000/- each and in default of payment of fine, they shall further undergo imprisonment for four months each.
	Under Section 307 read with Section 34 of IPC	To undergo Rigorous Imprisonment for 10 years each and to pay fine of ₹5,000/- each and in default of payment of fine, they shall further undergo rigorous imprisonment for a period of two months each.

Kuldeep	Under Section 25 of the Arms Act	To undergo Rigorous Imprisonment for a period of three years and to pay fine of ₹2,000/- and in default of payment of fine, he shall further undergo rigorous imprisonment for a period of one month.
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2. Brief facts as per prosecution case are that in the intervening night of 09.08.2010/10.08.2010, SI/SHO Rajbir Singh along with other police officials was on patrol duty. During patrolling, when they reached near Village Kharawar, SI/SHO Rajbir Singh received a telephonic message regarding firearm injuries to Ramesh son of Tek Chand. On this information, SI/SHO Rajbir Singh along with other police officials reached Village Ismaila 9B and found that Ramesh son of Tek Chand, Rinku and Rakesh alias Kala sons of Ramesh had received firearm injuries and they were shifted to PGIMS, Rohtak for medical treatment. Thereafter, SI/SHO accompanied with other police officials when reached at the gate of Emergency of PGIMS, Rohtak, Bijay Singh son of Tek Chand met him and got recorded his statement to police. In his statement, he stated that he is an agriculturist. In the evening of 09.08.2010, he along with his younger brother was enjoying hubble-bubble in front of the house of Ram Chander, Numberdar. At about 09:30 pm, Rinku son of Ramesh came there to call his father Ramesh for dinner. In the meantime, one Honda City car, colour beige stopped there, out of which Kuldeep and Sandeep who were having pistols in their hands alighted. Sandeep fired shots with pistol at Ramesh, whereas, Kuldeep fired shots at Rinku from his pistol, which hit his chest and abdomen. On hearing the shots, his (Bijay Singh) nephew Rakesh alias Kala reached at the place of occurrence. Kuldeep again fired shots at Rakesh alias Kala hitting on his chest. He (Bijay Singh) and Dilbag tried to catch hold Kuldeep and Sandeep, but they fled away in the said car along with their

respective weapons. However, they noticed number of the car i.e. DL-3CY-6092. The said injured persons were taken to PGIMS, Rohtak, where Ramesh and Rinku were declared dead by Doctor and Rakesh alias Kala was unconscious and was under treatment. The complainant further alleged that there was previous money dispute of Rakesh and Rinku with the assailants on account of installation of inverter in their house. Accordingly, it was prayed that legal action be taken against the culprits. With these allegations, present FIR was registered.

3. On this complaint, formal FIR No. 338 dated 10.08.2010 was registered under Sections 302, 307, 34 of Indian Penal Code, 1860 (for short 'IPC') and under Section 25/54/59 of Arms Act. Investigation was commenced. Statements of witnesses were recorded and it came to light that only one weapon was used in the occurrence. The dead bodies of Ramesh and Rinku alias Parmod were sent for postmortem examination. From the place of occurrence, blood was lifted and five empty cartridges and one live cartridge were recovered and taken into police possession. On the same day, SI/SHO Rajbir Singh received information that car bearing registration No. DL-4CY-6092 make Honda City used in the commission of crime was parked in front of Devi Lal Park, Bahadurgarh. The car along with Registration Certificate of Car and Driving License of Sandeep were taken into police possession. During further investigation, accused Kuldeep was arrested on 22.08.2010 and on the basis of his disclosure statement, one country made pistol along with one empty and five live cartridges were recovered. Accused Sunil was arrested on 30.08.2010, whereas, accused Sandeep was arrested on 13.09.2010. After completion of investigation, challan was presented in the Court of Illaqa Magistrate at Rohtak against

Kuldeep, Sandeep and Sunil alias Senior.

4. Accused were supplied complete set of copies of challan report as provided under Section 207 of Cr.P.C. Since the offence under Sections 302/307/212 of IPC are exclusively triable by the Court of Sessions, therefore, the learned Judicial Magistrate Ist Class, Rohtak committed the case to the Court of learned Sessions Judge, Rohtak for trial vide commitment order dated 16.12.2010.

5. The learned Additional Sessions Judge, Rohtak, after hearing the arguments, framed charge-sheet against all the accused persons. Accused Kuldeep was charge-sheeted under Sections 302, 307 read with Section 34 of IPC and under Section 25 of the Arms Act. Accused Sandeep was charge-sheeted under Sections 302, 307 read with Section 34, 420 of IPC and under Section 25 of the Arms Act, whereas, accused Sunil alias Senior was charge-sheeted under Section 212 of IPC. The said charge-sheet was read over and explained to them in simple language to which they pleaded not guilty and claimed trial.

6. In order to prove the facts of the case, prosecution examined Sunil Kumar as PW1, Bijay alias Vijay Singh complainant as PW2, Dilbag as PW3, Rakesh alias Kala as PW4, EHC Shri Bhagwan as PW5, EHC Karambir as PW6, HC Sumit Kumar as PW7, Constable Sunil Kumar as PW8, Manish Chaudhary as PW9, HC Virender Singh as PW10, Pawan as PW11, Constable Ramesh as PW12, Ram Bhagat as PW13, Yoginder Singh as PW14, SI Ram Karan as PW15, ASI Ranbir as PW16, ASI Shri Bhagwan as PW17, Ram Mehar (SI retired) as PW18, Daya Nand as PW19, ASI Rajesh Kumar as PW20, EASI Suraj Bhan as PW21, ASI Sukhbir Singh as PW22, Rajbir Singh as PW23, ASI Shamsher Singh as PW24, Bhupinder as PW25, Dr. Abhinav, DMS, BPS, GMC, Khanpur Kalan, Sonapat as PW26

and Dr. Vikas, M.O., CHC Kiloil as PW27. Thereafter, learned Public

Prosecutor for the State closed prosecution evidence.

7. 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.

8. Learned counsel for accused closed defence evidence without examining any witness.

9. After hearing arguments advanced by learned Public Prosecutor for the State and learned counsel representing the accused besides considering evidence on record, accused Kuldeep and Sandeep were convicted and sentenced for the commission of offence punishable under Sections 302 and 307 read with Section 34 of IPC, accused Kuldeep was further convicted and sentenced for the commission of offence punishable under Section 25 of the Arms Act, vide judgment of conviction dated 03.01.2014 and order of sentence dated 08.01.2014 passed by learned Additional Sessions Judge, Rohtak. Whereas, accused Sunil alias Senior was acquitted for the commission of offence punishable under Section 212 of IPC, as detailed in the judgment.

10. Feeling aggrieved of this judgment of conviction and order of sentence, present appeal has been filed by the convicts Kuldeep and Sandeep.

11. Learned counsel for appellants/convicts raised the argument that judgment of conviction and order of sentence passed by trial Court is without proper appreciation of the evidence on record. Prosecution has examined witnesses, namely Bijay alias Vijay Singh PW2 who is the real brother of Ramesh, Rakesh alias Kala PW4 who is son of Ramesh and real brother of Parmod alias Rinku, whereas, Dilbag PW3 is also close associate of complainant. All the witnesses are close relatives of deceased and their

statements cannot be safely relied upon. The occurrence took place in a street having residential houses where number of other persons were living, but no independent witness has been examined to prove the prosecution case. In the absence of independent corroboration, statements of aforesaid witnesses cannot be safely relied upon.

It is further pointed out that learned trial Court has failed to consider the discrepancies in the statements of aforesaid prosecution witnesses. Bijay alias Vijay Singh PW2 claimed that both Kuldeep and Sandeep were armed with pistols and Sandeep fired shot at Ramesh, whereas, Kuldeep fired shot at Rinku. On the other hand, Dilbag as PW3 and Rakesh alias Kala as PW4 in their respective statements claimed that it was Sandeep who was having a pistol in his hand who fired shot at Ramesh and thereafter, Kuldeep snatched pistol from Sandeep and fired shot at Rinku. There is material discrepancy in the statements of prosecution witnesses regarding the manner in which occurrence took place, therefore, their version cannot be relied upon.

Learned counsel for appellants submitted that proper investigation was not carried out by the police. Prosecution alleged that the injured were shifted to hospital by Bijay alias Vijay Singh, Dilbag and Kapil. In case they shifted the injured to hospital, their clothes must have been stained with blood. However, their blood stained clothes were not taken into police possession. Prosecution alleged that Kuldeep suffered disclosure statement on the basis of which country made pistol was recovered. No photographs were clicked at the time of said recovery nor any fingerprints were lifted from the weapon. In-fact, appellants/convicts did not suffer any disclosure statement nor pistol was recovered from the possession of

Prosecution has failed to prove on record motive behind the occurrence. It was the case of prosecution that Rakesh alias Kala and Rinku had installed inverter in the house of Kuldeep and Sandeep. Altercation had taken place two days prior to the occurrence regarding payment and for this reason, occurrence took place but there is no evidence on record to show that Rakesh and Rinku were running the business of installation of inverters nor there is anything on record to show that they had installed inverter in the house of appellants/convicts. Prosecution has failed to establish motive behind the occurrence. In-fact, complainant party is involved in several criminal cases. Therefore, there is a possibility that Ramesh and Rinku were killed by some unknown persons due to their rivalry.

Learned counsel for appellants/convicts pointed out that Sunil alias Senior, the other accused was also challaned in this case along with the present appellants and he was charge-sheeted under Section 212 IPC. Later he was found innocent and was ultimately acquitted under Section 212 IPC by learned Additional Sessions Judge, Rohtak. On the same set of unreliable evidence, present appellants/convicts have been wrongly held guilty and convicted by learned trial Court. There was no proper appreciation of the facts and evidence on record. Therefore, appeal preferred by appellants/convicts may be accepted and they be acquitted by setting aside judgment of conviction and order of sentence passed by learned trial Court.

12. On the other hand, learned counsel representing the State pointed out that facts of the case and evidence on record were rightly appreciated by the trial Court. Prosecution case was duly proved on record by Bijay alias Vijay Singh complainant as PW2 and his version was duly supported by Dilbag examined as PW3. Rakesh alias Kala had suffered fire arm injury who is examined as PW4 and fully supported the prosecution

case. Facts of the case are duly proved on record from the testimony of aforesaid witnesses who were eye witnesses and out of them Rakesh alias Kala was one of the injured. The ocular version is proved on record by Dr. Abhinav, DMS, BPS, GMC, Khanpur Kalan, Sonapat PW26 who has proved on record Postmortem Report of Ramesh Ex.PNN and Dr. Vikas, M.O., CHC Kilo PW27 has proved on record Postmortem Report of Rinku as Ex.PQQ. The medical file of Rakesh alias Kala is proved by Yoginder Singh, Clerk of PGIMS, Rohtak as PW14. Dr. Vikas, MO examined as PW27 has proved the MLR of Rakesh alias Kala as Ex.PSS. In the case in hand, weapon of offence was recovered on the disclosure statement of Kuldeep which is Ex.PX and he led the police party to recover one country made pistol, five live cartridges, one empty cartridge, which were taken into possession vide recovery memo Ex.PT. The report of Forensic Science Laboratory (FSL) Madhuban, Karnal Ex.PKK further connects the weapon with cartridges recovered from the body of deceased victims Ramesh and Rinku as well as cartridge recovered from the body of injured Rakesh alias Kala examined as PW4. The investigation carried out by Investigating Officer SI Rajbir Singh is proved by examining him as PW23 along with relevant recovery witnesses who joined the investigation from time to time. It was argued that prosecution case is duly proved on record from the testimony of eye witnesses supported by medical record. The weapon of offence was also recovered which further connects appellants/convicts with the said crime on the basis of report of FSL. There was ample evidence on record to prove the charges framed against appellants/convicts. There was proper appreciation of the facts and evidence on record. Therefore, judgment of conviction and order of sentence passed by the trial Court do not require

any interference. There is no merits in the appeal preferred by

appellants/convicts and the same deserves dismissal.

13. We heard arguments advanced by learned counsel for appellants/convicts, complainant and learned counsel representing the State and have gone through the record carefully with their able assistance. Appellants/convicts Kuldeep and Sandeep were charge-sheeted under Sections 302, 307 read with Section 34 of IPC and under Section 25 of the Arms Act. Appellant/convict Sandeep was further charge-sheeted under Section 420 of IPC, whereas, Sunil alias Senior was charge-sheeted under Section 212 of IPC. As referred above, Sunil alias Senior has been acquitted of the charge framed against him. Present appeal has been preferred by appellants/convicts Kuldeep and Sandeep for their conviction under Sections 302, 307 read with Section 34 of IPC and further conviction of appellant/convict Kuldeep under Section 25 of the Arms Act.

As per the facts of case, occurrence took place at about 09:30 pm and police came to know about this occurrence at about 10:05 pm on 09.08.2010. FIR has been registered on the statement of Bijay alias Vijay son of Tek Chand who met police party at PGIMS, Rohtak. After recording statement of Bijay alias Vijay Singh Ex.PA and endorsement Ex.PA/1, rukka was sent at 12:45 am on 10.08.2010 to police station for registration of FIR which is Ex.PR. Therefore, there is prompt registration of FIR without any delay. The assailants who were known to the complainant Bijay alias Vijay Singh were named by him in his statement Ex.PA.

To prove the charges, prosecution has examined complainant Bijay alias Vijay Singh as PW2, one of the injured Rakesh alias Kala as PW4 and another eye witness Dilbag PW3 who had reached on the spot along with Rakesh alias Kala. As per the testimony of aforesaid prosecution witnesses

brother Ramesh were talking to each other opposite the house of Ram Chander, Numberdar in the chowk. At about 09:30 pm, Rinku son of Ramesh came to call his father for dinner. In the meantime, Kuldeep and Sandeep came in Honda City car bearing No. DL-4CY-6092. It is matter of record that Bijay alias Vijay Singh as PW2 deposed that both assailants were armed with pistols in their hands. Sandeep fired shot at Ramesh whereas Kuldeep fired shot at Rinku, as a result both fell down. On hearing fire shots, Rakesh alias Kala and Dilbag also reached on the spot. Kuldeep fired shot at Rakesh alias Kala, as a result he also fell down. In this regard, Rakesh alias Kala as PW4 and Dilbag as PW3 claimed that it was Sandeep who was armed with pistol who fired shot at Ramesh and thereafter Kuldeep snatched pistol from Sandeep and fired shot at Rinku as well as at Rakesh alias Kala. The aforesaid witnesses further confirmed that Bijay along with Dilbag tried to catch hold of assailants but they ran away in their car. Thereafter, Bijay alias Vijay Singh along with Dilbag and Kapil shifted the injured to PGIMS, Rohtak where Ramesh and Rinku were declared dead, whereas Rakesh alias Kala was under treatment.

Learned counsel for appellants argued that witnesses examined by prosecution are close relatives thus interested witnesses and there was no independent corroboration to the testimony of aforesaid witnesses and secondly referred to the aforesaid discrepancy.

Before dealing with the facts of present case, it is well settled proposition of law that in criminal cases trivial discrepancies in deposition of witnesses cannot be given undue importance. Gainful reference can be made to the authority cited in **2013(2) R.C.R.(Criminal) 620 of Hon'ble Supreme Court of India**, case title "Lal Bahadur and others Versus State (NCT of Delhi)", where in para No. 19, it was explained regarding the

contradictions and inconsistencies in the evidence of prosecution witnesses.

It was held that “*entire evidence of the witnesses has to be considered and the evidence of witnesses cannot be brushed aside merely because of some minor contradictions, particularly for the reason that the evidence and testimonies of the witnesses are trustworthy.*”

In case title “**Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, 1983(2) RCR (Criminal)**”, it was held by Hon’ble Supreme Court of India that much importance cannot be attached to minor discrepancies on the following reasons :-

“(1) By and large a witness cannot be expected to possess a photographic memory and to recall the details of an incident. It is not as if a video tape is replayed on the mental screen.

(2) Ordinarily it so happens that a witness is overtaken by events. The witness could not have anticipated the occurrence which so often has an element of surprise. The mental faculties therefore cannot be expected to be attuned to absorb the details.

(3) The powers of observation differ from person to person. What one may notice, another may not. An object or movement might emboss its image on one person's mind, whereas it might go unnoticed on the part of another.

(4) By and large people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape-recorder.

(5) In regard to exact time of an incident, or the time duration of an occurrence, usually, people make their estimates by guess-work on the spur of the moment at the time of interrogation. And one cannot expect people to make very precise or reliable estimates in such matters. Again, it depends on the time-sense of individuals which varies from person to person.

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is liable to get confused, or mixed up when

interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the court atmosphere and the piercing cross-examination made by counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - Perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.”

It was further elaborated by Hon’ble Supreme Court of India in case title “Yogesh Singh Versus Mahabeer Singh & Ors.” **2016(4) R.C.R. (Criminal)** in para No. 29, which runs as under :-

“29. It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of trustworthiness. The test is whether the same inspires confidence in the mind of the Court. If the evidence is incredible and cannot be accepted by the test of prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission.”

Thus in the light of the above, we have considered the facts of case and evidence on record. Site plan of place of occurrence Ex.PK shows that occurrence took place in the inhabited area at about 09:30 pm. The

appellants/convicts opened fire and injured Ramesh, Rinku and Rakesh alias Kala. In such like situation, it cannot be expected that persons living in the said area will come out to see the occurrence. At the same time, presence of aforesaid witnesses cannot be doubted as one of the eye witness Rakesh alias Kala PW4 himself suffered fire arm injury in his chest. There is discrepancy in the statement of Bijay alias Vijay Singh PW2 where he alleged that both the appellants were armed with pistols, whereas, Rakesh alias Kala PW4 and Dilbag PW3 consistently stated that it was Sandeep who was armed with pistol and fired shot at Ramesh and thereafter, Kuldeep snatched pistol from Sandeep and fired at Rinku and Rakesh alias Kala. Consistent testimonies of injured Rakesh alias Kala as PW4 as well as Dilbag PW3 cannot be brushed aside on account of such discrepancy.

14. The ocular version of aforesaid witnesses is further supported by medical record. Prosecution has examined Dr. Abhinav, DMS, BPS, GMC, Khanpur Kalan, Sonapat PW26 who filed his affidavit Ex.PW26/A and proved Postmortem Report Ex.PNN, according to which Ramesh age 45 years had suffered following injuries :-

“1. Laceration measuring 1.5 cm diameter, whose margins were inverted with blackening around it. (Entry wound) on inferior aspect of sternum on its left side, 3 cms from midline. Clotted blood present. It was directed from left to right side, going downwards, backwards and medially, piercing sternum, pleura lacerating heart, going through the pleura on right side penetrating the right lung going inferiorly obliquely, piercing its muscles 9th space posteriorly and lodged in the muscles of posterior thoracic cavity. The bullet recovered, sealed and handed over to police. There is corresponding hole in the kurta in the left pocket area. Thoracic cavity contained blood.

2. Another laceration wound of 1.5 cm with inverted margins

and blackening around it. (Entry wound). There was clotted blood present. It was present 15 cms away from umbilicus on left side and 9 cms above left iliac crest. On dissecting the track goes downwards, medially and backwards from left to right side piercing anterior abdominal wall peritoneum, intestine with its mesentry, then entering into L3 and L4 vertebra and found lodged in spinal canal, Spinal cord was echymosed. Bullet recovered, sealed and handed over to police. Scalp and skull were healthy. L3 and L4 vertebrae were fractured. Membranes and brain were pale. Spinal cord was echymosed in lumbar region. Thoracic wall was pale and thoracic cavity had blood. Ribs and cartilages pale, pleura described. Larynx and trachea and hyoid were pale. Right lung has been described and left lung was pale. Pericardium and heart lacerated and pale, large vessels were pale.

Abdominal wall and peritoneum was pale, mouth described, pharynx and oesophagus were pale. Stomach contained semi-digested food particles. Small intestines contained some digested food and large intestine contained some fecal matter. Liver and kidneys were pale and bladder was empty. No abnormality was detected on external and internal organs of generation.

The cause of death in this case was due to firearm injuries and its complications which were ante-mortem in nature and sufficient to cause death in normal course of nature.”

This witness has also proved information sent to police authority regarding death of Ramesh, which is Ex.POO as well as his signatures on the inquest report Ex.PC. He also proved the clothes of deceased Ramesh which were sealed in a parcel and handed over to police. The white blood stained shirt Ex.P41, pyjama Ex.P42, underwear Ex.P43 and banyan/waist Ex.P44 were produced in the Court. Similarly, he confirmed that two bullets were recovered from the body of Ramesh which were sealed in a parcel and were

handed over to police. Same are Ex.P45 and Ex.P46.

Prosecution examined Dr. Vikas, MO, CHC, Kilo PW27 who filed his affidavit Ex.PW27/A and proved Postmortem Report of Rinku alias Parmod age 22 years Ex.PQQ. As per Postmortem Report, there were following injuries on the person of deceased:-

“(1) Entry wound :- Lacerated wound of size 1x1.5 cm, oval in shape, blacking. There was present lacerated wound of size 1.5 cm diameter, (margins inverted with blackening, tattooing, scorching was present around it) directed laterally, front of Rt. Side of chest 5 cm above and medially to nipples piercing skin, superficial fascia, deep fascia, thoracic muscles, deep tissues ecchymosed. Bullet recovered between thoracic muscles and Rt. Lung, right lung ruptured. Thoracic cavity full of blood.

(2) Entry wound :- Oval in shape, margins inverted, irregular, blackening, tattooing seen. 2.5x2 cm, 2 cm lateral to umbilicus over ant. abdominal wall, piercing only superficial fascia, no congestion, no ecchymosis seen. Deep tissues healthy.

(3) Entry wound :- of size 2.5x2 cm, oval in shape, inverted directed medially, upwards, margins irregular, over midline of back, 15.5 cm below occiput, blackening, tattooing, scorching around the wound present, piercing skin, superficial fascia, deep fascia, making exit wound of size 3x2.5 cm, 10 cm above entry wound No. 3, over inferior angle of scapula, margins irregular, everted, directed laterally, deep tissues ecchymosed. (Note: corresponding holes present over shirt and banyan).

(4) Scalp, skull healthy. Brain- Pale. Walls- pale, Larynx, Trachea Pale, left lung, Pericardium – pale, right side of heart contained dark liquid blood, left side empty, abdominal wall, peritoneum, pharynx, oesophagus – pale, stomach contained semi-digested food particles. Small intestine contained some digested food. Large intestine – some faecal matter. Liver, spleen, kidneys – pale, bladder- empty, organs of generation – NAD.

(5) The cause of death of deceased was firearm injuries and its

complications. Injuries were ante-mortem in nature and sufficient to cause death in normal course of life.”

He had sent information regarding death of Rinku vide rukka Ex.PRR. He further identified his initials on the inquest report of Rinku Ex.PD. The deposing witness also proved MLR of Rakesh alias Kala prepared by Dr. Ashish Chauhan Ex.PSS and rukka regarding the same is Ex.PTT. The deposing witness identified writing and signatures of Dr. Ashish Chauhan. The applications moved by SI/SHO Rajbir Singh seeking opinion of doctor are Ex.PVV and Ex.PXX and opinion of Dr. Ashish Chauhan is Ex.PVV/1 and Ex.PXX/1 respectively. The deposing witness identified signatures and writing of aforesaid doctor as he had seen him signing and writing. The deposing witness further confirmed that jeans pant Ex.P47, blood stained shirt Ex.P48, blood stained underwear Ex.P49 and blood stained banyan Ex.P50 were sealed in a parcel and were handed over to police. One bullet Ex.P51 was recovered from the body of Rinku which was sealed in a parcel and same was handed over to police.

15. There is report of FSL dated 12.05.2014 Ex.PKK which confirmed that country made pistol marked W/1 was found to be in working order. 7.65 mm five cartridge cases marked C/1 to C/5 were fired from the aforesaid country made pistol marked W/1 and it was further confirmed that fired bullets marked BC/1 to BC/5 were fired from country made pistol marked W/1 and not from any other firearm even of same make and bore/caliber because every firearm has got its own individual characteristic marks. Bullet marked BC/1 was recovered from the place of occurrence. Bullet marked BC/2 was recovered from the body of injured Rakesh alias Kala. Bullets marked BC/3 and BC/4 were recovered from the body of deceased Ramesh and bullet marked BC/5 was recovered from the body of

deceased Rinku. The hole on T-shirt contained in parcel No. IV that is of Rakesh alias Kala was caused by bullet projectile. The hole on kurta and banyan contained in parcel No. VI that is of Ramesh was caused by bullet projectile and holes on the shirt and banyan contained in parcel VIII that is of Rinku was caused by bullet projectiles. The aforesaid detailed report of FSL Ex.PKK clearly shows that Ramesh, Rinku and Rakesh alias Kala were fired at from one pistol. Therefore, the version put forward by injured Rakesh alias Kala PW4 and Dilbag PW3 that Sandeep fired from his pistol firstly at Ramesh and same pistol was snatched by Kuldeep who fired shots at Rinku and Rakesh alias Kala, is corroborated from the aforesaid report of FSL Ex.PKK. Considering the testimony of aforesaid witnesses coupled with medical record and supported by report of FSL, the stand taken by appellants/convicts does not hold any ground.

16. The prosecution has examined SI Rajbir Singh the Investigating Officer as PW23 who investigated the case from the beginning till presentation of challan. In this case, Kuldeep was arrested on 22.08.2010. He suffered disclosure statement on 24.08.2010 Ex.PX on the basis of which pistol along with one empty cartridge and five live cartridges were recovered vide recovery memo Ex.PT. The site plan of place of recovery is Ex.PJJ. Dr. Abhinav, DMS, BPS, GMC, Khanpur Kalan, Sonapat and Dr. Vikas, M.O., CHC Kiloj categorically stated that bullets recovered from the body of deceased victims Ramesh and Rinku, injured Rakesh alias Kala were sealed in separate parcels and same were handed over to police which were taken into police possession vide recovery memos Ex.PU and Ex.PCC respectively. The Investigating Officer had visited the spot and prepared site plan Ex.PK and further recovered five empty cartridges and one live cartridge which were taken into police possession vide recovery memo

Ex.PF. Investigation carried out by SI/SHO Rajbir Singh PW23 is further supported by examining all relevant recovery witnesses. Ram Bhagat, Reader to District Magistrate, Rohtak PW13 has proved sanction order Ex.PQ signed by the then District Magistrate, Rohtak Shri P.C. Meena IAS. Learned counsel for appellants/convicts could not point out any fault or discrepancy in the investigation carried out by Investigating Officer.

17. Learned counsel for appellants/convicts pointed out that prosecution had failed to lead any convincing evidence on record to prove motive behind the occurrence. In-fact, complainant party is involved in several criminal cases. Therefore, there is a possibility that Ramesh and Rinku were killed by some unknown persons due to their rivalry. It is the case of prosecution that Ramesh and Rinku had installed inverter in the house of Kuldeep and Sandeep appellants/convicts and regarding payment of money altercation had taken place about two days prior to the occurrence and on account of this reason, appellants/convicts murdered Ramesh and Rinku and further injured Rakesh alias Kala. Apart from the oral testimony of prosecution witnesses, there is no documentary proof to prove that Rakesh alias Kala and Rinku had installed inverter in the house of appellants/convicts. It is well settled proposition of law that in case of direct trustworthy evidence of witnesses as to commission of offence, the question/existence of motive loses its significance. The ocular testimony of witnesses regarding occurrence cannot be discarded only by the reason of absence of motive, if otherwise, the evidence is worthy of reliance. Gainful reference can be made to the judgment of Hon'ble Supreme Court of Indian in case title "Madan Versus State of Uttar Pradesh" 2023(15) Scale 310, where it was held in para No. 44 as under :-

“44. It is a settled law that though motive could be an important aspect in a case based on circumstantial evidence, in the case of direct evidence, the motive would not be that relevant.”

In the case in hand, assailants are specifically named right from the first instance by complainant Bijay alias Vijay Singh who was present along with Ramesh when the occurrence took place. Unfortunately, Ramesh and Rinku lost their lives due to firearm injuries suffered by them. However, Rakesh alias Kala who survived firearm injury has stepped into the witness box as PW4 to prove the prosecution case. Identity of assailants is duly proved on record by injured Rakesh alias Kala PW4 and eye witnesses Bijay alias Vijay Singh PW2 and Dilbag PW3. Thus in the presence of eye witnesses to the occurrence, motive behind occurrence cannot be given undue weightage. The prosecution case is based on direct evidence, therefore, this argument raised by learned counsel for appellants/convicts is of no avail to them.

18. The prosecution pointed out that in the case in hand, Sunil alias Senior was acquitted, whereas, present appellants/convicts are convicted by relying upon same set of evidence. We have considered this aspect of present case. Firstly, Sunil alias Senior was charge-sheeted only under Section 212 IPC for which he has been acquitted. The appellants/convicts Kuldeep and Sandeep are specifically named in the commission of offence as discussed above. Considering the role attributed to them, judgment of acquittal qua Sunil alias Senior will not affect the merits of case qua the appellants/convicts.

19. No other argument was raised by learned counsel for appellants/convicts.

20. Considering the aforesaid facts and evidence led by prosecution, learned trial Court rightly held appellants/convicts Kuldeep and Sandeep guilty under Sections 302 and 307 read with Section 34 of IPC and sentenced them accordingly with appellant/convict Kuldeep being rightly held guilty under Section 25 of the Arms Act as well and sentenced appropriately. The appellants/convicts murdered Ramesh and his son Rinku and injured other son Rakesh alias Kala by repeatedly firing shots with their pistol.
21. Resultantly, we do not find any reason to interfere in the judgment of conviction dated 03.01.2014 and order of sentence dated 08.01.2014 passed by learned Additional Sessions Judge, Rohtak. Same is accordingly, upheld.
22. Appeal preferred by appellants/convicts Kuldeep and Sandeep is accordingly, dismissed.
23. Pending application(s) if any, also stands disposed of accordingly.

(AMARJOT BHATTI)
JUDGE

(LISA GILL)
JUDGE

24.4.2024
lalit

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