



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

**Reserved on 06.08.2025
Pronounced on: 19.08.2025
CRA-D-513-DB-2004**

1.

Jai Pal

.....Appellant

Versus

State of Haryana

.....Respondent

2.

CRA-D-550-DB-2004

Daya Ram and another

.....Appellants

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL
HON'BLE MR. JUSTICE H.S. GREWAL**

Argued by : Mr. Ashwani Bhardwaj, Advocate
for the appellant in CRA-D-513-DB-2004.

Mr. Sudhir Sharma, Advocate,
Mr. Ram Krishan Rana, Advocate and
Mr. Mohit Thakur, Advocate
for the appellants in CRA-D-550-DB-2004.

Mr. Karan Sharma, DAG, Haryana.

MANJARI NEHRU KAUL, J.

1. This order shall dispose of above referred appeals as they both arise out of the same FIR and judgment of conviction, and similar questions of facts and law are involved in them.

2. The instant Criminal Appeals are directed against the judgement of conviction dated 13.05.2004 and order of sentence dated 17.05.2004 passed by learned Additional Sessions Judge (I), Faridabad, whereby appellants Jai Pal, Daya Ram and Rakam Chand, were convicted under Sections 302, 323 read with 34 of the IPC; appellant

Daya Ram was also convicted under Section 27 of the Arms Act, 1959, for the murder of Anil, and sentenced accordingly.

3. The case of the prosecution, as unfolded during trial is summarised hereinunder:

4. On the night of 14.10.2002, at about 11.00 p.m., the complainant Parvinder (PW-10), accompanied by his first cousin, Navit (PW-9), as well as Inder Singh Saini and Anil (hereinafter referred to as 'deceased'), was going towards Patel Chowk, Faridabad, for the purpose of purchasing certain household articles in connection with the upcoming marriage reception of his elder brother Pawan Kumar.

5. While enroute, the complainant party encountered accused Rakam Chand, Daya Ram Chandela, and an unidentified young man. Without any apparent provocation, an altercation ensued between the accused and the complainant party. During the confrontation, accused Daya Ram (appellant No.1 in CRA-D-550-DB-2004), in a fit of rage, picked up a brick bat and struck Navit (PW-9) on the head. Simultaneously, the unidentified person grappled with deceased, restraining him. At that moment, accused Rakam Chand (appellant No.2 in CRA-D-550-DB-2004) drew his pistol and fired at the deceased, the bullet striking him on the left shoulder, causing him to collapse to the ground.

6. The complainant party immediately rushed both deceased and injured Navit to Escorts Medical Centre, Faridabad, where Anil was declared brought dead by the attending doctor.

7. The statement of the complainant was recorded by PW-13

SI Bani Singh, and based on this version, a formal FIR (Ex.PD/1) was registered.

8. Upon completion of the investigation, the police presented final report under Section 173 of the Cr.P.C. before the competent Court. The accused persons were formally charged under Sections 302 and 323 read with Section 34 of the IPC, and in addition, accused Daya Ram was charged under Section 27 of the Arms Act.

9. In support of its case, the prosecution examined the following 13 witnesses: -

- PW-1 Dr. P.S. Parihar (conducted post-mortem upon the deceased)
- PW-2 Dr. Rakesh Singh (conducted MLR)
- PW-3 Inspector Randhir Singh
- PW-4 Inspector Ram Bhagat
- PW-5 S. Const. Abid Hussain
- PW-6 Const. Anoj Kumar
- PW-7 HC Satyawar
- PW-8 HC Daya Nand
- PW-9 Navit (injured witness)
- PW-10 Parvinder Dahiya (complainant)
- PW-11 Satish Sangwan
- PW-12 HC Balbir Singh
- PW-13 SI Bani Singh (Investigating Officer)

10. Upon closure of the prosecution evidence, the accused

were examined under Section 313 of the Cr.P.C. In their respective statements, accused Rakam Chand and Daya Ram adopted identical lines of defence, denying all incriminating circumstances appearing against them in the evidence of the prosecution and alleging false implication at the instance of the complainant.

11. According to the version put forth by the accused under Section 313 of the Cr.P.C., there had initially been a minor altercation at a nearby STD booth, which had ended with the complainant party tendering an apology and leaving the spot. However, a short while later, they allegedly returned, this time in a group of about 25 persons, and gathered outside the house of the accused, armed with sticks, iron rods and other weapons, and proceeded to ransack the premises, breaking open the windows and causing substantial damage to the property.

12. It was also claimed that the members of the complainant party were in an inebriated state, and were hurling threats, including threats to force the female members of the family of the accused out of the house. In this situation, accused Daya Ram, asserting his right of private defence, went up to the rooftop of his house and fired towards the mob in an attempt to disperse them. Unfortunately, Anil was hit in the process and collapsed.

13. Accused Jai Pal (appellant in CRA-D-513-DB-2004), also claimed to have been falsely implicated, attributing his prosecution to political rivalry and *malafide* motives.

14. In support of their respective defences, the accused examined the following 07 witnesses:-

- DW-1 R.K. Gaur (property dealer, Patel Chowk, Faridabad, who testified qua the place of occurrence)
- DW-2 A.S. Sandhu (shop owner, Patel Chowk, Faridabad, who testified qua the place of occurrence)
- DW-3 Dr. S.K. Mittal (medico legally examined Sita Ram)
- DW-4 SI Jagbir Singh (deposed that the logbook of wireless messages received of the period 2002 had been destroyed)
- DW-5 Sunil Gaur (Correspondent in Daily Bhaskar, Crime Reporter, Faridabad)
- DW-6 ASI Balbir (produced *Roznamcha* Register containing DDR No.8 dated 16.10.2002 of Police Post Sector 21-D, NIT Faridabad)
- DW-7 SI Ram Pat (recorded Ex.DW/7A-logbook entry qua the telephone call by accused Rakam Chand)

15. The learned Trial Court, on the basis of evidence led by both the parties, convicted the appellants-accused and sentenced them as under:-

Name of the accused	Offence(s) under Section	Period of sentence	Fine imposed	Period of sentence in default of payment of fine
Jai Pal	302 IPC	Imprisonment for life	-	-
	323 read with Section 34 IPC	RI for 03 months		
Daya Ram	302 IPC	Imprisonment for life	-	-
	323 IPC	RI for 03 months	-	-
	27 of the Arms Act	RI for 03 years	Rs.3,000/-	RI for 09 months

Rakam Chand	302 IPC	Imprisonment for life	-	-
	323 read with Section 34 IPC	RI for 03 months	-	-

Submissions on Behalf of Appellants Daya Ram and Rakam Chand @ Rakam Singh in CRA-D-550-DB-2004

16. Learned counsel for the appellants assailed the impugned judgment of conviction on multiple grounds, arguing that the findings recorded by the learned Trial Court suffered from manifest errors in appreciation of evidence, suppression of material facts, and a complete disregard of the defence version, which was fully supported by both oral and documentary evidence; it clearly came across as more plausible than the version trumped up by the prosecution.

A. **Delay in Lodging the FIR:** At the outset, it was urged that the FIR (Ex.PD/1) was registered only at about 01.33 A.M. on 15.10.2002, on the basis of the statement of PW-10, complainant Parvinder Dahiya (Ex.PD), whereas the alleged occurrence had taken place on 14.10.2002 at about 11.00 P.M. The unexplained delay of approximately 2.5 hours in registration of the FIR, it was submitted, was fatal to the case of the prosecution, as it clearly afforded ample opportunity for deliberation, embellishment, and fabrication, thereby creating serious doubt about the veracity of the version of the prosecution.

B. **True Genesis of the Occurrence is Concealed:** Learned counsel submitted that, according to the complainant, PW-10, Parvinder Dahiya, an altercation allegedly took place between the appellants and

the complainant party, during which the appellants assaulted them, including the deceased Anil. However, the reality, as per the learned counsel for the appellants, was starkly different : the complainant party were in fact the aggressors. They trespassed into the house of appellant Daya Ram, ransacked it, and caused substantial damage to the property. The appellants, in turn, promptly reported this incident to the police, as reflected in the documentary record including the deposition of DW-7 SI Ram Pat, who confirmed the same.

C. Two Separate Incidents on the Same Night: It was further contended that on the fateful night of 14.10.2002, two distinct incidents occurred :

- First incident : an altercation at the STD booth of the brother of appellant Rakam Chand, wherein PW-9 Navit suffered minor injuries. The matter was pacified with the intervention of shopkeepers, following which the complainant party apologised and left.
- Second incident : later the same night, the complainant party, along with 20/25 persons armed with weapons, gathered outside the house of appellant Rakam Chand. They began pelting stones, damaging the exterior of his house, and subsequently trespassed inside, continuing to cause destruction. Many of the attackers were intoxicated and openly issued threats to drag the womenfolk out of the house.

D. Evidence of DW-7 SI Ram Pat Ignored by Learned

Trial Court: It was forcefully urged that the learned Trial Court erred in rejecting the defence evidence, particularly the deposition of DW-7 SI Ram Pat, who categorically stated that at 11.12 P.M., on 14.10.2002, appellant Rakam Chand had telephonically reported a dacoity in his house to the police. This contemporaneous intimation as per the learned counsel lent strong corroboration to the defence plea of false implication and fabrication by the prosecution.

E. Prosecution's False Theory of the Occurrence at Patel Chowk : Learned counsel further argued that the prosecution concocted a false narrative that the appellants murdered deceased Anil at Patel Chowk as a sequel to the altercation there. In truth, it was vehemently argued that the actual occurrence took place within the premises of appellant Daya Ram's house, and the firing was an act of private defence.

F. Grave Provocation and Private Defence : Learned counsel further vehemently argued that it was the case of the appellants from the very beginning that the incident occurred in the backdrop of grave and sudden provocation when a large mob, armed with the weapons, trespassed into their home, threatening to harm their family and womenfolk. Appellant Daya Ram, on going to the roof, saw the deceased climbing it. Upon seeing the appellant, the deceased taunted “*Aanse tamanchey bahoot Dekhey hai*”. In the face of this imminent threat in the dead of the night, it was argued that the appellant was left with no other choice but to fire at the deceased in exercise of his right of private defence to protect not only his life but the honour of his

family.

G. Medical Evidence Supporting Defence Version :

Learned counsel while referring to the post-mortem report (Ex.PA) prepared by PW-1 Dr. P.S. Parihar, argued that it stood recorded therein that the fatal injury was directed downwards, medially, and from left to right and posteriorly—a trajectory inconsistent with the version of the prosecution of a street-side firing at Patel Chowk, but entirely compatible with a shot fired from an elevated position, as claimed by the defence. It was further argued that even as per the case of the prosecution and as per the evidence of the of PW-1 Dr. P.S. Parihar, only a single firearm injury was sustained by the deceased, which further corroborated the defence plea of private defence. Learned counsel argued that it could not even be said to be a case wherein the appellant had exceeded his right of private defence.

H. Interested Witnesses—PW-9 Navit and PW-10

Parvinder Dahiya : Learned counsel also contended that the learned Trial Court erred in relying only on the testimonies of both these witnesses, who were admittedly interested witnesses, without any independent corroboration.

I. Failure to Collect Material Evidence from Alleged

Scene of Crime : It was also argued if the alleged occurrence had indeed taken place at Patel Chowk as claimed by the prosecution, it would have been natural for the investigating agency to recover at least some incriminating material from the scene including bloodstained earth. The absence of such recovery, and pertinently the failure to

secure the alleged scene of crime, severely undermined the case of the prosecution.

J. **Manipulation of Scene of Crime** : Learned counsel for the appellants still further asserted that the investigating agency deliberately transposed the scene of occurrence, motivated by the fact that the deceased was the son of a serving police officer.

Submissions on Behalf of Appellant-Jai Pal in CRA-D-513-DB-2004

17. Learned counsel for appellant Jai Pal, adopting the arguments advanced on behalf of co-appellants, Rakam Chand and Daya Ram, additionally submitted as follows :

(i) **The appellant was not named in the FIR—and there were discrepancies even qua his physical appearance etc.:** The prosecution initially alleged that a young, unidentified boy was the third assailant. However, the appellant was 50 years old at the time of the occurrence in question and bore visible signs of age. This glaring discrepancy, as per the learned counsel by itself cast grave doubt on the case of the prosecution particularly concerning his involvement in the crime in question.

(ii) **Limited Role Attributed to Appellant Jai Pal** : It was also argued that even as per the own case of the prosecution, the appellant was alleged to have caught hold of the deceased and delivered a *danda* blow on his back, while appellant Rakam Chand allegedly fired the fatal shot. However, the post-mortem report (Ex.PA) revealed that no injury whatsoever was suffered by the deceased on either his back or

temple, therefore, rendering the allegations wholly uncorroborated.

(iii) **Material Improvements in the Testimony of the Prosecution** : It was also further argued that the learned Trial Court failed to appreciate that the testimonies of both PW-9 Navit and PW-10 Parvinder Dahiya, upon which the conviction is largely based, suffered from material improvements vis-a-vis their earlier statements in the FIR where they had only alleged that the three young assailants had incapacitated deceased Anil, accused/appellant Rakam Chand had fired a straight shot from his pistol whereas while stepping into the witness box, PW-9 Navit and PW-10 Parvinder Dahiya, in addition, deposed that accused/appellant Jai Pal had dragged the deceased from the back and thereafter appellant Rakam Chand had fired the gun shot. Such improvement as per the learned counsel made their testimony before the learned Trial Court entirely unsafe for conviction.

Submissions on Behalf of the State

18. *Per contra*, learned State counsel vehemently opposed the prayer and submissions made by the learned counsel opposite and, submitted that the learned Trial Court had rightly convicted the appellants/accused for committing murder of deceased Anil pursuant to a premeditated plan and thus, the impugned judgement did not warrant any interference by this Court. Learned State counsel submitted that on the date of occurrence i.e. 14.10.2002, the appellants cumulatively assaulted the deceased and complainant party, pursuant to a preconceived intent to seek vengeance; appellant Daya Ram and Jai Pal

caught hold of the deceased whereas, accused/appellant Rakam Chand fired upon the deceased. It was further argued that the appellants had not disputed that the injury inflicted upon the deceased was from a gunshot and the recovery of weapon at the instance of appellant Daya Ram, further corroborated with the ocular testimony of eyewitnesses PW-9 Navit and PW-10 Parvinder Dahiya.

19. Learned counsel for the State submitted that the eyewitnesses PW-9 Navit and PW-10 Parvinder Dahiya respectively, were natural eyewitnesses to the crime in question and there was no reason to discredit their testimony. It was further submitted that the eyewitnesses identified appellant Jai Pal in the Court and thus, presence and participation of appellant Jai Pal stood proved.

Findings of the Court

20. We have heard learned counsel for the parties and perused the relevant material on record.

21. Upon a comprehensive appraisal of the evidence and the rival submissions advanced, this Court is constrained to observe that the prosecution has failed to discharge its legal burden of establishing the guilt of the appellants beyond reasonable doubt. The infirmities in the case of the prosecution cannot be termed as peripheral or technical; they in fact strike at the very root of the narrative of the prosecution.

22. The gravamen of the case of the prosecution is that, on the night of 14.10.2002 at about 11.00 P.M. near Patel Chowk, Faridabad, the appellants, acting in concert, assaulted deceased Anil and some

other persons from the complainant party, resulting in the fatal shooting of the deceased. The learned Trial Court accepted the ocular account of PW-9 Navit and PW-10 Parvinder Dahiya and rejected the defence version of private defence, thereby recording conviction.

23. The instant case bristles with material inconsistencies, suppression of vital facts, and infirmities in investigation that strike at the root of the prosecution story for the reasons to follow:

24. The occurrence in question is alleged to have taken place on 14.10.2002 at about 11.00 P.M. The FIR came to be registered on the statement of the complainant at 01.15 A.M. on 15.10.2002, while the special report was forwarded to the Illaqa Magistrate only on 15.10.2002 at 7.30 A.M. The delay in despatch of the special report, remaining unexplained, assumes considerable significance. Such lapse is not merely a technical irregularity, but one that provides scope for interpolation and embellishment, thereby eroding the assurance of spontaneity and casting a serious shadow on the credibility of the prosecution version.

25. This aspect assumes decisive importance when examined in the context of the testimony of DW-7, SI Ram Pat, a serving police officer. He deposed with categorical precision that at 11.12 P.M. on 14.10.2002, he had received a telephonic message from accused Rakam Chand reporting that a mob was attempting to forcibly enter his house. He further testified that the information was immediately relayed through VT to the SHO as well as PCR Van No.5, and the same was contemporaneously recorded in the official logbook, exhibited as

DW7/A. This record, being contemporaneous, certified, and official in nature, bears the hallmarks of authenticity.

26. Significantly, the prosecution has neither disputed the genuineness of the logbook entry nor sought to impeach the credibility of DW-7 Sub Inspector Ram Pat. Yet, it has chosen to maintain silence on this vital circumstance. The prosecution has offered no cogent explanation as to why this contemporaneous police intimation from the accused—at the very time when the prosecution seeks to portray him as an aggressor in a street side assault—should be ignored. More importantly, the prosecution has failed to reconcile how its narrative of an unprovoked attack at Patel Chowk, Faridabad, can possibly co-exist with this contemporaneous record which clearly depicts the accused as a person under imminent threat, seeking immediate police protection.

27. The inevitable inference is that the contemporaneous police record and the testimony of DW-7 SI Ram Pat strike at the very root of the prosecution version. This contradiction is not peripheral; it goes to the core of the case. If the accused himself was on the telephone to the Police Control Room at the very time of the alleged occurrence, alerting the authorities of an unlawful mob attack on his residence, it is wholly incongruous to accept the claim of the prosecution that he and his co-accused were the aggressors. On the contrary, the surrounding circumstances are more consistent with the defence plea that the accused were themselves the victims of aggression and sought lawful protection.

28. We are, therefore, constrained to hold that the

prosecution's unexplained silence on this material circumstance is fatal to its case. The failure to confront or even address such a contemporaneous and authentic record cannot but be viewed as a serious infirmity. It also necessarily follows that once the police had been duly informed of an attempt by a mob to storm the residence of the accused, it was incumbent upon the investigating agency to at least visit the spot, verify the version of the accused, however, there was complete failure on the part of the police to undertake any such exercise, for reasons best known to it. This cannot be termed as a mere lapse. Such omission irreparably weakens the case of the prosecution and renders its version highly doubtful.

29. Coming next to the medical evidence on record vis-a-vis the ocular version of the prosecution witnesses. PW-1 Dr. P.S. Parihar found that the bullet entered at the upper part of the left anterior axillary fold and travelled vertically downwards from the second to the ninth intercostal space, piercing lung and heart. In his cross examination, PW-1 Dr. P.S. Parihar conceded that such a trajectory could occur if the victim was climbing with an outstretched hand.

30. This is starkly at odds with the claim of the prosecution of a level-distance frontal shot on the street. It aligns instead with the defence plea of the deceased climbing the roof of the appellant Daya Ram's house when the shot was fired from an elevated position.

31. Coming again to PW-1 Dr. P.S. Parihar, he opined that such a cardiac injury would cause profuse bleeding at the scene. However, the prosecution miserably failed to explain the absence of

any blood found at the purported place of occurrence i.e. Patel Chowk, Faridabad, nor did the Investigating Officer recover or take into possession any blood-stained earth from there.

32. PW-2 Dr. Rakesh Singh who conducted the medico legal examination of the deceased, noted tattooing around the wound, indicating close-range firing—typically within two feet. Yet the ocular account is of appellant Jai Pal holding the victim and appellant Rakam Chand firing from a greater distance. This material inconsistency remains unexplained.

33. Furthermore, PW-9 Navit claimed that appellant Jai Pal caught hold of the right hand of the deceased before appellant Rakam Chand fired, however, his statement (Ex.DC), made to the police, contained no such details. He instead stated that the crowd gathered and accused fired to scare them, but again no such details were given in Ex.DC. Furthermore, this witness also admitted not intervening despite being present, and fled when he saw the pistol—which is inconsistent with the active role he claimed to have played in rescuing the others including the deceased. Furthermore, there were multiple confrontations in the testimony of this witness, which revealed omissions, later improvements and contradictions.

34. Even as far as the complainant PW-10 Parvinder Dahiya is concerned, his statements (Ex.PD) are totally mismatched with his deposition before the learned Trial Court.

35. As per the testimony of the complainant, there had been some dispute between the parties about 4/5 days prior to the crime in

question, however, there was no mention about the same in the FIR (Ex.PD). Even more significantly, in the FIR the complainant did not attribute any role to appellant Jai Pal in holding the deceased, a fact which he sought to introduce only later during his testimony before the learned Trial Court. Similarly, while deposing in Court, the complainant introduced the allegation that the accused fled the scene while firing, a fact conspicuously absent from the FIR. Such material improvements necessarily cast doubt on the veracity and consistency of PW-10 Parvinder Dahiya.

36. The complainant, PW-10 Parvinder Dahiya, further admitted in cross-examination that he had blood only on his shirt cuffs, whereas the medical evidence records profuse bleeding, thereby creating another inconsistency between ocular and medical evidence.

37. The lapses in investigation are equally glaring. The Investigating Officer, PW-13 SI Bani Singh in his deposition, candidly admitted that the statement of the complainant recorded under Section 175 of the Cr.P.C. was missing both from the inquest report as well as the police file. He further conceded that the supplementary statement allegedly made by the complainant was also missing. The Investigating Officer also admitted to some delay in the lodging of the FIR. He could not dispute that several shops were located at the place of occurrence, yet he made no attempt to secure independent corroboration by examining shopkeepers or other neutral witnesses. He further failed to collect even the most basic corroborative evidence such as lifting blood-stained earth from Patel Chowk, the very place alleged to be the

scene of occurrence. These lapses, coupled with the loss of material records, which remain wholly unexplained, undoubtedly impair the integrity of the investigation.

38. The next and most crucial aspect relates to the very place of occurrence, which is shrouded in serious doubt. The defence version as already discussed in the earlier part of this order, stands corroborated by an entry in the Police Control Room at about 11.12 P.M., made by none other than the accused himself. The medical trajectory of the injuries is consistent with the rooftop defence scenario, lending further plausibility to the defence plea.

39. Furthermore, the evidence relied upon by the learned Trial Court to fasten liability under Section 34 IPC is far from conclusive. The principle of common intention under Section 34 IPC requires proof of a prior meeting of minds or, at the very least, a prearranged plan inferred from the conduct of the parties. Here, no evidence, direct or circumstantial, has been adduced to suggest such pre-concert. On the contrary, the injuries on both sides indicate a sudden and possibly mutual confrontation rather than a deliberate, jointly executed attack. Therefore, the learned Trial Court's approach in assuming the existence of common intention without an adequate evidentiary foundation, is contrary to the settled legal position. We find that such reasoning amounts to conjecture rather than a judicial conclusion based on proved facts.

40. As a sequel to the above discussion, the benefit of doubt is not a matter of indulgence but a mandate of law. We, therefore, find

that the case of the prosecution rests on shaky foundations and is clearly marred by unexplained contradictions. It fails to inspire confidence and cannot be sustained on the touchstone of judicial scrutiny. Consequently, we hold that the conviction recorded by the learned Trial Court cannot be sustained and the appellants are entitled to acquittal. Accordingly, both the appeals are hereby allowed, the impugned judgment of conviction and order of sentence passed by the learned Trial Court are set aside and the appellants are acquitted of the charges framed against them.

(MANJARI NEHRU KAUL)
JUDGE

(H.S. GREWAL)
JUDGE

19.08.2025

Vinay

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