
(2014) 07 P&H CK 0686

High Court Of Punjab And Haryana At Chandigarh

Case No: Murder Reference No. 1 of 2012 and Crl. Appeal No. D-16-DB of 2012

Ajay Veer

APPELLANT

Vs

State of Haryana

State of Haryana Vs

RESPONDENT

Ajay Veer

Date of Decision: July 18, 2014

Acts Referred:

- Arms Act, 1959 - Section 25
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313, 366
- Penal Code, 1860 (IPC) - Section 120-B, 148, 149, 216, 302

Hon'ble Judges: Kuldip Singh, J; Ashutosh Mohunta, J

Bench: Division Bench

Advocate: R.S. Cheema, Sr. Advocate, Arshdeep Singh Cheema, Advocate, J.S. Bedi, Sr. Advocate, Diya Sodhi, Advocate, Vinod Ghai, Sr. Advocate and Veneet Kaushal, Advocate for the Appellant; Manuj Nagrath, DAG, Advocate for the Respondent

Judgement

Kuldip Singh, J.

By this judgment, we shall dispose of Murder Reference No. 1 of 2012 submitted by District and Sessions Judge, Jhajjar for confirming the death sentence awarded to accused Ajay Veer @ Tiny s/o Ram Kumar, r/o village Jassaur Kheri, District Jhajjar at present Mundka and Jai Ram @ Baba s/o Ram Kishan, r/o village Jassaur Kheri awarded vide judgment and order dated 7.11.2011/28.11.2011 passed by learned Additional Sessions Judge, Jhajjar.

2. We shall also dispose of Criminal Appeal No. 16-DB of 2012 filed by accused Ajay, Kaptan @ Captain, Jai Ram @ Baba, Parveen, Yashwanti, Ashok Kumar, Ajay Veer @ Tiny, Kala @ Parmod, Manjeet and Vikas against the same judgment and order dated 7.11.2011/28.11.2011 whereby they were convicted and sentenced as under:

U/s. 302 read with Section 149 IPC

The accused namely Ajay Veer @ Tiny and Jai Ram @ Baba are sentenced to death and they be hanged by neck till they are dead.

U/s. 302 read with Section 120-B IPC

The accused namely Yashwanti, Tiny, Jai Ram, Ashok, Kala and Manjeet are sentenced to undergo imprisonment for life each and pay fine of Rs. 10,000/- each. In default of payment of fine, further RI for a period of six months.

U/s. 302 r/w Section 149 IPC

The accused namely Parveen, Vikas, Kaptan and Ajay are sentenced to undergo imprisonment for life each and pay fine of Rs. 10,000/- each. In default of payment of fine, further RI for a period six months.

U/s. 148 IPC

The accused namely Ajay Veer @ Tiny, Jai Ram @ Baba, Vikas, Parveen, Ajay and Kaptan are sentenced to undergo RI for a period of two years. In default of payment of fine, further undergo RI for six months.

U/s. 25/54/59 of Arms Act

The accused namely Ajay and Parveen are also sentenced to undergo imprisonment for a period of two years and pay a fine of Rs. 500/-. In default of payment of fine, further RI for a period of six months.

3. The case was registered on the statement (Ex. P1) of Gulabo w/o Hari Om, who has stated that her husband were five brothers. In the year 2001, her brother-in-law (Jeth) Ranbir demanded money from Ram Kishan s/o Parse for cultivating the land. Due to that reason, Ranbir was murdered by Vinod s/o Shakti r/o Bawana, Ajay Veer s/o Ram Kumar r/o Jassaur Kheri and Ajeet @ Billu s/o Om Singh, r/o village Mudlana. In the year 2003 due to same enmity, Ram Kumar s/o Paras Ram and Jai Ram @ Baba s/o Ram Kishan, r/o village Jassaur Kheri had committed the murder of her mother-in-law Chameli and the son of her sister-in-law Dharmender r/o Dighal. In the year 2004, a compromise took place in the panchayat but despite the compromise the said accused were having grudge against them. On 19.5.2009 Shamsheer son of her sister-in-law Krishna had come to their house. On 20.5.2009 at about 11.30 a.m. he was stated to have gone to village Dighal on his motor cycle. At about 12 noon, her husband Hari Om disclosed that four boys, who were sitting in a car, hit the motor cycle of Shamsheer near liquor-vend of village Luhar

Heri and took Shamsher to village Jassaur Kheri after forcibly putting him in the car. At this, her family members gave information in village Dighal and started searching for Shamsher in the hospitals of Kharkhoda, Sampla, Bahadurgarh and Rohtak but could not trace out Shamsher. Due to said reason, her sister-in-law Krishna and her nephew Naresh s/o Om Parkash had come to their house. She alongwith her husband Hari Om, her sister-in-law Krishna and her nephew Naresh r/o Dighal reached the bus stand, Jassaur Kheri at about 6 p.m. to inform the police regarding missing of Shamsher. In the meantime, Jai Ram @ Baba s/o Ram Kishan, Ram Kumar s/o Paras Ram, Tiny s/o Ram Kumar, Vinod s/o Shakti r/o Bawana, Satpal and Sudhir sons of Bhura r/o Piply Khera, Bulle s/o Nafe Singh r/o Majri who were already known to her, came on their motor cycles. They were carrying weapons in their hands. They raised an exhortation (lalkara) that they have already finished Shamsher and let his family members also be finished and nobody be spared. Then Vinod and Tiny fired at her husband Hari Om with their respective weapons. Hari Om fell down on the spot, Naresh and Krishna started running. Then Jai Ram and Ram Kumar fired at Naresh. Satpal, Sudhir and Bulle fired at Krishna with their respective weapons. She (Gulabo) saved herself by hiding in a shop and raised alarm. All the assailants fled away towards village Kharkhoda on their motor cycles carrying their weapons with them. Due to fire arm injuries, her sister-in-law, Krishna and her husband Hari Om died at the spot. They arranged for a vehicle to take Naresh for treatment at Bahadurgarh Hospital. Information of the incident was given to the relations. Naresh also expired in the hospital.

4. SI Krishan Kumar, Incharge PP Assaunda after recording the statement of Gulabo, recorded police proceedings at 2.15 a.m. on 21.5.2009 and sent the same to Police Station Sadar Bahadurgarh where FIR No. 168 dated 21.5.2009 under Sections 148/149/302, 25/54/59 of Arms Act (Ex. P43) was registered.

5. On the same day, Gulabo Devi made a supplementary statement u/s 161 Cr.P.C. wherein she stated that at the time of making of her previous statement, she was confused and stressed. She stated that when at the time of occurrence Ram Kumar and Ajay Veer @ Tiny were firing gun shots on her husband, her sister-in-law Krishna and Naresh r/o Dighal, four young boys came from Kharkhoda side, who were sitting on two motor-cycles (two on each motor cycle). They were having pistols in their hands. These four boys also fired with their weapons which hit her husband Hari Om, her sister-in-law Krishna and Naresh r/o Dighal. After the occurrence, these four boys alongwith Ajay veer @ Tiny ran away from the spot with their respective weapons on their motor cycles. Later on, their names and addresses were known to be Ajay Dabbas, r/o Barwala Delhi; Kaptan, Harijan r/o Jindpur Delhi; Parveen Jat, r/o Nahari; and Vikas s/o Balwan Jat r/o Jassaur Kheri. When the above stated accused were firing gun shots on her husband Hari Om, her sister-in-law Krishna and Naresh, at the same time Ravinder, younger son of her sister-in-law Krishna alongwith many persons of village Dighal had also come present at the spot. They had also witnessed the occurrence.

6. Immediately thereafter, SI Roop Singh (PW20) visited the spot. The dead bodies of Krishna Devi and Hari Om were found lying at bus stand Jassaur Kheri at different places. Site plan Ex. P6 of the place of occurrence was prepared. Photographer was called at the spot and photographs were clicked. Blood stained earth was lifted from the place where Naresh was murdered. From the said spot, three used cartridges of 9 mm were found lying which were taken into possession. Blood stained earth was also lifted from the place where the dead body of Krishna was lying. Three used cartridges and one used bullet were recovered from the said place where dead body of Krishna was lying, which were taken into possession after converting it into a parcel. Blood stained earth was also lifted from the place where the dead body of Hari Om was lying. Five used cartridges of 7.65 mm and one cartridge of .315 bore were recovered from the place where dead body of Hari Om was lying. Two used bullets were also found lying on the road and the same were also taken into possession after converting the same into a parcel. Inquest reports were prepared. Post mortem of the dead bodies was got conducted. From the dead body of Naresh, one bullet was extracted and the same was handed over to SI Roop Singh. Similarly, from the dead body of Hari Om, three bullets were extracted and were handed over to SI Roop Singh which were taken into possession vide separate recovery memo Ex. P46.

7. Accused Ajay, Kaptan @ Captain, Jai Ram @ Baba and Parveen were arrested on 23.5.2009. Accused Ashok was arrested on 25.5.2009. Accused Yashwanti was arrested on 31.5.2009. Accused Ajayveer @ Tiny was arrested on 13.8.2009. Remaining accused in this case were also arrested.

8. After the completion of investigation, challan was presented against all the accused.

9. All the accused were charged sheeted under Sections 148/302 read with Section 149/120-B IPC. Accused Parveen, Ajay and Ajayveer @ Tiny were also charge sheeted u/s 25/54/59 of Arms Act and accused Hari Parkash and Karambir were charge sheeted u/s 216 IPC.

10. In support of its case, the prosecution examined as many as 35 witnesses and thereafter, closed its evidence.

11. When examined u/s 313 Cr.P.C. accused pleaded innocence and claimed that they have falsely implicated in this case.

12. In defence, accused examined Jasbir as DW1 and Mukesh as DW2.

13. After hearing the learned counsel for the parties and going through the evidence, the learned Additional Sessions Judge, Jhajjar convicted and sentenced the aforesaid accused/appellants. However, Accused Hari Parkash, Karambir, Ravi, Tarun @ Kala @ Kadwa, Balraj and Vijay Kumar were acquitted of the charges framed against them.

14. Since Ajay Veer @ Tiny and Jai Ram @ Baba were sentenced to death, therefore, the murder reference was made to this Court for confirmation of the death sentence as required u/s 366 Cr.P.C.

15. The accused also preferred an appeal against the conviction and sentence.

16. We have heard learned counsel for the parties and have also gone through the file carefully.

17. Since the counsel for accused-appellants No. 4 and 8 to 10 did not appear, on the asking of the Court, Sh. Vinod Ghai, Sr. Advocate with Sh. Veneet Kaushal, Advocate addressed arguments on behalf of appellants No. 4, 8, 9 and 10.

18. In this case, three persons lost their lives namely, Hari Om, Krishna and Naresh. Prosecution has produced three eye witnesses of the occurrence, namely, Gulabo PW1, Ravinder PW2 and Darshna PW3.

19. First of all, necessary medical evidence in this case is to be examined.

20. PW5 Dr. Madhulika, who had conducted post mortem on the dead bodies of Krishna, Hari Om and Naresh on 21.5.2009, has testified that on the examination of the dead body of Krishna, w/o Ramesh, r/o Village Dighal, Jhajjar, following injuries were detected:

(a) Simple lacerated wound of scalp thickness present over the left occipital region of size 2 x 1.5 cm underlying bone formal.

(b) A less than 1 cm oval wound collared by carbon particles "inverted entry wound" over the neck on the back side, 1 cm. From the mid line of the back on the right side at the level of forth cervical vertebra. On dissection a well formed track found exiting in a lacerated wound size 1.5 cm with everted margins situated at the junction of lower 2/3 & upper one 1/3 of sternocleidomastoid muscle of right side, on its mideal aspect. The carotid artery and the spine were torn and fractured.

(c) An oval shape inverted margin wound with laceration having black collared pigmentation of size 1.5 cm present over the midline of lower abdomen at midpoint of between unbiceus and pubic synphysis (Entry Wound). The track of the wound is going downward and forward traversing Bladder anterior vaginal vault and exiting upto introitus of vagina. Blood clot in vagina present. Blood in peritoneal cavity about 400 ml. Present. Rest of the viscera pale and healthy.

21. Cause of death was hemorrhage and shock due to fire arm injuries which were ante mortem in nature and sufficient to cause death in normal course of nature. Probable time that elapsed between injury and death was within half an hour.

22. On the examination of dead body of Hari Om s/o Kartar Singh, r/o Jassaur Kheri, Jhajjar, aged 32 years, the following injuries were found:

a) An oval shape black collared wound with inverted margins 1.5 cm in size present over the middle of forehead, the underline bone (frontal) is fractured and depressed and embedded in the brain matter, in which a metallic object was found and extracted out.

b) Adjacent black collared 1.5 cm size lacerated wound present on the left side of 1st injury (a). Underlying frontal bone was fractured. A track was going down upto the left maxillary sinus in which the metallic object was embedded into it because of strong impaction cannot be extracted out and was left into the position.

c) A less than 1 cm oval shape black inverted margined, wound present in the left supra clavicular region. The track of which extending upto the middle lobe of left lung. Thoracic cavity was full of blood and metallic object was extracted from the parenchyma of left lung.

d) An oval shape wound 1 cm in size with black collared margins present over the right side of the chest situated at the level of 5th rib in the line of posterior axillary fold (Entry wound) the track of wound was extending upwards and backwards upto the acromion process of scapula of right. At end of the track a metallic object was extracted out.

e) A partially amputated and charred skin of the right thumb in the region of proximal phalanx.

23. The time elapsed between the injuries and death was immediate. Death in this case was due to hemorrhage and shock due to firm arm injury which was ante-mortem in nature and sufficient to cause death in normal course of nature.

24. On the examination of dead body of Naresh, s/o Om Parkash, 21 years, r/o village Dighal, following injuries were found:

(a) An oval shape lacerated wound, the margins were black and inverted present over the left arm upper 1/3 region post lateral aspect of 1 cm size. A track was found on dissection going in the axilla piercing the plural cavity left lung, oesophagus and crossing the mid line upto the right subclavian vessel, where a metallic body was extracted. Both the plural cavities were full of blood. Partial ruptured of subclavian trunk present.

b) Rest of the viscera were pale & healthy.

25. Death in this case was ante-mortem in nature and sufficient to cause death in normal course of nature. Probable time that elapsed between injury and death was within one hour.

26. Coming to the ocular version it comes out that complainant Gulabo while appearing as PW1, turned hostile and did not support the prosecution case. She stated that the accused present in the court, did not commit the murder of her husband Hari Om, sister-in-law Krishna and Naresh nephew of Krishna. She stated that those murderers are not present in the Court today. The witness was declared hostile by the prosecution and her statement made to the police Ex. P1 as well as supplementary statement Ex. P2 were put to her in detail. Witness denied to have made such statement to the police. However, she stated that the statement Ex. P1 bears her signatures. She claimed that police had obtained her signatures on blank papers. She also stated that contents of statement Ex. P1 were never read over to her.

27. However, other two witnesses namely, Ravinder and Darshna w/o Surrender supported the prosecution case. It is to be noted that Ravinder is the son of Krishna (deceased) and Darshna is the sister of Hari Om (deceased). PW2 Ravinder stated that on 20.5.2009 he had received a message from his maternal uncle Hari Om from village Dulhahera that his brother Shamsher has met with an accident on Luharheri-Dehkora road. On receipt of this information, he went to PGIMS Rohtak to inquire about the admission of his brother Shamsher but he was not found admitted there. Thereafter, he returned to village Dighal. Thereafter, he alongwith Sandeep, Rinku, Anoop and Naresh went to Luharheri on motor cycle and reached at the place of accident. He also received a telephonic message from his mother Krishna from village Dighal that she was coming to Police Post Assauda to lodge a complaint and they should reach the Police Post Assauda. Then they all left the village and reached at bus stand Jassaur Kheri. As their vehicle was punctured, they were present on the bus stand. In the meantime, Ajay Veer @ Tiny, Jai Ram @ Baba, Ram Kunwar alongwith their friends came at bus stand and started firing on his maternal uncle Hari Om, his mother Krishna and his friend Naresh. Thereafter, four persons riding two motor cycles also came there and also fired on his uncle Hari Om, his mother Krishna and his friend Naresh. He identified accused Vikas and Parveen on the spot and the name of two other assailants, namely, Ajay and Kaptan were disclosed to him by his maternal aunt Gulabo. He further stated that his maternal uncle Hari Om and his mother expired at the spot whereas Naresh expired on the way to Hospital. All the assailants fled away from the spot alongwith their weapons. He further stated that all the accused Ajay Veer @ Tiny, Jai Ram, Ram Kunwar, Vikas, Parveen, Satpal, Sudhir, Vinod, Bulle, Hari Parkash, Balraj, Kaptan, Ajay had fled away from the spot.

28. Stating about the history of enmity with the accused, he stated that in the year 2001, his maternal uncle Ranbir was shot dead by the accused. In the year 2003, accused party committed the murder of his brother and grand-mother (Nam) Chameli. Thereafter, a compromise had taken place between his maternal uncle and accused in the Panchayat but accused again committed the murder of his brother Shamsher (on the day of present occurrence). He further stated that he did not want to see the accused present in the Court as they have not left anything in his life.

29. PW3 Darshna w/o Surrender stated that in the month of May 2009, she had gone to the house of his brother Hari Om at village Jassaur Kheri which is her parental house. Two-three days prior to the occurrence, she was in village Jassaur Kheri. Ravi came to the house of his brother Hari Om and asked Shamsher as to at what time he will go to Sampla as he would accompany him. Shamsher told him that he was just leaving for Sampla. Therefore, Ravi took lift on his motor cycle for Sampla. While leaving, Ravi gave a signal to Ashok by putting his hand on his ear and left with a smiling face. After 1/2 hour, Ravi was noticed in the street by her. When he was asked as to how he is here as he had gone with Shamsher, Ravi entered his house while smiling, without giving any answer. Then her brother Hari Om told her that Shamsher had met with an accident and was kidnapped in a vehicle. Then all the family members searched for Shamsher in a car. She was present at bus stand Jassaur Kheri as tyre of the vehicle had burst. When Hari Om, Naresh and Krishna were getting the vehicle repaired, Ajay Veer @ Tiny, Vinod, Kaptan, Jai Ram @ Baba and some other persons committed the murder of Hari Om, Krishna and Naresh by gun shot injuries and ran away from the spot. Gulabo was also present at that time. Accused had also threatened them for not appearing as witness in this case. PW3 Darshana further deposed that Gulabo was also pressurizing them for compromise.

30. Prosecution has also examined PW10 Balwan, who is brother of Hari Om. He stated that he is married in village Mundka (Delhi). On 19.5.2009, he had gone to his in-laws" house at Mundka. While passing through a street in village Mundka, at about 2:30/3:00 p.m., accused Ajay Veer @ Tiny, Yashwanti, Ram Kumar, Jai Ram and others were present there. He also stopped there. All of them were telling Ajay Veer @ Tiny that Hari Om and Shamsher should be murdered. He heard their conversation. Ram Kumar stated to other accused that no one from the family of Hari Om should be spared. Yashwanti stated to other accused that if any person from the family of Hari Om is left alive then they would create problem for them. PW10 Balwan further stated that his brother Ranbir was earlier murdered by the same accused. Then his mother and cousin Dharmender were also murdered by same accused and they are facing trial for the same. Kala asked Ajay Veer @ Tiny to arrange the weapon. Ajay Veer @ Tiny disclosed that he has already arranged for the weapons and he can provide two weapons each for the members of his party. Then Kala stated that they would not spare any family member of Hari Om as they have committed murder after breaking open two doors of the house of Hari Om. Manjit son of Ishwar stated that they would not spare any family member of Hari Om. Then all the accused noticed his presence and they asked each other to eliminate him. But Ram Kumar asked other accused not to eliminate him. Then he went to Gola Dairy to purchase buffalo. On 20.5.2009 at about 4/5 p.m., he reached bus stand Jasaur Kheri and found that murders have already taken place.

31. PW11 ASI Surrender Kumar, photographer, proved 14 photographs, Ex. P7 to P20, clicked at the spot.

32. The next important witness is SI Roop Singh, PW20 who had recorded the initial statement of Gulabo forming the basis of FIR and her supplementary statement and had carried out inspection of the place of occurrence and had taken the dead bodies into possession. He had also lifted the blood stained earth and cartridges from the spot which need not be repeated over again.

33. He further stated that on 25.5.2009, he had joined the investigation with SI/SHO Satnarain. At that time, accused Parveen, Ajay, Kaptan and Jai Ram, who were in custody, were interrogated in his presence. Accused Parveen suffered a disclosure statement Ex. P47 to the effect that he has kept concealed a .315 bore pistol near railway line, Assaudha. Accused Ajay suffered disclosure statement Ex. P48 that he had kept concealed a pistol near under construction polytechnic college on Jassaur Kheri-Kulasi road. Accused Kaptan suffered disclosure statement Ex. P49 that after the occurrence, he handed over 9 mm pistol to Ajay Veer @ Tiny.

34. PW20 SI Roop Singh further stated that on 13.8.2009 he had arrested Ajay Veer @ Tiny in case FIR No. 167 of 2009, PS. Sadar, Bahadurgarh. Ajay was interrogated on 14.8.2009 and he suffered a disclosure statement Ex. P52 which he retracted. He again suffered a disclosure statement Ex. P28 to the effect that he has kept concealed a pistol in his house at village Mundka and can get the same recovered. Accordingly, he got recovered 9 mm country made pistol from his house which was taken into possession vide recovery memo Ex. PE. Site plan of the place of recovery was prepared.

35. PW32 SI/SHO Satnarain stated that on 23.5.2009 he had apprehended accused Ajay s/o Satbir Singh, Parveen s/o Bhim Singh, Jai Ram @ Baba s/o Ram Kishan and Kaptan @ Captain s/o Suraj Bhan and had also recovered two motor cycles from them. He proved interrogation of the accused Parveen, Ajay and Kaptan on 25.5.2009 which has been discussed above. He also proved the above-noted recoveries from the said accused. He also proved the copies of previous FIRs between the parties i.e. FIR No. 165 dated 23.5.2001 Ex. P59, FIR No. 285 dated 27.7.2003 Ex. P60 and FIR No. 405 dated 17.12.2003 Ex. P61.

36. Learned counsel for the appellants have argued that all the previous cases arising out of said FIRs resulted in acquittal of the accused on the basis of compromise between the parties.

37. Learned counsel for the appellants have further argued that in this case, there is delay in recording the FIR. The occurrence took place at 6 p.m. whereas the statement of Gulabo was recorded next day at 2.15 a.m. i.e. after about eight hours of the occurrence. Special report was sent subsequently. Therefore, on account of previous enmity between the parties, a tainted version was put-forth to rope in the name of as many as 16 persons in the crime. It has been argued that later on supplementary statement was made by Gulabo whereby presence of Ravinder son of Krishna (deceased) at the spot was alleged and the names of other accused were also mentioned and criminal conspiracy part was

also added.

38. We are of the view that in this case there is no inordinate delay in recording the FIR. The occurrence took place around 6 p.m. at the bus stand Jassaur Kheri and one of the injured Naresh was removed to the Hospital. It has also come in the statement of PW2 Ravinder that police party met them near railway crossing when Naresh was in the car. Naresh died subsequently. Therefore, first priority of the complainant party was to save the life of Naresh. Thereafter, it was night time. The police arrived in the hospital and apparently took their own time in recording the statement of Gulabo. Recording of statements might have taken about one hour and thereafter, police recorded the proceedings which were completed at 2.15 a.m. It means that it was around 1 a.m. that the statement of Gulabo was started to be recorded. Complainant party was under shock due to three deaths in the present occurrence and death of Shamsher in the earlier part of the day. Therefore, this delay in recording the FIR is natural and is to be ignored.

39. Learned counsel for the appellants has further argued that as per FIR Ex. P61, last occurrence between the parties took place in the year 2003. Thereafter, no occurrence took place till the year 2009, i.e. for nearly six years. Therefore, there was no reason for the accused to commit the crime after the compromise was effected between the parties.

40. Learned State counsel has pointed out that said case of the year 2003 was decided in the year 2008. After the previous occurrence, challan was presented in the Court which took time in disposal. It was during the pendency of the case that compromise was effected. Therefore, controversy between the parties was still alive till the year 2008. On account of so many murders, accused were nursing grudge and wanted to settle the score for all the time to come. In the occurrence, three members of family were murdered in shoot out which took place at bus stand, Jassaur Kheri in full view of the public. Apparently Hari Om tried to save his life by entering into the shop of Mukesh Halwai and collapsed there. On account of the previous history of murders between the parties, a peace loving citizen would not like to become a witness for or against any person unless he has got special interest. Therefore, despite the existence of so many shops, nobody came forward to depose before the police on account of old enmity between the parties. This is natural. It is to be noted that as per FIR No. 285 dated 27.7.2003 Vinod @ Kala (accused party) was murdered by Hari Om and Shamsher (both deceased). The members of complainant party were accused in the said case.

41. Learned counsel for the appellants has further argued that statement of PW10 Balwan does not inspire confidence regarding the over-hearing of the criminal conspiracy. Balwan does not reside in village Dighal. He happened to go there as his in-laws are resided in the said village. His brother was previously murdered by the accused. It is unlikely that all the accused will be discussing their strategy, if any, to commit the present crime at an open place within the hearing of PW10 Balwan. According to the statement of PW10 Balwan when the accused saw him, they wanted to kill him but one of the co-accused restrained them from doing so. If the accused had decided to kill the family of

Hari Om then there was no reason for them to spare Balwan, who was found alone by them in their own village Dighal.

42. Therefore, we are of the view that testimony of PW10 Balwan regarding over-hearing the criminal conspiracy between the accused, is not dependable and is liable to be discarded.

43. Learned counsel for the appellants has vehemently argued that the presence of PW2 Ravinder at the place of occurrence is unlikely. His name was not mentioned by Gulabo in her initial statement Ex. P1. His name finds mention in the supplementary statement of Gulabo Ex. P2 which was not supported by her in the Court. It has further been argued that even in the inquest report of the deceased, name of PW2 Ravinder is not mentioned. His story that his vehicle got punctured, is not believable. There was no reason for Gulabo to omit his name in her initial version before the police. There was also no reason for the police to miss his name in the inquest proceedings.

44. We are of the view that the presence of Ravinder at the spot is rather natural. As per the prosecution case, earlier in the day, his brother Shamsher, who had come to village Jassaur Kheri and had gone to village Dighal at about 11.30 a.m., is alleged to have been kidnapped by the accused on the way and later on murdered. When this fact came to the notice of Hari Om and others, Krishna, mother of Ravinder and Shamsher came to village Jassaur Kheri. At that time, it was suspected that Shamsher has been kidnapped by the accused. Therefore, it is natural that the family members of Shamsher will be searching for him. Ravinder is the real brother of Shamsher and it is natural that his mother Krishna might have sought the assistance of her second son Ravinder in searching for Shamsher. If Krishna had come to village Jassaur Kheri, it is likely that Ravinder also might have come there for searching Shamsher. In these circumstances, presence of Ravinder at the spot is natural. Since the occurrence took place at bus stand Jassaur Kheri, therefore, it is likely that they were present there for some purpose. Therefore, the possibility of puncturing of vehicle cannot be discarded. On account of murder of three persons in her presence and having barely saved her life, Gulabo was under shock. Therefore, if Gulabo w/o Hari Om initially failed to tell the names of all the accused present at the spot, there is nothing unnatural in the same. We are of the view that presence of PW2 Ravinder at the spot is natural.

45. Now when the statement of PW2 Ravinder is examined, according to him accused Ajay Veer @ Tiny, Jai Ram @ Baba and Ram Kumar (stated to be P.O.) alongwith their friends came at bus stand Jassaur Kheri and started firing on his uncle Hari Om, his mother Krishna and Naresh. Then four more persons came on two motor cycles and also started firing on Hari Om, Krishna and Naresh. He identified them on the spot as Vikas and Parveen. The names of two others i.e. Ajay and Kaptan were disclosed to him by his maternal aunt Gulabo. In this way, PW2 Ravinder has named seven persons in the crime out of which one is declared proclaimed offender. So far as the conduct of Gulabo is concerned, she lost her husband Hari Om. Apparently, on account of fear of the accused

or for some other consideration, she did not support the case. She admitted her signatures upon initial statement Ex. P1. Her statement was proved by Investigating Officer SI Roop Singh. Therefore, it is proved that Gulabo had made a statement to the police on the basis of which FIR was registered. Police is unlikely to itself record her second statement as there is no motive on part of police to do so. Therefore, though the statement of Gulabo is not proved but this fact is proved that she had lodged FIR with the police making certain allegations which are to be examined on merits on the basis of evidence available on file. The FIR is taken to be corroborative piece of evidence to support the statement of Ravinder. During cross examination, PW2 Ravinder has disclosed that he got repaired the punctured car at 5.30 p.m. at bus stand, Jassaur Kheri and that the said Maruti car was owned by Dharmender. Then he also stated about taking the injured Naresh to Hospital in the said car when he met the police party at Assaudha railway crossing. The mere fact that Ravinder told that he did not want to see the accused present in the court as they have not left anything in his life, does not mean that their identity is not proved. Since there is enmity between the parties, the parties are well known to each other. Their names and parentage has been mentioned in their statements. It is sufficient to establish their identity.

46. Learned counsel for the appellants has further argued that PW2 Ravinder was confronted with his statement Ex. D2 made before the police u/s 161 Cr.P.C. wherein he has omitted to state about the puncture of the vehicle and that names of two accused were told by his maternal aunt Gulabo. It is noticed that police normally do not record the statements of witnesses u/s 161 Cr.P.C. in detail. Therefore, omission of some of the details is no ground to throw away prosecution case.

47. So far as statement of PW3 Darshna is concerned, she talked about Ravi taking Shamsher with him on the motor cycle and thereafter, giving signal to Ashok. The case regarding the murder of Shamsher was separately tried. Regarding the present case, she has stated that she was present at bus stand, Jassaur Kheri when Ajay Veer @ Tiny, Vinod, Kaptan, Jai Ram @ Baba and some other persons committed the murder of Hari Om, Krishna and Naresh by firing gun shots. Darshna is the real sister of Hari Om. She belonged to village Kharawar. She has stated that she had come to the house of his brother Hari Om in village Jassaur Kheri 2-3 days back. Name of Darshna does not find mentioned even in the supplementary statement of Gulabo Devi. Therefore, we are of the view that the possibility is that Darshna was not present at the time of occurrence, therefore, her statement cannot be relied upon. Statement of Mukesh Halwai as DW2, in whose shop Hari Om was shot dead, that accused were not present at the time of occurrence, cannot be given much importance as his statement can be easily procured by the accused.

48. Now coming to the forensic evidence. It comes out that three types of weapons were used in the crime i.e. 9 mm pistol, .315 bore pistol and 7.65 mm pistol. .315 bore country made pistol was recovered from Parveen Kumar, 7.65 mm and .32 bore country made pistol were recovered from Ajay, 9 mm pistol was recovered from Ajay Veer @ Tiny. The

said weapons are stated to have been used in the present case. Bullets were also recovered from the dead bodies of Hari Om and Naresh. Some live cartridges and the used ammunition was also recovered from the spot. The report of FSL Ex. P57 shows that the country made pistol 7.65 mm marked W/2 was used in firing..315 bore fired cartridge cases marked C/12 and .315" fired bullet marked BC/1 have been fired from country made pistol mark W/1 which were recovered from accused Parveen. 9 mm fired cartridge case marked C/2, C/3 and 9 mm fired bullets marked BC/2 and BC/7 have been fired from country made pistol marked W/3 which were recovered from Ajay Veer @ Tiny. However, 7.65 mm cartridge cases sent to the laboratory were found to have been fired from the same arm but not from country made pistol marked W/2 recovered from accused Ajay. In this way, cartridges recovered in this case could not be connected to the weapon recovered from Ajay. Memos show that these cartridges and bullets were duly sealed and sent to the laboratory and there is nothing on file to show that they were tampered with till their examination. As per the report of FSL, three bullets recovered from dead body of Hari Om were of .315 bore, 7.65 mm and 9 mm. One bullet recovered from the dead body of Naresh was of 7.65 mm. Therefore, it is proved that the weapons recovered from the accused Parveen and Ajay Veer @ Tiny have been used in the present crime. So far as 7.65 mm country made pistol is concerned it has come in the initial statements that several weapons were procured by the accused. Therefore, the possibility is that accused Ajay might have played a trick by producing some other country-made pistols before police so that same could not be connected with crime. However, his presence at the spot is established beyond all reasonable doubts and there is nothing to suggest that he did not participate in the crime. The mere fact that bullets were not produced before the doctor during his examination in the Court, is immaterial in the given circumstances. Some bullets were recovered from the spot alongwith empties and have been connected with this case. The bullets were sealed by the Investigating officer after the doctor handed over the same to the Investigating officer and therefore, non production of the bullets during the examination of the doctor does not raise any suspicion about the dependability of the report of the Forensic Science Laboratory, Madhuban, Karnal.

49. Learned counsel for the appellants has further argued that in this case, recovery in pursuance to the disclosure statement is immaterial. He has pointed out the discrepancies in the statements of SI Roop Singh and SI/SHO Sat Narain. SI Roop Singh has stated that recoveries took place at 3.10 p.m. whereas SI/SHO Satnarain has stated that recovery from accused Ajay took place at 2.15 p.m.

50. We are of the view that recoveries had been proved. Some discrepancies regarding the timings are not material. Otherwise also from the independent ocular testimony, the role of the accused, who were involved in the murder at bus stand, Jassaur Kheri, is proved.

51. Sh. Vinod Ghai, learned senior counsel for the appellants Ashok and remaining accused have argued, while supporting the contentions raised by Mr. R.S. Cheema, Sr. Advocate with Mr. Arshwinder Singh Cheema, Advocate, that conspiracy is not proved as

the statement of PW10 Balwan is not dependable. In this case, accused Ravi has already been acquitted and the role attributed to accused Ashok is on the same footing. He has further argued that details of the mobile phone 9991362120 do not show that accused Ashok in any way participated in the criminal conspiracy. He has further argued that the prosecution case is that, in the earlier part of the day, Shamsher was murdered by the accused and that accused were after the complainant party. Therefore, there is no question of criminal conspiracy.

52. Constable Suresh of Cyber Cell, Jhajjar appeared as PW17. He brought and proved the call details of mobile No. 9253444709 standing in the name of Satish Kumar Ex. P36/A, mobile No. 9268343884 standing in the name of Kuldeep, Ex. P37/A, 9812933600 standing in the name of Ravinder Ramesh, Ex. P38/Ex. P38-A, mobile number 9812817853 standing in the name of Hari Om, Kartar Ex. P39/A. The call details of mobile No. 9953315649 is Ex. P40. Call details of Mobile No. 9718999004 is Ex. P41. He stated that these details were issued by Cyber Cell, Jhajjar. No objection was raised by the accused at the time when call details were exhibited. The only question put to the witness was regarding the application moved by the Investigating Officer in Cyber Cell, Jhajjar.

53. The disclosure statement of accused Ashok Ex. P44 shows that he had disclosed to the police that he had been using mobile No. 9991362120 and mobile number used by Tiny @ Ajay Veer was 9718999004. He had also stated that he had given information about Hari Om, Krishna and Naresh etc. and that they had also planned the murder of Hari Om and Shamsher. Police thereafter obtained the call details of mobile phone of 9718999004 which was proved by PW17 Constable Suresh, Cyber Cell, Jhajjar.

54. Learned counsel for the appellants argued that said call details are not admissible in evidence. The said call details should have been called from service provider and proved in accordance with law. It has further been argued that the ownership of said mobile numbers is not proved nor the ownership of sim card is proved. These do not stand in the name of the accused.

55. We are of the view that it is not necessary that one may be using his own mobile while committing such dastardly crime which is alleged to have been committed after pre-meditation. Rather the investigation revealed that Ashok Kumar was using mobile number 9991362120 and Tiny @ Ajay Veer was using mobile number 9718999004. Therefore, the call details proved by Cyber Cell which were admitted in evidence without any objection from any of the accused can be relied upon. The position would have been different, if accused had raised the objection to the exhibiting of the said call details, which would have given opportunity to the prosecution to summon the call details from the service provider. It is common for the criminals to use the mobile phone standing in the name of other persons so that these could not be connected with them in case of their arrest. The call details of Mobile No. 9718999004 Ex. P17 show that many call were exchanged between mobile No. 9991362120 and mobile No. 9718999004 on 20.5.2009

between 6.29 a.m. till 1.19 p.m., which shows that Ashok and Ajay Veer were in constant touch during the period of commission of crime. Normally, there is no eye witness account of criminal conspiracy. Criminal conspiracy is always a secret act and has to be inferred from the attending circumstances. The call details clearly show that Ashok and Ajay Veer @ Tiny were in constant touch when the crime was committed. From these circumstances, it is to be inferred that Ashok was in constant touch of Ajay Veer @ Tiny and participated in the crime. In this way, criminal conspiracy between Ashok and Ajay Veer @ Tiny is proved. Therefore, accused Ashok and Ajay Veer @ Tiny are liable to be punished u/s 302 read with Section 120-B IPC.

56. We are of the view that so far as criminal conspiracy qua other accused on the basis of statements of PW10 Balwan and PW3 Darshna is concerned, the same is not proved beyond all reasonable doubts. Statement of PW10 Balwan regarding over-hearing the conspiracy is not dependable.

57. In view of the foregoing discussion, we come to the conclusion that conviction of accused Yashwanti, Parmod @ Kala, Manjit under Sections 302/120-B cannot be sustained. Accordingly, the aforesaid accused Yashwanti, Parmod @ Kala and Manjeet are given benefit of doubt and acquitted of the charges framed against them. They be released forthwith, if not required, in any other case.

58. So far as remaining accused namely Ajay Veer @ Tiny, Kaptan, Jai Ram @ Baba, Parveen, Ajay and Vikas are concerned, their guilt has been proved beyond all reasonable doubts. Accordingly, their conviction u/s 302 read with Section 149 IPC and 148 IPC is upheld. Conviction of accused Ajay Veer @ Tiny and Parveen u/s 25 of Arms Act is also upheld.

59. In this case two of the accused namely Ajay Veer @ Tiny and Jai Ram @ Baba have been sentenced to death.

60. Learned counsel for the appellants Sh. R.S. Cheema, Sr. Advocate with Mr. Arshwinder Singh Cheema, Advocate has vehemently argued while relying upon the authority in [Sangeet and Another Vs. State of Haryana](#), ; [Swamy Shraddhananda @ Murali Manohar Mishra Vs. State of Karnataka](#), and [Bachan Singh Vs. State of Punjab](#), that this is not one of the rarest of the rare cases and does not call for the extreme penalty. It has also been stated that both the accused are young persons. The age of accused Jai Ram was only 22 years at the time of crime and that of accused Ajay Veer @ Tiny was 27 years. Admittedly, there is a previous enmity between the parties and earlier also, some murders had taken place. However, during the trial for one or the other reason, guilt of the accused could not be proved. The trial Court has taken a view that there are no chances of accused mending themselves. We are of the view that it is a case of enmity between two families. Previously also, three FIRs were registered but later on parties compromised. Though in the present case, three persons of one family were killed at a public place i.e. bus stand of village Jassaur Kheri but the crime does not fall within the

rarest of rare category. Keeping in view of the age of the accused, the possibility of accused reforming themselves also cannot be ruled out. We are of the view that this case does not call for extreme death penalty qua accused Ajay Veer @ Tiny and Jai Ram @ Baba.

61. Therefore, the reference made by District and Sessions Judge, Jhajjar is declined. The death sentence awarded to accused Ajay Veer @ Tiny and Jai Ram @ Baba u/s. 302 read with Section 149 IPC is commuted to life imprisonment. However, keeping in view the circumstances in which the crime was committed and the background of the accused, we direct that accused Ajay Veer @ Tiny and Jai Ram @ Baba shall spend minimum of actual 20 years in the jail and they shall not be entitled to parole for first 10 years of their imprisonment, so as to prevent them from committing any similar crime. The sentence of accused Ajay Veer @ Tiny and Jai Ram @ Baba u/s 148 IPC is upheld. The sentence awarded to accused Ajay s/o Satbir, Kaptan @ Captain s/o Suraj Bhan, Parveen s/o Bhim Singh and Vikas s/o Balwan u/s 302 IPC is upheld as discussed above.

62. Sentence awarded to accused Ashok and Ajay Veer @ Tiny u/s. 302 read with Section 120-B IPC is also upheld.

63. Therefore, murder reference No. 1 of 2012 is declined. Criminal Appeal No. 16-DB of 2012 is allowed qua accused Yashwanti, Kala @ Parmod and Manjeet and the appeal qua the remaining accused stands dismissed as detailed above.