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**CRA-D-612-DB-2004 (O & M)**

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

**Reserved on: 08.07.2025  
Pronounced on:11.07.2025**

**(1) CRA-D-612-DB-2004 (O & M)**

Pardeep Kumar and others

.... Appellants

V/s

State of Haryana

...Respondent

**(2) CRR-1644-2004 (O & M)**

Balbir

.... Petitioner

V/s

Pardeep Kumar and others

...Respondent

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL  
HON'BLE MR. JUSTICE JASJIT SINGH BEDI**

Present: Mr. Arnav Sood, Advocate, as Amicus Curiae  
for appellant No.1 in CRA-D-612-DB-2004.

Mr. Deepender Singh, Advocate,  
for appellant No.2 CRA-D-612-DB-2004.

Mr. Anmol Partap Singh Mann, Advocate,  
for the petitioner in CRR-1644-2004.

Mr. Anil Singh, Advocate,  
for appellant No.3 in CRA-D-612-DB-2004 and  
for respondent No.3 in CRR-1644-2004.

Mr. Ranvir Singh Arya, Addl.A.G., Haryana.  
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**JASJIT SINGH BEDI, J.**

This order shall dispose of a criminal appeal i.e. **CRA-D-612-DB-2004** preferred by the accused-appellants No.1 to 3, namely, Pardeep

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Kumar, Ashok Kumar alias Tindi and Hazrat alias Om Parkash against the judgment of conviction and order of sentence dated 13/15.05.2004 passed by the Additional Sessions Judge, Gurgaon and the other revision petition bearing No. CRR-1644-2004 preferred by Balbir-father of the deceased-Naveen Kumar seeking enhancement of the fine and imposition of the death sentence.

2. The FIR in the present case (**CRA-D-612-2004**) came to be registered on 19.08.2000. The judgment of conviction and order of sentence was passed on 13/15.05.2004 by the Additional Sessions Judge, Gurgaon. The present appeal was filed on 12.07.2004 against the aforesaid judgment of conviction and order of sentence and has come up for final hearing now i.e. after a period of 25 years from the date of registration of the FIR.

3. For the sake of convenience, the facts being are taken from CRA-D-612-DB-2004.

4. The case of the prosecution, in brief, is that on 19.08.2000, HC Siri Chand Complainant (PW-5) alongwith Constable Amir Singh was on patrolling duty at Bus Stand, Gurgaon. At about 1.15 PM, when they were patrolling near Booth No.9, they heard the sound of a shot being fired in front of Booth No.2. On that, they ran towards that place and saw that there were two young men on a motor cycle of red colour and three young men on a scooter, the number of which was later on known as HR-26-J/3375. The young man riding the scooter on the last seat, fired a shot at another young man (Naveen Kumar-deceased), who was near a DTC Bus, which hit the

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back side of his left shoulder, due to which he fell down. Out of the young men riding the motor cycle, one young man got down and caused injuries with a belt to the young man, who had fallen down due to the injury received by gun shot. Thereafter, all the culprits escaped on their respective vehicles towards the outer gate of the Bus Stand. HC Siri Chand and Amir Singh raised alarm and chased those culprits. But, public persons did not come forward to help. Thereafter, some unknown persons took the injured to Hospital. HC Siri Chand and Amir Singh reached Mahavir Chowk in search of the culprits. HC Siri Chand-complainant got recorded his statement, Ex.PC with Ramesh Kumar, Sub Inspector (PW-12).

5. Ramesh Kumar Sub Inspector made his endorsement Ex.PC/1 on the aforesaid statement, Ex-PC of Siri Chand complainant and sent the same to Police Station, on the basis of which First Information Report, Ex.PB, was recorded by Davinder Kumar ASI (PW-25). Ramesh Kumar Sub Inspector carried out the investigation. He reached General Hospital, Gurgaon, where the doctor handed over to him the sealed parcels, which were taken into possession vide memo Ex-PD. He visited the spot, lifted blood stained earth and prepared rough site plan, Ex.PZ/2. He recorded the supplementary statement of Siri Chand Head Constable on 23.09.2000 and statements of other witnesses. On 20.08.2000, he reached Safdarjang Hospital, New Delhi, where he came to know that Naveen had succumbed to the injuries. Therefore, Section 302 of Indian Penal Code was added and special report Ex.PZ/3 of the case was sent to the Illaqa Magistrate. On

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30.08.2000, he took into possession a sealed parcel containing blood of the deceased and another sealed parcel containing underwear of the deceased from Delhi Police and memo Ex.PN was prepared in that regard.

6. Thereafter, the matter was investigated by Randhir Singh Inspector (PW-29). On 31.10.2000, accused Pardeep on interrogation suffered a disclosure statement Ex.PV and in pursuance thereof, got recovered one loaded country made pistol of .315 bore. The pistol was unloaded. The sketch Ex.PX/1 was prepared and the same was put into a sealed parcel, sealed with the seal of RSS and taken into possession vide memo Ex.PX. Site plan Ex.PX/2 regarding the place of recovery was prepared. On 01.11.2000, accused Sunil alias Kalu Kalu was arrested and one Hero Honda motor cycle parked in the court-yard of his house was taken into possession vide memo Ex-PQ and site plan regarding the place of recovery Ex-PQ/1 was prepared. On the same day, accused Kamal Kishore alias Bablu was arrested from his house. Accused Ashok Kumar alias Tindi Tindi was arrested on 06.11.2000 and a scooter bearing No.HR-26-J/3375 was recovered from the court-yard of his house and the same was taken into possession, vide memo Ex-PO and site plan regarding place recovery Ex.PO/1 was prepared. Accused Ashok face was produced before the Illaqa Magistrate on 07.11.2000 with a muffled face. An application Ex.PP/1 was moved for Test Identification Parade, but he refused to join the same. On 10.11.2000, accused Hazrat alias Om Parkash was arrested from Bus Stand Sukhrali. On interrogation, he made a disclosure statement Ex.PY and in

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pursuance thereof got recovered one country made pistol of .303 bore, the sketch of the same (Ex.PY/1) was prepared and the same was taken into possession vide memo Ex.PZ. Site plan regarding place of recovery Ex.PY/2 was prepared. On 11.11.2000, accused Hazrat was produced with a muffled face before the Illaqa Magistrate and an application Ex.PV was moved for joining him in the Test Identification Parade, but he refused to join the same. On completion of investigation, the report under Section 173 of Code of Criminal Procedure was prepared by Rajender Singh (PW-23) the then Station House Officer, Police Station City Gurgaon.

7. On commitment, after hearing the parties and perusing the documents, charges under Sections 302 read with Section 34 were framed against the accused. They pleaded not guilty and claimed trial.

8. To substantiate its allegations against the accused, the prosecution examined Naresh Kumar Draftsman as PW-1, Mohan Lal Photographer as PW-2, Jai Bhagwan Constable as PW-3, Arvind Kumar Constable as PW-4, Siri Chand Head Constable as PW-5, Shamshudeen Head Sonstable as PW-6, Dr. P.C.Arya as PW-7, Daya Pal son of Ram Kishan as PW-8, Ram Niwas son of Jagmal as PW-9, Krishan Kumar son of Kanshi Ram as PW-10, Rishi Pal Constable as PW-11, Ramesh Chander Assistant Sub Inspector as PW-12, Roop Lal, Assistant Sub Inspector as PW-13, Shri L.N.Jindal, Chief Judicial Magistrate as PW-14, Jagdish Chander Head Constable as PW-15, Doctor Arvind as PW-16, Ghansham Dass as PW-17, Ishwar Singh Assistant Sub Inspector as PW-18, Rama Nand Head Constable as PW-19, Kuldeep

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Singh Constable as PW-20, Sukhdev Singh Constable as PW-21, Shri Virender Malik, Civil Judge as PW-22, Rajinder Singh, Inspector as PW-23, Udai Singh son of Jyanti Parshad as Pw-24, Devinder Kumar, Assistant Sub Inspector as PW-25, Ramesh Chander Sub Inspector as PW-26, Ved Parkash son of Daya Nand as PW-27, Raj Singh Assistant Sub Inspector as PW-28, Randhir Singh Inspector as PW-29 and Ramesh Kumar, Sub Inspector as PW-30.

9. Complainant-HC Siri Chand/PW-5 on the basis whose statement Ex.PC, the case was registered that on 19.09.2000, he was Incharge, Police Post Bus Stand. Gurgaon. On that day, he and Constable Amir Singh were on patrolling duty. At, 1.15 PM, when they were at Booth No.9, they heard the sound of a gun shot from Booth No.2 and on that, they both immediately reached there running. They saw that there were three persons riding a scooter No. HR-26J-3375 and within their sight, the boy riding the pillion seat fired upon another boy (Naveen) who was by the side of DTC bus. The shot hit the left shoulder, as a result of which that boy fell down. They raised an alarm "Pakro-Pakro" and then chased the scooter upto the Fountain crossing, but, all the three escaped on the scooter towards Old Delhi Road. No person from the public helped them. Sub Inspector-Ramesh Kumar was present at Mahabir Crossing/Fountain Crossing and he got recorded his statement Ex.PC with him. He further stated that injured-Naveen Kumar was taken to General Hospital, with the help of two unknown persons. He identified accused Pardeep Kumar, as the person who



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fired upon Naveen Kumar, accused Ashok as the person, who was driving the scooter and accused Hazrat as the person sitting in between the two on the scooter. He also stated that his supplementary statement was recorded on 23.09.2000. Earlier, he had also mentioned in his statement Ex.PC regarding presence of a motor cycle of Red colour, with two boys thereon and giving of a belt blow on the deceased by them, but that statement was on account of a misunderstanding. In fact, there was no person on the motor cycle. He also proved the recovery memo Ex.PE regarding taking into possession, blood stained earth from the spot by Ramesh Kumar, Sub Inspector.

10. PW-10/Krishan Kumar another eye-witness of the occurrence deposed that Naveen was his childhood friend. Sunil Kumar son of Jagbir Singh, resident of Nazafgarh, who used to reside with his maternal-uncle Dharam Singh, was also his friend. On 19.08.2000, Naveen Kumar was standing at the shop of Balwan Singh. He was having Hero-Honda motor cycle No.HR-26-3081 and asked Naveen to go to Gurgaon for joyride. They both came to Gurgaon on motor cycle. Sunil Kumar alias Bholu also met them near Government College on Mehrauli road and then the three came to Bus Stand, Gurgaon. He started playing at a lottery stall, whereas Naveen remained standing outside the lottery stall and Sunil son of Jagbir went inside the bus stand saying that he would come back shortly. When Sunil did not return, they both went inside the bus stand and searched for him. He stopped his motor cycle near Bahadurgarh Bus Stand, where one DTC bus was also parked. They heard the sound of a gun shot, resulting into

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commotion. He saw a scooter, on which three boys were riding. Two persons were riding on a motor cycle. Naveen tried to run away, but the boy who was sitting on the last back seat of the scooter, fired at him, which hit him on the backside. He also ran away, but, after sometime came back to the spot. He came to know that Naveen Kumar had been taken to the hospital. He identified accused Pardeep Kumar, as the person who had fired upon Naveen Kumar. He further stated that the name of Pardeep Kumar was earlier not known to him but, later on, he came to know about his name. He identified accused Sunil as the person who was driving the scooter and stated that the third person sitting in between the two persons could not be properly identified by him as he could see his face properly. He stated that the person who was sitting in between the two persons on the scooter had pointed out towards Naveen Kumar and on his pointing out, Pardeep Kumar fired at Naveen Kumar. That person also said that the dispute was with Naveen Kumar and that he was to be killed. All the three scooterists had taken a round of that place and lastly they had gone out from the outer gate of the Bus Stand. He also stated that the police had also enquired from him and had taken him to the police station to ask about the occurrence and the accused persons.

11. PW-8/Daya Pal and PW-9/Ram Niwas were also the eye-witnesses of the occurrence, but, they did not support the case of the prosecution. They resiled from their previous statements as recorded by the police and were allowed to be cross examined on the request of the Public



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Prosecutor, but, despite that nothing incriminating against any of the accused could be elicited. PW-8/Daya Pal stated that no occurrence had taken place on 19.08.2000 at bus stand Gurgaon in his presence. However, 3/4 days thereafter, he came to know that 3/4 persons of his age were apprehended by the police. He denied the factum of making any statement to the police as recorded in Ex.PK. PW-9/Ram Niwas expressed his ignorance about the facts of the present case. He stated that he was not present at bus stand Gurgaon with Daya Pal. He did not admit the contents of his statement as recorded by the police in Ex.PL.

12. PW7/Dr. PC Arya medico-legally examined Naveen in General Hospital Gurgaon. He found the following injuries:

*1. There was a fire arm entry wound on the right side of upper outer back of the chest. It was 3cm x 2 cm. unapproximated and slightly behind the posterior axillary line. A bullet was palpable on the right side front (upper) of the chest. It was 2 cm. in front of the anterior axillary line. Injury was advised X-ray and management by Surgeon.*

*A corresponding cut was present over the T-shirt on the right back. The T-shirt was badly soaked in blood and clotted blood was present around the cut. T-shirt was sealed with seal PC and handed over to the police. The bullet was removed by the Surgeon from the Front side and handed over the police with seal alongwith the sample seal.*

He opined that the injury was fresh, caused by a fire arm. He proved the copy of medico legal report Ex.PG and *ruqa* sent to the police station Ex.PH. He stated that he handed over to the police a sealed parcel



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containing T-shirt of Naveen and glass vial containing a bullet in a sealed parcel.

13. PW-16/Doctor Arvind, Senior Chief Medical officer, Safdarjang Hospital, New Delhi, conducted the post mortem on the dead body of Naveen on 02.08.2000 and he observed as under:

General Observation:

*Pale on face, palm and soles. Rigor mortis was present all over the body. Post mortem stainings were present on back. Eyes were closed. Ear, nose and mouth were normal. The body was dressed in blue kacha with blood stains, the clothes and blood swab were preserved sealed and handed over to the police for FSL examination.*

External Examination

*Injuries Entry wound:*

*1. Fire arm injury entry wound size 7 cm. x 3 cm. oval shaped with stitches, seen on back of chest at posteria axillary fold right side, on opening the stitches that the margins appeared to have had surgical intervention, inverted margins, bluish discolouration around the wound seen in an area of 10 x 6 cm. No blackening, charring, tattooing seen around the wound. The margins of the wound were clear cut due to surgical intervention.*

*2. Exit wound clear cut margins, averted size 2 x 1 cm. with surgical intervention seen in anterior axillary fold, effusion of blood was seen in the surrounding tissue of the wound around the track.*

*3. Abrasion 1 x 1 cm. was seen on left knee.*

Internal Examination



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*Scalp, skull and brain, no effusion of blood in scalp skull vault and base were normal. Brain was pale, on section.*

*Neck and thorax*

*Trichaea/neck structures intact. On exploration of chest and track in axilla, the track was directed from behind anteriorly, medially and upwards. Effusion of blood was seen around the track and factorarlis major and minor muscle seen. The track showed puncture right axillary entry axilla. The lungs were intact, but pale. Heart pale. No blood was seen in chest cavity.*

*Abdomen and Pelvis*

*Stomach was empty. Liver/spleen/kidneys all were pale. Blood/pelvis were normal. No bullet was recovered from the track or body.*

He proved the copy of Post Mortem Report, Ex.PR. He opined that all the injuries were ante-mortem in nature. Cause of death was haemorrhagic shock, following fire arm injury to the axillary artery from a distance of approximately more than one-two meters. The time since death was about 19 hours. He further stated that the Investigating Officer had submitted inquest papers at the time of the post mortem examination which were initialled by him. He proved the application for post mortem Ex.PR/1 and the inquest report Ex.PR/2.

14. PW-30 Ramesh Kumar, Sub-Inspector, initially investigated the case. He proved the statement of the complainant Ex.PC recorded by him and his endorsement thereon Ex.PC/1. He stated that he reached General Hospital, Gurgaon, where the Doctor handed over to him a bullet in a glass bottle, sealed with the seal of PC and another sealed parcel, which were



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taken into possession vide memo EX-PD. He recorded the statements of the witnesses. He reached the spot, lifted blood stained earth and took the same into possession vide memo Ex.PE. He prepared rough site plan Ex.PZ/2 and recorded the supplementary statement of complainant-Siri Chand Head Constable. He further stated that on 20.08.2000, he reached Safdarjang Hospital, New Delhi, where he was told that Naveen Kumar had succumbed to the injuries. On that information, Section 302 of Indian Penal Code was added and special report Ex.PZ/3 was sent through Jai Bhagwan Constable. On 30.08.2000, he took into possession, sealed parcel of blood of the deceased and another sealed parcel containing underwear of the deceased from Ramesh Chand Assistant Sub Inspector, Delhi Police and prepared memo EX-PN in that regard. He stated that the parcels were deposited by him in intact condition with the Mohrir Head Constable of the Police Station.

15. PW-23 Rajender Singh, Inspector, partly investigated the case and arrested the accused Pardeep Kumar on 23.10.2000. He sent the parcels containing bullets and blood stained clothes through constable Sukh Dev to the Forensic Science Laboratory and recorded the statement of Sukhdev and Shamshudeen. On completion of investigation, he also submitted the report under Section 173 of the Code of Criminal Procedure.

16. PW-29 Randhir Singh, Inspector carried out further investigation of the case. He stated that on 31.10.2000, during interrogation; accused Pardeep made a disclosure statement Ex.PV and in pursuance

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thereof, got recovered one loaded pistol of .315 bore. The pistol was unloaded, sketch of the same Ex.PX/1 was prepared and the same was taken into possession vide memo Ex.PX, after putting in a sealed parcel bearing the seal of RSS. He prepared the site plan regarding place of recovery Ex.PX/2. He further stated that on 01.11.2000, accused Sunil alias Kalu Kallu was arrested from his house and one Hero Honda motor cycle parked in the courtyard of his house was taken into possession vide memo Ex.PQ and site plan regarding place of recovery Ex.PQ/1 was prepared. Accused Kamal Kishore alias Bablu was also arrested from his house on the same day. On 06.11.2000, accused Ashok Kumar alias Tindi Tindi was arrested and one scooter no. HR-26J/3325 was recovered from the court-yard of his house, which was taken into possession vide memo Ex.PO and site plan regarding place of recovery Ex.PO/1 was prepared. On 07.11.2000, accused Ashok Kumar was produced with a muffled face, before the Illaqa Magistrate with application Ex.PP/1 for arranging a Test Identification Parade but he refused to join the parade. On 10.11.2000, accused-Hazarat alias Om Parkash was arrested from Bus Stand Sukhrali. On interrogation, Hazarat made disclosure statement Ex.PY and in accused pursuance thereof, got recovered one country made pistol of .303 bore, the sketch of which Ex.PY/1 was prepared and the same was taken into possession vide memo Ex.PZ. Site plan regarding place of recovery Ex.PY/2 was prepared. On 11.11.2000, accused Hazrat was produced with a muffled face before the



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Illaqa Magistrate with application Ex.PV, but he refused to join the identification parade.

17. PW-27/Ved Parkash stated that Naveen Kumar deceased was related to him. On 31.10.2000, he and Moji Ram Visited the CIA Staff, Gurgaon for enquiring about the development of the case and in their presence, accused Pardeep made a disclosure statement Ex-PV and in pursuance thereof, got recovered one loaded pistol of .315 bore. The pistol was un-loaded, the sketch of the same Ex.PX/1 was prepared. The pistol and the cartridges were made into parcels, sealed with the seal of RSS and taken into possession vide memo Ex.PX.

18. PW-28/Raj Singh, Assistant Sub Inspector, stated that on 01.11.2000, accused Sunil alias Kalu Kalu was arrested by Randhir Singh, Inspector from his house and one motor cycle was recovered from his house which was taken into possession vide memo Ex.PQ. He further stated that on 06.11-2000, accused Ashok Kumar alias Tindi was arrested and at his instance, one scooter No.HR-26-J/3325 was recovered from his house and the same was taken into possession vide memo Ex.PO. On 10.11.2000, accused Hazrat alias Om Parkash was arrested and on interrogation, he made a disclosure statement Ex.PY and in pursuance thereof, got recovered one country made pistol, the sketch of which Ex.PY/1 was prepared, the same was put in a sealed parcel, sealed with the seal of SS and taken into possession vide memo Ex.PZ.



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19. PW-1/Naresh Kumar, draftsman proved the scaled Ex-PA prepared by him at the pointing out of Siri Chand, Head constable. PW-2/Mohan Lal photographer, proved the photographs of the site, Ex.P-1 and Ex.P-2 and the negatives thereof Ex.P-3 and Ex.P-4. PW-3/Jai Bhagwan Constable stated that on 20.08.2000, he delivered the special report to the learned Illaqa Magistrate, at his residence at 6.20 PM. PW-4/Arvind Kumar Constable took the *ruqa* Ex.PC to the Police Station for registration of the First Information Report. He further stated that after the medico legal report of Naveen, doctor handed over to him one parcel sealed with the seal of PC, containing clothes of the injured and another parcel containing a vial with a bullet taken out from the body of the injured. Both the parcels were taken into possession by Ramesh Kumar, Sub Inspector, vide memo Ex-PD.

20. PW-6/Shamshudeen Head constable, PW-11/Rishi Pal Constable, PW-20/Kuldeep Singh Constable and PW-21/Sukhdev Singh Constable produced their affidavits Ex.PF, Ex.PM, Ex-PT and Ex.PU respectively. According to their affidavits, the sealed parcels deposited with the Mohrir Head Constable by the Investigating Officer remained intact while in their respective custody till depositing in the Office of Forensic Science Laboratory.

21. PW-12/Ramesh Chander, Assistant Sub Inspector, Delhi Police stated that on 30.09.2000, after post mortem on the dead body of Naveen, doctor handed over to him one sealed parcel containing vial with blood and another sealed parcel containing under-wear of the deceased alongwith the



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copy of Post Mortem Report and other papers and he gave the same to Ramesh Kumar Sub Inspector and memo Ex-PN was prepared in that regard. PW-18/Ishwar Singh, Assistant Sub Inspector, Delhi Police stated that on 20.08.2000, he moved application Ex.PR/1 to Chief Medical Officer, Safdarjang Hospital, New Delhi, alongwith inquest papers for post mortem of the dead body of Naveen. The dead body was identified by Daya Nand and Santra Devi and their statements were recorded. He also stated that inquest proceedings were carried out by him and all the 12 papers were signed by him. PW-26 Ramesh Chander Sub Inspector Delhi Police stated that on 30.09.2000, he handed over inquest papers of deceased Naveen alongwith blood sample and clothes of the deceased in sealed parcel to Ramesh Kumar Sub Inspector Gurgaon Police.

22. PW-14/Shri L.N.Jindal, the then Chief Judicial Magistrate, Gurgaon, stated that on 07.11.2000, accused Ashok Kumar was produced before him and a request was made by the prosecution to get his Test Identification Parade conducted. He recorded the statement of Ashok Kumar, Ex.PP, vide which he refused to get his test identification parade conducted. He signed the statement in token of its correctness and passed an order Ex.PP/2.

23. PW-22/Shri Virender Malik stated that on 11.11.2000, he was Duty Magistrate, Gurgaon. On that day, the police produced before him accused Om Parkash son of Het Ram and moved application Ex.PV for arranging test identification parade. He recorded the statement of Om



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Parkash Ex.PV/1, whereby he refused to join the identification parade. Statement was signed by him in token of its correctness and he passed order Ex.PV/2.

24. Jagdish Chander Head constable/PW-15 stated that on 01.11.2000, he joined the investigation and visited village Wazirabad in connection with investigation of this case. Accused Sunil alias Kalu Kala was arrested from his house and one Hero Honda motor cycle bearing registration No.HR-51-B/1652 was taken into possession from his house vide memo Ex.PQ. PW-17/Ghanshyam Dass, Reader to District Magistrate, Gurgaon, proved the sanction order dated 22.11.2000, Ex.PS and identified the signatures of Shri Aproorve Kumar Singh on the same. PW-19/Rama Nand Head constable only recorded the statement of Udai Singh, photographer on 24.10.2000 and collected the photographs and negatives from him. PW-24 Udai Singh stated that at the instance of the police, he took photographs of the place where the accused were arrested. He proved the photographs Ex.P-5 to Ex.P-14 and the negatives thereof Ex.P-15 to Ex-P-24. PW-25 Devinder Kumar, Assistant Sub Inspector recorded the First Information Report Ex-PB after receiving ruqa Ex-PC from Sub Inspector Ramesh Kumar.

25. After completion of evidence of the prosecution, statements of the accused as envisaged under Section 313 of Code of Criminal procedure were recorded, wherein they denied the allegations levelled against them and pleaded innocence.



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26. In defence evidence, Constable Sanjay Kumar was examined as DW-1, Het Ram son of Mehar Chand as DW-2, Shiv Kumar son of Udal Raj Rao as DW-3 and Smt. Kela wife of Het Ram as DW-4.

27. DW-1/Constable Sanjay Kumar brought the record of registered letter No.2574 dated 10.11.2000, sent by the father of accused Om Parkash to Senior Superintendent of Police, Gurgaon, regarding Illegal detention of Om Parkash. He proved the original complaint and the report of CIA Inspector on the file, the copies of which are Ex.D-1 and Ex. D-2 respectively. DW-2/Het Ram, the father of accused Om Parkash testified that about three years ago, he produced his son Om Parkash in CIA Staff, Sector-15, Gurgaon. His son was detained illegally for several days and was given beatings and threatened. Therefore, he moved an application, the copy of which is Ex.D-1. Later on, he came to know that his son was falsely involved in a murder case, though, no offence was committed by his son. He also stated that he was not given hearing by any officer, on his complaint. DW-4/Smt. Kela wife of Het Ram, the mother of accused Om Parkash stated that about 3/4 years ago, she and her husband Het Ram produced their son Om Parkash before CIA Staff, Gurgaon and their son was illegally detailed for about 5/6 days and then falsely implicated in the present case. Nothing was recovered from their house. DW-3/Shiv Kumar deposed that on 19.08.2000, he was present at the gate of Bus Stand, Gurgaon. One boy was lying in an injured condition and he lifted him with the help of one person and got him admitted in the Hospital. No police official was present at the



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spot at that time. The Chief Medical Officer had given information to the police. He also stated that his statement was not recorded by the police.

28. Based on the evidence led, while two co-accused, namely, Sunil alias Kalu Kala and Kamal Kishore alias Bablu were acquitted of the charges framed against them, the accused-appellant, namely, Pardeep Kumar, Ashok Kumar alias Tindi and Hazrat alias Om Parkash came to be convicted and sentenced by the Court of the Additional Sessions Judge, Gurgaon, vide judgment of conviction and order of sentence dated 13/15.05.2004 as under:-

<b>Offence U/Ss</b>	<b>Sentence</b>	<b>Fine</b>	<b>In default of payment of fine</b>
302/34 IPC	Imprisonment Life each	of Rs.2,000/- each	RI 04 months each

29. The aforementioned judgment of conviction and order of sentence dated 13/15.052004 passed by the Additional Sessions Judge, Gurgaon is under challenge before this Court.

30. During the pendency of this appeal, the sentences of the accused-appellants, namely, Pardeep Kumar, Ashok Kumar alais Tindi and Hazrat alias Om Parkash were suspended by this Court vide separate orders dated 18.12.2007 and 18.10.2007 respectively.

31. The learned Amicus Curiae and the learned counsel for the appellants contend that the presence of PW-5/H.C. Siri Chand-complainant is highly doubtful at the spot. He was unknown to the accused and was required to describe their characteristic features in his statement made before



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the investigating officer which led to the registration of the FIR. No Test Identification Parade was held and the identification of the accused took place first time in Court which has little evidentiary value. This witness in his statement Ex.PC had got recorded that two boys were riding on a red colour motor cycle and one of them hit the deceased with the belt. Later on, in a supplementary statement recorded on 23.09.2000, he stated that it was on account of some misunderstanding that he had mentioned the motor cycle borne men and in fact, there were no other accused persons on a motor cycle. Further, this witness stated in his statement Ex.PC that the registration number of the scooter of the accused had come to his knowledge later on. However, in his deposition before the Court, he stated that the registration number of the scooter was told to him by some other unnamed police official. The said police official was never examined by the prosecution and to this extent, the version of this witness amounts to *hear say* evidence. As regards the scooter, while the colour of the same was not mentioned in the first statement, it was recorded as Blue in the statement before the Court.

32. They contend that the presence of PW-10/Krishan Kumar, an eye-witness to the occurrence is also doubtful at the spot. The occurrence took place on 19.08.2000 and the statement of this prosecution witness was recorded by the investigating officer for the first time on 29.10.2000 i.e. more than two months of the occurrence. This witness was a friend of the deceased and if he had been present at the spot, his statement would have been recorded immediately after the occurrence and would have been the

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basis for registration of the FIR. In fact, he chose to leave the place of occurrence and came back later. This conduct of a childhood friend leaving his friend in serious injured condition makes his version doubtful. Pertinently, the deceased was taken to hospital by one Shiv Kumar/DW-3 and not by this witness. This witness also identified the accused for the first time in the Court without there being a Test Identification Parade having been conducted.

33. They further contend that there are material discrepancies in the statements of PW-5/HC Siri Chand and PW-10/Krishan Kumar regarding the role of each of the accused which creates a doubt on the prosecution case.

34. Additionally, they contend that the prosecution had not proved on record that Pardeep Kumar got recovered a .315 bore pistol alongwith cartridges where Hazrat alias Om Parkash got recovered a .303 bore country-made pistol. The prosecution did not prove on record that the said weapons were in working condition. No report of the Armourer was produced by the investigating agency. Further, no FSL/Ballistic report has been placed on record by the prosecution to show that the pellet recovered from the body of the deceased was fired from the pistols recovered from the accused. In the absence of any such report, the accused cannot be connected with the evidence in question. Reliance is placed on '*Sukhwant Singh versus State of Punjab, 1995(2) RCR(Criminal) 433*' and '*Ram Singh versus The State of U.P. (Criminal Appeal No.206 of 2024 decided on 21.02.2024)*'.



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35. They, thus, contend that as the prosecution has not established its case beyond reasonable doubt, therefore, the impugned judgment dated 13/15.05.2004 is liable to be set aside.

36. The learned counsel for the State and the learned counsel for the complainant, on the other hand, contend that the FIR has been registered promptly. The statement of H.C.Siri Chand, the complainant who was examined as PW-5 cannot be doubted as he had no personal enmity with the accused. Similarly, PW-10/Krishan Kumar, an eye-witness of the occurrence was a friend of the deceased and has vividly described the manner in which the occurrence has taken place. Merely because there was no report of the Armourer or the FSL regarding the weapon used would not fatally effect the case of the prosecution. They, thus, contend that there was not merit in the present appeal and the same was liable to be dismissed.

37. We have heard the learned counsel for the parties.

38. As per the FIR, PW-5/HC Siri Chand, the complainant, initially, stated that there were boys travelling on a scooter who fired at the deceased. The scooter was accompanied by a motor cycle on which two persons were travelling one of whom gave a belt blow to the deceased. Later, on 23.09.2000, the supplementary statement of this witness was recorded wherein he stated that other than the scooter on which the assailants were travelling there was no motor cycle on which two other persons were travelling. Later, on 29.10.2010, during investigation the statement of PW-10/Krishan Kumar was recorded to the effect that there was a scooter on

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which three persons were travelling one of whom had fired at the deceased whereas there was also a motor cycle on which there were two persons travelling. When the complainant was examined as PW-5, he clarified that Ashok Kumar alias Tindi was driving the scooter. Hazrat alias Om Parkash was sitting in between whereas Pardeep sitting at the back had fired at the deceased. On the other hand, PW-10/Krishan Kumar changed his version. He stated that Sunil alias Kalu (acquitted accused) was driving the scooter. An unidentified person was sitting in between who pointed out the deceased to Pardeep who fired the shot. Interestingly, this witness was purportedly accompanying the deceased on the day of the occurrence who got recorded his statement much later on 29.10.2010. In fact, it has come on record that initially, he was treated as a suspect. The discrepancies in the number of vehicles as also the role played by each accused makes the prosecution case doubtful. Sunil alias Kalu who is stated to have been driving the scooter by PW-10/Krishan Kumar has been acquitted. Similarly, Om Parkash alias Hazrat who the complainant stated to have been sitting on the scooter in between Ashok Kumar alias Tindi and Pardeep was not named as an accused by PW-10/Krishan Kumar. This witness has also not named Ashok Kumar alias Tindi as the driver but Sunil alias Kalu as already mentioned. Therefore, the eye witnesses are only consistent about the role and identification of Pardeep.

39. As regard the Test Identification Parade, Pardeep was never produced before the Magistrate concerned for the purposes of a Test



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Identification Parade. Ashok Kumar alias Tindi and Om Parkash alias Hazrat were produced before the Magistrate but denied to be subjected to a Test Identification Parade. Later, they stated that they had not been produced in muffled faces. PW-10/Krishan Kumar has admitted that he had seen Pardeep and Sunil alias Kalu in the police station. Where the prosecution case itself is doubtful and the eye-witnesses are unbelievable, the refusal of the accused to undergo a Test Identification Parade on any tenable or untenable ground would not provide a missing link to the prosecution case.

39. Further, the weapons recovered from the accused have not been examined by an Armourer or by any Ballistic Expert. No such report is on record. Therefore, the prosecution case becomes doubtful on this count alone, particularly, when the eye-witnesses are not believable.

40. The Hon'ble Supreme Court has held that when the eye-version account is doubtful, then, in the absence of the report of the Ballistic Expert regarding the weapon used in the occurrence, the prosecution case would have no legs to stand on. The relevant judgment in that regard are as under:-

In *Sukhwant Singh versus State of Punjab, 1995(2) RCR(Criminal)433*, the Hon'ble Supreme Court held as under:-

*21. There is yet another infirmity in this case. We find that whereas an empty had been recovered by P.W.6, ASI Raghbir Singh from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution, for reasons best known to it, did not send the recovered empty and the seized pistol to the*



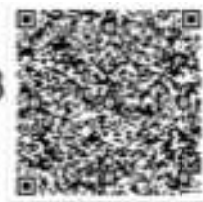
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*ballistic expert for examination and expert opinion. Comparison could have provided link evidence between the crime and the accused. This again is an omission on the part of the prosecution for which no explanation has been furnished either in the trial Court or before us. It hardly needs to be emphasised that in cases where injuries are caused by fire-arms, the opinion of the Ballistic Expert is of a considerable importance where both the fire-arm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial Court in such cases affects the creditworthiness of the prosecution case to a great extent.*

In '**Ram Singh versus The State of U.P. (Criminal Appeal No.206 of 2024 decided on 21.02.2024)**', the Hon'ble Supreme Court held as under:-

*21. At this stage, what is noticeable is that the weapon of offence i.e. the country made pistol used by the accused in the offence, could not be recovered by the police and therefore not exhibited. Thus, the main material evidence i.e., the weapon of offence was not exhibited. In the seizure memo, it was mentioned that a 12 bore cartridge was lying on the cot and alongwith the tikli of the cartridge which was stuck on the wound of the deceased, were seized by the police. On the other hand, in the evidence of the doctor, PW-6 as well as from the post-mortem report, it has come on record that 55 small pellets were taken out from the body of the deceased during post-mortem. The bullet wound was bone-deep which clearly reveals that the deceased was shot at from close range. In his evidence, PW-4 Sub-Inspector B.D. Verma deposed that during preparation of the inquest report, one tikli and 12 pellets were seized from the wound of the deceased. The pellets as well as the tikli of the cartridge were not sent to any ballistic expert, as a result of which there is no ballistic report on the basis of which it could be said for sure that the pellets found outside the body and from within the body could be traceable to the tikli of the 12 bore cartridge which in turn could be traced to the*



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*country made pistol from which the shot was allegedly fired by the appellant. There is no explanation of the prosecution regarding the 55 pellets retrieved from the body of the deceased during post-mortem; whether those could be linked to the 12 bore cartridge and the tikli. Importantly, the country made pistol was never recovered. Prosecution has not said anything in this regard. That apart, as per the version of PW-4, the blood stained clothes of the deceased which were seized were sent to the chemical examiner but the report from the chemical examiner was not received till the date and time of his deposition.*

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23. In *Munna Lal v. State of U.P.*, (2023) SCC Online SC 80, this Court opined that since no weapon of offence was seized in that case, no ballistic report was called for and obtained. This Court took the view that failure to seize the weapon of offence on the facts and in the circumstances of the case, had the effect of denting the prosecution story so much so that the same together with non-examination of material witnesses constituted a vital circumstance amongst others for granting the appellants the benefit of doubt.

24. On the aspect of non-examination of ballistic expert and its impact on the prosecution case, one of the earliest decisions of this Court was rendered in *Gurucharan Singh v. State of Punjab*, AIR 1963 SC 340. This Court observed that there is no inflexible rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused by a gun and those prima facie appeared to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral



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*evidence can be corroborated by leading the evidence of a ballistic expert. However, in what cases the examination of a ballistic expert is essential for the proof of the prosecution case must naturally depend upon the circumstances of each case. This Court held as under:*

*41.... These observations do not purport to lay down an inflexible Rule that in every case where an accused person is charged with murder caused by a lethal weapon, the prosecution case can succeed in proving the charge only if an expert is examined. It is possible to imagine cases where the direct evidence is of such an unimpeachable character and the nature of the injuries disclosed by post-mortem notes is so clearly consistent with the direct evidence that the examination of a ballistic expert may not be regarded as essential. Where the direct evidence is not satisfactory or disinterested or where the injuries are alleged to have been caused with a gun and they prima facie appear to have been inflicted by a rifle, undoubtedly the apparent inconsistency can be cured or the oral evidence can be corroborated by leading the evidence of a ballistic expert. In what cases the examination of a ballistic expert is essential for the proof of the prosecution case, must naturally depend upon the circumstances of each case....*

*25. This issue was again examined by this Court in Sukhwant Singh v. State of Punjab, (1995) 3 SCC 367. In that case, this Court observed that though the police had recovered an empty cartridge from the spot and a pistol along with some cartridges were seized from the possession of the appellant at the time of his arrest, yet the prosecution did not send the recovered empty cartridges and the seized pistol to the ballistic expert for examination and expert opinion. This Court was of the view that if such opinion would have been called for, comparison could have been made which in turn could have provided link evidence between the crime and the accused. It was noted that this again was an omission on the part of the prosecution for which no explanation was furnished. It was thereafter that this Court declared as follows:*



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21.... *It hardly needs to be emphasised that in cases where injuries are caused by firearms, the opinion of the ballistic expert is of a considerable importance where both the firearm and the crime cartridge are recovered during the investigation to connect an accused with the crime. Failure to produce the expert opinion before the trial court in such cases affects the creditworthiness of the prosecution case to a great extent.*

25.1. *Thus, in the aforesaid case, this Court emphasized that in cases where injuries are caused by firearms, the opinion of the ballistic expert becomes very important to connect the crime cartridge recovered during the investigation to the firearm used by the accused with the crime. Failure to produce expert opinion in such cases affects the creditworthiness of the prosecution case to a great extent.*

26. However, in *State of Punjab v. Jugraj Singh*, (2002) 3 SCC 234, this Court opined that when there are convincing evidence of eyewitnesses, non-examination of the expert would not affect the creditworthiness of the version put forth by the eyewitnesses.

27. This Court considered the issue as to failure of the prosecution to recover the crime weapon and also non-examination of ballistic expert in *Gulab v. State of U.P.*, (2022) 12 SCC 677. In that case, the deceased had sustained a gunshot injury with a point of entry and exit. In that case, prosecution had relied on the eyewitnesses' accounts of three eyewitnesses which were found to be credible. Therefore, non-recovery of the weapon of the offence would not dis-credit the case of the prosecution. After referring to the previous decisions, this Court opined that in the facts and evidence of the case, the failure to produce the report by a ballistic expert who could testify to the fatal injuries being caused by a particular weapon would not be sufficient to impeach the credible evidence of the direct witnesses.

28. In *Pritinder Singh v. State of Punjab*, (2023) 7 SCC 727, this Court in the facts and evidence of that case held that conviction could not be sustained. That apart, from not collecting any evidence as to whether the gun used in the crime belonged to



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*the appellant or not, even the ballistic expert had not been examined to show that the wad and pellets were fired from the empty cartridges of the appellant. In that case which was based on circumstantial evidence, it was held that when there was serious doubt as to credibility of the witnesses, the failure to examine ballistic expert would be a glaring defect in the prosecution case.*

*29. Thus, what can be deduced from the above is that by itself non-recovery of the weapon of crime would not be fatal to the prosecution case. When there is such non-recovery, there would be no question of linking the empty cartridges and pellets seized during investigation with the weapon allegedly used in the crime. Obtaining of ballistic report and examination of the ballistic expert is again not an inflexible rule. It is not that in each and every case where the death of the victim is due to gunshot injury that opinion of the ballistic expert should be obtained and the expert be examined. When there is direct eye witness account which is found to be credible, omission to obtain ballistic report and non-examination of ballistic expert may not be fatal to the prosecution case but if the evidence tendered including that of eyewitnesses do not inspire confidence or suffer from glaring inconsistencies coupled with omission to examine material witnesses, the omission to seek ballistic opinion and examination of the ballistic expert may be fatal to the prosecution case.*

41. The upshot of the aforementioned discussion is that the prosecution has not been able to prove its case beyond reasonable doubt and therefore, the present appeal is allowed and the impugned judgment dated 13/15.05.2004 passed by the Additional Sessions Judge, Gurgaon is set aside. The accused-appellants are acquitted of the charges framed against them.

42. **CRR-1644-2004 (O & M)**

In view of the order passed in **CRA-D-612-DB-2004**, the

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present revision petition seeing enhancement of fine and imposition of death sentence has been rendered infructuous and the same is dismissed as such.

43. The pending applications, if any, shall stands disposed of accordingly.

**( GURVINDER SINGH GILL )  
JUDGE**

**11.07.2025**  
sukhpreet

**( JASJIT SINGH BEDI )  
JUDGE**

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