

In the High Court of Punjab and Haryana at Chandigarh

1. **CRA-D-885-2019 (O&M)**
Reserved on: 9.5.2023
Date of Decision: 17.5.2023

Balbir Singh Appellant

Versus

State of Punjab Respondent

2. **CRA-D-843-2019 (O&M)**

Kuldeep Kaur and another Appellants

Versus

State of Punjab Respondent

3. **CRA-D-821-2019 (O&M)**

Narinder Singh Appellant

Versus

State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Ankur Mittal, Advocate with
Ms. Kushaldeep Kaur, Advocate and
Mr. Shivam Garg, Advocate
for the appellant (in CRA-D-885-2019).

Mr. Abhinav Gupta, Advocate
for the appellants (in CRA-D-843-2019).

Mr. P.S.Ahluwalia, Advocate
for the appellant (in CRA-D-821-2019).

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since all the above appeals arise from a common verdict, made
by the learned trial Judge concerned, hence all the appeals (supra) are

amenable for a common verdict being made thereons.

2. All the appeals (supra) are directed against a common verdict of conviction, made on 9.8.2019, against the convicts-appellants, upon case bearing SC/0000245/2016, thus by the learned Additional Sessions Judge, Patiala. Through the above said verdict, the learned trial Judge concerned, convicted the accused, for the commission of offences punishable, under Sections 302, 326, 324, 506 read with Section 34 of the IPC. Moreover, through a separate sentencing order, drawn on 14.8.2019, the learned trial Judge concerned, imposed upon each of the convicts, sentence of imprisonment as well as of fine but in the hereinafter extracted manner:-

Convict Balbir Singh

Under Section 302 of the IPC	To undergo rigorous imprisonment for life and ordered to pay fine of Rs. 20,000/- (Rupees twenty thousand only) and in case of default of fine, convict has to further undergo R.I. for two years.
Under Section 326/34 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 324 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 324/34 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 506 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.

Convict Rajinder Singh

Under Section 302 of the IPC	To undergo rigorous imprisonment for life and ordered to pay fine of Rs. 20,000/- (Rupees twenty thousand only) and in case of default of fine, convict has to further undergo R.I. for two years.
Under Section 326 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 324 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 324/34 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 506 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.

Convict Narinder Singh

Under Section 302 of the IPC	To undergo rigorous imprisonment for life and ordered to pay fine of Rs. 20,000/- (Rupees twenty thousand only) and in case of default of fine, convict has to further undergo R.I. for two years.
Under Section 326/34 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 324 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 324/34 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 506 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of

	default of fine, convict has to further undergo R.I. for 03 months.
--	---

Convict Kuldeep Kaur

Under Section 302/34 of the IPC	To undergo rigorous imprisonment for life each and ordered to pay fine of Rs. 20,000/- (Rupees twenty thousand only) each and in case of default of fine, convict has to further undergo R.I. for two years.
Under Section 326/34 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 324/34 of the IPC	To undergo rigorous imprisonment for 03 years each and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.
Under Section 506 of the IPC	To undergo rigorous imprisonment for 03 years and ordered to pay fine of Rs. 5,000/- (Rupees five thousand only) and in case of default of fine, convict has to further undergo R.I. for 03 months.

3. All the above imposed sentences of imprisonment, were ordered to run concurrently but the period of detention undergone by each of the convicts, during the investigations, and, trial of the case, were, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment. In addition, on realization of the fine amount, it was directed, that the amount Rs. One lac, be awarded, as compensation to the legal heirs of deceased Balkar Singh, and, Rs. 20,000/- to complainant Garja Singh, besides Rs. 20,000/- to injured Prem Singh.
4. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to

institute thereagainst the instant criminal appeals, before this Court.

5. However, during the pendency of instant appeals, before this Court, this Court, upon CRM-49971-2022, filed in the CRA-D-843-2019, had made an order, that given the occurrence of demise of co-appellant No. 1-Kuldeep Kaur, thus during the pendency of the appeal (supra), rather insofar as the above appeal was concerned, thereby the same being liable to become declared abated, and, thus became dismissed as such, in respect of co-appellant No. 1-Kuldeep Kaur.

Factual Background

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P-36 is assigned. The narrations carried in Ex. P-36, are that on 13.5.2016, a telephonic message was received from A.P. Jain Hospital, Rajpura regarding admission of Garja Singh son of Sarwan Singh, and, Prem Singh son of Gurdev Singh, both residents of village Mehmoodpur in an incident of fight, and, Prem Singh was referred to Sector 32, Chandigarh for treatment, whereas Balkar Singh son of Jarnail Singh, resident of Mehmoodpur had died. On this information, Inspector Manjit Singh, SHO, PS Kheri Gandian along with other police officials reached Civil Hospital, Rajpura, where ASI Sukhwinder Singh, and, other police officials were already present. Inspector Manjit Singh recorded the statement of Garja Singh, wherein he stated that for a common pond a pit was being dug in their village, so that the water could pass, and, near to that pit, house of Rajinder Singh @ Happy son of Balvir Singh etc. was situated. In the evening at 7.30 PM, he was sitting in the corridor of Gurudwara Sahib near pit and Prem Singh son of Gurdev Singh was coming from his house towards him. When Prem Singh was a little back, then Rajinder Singh @ Happy son of Balvir Singh armed with Kirch, Narinder Singh son of Balvir

Singh armed with Kirch, suddenly came out by running from their house and Rajinder Singh @ Happy gave Kirch blow on the left arm of Prem Singh and also gave one more Kirch blow towards Prem Singh, which hit on his abdomen. He further stated that Narinder Singh gave Kirch blow on the right arm of Prem Singh and Prem Singh fell down on the spot and complainant raised Raula "Bachao- Bachao". In the meantime, Balvir Singh son of Ajmer Singh armed with knife and his grandson Manjit Singh @ Laddi son of Rajinder Singh armed with stick, and, Kuldeep Kaur wife of Rajinder Singh, Sukhdev Kaur wife of Balvir Singh and sister-in-law of Rajinder Singh @ Happy resident of Kohle Majra, came there and raised lalkaras to catch hold them, and, to not allow them to go alive, and, they will be taught a lesson for digging a pit, upon which Balbir Singh gave a knife blow in the left leg of complainant. Complainant raised hue and cry. On hearing their raula, Balkar Singh son of Jarnail Singh rushed towards them. Then Rajinder Singh @ Happy and Narinder Singh and Balbir Singh and his grandson Manjit Singh @ Laddi suddenly scuffled with Balkar Singh and Rajinder Singh @ Happy gave Kirch blow into the chest of Balkar Singh towards left side and Balbir Singh also gave knife blow into the chest of Balkar Singh. Rajinder Singh @ Happy gave another blow towards Balkar Singh, which hit into the left lower flank and Narinder Singh gave a Kirch blow towards Balkar Singh, which hit in the right lower flank, and, due to that Balkar Singh fell down at the spot. Then Manjit Singh @ Laddi gave many injuries by giving him stick blows and Kuldeep Kaur and Sukhdev Kaur and their relatives gave kick blows in the abdomen and other parts of the body of Balkar Singh and Prem Singh. On hearing the Raula, Balwinder Singh son of Pritam Singh, Rajinder Singh @ Bittu son of Prem Singh and Jaspal Singh son of Jarnail Singh also

came at the spot and on seeing them, all the accused persons fled away from

the spot along with their respective weapons. While leaving the spot, they raised lalkaras that they have escaped that day and they would see them later on. The motive behind the occurrence was that they along with Sarpanch Harwinder Singh were clearing the pits, but Balbir Singh etc. felt annoyed with it. Thereafter, Balwinder Singh son of Darshan Singh, Ravinder Singh son of Chamkaur Singh made arrangement of vehicle and got admitted complainant, Prem Singh and Balkar Singh at A. P. Jain Hospital, Rajpura, where doctor declared Balkar Singh as dead and Prem Singh was referred to GMCH, Sector 32, Chandigarh for treatment. On the basis of this statement, the present case was got registered.

Investigation proceedings

7. During investigation, site plan of the place of incident was prepared. Statements of witnesses were recorded. Accused persons were arrested. Weapons of offence were got recovered. Medical record of the injured was collected. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., against accused Balbir Singh, Rajinder Singh, and, Kuldeep Kaur, before the learned committal Court concerned.

Committal Proceedings

8. Since the offences under Section 302 and 307 of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 12.9.2016, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

9. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to

draw charges against accused, on 7.10.2016, for the offences punishable under Sections 302, 307, 324, 506 read with Section 34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

10. Thereafter, the prosecution moved an application under Section 319 of the Cr.P.C. for the summoning of Narinder Singh, Jaswant Kaur, Sukhdev Kaur and Manjit Singh, as additional accused. Through an order, made thereons by the learned trial Judge concerned, on 22.5.2017, the application (supra) was partly allowed, and, only co-accused Narinder Singh was ordered to be summoned to face trial along with other co accused.

11. Thereafter, vide order dated 4.9.2017, the learned trial Judge proceeded to draw an amended charge sheet against all the accused for commission of offences punishable under Sections 302, 307, 324, 506 read with Section 34 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

12. In proof of its case, the prosecution examined 17 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, and, led three witnesses into the witness box.

13. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge(s) (supra), as became drawn against them, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convicts.

Introductory

14. The prosecution case is rested, upon the statements of the injured eye witnesses to the occurrence, who stepped into the witness box as PW-1, and, PW-2. Moreover, the prosecution case is also rested, upon the recoveries, as made from the accused concerned, in pursuance to the accused making their disclosure statements to the investigating officer concerned. The said disclosure statements are respectively assigned Ex. P-28 and Ex. P-32, and, the recoveries, as made in pursuance thereof, are respectively assigned Ex. P-29 and Ex. P-33.

Submissions of the learned counsels for the appellants

15. The learned counsels for the aggrieved convicts-appellants, have argued before this Court, that the crime incident took place at the crime site Ex. P-22. They further submit, that at the crime site, deceased Balkar Singh allegedly suffered lethal injuries on his person. Furthermore, they submit, that the purported ocular witnesses to the occurrence, namely, Garja Singh, and, Prem Singh also allegedly suffered injuries on their respective persons, as are detailed in their respectively drawn MLRs, to which, respectively Ex.P-17 and Ex. P-19, are assigned. However, they submit, that though the ill-fated occurrence took place, at the crime site on 13/14.5.2016, but since in prompt sequel thereof, the reporting of the incident, rather was not made to the police. Contrarily, they submit, that the FIR Ex. P-36, became registered on 14.5.2016, on the statement of injured witness Garja Singh Ex. PA, but yet since the above delay has remained unexplained, therefore, they submit, that the prosecution story, as detailed in the FIR (supra), is prevaricated, and, tainted, thus suffers from the vice(s) of premeditation, and, concoction.

Reason for rejecting the above arguments

factum, that from a reading of the deposition of PW-7 Dr. Gurnik Singh, it becomes unfolded, that injured Garja Singh arrived at the hospital, on 13.5.2016, at 20:35 hours, and, the examination, upon his injuries, was conducted in the emergency at 21:25 hours. Therefore, the said examination of injuries are testified by him to be the following injuries:-

“1. Incised wound 1 cm x 1 cm on left shin, above ankle, fresh bleeding present. Advised ortho opinion and the injury was kept under observation.”

17. The said injury, as detailed in Ex. P-17, is opined in Ex. PW-18/A to be simple assault injuries. Be that as it may, admittedly the ill-fated occurrence happened at the crime site on 13.5.2016, which resulted in ruqa Ex. P-15 becoming drawn. However, when as revealed by the testification of PW-7, that the injured eye witness to the occurrence Garja Singh, was admitted in the hospital on 13.5.2016 at 20:35 hours, and, became examined in the emergency, besides when injuries, detailed in Ex. P-17, are declared in Ex. PW-18-A, to be simple assault injuries. Therefore, when at that stage, the police officer, had not visited the hospital, whereas, with the complainant visiting the police station on 14.5.2016, and, his through the making of Ex. PA, ensuring that the FIR (supra), becomes lodged. Resultantly, when the crime incident occurred on 13.5.2016, but when in sequel to the occurrence taking place at the crime site, one Garja Singh, the injured eye witness, to the occurrence thus taking to visit the hospital on the same day hence for receiving the treatment in the emergency ward. Moreover, when he had not then made any interface with the police officer, rather made an interface with the police officer only on 14.5.2016. Therefore, given Ex. PW-18/A, narrating that Garja Singh had sustained simple assault injuries, as such, the making of Ex. PA by Garja Singh, resulting in lodging of the FIR (supra),

thus cannot be said to be suffering from the vices of any premeditation and, concoction. Reiteratedly, when on the day of occurrence, he was shifted to the hospital, and, only after his being discharged from the hospital, as he was not required to be hospitalized, given his receiving simple assault injuries, as pronounced in Ex. PW-18/A, his thus taking to make Ex. PA, before the police officer concerned. As but a natural corollary, there is no delay as such in reporting of the crime event to the police, rather the delay for the above reasons is well explained.

Second submission of the learned counsel for the appellants

18. The learned counsel for the appellants further submits, that since PW-3 ASI Rajinderpal, in his cross-examination, has stated, that there is no mentioning in DDR No. 13 of 17.5.2016, whereby convict Balbir Singh was removed from the police lock-up, that he suffered a disclosure statement Ex. P-28. Therefore, the learned counsel has argued with much force, that the disclosure statement, as made by convict Balbir Singh Ex. P-28, thus carries no evidentiary worth. Furthermore, he has also submitted, that as unfolded by DDR No. 28 drawn on 17.5.2016, convict Balbir Singh was sent to judicial custody, but yet when there is no mention therein, about the convict Balbir Singh making a disclosure, as such no evidentiary tenacity is acquired by the said disclosure statement Ex. P-28, as made by convict Balbir Singh, and, which resulted in recovery of weapon of offence, being made in pursuance to the recovery memo Ex. P-29.

Reason for rejecting the above arguments

19. The reason for rejecting the above argument ensues from a reading of the signed disclosure statement of convict Balbir Singh. The said signed disclosure statement occurs in Ex. P-28. The said exhibit has

been drawn on 14.5.2016. Therefore, given its being drawn on the said date,

which is but prior to the convict (supra) becoming committed to judicial custody, thus it cannot be said, that it was not made by convict Balbir Singh during the phase of his being in police custody, but was made by him when, as such he became put to judicial custody. Moreover, in the confession of guilt borne in Ex. P-28, thereins occur recitals about convict Balbir Singh, using a knife in his committing the alleged offence, and, his concealing the said knife near the outer wall of the house of his son Narinder Singh near Saidkheri underneath the earth. The place of its hiding, and, keeping, is stated thereins to be known only to him. Since through recovery memo Ex. P-29, he caused recovery of the incriminatory knife. Therefore, the confession of guilt, as made in Ex. P-28, is not a bald and simpliciter confession, to which the embargo of Section 25 of the Indian Evidence Act, becomes invited. Contrarily when in pursuance to its making, the convict (supra), through Ex. P-29 thus caused the recovery of the incriminatory knife, resultantly the confession of guilt Ex. P-28, becomes both admissible as well as a relevant piece of incriminatory evidence, thus against convict Balbir Singh.

20. Significantly also, when the weapon of offence was recovered from the place known only to the convict (supra). Therefore, it cannot be said, that the recovery of the said weapon of offence, through Ex. P-29, is an engineered or a contrived recovery, which otherwise it could be so construed, if it was recovered from an open accessible place. Since it was recovered from a secluded, and/or, a place which was known only to the accused concerned, therefore both Ex. P-28 and Ex. P-29 acquire evidentiary worth.

21. Moreover, the fact of both the above exhibits thus carrying the signatures of convict Balbir Singh, which however he neither denied nor the

said denial became ably proven by him, through his leading able evidence, resultantly both the above exhibits acquire formidable evidentiary worth. An additional impetus to the above, becomes gathered from the factum, that neither to the marginal witness thereto, one ASI Sukhwinder Singh, nor to the investigating officer concerned, any suggestion became meted, thus to bely the drawings of Ex. P-28, and, Ex. P-29, rather on the ground, that they were engineered or contrived recoveries. Resultantly also immense evidentiary vigour is to be assigned to the above exhibits.

Third submission of the learned counsel for the appellants

22. The further argument which has been raised, before this Court, by the learned counsel for the appellants, is that since in the application for remand, as became moved on 17.5.2016, there is no mention of makings of the above exhibits, at the instance of the convict concerned, by the investigating officer concerned, therefore, no sanctity is to be assigned to the above exhibits.

Reason for rejecting the above argument

23. However, the above argument is rejected, as there was no necessity for the investigating officer concerned, to mention in the remand application, the above fact, as the said fact occurs in the police zimnis, which however are inadmissible in evidence, excepting for the investigating officer concerned, being confronted with the zimnis, thus to bely the making of Ex. P-28 and Ex. P-29. Nor there was any necessity for the investigating officer concerned, to, on production of the accused on 17.5.2016, produce the said recovered weapon of offence, before the learned committal Court concerned, as the necessity for production of the recovered weapon of offence, occurs only before the learned trial Judge, and, not before the

Fourth submission of the learned counsel for the appellants

24. The learned counsel for the appellants further argues, that though convict Rajinder Singh @ Happy purportedly made a disclosure statement Ex. P-32, wherein, he purportedly confessed his guilt, in committing the charged offences. Moreover, he also submits, that though in Ex. P-32, he purportedly made a disclosure, that the incriminatory kirch, which became used by him for committing the crime event, becoming purportedly concealed by him in the room of his motor, near the bridge of minor canal, on the right side of gate, after cleaning with sand underneath the earth, and, also wherein he also purportedly evinced his readiness to cause the recovery of the kirch to the investigating officer concerned, from the place of its hiding, and keeping, given the said places thus being known only to him. In addition, he submits, that though purportedly in pursuance thereof, he had also through Ex. P-33, purportedly caused the recovery of the incriminatory kirch, to the investigating officer concerned. However, he submits, that since PW-3 ASI Rajinderpal, in his cross-examination, has stated that in the malkhana register, as maintained in the police station concerned, there is no entry therein, about either the case property appertaining to convict Rajinder Singh @ Happy, thus being taken out from the police malkhana on 27.5.2016, or in respect of its being re-deposited in the malkhana concerned, on 27.5.2016. Therefore, the learned counsel argues, that the recovery, as made from convict Rajinder Singh @ Happy through Ex. P-33, is a tainted recovery, as there is no entry in the malkana register about its being taken out or its being re-deposited.

Reason for rejecting the above submission

25. However, for the reasons to be assigned hereinafter, the above argument is extremely frail, and, deserves to become rejected.

26. The reason for drawing the above inference, is that, the signed disclosure statement of convict Rajinder Singh @ Happy Ex. P-32, was drawn on 21.5.2016, and, the said signed disclosure statement resulted in the convict Rajinder Singh @ Happy, through the drawing of Ex. P-33, causing the recovery of incriminatory kirch, to the investigating officer concerned. The reason for forming the above inference also emanates from PW-3, denying the suggestion, as became put to him, that there was any tampering in the entry relating to the deposit of the relevant weapon of offence, as became recovered through Ex. P-33. Furthermore, since the investigating officer concerned (PW-16), who made the said recovery, at the instance of the convict concerned, has in his examination-in-chief deposed, that after causings of the recovery to him, of the relevant weapon of offence, thus by the co convict (supra), his depositing the said recovered incriminatory weapon of offence, in the police malkhana but with the MHC. The said deposition occurring, in the examination of the investigating officer concerned, has, however, remained unbelied. Therefore, besides since the recovered weapons' of offence, from each of the convicts, thus through the above recovery memos, also did come to be produced in Court, but in an untampered, and, sealed condition. However, when on said production(s) of the case property(ies), before the learned trial Judge concerned, there is no subsequent cross-examination(s), by the learned defence counsel, upon the investigating officer concerned, but suggestive, that the recoveries are tainted or concocted. Resultantly, in the absence of any cross-examination, being made by the learned defence counsel, upon, the investigating officer concerned, thus the production of said recovered weapons of offence, before the learned trial Judge concerned, does beget an inference that PW-16, thus not only caused valid recovery of weapons of offence, but thereafter also he

deposited them, with the malkhana incharge, who subsequently made an entry in respect thereof, in the register concerned.

27. Moreover, the recovery memos (supra), carry the signatures of convicts Balbir Singh and Rajinder Singh @ Happy. Since the recovery(ies) of the incriminatory items, as made through recovery memos (supra) have not been proven to be false or contrived recovery(ies). Moreover, when the signatures of the accused, as existing thereons, are neither ably denied nor when the said denial has been efficaciously proven. Thus, the above recovery(ies), but is/are not only to be concluded, to be validly made recovery(ies), but are also to be concluded, to be of the very same incriminatory weapons, which did become used by the convicts, rather in theirs inflicting injuries, on the injured eye witnesses concerned, and, also in thereins committing the murder of the deceased concerned.

Argument of the learned counsel for convict Narinder Singh

28. The learned counsel for convict Narinder Singh has made a vigorous submission before this Court, that since the said co-convict neither made any disclosure statement to the investigating officer concerned, whereby he confessed his incriminatory participation, in the crime event, nor when in pursuance thereof, any recovery became effected by him, to the investigating officer concerned. Therefore, he argues, that in the face of the above, no incriminatory liability can be fastened upon co-convict Narinder Singh.

Reason for rejecting the above arguments

29. The reason for rejecting the above argument, is comprised in the factum, that both the injured eye witnesses to the occurrence, PW-1, and, PW-2, in their respectively made examination-in-chief, thus attributing an incriminatory role to the accused, as named therein, amongst whom is also

co-convict Narinder Singh. Both the said witnesses, with utmost inter se corroboration deposed, that they received injuries on their respective persons. The said injuries are enunciated in their respectively drawn MLRs to which Ex. P-17 and Ex. P-19 are assigned. The injuries, as detailed in the MLR Ex. P-19, and, as appertains to injured eye witness Prem Singh, are testified by PW-7 Dr. Gurnik Singh, thus in the hereinafter extracted manner.

- “1. *Incised wound 3 cm x 1 cm on front of right arm. Advised ortho opinion. Kept under observation.*
2. *Incised wound 3 cm x 1 cm on abdomen, fresh bleeding present. Advised surgical opinion. Kept under observation.*
3. *Incised wound 5 cm x 2 cm on left forearm. Advised ortho opinion. Kept under observation.*
4. *Incised wound 3 cm x 1 cm on back of right arm. Advised ortho opinion. Kept under observation.*

30. Therefore, when the injured eye witnesses, did suffer assault injuries on their persons, which they attribute with utmost inter se corroboration thus to the accused, resultantly, credence is to be assigned to their respectively made testifications. Thereins speakings also occur about co-convict Narinder Singh, delivering a kirch blow on the right flank of Balkar Singh, thereupon Balkar Singh falling on the ground at the spot. The attribution of inculpability to all the convicts inclusive convict Narinder Singh, thus in the respective examinations-in-chief of PW-1, and, PW-2, who are the injured eye witnesses to the occurrence, rather did not evidently suffer any erosion, during the phase of theirs being cross-examined by the learned defence counsel. Therefore, the testifications, rendered by PW-1 and PW-2 acquire immense creditworthiness.

31. The significant aspect of the speakings made by PW-1 Garja Singh, in his cross-examination, relate to the said Garja Singh, in his cross-examination, answering in the affirmative, thus an affirmative suggestion(s), as became put to him, and, which relate(s) to convict Balbir Singh inflicting knife blow on his left leg. Moreover, the further incriminatory suggestion also relates to only one side of the said knife being sharp. To the said affirmative suggestion, an affirmative answer emanated from PW-1. Moreover, also during the course of cross-examination, being made, upon Garja Singh, an affirmative suggestion became put to him, relating to the length of blade of the kirch, which was possessed by convict Narinder Singh. To the said suggestion, Garja Singh feigned ignorance. Leaving aside the feignings, as, made by Garja Singh to the above suggestion, meted to him, rather, hence the cumulative effect of the above, is that, the defence conceding to the incriminatory participation of co-convict Balbir Singh, in the crime event, but also its conceding to co-convict Narinder Singh, thus wielding a kirch, given there being no necessity of the above suggestion, being meted to Garja Singh, relating to the length of the blade of the kirch, unless co-convict Narinder Singh, thus was available at the crime site.

32. The said thus clearly speaks about the presence of co-convict Narinder Singh at the crime site. Both the injured eye witnesses, who evidently sustained injuries, as pronounced in their respective MLRs, thus on their respective persons, thus also making speakings with unison about the incriminatory participation of the convicts in the crime event. Moreover, the said testified incriminations, as made against the convicts, when are free from the stains of any rife or blatant improvements or embellishments, being made by them, from their previously made statements in writings.

Therefore, utmost sanctity is to be assigned to their respectively rendered

eye witness account qua the crime event.

Second argument of the learned counsel for convict Narinder Singh

33. However, the learned counsel for appellant-convict Narinder Singh submits, that since the evidence adduced in defence, by the said convict, makes candid suggestion, that he was not present at the crime site. Therefore, he intends to dispel the vigour of the consistent testifications, as made by PW-1 and PW-2, whereby they attributed an incriminatory role to even co-convict Narinder Singh. The said plea of alibi is rested in the statement of DW-2, who conducted an inquiry, whereby he exonerated Narinder Singh, who however was added as an accused, through an affirmative order, being made on an application, as became cast under Section 319 of the Cr.P.C., by the prosecution. The said order was drawn on 22.5.2017.

Reason for rejecting the above argument

34. Therefore, it appears that convict Narinder Singh, did not earlier to his being arraigned as an accused in the case, join investigations, nor obviously the investigating officer concerned, had an occasion to arrest him, and, to thereafter during the course of his police custody, make interrogations, upon him, whereby convict Narinder Singh, thus made a disclosure statement, thereby confessing his incriminatory participation, in the crime event, nor also when in pursuance thereof, he obviously did not cause recovery of the kirch, to the investigating officer concerned. Consequently, the effect of the above, is that, even if co-convict Narinder Singh, did not make any disclosure statement, to the investigating officer concerned, whereby he confessed his incriminatory participation in the crime event, nor also he caused any recovery of any weapon of offence, to the investigating officer concerned, thus thereby, the incriminatory role, as

fastened to him by the eye witnesses to the occurrence, does not loose its creditworthiness.

35. Moreover, even the exoneration, as made by DW-2 qua co-convict Narinder Singh, thus appears to be in proceedings carried parallel to the investigations, carried into by the investigating officer concerned, thereby he rather appears to stall the makings of fair and impartial investigations into the crime event, thus by the investigating officer concerned, when alone had the authority under law, to make an investigation into the penal offence, as spelt in the FIR. In the said FIR, there is a reference of co-convict Narinder Singh also making an incriminatory participation in the manner in which both PW-1 and PW-2 also consistently deposed. Necessarily, hence no credence can be assigned to the deposition of DW-2, whereons the learned counsel for the convict-appellant, thus rests an argument that, thereby the plea of alibi has been proven. The primary reason for dispelling the vigour of the testimony of the said inquiry officer, is that, he did not record, the statement of the investigating officer concerned, which was rather required to be imperatively recorded by him. Secondly, the best evidence in support of the absence of the above convict, at the crime site, became comprised in electronic evidence, but even the said evidence is not occurring in the inquiry report Ex. PW-15/D1. Thirdly, the exoneration, as made qua co-convict Narinder Singh, stems from a joint statement Ex. DW-2/C, which however does not carry the signatures of the persons, who purportedly made it. Even the explanation for non-existence of the signatures of the persons, who purportedly made Ex. DW-2/C, is completely pretextual, inasmuch as, he states that their names have been struck off from Ex. DW-2/C. Therefore, Ex. DW-2/C, which

became the foundation for the said police officer to exonerate the guilt of the

co-convict (supra), thus becomes completely unhinged, and/or the said joint statement, is to be construed to be never, as such being made, thus in accordance with law.

36. For all the reasons (supra), it appears, that co-convict concerned, thus dissuaded the investigating officer concerned, to cause his making a disclosure statement before him, besides also dissuaded the investigating officer concerned, to at his instance, cause the recovery of weapon of offence. If so, resultantly the said convict not making any disclosure statement, whereby he confessed his incriminatory participation in the crime event, nor also his causing the relevant recovery in pursuance thereof, becomes completely insignificant. On the other hand, the consistently made incriminatory speakings against him by both the injured eye witnesses, thus enjoy credence, emphasizingly when rather the above incriminatory echoings became meted to PW-1, during the phase of the latter being put to cross-examination, whereto too affirmative answer(s) also emanated from PW-1.

Post-mortem report

37. The post-mortem report, to which Ex. P-20 is assigned, became proven by PW-8 Dr. Rama Kumari, one of the co-authors thereof. PW-8 in her examination-in-chief, has deposed that on the making of an autopsy on the body of deceased Balkar Singh, by the team of doctors, theirs noticing thereons, the hereinafter injury(ies)-

“1. A stab wound measuring 2 x 1 cm on the anterior aspect of left side of chest penetrating into the lung and heart. On dissection the left lung and apex of the heard (1x2 cm wound) was cut with blood oozing out and filling the chest cavity.

2. A stab wound measuring 2x1 cm in the right hypochondrium penetrating into the abdomen cutting the liver

and right lung. The wound was associated with blood in the abdominal cavity.

3. Two stab wounds measuring 2x1 cm each on the right side of anterior aspect of chest wall penetrating into the thoracic/chest cavity and cutting the lung parenchyma.

4. Two stab wounds measuring 3x2 cm each on the right elbow and right upper arm.

5. A stab wound measuring 2x1 cm in the left hypochondriac region cutting the spleen and associated with bleeding.”

38. Furthermore, the cause of demise of the deceased, was opined due to multiple stab wounds leading to hypovolemic shock, which was sufficient to cause death in the normal course of nature. The above made echoings by PW-8, in her examination-in-chief, became never challenged through an efficacious cross-examination, being made upon her, by the learned defence counsel. Therefore, the opinion, as made by PW-8 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoings, as made by PW-8, in her examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

39. Thus, a conjoint reading of the report of the doctors concerned, who proved the apposite MLRs, and, of the post-mortem report of the deceased concerned, does foster an inference, that therethroughs corroboration, is acquired by the untainted testifications of the ocular witnesses to the occurrence, who respectively stepped into the witness box as PW-1 and PW-2.

Final order

40. The result of the above discussion, is that, this Court does not find any merit in the appeals, and, is constrained to dismiss them.

Consequently, all the appeals are dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence(s) is also affirmed. If the convicts are on bail, thereupon, the sentence(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

41. Records be sent down forthwith.
42. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 17th, 2023
Gurpreet

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