

In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-1028-DB-2018 (O&M)
Reserved on: 18.7.2023
Date of Decision: 25.7.2023

Farukh and others Appellants

Versus

State of Haryana Respondent

2. CRA-D-1964-DB-2018 (O&M)

Subedeen Appellant

Versus

State of Haryana Respondent

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

Present: Mr. Abhilaksh Grover, Advocate
for the appellants (in CRA-D-1028-DB-2018).

Mr. Nafees Ahmad Khan, Advocate
for the appellant (in CRA-D-1964-DB-2018)

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. Since both the above appeals arise from a common verdict of conviction, and, consequent thereto sentence(s), as, made by the learned trial Judge concerned, thus both are amenable for a common verdict being made thereons.

2. The learned Additional Sessions Judge, Palwal, through a verdict drawn on 6.9.2018, upon case bearing No. 08 of 2016, thus recorded a finding of conviction against appellants-accused Subedeen, Farukh, and Farmuddin @ Fammu, for the commission of offences punishable under Sections 354-A, 302 read with Section 34 of the IPC. However,, appellant-

accused Samina was convicted for the commission of an offence under

Section 302/34 of the IPC. In addition, the other co-accused, namely, Aslam, Hakmuddin and Sakmuddin were acquitted of the charges framed against them. Moreover, through a separate sentencing order drawn on 12.9.2018, the learned trial Judge concerned, sentenced all the convicts-appellants to undergo rigorous imprisonment for life, for a charge drawn for an offence punishable under Section 302 of the IPC, besides also imposed, upon the convicts sentence of fine, comprised in a sum of Rs. 25,000/- each. In default of payment of fine amount, the learned convicting Court sentenced the convicts to undergo rigorous imprisonment for a period of one year. Moreover, the learned convicting Court also sentenced convicts-appellants Subedeen, Farukh and Farmuddin @ Fammu to undergo rigorous imprisonment for a period of six months, for a charge drawn for an offence punishable under Section 354-A of the IPC, and, also imposed, upon them the sentence of fine, as comprised in a sum of Rs. 500/- each, besides in default of payment of fine amount, it sentenced the convicts (supra) to undergo rigorous imprisonment for a period of 15 days. It was also ordered that on payment of the entire fine amount, the same shall be paid, as compensation to the legal representatives of deceased Rizwan.

3. However, the period of detention, as, undergone by the convicts, during the investigations, and, trial of the case, was, in terms of Section 428 of the Cr.P.C., rather ordered to be set off, from the above imposed sentence(s) of imprisonment.

4. All the convicts being aggrieved from the above made verdict of conviction, and, also becoming aggrieved from the consequent thereto sentence(s) of imprisonment, as well as of fine, as became imposed, upon them, thus become led to institute thereagainst **CRA-D-1028-DB-2018** and

Factual Background

5. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P-22 is assigned. The narrations carried in Ex. P-22, are that on 13.9.2016, the police party led by Inspector Deep Chand (PW-14) was present at Jayanti Crossing, Hathin on patrol duty. PW-14 was informed about a quarrel taking place at village Lakhnaka culminating into death of a person. PW-14 accompanied by Ct. Rakesh, ASI Banwari Lal and Ct. Krishan Lal went to village Lakhnaka where complainant Kasim met him and present his application Ex. P1. It has been alleged in the said application that on 13.09.2016 at about 04.30 pm, complainant Kasim along with his brothers Rizwan, since deceased, Lukman and cousin Sahun, was present at his field situated in village Lakhnaka. Meanwhile, Mohd. Shakeel with her niece victim (name is withheld) appeared there riding a motor-bike for collecting millet (javar), as the complainant party had sold millet to him. There is a tree of Neem standing in the agriculture land of village Sarpanch. He further disclosed to the police that 6/7 boys of village Jallalpur were playing cards under Neem tree. They passed lewd and sexually explicit comments against the victim, to which Mohd. Shakeel protested. Hearing the commotion, the complainant along with his brothers appeared at the spot and asked the boys to maintain the discipline. The boys became infuriated. They told the complainant party to teach them a lesson or two. In furtherance of their common object, those boys opened assault on the complainant party and they also called their native villagers. It has been further alleged therein, that Farukh @ Fammu and Samina held the deceased by hands, whereas, Subedeem repeatedly dealt blows of stone on the chest of the deceased. Hakmu and Sakmu administered punch and fist blows to the deceased. Meanwhile, Aamin @ Kalu and Arshad also appeared and they

exhorted the other accused to finish all the members of the complainant party. The accused opened assault with lathi, danda and stones. The complainant rescued him by running towards the village raising commotion which brought Asru, Imran, Mubin and 10-20 other persons from his village at the spot who intervened and rescued the complainant party. Before leaving the spot, the accused had taken away three motor-bikes and necklace of the victim besides her gulibandi (ornament worn upon the necklace). The deceased succumbed to his injuries on the spot. Lukman, Sahun, Sakil and Rajina also sustained injuries. Before leaving the spot, the accused intimidated the complainant party with threat to kill them after outraging modesty of the victim. Consequently, the appeal FIR, to which Ex. P-22, becomes assigned, was registered at police station. Hathin.

Investigation proceedings

6. During investigation, Amin @ Kalu s/o Nooru and Arshad s/o Nooru were declared innocent. Afterwards, Subedeen, Saddam, Samina, Ayin, Maksood, Falli, Hakmu, Sakmu, Kamal, Usman, Arshad and Tahir were also declared innocent. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., only against accused Farmuddin (@ Fammu, Farukh, Shokeen and Aslam, before the learned committal Court concerned.

Committal Proceedings

7. Since the offence(s) under Section 302, 354-A of the IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 13.12.2016, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

Vide order dated 21.3.2017, accused Shokkeen was declared

juvenile-in-conflict with law. The application filed under Section 319 of the Cr.P.C. for summoning of Subedeen, Samina, Hakmu and Sakmu was allowed, whereas, application qua summoning of Maksood, Aamin, Fatti, Arshad and Aamin @ Kalu, became dismissed.

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 a charge against accused, for the offences punishable under Sections 120-B, 148, 302, 149, 354-A, 379-B of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

10. In proof of its case, the prosecution examined 15 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 thereins, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, and, led three witnesses into the witness box.

11. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charges (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-appellants.

Submissions of the learned counsels for the appellant

12. The learned counsels for the aggrieved convict-appellants have argued before this Court, that the impugned verdict of conviction, and, consequent thereto order of sentence(s), both require an interference. They

support the above submission on the ground, that it is based on a gross

misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

13. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convicts, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, they have argued that both the appeals, as preferred by the convicts, be dismissed.

**Analysis of the depositions of the eye witnesses to the occurrence,
who respectively stepped into the witness box as PW-1, PW-2, PW-3,
PW-4 and PW-5.**

14. Complainant Kasim, stepped into the witness box as PW-1, and, in his examination-in-chief, he thus made an articulation, that at the crime site, he had witnessed the accused concerned, to be giving blows with stones, dandas, punches, and, kicks, hence on the chest of his brother Rizwan. He also then identified the accused in Court. In his examination-in-chief, PW-1 has voiced a narrative, qua the genesis of the prosecution case, which is in complete tandem with his previously made statement, in writing, and, to which Ex.P-1 becomes assigned. Though, he was subjected to the ordeal of a grilling cross-examination by the learned counsel for the accused, but he remained unscathed in the said ordeal.

15. Since a wholesome reading of his testification, as carried in his examination-in-chief, and, in his cross-examination, does not unfold qua therein rather becoming carried any rife improvements or embellishments viz-a-viz his previously recorded statement, in writing, nor when his testification suffers from any further taint of its being ridden with any *intra se* contradiction, thus *inter se* his examination-in-chief, and, his cross-

examination, therefore, utmost sanctity is to be assigned to his testification.

16. PW-2 Lukman, who is also an ocular witness to the occurrence, on his stepping into the witness box, made speakings in his examination-in-chief, which are in complete alignment with the ones, as became made by him in his previously recorded statement in writing. The witness (supra) thus as revealed by his MLR, to which Ex. P-12, is assigned, hence is also an injured eye witness. Though the speakings made by PW-2, in his examination-in-chief unless they remain uncontradicted by him during the course of his cross-examination, thereby they acquire immense creditworthiness. Therefore, an allusion to the cross-examination, as made upon P-2, is but imperative. The relevant part of the cross-examination of PW-2, becomes extracted hereinafter.

“The distance between my village and my field is about 20-21 kilas. The complainant party went to the fields on foot. Razina and Sakeel came to the fields riding a motor bike. The deceased was not rushed to the hospital as the police had arrived on the spot. The police arrived within 15- 20 minutes on the spot. The police was informed by Aamin but I do not know his parentage and his profession but Aamin belongs to village Jalalpur. I do not know the statement of whom was recorded first by the police. The deceased was taken to Hathin by the police accompanied by me, my brother Kasim and other villagers but I do not recollect their names. The dead-body of the deceased was taken to the police station. I reached at police station Hathin at about 5:00 p.m. but my statement was not recorded.

I accompanied the police when dead-body of the deceased was brought to GH Palwal. We reached the hospital at about 6:00 pm. I do not wear any watch. First-aid to me was given by Shahid who is running a clinic in village Jalalpur. I am driver by profession. I parked my vehicle at my house as it was a festival of Eid and I went to fields in the evening. I know

that the accused Hakmu, Sakmu and Subedin are also drivers. I do not know whether accused Hakmu and Sakmu are drivers on one vehicle. I do not know that the accused Hakmu and Sakmu were out of station at the time of the incident. It is incorrect to suggest that the accused Subedin was also out of station being a driver. It is incorrect to suggest that accused Sameena held the deceased.

It is incorrect to suggest that I was not present at my fields. It is incorrect to suggest that I came there-after the incident. It is incorrect to suggest that the place of incident is nearer to village Jalalpur. It is correct that at the time of the incident the crop was growing in the fields. Voluntarily stated:- there was no crop at the place of the incident. It is correct that village Jalalpur is visible from the place of incident. It is incorrect to suggest that no one from the village could come hearing the commotion at the place of incident. I left the house at 4:00 p.m. for the fields. I reached at the fields within 10-15 minutes.

One can reach to the place of incident from the village within 10 minutes if one comes running. It is incorrect to suggest that people from both the villages assembled on the spot. It is incorrect to suggest that stones were pelted by both the villagers. It is incorrect to suggest that the accused party received any injury. It is incorrect to suggest that accused Aslam was not present on the spot. The police did not meet me after the day of incident. It is incorrect to suggest that no incident had taken place as stated by me. It is incorrect to suggest that the accused have been falsely implicated.”

17. The speakings, as made by PW-2 in the above extracted portion of his cross-examination, do imminently underline, that (a) the defence acquiescing to PW-2, being an ocular witness to the occurrence; (b) the defence acquiescing to the presence at the crime site of the accused, who also became identified in Court by PW-2, during the course of his

examination-in-chief. Therefore, the occurrence of the speakings (supra) in the cross-examination of PW-2, do capitalize an inference, that but obviously the defence conceding, as stated (supra), qua PW-2 being an ocular witness to the occurrence, besides also the defence conceding to his presence, at the crime site, thus at the relevant time. Moreover, the defence also thereby acquiesces to the accused being armed with lathis, besides with stones.

18. PW-3 in his examination-in-chief, has corroborated the statement, as made by PW-2. The said witness, as revealed by his MLR, to which Ex. P-8, is assigned, thus is also an injured eye witness to the ill fated crime event. The relevant portion of the cross-examination, as made upon PW-3, becomes extracted hereinafter.

“I am illiterate. We proceed for fields from the house after 4:00 p.m. We reached on the spot at about 4:15 p.m. Many people can play cards, it depend upon the games. Kashim and his brother were present at the distance of half kila from the spot. Kashim and his brother were not visible from the spot. I parked the motorcycle at the distance of 10 meter on the spot. The altercation between me and accused for taken place at about 3-4 minutes before reaching the Kashim etc. Before reaching Kashim and brothers accused gave 2-3 slap to me. The distance of the fields where we were going for fodder is about half kila from the spot. Kashim and his brothers reached on the spot at once. The altercation took place at about 5/7 minutes. The distance of village Jalalpur and village Lakhnaka is about 20 kila from the spot. 3-4 persons were reached on the spot from our village Lakhnaka after the altercation and 15/20 persons were came from village Jalalpur. I received three injuries. I know Aamin because we usually visit village Jalalpur. Police reached on the spot after one hour. I do not know who shifted the dead-body of Rizwan to the hospital again said perhaps

police might have shifted the dead-body to GH Palwal. I had tried to take the Rizwan to the hospital but he was already died. I do not know who called the police. The stones were lying at the distance of 10/15 feet from the spot as BPL Colony was under construction. When boys were playing card they were not having any lathi, dandas, however, when altercation take place they brought lathi, dandas. They brought the lathi, dandas from the nearby houses of BPL Colony. The house of BPL Colony is situated at the distance of half kila. The persons came from the nearby colony with lathi, danda but I cannot tell their names. Those assailants who came with lathi, dandas on the spot from the nearby BPL Colony, they also gave injuries to all of us. They were 4/5 in numbers who came from the Colony. Police met me in the village Lakhnaka at first time, on the same day after one hour of the incident. Police recorded my statement in the village on the same day, however, statement of the witness shown to him where the date mentioned in 14.09.2016. I was treated at GH Hathin. We reached in the hospital at about 6-7:00 p.m. on the same day. I cannot tell the number of injuries of deceased Rizwan.

I cannot tell specifically who was holding the lathi and who was holding the stones in their hands. Deceased Rizwan and Kashim are my nephew by village relation. It is incorrect to suggest that Rizwan and Kashim are my real nephews. I have no agricultural land. I have purchased a crops of Jawar from Kashim for fodder. I stated in my statement Ex. D-1 that the name of the boys who were playing cards confronted with statement Ex. D-1 wherein it is so recorded. I know the accused Farukh and Famu prior to the incident. Farukh reside in the village Jalalpur. I do not know the profession of accused Farukh. It is correct that the date of the incident Eid festival and people usually remained at there houses.

Blood was not oozed from the mouth of deceased Rizwan. I do not know whether police lifted stones from the spot. I do not know all the accused by name prior to the occurrence.

Police did not get conducted any test identification parade. Police did not show any photograph of the accused. I saw the accused at the time of incident and after that first time in the court room.”

19. A reading of the above extracted portion of the cross-examination of PW-3, does also underscore the factum of his presence, at the relevant time, and, at the crime site. Moreover, thereby the defence also concedes to the accused fetching lathis, dandas from the nearby houses of the BPL colony. The further effect of the above acquiesces, as made by the defence, is that, concomitantly thereby the defence, hence concedes to the identification, as, made of the accused, in Court, by PW-3, besides also concedes to the incriminatory participation of the accused in the crime event. Lastly even the expression, “that he had seen the accused, at the time of incident and after that first time in the Court”, as occurs in the apposite sentence of his cross-examination, but carries the necessary telling effect, that thereby the defence concedes to PW-3, being an ocular witness to the occurrence, besides also concedes to a valid identification being made by him, in Court, of the accused, thus irrespective qua prior thereto no valid test identification parade, being conducted by the investigating officer concerned. Furthermore, thereby reiteratedly the incriminatory participation of the accused in the crime event, thus becomes invincibly proven.

20. PW-4 Sahun, who is another injured eye witness, upon his stepping into the witness box has also corroborated the statements of PW-2 and PW-3.

21. The victim stepped into the witness box as PW-5. In her examination-in-chief, she deposed in alignment with the depositions of PW-2 and PW-3, thereby she corroborates the testifications, as became rendered

by PW-2 and PW-3. She also during her examination-in-chief, proceeded to

identify the accused, who were present in Court. Though, she has revealed in her cross-examination, that the names of the accused were told to her by the villagers of Jalalpur. Therefore, though thereby the identification made of the accused in Court by PW-5, thus becomes a tainted identification as prior thereto, no valid test identification parade was conducted. However, the effect thereof is completely overcome, as the ocular witnesses (supra) to the occurrence, for reasons (supra), thus being conceded by the defence to be eye witnesses to the occurrence, besides it becoming graphically underscored therein, that the convicts also acquiescing to their presence at the crime site, besides also acquiescing to their incriminatory participation in the crime event.

Signatures disclosure statement of convict Farmuddin @ Fammu Ex. P24

22. During the course of investigations, being made into the appeal FIR (Ex.P-22), convict Farmuddin @ Fammu made a signed disclosure statement, to which Ex. P-24 is assigned. The signed disclosure statement, as made by the accused (supra) is ad verbatim extracted hereinafter.

“In the presence of following witnesses, above mentioned accused Farmuddin @ Fammu S/o Fojalli caste Sakka R/o Jalalpur, disclosed his statement in police custody without any fear and pressure that on 13.9.2016, we had quarrel with deceased Rijwan s/o Nasru , caste Meo R/o Lakhnaka etc. on playing cards. During the quarrel I and my brother Farukh had hit Rijwan. That the shuru of cot was hit on the chest of Rijwan. After that on hearing the commotion of quarrel many persons from both villages had gathered there and stone pelting took place from both sides. That some people were going to meet each other in the celebration of Eid. That quarrel had worsened. That the disclosure statement that I had given yesterday on 22.9.2016 regarding arrest of my wife Samina and Subedin was false. That I had looted a motor cycle No. HR 52C 1980, and I hid that motor cycle in my house. That the shuru of the cot that I had used to hit deceased Rujwan, I have hidden that on the roof of my house. That I can get that recovered. Disclosure statement of the accused was written separately. Accused and witnesses put their signature on the disclosure

statement.”

23. Pursuant to the above signed disclosure statement, convict Farmuddin @ Fammu got recovered motor cycle bearing No. HR-52C-1980, and, one danda, which were taken into police possession, through recovery memo Ex. P-27.

Signed disclosure statement of convict Farukh Ex. P-25

24. During the course of investigations, being made into the appeal FIR (Ex.P-22), convict Farukh made a signed disclosure statement, to which Ex. P-25 is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of following witnesses, above mentioned accused Farukh S/o Fojalli caste Sakka R/o Jalalpur, P.S.Bhasin disclosed his statement in police custody without any fear and pressure that on 13.9.2016, we had quarrel with deceased Rijwan s/o Nasru , caste Meo R/o Lakhnaka etc. on playing cards. After that on hearing the commotion of quarrel many persons from both villages had gathered there. That some people were going to meet each other in the celebration of Eid. That in that quarrel I had used danda, stones and bricks to hit. That I had hit deceased Rijwan a danda in the back. That I had hit danda in the chest and stomach. And brother Farmuddin also hit sheru of cot. And after gathering of people fighting took place pelting of stones. I and brother Farmuddin had fled from there with motor cycle of people of Lakhnaka. That I had hidden a motor cycle No. HR-52A-7215, standing in my house. That the danda that I had used to have, I have hidden on the tand of my house. No one knows about that except me. I can get that recovered. That the disclosure statement that I had given regarding recovery of motor cycle and arrest of Salim from Delhi; on 22.9.2016, was false. That I can get recovered danda and motor cycle from my house. Disclosure statement of the accused was written. Accused and witnesses put their signature on the disclosure statement.”

25. Pursuant to the above signed disclosure statement, convict Farukh got recovered motor cycle bearing No. HR-52A-7215, and, one danda, which were taken into police possession, through recovery memo Ex. P-26.

26. The disclosure statements (supra), carry the signatures, of both

the convicts. In their signed disclosure statements (supra), both the convicts confessed their guilt in committing the murder of the deceased concerned, thus by giving danda blows on his chest. The further speakings therein, is qua their keeping, and, concealing the said incriminatory weapons of offence. Moreover, they also make speakings about their alone being aware about the location of their hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory item(s), to the investigating officer concerned, from the place of their hiding, and, keeping the same.

27. The above disclosure statement(s), do acquire utmost evidentiary solemnity, as thereons exist the signatures of the convicts concerned, which, however, they have neither ably denied nor have efficaciously proven the said denial. Moreover, the above confession of guilt is neither a bald, nor a simpliciter confession, nor is hit by the bar, as, encapsulated in Section 25 of the Indian Evidence Act, 1872. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, thus through the proven recovery memos (supra), rather both the convicts, thus caused legally efficacious recovery(ies) of the incriminatory weapons of offence, to the investigating officer concerned.

Post-mortem report

28. The post-mortem on the body of deceased Rizwan was conducted by a board of doctors consisting of PW-11 Dr. Gagan, Dr. Deep Kishore and Dr. Mukesh Sarang. PW-11 Dr. Gagan has proven the post-mortem report, to which Ex. P16, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of the deceased concerned.

“1 cm x 1 cm reddish contusion present on mid-line over sternum 1 cm above ZIFI process sternum on further dissection underline injury fracture rt 3rd, 4th, 5th, 6th ribs underline rt upper and middle lobes founds puncture with massive hemothorax found. RM present, PM present.”

29. PW-11 has opined that the cause of death in the present case is owing to shock, and, haemorrhage leading to respiratory failure owing to ante mortem injury (supra), which was sufficient to cause death in normal condition.

MLRs of the injured eye witnesses

30. Dr. Lalit Kumar Kaushik, who medico legally examined the injured eye witness Shakeel, has stepped into the witness box as PW-8, and, during the course of his examination-in-chief, tendered his affidavit, to which Ex. PW-8/A, is assigned, whereby he proved the MLR of injured eye witness Shakeel, to which Ex. P-8, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured Shakil.

- “1. Bruise of size 4 cm x 2 cm over right shoulder
o/e movement normal
no swelling and tenderness present.*
- 2. C/o pain in right knee
o/e movement normal
no swelling and tenderness present.*
- 3. c/o pain and swelling in distal phalynx of ring finger of right hand.”*

31. The said witness has opined that the duration of injury was within 24 hours, and, the weapon used for causing the afore injuries was blunt.

32. Dr. Diwakar Sharma, who medico legally examined the injured eye witness Sahun, has stepped into the witness box as PW-9, and, during

the course of his examination-in-chief, tendered his affidavit, to which Ex. PW-9/A, is assigned, whereby he proved the MLR of injured eye witness Sahun, to which Ex. P-10, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured Sahun.

- “1. Reddish color bruise present over right calf region, size 5x2 cm (approx). No tenderness seen, joint movement normal.*
- 2. Reddish color bruise present over left leg about 4 cms above calf region, no tenderness/swelling seen, knee joint movement normal.”*

33. The said witness has opined that the nature of injury was simple, and, duration of injuries was within 24 hours. He further opined that the weapon used for causing the afore injuries was blunt.

34. Dr. Tarun, who medico legally examined the injured eye witness Lukman, has stepped into the witness box as PW-10, and, during the course of his examination-in-chief, tendered his affidavit, to which Ex. PW-10/A, is assigned, whereby he proved the MLR of injured eye witness Lukman, to which Ex. P-12, is assigned. He has also proven the existence of the hereinafter extracted injury on the person of injured Lukman.

“Lacerated wound 3.5 x 0.5 cm and 1x 0.5 cm left parietal .”

35. The said witness has opined that the duration of above injury was less than six hours, and, was blunt in nature.

36. Thus, the valid disclosure statements (supra), as made by the convicts concerned, and, also consequent thereto valid recoveries, as became caused to the investigating officer concerned, besides the statements of the injured eye witnesses, thus do also become fully supported by the above credible medical accounts/evidence(s).

37. The effects of an ablest inter se corroboration thus palpably emerging inter se credible ocular account rendered qua the prosecution

version by the eye witnesses thereto, with the medical evidence, besides with the disclosure statements and with the recovery memos, and, importantly with the unfoldings, as become spoken in the post-mortem report, are but obviously that qua even if a fatal assault was committed by the accused concerned, but yet since for the reasons (supra), the defence concedes to the other co-convicts also being available at the crime site, thus with theirs being armed with the incriminatory weapons of offence. Consequently, even if the fatal assault was delivered solitarily by accused Subedeen, hence on the person of the deceased, yet since all the other co-convicts, thus were evidently also members of an unlawful assembly, and, had evidently joined the said unlawful assembly, rather with a common object to commit a fatal assault on the deceased. Therefore, when each of them were evidently not mere mute spectators of the ill fated event, but each of them were armed with the incriminatory weapons of offence, thereby irrespective of the fatal assault being solitarily delivered on the person of the deceased, thus by convict Subedeen, yet when the other members of the unlawful assembly, who are the other co-convicts also did join the principal convict, thus with the common object to thereby commit a fatal assault on the person of the deceased concerned. Consequently, all the members of the unlawful assembly are deemed to through theirs joining the unlawful assembly, thus prosecuting the avowed common object to commit a fatal assault. Resultantly, each of them are vicariously liable along with the principal convict in theirs committing the murder of the deceased. Therefore, each of them became aptly convicted, and, also became aptly sentenced to undergo the sentences (supra), as became imposed upon each of them.

Final order

38. The result of the above discussion, is that, this Court does not find any merit in both the appeals, and, is constrained to dismiss them. Consequently, both the appeals are dismissed. The impugned verdict of conviction, as becomes imposed upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed, besides also the consequent thereto sentence(s), as became imposed upon the convicts-appellants, by the learned convicting Court, is also maintained, and, affirmed. If the convicts-appellants 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.

39. Records be sent down forthwith.

40. The miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

July 25, 2023
Gurpreet

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