

In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-445-DBA-2003 (O&M)
Reserved on: 27.8.2024
Date of Decision: 31.8.2024

State of Punjab Appellant

Versus

Gurmail Singh and others Respondents

2. CRA-S-84-SB-2003

Gurmail Singh and others Appellants

Versus

The State of Punjab Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Mr. Nikhil Ghai, Advocate
for the appellants (in CRA-S-84-SB-2003) and
for respondents No.1 and 3 (in CRA-D-445-DBA-2003)

Proceedings qua respondent Nos.2, 5 and 9
already stand abated.

SURESHWAR THAKUR, J.

1. Since both the above appeals arise from a common verdict, made by the learned trial Judge concerned, hence both the appeals (supra) are amenable for a common verdict being made thereons.

2. Both the appeals (supra) are directed against the impugned verdict, as made on 03.12.2002, upon SC No.33 of 18.5.2000, by the learned

drawn against the accused qua offences punishable under Sections 148, 302 and 120-B read with Section 149 of the IPC, besides for offence punishable under Sections 25 and 27 of the Arms Act, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellant-convict Gurmel Singh vis-a-vis an offence punishable under Section 304 Part-I of the IPC and under Section 27 of the Arms Act, whereas, accused Sadhu Singh and accused Babu Singh, were convicted for an offence punishable under Section 304 Part-I read with Section 34 of the IPC. However, the other co-accused namely Jarnail Singh @ Jaila, Satnam Singh, Kaka Singh, Balbir Singh, Janta Singh and Jagga Singh were acquitted from the charges drawn against them. Moreover, through a separate sentencing order of 07.12.2002, the learned trial Judge concerned, sentenced the appellants-convicts in the hereinafter extracted manner.

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Accordingly Gurmel Singh convict is sentenced to undergo R.I. for a period of ten years and to pay a fine of Rs.1000/- in default to undergo further R.I. for a period of one month, for the offences punishable u/S 304 Part-I IPC, he is further sentenced to undergo R.I. for a period of three years and to pay a fine of Rs.1000/- in default to undergo further R.I. for a period of one month for the offence punishable u/s 27 of the Arms Act. Convicts Sadhu Singh and Babu Singh are sentenced to undergo R.I. for a period of seven years each and to pay a fine of Rs.1000/- each in default to undergo further R.I. for a period of one month each for the offence punishable u/s 304 Part-I read with Section 34 IPC.”

3. All the above imposed sentences of imprisonment, qua convict Gurmel Singh were ordered to run concurrently. The period spent in prison by the convict, thus during the investigation or trial of the case, was, in

Terms of Section 428 of Cr.P.C., ordered to be set off from the above

imposed substantive sentence(s) of imprisonment, upon the convict.

4. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to institute thereagainst criminal appeal bearing No.CRA-S-84-SB-2003.

5. The State of Punjab has filed criminal appeal bearing No.CRA-D-445-DBA-2003, against the verdict acquittal rendered qua co-accused namely Jarnail Singh @ Jaila, Satnam Singh, Kaka Singh, Balbir Singh, Janta Singh and Jagga Singh, besides seeks conviction of all the accused for offences punishable under Sections 302, 120-B read with Section 149 of the IPC, in addition to the offence for which the convicts are already convicted.

6. Since respondent Nos.2, 5 and 9 namely Sadhu Singh, Satnam Singh and Jagga Singh thus died, during the pendency of the appeal, therefore, the proceedings qua them stand declared to become abated respectively vide orders dated 23.05.2024 and 25.07.2024.

Factual Background and investigation

7. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PT/2 is assigned. The narrations carried in Ex.PT/2 are, that Sarabjit Singh son of Balbir Singh, complainant was married to Raj Kaur daughter of Gurnam Singh, resident of Daraka Pattim Maur, about 11 years before 2.3.2000. About 2/2½ years before 2.3.2000, Sarabjit Singh son of Balbir Singh had some dispute with his in-laws. A criminal case was got registered against Balbir Singh and others by the in-laws of Sarabjit Singh which was pending in the Court.

8. On 01.3.2000, in the evening, Balbir Singh was going to his

house from the office of tractor Mandi whereas, his sons Sarabjit Singh and Gurdeep Singh were irrigating their fields, located at patti road Barnala. At about 7.30 p.m., Balbir Singh complainant turned towards patti road Barnala from Barnala Sanghera road and reached about 15/20 karams ahead when a vehicle came from behind. The occurrence of the said vehicle alighted from the same. In the light of that vehicle Balbir Singh turned towards and found Gurmel Singh alias Mala Singh, Babu Singh and Sadhu Singh sons of Gurnam Singh, residents of Darak Patti, Maur, present there. Gurmel Singh @ Mela Singh fired a shot from his gun when Balbir Singh attempted to run away and that shot hit his spinal cord. Sadhu Singh and Babu Singh were raising exhortation that Balbir Singh should not escape alive. Balbir Singh after the receipt of fire arm injury fell down and raised an alarm of killed killed on hearing his alarm, his sons Sarabjit Singh and Gurdeep Singh who were irrigating the field and witnessed the entire occurrence, came to the place of occurrence and saved him (Balbir Singh). Thereafter, Gurmel Singh @ Mela Singh, Babu Singh and Sadhu Singh boarded the same vehicle and went towards Bajakhana road.

9. It was stated that about 2/2½ years before on 2.3.2000 a dispute took place between Sarabjit Singh and the members of his in-laws family Balbir Singh fired a shot from his gun in that occurrence which hit Babu Singh on account of that grudge, with a view to kill Balbir Singh, Gurmel Singh @ Mela Singh and others caused fire arm injury, on his person. A vehicle was arranged. Balbir Singh was taken on the civil hospital, Barnala, by his sons. The doctors in the civil hospital Barnala gave first aid to Balbir Singh and referred him to some other institute. The sons of Balbir Singh took him to Dayanand Medical College & Hospital, Ludhiana, where he got

admitted. On 2.3.2000 Surinder Pal Singh, Inspector, SHO Police Station Kotwali, Barnala received a ruqa from civil hospital, Barnala regarding the admission of Balbir Singh. He reached civil hospital Barnala and the doctor reported vide Ex.PB that he had been referred to Patiala. In civil hospital, Barnala Biranjan Singh, brother of Balbir Singh met him who told him that Balbir Singh had been taken to New DMC&H, Ludhiana. Thereafter, Surinder Pal Singh, Inspector went New DMC&H, Ludhiana and moved the application Ex.PW2/C before the doctor. The doctor vide endorsement Ex.PW2/D declared the injured fit to make statement. He then recorded the statement Ex.PT of Balbir Singh injured which was read over and explained to him who after admitting the same to be correct, thumb marked the same. Ex.PT/1 endorsement was appended on the same by Surinder Pal Singh, Inspector. The statement was sent to the police station on the basis whereof FIR carbon copy whereof is Ex.PT/2 was registered by Jaswant Singh, ASI.

Committal Proceedings

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

Trial Proceedings

11. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw a charge against accused, for the commission of offences punishable under Sections 148, 302 read with Section 149 IPC, 120-B of the IPC, besides under Sections 25 and 27 of Arms Act. 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 13 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. However, they did not lead any witness in their defence evidence.

Submissions of the learned counsel for the appellants-convicts

13. The learned counsel for the aggrieved convicts-appellants has argued before this Court, that the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He 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

14. 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-appellants, are well merited, and, do not require any interference, being made by this Court, thus in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeal, as preferred by the convicts-appellants, be dismissed. He further submitted that the convicts-appellants have been erroneously acquitted of the charges drawn under Sections 302 read with Section 149 of the IPC, and, as such he submits that the convicts are also liable to be convicted for offences punishable under Sections 148 and 302, read with Section 149 of the IPC, thus in addition to the offence(s) for which they are already convicted. He further submitted that the learned trial Judge concerned, has also fallaciously

acquitted the other six co-accused persons from the charged offences, thereby the said finding of acquittal also requires becoming interfered with.

The prosecution case is based upon the dying declaration made by the informant who subsequently died, to the said statement Ex.PT becomes assigned

15. The statement of the deceased was recorded by PW-11 on 02.03.2000 through Ex.PT. The informant has made echoings vis-a-vis the incriminatory participation of accused Gurmail Singh alias Mela Singh, accused Sadhu Singh and accused Babu Singh in the crime event. Since pursuant to the making of the said statement thus by the informant the latter died, thereby the said made statement is to be construed to be a dying declaration of the informant/deceased, wherebys grave evidentiary solemnity is to be assigned to Ex.PT.

16. PW-11 recorded the statement of the deceased, on 02.03.2000 but after his being declared fit to make a statement. The said declaration of fitness remained unchallenged. Moreover, no evidence has been adduced by the defence, that the thumb marks of the deceased as made on Ex.PT rather becoming declared by the Fingerprint Expert, but after the latter making comparisons thereof with the admitted thumb marks of the informant/deceased, to rather not belong to the deceased, as such Ex.PT become aptly construed, thus by the learned trial Judge concerned to be the dying declaration. Resultantly, reiteratedly immense solemnity is to be assigned to Ex.PT.

17. Fortified vigor to the above ensues from the doctor, who made the declaration of fitness, and, who upon stepping into the witness box as PW-2, thus during his examination-in-chief hence has spoken qua his making the relevant declaration in Ex.PW-2/D. Since the said made echoing

by PW-2 in his examination remains uneroded vis-a-vis its efficacy, despite his becoming subjected to a grilling cross-examination. Therefore, immense evidentiary vigor is to be assigned to the declaration of fitness as made in the apposite exhibit.

18. The further effect of the above, is that, the absence of the Magistrate at the time of making of the dying declaration by the informant/deceased rather becomes inconsequential.

19. Surjeet Singh son of Ajaib Singh (PW-12) recorded his statement under Section 161 before the investigating officer. The contents thereof become extracted hereinafter.

“Statement of Surjeet Singh son of Ajaib Singh, caste Jat, resident of Badra, FIR No. 60 Dated 02.03.2000, U/s 307,148,149,120B IPC and 25, 27/54/59 Arms Act, Police Station Kotwali Barnala, U/s 161 Cr.P.C.

I am resident of above said address and an agriculturist. On dated 05.03.2000, I was present at my home. That, Jaila Singh @ Mistri of Sehna, Satti of Sehna, Kaka of Sehna, Babbi of Barnala, Jagga Singh Kariarwala, Janta Singh of Rangian, all came to me at about 12:00 PM. Out of which, Jarnail Singh @ Jaila told me that I discussed with Mela Singh, resident of Daraka Patti and made conspiracy to kill Balvir Singh son of Hamir Singh, resident of Patti road, Barnala and gave ransom to Satti of Sehna, Babbi of Barnala, Kaka of Sehna, Janta of Rangian and Jagga Singh of Kariarwala. So, on dated 01.03.2000, as per conspiracy, I, Satti, Kaka, Babbi came to Barnala to chase Balvir Singh and Mela Singh, Sadhu Singh, Babu Singh, Janta Singh, Jagga Singh came on the car and Mela Singh fired a gun shot on Balvir Singh, from his 12 Bore gun. We have done a big mistake and now, we are hiding from the police. We are scared from the police. You are familiar with the police. You should produce us before the police. I told them that today, I have to go at the relatives. Tomorrow, I will

produce all of you at Police Station Kotwali Barnala. After that, they did not come to me. Today, you met at Bus Stand, Barnala. I told you everything. Statement has been written, heard and found correct.”

20. A reading of the said made statement reveals, that therein he attributed an incriminatory role to all the accused persons. However, when the said witness stepped into the witness box, thereupon he did not support the prosecution case. Resultantly, he was declared hostile. During the course of his cross-examination, when the said witness, became confronted with the above statement, which was made by him before the investigating officer concerned, wherein rather inculpatory speakings occur against the accused. Resultantly, thereby the resiling as made therefrom by witness (supra) during the course of his making speakings in his examination-in-chief, rather thus do become belied. Therefore, thereby irrespective of the above made renegings by PW-12 from his earlier made statement (supra), to the police officer, hence does yet make the said renegings to be ill renegings. Contrarily, both sanctity and truth is to be assigned to the previously made statement by him to the police officer concerned. In sequel, in terms of the said previously made statement by witness (supra) to the police officer concerned, the incrimination drawn against the accused is deemed to be a worthy drawn incrimination.

21. Paramountly also when thereby he makes valid incriminations against the acquitted accused, thereupon the verdict of acquittal recorded against the acquitted accused rather does suffer from grave faultiness and is required to be reversed.

22. Preeminently also when the said previously made statement of the witness (supra) to the police officer concerned, has not been proven to be

fictitiously made nor the makings of the said become proven to be a sequel of active duress or compulsion becoming exerted upon him, by the police officer, nor also when evidence become adduced that the said statement was recorded behind the back of the witness (supra), thereupon too, than to the apposite ill made renegings, rather qua the previously made statement by the witness (supra), thus credence is to be assigned.

23. Kaur Singh son of Ajaib Singh (P-13) also recorded his statement under Section 161 before the investigating officer. The contents thereof become extracted hereinafter.

“Statement of Kaur Singh son of Ajaib Singh, caste Jat, resident of Dhoorkot, FIR No. 60 Dated 02.03.2000, U/s 307,148,149,120B IPC and 25, 27/54/59 Arms Act, Police Station Kotwali Barnala, U/s 161 Cr.P.C.

I am resident of above said address and an agriculturist. I also, come to Tractor Mandi, Barnala on Monday of every month and also sell tractor as a broker. On dated 14.02.2000, day Monday, I was present at Tractor Mandi, Barnala. Balvir Singh son of Hamir Singh, resident of Barnala was sitting with his partners in the office and I also stand nearby there. So, at about 12:00 PM or 01:00 PM, Mela Singh, Sadhu Singh, Babu Singh, all residents of Daraka Patti, Mor came along with Jarnail Singh Mistri of Sehna, Satti @ Satnam Singh of Sehna, Kaka Singh of Sehna, Jagga Singh of Kariarwala, Janta Singh of Rangian and Babbi of Barnala. Then, to above said persons, Mela Singh confirms identification of Balvir Singh. After identifying the signal, I move backward. Then, Mela Singh takes all of them on a side and told them that I will give you money whatever you want, but you have to kill Balvir Singh and I will also provide you the weapon. Then, Jagga Singh, Satti, Janta Singh, Babbi, Kaka Singh and Jarnail Singh replied that don't worry, money will be spent by you and we will kill Balvir Singh and also we will settle your sister Raj Kaur at Sarabjeet Singh's house. I was listening all of their talks and watching their activities. But, I was thinking that they are proceeding in the

court, married their sister in their house and will not do anything like this. I did not told anyone about this. Now, on dated 02.03.2000, I found out that Mela Singh fired gun shot on Balvir Singh. Planning of firing gun shot and to kill Balvir Singh was going on from past few days. All of these had planned a criminal conspiracy and fired gun shot on Balvir Singh, with the motive to kill him. I was at my relatives from past few days. Today, you met at Bus Stand, Barnala. I told you everything. Statement has been written, heard and found correct”

24. A reading of the said made statement reveals, that therein he attributed an incriminatory role to all the accused persons. However, when the said witness stepped into the witness box, thereupon he did not support the prosecution case. Resultantly, he was declared hostile. During the course of his cross-examination, when the said witness, became confronted with the above statement, which was made by him before the investigating officer concerned, wherein rather inculpatory speakings occur against the accused. Resultantly, thereby the resiling as made therefroms by witness (supra) during the course of his making speakings in his examination-in-chief, rather thus do become belied. Therefore, thereby irrespective of the above made renegings by PW-13 from his earlier made statement (supra), to the police officer, hence does yet make the said renegings to be ill renegings. Contrarily, both sanctity and truth is to be assigned to the previously made statement by him to the police officer concerned. In sequel, in terms of the said previously made statement by witness (supra) to the police officer concerned, the incrimination drawn against the accused is deemed to be a worthy drawn incrimination.

25. Paramountly also when thereby he makes valid incriminations against the acquitted accused, thereupon the verdict of acquittal recorded against the acquitted accused rather does suffer from grave faultiness and is

required to be reversed.

26. Preeminently also when the said previously made statement of the witness (supra) to the police officer concerned, has not been proven to be fictitiously made nor the makings of the said become proven to be a sequel of active duress or compulsion becoming exerted upon him, by the police officer, nor also when evidence become adduced that the said statement was recorded behind the back of the witness (supra), thereupon too, than to the apposite ill made renegings, rather qua the previously made statement by the witness (supra), thus credence is to be assigned.

MEDICAL EVIDENCE (POST MORTEM REPORT)

27. The autopsy upon the body of deceased Balbir Singh was conducted on 17.03.2000 by PW-3 along with Dr. Harjap Singh. PW-3 has proven *qua* his, authoring Ex.PC/1, as relates to the autopsy as made upon the body of deceased.

28. This witness has also proven *qua* the cause of death of deceased, was septicaemic shock, which was sufficient to cause death in the ordinary course of nature. The injuries were declared to be ante mortem in nature. The relevant ante mortem injuries, as noticed by PW-3, on the body of deceased are extracted hereinafter.

“1. Infected stitched and gaped wound 2 cm in length and 1 cm in breadth on back in lower thoracic region, 1 inch right of mid line. On exploration track was going anteriorly and medially. On further exploration bulled was found lodged in the body of vertebra. Bullet was removed and sealed. Incerling part of the spinal cord was lacerated.

2. 3x3 cm bed sore on back in limo sacral region. Both lungs on cur section showed pus.”

FSL REPORT

29. Ex.PG, Ex.PH and Ex.PS became sent to the FSL concerned, through C Jagtar Singh No.641. After examinations being made at the FSL concerned, *qua* the contents of the sealed parcels, thus the expert concerned, drew the hereinafter extracted results.

Xxx

Articles received: Three sealed parcels marked 'A', 'B' & 'C' in the laboratory

Parcel 'A' contained 'soil' alleged to be stained with blood.

Parcel 'B' contained 'soil' alleged to be 'simple soil'.

Parcel 'C' contained the following exhibits alleged to be stained with blood:-

i) Kameez marked exhibit No.c1

ii) Banian marked exhibit No.c2

RESULT OF EXAMINATION

The exhibits contained in parcel 'A' and C' are stained with human blood. No demonstrable blood could be detected on exhibit contained in parcel 'B'."

30. An analyses of the above made conclusions, as became drawn by the experts concerned, working at the FSL concerned, and but after theirs examining the contents of the sealed cloth parcels, as became sent there, does but naturally brings forth an inference, that the prosecution has hence invincibly proven, that the blood on the *Kameez and Banyan* and soil in fact was human blood. Therefore, irrespective of the fact that the prosecution has been unable to bring forth evidence, that the blood occurring on the *Kameez and Banyan* and soil was not belonging to the blood group of the deceased, yet therebys the said stains of blood on the soil as also on the clothes (*supra*) are to be concluded to be of the blood group of the deceased, especially when no evidence became adduced by the defence, suggestive that the blood stains borne on *Kameez and Banyan* rather not belonging to the blood of the

deceased, thus through the defence adducing the FTA card of the deceased.

Report of the Ballistic Expert

31. Moreover, when for reasons stated hereinafter, the report of the FSL concerned, relevant paragraph whereof are extracted hereinafter, does also pronounce, that the recovered firearm, as became sent there for examination by the ballistic expert, thus in sealed cloth parcels, rather was the relevant firearm wherefrom the bullet, hence became fired, besides pronounces that the said firearm was in a working condition. In sequitur, with this Court assigning credence to the testification, of the ocular witness to the occurrence, and, when in tandem therewith, the ballistic expert, has also made an opinion qua the fired cartridge, becoming fired, from one 12 bore DBBL gun No.7277-94, as became recovered through recovery memo Ex.PJ, at the instance of the accused. Consequently, the charge drawn against the accused is to be concluded to become invincibly proven.

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RESULT OF EXAMINATION

1) *The chemical examination of barrel wash of the 12 bore DBBL gun No.7277-94 indicates that it has been used in firing. However, the date of its last firing can not be ascertained.*

2) *One lead slung marked B/1 and one black plastic cushion wad marked B/2 contained in parcel ‘B’ are normally loaded in Shaktiman type 12 bore cartridge.*

xxx”

32. Be that as it may, the learned trial Judge concerned, in the instant case, held that since there is virtually no evidence, on record, to the effect that the firearm injury noticed on the person of Balbir Singh (deceased) was sufficient to cause death, in the ordinary course of nature or that septicaemic shock, resulting in the death of Balbir Singh, was on

account of the firearm injury, caused on his person. Therefore, the learned trial Judge concerned, held that the act of Gurmel Singh, accused did not fall within the mischief of clause thirdly of Section 300 of the IPC and as such he did not commit the offence punishable under Section 302 IPC nor accused Babu Singh and accused Sadhu Singh committed an offence punishable under Section 302 read with Section 34 IPC.

33. However, for the reasons assigned hereinafter, the reasons (supra), as assigned by the learned trial Judge concerned, for converting the offence punishable under Section 302 of the IPC into an offence punishable under Section 304 Part-I, rather is infirm.

34. Firstly for the reason that through the demise of the deceased occurred after about 16 days elapsing since the crime event taking place. However, the said *inter se* delay *inter se* the crime event taking place and the happenings of the demise of the injured-deceased, to the considered mind of this Court, yet did not make the case fall outside the mischief of Section 300 of the IPC, clause whereof becomes extracted hereinafter.

“300. Murder xxx

*Thirdly – If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or-
xxx”*

35. The reason for forming the said inference becomes generated from the trite factum, that there become adduced no firm rebuttal evidence qua the incriminatory echoings made in the report of the ballistic experts, wherein he has pronounced qua the user of the firearm by convict-Gurmel Singh. The said proven incriminatory fact becomes further corroborated by the validly proven disclosure statements as respectively made by accused

Satnam Singh and by accused Kaka Singh, besides by the consequent thereto made validly recoveries.

36. Therefore, the entry of the fired bullet inside the body of the deceased, but *ipso facto* personified that therebys the accused held the inculpatory *mens rea* to cause the demise of the deceased, and/or, the bodily injury as became inflicted with the user of firearm by the accused, becoming so inflicted so as to cause the demise of the deceased.

37. Furthermore, since the report of the ballistic expert is also supported by the dying declaration made by the informant/deceased revealing therein the cause of his demise, whereby an attribution of guilt is assigned to the accused. Moreover, since the said dying declaration for reasons (*supra*), is a validly made dying declaration, and, to which evidentiary credit is to be assigned, therebys if yet the said dying declaration, thus vividly assigning a vivid incriminatory role to the accused, becomes discarded, besides also the statement of the witnesses (PW-12 and 13), wherein, they for above reasons have assigned an incriminatory role to the accused, but irrespective of theirs turning hostile, thus also become discarded, thereupon such discardings would be outside the rules relating to the wholesome appreciation of adduced evidence.

38. The import of the above, is that, unless the exceptions to offence of culpable homicide to murder as embodied in Section 300 of the IPC, exceptions whereof become extracted hereinafter, thus become validly raised and also become validly proven through adduction of cogent evidence, thereupon alone a conviction and consequent thereto order of sentence can become validly recorded under Section 304 Part-I of the IPC.

“300. Murder xxx

Exception 1.—When culpable homicide is not murder.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisos:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Exception 2.—Culpable homicide is not murder if the offender in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

39. Enigmatically despite the accused neither raising the said espousal nor proving the same, whereas, both the raisings of the exculpatory

plea (supra), besides the said raised exculpatory plea (supra) becoming

required to be proven through adduction of cogent evidence, but was a dire necessity. However, the learned trial Judge concerned, despite evidence (supra) personifying qua the crime event falling within the mischief of clause 3 of Section 300 of the IPC, thus appears to become untenably coaxed to ill conclude that the crime event rather fell within the exceptions to the offence of culpable homicide amounting to murder and resultantly ill sentenced the accused to undergo the impugned sentence.

40. Be that as it may, and secondarily it appears that only on account of the doctor opining that only on account of demise of the injured occurring after an elapse of about 16 days since the crime event taking place, besides his echoing qua the cause of demise of the deceased arising from septicemia, rather than from the ante mortem injuries, which were noticed to be occurring on the body of the deceased, qua therebys the learned trial Judge concerned, making the above conversion.

41. Nonetheless, the above assigned reason, as stated (supra), thus makes above made conversion, to untenably discard the worthy testifications, made by witnesses' (supra), besides discards the well informed report of the ballistic expert. Significantly also since the extraction of the bullet which had entered the body of the deceased was made by the doctor concerned, and the same was sent in a sealed cloth parcel for examinations thereof rather being made by the ballistic expert. Moreover, when the ballistic expert after examining the said extracted bullet, as became sent to him in sealed and untampered cloth parcels, thus made an incriminatory opinion (supra). Therefore, when the (supra) was with the evident user of the incriminatory weapon of offence as became recovered through a validly made recovery memo, besides when there is no suggestion to the PWs

concerned, that the apposite sealed cloth parcels received at the FSL concerned, rather were received in a spoiled or in a tampered condition. Resultantly, also thereby the (supra), pointedly and strikingly bespeaks about the penally inculpable *mens rea* to commit the murder of the deceased, thus etching in the minds of the accused.

42. Since delay (supra) but becomes insignificant, thereby the *mens rea* etching in the mind of the deceased to murder the deceased becomes invulnerable to any skepticism, merely on account of the cause of demise of the deceased becoming pronounced to arise from septicemia. The reason being, that if septicemia beset the body of the deceased, thereupon unless evidence become adduced to the effect, that the besetting of septicemia, vis-a-vis the body of the deceased was a sequel to evident medical negligence, thus thereupon alone the said cause of demise could be stated to be on account of medical negligence and not on account of evident firing of bullet(s) by evident user of the apposite firearm, at the body of the deceased, thus by the accused. However, the above evidence does not exist thereby medical negligence cannot be construed to be the cause of demise of the deceased.

43. Though a reading of the above extracted ante mortem injuries, reveals that the body of the deceased became stitched, post an autopsy becoming conducted on the body of the deceased. However, since during the course of cross-examination made upon PW-3, he denied the suggestion that the said infection occurred during the apposite process or post stitching. Contrarily when septicemia has been pronounced by PW-3 rather in his cross-examination, to be a sequel of the victim evidently suffering from sugar or any other like ailment, whereupons, he speaks qua the infection in

relation to injury No.1 rather would occur. However, when no such evidence exists on record. Resultantly, thereby the infections cannot be a sequel of stitching of the body of the deceased during or post autopsy nor the unproven medical negligence could result in septicemia besetting the deceased nor could it arise from injury No.2, especially when PW-3 makes speakings in his cross-examination, that the said bed sore was not a sequel of injury No.1.

44. Therefore, the learned trial Judge concerned, may not have concluded, that there since there was no clear pronouncement, that the bullet which entered into the body of the deceased and which was proven by the ballistic expert to be fired from the validly effected recovery of the firearm to the investigating officer concerned, at the instance of the accused, *qua* thus the fired bullet not causing the demise of the deceased, whereas, the makings of explicit pronouncement (*supra*) by the doctor concerned, but was necessary for making the crime event to fall within the ambit of clause 3 of Section 300 of the IPC. Conspicuously since a clear pronouncement vis-a-vis the fired bullet leading to the demise of the deceased, thus remains unechoed in the apposite opinion, thereupon reitertatedly the learned trial Judge concerned, concluded that the crime event did not fall within the ambit of clause 3 of Section 300 of the IPC. However, the said formed reason, in the wake of the above discussion, thus become ingrained with a deep pervasive fallacy. Moreover, it also completely untenably subsides the effect of the above firm incriminatory evidence adduced by the prosecution.

45. Even otherwise, unless the accused-Gurmel Singh fired the pellets onto the body of the deceased, thereupon the informant/deceased would not become hospitalized, as such, and when there is a close nexus

inter se the entry of the bullet evidently fired by the accused-Gurmel Singh from the incriminatory firearm, thus with the deceased becoming hospitalized.

46. In sequel, therebys the eruption of septicemia and the same causing the demise of the deceased, but is only a sequel of the firing of the bullet from the recovered incriminatory firearm, thus by the accused at the deceased.

47. Further sequitur therefrom, is that, the case fell within the ambit of clause 3 of Section 300 of the IPC, rather than the same being ill construed to be falling within the exceptions to the offence of culpable homicide amounting to murder, nor therebys the conviction could be made under Section 304 Part-I of the IPC, besides the sentence was not required to be passed in terms of Section 304 Part-I. Contrarily, the learned trial Judge concerned, was required to be convicting the accused-respondent No.1 rather for an offence punishable under Section 302 of the IPC, and was required to be convicting the accused Nos.2 and 3 for an offence punishable under Section 302 read with Section 34 of the IPC. Moreover, the learned trial Judge concerned, was also required to be convicting, the convicts, thus in terms of the credible statements of the witnesses (*supra*), for an offence punishable under Section 302 read with Section 120-B of the IPC.

FINAL ORDER

CRA-S-84-SB-2003

48. In consequence, subject to the decision made in CRA-D-445-DBA-2003, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the appellants-convicts by the learned trial Judge concerned,

does not suffer from any gross perversity, or absurdity of gross mis-

appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the apposite appeal, and, the same is dismissed.

CRA-D-445-DBA-2003

49. Accordingly, in view of the above, the instant appeal is allowed. Consequently after allowing the instant appeal filed by the State of Punjab, this Court quashes the impugned verdict of acquittal, as made by the learned trial Judge concerned, wherethrough, he made a finding of acquittal in respect a charge drawn for an offence punishable under Section 302 of the IPC, and modifies the same to the extent that respondent No.1 is held guilty for an offence punishable under Section 302 of the IPC, besides respondents No.2 and 3 are held guilty for an offence punishable under Section 302 read with Section 34 of the IPC, in addition to the offence(s) for which respondents No.1 to 3 stand already convicted. Moreover, respondents No.4 to 9 are held guilty for an offence punishable under Section 302 read with Section 120-B of the IPC. All the accused are directed to be produced in custody before this Court, on 10.09.2024 for theirs being heard on the quantum of sentence.

50. Records of the Court below, be sent down forthwith. Case property, if any, if not required, be dealt with, and, destroyed after the expiry of the period of limitation.

51. Miscellaneous application(s), if any, is/are, also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 31st 2024
Ithlesh

ITHLESH KUMAR
2024.09.04 14:57
I attest to the accuracy and
integrity of this order/judgment

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