



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-725-DBA-2004 (O&M)
Reserved on: 27.8.2024
Date of Decision: 31.8.2024

State of Punjab Appellant

Versus

Gurdev Singh and others Respondents

2. CRA-S-2339-SB-2003 (O&M)

Gurdev Singh and others Appellants

Versus

State of Punjab Respondent

3. CRR-127-2005

Chhinder Pal Singh Petitioner

Versus

State of Punjab others Respondents

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

Argued by: Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Mr. A.P.S. Mann, Advocate
for appellants No. 1 to 4 (in CRA-S-2339-SB-2003) and
for respondents No. 1 to 4 (in CRA-D-725-DBA-2004) and
for respondents No. 2 to 5 (in CRR-127-2005).

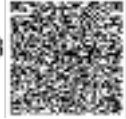
Accused Thana Singh died and proceedings qua him stand
abated vide order dated 27.8.2004.

Mr. Rajat Dogra, Advocate and
Mr. Ankit Bhinchar, Advocate
for the petitioner (in CRR-127-2005).

SURESHWAR THAKUR, J.

1. Since both the appeals (supra) as well as the criminal revision

petition (supra) arise from a common verdict, made by the learned trial



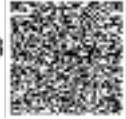
Judge concerned, hence both the appeals (supra) as well as the revision petition (supra) are amenable for a common verdict being made thereons.

2. All the (supra) are directed against the impugned verdict, as made on 28.11.2003, upon case bearing No. 31 of 2000, by the learned Sessions Judge, Ferozepur, wherethrough in respect of charges respectively drawn against the accused-appellants qua offences punishable under Sections 148 IPC, and, under Section 302 read with Section 149 IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against the accused-appellants under Sections 304 Part-II read with Section 149 IPC.

3. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced all the accused-appellants, to undergo rigorous imprisonment for a period of seven years for an offence punishable under Section 304 Part-II read with Section 149 IPC, besides also imposed upon the convicts-appellants sentence of fine, comprised in the sum of Rs. 5,000/- each, besides in default of payment of fine amount, he sentenced all the convicts-appellants to undergo rigorous imprisonment for a period of one year.

4. However, the period of detention undergone by the accused-appellants, 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.

5. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed, upon them, by the learned convicting Court concerned, and, hence have chosen to



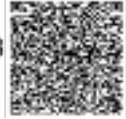
institute thereagainst the criminal appeal bearing No. **CRA-S-2339-SB-2003**.

6. The State of Punjab and the complainant have respectively instituted criminal appeal bearing No. **CRA-D-725-DBA-2003** and criminal revision petition bearing No. **CRR-127-2005** with a prayer that the impugned verdict (supra) of the learned trial Court be modified, and, all the accused be convicted and sentenced for the commission of an offence punishable under Section 302 of the IPC.

Factual Background

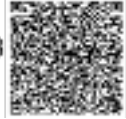
7. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P7/B is assigned. As per the prosecution case, on 16.10.2000 a Q.S.T. (Ex.P-11) through Police Station City Ferozepur was received by the S.H.O. of Police Station Ghall Khurd qua the admission of one Gura Singh in Civil Hospital, Ferozepur in an injured condition, and, thereafter his being expired. On receipt of said message, SI Gurbux Singh alongwith the police party reached Civil Hospital, Ferozepur and met Chhinder Pal Singh in the Civil Hospital, Ferozepur, who made statement Ex.P7, which on translation reads as follows:-

"Stated that I am resident of village Ghall Khurd and do agricultural work. We are three brothers and eldest is Gura Singh. Younger to him is Gurnaib Singh and I am the youngest. We all three brothers had kept the paddy stocks for sale in the grain market Ghall Khurd. All three of us were looking after the paddy near our heaps of paddy. There were paddy heaps of Ranjit Singh Sarpanch son of Ajaib Singh, Gurdev Singh son of Gurdial Singh, Thana Singh son of Jagir Singh, Baljinder Singh Jarnail Singh caste Jatt, Angrej Singh son Lachhman Singh resident of Ghall Khurd, who were taking liquor near their heap of paddy. It was about 7.30 P.M. and electric light



was on in the grain market. Ranjit Singh Sarpanch raised a lalkara and said that all the three brothers were available together and they should be taught a lesson for taking the possession of land on which we requested them that matter had been settled and they should not commit any unreasonable act, on which all of them became angry and attacked my brother Gurnaib Singh. Gurdev Singh picked up a 'Karahi' (an instrument for winnowing and collecting the paddy) from the heap of paddy and hit on the front side of the forehead of Gurnaib Singh and Ranjit Singh gave a dang blow on the right arm of my brother, Gurnaib Singh. Gurnaib Singh raised alarm 'mar mar dita' upon which my brother Gura Singh came forward to release him. Then all of them caught hold of him and threw him down and pressed him with his face downwards and continued to beat him and gave him blows and inflicted injuries with dang thrust-wise. I also raised alarm, upon which people present in the grain market came at the spot and they saved us from the clutches of the accused persons. My brother Gurnaib Singh was lying in a pool of blood and my brother Gura Singh was lying on the heap of paddy in an unconscious condition. I immediately arranged a Jeep and took Gurnaib Singh to Civil Hospital, Ferozepur and the doctor gave first aid to Gurnaib Singh. Meanwhile my nephew Sukhdeep Singh son of Gura Singh and Hartej Singh brought Gura Singh to hospital, where doctors declared him brought dead. Above named accused persons had caused injuries to my brother Gura Singh because we had obtained the possession of 10 killas of land from Gurdev Singh and others for which reason, they nursed a grudge against us and hatched a conspiracy. I personally witnessed the entire occurrence with my eyes. You have come present in the hospital. I have got recorded my statement with you. Action may kindly be taken. My statement has been read over to me and it is correct.

On the basis of the said statement, formal FIR (Ex. P7/B) was



recorded.

Investigation proceedings

8. During the course of investigations, statements of the witnesses were recorded. The dead body was sent for the post-mortem examination. The statement of injured Gurnaib Singh was also recorded after he was declared fit by the doctor concerned, to make a statement. On 2.11.2000 accused Baljinder Singh, Gurdev Singh and Angrej Singh were arrested. The *karahi* Ex. MO-1 was also produced by the accused, which was taken into possession vide recovery memo Ex. P-17. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., against accused-appellants Baljinder Singh, Gurdev Singh and Angrej Singh before the learned committal Court concerned.

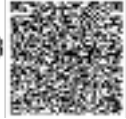
Committal Proceedings

9. Since the offence under Section 304 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 21.11.2000, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

10. 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-appellants Gurdev Singh, Angrej Singh and Baljinder Singh for the offence punishable under Section 302 read with Section 34 IPC. The afore drawn charges were put to the accused, to which

they pleaded not guilty, and, claimed trial.



11. During trial, an application under Section 319 Cr.P.C was moved by the prosecution for summoning Ranjit Singh and Thana Singh as additional accused, which was allowed by the learned trial Court vide order dated 18.4.2001. Consequently, the said accused were summoned to face trial along with other three co-accused.

12. Subsequently, vide order dated 19.5.2001 amended charge sheet was framed against all the accused qua commission of the offences punishable under Section 148 IPC and under Section 302 read with Section 149 IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

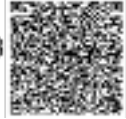
13. In proof of its case, the prosecution examined 08 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

14. 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-appellants led five defence witnesses into the witness box.

15. As above stated, the learned trial Judge concerned, proceeded to convict all the accused-appellants for commission of offence punishable under Section 304 Part II read with Section 149 of the IPC, and, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon all the accused-appellants.

Submissions of the learned counsel for the accused-appellants

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



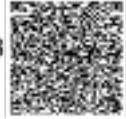
support the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

**Submissions of the learned State counsel and of the learned counsel
for the petitioner**

17. On the other hand, the learned State counsel and the learned counsel for the petitioner have argued before this Court, that the learned trial Court has erred in not appreciating the fact, that it was a case of repeated blows, and, that the accused had pressed the face of the deceased in the heap of paddy, and, caused serious injuries on the vital parts of the body of the deceased. They further deposed, that the ocular version with regard to the demise of the deceased stands corroborated by the medical evidence. Therefore, they have argued that all the accused be convicted and sentenced for an offence punishable under Section 302 of the IPC. Moreover, they have also argued, that the appeal, as preferred by the convicts-appellants be dismissed.

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

18. Complainant Chhinderpal Singh, stepped into the witness box as PW-3, and, in his examination-in-chief, he thus made an articulation, that on the fateful day, at about 7.30 P.M., they had put their paddy crop in the Grain Market, Ghall Khurd, and, adjacent to the heaps' of their paddy, thus were located the heaps' of paddy of the accused. He further deposed, that when all the accused were consuming liquor, then accused Ranjit Singh raised a lalkara that they be taught a lesson for taking possession of the disputed land, whereupon, all the accused attacked his brother Gurnaib Singh. Accused Gurdev Singh picked up a *karahi* (the instrument for picking



up paddy) and hit the same on the head of his brother Acused Ranjit Singh inflicted a dang blow on the left arm of Gurnaib Singh. Upon raising an alarm by the said Gurnaib Singh, his brother Gura Singh came to rescue him. Thereafter all the accused threw Gura Singh on the heap of paddy, and, after burying his face in the heap of paddy, and, kept on inflicting fist blow and dang blows on the person of Gura Singh. The said witness further deposed, that after arranging a vehicle, he had taken his brother Gurnaib Singh to Civil Hospital, Ferozepur, where he was medico legally examined. Meanwhile Gura Singh was brought to the hospital concerned, by his nephew Sukheep Singh and Hartej Singh, where he was declared already dead by the doctor concerned. In his examination-in-chief, the said witness has, thus 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. P7 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.

19. Since a wholesome reading of his testification, as carried in his examination-in-chief, and, in his cross-examination, does not unfold, qua thereins 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 *intra se* his examination-in-chief, and, his cross-examination, therefore, utmost sanctity is to be assigned to his testification.

20. The depositions of PW-3 becomes supported by the deposition of the other eye witness to the occurrence, namely Gurdip Singh, who

stepped into the witness box as PW-4. The echoings occurring in the

examination-in-chief of PW-4 are in complete harmony with the echoings, as became rendered in respect of the crime event by PW-3. In sequel, the testifications rendered by PW-3, and, by PW-4 vis-a-vis the crime event, when rather are in complete inter se alignment, as such, their respectively made testifications were amenable to become relied, upon, as aptly done by the learned trial Court concerned.

21. However, the learned trial Court concerned, had observed that the act of all the accused in the present case would fall within the definition of culpable homicide not amounting to murder. The relevant paras of the said observation become extracted hereinafter.

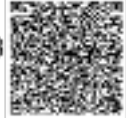
“x x x x x

(iv) *The incident has occurred on the spur of moment on the intervention of Gura Singh. As such it cannot be said that all the accused intended to cause the death of the deceased or intended to cause such bodily injury which could cause death.*

(v) *The physical condition of the deceased that he was suffering from Tuberculosis and diabetes established that it was culpable homicide falling within the explanation-I of Section 299 Cr.P.C. i.e when a person who causes bodily injury to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death. As such culpable homicide was not with an intention. Thus would bring the case within the ambit of offence punishable under Section 304 Part-II of the Indian Penal Code.*

x x x x x”

22. Since in the credible testifications rendered by the eye witnesses (supra), there is no suggestion put to either of them by the learned defence counsel, thus personificatory that therebys the defence has propagated an



espousal qua the offence committed, thus falling within the exceptions to an offence of culpable homicide amounting to murder, exceptions whereof become embodied in Section 300 of the IPC, exceptions whereof become extracted hereinafter.

“300. Murder.-

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(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—

(Fourthly)- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

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.

Explanation.— *Whether the provocation was grave and*



sudden enough to prevent the offence from amounting to murder is a question of fact.

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.*

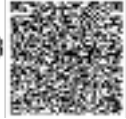
Exception 3 - *Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the 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 having taken undue advantage or acted in a cruel or unusual manner.*

Explanation.— It is immaterial in such cases which party offers the provocation or commits the first assault.

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.”*

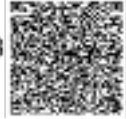
23. Moreover, when no answers favourable to the accused became meted thereto by the ocular witnesses to the crime event. Resultantly when neither the espousal (supra) became well propagated, nor became supported by any cogent evidence. In sequitur, it was completely inapt for the learned trial Judge concerned, to declare that the accused had proven the exceptions (supra), to the offence relating to the commission of an offence of culpable homicide amounting to murder, nor therebys it was apt for the learned trial Judge concerned, to record a finding of conviction against the accused only for an offence punishable under Section 304 Part II of the IPC. Resultantly,



therebys Criminal Appeal bearing No. ***CRA-D-725-DBA-2004***, as preferred by the State of Punjab and, criminal revision petition bearing No. ***CRR-127-2005***, as preferred by the complainant, are accepted.

24. The reason for forming the above conclusion is firmly embedded in the factum, that when the incriminatory role of all the accused but is also candidly spoken by the eye witnesses concerned, therebys when they were not bystanders to the crime event, but evidently were members of an unlawful assembly, besides also with theirs sharing a common object, they thus evidently made incriminatory participations in the crime event. Resultantly therebys, on the principle of vicarious liability founded upon Section 149 IPC, all the accused are co-equally liable to be convicted and sentenced under Section 302 read with Section 149 IPC.

25. Since the credible ocular account, as became rendered by the ocular witnesses (supra) though for ensuring corroboration thereto becoming meted, thus made it incumbent upon the investigating officer concerned, to during the course of his holding the accused to custodial interrogation, rather ensure the making of a signed disclosure statement by the accused concerned, wherein, after theirs confessing their guilt in the crime event, theirs showing their readiness and willingness to cause the recovery(ies) of the incriminatory weapons of offence, and subsequent thereto the relevant valid recovery(ies) being made to the investigating officer concerned, thus at the instance of the accused concerned. However, even if the above prima facie is not done, yet therebys the credible ocular account rendered qua the crime event rather does not become rendered uncreditworthy. Resultantly, the omission to record the signed disclosure statement of the accused by the investigating officer concerned, besides the omission, if any, to in



pursuance thereof, thus cause the recovery of the incriminatory *karahi*, rather becomes completely inconsequential.

26. Be that as it may, the learned Additional Advocate General, has vigorously contended before this Court, that even if the investigating officer concerned, has failed to record the signed disclosure statement of the accused concerned, nor also when in pursuance thereto rather the recovery of the incriminatory weapons of offence became effected by the accused concerned, to the investigating officer concerned. However, he has argued, that the above failings do not yet eclipse the incriminatory effect of recovery memo Ex. P-17, as became drawn in respect of recovery being made of the *karahi*. The contents of the said recovery memo, to which Ex. P-17 is assigned, becomes extracted hereinafter.

“In the presence of following witnesses, one Fahi (Karahi) has been produced before me by Gurdev Singh named above regarding which separate khaka of its handle was prepared and the handle of said Fahi is about 4½ feet and there is no blood mark on the said Fahi. The same has been taken into police possession vide instant memo.”

27. Though, evidently the recovery (supra), as became effected through recovery memo Ex. P-17, rather remained unpreceded by a signed disclosure statement being made by the accused, but yet the omission (supra), does not render unworthwhile the recovery, as made through recovery memo Ex. P-17. The reason for drawing the above conclusion becomes engendered from the factum, that since the accused produced before the investigating officer concerned, thus in the police station concerned, the incriminatory weapon, which he was then carrying with him, thereupon when the incriminatory *karahi* was not hidden or



camouflaged by the accused concerned, in a place known only to him, whereas, only upon the place of keeping or hiding of the incriminatory *karahi* rather being within the exclusive knowledge of the accused, but therebys obviously required qua his disclosing the said place in a signed disclosure statement made by him, whereafter, he was required to be leading the investigating officer concerned to the said place. Resultantly, when the incriminatory *karahi* was produced by the accused before the investigating officer concerned, thus in the police station concerned, as such, when he was then carrying the said incriminatory *karahi* with him, therebys when the said incriminatory *karahi* was neither hidden nor was camouflaged by the accused in a place, in respect whereof he alone had the requisite exclusive knowledge. Therefore, there was neither any requirement for the investigating officer concerned, to record the signed disclosure statement of the accused concerned, nor in pursuance thereof the recovery memo was required to be drawn. Contrarily, the above manner of drawing of the recovery memo is sufficient to conclude that the recovery of the incriminatory *karahi* was validly effected at the instance of the accused to the investigating officer concerned.

28. In consequence, the sequel of the above, is reiteratedly that therebys, irrespective of no disclosure statement becoming made by the accused to the investigating officer concerned, during the course of the latter holding them to custodial interrogation, nor when in pursuance thereof, any recovery became effected, yet the apposite recovery, as became made through recovery memo Ex. P-17, thus is to be concluded to be validly effected recovery thereof. Moreover, when upon combining the above

conclusion with the above extracted articulations, as made by the eye



witnesses, during the course of their becoming subjected to cross-examinations, rather an inference does evidently emerge that thereby the defence conceding to the taking place of the crime event. Therefore, thereby the prosecution has fully discharged its burden of proving to the hilt the charged offence.

MLR of injured Gurnaib Singh

29. Dr. Hardit Jyoti, who medico legally examined the injured Gurnaib Singh, has stepped into the witness box as PW-1, and, during the course of his examination-in-chief, he has proven the MLR of the said injured, to which Ex. P1, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured (supra).

“1. There was diffused swelling 10 cm x 5 cm in left fronto area with another incised wound of 6 cm x .5 cm which was 2 cm to the left side of mid line of the vault of skull and it was kept under observation for x-ray examination.

2. Diffused swelling 4 cm x 4 left frontal region with a lacerated wound .5cm x .5cm in the centre of the skull. It was also kept under observation for x-ray examination.

3. It was an abrasion 10 cm x 1 cm on left upper arm in its middle and it was also kept under observation for x-ray examination.

4. Swelling 10 cm x 6cm middle of the left forearm on its back and it was also kept under observation for x-ray examination.

5. Swelling 5 cm x 2 cm on left elbow. It was also kept under observation for x-ray examination.

6. Diffused swelling 8 cm x 3 cm dorsem of left hand more towards thumb region. Also advised x-ray examination.”

30. Injury No. 5 was declared to be grievous in nature after x-ray as there was fracture of ulna bone. The said witness also opined, that injury



No. 1 could be caused with karabi Ex. MO-1 from its sharp side. Regarding the remaining injuries, it was stated that these could be caused by stick blows or the backside of karahi Ex. MO-1.

Post-mortem report

31. The post-mortem report, to which Ex. P-6 is assigned, became proven by PW-2. PW-2 in his examination-in-chief, has deposed that on his making an autopsy on the body of deceased Gura Singh, thus his noticing thereons the hereinafter extracted ante mortem injuries-

“1. Abrasion 1 cm x 1 in size on back right index finger on distal interphalangeal joint. On dissection underlying tissues were congested.

2. Abrasion 1 cm x 1 on back right middle finger on proximal inter phalangeal joint. On dissection underlying tissues were congested.

3. Abrasion on back of the right hand on base of right ring finger 1 cm x 1 in size. On dissection the underlying tissues were congested.

4. Abrasion on back of the right hand on base of the little finger 1 cm x 2 cm in size. Underlying tissues were congested.

5. Abrasion 1 cm x 1 size on outer middle right thigh underlying tissues were congested.

6. Abrasion 1 cm x 1 cm on outer upper left leg just below knee underlying tissues were congested.

7. Two small abrasions 1 cm apart 0.25 x 0.25 cm, .2 cm above injury No. 6. Underlying tissues were congested.

8. Abrasion 1 cm x 0.5 cm on back upper part of right chest on the middle upper part of scapula. Underlying tissues were congested.

9. Abrasion 0.75 cm x 0.75 cm on back right chest on the lower part of the scapula. Underlying tissues were congested.



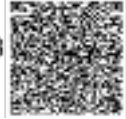
10. *Contusion reddish colour 2 cm x 3 cm size on the upper left chest in the middle part. Underlying tissues were congested.”*

32. The above made echoings by PW-2, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-2 qua the demise of the deceased, thus acquires formidable force. Consequently, the above echoings, as made by PW-2, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

33. Thus, conjoint readings of the post-mortem report of the deceased concerned, along with the statements of the ocular witnesses (supra), do thereby foster an inference, that thereby there is *inter se* corroboration *inter se* the medical account with the recovery memo (supra), besides with the credible ocular account rendered vis-a-vis the prosecution case. As such, this Court is of the formidable view, that the prosecution has been able to prove the charge to the hilt.

34. Furthermore, PW-2 has also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to ante mortem asphyxia, and, which is opined to be sufficient to cause death in the ordinary course of nature.

35. Therefore, the learned counsel for the accused-appellants has vigorously argued before this Court, that since the post-mortem report has pronounced that the demise of the deceased has occurred on account of ante mortem asphyxia. Resultantly, it is contended, that since the ensual of the above stated cause of death was through the purported burying of the head of



the deceased onto the heap of paddy, rather by the accused, but when it is also evident on a reading of the cross-examination of PW-2, that no grain of paddy was found inside the nose or mouth of the deceased, whereas, the existences therein of grains of paddy, was imperative for ultimately concluding, that the accused had smothered the deceased, whereafter he became fatally asphyxiated. In sequitur, the absence of the above does not rather open any conclusion, that the accused had any *mens rea* to commit the murder of the deceased

36. Nonetheless, the above made argument does not appeal to the judicial conscience of this Court, as it is evidently spoken by PW-2 in his examination-in-chief, that the grains of paddy were found to be existing all over the body of the deceased. Therefore, thereby the accused did through theirs burying the head of the deceased onto the heap of paddy, rather ensure that thereby he becomes defacilitated to inhale oxygen. Moreover, when thereby the fatal smotherings led to a fatal ante mortem asphyxia. Resultantly, the mere non-existence of grains of paddy inside the nose and mouth of the deceased becomes inconsequential. Moreover, the said non-existences of grains of paddy inside the mouth and nose of the deceased also cannot be taken to dispel the evidentiary worth of the credible eye witness account rendered vis-a-vis the crime event by the ocular witnesses (supra). Conspicuously also when primacy is to be assigned to credible eye witness account, than to the medical account.

37. In summa, this Court is led to ably conclude, that the demise of the deceased, as spelt in the opinion recorded by the doctor, who conducted autopsy of the deceased, wherein, he has spoken that the demise of the deceased occurred on account of the ante mortem asphyxia, but was the



sequel of the accused committing the penal act of theirs forcibly burying the head of the deceased onto the heap of paddy.

Final order

38. The result of the above discussion, is that, this Court does not find any merit in the appeal filed by the accused-appellant bearing No. CRA-S-2339-SB-2003, and, is constrained to dismiss it. Consequently, the appeal bearing No. ***CRA-S-2339-SB-2003*** is dismissed.

39. However, criminal appeal bearing No. ***CRA-D-725-DBA-2004***, as preferred by the State of Punjab and, criminal revision petition bearing No. ***CRR-127-2005***, as preferred by the complainant, are allowed. The impugned verdict of conviction and sentence, as made on 28.11.2003, upon case bearing No. 31 of 2000, by the learned Sessions Judge, Ferozepur, is modified to the extent that the accused are held guilty for committing the offence punishable under Section 302 read with Section 149 of the IPC, and, are convicted accordingly. The accused are directed to be produced in custody before this Court on 9.9.2024 for theirs being heard on the quantum of sentence.

40. 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.

43. The Court in general is deeply concerned, that the trial Courts at times stray from core issues, overwhelmed by the magnitude and complexity of the cases before them. This tendency undermines the effectiveness of judicial proceedings. To rectify this, it is essential that judicial officers, especially those in training, receive advanced instruction in language and



communication from a distinguished expert in these fields. The Court strongly urges the Chandigarh Judicial Academy to take an effective decisive action, through considering the appointment of a Professor of Eminence in language and communication. Such a step is crucial for ensuring that judicial officers are trained to deliver judgments that are not only accurate but also articulate and comprehensive. This investment in judicial training will significantly enhance the precision and integrity of judicial decisions, ultimately serving the cause of justice more effectively.

44. Compliance affidavit in the above regard be hereafter filed before the Hon’ble Single Bench of this Court.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 31st, 2024
Gurpreet

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