



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-404-DB-2006 (O&M)
Reserved on: 25.9.2024
Date of Decision: 01.10.2024

Surjit Singh and others Appellants

Versus

State of Punjab Respondent

2. CRR No. 2029 of 2006 (O&M)

Malkiat Singh Petitioner

Versus

Surjit Singh and others Respondents

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

Argued by: Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate and
Mr. Amritpal Singh Mann, Advocate.
(in CRA-404-DB-2006).

Mr. P.S.Ahluwalia, Advocate and
Mr. H.S.Randhawa, Advocate
for the petitioner (in CRR-2029-2006) and
for the complainant (in CRA-404-DB-2006)

Proceedings against appellants No. 5 and 6 (in CRA-404-DB-2006) stand abated vide order dated 25.9.2024.

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

SURESHWAR THAKUR, J.

1. Since both the appeal (supra) as well as criminal revision (supra) arise from a common verdict, made by the learned trial Judge concerned, hence they are amenable for a common verdict being made thereons.



2. **CRA-404-DB-2006** is directed by the convicts-appellants, against the verdict of conviction, as made on 19.5.2006, by the learned Additional Sessions Judge, Patiala, upon, Session Case No. 20 of 15.10.2003, wherethrough, in respect of charges drawn for offences punishable under Sections 302/307/148/149 of the IPC, and, under Sections 25 and 27 of the Arms Act, he made a finding of conviction against the accused-appellants.
3. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, proceeded to impose upon the convicts-appellants (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

<i>Name of the accused/convict</i>	<i>Offence committed</i>	<i>Period of sentence awarded</i>
Surjit Singh and Nardev Singh	u/s 302 IPC	Imprisonment for life and fine of Rs. 5000/- each. In default of payment of fine to further undergo R.I. for 2 months each.
Devinderjit Singh, Shamsher Singh, Amarjit Singh, Labh Singh, Gurvinder Singh, Kirpal Singh	u/s 302 IPC r/w Sec. 149 IPC	Imprisonment for life and fine of Rs. 3000/- each. In default of payment of fine to further undergo R.I. for 1-1/2 months each.
Devinderjit Singh, Amarjit Singh, Shamsher Singh	u/s 302 IPC	Imprisonment for life and fine of Rs. 5000/- each. In default of payment of fine to further undergo R.I. for 2 months each.
Surjit Singh, Nardev Singh, Labh Singh, Gurvinder Singh, Kirpal Singh	u/s 302 IPC r/w Sec. 149 IPC	Imprisonment for life and fine of Rs. 3000/- each. In default of payment of fine to further undergo R.I. for 1-1/2 months each.
Kirpal Singh	u/s 307 IPC	R.I. for 5 years and fine of Rs. 2000/-. In default of payment of fine to further undergo R.I. for one month.
Surjit Singh, Devinderjit Singh, Shamsher Singh, Amarjit Singh, Nardev Singh,	u/s 307 IPC r/w Sec. 149 IPC	R.I. for 3 years and fine of Rs. 1000/- each. In default of payment of fine to further undergo R.I. for 15 days each.



Labh Singh, Gurvinder Singh		
Surjit Singh	u/s 27 Arms Act	R.I. for 3 years and fine of Rs. 1000/-. In default of payment of fine to further undergo R.I. for one month.
Devinderjit Singh	u/s 25 Arms Act	R.I. for 3 years and fine of Rs. 1000/-. In default of payment of fine to further undergo R.I. for one month.

4. All the above imposed sentences of imprisonment, were ordered to run concurrently 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 convicts-appellants 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-404-DB-2006**.

6. Complainant Malkiat Singh has also preferred **CRR No. 2029 of 2006** with a prayer that the sentence of fine, as imposed upon the convicts-respondents, by the learned convicting Court concerned, be enhanced, and, the same be paid as compensation to the legal heirs of the deceased.

Factual background

7. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PC/3 is assigned. As per the prosecution story, on



Hospital, Patiala, that Malkiat Singh s/o Ram Singh, r/o Vill. Punia, Tehsil and Distt. Patiala has been admitted in the hospital with injuries on his person in an occurrence in which Rupinder Singh s/o Ram Singh of the same village has expired. Consequently investigating officer Inspector Rajwinder Singh, S.H.O. with the Police party reached Rajindra Hospital for recording the statement of Malkit Singh injured, and, moved an application to the doctor attending the injured to ascertain whether Malkiat Singh was fit to make statement. The doctor declared the injured fit to make the statement. Resultantly Inspector Rajvinder Singh recorded the statement of Malkait Singh, wherein he stated that he has been cultivating the land of his joint family with his brothers. On 13.6.2003 Harjit Singh younger brother of the complainant came to Patiala for purchasing the diesel on his tractor. At about 6.30/7.00 A.M. accused Surjit Singh armed with rifle, accused Kirpal Singh armed with sword and remaining accused armed with gandas came in front of the house of the complainant in Santro car bearing No. PB-11T-2481 and a Ford tractor. Accused raised Lalkara that they would not allow Harjit Singh to escape unhurt, and, that he would be finished. Thereafter, all of them left that place raising lalkaras. The complainant alongwith his father Ram Singh and son Rupinder Singh left for P.P. Bhunerheri on scooter and motorcycle to report the matter to the Police. When they reached near the bus stand, the aforesaid accused stopped their car and tractor in front of the scooter and motorcycle of the complainant party. The complainant party was forced to stop their vehicles. Accused Surjit Singh raised Lalkara that first they should deal with the complainant and others. Then accused Surjit Singh fired from his rifle towards the complainant party and the same hit on the chest of Ram Singh who collapsed on the ground. As the son of the



complainant namely Rupinder Singh tried to run away to rescue himself, accused Davinderjit Singh caught hold the rifle from his father accused Surjit Singh and fired towards Rupinder Singh, which hit Rupinder Singh at his back and he also fell down on the ground. In the meanwhile, Nardev Singh accused gave gandasi blow on the head of Ram Singh father of the complainant, which hit on the backside of his head. Accused Amarjit Singh and Shamsher Singh also caused injuries on the person of Rupinder Singh, hitting him on his forehead, whereas, accused Kirpal Singh caused sword blow hitting on the head of the complainant. The complainant and others raised an alarm. By that time Harjit Singh, brother of the complainant, and, Mohinder Singh s/o Bant singh of their village came there and when they tried to rescue them, thereupon accused Gurvinder Singh gave gandasi blow from its reverse side on the right leg and left arm of Mohinder Singh. Labh Singh gave gandasi blows on the right leg, right arm and back of the complainant. On hearing the cries of the complainant and others, several people gathered at the spot, thereupon the accused fled away from the spot with their respective weapons on their vehicles. The motive behind the occurrence was that the accused party got registered the case against the complainant in the past. The father of the complainant was a candidate for the election of member Gram Panchayat and he was opposed by the accused party. Therefore, the accused party had been nursing a grudge against the complainant party, and, have caused injuries to the complainant and others and have caused the death of his son Rupinder Singh and father Ram Singh. On the basis of the statement (supra), the appeal FIR became registered under SEctions 302, 307, 148, 149 and Sections 25 and 27 of the Arms Act at P.S. Sadar, Patiala.



Investigation proceedings

8. During the course of investigations, the investigating officer concerned, prepared the inquest reports. The dead bodies of the deceased were subjected to post-mortem examinations, whereas the MLR of the injured were collected. He inspected the spot of occurrence, prepared the rough site plan of the place of occurrence with correct marginal notes. The investigating officer concerned, took into possession the clothes of the injured along with pallets, which were sealed by the doctor with his seal bearing impression SSO. Two empty cartridges of .12 bore lying near the dead body of deceased Ram Singh was also taken into possession. The statements of the witnesses were recorded. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., against all the accused except accused Gurvinder Singh and Kirpal Singh before the learned committal Court concerned and they were kept in column No. 2. Subsequently supplementary challan against the accused (supra) was filed before the learned Court concerned.

Committal Proceedings

9. Since the offences under Section 302 IPC and under Section 307 IPC were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 1.10.2003, 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 the accused concerned, for the offences punishable under Section 302/307/148/149 IPC and under Sections 25 and 27 of the Arms Act. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

11. In proof of its case, the prosecution examined 22 witnesses, and, thereafter the evidence of the prosecution was closed.

12. 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 chose to adduce defence evidence, and led 09 witnesses into the witness box.

Submissions of the learned senior counsel for the appellants

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

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 convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the instant appeal, as preferred by the convict-appellant be dismissed.



**Submissions on behalf of the learned counsel for the
complainant/petitioner**

15. The learned counsel for the complainant-petitioner has argued before this Court the judgment of conviction and order of sentence, passed by the learned convicting Court below, be upheld. However, he has prayed that the sentence of fine, as imposed upon the convicts be enhanced and the same be paid as compensation to the legal heirs of the deceased.

**Case dependent upon the testimony of injured
eye witness-complainant PW-4.**

16. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the deposition of the ocular witness to the occurrence, namely, Malkiat Singh, who stepped into the witness box, as PW-4. The contents of the examination-in-chief, as rendered by PW-4 are ad verbatim extracted hereinafter.

“We are four brothers and all of us were residing jointly with our father Ram Singh (since deceased) and our cultivation was also joint. On 13.6.2003 my younger brother Harjit Singh had gone to Patiala on tractor to purchase diesel. At about 6.30/7 Surjit Singh son of Ralla Singh armed with 12 bore double barrel gun, Devinderjit Singh s/o Surjit Singh armed with Gandasi, Nirdev Singh son of Ujjagar Singh armed with Gandasi, Amarjit Singh s/o Sher Singh armed with Gandasi, Gurvinder Singh s/o Amarjit Singh armed with gandasi, Shamsher Singh s/o Gurdial Singh armed with gandasi, Kirpal Singh s/o Gurdial Singh armed with kirpan, all the residents of village Punia and Labh Singh s/o Gurcial Singh r/o Sainsarwal armed with gandasi. All of them had come in front of our house in a Santro car bearing No. PB-11-T-2481 which was being driven by Surjit Singh accused and one tractor Ford which was being driven by Nirdev Singh accused. All the accused persons raised lalkaras that Harjit Singh s/o Ram Singh my brother should not be spared today and should be finished. While raising abovesaid lalkaras all the accused persons went away on the



above Santro car and the tractor. To lodge the report at Police Post Bhunderheri regarding abovesaid act of the accused persons, I and my father Ram Singh and my son Rupinder Singh were going on scooter and motor cycle to report the matter. I was on my scooter. My father Ram Singh and my son Rupinder Singh were on motor cycle. When we reached at bus stand Behal, all the abovesaid accused intercepted us with their abovesaid Santro car and Ford tractor, and all the accused persons were armed with their abovesaid respective weapons. We had boarded down from our scooter and motor cycle. Surjit Singh accused raised lalkara that first of all we should be taught a lesson. At this Surjit Singh accused fired from his double barrel gun towards us which hit my father Ram Singh on his chest. As a result of which my father Ram Singh had fallen on the ground. My son Rupinder Singh tried to run away from the spot, Devinderjit Singh accused after taking the double barrel gun from Surjit Singh fired the same towards my son Rupinder Singh and the fire hit at the backside of my son Rupinder Singh. On receiving fire injury, my son Rupinder Singh had also fallen on the ground. Nardev Singh accused gave gandasi blow to my father which hit my father on his head, on the backside. Amarjit Singh accused and Shamsher Singh accused gave gandasi blows to my son Rupinder Singh which hit on his forehead. Kirpal Singh accused gave kirpan blow which hit on my head. we raised noise Mar ditta mar ditta. At this my brother Harjit Singh and Mohinder Singh s/o Bant Singh r/o Bhunderheri came there. Gurwinder Singh accused gave reverse side gandasi blows to Mohinder Singh which hit on right leg and left arm of Mohinder Singh. Labh Singh accused gave his gandasi blow to me which hit on my right leg, right arm, my backside and on my foot. On hearing noise people had collected at the spot and all the accused persons armed with their respective weapons, had went away on their abovesaid Santro car and Ford tractor. Previously the accused party had filed a false case against us in the Court which is pending. My father Ram Singh (since deceased) was contesting election as Panch of the village and the accused party was opposing my father. Due to that grudge, the accused persons had attacked us with common object and had murdered my son Rupinder Singh and my father Ram Singh. My father Ram Singh had died at the spot. I and my son Rupinder Singh were removed to Rajindra Hospital, Patiala by my brother Harjit Singh. Rupinder Singh my son had died on the way to hospital. My statement was recorded by the police on 13.6.2003, at Rajindra



Hospital, Patiala which was read-over to me by the police and the same is Ex.PC/A and I had signed my statement Ex.PC/A at Ex.PC/1 after admitting it as correct. All the accused persons are present in the Court today.”

17. PW-4 also suffered the ordeal of an exacting cross examination, and, yet during the course thereof, the defence counsel failed to elicit from him, any echoing qua the deposition(s) (supra), as, comprised in his examination-in-chief rather being engineered, false, or, contrived. Therefore, completest credence is to be assigned to the deposition of PW-4.

Corroboration lent to the statement of PW-4 by the depositions of PW-5 and PW-6 and analysis of the testification(s).

18. The statement of PW-4 is fully corroborated by the deposition of PW-5 Harjit Singh and by the deposition of PW-6 Mohinder Singh (injured eye witness). The echoings occurring in the examinations-in-chief of PW-5 and PW-6 are in complete harmony with the echoings, as became rendered in respect of the crime event by PW-4.

19. A conjoint analysis of the testification(s), as made by the ocular witnesses (supra), to the relevant occurrence suggests, that their respectively made statements are not ridden with any taint of theirs making any gross improvements or embellishments vis-a-vis their respectively recorded previous statements in writing. Moreover, their respectively made testification(s) are also free from any taint of any intra-se contradiction(s) intra-se their respectively made testification(s). Moreover when they also render unblemished inter-se corroboration(s) to their respectively rendered ocular accounts qua the penal occurrence. Thus, completest credence is to be meted to their respectively made testification(s). Therefore, on the basis of the respectively made testification(s), by the credible ocular witnesses to the



**Signatures disclosure statement(s) of the accused and pursuant
thereto recoveries**

20. During the course of investigations, being made into the appeal FIR, convicts-appellants, made their respective signed disclosure statements, to which respectively Ex. PM, Ex. PN, Ex. PO, Ex. PP, Ex. PQ, Ex. PT, Ex. PV and Ex. PW become assigned.

21. The disclosure statements (supra), carry thereons the signatures, of the convicts concerned. In their signed disclosure statements (supra), convicts, confessed their guilt in inflicting injuries on persons' of the injured and deceased, hence with the recovered weapons. The further speaking therein is qua theirs keeping, and, concealing the incriminatory weapons of offence. Moreover, the said signed disclosure statements do also make speakings about theirs alone being aware about the location of theirs hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory weapons, to the investigating officer concerned, from the place of theirs hiding, and, keeping the same.

22. Significantly, since the appellants have not been able to either ably deny their signatures as occur on the exhibits (supra) nor when they have been able to prove the apposite denial. Moreover, since they have also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Therefore, all the exhibits are *prima facie* concluded to be holding the utmost evidentiary tenacity.

23. Significantly also, since post the making of the said signed disclosure statements, becoming made, thus by the convicts to the investigating officer concerned, each of them through their respective recovery memos bearing Ex. PN/2, Ex. PM/2, Ex. PO/2, Ex. PP/2, Ex. PQ/2,

Ex. PT/1, Ex. PV/2 and Ex. PW/2, thus caused the recoveries of the weapons



of offence to the investigating officer concerned. Consequently, when the said made recoveries are also not suggested by any cogent evidence to be planted recoveries. Resultantly, the effect thereof, is that the valid recoveries were made vis-a-vis the incriminatory weapons of offence by the convicts, to the investigating officer concerned. In sequel, the makings of the valid signed disclosure statements, by the convicts besides the pursuant thereto effectuation(s) of valid recoveries of the incriminatory weapons of offence, thus by each of the convicts to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

24. However, yet for assessing the vigor of the said made disclosure statements and consequent thereto made recoveries, it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statements and to the consequent thereto made recoveries. The principles governing the facet (supra), become embodied in paragraphs Nos. 23 to 27 of a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal Nos.1030 of 2023, titled as "Manoj Kumar Soni V. State of Madhya Pradesh", decided on 11.8.2023**, relevant paragraphs whereof become extracted hereinafter.

23. The law on the evidentiary value of disclosure statements under Section 27, Evidence Act made by the accused himself seems to be well established. The decision of the Privy Council in Pulukuri Kotayya and others vs. King-Emperor holds the field even today wherein it was held that the provided information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects. The Privy Council observed:



The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into s. 27 something which is not there, and admitting in evidence a confession barred by s. 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

24. *The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in **Emperor vs. Lalit Mohan Chuckerburty**, to “lend assurance to other evidence against a co-accused”. In **Haricharan Kurmi vs. State of Bihar**, this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:*

13. ...In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

25. *In yet another case of discrediting a flawed conviction under Section 411, IPC, this Court, in **Shiv Kumar vs. State of Madhya Pradesh** overturned the conviction under Section 411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:*

24. ..., the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the



conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens rea is clearly not established for the charge under Section 411 IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing." [William Shakespeare, Merchant of Venice, Act 1 Scene 1.]

26. *Coming to the case at hand, there is not a single iota of evidence except the disclosure statements of Manoj and the co-accused, which supposedly led the I.O. to the recovery of the stolen articles from Manoj and Rs.3,000.00 from Kallu. At this stage, we must hold that admissibility and credibility are two distinct aspects and the latter is really a matter of evaluation of other available evidence. The statements of police witnesses would have been acceptable, had they supported the prosecution case, and if any other credible evidence were brought on record. While the recoveries made by the I.O. under Section 27, Evidence Act upon the disclosure statements by Manoj, Kallu and the other co-accused could be held to have led to discovery of facts and may be admissible, the same cannot be held to be credible in view of the other evidence available on record.*

27. *While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned hostile right from the word 'go'. The common version of all the seizure witnesses, i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.*

25. Furthermore, in a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal No.2438 of 2010, titled as "Bijender @ Mandar V. State of Haryana", decided on 08.11.2021**, the relevant principles governing the



assigning of creditworthiness become set forth in paragraph 16 thereof, paragraph whereof becomes extracted hereinafter.

*16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: **Tulsiram Kanu vs. The State; Pancho vs. State of Haryana; State of Rajasthan vs. Talevar & Anr and Bharama Parasram Kudhachkar vs. State of Karnataka**).*

26. Furthermore, in another judgment rendered by the Hon'ble Apex Court in **Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police", decided on 03.01.2024**, the relevant principles governing the assigning of creditworthiness become set forth in paragraphs 22 to 25 thereof, paragraphs whereof become extracted hereinafter.

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical



*object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In **Mohmed Inayatullah v. State of Maharashtra**¹², elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.*

23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the



police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant – Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar, Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR. No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression “custody” under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

27. Now the principles set forth therein are that the defence, is required to be proving;

i) That the disclosure statement and the consequent thereto recovery being forged or fabricated through the defence proving that the discovery of fact, as made in pursuance to a signed disclosure statement made by the accused to the investigating officer, during the term of his custodial interrogation, rather not leading to the discovery of the incriminatory fact;

ii) That the fact discovered was planted;

iii) It was easily available in the market;



iv) It not being made from a secluded place thus exclusively within the knowledge of the accused.

v) The recovery thereof made through the recovery memo in pursuance to the making of a disclosure statement, rather not being enclosed in a sealed cloth parcel nor the incriminatory item enclosed therein becoming sent, if required, for analyses to the FSL concerned, nor the same becoming shown to the doctor concerned, who steps into the witness box for proving that with the user of the relevant recovery, thus resulted in the causings of the fatal ante mortem injuries or in the causing of the relevant life endangering injuries, as the case may be, upon the concerned.

vi) That the defence is also required to be impeaching the credit of the marginal witnesses, both to the disclosure statement and to the recovery memo by ensuring that the said marginal witnesses, do make speakings, that the recoveries were not made in their presence and by making further speakings that they are compelled, tutored or coerced by the investigating officer concerned, to sign the apposite memos. Conspicuously, despite the fact that the said recovery memos were not made in pursuance to the accused leading the investigating officer to the site of recovery. Contrarily the recovery memo(s) becoming prepared in the police station concerned.

vii) The defence adducing evidence to the extent that with there being an immense gap *inter se* the making of the signed disclosure statement and the consequent thereto



recovery being made, that thereby the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem employed by the investigating officer.

28. Therefore, unless the said defence(s) are well raised and are also ably proven, thereupon the making of a disclosure statement by the accused and the consequent thereto recovery, but are to be assigned credence. Conspicuously, when the said incriminatory link in the chain of incriminatory evidence rather is also the pivotal corroborative link, thus even in a case based upon eye witness account.

29. Be that as it may, if upon a prosecution case rested upon eye witness account, the eye witness concerned, resiles therefrom his previously made statement. Moreover, also upon his becoming cross-examined by the learned Public Prosecutor concerned, thus the judicial conscience of the Court become completely satisfied that the investigating officer concerned, did record, thus a fabricated apposite previously made statement in writing, thereby the Courts would be led to declare that the said made apposite resilings are well made resilings by the eye witness concerned, thus from his previously made statement in writing.

30. Moreover, in case the Court, in the above manner, becomes satisfied about the well made resilings by the eye witness concerned, to the crime event, thereupon the Court may consequently draw a conclusion, that the recoveries made in pursuance to the disclosure statement made by the accused, even if they do become ably proven, yet thereby may be the said disclosure statement, and, the consequent thereto made recoveries also loosing their evidentiary tenacity. The said rule is not a straitjacket principle, but it has to be carefully applied depending upon the facts, circumstances



and evidence in each case. Tritely put in the said event, upon comparative weighings being made of the well made resilings, thus by the eye witness concerned, from his previously made statement in writing, and, of the well proven recoveries made in pursuance to the efficaciously proven disclosure statement rendered by the accused, the Court is required to be drawing a conclusion, as to whether evidentiary tenacity has to be yet assigned to the disclosure statement and the pursuant thereto recovery memo, especially when they become ably proven and also do not fall foul from the above stated principles, and/or to the well made resiling by the eye witness concerned, from his previously recorded statement in writing. Emphatically, the said exercise requires an insightful apposite comparative analyses being made.

31. To a limited extent also if there is clear cogent medical account, which alike, a frailly rendered eye witness account to the extent (supra), vis-a-vis the prosecution case based upon eye witness account rather unfolds qua the ante mortem injuries or other injuries as became entailed on the apposite regions of the body(ies) concerned, thus not being a sequel of users thereovers of the recovered weapon of offence. Resultantly therebys too, the apposite signed disclosure statement and the consequent thereto recovery, when may be is of corroborative evidentiary vigor, but when other adduced prosecution evidence, but also likewise fails to connect the recoveries with the medical account. In sequel, thus therebys the said signed disclosure statement and the consequent thereto recovery, thus may also loose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

32. However, in a case based upon circumstantial evidence when



the appositely made signed disclosure statement by the accused and the consequent thereto prepared recovery memos, do not fall foul, of the above stated principles, thereby they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

33. The makings of signed disclosure statement and the consequent thereto recoveries, upon able proof becoming rendered qua both, thus form firm incriminatory links in a case rested upon circumstantial evidence. In the above genre of cases, the prosecution apart from proving the above genre of charges, thus also become encumbered with the duty to discharge the apposite onus, through also cogently proving other incriminatory links, if they are so adduced in evidence, rather for sustaining the charge drawn against the accused.

34. Consequently, since the statutory provisions enclosed in Section 25 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter, do not assign statutory admissibility to a simpliciter/bald confession made by an accused, thus before the police officer, rather during the term of his suffering custodial interrogation, but when the exception thereto, becomes engrafted in Section 27 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter. Therefore, thereby when there is a statutory recognition of admissibility to a confession, as, made by an accused before a police officer, but only when the confession, as made by the accused, before the police officer concerned, but becomes made during the term of his spending police custody, whereafter the said incriminatory confession, rather also evidently leads the accused, to lead the investigating officer to the place of discovery, place whereof, is exclusively within the domain of his exclusive knowledge.



“25. Confession to police-officer not to be proved.—No confession made to a police-officer, shall be proved as against a person accused of any offence.

x x x x x

27. How much of information received from accused may be proved.— Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

35. Significantly, it would not be insagacious to straightaway oust the said made signed disclosure statement or the consequent thereto recovery, unless both fall foul of the above principles, besides unless the said principles become proven by the defence. Contrarily, in case the disclosure statement and the consequent thereto recovery enclosed in the respective memos, do not fall foul of the above principles rather when they become cogently established to link the accused with the relevant charge. Resultantly, if the said comprises but a pivotal incriminatory link for proving the charge drawn against the accused, thereby the snatching of the above incriminatory link from the prosecution, through straightaway rejecting the same, but would result in perpetration of injustice to the victim or to the family members of the deceased, as the case may be.

36. Now coming the facts at hands, since the disclosure statements and the consequent thereto recoveries do become efficaciously proven by the prosecution. Moreover, when none of the marginal witnesses, to the said memos become adequately impeached rather for belying the validity of drawings of the memos nor also when it has been proven that the said memos are fabricated or engineered, besides when it is also not proven that the recoveries (supra) did not lead to the discovery of the apposite fact from



the relevant place of hiding, thus only within the exclusive knowledge of the accused.

37. Conspicuously also, when the said disclosure statements are but not bald or simpliciter disclosure statements, but evidently did lead to the making of efficacious recovery(ies), at the instance of the accused, to the police officer concerned.

38. Consequently, when therebys the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statements, and, the consequent thereto recoveries, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the rendition of credible eye witness account vis-a-vis the crime event. Moreover, when the memos (supra) also lend corroboration also to the medical account, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

Medical Evidence

MLRs of injured Mohinder Singh and Malkiat Singh

39. Dr. Vishal Garg, who medico legally examined the injured Mohinder Singh on 13.6.2003, 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. PA, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured Mohinder Singh.

“1. Reddish contusion 10 x 1 cm on the back of left forearm 2 cm below the left elbow present obliquely, tenderness was present.

2. Reddish contusion 3 x 1 cm present on the inner part of



left wrist joint. Tenderness was present.

3. Reddish contusion 10 x 4 present on the outer and backside of right lower leg 5 cm below knee joint.”

40. The said witness deposed that all the injuries were simple in nature, and, became caused by a blunt weapon.

41. Dr. B.P.S.Khagura, who medico legally examined the injured Malkiat Singh on 13.6.2003, has stepped into the witness box as PW-21, and, during the course of his examination-in-chief, he has proven the MLR of the said injured, to which Ex. PS, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured Malkiat Singh.

“1. Incised wound 6 x 1 cm on the right side four inches above the pinna, fresh bleeding was present. He was advised X-ray and opinion of the said injury.

2. Bruise on the lateral aspect of right lower leg extending from knee joint till 8 inches down the leg. Advised X-ray.

3. Bruise on the left side of back 16x4 cm. Advised X-ray.

4. Bruise on the right upper arm measuring 12 x 2.5 cm. Advised X-ray.

5. Bruise on the right upper back just below the shoulder measuring 17 x 3 cm. Advised X-ray.

6. Lacerated wound 0.5 cm x 0.5 cm on the right foot dorsal aspect. Advised X-ray.”

42. Injury No. 1 was declared to be caused by a sharp edged weapon, whereas the other injuries were opined to be caused by a blunt weapon

Post-mortem report

43. The post-mortem report appertaining to deceased Ram Singh, to which Ex. PB 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 Ram Singh, thus his noticing thereons the hereinafter extracted ante mortem injuries-

- “1. Wound of entrance caused by fire arm measuring 3 cm x 3 cm with blackening abrasion collar all around with inverted margins present on right side of epigastric region 2 cm from midline and 6 cm below the inter memory line. On exploration theunderline liver (left lobe) was lacerated with the peritoneal cavity containing about 1.6 litres of blood. A number of pellets were found lodged in the liver, stomach, intestine and mesentry. Three pallets were taken out and were sealed in a vial with one seal.*
- 2. Incised wound 12 cm. x 2 cm. bone deep present on the left parietal region of head in its posterior part.”*

44. PW-2 further deposed that on the same day i.e. 13.6.2003, the Board of Doctors including him, Dr. S.S.Oberoi and Dr. Kuldip conducted the post-mortem examination on the dead body of Rupinder Singh. He has proven the said post-mortem report, to which Ex. PC is assigned. He has deposed that on theirs making an autopsy on the body of deceased Rupinder “Singh, thus theirs noticing thereons the hereinafter extracted ante mortem injuries-

- “1. Incised wound measuring 6 cm x 2 cm bone deep present on left side of forehead.*
- 2. Incised wound 7 cm x 2 cm bone deep present on left side of head 3 cm above injury No. 1.*
- 3. Wound of entrance caused by fire arm measuring 3 cm x 2.5 cm with abrasion again said abraded margins and inverted edges present on the left side of lower back 6 cm from midline and at the level of iliac crest. About 40 to 50 penerating injuries with abraded margines and inverted edges present in an area 18 x 15 cm. Around above mentioned injuries. On exploration left kidney, small and large intestines and mesentary were lacerated with lodging of pellets at various*



places. The peritoneal cavity contained about 1.7 litres of liquid blood. Three pellets were taken and were sealed in a vial with one seal.”

45. Furthermore, PW-2 also made a speaking in his examination-in-chief, that the cause of demise of both the deceased (supra) was owing to shock and haemorrhage, as a result of fire arm injury, which was stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature.

46. 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 both 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.

Report of the ballistic expert Ex. PV/1.

47. Through Reference Nos. 9635/C-3 of 17.6.2003 and 9758/C of 1.7.2003, four sealed parcels, and one unsealed parcel became sent, through HC Faqir Chand No. 368 to the FSL concerned. After the ballistic expert making an examination of the items, as became sent to him, he made the hereinafter extracted opinion, to which Ex. PV/1, is assigned.

“X	X	X	X
Articles received	Four sealed parcels marked A to D sealed with the seal R.S., S.S. and one unsealed parcel marked ‘E’ in the laboratory.		
	Seals were found intact and tallied with the specimen/		
Parcel ‘A’ contained	Two .12 bore, KF Astram Magna cartridge cases marked C/1 and C/2 in the laboratory.		



Parcel 'B' contained Three small lead pellets.
Parcel 'C' contained Three small lead pellets.
Parcel 'D' contained One .12 bore DBBL gun No. 2001/25542 marked W/1 in the laboratory (Lower and upper barrel type)
Parcel 'E' contained Ten 12 bore test cartridges.

Result of Examination

1. *One 12 bore K.F.Astram Magna cartridge case marked C/1 contained in parcel 'A' had not been fired from lower barrel of 12 bore DBBL gun No. 2001/25542. However, no definite opinion can be given regarding its firing from upper barrel of this gun, because its upper firing mechanism is not in proper working condition.*
2. *One 12 bore K.F.Astram Magna cartridge cases marked C/2 contained in parel 'A' had been fired from lower barrel of 12 bore DBBL gun No. 2001/25542."*

48. A reading of the hereinabove extracted opinion, thus vividly unveils, that one shot became fired from the lower barrel of 12 bore DBBL gun No. 2001/25542. However, no definite opinion could be formed by the ballistic expert concerned, with regard to the firing from the upper barrel of the gun (supra), as its upper firing mechanism was not in proper working condition. However, the latter opinion (supra) does not negate the evidentiary worth of the credible eye witness account rendered vis-a-vis the crime event, nor does it negate the evidentiary tenacity of the respective apposite recorded disclosure statements, and, consequent thereto recoveries, wherefroms the weapon of offence (supra) became recovered. As such, the latter opinion (supra) relating to the factum, that the ballistic expert could not make an opinion with regard to the firing from upper barrel of the gun, thus on the ground that it was no in proper working condition, rather has no exculpatory effect.



49. Importantly also since the relevant cloth parcels also travelled in an untampered, and, unspoiled condition to the FSL concerned. Moreover, reiteratedly when for the reasons (supra), this Court has assigned probative sanctity to the signed disclosure statement, and, to the consequent thereto prepared recovery memo. Resultantly, the examination(s), as made on the items enclosed in an untampered, and, unspoiled cloth parcels when do clearly indicate the inculpatory role of the convict-appellant. Therefore, as but a natural corollary thereof, this Court is of the firm view, that the prosecution has been able to cogently establish the guilt of the accused-appellant in the relevant crime event.

50. Moreover, PW-7 Amarjit Singh, Sr. Assistant in the office of District Magistrate Patiala has proven that the arm licence No. Ex. PT bearing No. 3214/DM/2003/P.S. Sadar, Patiala was issued in the name of appellant Surjit Singh for .12 bore DBBL gun No. 25542-01. In addition PW-15 Gurnam Singh, Reader to the Additional District Magistrate, Patiala has proven the sanction order Ex. PR issued by the Additional District Magistrate, Patiala for prosecution of accused-appellant Devinderjit Singh under the Arms Act, for using the gun (supra) in the crime event, which was issued in the name of his father i.e. appellant Surjit Singh. As such, the incriminatory weapon of offence (supra) is thereby proven to be in the name of the convict-appellant Surjit Singh.

51. Thus, conjoint readings of the report of the doctors concerned, who proved the apposite MLRs of the injured concerned, and, of the apposite post-mortems report of the deceased concerned, along with the efficaciously proven signed disclosure statements (supra) as made by the convict-appellant, and, also with the consequent thereto made valid recovery



through recovery memos (supra), does therebys foster an inference, that therebys there is *inter se* corroboration *inter se the inter se the ocular account with the* medical account and the report of the ballistic expert, besides with the memos supra. In summa, this Court finds no gross perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

Final Order

52. The result of the above discussion, is that, this Court does not find any merit in the appeal (supra) preferred by the appellants, and, is constrained to dismiss it. Consequently, **CRA-404-DB-2006** stands dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent thereto order of sentence is also affirmed. If the convict-appellants are on bail, thereupon, the sentence as imposed upon them, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

53. Insofar as **CRR No. 2029 of 2006** is concerned, since only minimum sentences of fine (supra) become imposed upon the convicts-appellants, nor also when the sentences of fine as imposed, upon the convicts-appellants, declare that on realization thereof, the same becoming disbursed to the family members of the victims concerned.

54. Resultantly, **CRR No. 2029 of 2006**, is allowed. The sentences of fine imposed upon each of the convicts-appellants, is enhanced to Rs. 25,000/- each. In default of payment of fine (supra), the convicts-appellants shall further undergo rigorous imprisonment for a period of six months. Insofar as the sentence(s) of fine, as imposed under Sections 25 and



27 of the Arms Act, upon convicts-appellants Surjit Singh and Devinderjit Singh is concerned, the said sentence(s) of fine is also enhanced from Rs. 1000/- each to Rs. 25,000/- each, on the both counts (supra). In default of payment of fine (supra), the convicts-appellants shall further undergo rigorous imprisonment for a period of six months.

55. On realization of the fine amounts (supra), the same be disbursed to the family members of the victims concerned.

56. 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.

57. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

October 01, 2024
Gurpreet

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