



In the High Court of Punjab and Haryana at Chandigarh

1.

CRA-752-DB-2005 (O&M)
Reserved on: 21.8.2024
Date of Decision: 27.8.2024

Dharampal

.....Appellant

Versus

State of Haryana

.....Respondent

2.

CRR-194-2006 (O&M)

Chandgi Ram

.....Petitioner

Versus

Mahabir and others

....Respondents

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

Present: Mr. Kapil Aggarwal, Advocate
for the appellant (in CRA-D-752-DB-2005).

Ms. Shruti Sharma, Advocate
for the petitioner (in CRR-194-2006).

Mr. Gautam Pathania, Advocate (Legal Aid Counsel)
for the accused-respondents.

Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

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

2. Both the (supra) are directed against the impugned verdict, as made on 5.10.2005, upon Session Case bearing No. 04 of 1998/2005, by the

learned Additional Sessions Judge, Rewari, wherethrough in respect of



charges drawn against the accused qua offences punishable under Sections 148, 302/149, 323/149 and under Section 506, thus the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellant Dharampal under Section 302 read with Section 34 IPC. However, accused Mahabir, Raj Kumar, Dayanand and Krishan Kumar were acquitted of the charges framed against them.

3. Moreover, through a separate sentencing order dated 8.10.2005, the learned trial Judge concerned, sentenced convict-appellant Dharampal to undergo imprisonment for life for an offence punishable under Section 302 read with Section 34 IPC, besides also imposed upon the said convict-appellant sentence of fine, as comprised in a sum of Rs. 2,000/-, and, in default of payment of fine amount, he sentenced the said appellant to undergo rigorous imprisonment for a period of six months.

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

5. Accused-appellant Dharampal becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the instant criminal appeal.

6. Petitioner Chandgi Ram (father of the deceased) becomes aggrieved from the above drawn verdict of acquittal qua the accused-respondents, and, is led to institute thereagainst Criminal Revision Petition



Factual Background

7. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PF/1 is assigned. As per the prosecution case, on 14.3.1998 after receipt of information regarding the admission of injured Om Parkash son of Shiv Lal in General Hospital, Rewari, ASI Lal Singh accompanied by other police officials immediately rushed to the premises of GH, Rewari and after seeking opinion regarding fitness of the said injured from the doctor concerned, he recorded the statement of injured Om Parkash son of Shiv Lal, wherein he alleged that on the fateful day i.e. 13.3.1998 at about 11.30/12.00 O' Clock, Mahabir son of Raghbir Singh under the influence of liquor, was calling bad names to Om Parkash son of Chandgi Ram in the public street and when said Om Parkash objected to it, Mahabir gave him beatings. In the meanwhile, Krishan and Raj Kumar sons of Raghbir Singh also reached there and thrashed said Om Parkash son of Chandgi Ram. To save him, complainant went to the spot and Mahabir, Krishan and Raj Kumar also started beating him. Mahabir brought a Lakri (wood) and hit him with the same on his left shoulder. Raj Kumar hit him with a stone on his back and Krishan hit him with a rod on his right leg. Thereafter, Dayanand son of Ram Sarup also arrived there and hit him with the stone on his head. The aforesaid persons namely Mahabir, Krishan, Raj Kumar and Dayanand caused injuries on the person of complainant as well as on the person of Om Parkash son of Chandgi Ram with Lakri and stones. The said occurrence was also witnessed by Bhim Singh and Sunder and they saved the injured from the clutches of the accused. Since the condition of Om Parkash son of Chandgi Ram deteriorated due to the injuries, therefore,

firstly he was taken to Saxena Hospital, Rewari and from there he was



referred to Safdarjang Hospital, New Delhi and complainant Om Parkash son of Shiv Lal was got admitted in GH, Rewari where his statement was recorded. On the basis of the aforesaid statement, the instant FIR was registered. On 17.3.1998 as Om Parkash son of Chandgi Ram succumbed to the injuries, therefore, Section 302 IPC was also added.

Investigation proceedings

8. During the course of investigations, all the accused were apprehended and were subsequently released on bail. Inquest proceedings under Section 174 Cr.P.C., were got conducted by the investigating officer. Statements of the witnesses under Section 161 Cr.P.C. were recorded. Site plan qua the place of occurrence was also got prepared. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

9. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 9.6.1998, 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 for the offences punishable under Sections 148, 302/149, 323/149 IPC and under Section 506 IPC. 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 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence.

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. Though, the accused chose to adduce defence evidence, however, they did not lead any witness into the witness box.

13. During the pendency of trial, co-accused Sri Chand had expired during trial, therefore, proceedings qua him were ordered to be dropped.

Submissions of the learned counsels for the appellant

14. The learned counsels for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. He further rests the above submission on the ground, that appellant Dharampal has not been named in the FIR, and, his name surfaced later on, thus on the statement of Om Parkash (PW-7), as, made under Section 161 Cr.P.C. The learned counsel further submits that the said witness did not support the prosecution case, and, was declared hostile. Furthermore, the learned counsel submits, that the alleged eye witness Om Pal (PW-15) was introduced later on, as he reached the place of occurrence after the crime event taking place. Moreover, no specific role has been attributed to the appellant by the said witness. The learned counsel also submits that



allegation to the effect that the appellant had pushed the deceased from the roof, has not been put to the appellant in his statement recorded under Section 313 Cr.P.C. He further submits, that DDR No. 11 Ex.DA was also not put to the appellant in his statement recorded under Section 313 Cr.P.C.

Submissions of the learned State counsel

15. 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-appellant, 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 be dismissed.

Submissions on behalf of the petitioner (in CRR-194-2006)

16. The learned counsel for the petitioner, has made vehement submissions before this Court, that the reasons assigned by the learned trial Judge concerned, for making an order of acquittal, upon the accused concerned, are extremely frail, besides are not based upon a sound appreciation of the evidence on record. Therefore, she contends, that the impugned verdict of acquittal be quashed, and, set aside. She rests the above submissions on the ground, that prior to the deceased Om Parkash succumbing to the injuries, he was alive for three days, however, the police intentionally did not record the statement of said Om Parkash, thus only for extending benefit to the accused persons. She further submits, that PW-15 Om Pal, who is the brother of the deceased and, who is the eye witness to the occurrence, has supported the prosecution case, inasmuch as, he has specifically echoed in his testification, that he had seen all the accused persons throwing his brother Om Parkash from the room. Furthermore, the



learned counsel submits, that though the eye-witnesses to the occurrence namely Om Parkash son of Durga Ram (PW-7) and Om Parkash son of Shiv Lal (PW-12) were declared hostile, but since in their depositions they initially implicated the accused persons, therefore, their testifications cannot be completely discarded.

Analysis of the depositions of the eye witnesses to the occurrence, who respectively stepped into the witness box as PW-7 and PW-12

17. Complainant Om Parkash son of Shiv Lal stepped into the witness box as PW-12, and, in his examination-in-chief, he thus made an articulation, that on 13.3.1998, at about 10/11.00 A.M., an altercation took place between Sri Chand, Dharampal, Raj Kumar, Krishan, Mahabir with Om Parkash son of Chandgi Ram, and, they were abusing each other. However, the said persons were separated. He further deposed thereins, that when Om Parkash son of Chandgi Ram was passing in front of the house of Sri Chand, thereupon, Sri Chand threw brick-bats from the roof of his house towards Om Parkash, whereupon Om Parkash raised a protest. Thereafter Om Parkash went to the roof of the house of Sri Chand, Dharampl caught hold of Om Parkash and Sri Chand inflicted a lathi blow on his neck. He further deposed that thereupon Om Parkash was thrown from the roof in the street by accused Sri Chand and Dharampal. He further stated in his deposition, that he also received one lathi blow on his shoulder, which was caused by accused Sri Chand. Thereafter, the said witness was declared hostile.

18. After the said witness becoming declared hostile, he was subjected to cross-examination by the learned Public Prosecutor concerned.

During the course of his being put to cross-examination by the learned



Public Prosecutor concerned, he admitted that Ex. PF bears his signatures. However, he stated that the contents thereof were neither read over nor explained to him.

19. The inference to be drawn from the factum of the witness (supra) during the course of his cross-examination by the learned Public Prosecutor concerned, thus admitting qua Ex. PF bearing his signatures, is that, the deposition made in his examination-in-chief whereby, he resiled from the contents of Ex. PF, rather is required to be declared as inadmissible. The reason for forming the above conclusion generates from the factum, that in terms of Sections 91 and 92 of the Indian Evidence Act, provisions whereof stand extracted hereinafter, thus upon a witness admitting the occurrence of his valid signatures on a scribed document, thereupon, the witness concerned becomes rather estopped from detracting from the contents of the document, whereons, he admits his signatures. Therefore, the existence of valid signatures over a scribed document but makes all the contents borne therein, to be readable or admissible in evidence, rather than any parole evidence contra thereto being declared to be admissible in evidence.

91. Evidence of terms of contracts, grants and other dispositions of property reduced to form of document—When the terms of a contract, or of a grant, or of any other disposition of property, have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions hereinbefore contained.

Exception 1.—When a public officer is required by law to be appointed in writing, and when it is shown that any particular person has acted as such officer, the writing by which he is



appointed need not be proved.

Exception 2.— *Wills may be proved by the probate.*

92. Exclusion of evidence of oral agreement— *When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:*

Proviso(1)—Any fact may be proved which would invalidate any document, or which would entitle any person to any decree or order relating thereto; such as fraud, intimidation, illegality, want of due execution, want of capacity in any contracting party, 1 [want or failure] of consideration, or mistake in fact or law.

Proviso(2)—The existence of any separate oral agreement as to any matter on which a document is silent, and which is not inconsistent with its terms, may be proved. In considering whether or not this proviso applies, the Court shall have regard to the degree of formality of the document.

Proviso(3)—The existence of any separate oral agreement, constituting a condition precedent to the attaching of any obligation under any such contract, grant or disposition of property, may be proved.

Proviso(4)—The existence of any distinct subsequent oral agreement to rescind or modify any such contract, grant or disposition of property, may be proved, except in cases in which such contract, grant or disposition of property is by law required to be in writing, or has been registered according to the law in force for the time being as to the registration of documents.

Proviso(5)—Any usage or custom by which incidents not expressly mentioned in any contract are usually annexed to contracts of that description, may be proved: Provided that the annexing of such incident would not be repugnant to, or inconsistent with, the express terms of the contract.

Proviso(6)—Any fact may be proved which shows in what manner the language of a document is related to existing facts.”



20. In consequence, the attribution of incrimination in Ex. PF, which is admittedly the signed document of PW-12, one Om Parkash, thus holds immense evidentiary vigour, irrespective of the said witness during his examination-in-chief rather reneging from the contents thereof.

21. Furthermore, the consequent effect thereof, is that, the incrimination made therein against all the accused inclusive of accused Dharampal does hold immense evidentiary solemnity, especially when the genesis of the prosecution case becomes founded upon scribed complaint Ex. PF, which resulted in the registration of the FIR, to which Ex. PF/1 is assigned.

22. PW-7 Om Parkash son of Durga Ram, is the another eye witness to the occurrence. However, during the course of his examination-in-chief, he reslied from his previously made statement in writing, as such was declared hostile. After his becoming declared hostile, he was subjected to cross-examination by the learned Public Prosecutor concerned. The cross-examination, as made by the learned Public Prosecutor, upon, the said witness, was through 11 questions becoming purveyed to him. The said questions and the answers made thereto become extracted hereinafter.

Q.1 I put to you that you had made statement before the police, which read to you know that accused (who are present in Court today and whose names have been read to you from the statement, were causing injuries to deceased Om Parkash son of Chandgi and also to Om Parkash son of Shiv Lal PW. What have you to say?

Ans: I had only stated before the police that both the parties were throwing brick bats from the top of the houses. (confronted with portion A to A of Ex. PI, the statement of this witness under Section 161 Cr.PC., where there is mention on the line, as is put to the witness as Question no. 1.)

Q.2 I put to you that you had made statement before the police



that at the time accused Krishan was having iron rod in his hand and accused Mahavir was having wooden stick in his hand. What have you to say?

Ans: It is incorrect. I had not so stated before the police (confronted with portion B to B of Ex. PI, wherein it is so recorded.)

Q.3 I put to you that you had stated before the police that accused Krishan had caused injuries with iron rod on the right foot of Om Parkash son fo Shiv Lal and accused Mahabir caused wooden stick blow to Om Parkash son of Shiv Lal. What have you to say?

Ans: It is incorrect. (confronted with portion C to C of Ex. PI, wherein it is so recorded.)

Q.4 I further put to you that you had stated before the police that accused Raj Kumar gave blow with stone to Om Parkash son of Shiv Lal and accused Daya Nand gave blow with stone on the head of Om Parkash son of Shiv Lal. What have you to say?

Ans: It is incorrect. (confronted with portion D to D of Ex. PI, wherein it is so recorded.)

Q.5 I further put to you that you had also stated that by that time Siri Chand and Dharam Pal had come present. Siri Chand was having wooden stick in his hand and they had said that what was being waited for and that both Om Parkash son of Shiv Lal and Om Parkash son of Chandgi be killed and on this, Krishan gave a rod blow on the back of Om Parkash son of Chandgi, Mahabir gave stick blow on his shoulder and Siri Chand gave stick blow on his head and others had given brick bats and fist blows etc. to both of them. What have you to say?

Ans: I had only stated that the brick bats were exchanged. I had not stated anything else. (confronted with portion E to E of Ex. PI, wherein it is mentioned as is put to the witness above as question No. 5.)

Q.6 I further put to you that when Om Parkash son of Chandgi Ram had fallen down, all the accused had dragged him to the roof of Siri Chand and with an intention to kill, he was thrown down from the roof of the house of Siri Chand. What have you to say?

Ans: It is incorrect. (confronted with portion F to F, wherein it is



so recorded.)

Q.7 As per you, what was the cause of the fight?

Ans: It was a day of Holi festival. They may have taken somewhere and I do not know, when there was a fight. Volunteered, I do not precisely.

Q.8 Whether Om Pal son of Chandgi Ram was seen by you at the spot ?

Ans: No volunteered, I had heard afterwards, he had reached the spot and he had taken his brother to the hospital.

Q.9 Whether you had a talk about this incident with Om Pal son of Chandgi?

Ans: Om Pal son of Chandgi is my co-villager. We usually meet and we had a talk about this incident.

Q.10 I put to you that on 14.10.1999, the village Biradari had intervened and a sum of Rs. 2,15,000/- had been got deposited in Punjab National Bank village Branch Mundi, as an amount to be paid to you, if you would turn hostile and would depose against the case of the prosecution and the amount was deposited in the name of Lala Ram, Virender, sitting Sarpanch, Bholu Ram and Dariyav, Jija of Mahabir accused, who would paid this amount to you and to your brothers Sunder and Bhim Singh. What have you to say?

Ans: It is incorrect. I have knowledge of any such things. The allegations are false. I am deposing truly.

Q.11 I put to you that after the occurrence, there was panchayat election in the village, and the relatives of the deceased had refused to support your candidate namely Virender Singh and this is one of the reason, you decided to turn hostile. What have you to say?

Ans: It is incorrect.”

23. A reading of the questions (supra) and the answers meted thereto, do result in the formation of the hereinafter extracted inferences:-

(a) That the witness (supra) while stepping into the witness box, ill-resiling from his previously made statement to the



police, whereins, he attributed incrimination to the accused. The reason for forming the above inference becomes generated from the factum, that when the witness (supra), during the course of his cross-examination, thus became confronted with his previously made statement, thereins he attributed incrimination to the accused. Resultantly, the answer meted to question No. 1 (supra), qua his only intimating the police, that both the parties were throwing brick-bats from the top of the houses, is to be construed to be a pretextual or prevaricated version qua the crime event.

(b) Likewise though to question No. 2, with expressions thereins, that the witness (supra) had stated to the police, that he had witnessed accused Krishan to be wielding an iron rod, and, accused Mahabir was wielding a wooden stick in his hand, rather he made a disaffirmative answer. However, when he became confronted with the relevant portion of his previously made statement, thereins rather the said fact became stated, thereupon, it is to be concluded, that he had ill-contradicted his earlier made version to the police, whereby his resiling from the said version during the course of his examination-in-chief, is an ill-resiling therefrom, therefore, thereby he is to be construed to be stating a prevaricated version vis-a-vis the crime incident.

(c) Similarly though to question No. 3, with expressions thereins, that the witness (supra) had stated to the police, that accused Krishan had caused injuries with the iron rod on the



right foot of Om Parkash, and, also to accused Mahabir, rather he made a disaffirmative answer thereto. However, when the said witness became confronted with the relevant portion of his previously made statement, therein, rather the said fact became stated. Furthermore, though to question No. 4 with expressions therein, that the witness (supra) had stated to the police, that accused Raj Kumar flung stones respectively, upon Om Parkash and accused Daya Nand, besides flung a stone on the head of Om Parkash, rather he made a disaffirmative answer thereto. However, when the said witness became confronted with the relevant portion of his previously made statement, therein rather the said fact became stated.

(d) Similarly to question No. 6 with expressions therein, that when Om Parkash had fallen down, all the accused had dragged him to the roof of Sri Chand and with an intention to kill, he was thrown from the roof of the house of Sri Chand, rather he made a disaffirmative answer thereto. However, when the said witness became confronted with the relevant portion of his previously made statement, therein rather the said fact became stated. Thereupon, it is to be concluded, that since he had contradicted his earlier made version to the police, thus thereby his resiling from the said version during the course of his examination-in-chief, is an ill-resiling therefroms, and, thereby he is to be construed to be stating a prevaricated version vis-a-vis the crime incident.

(e) Cumulatively hence, since the deposition embodied in the



examination-in-chief of PW-7, becomes contradicted from his previously made statement in writing to the police. Resultantly when during the course of his cross-examination, he omitted to make any speakings, that his previously made statement, thus was concocted or manufactured by the investigating officer concerned, nor when he stated that he had never made any previous statement in respect of the crime incident to the police officer concerned. Therefore, the consequential effect thereof is that, the previously made statement by the witness (supra) to the police officer concerned, was both genuine and a true reflection of the crime incident. Contrarily, the statement made by the witness (supra) before the learned trial Judge concerned, was an engineered and concocted version vis-a-vis the crime incident. In sequel, since the previously made statement by the witness (supra) to the police officer concerned, for the reasons (supra) is a truthful reflection of the crime event, thereby immense credence is to be assigned thereto, rather than to the ill resilings therefrom by the witness (supra). Resultantly thereby the prosecution has been able to prove the genesis of the prosecution case. The said reason becomes founded upon the principle of law that even if the prosecution witness turns hostile yet when during the course of his being cross-examined by the Public Prosecutor concerned, he is proven to be ill-resiling from his previously made untutored statement to the police officer concerned, thereupon the resilings as made by the prosecution witness in his examination-in-chief, vis-a-vis, his



previously made statement to the police officer concerned, are ill-resilings therefrom, thus thereto no credence is to be assigned, rather credence is to be assigned to the evidently untutored and undoctored version comprised in his previously made statement in writing to the police officer concerned.

24. In nutshell, an analysis of the depositions of PW-7 and PW-12, thus forthrightly bring to the forth the factum, that the incrimination drawn against all the accused rather was a well drawn incrimination. Resultantly therebys, the charges drawn against the accused became proven to the hilt. Therefore, the verdict of acquittal pronounced by the learned trial Judge concerned, was a sequel of an ill-appreciation of evidence of the above witnesses. As such, the verdict of acquittal is required to be interfered with. Moreover, the verdict of conviction pronounced by the learned trial Court concerned, is required to be affirmed.

Analysis of the deposition of PW-15

25. Though PW-15 also is purported eye witness to the occurrence. However, the rendition by him thus of a purported ocular account vis-a-vis the crime event, rather is bereft of vigour. The reason for forming the above inference becomes spurred from the factum, that when the said witness became cross-examined by the learned defence counsel, thereupons when he became confronted with his previously made statement to the police officer concerned, to which Ex. DX becomes assigned, rather therein he had omitted to state that he was an eye witness to the occurrence. Therefore, the purported ocular version rendered in respect of the crime event, by PW-15, thus in his examination-in-chief, rather is rendered bereft of any evidentiary



26. Nonetheless, when this Court for reasons (supra) has assigned creditworthiness to the depositions of PW-7 and PW-12, thereby even if PW-15 did not eye witness the occurrence, besides when thus thereby the rendition by him of a purported ocular account vis-a-vis the crime event, thus is unworthy of any credence being assigned thereto, yet the said non-assigning of creditworthiness vis-a-vis the deposition of PW-15, rather is completely inconsequential or becomes eclipsed by the rendition of creditworthy depositions vis-a-vis the crime event hence by PW-7 and PW-12.

Recoveries of weapons of offence from accused Krishan Kumar, Sri Chand and accused Mahavir through recovery memos to which respectively Ex. PJ, PK and PL become assigned.

27. During the course of the investigating officer concerned holding the accused (supra) to custodial interrogation, he drew the hereinafter extracted recovery memos to which respectively Ex. PJ, PK and PL become assigned.

“Recovery memo Ex. PJ

“In the presence of following witnesses, accused Krishan Kumar produced one iron Saria rod by which on 13.3.98, injuries to Om Parkash complainant and deceased Om Parkash have been inflicted, as alleged. On measurement, the length of saria was found 3’-1”. The parcel of the same was prepared and sealed with the seal of DN and was taken into police possession through memo. The witnesses signed on the memo.

“Recovery memo Ex. PK

“In the presence of following witnesses, accused Sirichand, have kept oftenly Danda (Baint) by which deceased Om Parkash son of Chandgi Ram have alleged to give injuries, have taken into police possession. The measurement of Danda Baint was found 3’-4” having finve pories. The parcel of the same was prepared and sealed with the seal of DN and was taken into police possession through memo. The witnesses signed on the memo.”



“Recovery memo Ex. PL

“In the presence of following witnesses, accused Mahavir, at the time of arrest, produced one wood by which Om Parkash was suffered injuries on 13.3.98. On measurement, the length of wood was found 3’-2”. The parcel of the same was prepared and sealed with the seal of DN and was taken into police possession through memo. The witnesses signed on the memo.”

28. A reading of the contents of the above extracted recovery memos, though does not unveil that the accused (supra) after making their respective signed disclosure statements, rather theirs causing recovery of weapons of offence to the investigating officer concerned from the respective place(s) of their hiding and keeping them.

29. Nonetheless, the omission (supra) does not detract from the efficacy of the recovery memos (supra). The reason for forming the above inference arises from the factum, that since at the relevant time, the accused were in possession of the incriminatory weapons of offence, and/or when the incriminatory weapons of offence were not hidden or camouflaged by them at a place known only to them, thereupon the possession as held but at the relevant time by the accused of the incriminatory weapons of offence, and, whereafter recoveries became effectuated thus in the police station, at their instance(s) to the investigating officer concerned, rather is to be construed to be an efficacious recovery of the incriminatory weapons of offence by the accused to the investigating officer concerned, but irrespective of prior thereto no disclosure statements being made, the same for reasons (supra) becoming unnecessary.

30. Fortifying vigour thereto becomes garnered from the factum that despite the said recovery memos (supra) becoming proven, yet no cross-examination being made upon the marginal witnesses’ concerned, thus



reflective qua the manner of recoveries thereof, as detailed therein, rather being engineered or skewed recovery(ies). Resultantly therebys also, the recoveries (supra) when are efficaciously made recoveries, thereby they do corroborate the ocular version as rendered vis-a-vis the crime event by the eye witnesses (supra).

MLR of injured Om Parkash S/o Chandgi Ram Ex.PB

31. Dr. Sanjay Kamboj, who medico legally examined the injured/deceased Om Parkash, has stepped into the witness box as PW-1, and, during the course of his examination-in-chief, he has proven the MLR of injured Om Parkash, to which Ex. PB, is assigned. He has also proven the existence of the hereinafter extracted injury on the person of the said injured.

“Alleged history of fall with fracture lumber vertebrae with paraplegia vital stable.

Patient was referred to Emergency Operation Theater.”

32. PW-14 Dr. Ashish Diwan has deposed that on 14.3.1998, injured Om Parkash was brought with traumatic quadriplegia. He has proved the admission slip of the patient as Ex. PG and also proved the treatment and history summary as Ex. PG/1. The said witness further deposed, that the said patient was not able to move, and, that he was in a state of spinal shock. He further deposed that on 17.3.1998, on police request Ex. PH, he made a report that patient Om Parkash had expired at 6.45 P.M. on 17.3.1998 owing to quadriplegia following the surgical spine injury, and, proved his report Ex. PH/1.

Post-mortem report

33. The post-mortem report, to which Ex. PC is assigned, became proven by PW-3. PW-3 in his examination-in-chief, has deposed that on his



making an autopsy on the body of deceased Om Parkash, thus his noticing thereons the hereinafter ante mortem injuries-

- “1. Multiple abrasions on the right shoulder, within an area of 5 x 6 cms.
2. Contusion over the right scapular region of size 5 cm x 5 cm.
3. Abrasion on the right lumbar region of size 1 cm x 5 cm.
4. Abrasion on the lateral aspect of left knee of size 1 cm x 1 cm.
5. Abrasion on the ventral aspect of left feet of size 1 cm x .5 cm.
6. Abrasion on the lateral aspect of right knee of size .5x.5 cm.”

34. Furthermore, PW-3 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to cranio cerebral injuries caused by blunt impact. All the injuries were stated to be ante mortem in nature, and, also stated to be consistent to the alleged history.

35. The above made echoings by PW-3, 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-3 qua the demise of the deceased thus acquires formidable force. Consequently, the above echoings, as made by PW-3, 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.

36. Thus, a conjoint reading of the reports of the doctors concerned, who respectively proved the apposite MLR of the injured/deceased concerned, and, of the post-mortem report of the deceased concerned, does foster an inference, that therebys the eye witness account as rendered by



gross perversity or absurdity in the appreciation of the relevant evidence, as became made by the learned trial Judge concerned qua accused-appellant Dharampal.

37. The reason for forming the above conclusion is firmly embedded in the factum, that when the incriminatory role of the acquitted 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 with the principal accused, they made incriminatory participations in the crime event. Resultantly therebys, even if the fatal ante mortem injuries were delivered by the principal accused, and, not by the acquitted accused, yet on the principle of vicarious liability founded upon Section 148 and Section 149 IPC, they are co-equally liable along with the principal accused.

Final Order

38. The result of the above discussion, is that, this Court does not find any merit in the appeal preferred by appellant Dharampal, and, is constrained to dismiss it. Consequently, **CRA-752-DB-2005** is dismissed. The impugned verdict of conviction, as becomes recorded upon convict-appellant Dharampal, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent thereto order of sentence is also affirmed. If the convict-appellant is on bail, thereupon, the sentence as imposed upon him, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

39. However, finding merit in the criminal revision petition preferred by one Chandgi Ram bearing No. **CRR-194-2006**, the same is



hereby allowed. The impugned verdict of acquittal, as made by the learned trial Judge concerned, on 5.10.2005 in respect of the accused concerned, is quashed and set aside. In consequence, accused-respondents are held guilty for committing the offences punishable under Sections 302 read with Section 148 and Section 149 IPC, and, are convicted accordingly. The accused are directed to be produced in custody before this Court on 2.9.2024 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.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

August 27, 2024
Gurpreet

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