

In the High Court of Punjab and Haryana at Chandigarh

CRA-D-892-DB-2016 (O&M)

Reserved on: 21.03.2024

Date of Decision: 18.4.2024

Naresh Godara

.....Appellant

Versus

State of Haryana

.....Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Mansur Ali, Advocate
for the appellant.

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

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the impugned verdict, as made on 17.8.2016, upon case bearing No. 35 of 1998/2016, by the learned Additional Sessions Judge, Sirsa. Through the above said verdict, the learned trial Judge concerned, convicted the accused, for the commission of offence punishable, under Section 302 read with Section 34 of the IPC. Moreover, through a separate sentencing order, drawn on 22.8.2016, the learned trial Judge concerned, sentenced the convict to undergo rigorous imprisonment for life for an offence punishable under Section 302 IPC read with Section 34 IPC, besides also imposed, upon the convict sentence of fine, as comprised in a sum of Rs. 50,000/-. However, the period of detention undergone by the convict, 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. It was also ordered, that the fine, if realized, be apportioned in such a manner, that

Rs. 10,000/-be paid to the State Exchequer towards cost of proceedings, and, Rs. 40,000/- be paid to the LRs of the deceased as compensation.

2. The accused-convict becomes aggrieved from the above drawn verdict of conviction, besides also, becomes aggrieved from the consequent therewith 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, before this Court.

Factual Background

3. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PH/1 is assigned. The narrations carried in Ex. PH/1, are that on 22.7.1998 complainant Balbir Singh son of Chanan Singh, Caste Rajput resident of Dudiawali, got recorded his statement to the police to the effect that on 22.7.1998 he and Bishan Singh reached in National College to see Shivdutt and Raj Kumar son of Pokhar Dass r/o Talwara Khurd and they met there. Thereafter, they all proceeded towards Canteen for taking tea, and, when they reached near Science Block at about 2-05 P.M., accused Naresh Godara armed with 12 bore Double barrel gun, Vikas Kukna armed with 12 bore double barrel gun. Rajan son of Sheo Ram armed with a pistol and Rajdeep son of Harbhajan Singh armed with a sword came there. Naresh Godara raised a 'lalkara' to teach a lesson to Shiv Dutt for causing injuries to his brother Hanuman, and, for opposing them in election. On this, accused Rajan fired from his pistol upon Shivdutt but Shivdutt saved himself. Thereafter, Naresh Kumar and Vikas fired from their respective guns on Shivdutt which struck in the chest and stomach of Shiv Dutt and he fell on the ground. Thereafter, the complainant, Bishan Singh and Raj Kumar raised an alarm, and, then three assailants namely

Naresh Kumar, Vikas and Rajan ran away with their respective weapons

from the spot while accused Rajdeep fled away after throwing sword at the spot. Thereafter, Shiv Dutt was shifted to General Hospital, Sirsa where after half an hour he was succumbed to his injuries. Postmortem on the dead body of Shiv Dutt was got conducted from General Hospital, Sirsa. On the statement of the complainant, FIR under Sections 302, 34 IPC and under Section 25/27 of the Arms Act was registered against all the accused.

Investigation proceedings

4. During the course of investigation, it was found that Jasbir Singh son of Ranbir Singh and Kirpa Ram son of Duni Chand had also participated in the occurrence, and, accused Rajdeep was not present at the scene of occurrence and was not involved. Sections 148 and 149 IPC were added. Accused Naresh, Vikas, Rajan, Jasbir and Kirpa Ram were arrested. Accused Naresh in pursuance of his disclosure statement got recovered a double barrel gun. Accused Vikas got recovered a pistol of .315 bore from his possession. 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

5. 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 31.10.1998, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

6. 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 offence punishable under Section

302 read with Section 149 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

7. However, when the case was fixed for prosecution evidence, the learned Public Prosecutor moved an application under Section 319 of the Cr.P.C. for summoning of accused Rajdeep, which was allowed by the learned trial Judge vide order dated 23.2.2000. Thereafter the learned trial Judge concerned, vide order dated 11.9.2000, proceeded to draw charge sheet against the said accused, to which he pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 14 witnesses, and, thereafter vide order dated 3.6.2002, the prosecution evidence was closed by the learned trial Judge concerned.

9. Thereafter, accused-appellant Naresh Godara was released on interim bail by this Court with a direction to appear before the jail authorities on 13.6.2002. However, he did not surrender, and, absconded. Since the presence of the accused-appellant could not be procured through warrant of arrest, and, proclamation under Section 82 Cr.P.C., therefore vide order dated 13.10.2022, he was declared a proclaimed offender. Trial against the remaining accused was concluded, and, accused Vikas and Rajan were held guilty for the commission of offence punishable under Section 302/34 IPC, and, were convicted and sentenced under Section 302/34 IPC to undergo life imprisonment. However, the remaining accused were acquitted of the charges drawn against them. Thereafter, the accused-appellant was arrested in the present case on 2.11.2014.

10. Subsequently, the learned trial Judge concerned, drew proceedings against the accused-appellant, under Section 313 of the Cr.P.C.,

but therein, the accused pleaded innocence, and, claimed false implication.

The accused led into the witness box four defence witnesses.

11. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge(s) (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convict.

Submissions of the learned counsel for the appellant

12. The learned counsel for the aggrieved convict-appellant, has contended, that since one of the ocular witnesses to the occurrence, namely, one Raj Kumar, was given up by the prosecution, but when he was cited as a defence witness, resultantly when upon his stepping into the witness box as DW-1, thus he exculpated the guilt of the accused-appellant. Consequently, he submits, that thereby the testifications, as became rendered by the ocular witness to the occurrence, who respectively stepped into the witness box as PW-8, and, PW-10, rather become eroded of their respective probative vigours. In sequel, he contends, that no reliance could be placed, upon the testifications of the above prosecution witnesses, rather reliance was required to be placed, upon, the testification of DW-1. Resultantly, he argues, that the verdict of conviction, and, consequent thereto sentences of imprisonment, and, of fine, as became imposed upon the present accused-appellant, is required to be reversed.

13. The learned counsel for the appellant further submits, that Dr. B.R.Sharma, retired Director, CFSL, Chandigarh, who stepped into the witness box as DW-3, after his making an allusion to paragraph 4, carried in the report of the ballistic expert, thus with indications therein, that the holes of the pant contained in parcel No. 5 have been caused by bullet and pellet projectiles, thus thereby his concluding, that the said holes have been caused

the said DW has also stated that given the contents of the FIR, contents of the inquest report, thus suggesting, that two guns, and, one countrymade pistol became used in the relevant crime event. Therefore, when in his report Ex. DW-3/A he concluded that the fatal shot has not been fired from the seized gun W/1, rather the lethal gun shot became fired from the countrymade fire-arm. In sequel, the above made articulations by DW-3, in his report Ex. DW-3/A, thus become the anchor for the learned counsel for the appellant to argue, that thereby the evidentiary vigour of the report of the ballistic expert Ex. PZ rather becomes shaken. Moreover, the learned counsel for the appellant also argues, that thereby there can be no assigning of any evidentiary vigour either to the disclosure statement made by the present appellant, nor to the consequent thereto recoveries, as became effected through recovery memo Ex. PR/1.

14. The learned counsel for the appellant further argues, that since Ex. PZ has been authored by the Senior Scientific Officer (Ballistics)-cum-ex-office Assistant Chemical Examiner to the Govt. of Haryana. However, he submits, that since the author of the exhibit (supra), has not been, in terms of clause (g) of sub-Section 4 of Section 293 Cr.P.C., provision whereof becomes extracted hereinafter, thus authorized by an apposite notification issued by the Central Government.

“(g) [any other Government Scientific Expert specified, by notification, by the Central Government for this purpose.]”

15. Therefore, he submits, that for want of an apposite notification (supra), thus bestowing upon the author of Ex. PZ, the authorization in terms of sub-Section (1), and, sub-Section (2) of Section 293 Cr.P.C., to make the exhibit (supra), resultantly, the exhibit (supra) did not enjoy any presumption of truth in terms of sub-Section (1) of Section 293 Cr.P.C.,

rather in terms of sub-Section (2) of Section 293 Cr.P.C., the author of Ex. PZ was required to be summoned by the learned trial Judge concerned, so as to enable him to prove the said exhibit. Since the above exhibit remained not proven by its author through his being either summoned, nor when he stepped into the witness box to lend efficacious proof in respect of his making the exhibit (supra), thereby the report of the ballistic expert, as carried in Ex. PZ, rather has no evidentiary tenacity. Consequently, he submits, that no reliance whatsoever can be placed, upon the report of the ballistic expert, rather reliance is to be placed, upon Ex. DW-3/A, proven by DW-3

Submissions of the learned State counsel

16. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent therewith 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 be dismissed.

Reasons for dismissing the instant appeal

17. For the reasons to be assigned hereinafter the contentions (supra), as become raised before this Court, by the learned counsel for the appellant rather are unworthy of acceptance, and, thereby they are rejected. Consequently, finding no merit in the instant appeal, the same is hereby dismissed, and, the verdict of conviction, and, consequent thereto sentence of imprisonment, and of fine, as imposed upon the convict-appellant are maintained, and, affirmed.

Testifications of the eye witnesses to the occurrence, who respectively stepped into the witness box as PW-8, and, PW-10.

18. PW-8 Balbir Singh, has in his examination-in-chief made a specific attribution to co-accused Rajan qua his firing a gun shot at deceased Shiv Dutt. He has also echoed therein, that the said fire shot struck the body of the deceased. He has further continued to testify, that subsequently convicts Vikas and Naresh Godara fired at him from their respective weapons of offence, resulting in the pellets fired therefrom striking the chest, abdomen, and, private parts of deceased Shiv Dutt, thus resulting in his collapsing on the ground. Therefore, the above made echoings by PW-8, who is the eye witness to the occurrence, whereby thus with specificity an incriminatory role becomes assigned to the present appellant, inasmuch as, his firing pellets from the fire-arm, which he was wielding at the crime site, do acquire evidentiary sanctity. Moreover, when the testification (supra) made by the eye witness to the occurrence, is in complete harmony with his previously made statement in writing. In addition, when PW-8 also became subjected to an ordeal of a rigorous cross-examination by the learned defence counsel, but when neither any suggestions became meted to the said witness, during the course of his cross-examination by the learned defence counsel, vis-a-vis, the above attributed incriminatory role to the appellant rather being prevaricated or false, nor when any affirmative answers to the said suggestions became rendered by him.

19. Consequently, the effect of non makings of any suggestions (supra) to PW-8 during the latter becoming subjected to an ordeal of an exacting cross-examination, is that, thereby the defence conceding to the said made attribution of incrimination by PW-8 to the convict-appellant. The further effect thereof, is that, the defence also conceding, that reliance, if

any, made by the appellant, upon DW-3/A also is a misplaced reliance. Moreover also for the reason that it has been candidly voiced in the cross-examination conducted upon DW-3 by the learned public prosecutor concerned, that apart from the said defence witness analyzing the report of the ballistic expert Ex. PZ, besides his analyzing the contents of the FIR, besides the contents of the inquest report, rather his not making any examinations of any of the incriminatory materials enclosed in the sealed cloth parcels, which evidently became sent in an untampered, and, unspoiled condition, thus to the FSL concerned, and, wherein a vivid pronouncement is made, rather connecting the seized fire-arm, as, recovered through Ex.PR/1, thus with the fired therefrom pellets.

20. Moreover, the effect of the above, is that, even if one of the eye witnesses to the occurrence namely, Raj Kumar was given up by the prosecution, apparently on the ground, that he had been won over by the defence, and, who while appearing as a defence witness rather exculpated the guilt of the present appellant. Nonetheless, the exoneration of the guilt of the present appellant by the said witness does also become eclipsed, rather from the lack of any suggestion being meted to PW-8, during the latter's cross-examination by the defence, rather devolving upon, qua therebys falsification being strived vis-a-vis the attribution of guilt to the accused-appellant by PW-8 in his examination-in-chief, through his therein making speakings, that the present appellant had fired a pellet from the fire-arm which he was wielding at the crime site, and, that the said pellet struck the body of the deceased Shiv Dutt. Therefore, also therebys preponderance is enjoyed by the said unchallenged/unimpeached attribution of guilt by PW-8 to the present appellant, than to the exculpatory statement made by the said

ground that he was won over by the accused.

21. Moreover, if the public prosecutor had given up the said witness on the ground that he was won over, thereby the said giving up of the witness on the said ground also appears to be tangible, and, sound, especially when the said witness ultimately stepped into the witness box rather as a defence witness. Resultantly, the testification of prosecution witness (supra), who purportedly eye witnessed the occurrence, but was given up by the prosecution on the ground that he was won over by the defence, and, who ultimately stepped into the witness box as a defence witness, thus cannot be assigned any creditworthiness, pre-eminently on the ground, that during the course of cross-examination of PW-8, rather no suggestions became meted to him, whereby the defence strived to negate the creditworthiness of the deposition made by the said witness, thus in his examination-in-chief rather wherebys he has with specificity assigned an incriminatory role to the present appellant.

22. The depositions of PW-8 are supported by the deposition of the other eye witness to the occurrence, namely Bishan Singh, who stepped into the witness box as PW-10. The echoings occurring in the examination-in-chief of PW-10 are in complete harmony with the echoings, as became rendered in respect of the crime event by PW-8. Therefore, when there is inter se harmony inter se the testification(s) rendered by PW-8 and by PW-10. Moreover, when the testification(s) of both the witnesses (supra) is not tainted with any gross embellishments or improvements vis-a-vis their respectively made previous statements in writing. In addition when the learned defence counsel while subjecting PW-10, to a rigorous cross-examination, did not attempt to, through putting suggestions to the said

witness, thus rid the efficacy of the speakings made by the said witness in

his examination-in-chief, whereby he made a formidable attribution of guilt to the present appellant. Therefore, the said omission also tantamounts to the defence acquiescing, that the attribution of guilt made by PW-10 in his examination-in-chief rather was a truthful attribution of guilt vis-a-vis the present appellant. In sequel, the testifications rendered by PW-8, and, PW-10 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. In addition, reiteratedly the testification of the other eye witness to the occurrence, namely Raj Kumar, who stepped into the witness box as a defence witness, is for reasons (supra) also not amenable for any credence being assigned thereto, as he was given up on the ground that he was won over, besides when the above ground appears to become fortified by the said witness rather than supporting the prosecution case, his proceeding to exculpate the guilt of the accused-appellant.

Signed disclosure statement of convict Naresh Godara Ex. PR

23. During the course of investigations, being made into the appeal FIR, convict Naresh Godara made a signed disclosure statement, to which Ex. PR is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x
I have hidden one DBBL gun of .12 bore belonging to my
brother Hanuman, under the wheat chaff lying in a kotha
(room) of the hamlet (Dhani) constructed in the field, after
causing fire-arm injury to Shiv Dutt Singh, about which no
other person but for me has the knowledge and I can get the
same recovered after making identification (Nishandehi).
x x x x”

24. Pursuant to the above made signed disclosure statement, convict Naresh Godara ensured the recovery of a .12 bore pistol, which was

taken into police possession through recovery memo Ex. PR/1.

25. The disclosure statement (supra), carries the signature, in English, of convict-appellant Naresh Godara. In his signed disclosure statement (supra), convict-appellant Naresh Godara confessed his guilt in committing the crime event, by inflicting injuries on the deceased concerned, hence with the incriminatory weapon of offence. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence, at the place concerned, and, qua his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon of offence to the investigating officer concerned, from the place of his hiding, and, keeping the same.

26. The above disclosure statement, does acquire, the utmost evidentiary solemnity, as thereons exist the signatures, in English, of the convict concerned, which, however, he has neither ably denied nor proven the said denial. Moreover, the above confession of guilt is neither a bald or a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through a proven recovery memo, the convict-appellant, thus caused the recovery of the incriminatory weapon of offence, to the investigating officer concerned.

27. Since the recovery of the incriminatory weapon of offence, as made through recovery memo Ex. PR/1, has not been proven to be a false or a contrived recovery, inasmuch as, it has not been cogently established, that prior to the making of the above recovery, rather the investigating officer concerned, had taken to plant the same at the apposite site of its recovery,

nor when any cogent evidence becomes adduced rather vividly

exemplifying, that the place of the apposite recovery rather was an open place, hence leaving scope for any person, other than the convict to place it there. Thus, the above recovery is not only to be concluded to be a validly made recovery, but is also to be concluded to be of the very same incriminatory weapon, which did become used by convict-appellant Naresh Godara, in causing the relevant assault.

28. The above made recovery(ies) through recovery memo Ex. PR/1 in pursuance to the disclosure statement, as made by the convict before the police officer concerned, whereons his uncontested signatures exists, do also corroborate, the untainted depositions rendered qua the crime event, by the theretos ocular witnesses (supra).

Post-mortem report

29. The post-mortem report, to which Ex. PQ is assigned, became proven by PW-11. PW-11 in his examination-in-chief, has deposed that he along with Dr. J.K.Bishnoi, on theirs making an autopsy on the body of the deceased, thus theirs noticing thereons the hereinafter injuries-

“1. 20 punctured wounds circle to oval in shape of size . 75 cm x .5 cm to .5 cm x .5 cm. On the anterior and right anterior and right anterior lateral aspect of chest wall and abdominal wall. Edges of the wounds were inverted and colour of abrasions was present. Wounds were scattered in an area of 46 x 24 cms. left lateral most wound was 7 cm medial of left nipple. Right lateral most wound was 9 cm. Infero lateral to right nipple.

2. Two oval punctured wounds over left forearm postero laterally in its middle 1/3rd. Edges of wounds were inverted and colour of abrasion was present on both the wounds which were muscle deep.

3. Three oval lacerated wounds with inverted margins and colour of abrasions measuring from 1 cm x .05 cm to .75 cm to 0.5 cm on right upper medial aspect of thigh which were

muscle deep.

4. *An oval lacerated wound measuring .75 cm x .5 cm on anterior aspect of right knee. Edges were inverted and colour of abrasions was present, bone deep.”*

30. Furthermore, PW-11 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was shock, and, haemorrhage owing to the injuries to vital organs, as a result of fire arm injury, which were stated to be ante mortem in nature, and, sufficient to cause death in the ordinary course of nature.

31. The said witness was subjected to the ordeal of a rigorous cross-examination by the learned defence counsel, and, therein he stated, that the spread of pellets of one shot, can cause all the four injuries if the left arm is flexed in front of right side. Nonetheless, he stated that a more accurate opinion in the said regard can be assigned by the ballistic expert.

32. Be that as it may, a reading of the deposition made before the learned trial Court by PW-11 also reveals, that he had made a sealed parcel with four seals, wherein, he enclosed the clothes of the deceased, and, it also reveals that he had also in a sealed bottle, wherein, he embossed a similar seal, thus enclosed therein the used pellets. The said sealed parcels were deposited in the police malkhana concerned, and, subsequently they were sent, through Constable Satbir Singh, through memo No. 685-5A and No. 4566 dated 26.7.1998 and dated 3.8.1998, to the FSL concerned.

33. A reading of the report of the FSL concerned, reveals that the said sealed parcels were declared therein to be untampered, and, unspoiled, inasmuch, as there is an echoing in the report of the FSL concerned, that the sealed cloth parcels were found intact both in respect of the number of the seals embossed thereon, as well as the English alphabets made thereon.

The said declaration is made on the basis of the ballistic expert comparing,

both the numbers of the seal impressions made on the relevant cloth parcels, and, the English alphabets embossed on the said seals, thus with the road certificate, and, with the sample seal(s), as became sent to him.

34. The articles which became sent to the ballistic expert concerned, for examinations thereof being made are extracted hereinafter.

“X X X X

Description of parcel(s) and condition of seal(s)

The seals on the parcels were found intact and tallied with the specimen seals as per forwarding authority.

Description of article (s) contained in parcel(s)

Parcel No.	No. and seal impression	Description of parcel(s)
I.	2 of RS	Contained deformed pellets stated to have been collected from the place of occurrence.
II.	2 of RS	Stated to contain blood lifted from the place of occurrence. (Sent to Serology Division in original packing).
III.	3 of RS	Contained deformed pellets, pieces of glass and black plastic pieces stated to have been collected from place of occurrence..
IV.	1 of Mortuary Civil Hospital Sirsa.	Contained pellets stated to have been taken out from the body of deceased Shiv Dutt.
V.	4 of Mortuary Civil Hospital Sirsa	Contained clothes of deceased Shiv Dutt. (First examined in Ballistics than sent to Serology Divn.)
VI.	13 of RS	Contained one 12 bore DBBL gun No. 6121-84 stated to have been recovered from Naresh. (Marked W/1 by me).
VII.	5 of RS	Contained one countrymade pistol (chambered for .315” cartridges) stated to have been recovered from Vikas in case FIR No. 637 dt. 30.7.98 u/s 25/54/59 A. Act PS City Sirsa (Marked W/2 by me).

35. Moreover, the result of the examinations, as became made thereons are also extracted hereinafter.

Result

1. The 12 bore DBBL gun marked W/1 and country-made pistol marked W/2 (chambered for .315” cartridges) are

firearms as defined in Arms Act 54 of 1959. Their firing mechanism were found in working order.

2. The 12 bore DBBL gun W/1 and countrymade pistol W/2 have been fired through. However, scientifically time of their last firings cannot be given.

3. Holes in the shirt contained in parcel No. V have been caused by pellet projectiles.

4. Holes in the pant contained in parcel No. 5 have been caused by pellet projectiles.

5. Pellets contained in parcel No. I, III and IV were found to be fired lead pellets. Such pellets are usually loaded in shotgun cartridges including 12 bore.

6. Lead was detected on the pieces of glass and black coloured plastic pieces contained in parcel No. III.

7. Black coloured plastic pieces contained in the parcel No. III could be pieces of black plastic air-cusion wad of 12 bore cartridge.

8. Report in original from Serology is enclosed herewith.

***Note:-** (i) Exhibits examined in the Ballistic Division were resealed along with their original wrappers with the seal of DD (Balli) FSL(H)".*

36. Though, Ex. PZ did not become tendered into evidence by its author, nor it became proven by him, rather though Ex. PZ became tendered into evidence by the public prosecutor concerned. However, the argument of the learned defence counsel, that thereupon, there was an imperative necessity of the author of Ex. PZ stepping into the witness box, for thereby his thus in terms of sub-Section (2) of Section 293 Cr.P.C., rather lending efficacious proof thereto, thus on the ground that he was not an Assistant Chemical Examiner at the FSL concerned, whereupon, there was a requirement of a notification being issued by the Central Government in terms of clause (g) of sub-Section (4) of Section 293 Cr.P.C., rather is extremely frail, and, is required to be rejected. This Court contrarily

concludes, that rather Ex. PZ enjoyed a presumption of truth, and, as such merely on its being tendered into evidence by the public prosecutor concerned, it acquired evidentiary tenacity but unless the defence had insisted, that the author of Ex. PZ be summoned for his stepping into the witness box for thereby the defence belying the efficacy of the results (supra), as became made in his report Ex. PZ.

37. The reason for drawing the above inference emanates from the factum, that the learned counsel for the appellant rather has remained oblivious to the trite factum, that Ex. PZ was drawn by Assistant Chemical Examiner, thus working in the FSL concerned, and, who also was serving there as a Senior Scientific Officer (Ballistics)-cum-ex-officio Asstt. Chemical Examiner. Moreover, a perusal of the seal as became used by its author reveals, that the said report was drawn by him not only in his capacity as Assistant Chemical Examiner at the FSL concerned, but also in his capacity as a Senior Scientific Officer (Ballistics)-cum-ex-officio Asstt. Chemical Examiner. Thereby when, as such the author of Ex. PZ is, in terms of sub-Section (4) of Section 293 Cr.P.C., an Assistant Chemical Examiner to the Government. Resultantly, when to the said Assistant Chemical Examiner or to the Senior Scientific Officer (Ballistics)-cum-ex-officio Asstt. Chemical Examiner, the mandate of sub-Section (4) of Section 293 Cr.P.C. applies, whereby the said report rather in terms of sub-Section (1) of Section 293 Cr.P.C., upon, thus its becoming tendered into evidence by the public prosecutor, rather enjoys a presumption of truth, unless the defence had made a motion before the learned trial Judge concerned, for the author of Ex. PZ, stepping into the witness box, for thereby his efficaciously proving the said exhibit. However, when the author of Ex. PZ

sub-Section (4) of Section 293 Cr.P.C. Therefore, when apparently there is no application moved by the defence before the learned trial Judge concerned, for issuing summons, upon the said author to ensure his stepping into the witness box, thus to efficaciously prove Ex. PZ, as such, the omission (supra) does assign conclusivity to Ex. PZ. The reason being that when Ex. PZ in terms of sub-Section (1) of Section 293 Cr.P.C., enjoyed a presumption of truth, upon its becoming tendered into evidence by the public prosecutor, thereupon rather the defence, thus to erode the said presumption of truth, was required to move an application for thereby ensuring that the author of Ex. PZ rather steps into the witness box to prove the contents thereof, and, also to enable the defence to cross-examine him.

38. Evidently, when after the tendering into evidence of Ex. PZ, by the public prosecutor, the defence made omission (supra), thereby the presumption of truth assignable to Ex. PZ becomes conclusive, and, thereby the learned counsel for the appellant cannot, at this belated stage also contend, that when the author of Ex. PZ, was purportedly not the Assistant Chemical Examiner, thereby he was not purportedly covered by sub-Section (4) of Section 293 Cr.P.C., resultantly, no presumption of truth was assignable to the report, rather the author of Ex. PZ was required to step into the witness box to prove the same. The reason being that the said opportunity was waived and abandoned, irrespective of the fact, that assumingly a Senior Scientific Officer, may have required the makings of a notification by the Central Government, in terms of clause (g) of sub-Section (4) of Section 293 Cr.P.C.

39. Be that as it may, since the relevant cloth parcels also travelled in an untampered, and, unspoiled condition to the FSL concerned.

Moreover, 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.

40. Though, the learned counsel for the appellant has argued, that in view of the observations occurring in Ex. DW-3/A, thus detailing, that the fatal fire-arm was purportedly other than the fire arm which became recovered through recovery memo Ex. PR/1 in pursuance to the signed disclosure statement Ex. PR, as made by the appellant, thereby though the learned counsel for the appellant, has attempted to erode the efficacy of the disclosure statement (supra), and, of the recovery memo (supra), besides has attempted to tear apart the evidentiary sanctity of the best scientific evidence, as enclosed in the report of the ballistic expert Ex. PZ.

41. However, the above made reliance upon DW-3/A which was tendered into evidence by DW-3 rather is a misplaced reliance thereons. The reason being that, it is discordant with the credible ocular account rendered by the ocular witnesses to the occurrence, who respectively stepped into the witness box as PW-8, and, as PW-10. Since primacy is to be assigned to the ocular account, than to Ex. DW-3/A, as became tendered into evidence by DW-3. Therefore, and, also when all the items enclosed in the sealed cloth parcel never became examined by DW-3, whereas, they became examined by the author of Ex. PZ. Moreover, reiteratedly when all the items enclosed in the sealed cloth parcels travelled to the laboratory concerned, in

and untampered, and, an unspoiled condition, therefore, the result of the

examinations made on the relevant items, is but to predominant over Ex. DW-3/A.

Final order

42. The result of the above discussion, is that, this Court does not find any merit in the appeal, and, is constrained to dismiss it. Consequently, the appeal is dismissed. The impugned verdict of conviction, as becomes recorded upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence is also affirmed. If the convict is on bail, thereupon, the sentence(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

43. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

April 18, 2024
Gurpreet

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