

2024:PHHC:118911-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 02.09.2024
Pronounced on: 06.09.2024

1. CRA-D-603-DB-2003

Jaswinder Singh Appellant

Versus

State of Punjab Respondent

2. CRA-D-731-DB-2003

Dhalwinder Singh Appellant

Versus

State of Punjab Respondent

3. CRR-1630-2003

Narinder Kaur Appellant

Versus

State of Punjab Respondent

4. CRR-98-2001 (O & M)

Ujjagar Singh Appellant

Versus

State of Punjab Respondent

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
Mr. Amritpal Singh Mann, Advocate and
Mr. Prikshit Thakur, Advocate
for the appellant(s)

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(in **CRA-D-603-DB-2003** and **CRA-D-731-DB-2003**)
and for the respondents (in **CRR-1630-2023**).

Mr. Balram Singh, Advocate
for the petitioner (in **CRR-1630-2003**).

Mr. Pawan Girdhar, Advocate (legal aid counsel)
for the petitioner (in **CRR-98-2001**).

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

SURESHWAR THAKUR, J.

1. The criminal appeals (supra) and the revision petitions (supra) became remanded by the Hon'ble Supreme Court vide order dated 25.08.2010. The operative part of the said order is extracted hereinafter.

“ On the facts of the case we are of the opinion that the High Court in the impugned judgment has not properly considered the evidence on record. We are not expressing any opinion either way about the evidence.

Hence, we set aside the impugned judgment of the High Court and remand the matter to the High Court to dispose of the appeal afresh expeditiously after considering the entire evidence and hearing learned counsel for the parties.....”

2. Since the criminal appeal(s) (supra) as well as the revision petitions (supra), both involve common questions of facts and law. Therefore, they are amenable to be decided through a common order.

3. **CRA-D-603-DB-2003** and **CRA-D-731-DB-2003** are directed by the convicts-appellants, against the verdict of conviction, as made on 12.06.2003, by the learned Additional Sessions Judge

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(Adhoc), Jalandhar, upon, Session Case No. 1 of 2003, wherethrough, in respect of charges drawn for offences punishable under Sections 302/34 IPC and Section 25 of the Arms Act, he made a finding of conviction against the accused.

4. Moreover, through a separate sentencing order drawn on 12.06.2003, the learned trial Judge concerned, proceeded to impose upon the convicts (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

Dharminder Singh Bhinder	@ RI for a period of life and fined Rs. 2000/- and in default of payment of fine to further undergo RI for one year under Section 302 IPC for murder of Shingara Singh. RI for a period of life and fined Rs. 2000/-, in default of payment of fine to further undergo RI for one year under Section 302 IPC for murder of Balkar Singh. RI for a period of 5 years under Section 27 of the Arms Act.
Shinder Singh @ Jaswinder	RI for a period of life and fined Rs.2000/-, in default of payment of fine to further undergo RI for one year under Section 302 read with Section 34 IPC for murder of Shingara Singh. RI for a period of life and fined Rs. 2000/-, in default of payment of fine to further undergo RI for one year under Section 302 read with Section 34 IPC for murder of Balkar Singh.

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

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hence have chosen to institute thereagainst separate criminal appeals, before this Court.

6. **CRR-1630-2003** has been instituted by the widow of the deceased Balkar Singh (son of the complainant) praying that conviction awarded upon the accused respondents be maintained and sentence be enhanced in accordance with the provisions of law. Further, it has been prayed therein that heavy amount of fine may kindly be awarded and be paid as compensation to the legal heirs.

7. **CRR-98-2001** has been instituted by the complainant praying for setting aside the order dated 24.08.2000, passed in Sessions Case No. 3 of 2000, whereby the learned trial Judge concerned refused to summon respondents No. 2 to 5, in case FIR No. 209 dated 14.10.1999, registered at Police Station Shahkot, District Jalandhar.

Factual background

8. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PJ is assigned. The informant one Ujagar Singh (PW-7) has made narrations therein that he is resident of village Reharwan and is an agriculturist. He has got four sons and one daughter. On the date of occurrence i.e. 14.10.99 at about 6.00 P.M. he alongwith his son Shingara Singh (since deceased) were present at bus stop of Poonian and were repairing their vehicle. In the meanwhile, a Tata Mobile 207 of slightly blue colour, came from the side of Mandi Poonian which was driven by accused Shinder son of Sucha Singh. Accused Sukhdev Singh alias Deba son of Sucha Singh armed with

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.315 bore rifle and Dhalwinder Singh alias Bhinder son of Resham Singh armed with gun were sitting in the said vehicle. They stopped the said vehicle near the complainant and pulled the son of the complainant. Accused Deba gave a .315 rifle blow with 3-4 shots which hit Shingara Singh, the son of the complainant, as a result of which he died at the spot. They went from the spot while stating that they had taken the revenge of the death of Jeeta. They were followed by one Gypsy driven by Satnam Singh son of Banta Singh. In the said Gypsy, their brother Resham Singh, Sucha Singh and Swaran Singh son of Banta Singh were sitting. They followed the previous vehicle by raising lalkaras. The colour of the said Gypsy was white and at that time Neeta Pandit resident of Poonian and Shinda son of Sarwan of Poonian was also present, who witnessed the occurrence. They were deputed to guard the dead body. Thereafter, a mini bus was taken by the complainant for going to his house to give information. In the meanwhile, when he reached near the house of Comrade Charanjit Singh, he heard the noise of weeping of the ladies and when the complainant reached near the house of Charanjit Singh, he found his other son Balkar Singh lying dead. His wife Gian Kaur told the complainant that Balkar Singh (deceased) was coming on his scooter and his wife Narinder Kaur was also sitting near the gate and then a Tata Mobile of slight blue colour driven by accused Shinder son of Sucha Singh on which Sukhdev Singh alias Deba and Jaswinder alias Bhinder were sitting armed with gun. While they were saying that

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Balkar Singh should not be spared, then Balkar Singh in order to save himself left his scooter and entered the house of Comrade Charanjit Singh. Accused Deba and Bhinder followed him and accused Deba gave a gun blow at Balkar Singh which hit on his back and head, as a result of which he died. The accused raised *lalkaras* and went in the same vehicle and one white gypsy driven by Satnam Singh had also come there in which Sucha Singh Sarpanch, Swaran Singh and Resham Singh were raising lalkaras and went towards the market. At that time Balkar Singh's son Ranjodh Singh aged about 4 to 5 years, who used to come to the house of Comrade Charanjit Singh to get tuition was also present there.

9. The motive behind the occurrence is that about 6-7 months prior to the occurrence, the family member of accused namely Ranjit Singh alias Jeeta and their servant was killed and the allegation of the same was leveled on the deceased sons of the complainant by the Police and they had been released on bail. Due to the said reason, both of his sons were killed. Both the said vehicles belong to the accused, who were seen by the complainant in the village. Accordingly a request was made to take legal action.

10. The above statement Ex.PJ was reduced into writing by SI Ram Dutt on 14.10.99 on which he made endorsement Ex.PJ/1 and sent the same for registration of the case on which formal FIR Ex.PJ/2 was recorded by SI Mohan Singh.

Investigation proceedings

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11. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

12. Initially, accused Shinder Singh, Satnam Singh, Resham Singh, Sucha Singh and Swaran Singh were kept in column No. 2, whereas, Sukhdev Singh and Dhalwinder Singh were challaned. However, at a subsequent stage, accused Shinder Singh was summoned under Section 319 Cr.P.C.

Committal proceedings

13. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court, committed the case for trial to the Court of the learned Session Judge, Jalandhar.

Trial Court Proceedings

14. On finding a *prima facie* case, charges under Sections under Sections 302/34 IPC, and Section 25/54/59 Arms Act became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

15. In support of the prosecution case, the prosecution examined thirteen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge (Adhoc) Jalandhar, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and,

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pleaded innocence. The accused examined nine witnesses in their defence.

16. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Jalandhar, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellants.

Submissions of the learned counsel for the convicts-appellants.

17. The learned counsel for the aggrieved convicts-appellants herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convicts-appellants, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing on record. Therefore, they have argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

Submissions of the learned State Counsel

18. On the other hand, the learned State counsel has argued that the appreciation of evidence as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

Case dependent upon the testimony of eye witness-complainant PW-7.

19. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the deposition of the ocular witness

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to the occurrence, who stepped into the witness box, as PW-7. The contents of the examination-in-chief, as rendered by PW-7 are ad verbatim extracted hereinafter.

I know Chhinder, Bhinder and Bhupinder Singh, accused present in the court today. The name of one of the accused is Sukhdev Singh, Chhinder and Deba accused are sons of Ucha Singh. Bhinder Singh accused is son of Resham Singh. On 14.10.1999 myself and Shingara Singh were getting our jeep repaired in the bus stand of vill. Punian. It was about 6 p.m. Chhinder, Deba and Dharminder came their on vehicle make 207. The same was being driven by Chhinder. Deba and Dharminder were sitting therein and they were armed with 315 bore gun. Sucha Singh, Resham, Swarna and Harnam also came there in a gypsy jeep. Chhinder accused after stopping his vehicle near our jeep dragged Shingara Singh. Deba and Bhinder fired at Shingara Singh as a result of which he receive injuries on his head, back and chest. As a result of that my son Shingara Singh died at the spot itself. The accused at the time of fleeing were saying that they had taken revenge of Jeeta. The occupiers of gypsy jeep had been raising lalkaras and they escaped from the spot along with other accused. This occurrence was witnessed by Nita and Shinda. After leaving these witnesses at the spot I came to my village.

When I reached near the house of Charanjit ladies were standing, at that place and all of them were weeping. I found that Balkar was lying killed at that place. My wife Gian Kaur and my daughter in law Davinder Kaur were present at that place. My wife Gian Kaur told me that Deba, Bhinder and Chinder had come there and that they fired at Balkar Singh and killed him. I was asked where Shingara Singh was and I told that he was also killed.

About 2/3 month before the present occurrence, the police had recovered poppy husk from the possession of the accused. The accused were present inside the house at that time and they fired from

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inside whereas police fired from outside. In that firing two members of accused party were killed. FIR was registered about that encounter. Shingara Singh and Balkar Singh were falsely implicated in that encounter and were released on bail. The accused party had the apprehension that we were instrumental in getting the raid conducted at their house by the police.

The police met me near the house of Charanjit Singh. At that place I disclosed all the above said facts to him. My statement was recorded by the police. I had put my signatures on that statement and the same is Ex.PJ. The police prepared the inquest report in respect of the dead body of Balkar Singh. During those proceedings my statement was recorded. That statement is Ex.PK. The police collected the blood stained earth from the spot. The same was put in a piece of cloth which was converted into parcel. That parcel was taken into possession vide memo Ex. PL. Spent cartridges were also found at the spot and were taken into possession. Those were 2/3 in numbers. Those were converted into parcel which were sealed and were taken into possession vide memo Ex.PM.

Then the police went to bus stand Punian. At that place it took inquest proceedings in respect of the dead body of Shingara Singh. My statement was recorded during those proceedings and the same is Ex.PN. Four spent cartridges and one bullet was recovered from that place. Parcel thereof was prepared and was taken into possession vide memo Ex. PO. Blood stained earth was also collected from that place which was converted into parcel and was taken into possession vide memo Ex.PP. The dead bodies were sent to Civil Hospital, Nakodar for post mortem examination. At the time the post mortem examination was performed, I identified the dead bodies of my sons...”

20. PW-7 also suffered the ordeal of an exacting cross examination, and, when during course thereof, he became confronted

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with his previous statement made in writing, therein, he made the hereinafter extracted echoings, the relevant paras whereof become extracted hereinafter.

“It is incorrect that mostly I do not move about and kept on lying on the cot. It is correct that I can walk only with the help of clutches. I had stated in my statement before the police that poppy husk were recovered from the possession of the accused and encounter took place with the police in which two of the members of their family died and they had apprehension that my sons were instrumental in getting the raid conducted on them. (attention of the witness is drawn towards his statement Ex.PJ and he is confronted therewith wherein it is not so recorded.) I had stated in my statement before the police that Bhinder was also armed with 315 bore rifle. (attention of witness is drawn towards his statement Ex.PJ and he is confronted therewith wherein the bore of the gun is not written). When my statement was recorded in this court on the previous occasion I had stated that Dharminder accused was also armed with 315 bore gun (attention of witness is drawn towards his statement recorded on 24.8.2000 and he is confronted therewith wherein the bore of that gun is not given. Sucha and brothers had come in the gypsy jeep simultaneously before the shots were fired. I had not state in my statement before the police that after Dharminder and other left the spot after causing the death of Shingara Singh, one gypsy jeep came there which was driven by Satnam Singh and Resham Singh and others were sitting in the same. (Attention of witness is drawn towards his statement Ex.PJ and he is confronted therewith wherein it is so recorded). I had stated in that statement that Chhinder accused had dragged my son. (Attention of the witness is drawn towards his statement Ex. PJ and he is confronted with portion B to B1 thereof wherein it is not specifically mentioned that his son was dragged by Chhinder accused.) He was dragged only to the distance of 6 to 7 feet. I had stated in my statement not before the police that Dharminder accused had also fired at my son

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(Attention of witness is drawn towards his statement Ex. PJ and he is confronted therewith wherein it is not so recorded). I had stated in the statement that my son received the gun shot injuries on his head, back and chest (Attention of witness is drawn towards his statement Ex. PJ and he is confronted therewith wherein it is not so recorded and he is confronted with portion C to C1 thereof wherein it is recorded that Deba fired 3/4 gunshot from his 315 bore gun which hit his son.

I had state in my statement before the police that when I reached near the house of Charanjit, I was told by my wife Gian Kaur that Deba, Bhinder and chhinder accused had come there and they fired at Balkar Singh and killed him. (attention of the witness is drawn towards his statement Ex.PJ and he is confronted with portion D to D1 thereof wherein it is recorded that he was told by his wife that only Deba fired gun shot from his gun at Balkar Singh which hit him on his back and head causing his death at the spot). xxxx xxxx ”

21. The above underlined portions of the cross-examination as made upon the witness (supra), especially the ones relating to his not in his previous statement disclosing the bore of .315 rifle wielded at the crime site, by co-accused Bhinder besides his also not in his previous statement unfolding the bore of .315 rifle wielded by accused Dharminder, but not only gives fillip to the hereinafter inference(s) :

a) that therebys the defence conceding to the participation of the accused in the crime event.

b) that also when for the reasons made hereinafter, this Court assigns evidentiary vigor to the disclosure statement(s) respectively made by the accused concerned, and, consequential thereto made recovery memo(s).

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c) that resultantly thereby the said made improvement rather than holding any exculpatory effect, contrarily carries an inculpatory effect.

22. Furthermore, even if this witness in his previous statement has omitted to state that accused Dharminder had fired at his son. Moreover, even if the witness (supra), had omitted to in his previous statement specify the exact regions of the body of the deceased concerned, which became fired, yet when in his examination-in-chief expressing that the accused fired gun shots injuries on the head, back and chest of his deceased son. However, the apposite omission (supra) also does not hold any exculpatory effect. The reason for so concluding becomes grooved in the factum that the ante mortem injuries existing over the body of the deceased, become unfolded therein to exist on the head, back and chest of the deceased. Moreover, when the said ante mortem injuries resulted in the demise of the deceased. In addition, when the said entailment of fatal ante mortem injuries on the body of the deceased remained unchallenged by the defence during making a rigorous cross examination upon PW-1.

23. Furthermores, when for reasons hereinafter, this Court has assigned evidentiary solemnity to the respectively made disclosure statement(s) by the accused and also to the consequent thereto recoveries. Paramountly also, when the ballistic expert has opined vis-a-vis the user of weapon of offence in the crime event. Conspicuously thereby the said minimal omission (supra) does not hold any

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consequential exculpatory effect. If yet exculpatory effect is assigned to the omission (supra), thereby the credible eye witness account rendered by the eye witness (supra) would become untenably discarded. Thus, for saving the effectiveness of the credible deposition rendered by an eye witness to the crime event, the omission (supra) becomes completely irrelevant.

24. Be that as it may, subsequent to the murder of Shingara Singh occurring at the crime site, the said witness moved towards another crime site, where the murder of Balkar Singh became committed. The said murder was witnessed by Narinder Kaur wife of Balkar Singh, who stepped into the witness box as PW-10. The contents of the examination-in-chief, as rendered by PW-10 are ad verbatim extracted hereinafter.

“On 14.10.99 at about 6.15 p.m. I myself alongwith my mother in law Gian Kaur were present by the side of gate of Charanjit Singh of our village. My husband Balkar singh was coming on a scooter from the side of well. After him two vehicles one Tata Mobile of blue colour and other gypsy of white colour were coming. The former vehicle was being driven by Chhinder and Deba and Bhinder were sitting in it. All of them are the accused present in the court today. Bhinder is also known as Dharminder and Deba is also known as Sukhdev. At that time both of them were armed with guns of 315 bore. The gypsy was being driven by Satnam Singh, Sucha Singh, Swaran Singh and Resham Singh were sitting in the same. The occupiers of gypsy jeep raised a lalkara that Balkar Singh be not allowed to go and that they were to take revenge of Ranjit Singh alias Jita. Balkar Singh took the scooter and entered the house of Charnjit Singh. Deba and Bhinder jumped out of the vehicle and followed Balkar Singh by

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entering into the house of Charanjit Singh. They fired at Balkar Singh From their guns. After that they escaped towards Mand by saying that they have taken revenge of Jeeta. Balkar Singh died at the spot. Ranjodh Singh was present at the spot who was studying there. My father in law Jagar Singh came to the spot. I narrated whole of the incident to him. He told me that shangra Singh at had also been killed by Deba and his party. The police recorded my statement in this case. The accused were known to me previously also as they were related to us.”

25. PW-10 also suffered the ordeal of an exacting cross examination, and, when during course thereof, she became confronted with her previous statement made in writing, therein she made the hereinafter extracted echoings, the relevant parts whereof become extracted hereinafter.

*“ Our tubewell is on the side of Mand from the house of Charanjit Singh. Our house is situated on the other side. I had stated in my statement before the police that both the said vehicles were coming after the scooter of my husband. **(Attention of the witness is drawn towards her statement recorded u/s 161 Cr.P.C. dated 15.10.99 Ex. DA and she is confronted therewith wherein it is not so recorded)**. I had not stated at that time the other vehicle namely gypsy after my husband and fired by Deba and Bhinder and after his death those accused escaped towards Mand. **(Attention of the witness is drawn towards her statement Ex. DA and she is confronted with the same wherein it is not so recorded)**. I had stated before the police that occupiers of gypsy jeep had raised lalkara that Balkar Singh be not allowed to go alive and that they were to take a revenge of Ranjit Singh @ Jita. **(Attention of the witness is drawn towards her statement Ex. DA and she is confronted therewith wherein it is not so recorded)**. I had stated before the police that my father in law Jagar Singh came to the spot and I narrated the occurrence to him and he disclosed to me*

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causing of death of Shangara Singh by Deba and his party. (Attention of the witness is drawn towards her statement Ex. DA and she is confronted therewith wherein it is recorded that the said accused were armed with 315 bore guns.”

26. The above underlined improvement(s) or embellishments as made by the witness (supra), from her previously made statement in writing but ex facie are minimal nor they overcome the inculpatory effect of the hereinafter made inculpatory conclusions against the accused.

27. Therefore, the argument addressed by the counsel for the convict-appellants, that in view of the above improvement(s) or embellishments made by the witnesses (supra), thus a cloud of doubt seeps into the prosecution case and benefit thereof, is to be assigned to the accused, thus is bereft of any vigor and is rejected.

SIGNATURED DISCLOSURE STATEMENT OF THE ACCUSED AND PURSUANT THERETO RECOVERIES.

Signatured disclosure statement of accused Dhalwinder Singh @ Dharminster Singh @ Bhinder.

28. During the course of investigations, being made into the appeal FIR, convict Dhalwinder Singh @ Dharminster Singh made a signatured disclosure statement, to which Ex.PY is assigned. The signatured disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of the following witnesses accused Dhalwinder Singh @ Dharminster Singh @ Bhinder son of Resham Singh caste Jat r/o village Reharhvan, P.S. Shakkot Jalandhar disclosed that “ I have kept concealed

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the rifle of 315 bore used in the case in the bushes of a barren well outside of my Dera in the area of Shahkot towards the western side of road leading from Shahkot to Dharmkot and only I know about it and can get the same recovered by pointing out”. His disclosure memo was drawn.”

29. Pursuant to the above signed disclosure statement, convict Dhalwinder Singh @ Dharminder Singh @ Bhinder ensured the effectuation of the recovery of the weapon of offence i.e. 315 bore rifle No. AB-87-0991, which was taken into police possession, through recovery memo Ex. PY/1.

Signed disclosure statement of accused Sukhdev Singh (the said convict became absent during trial and was declared proclaimed offender and was re-arrested and convicted vide separate judgment).

30. During the course of investigations, being made into the appeal FIR, convict Sukhdev Singh (in CRA-D-1162-2023) made a signed disclosure statement, to which Ex.PX is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of the following witnesses Sukhdev Singh above while in police custody on my interrogation disclosed that I had concealed the rifle of 315 bore used in the above case in a heap of paddy chaff lying near the electricity transformer towards the western side of road pacca leading to Mand near village Poonian and only I know about it and can get the same recovered by pointing out. His disclosure memo was drawn.

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31. Pursuant to the above signed disclosure statement, convict Sukhdev Singh ensured the effectuation of the recovery of the weapon of offence i.e. 315 bore rifle No. AB-98-4987, which was taken into police possession, through recovery memo Ex. PX/2.

INFERENCES DRAWN FROM THE DISCLOSURE STATEMENT(S) AND RECOVERY MEMO(S).

32. A reading of the respectively made disclosure statements, does reveal, that not only all the accused confessed their participation, in the crime event, but also reveal qua theirs' evincing their readiness to cause recoveries of the relevant incriminatory items, to the investigating officer concerned, thus from their respective place(s) of their hiding and keeping by them, and which place(s) were but known exclusively to them, and whereafters, also they through recovery memo(s) (supra), also respectively did cause the relevant recoveries, to the investigating officer concerned. The above drawn disclosure statements when become signed by all the co-convicts, and, also when they led to the making of the apposite recoveries at their respective instances, to the investigating officer concerned. In consequence, sanctity is to be meted to the above drawn memo(s).

33. Though the assigning of sanctity thereto would become waned only, when they had ably denied, the existence of their respective signatures thereons, and or, had efficaciously proven that the relevant recoveries, were engineered, or, contrived thus through a clever strategem being deployed by the investigating officer concerned, but yet a reading of the deposition of PWs concerned, does not reveal,

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that the above possible exculpatory pleas, hence for negating the evidentiary worth of the above drawn memo(s), rather becoming either raised or becoming efficaciously proven.

Medical Evidence

34. The doctor who conducted an autopsy respectively on the bodies of the deceased Balkar Singh and Shangara Singh, stepped into the witness box as PW-1. During the course of his examination-in-chief, he proved the post mortem reports, as became authored by him. He also proved the existence thereons of his valid signatures and of his co-author Dr. Paramjit Singh. The post mortem reports are respectively assigned as Exhibit PA and as Exhibit PB. The relevant observations, as become narrated in Exhibits (supra) are extracted hereinafter.

Exhibit PA

1. *Lacerated wound 4 cm X 3.5 cm in size with irregular and inverted margins present over left parietal region of scalp. 11 cm from pinna of left ear and 2 cm from midline clotted blood was present in and around the wound and temporal and parietal bone were fractured into multiple pieces. Membranes were torn and brain matter was badly lacerated. Wound of entry.*
2. *Lacerated wound 11 cm x 8 cm in size with a irregular everted margins present over right temporo parietal region of scalp 5 cm above pinna of right ear and 2 cm from midline. Clotted blood was present in and around the wound underlying bones were fractured into multiple pieces. Few pieces were missing, brain membranes and brain matter was badly lacerated and coming out of the wound Large portion of brain was absent Wound of exit. Injury no I was communicating injury no 2.*
3. *Lacerated wound 2 cm x 1 cm oval in shape present on the top of right shoulder, margins were blackened and inverted clotted blood present in and around the wound. On dissection of wound tract, underlying structural skin, sub-cutaneous tissues, muscles, vessels and nerves were lacerated and lateral end of clavicle and acromion were fractured third and fourth rib were fractured at lateral side, pleura middle and lower lobes of right lung lacerated, left pleural cavity contained about 800 cc of fluid and clotted blood Diaphragm*

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was lacerated liver was lacerated and three pallets were recovered from the liver. Abdominal cavity was full of fluid and clotted blood.

4. *Lacerated wound 2 cm x 4 cm with irregular and everted margin present over the front of abdomen at level of umbilicus 8 cm from midline to the right side Clotted blood was present in and around the wound. Wound of exit.*

5. *Lacerated wound 1.5 cm x 1 cm with irregular and inverted margine was present over front of right side abdomen 17 cm from middle and 7 cm below and right to injury no 4 clotted blood was present an abrasion 2 cm x 1.75 cm present on medial and upper side of wound of entry. On dissection of abdominal wall injury no 4 was communicated with injury no 5 lacerating underlying strctures skin, subcutaneous tissue and muscle.*

6. *Lacerated wound 6 cm x 1 cm with regular and inverted margine present over right side of abdomen just above iliac crest, 13 cm below and lateral to injury no 5 Clotted blood was present in and around the wound. An abrasion 8 cm x 1.5 cm was present on the medial side of wound. On dissection underlying structure skin, subcutaneous tissues, mussle were lacerated and pallet recovered from iliac crest.*

35. Further, the doctor concerned opined that the cause of death of deceased Balkar Singh was owing to neurogenic and hemorrhage shock as a result of injuries (supra) to the vital organs. All the injuries were declared to be ante mortem in nature and also were declared to be sufficient to cause death in the ordinary course in nature.

Exhibit PB

1. *Lacerated wound 4 cm x 3 cm in size with irregular inverted margins was present over left side of temporal parietal region of scalp and upper part of left ear which was also lacerated. Clotted blood was present in and around the wound. Temporal and prietal bones were fracuted into multiple pieces. Membranes torn and brain matter badly lacerated. Wound of entry.*

2. *A lacerated wound 14 cm x 6 cm with irregular everted margine present over right side of frontal temporal and parietal region of scalp Starting just right to midline in the middle of forehead and going postero laterally 2 cm above pinna of right ear, underlying bones were fractured into multiple pieces and few pieces were missing brain membranes and brain matter was badly lacerated coming out of wound a large portion of brain matter was absent Clotted blood present in and around the wound wound of exit. Injury no.2 was communicating with injury no. 1.*

3. *Lacerated wound 1.75 cm in diameter was present over right nipple and areolla in upper part margine blackened and inverted.*

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Clotted blood was present on dissection one pallet was recovered from mussels in IVth inter costal space underlying tissue were lacerated.

4. Lacerated wound 1.75 x 1.25 cm oval in shape present on the posterio lateral aspect of left arm 4 cm below its middle. Margines were blackened and inverted clotted blood was present wound of entry.

5. Lacerated wound 12 cm x 6 cm with irregular and everted margins was present over the postero medial aspect of left forearm in its middle, underlying tissues were badly lacerated. Clotted blood was present in and around wound of exit Injury no 4 was communicating with injury no 5.

6. Lacerated wound 3cm x 2.5 cm present over left side of chest 2 cm lateral to left nipple. Margins were irregular and invtd an abrasion 3cm x 2.5 cm present on lateral side of wound. On dissection of chest injury no 6 underlying structures skin, sub cutaneous tissues, muscles were lacerated 4th and 5th ribs were fractured near the sternal end. Plenuae and middle zone of left lung were lacerated left pleural cavity contained about 1000 cc of fluid and clotted blood. The tract of wound contained fluid and clotted blood 2 pallet embedded in the tract.

7. Lacerated wound 5cm x 4.5 cm with irregular and inverted margins were present over left side of chest just posterior to midaxillary line 12 cm below axilla underlying structures skin, sub-cutaneous tissues muscles were lacerated, 7th and 8th ribs were fractured. Pleurae and lung were lacerated, two pallets recovered from the tract Clotted blood was present. Pleural cavity full of fluid and clotted blood.

8. Lacerated wound 1.5cm x 1 cm with irregular inverted margine present over left side of chest in lowere part over mid axillary line. Clotted blood present on dissection underlying structure skins, sub-cutaneous tissues, muscles were lacerated, 10th rib was fractured. Peritoneum was lacerated Spleen was ruptured and two pallets recovered from it. Abdominal cavity was full of bluid and clotted blood.

9. Lacerated wound 1.75cm x 1.125 cm oval in shape present on back of chest just left to midline 17 cm below the lape of neck margins were inverted, clotted blood was present in and around the wound. On dissection laceration of skin, sub cutaneous tissues, muscles were present fasciae of liver and liver was lacerated. one large pallet was embedded in sub cutaneous tissue of right of chest at level of 8-9 rib alongwith one small pallet.

36. Further, the doctor concerned opined that the cause of death of deceased Shingara Singh was owing to neurogenic and hemorrhage shock as a result of injuries (supra) to the vital organs. All

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the injuries were declared to be ante mortem in nature and also were declared to be sufficient to cause death in the ordinary course in nature.

37. Both the doctors remained un-cross-examined by the defence to the extent that the said ante mortem injuries became not entailed in consequence to the accused firing the fatal bullets at the bodies of the deceased concerned. Therefore, utmost credit worthiness is to be assigned to medical evidence.

38. Consequently, since the medical account but corroborates the eye witness account besides also lends corroboration to the memo(s) (supra) therebys the charge against the accused is concluded to be efficaciously proven.

FSL Report

Report No.	262/99/FSL/Exam
Reference No.	Letter No. (i) 132101 dated 18.10.99 (ii) C/46451 dated 24.10.99 From SSP Jalandhar
Subject	Case FIR No. 204 dated 14.10.99 u/s 302/148/149 IPC, 25/27/54/59 Arms Act, P.S.Shahkot.
Date of receipt	20.10.99 and 25.10.99
Mode of receipt	(C) Balraj Singh No. 3747 and H.C. Jarnail Singh No. 1252.
Articles received	Eight sealed parcels marked A to H and one unsealed parcel market 'I' in the laboratory. Seals were found intact and tallied with the specimen.
Parcel 'A' contained	One .315 inch K.F. Live Cartridge marked L/1 in the laboratory.
Parcel 'B' contained	Two .315 inch K.F. Live Cartridge cases marked C/1 and C/2 in the laboratory.
Parcel 'C' contained	Two .315 inch K.F. Live Cartridge cases

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- marked C/3 and C/4 in the laboratory.
- Parcel 'D' contained Four .315 inch K.F. Live Cartridge cases marked C/5 to C/8 in the laboratory.
- Parcel 'E' contained Four deformed pieces of jacket of bullet
- Parcel 'F' contained
 - a) small deformed pieces of jacket of bullet.
 - b) One deformed piece of lead core of bullet.
- Parcel 'G' contained One .315 calibre bolt action rifle No. AB98/4987 marked W/1 in the laboratory.
- Parcel 'H' contained One .315 calibre bolt action rifle No. 87AB/0991 marked W/2 in the laboratory.
- Parcel 'I' contained Ten .315 inch test cartridges.

Result of Examination

1. Six .315 inch/8 mm cartridge cases marked C/1, C/2, C/4, C/5, C/7 and C/8 contained in parcels B, C and D have been fired from .315 inch rifle No. AB98/4987.
 2. Two .315 inch/8mm cartridge cases marked C/3 and C/6 contained in parcel C and D have been fired from .315 inch rifle No. 87AB/0991.
39. The report of the FSL concerned, relevant paragraph whereof are extracted hereinabove, does vividly pronounce, that the recovered firearm, as became sent there for examination by the ballistic expert, thus in sealed cloth parcels, rather was the relevant firearm wherefrom the bullet, hence became fired, besides pronounces that the said firearm was in a working condition. In sequitur, with this Court assigning credence to the testification, of the ocular witness to the occurrence, and, when in tandem therewith, the ballistic expert, has also made an opinion qua the fired cartridge, becoming fired, from .315 inch rifle No. 87AB/0991, as became recovered through recovery memo Ex.PY/1, at the instance of the accused. Consequently, the charge

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drawn against the accused is to be concluded to become invincibly proven.

40. However, on the basis of the hereinafter extracted purported indefinite opinion made by the FSL concerned, wherein, expressions occur that owing to lack of sufficient individual characteristic marks on the relevant items, thus it could not be conclusively stated that the deformed pieces of jacket and core of bullets contained in parcels E and F becoming fired from either of the two .315 inch rifles.

“No definite opinion could be given regarding firing of disformed pieces of jackets and core of bullets contained in parcels E and F from either of the two .315 inch rifles under reference, due to lack of sufficient individual characteristic marks on them.”

41. However, the said indefiniteness of opinion also cannot garner any exculpatory effect. The reason for making the said conclusion becomes sparked from the factum that the said indefiniteness of opinion would have the apposite exculpatory effect, only if, there was clinching evidence adduced by the defence, either through suggestions being made to the ballistic expert concerned, or through the leading into the witness box, vis-a-vis the manufacturer of the guns', and, with therein affirmative speakings occurring qua the bullets contained in parcels E and F, thus holding certain specific characteristic marks. However, when there is evident omission of adduction of evidence (supra), thereby the mere indefiniteness of

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opinion, but is in-consequential nor thereby the inculpatory effect of the disclosure statements, recovery memo(s) besides the credible ocular account rendered qua the crime event, rather cannot become erased.

42. Paramountly also, when the bullets were evidently extracted from the bodies of the deceased, thus by the doctors concerned, besides when there is no evidence, that the statement (supra) made by the doctors concerned appertaining to the bullets being extracted from the bodies, rather suffering from any prevarication.

43. Moreover, reiteratedly when it becomes pointedly stated by PW-1, that the said bullets became extracted from the bodies of the deceased concerned, whereafter they became enclosed in sealed cloth parcels. Since subsequently PW-1, deposed that the said sealed cloth parcels became handed over to the investigating officer concerned. Moreover, when thereafters the apposite sealed cloth parcels became evidently deposited in the malkhana concerned, whereafters they became evidently sent in an un- tampered and un-spoiled condition to the FSL concerned. Therefore, when the bullets as became extracted from the bodies of the deceased concerned, and which became declared in the FSL report to become fired from the recovered fire arms, are to be concluded to be the bullets which obviously entered the bodies of the deceased concerned, but irrespective of the factum that the said bullets not holding any specific characteristic marks.

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Final Order of this Court.

44. In consequence, there is no merit in appeals **CRA-D-603-DB-2003 & CRA-D-731-DB-2003** and are accordingly dismissed. The impugned verdict, and, consequent therewith sentence(s) (*supra*), as imposed upon the convicts by the learned Convicting Court, is affirmed and maintained.

45. If the convicts (*supra*) are on bail, thereupon, the sentences(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.

46. Insofar as **CRR-1630-2003**, filed by the widow of the deceased Balkar Singh is concerned, since the instant case is not a rarest of the rare case, thus thereby this Court is constrained to not impose capital punishment, upon the convicts. However, the imposition of the fine amount of Rs. 2000/- upon each of the accused is extremely minimal, and, is required to be enhanced, as the fine amount is required to be on its realization disbursed to the family members of the deceased. Therefore, **CRR-1630-2003** is allowed only to the extent, that the above sentence of fine comprised in the sum of Rs. 2000/- each, as imposed upon each of the convicts on the counts (*supra*) being ordered to be enhanced to Rs. 50,000/- each. Further on realization of the said fine amount, the same shall be disbursed as victim compensation to the family members of the deceased. However, in default of payment of fine amount (*supra*), the convicts-appellants shall undergo further

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rigorous imprisonment for one year. All the sentence(s) (supra) shall run concurrently.

47. Furthermore, the connected petition bearing number **CRR-98-2001** deserves rejection on the ground that the dis-affirmative order passed on an application under Section 319 Cr.P.C., has merged into the verdict of conviction, as made by the learned trial Judge concerned. Resultantly, the **CRR-98-2001** becomes rendered infructuous and is disposed of as such.

48. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be sent down forthwith.

49. A photocopy of this order be placed on the files of other connected cases.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

06.09.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No