

2024:PHHC:114237-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 28.08.2024
Pronounced on: 03.09.2024

1. CRA-D-626-DB-2006

Deepak Appellant

Versus

State of Haryana Respondent

2. CRA-D-738-DB-2006

Rajesh and another Appellants

Versus

State of Haryana Respondent

3. CRA-D-17-DB-2007

Raj Kumar Appellant

Versus

State of Haryana Respondent

4. CRA-D-717-DB-2006

Sanjay @ Sanju Appellant

Versus

State of Haryana Respondent

5. CRA-D-675-DB-2006

Siya Ram Appellant

Versus

State of Haryana Respondent

6. CRA-D-652-DB-2006

2024:PHHC:114237-DB



Sudama Appellant

Versus

State of Haryana Respondent

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

Argued by: Mr. P.S.Hundal, Senior Advocate with
Mr. Ankush Chauhan, Advocate
for the appellant (in **CRA-D-626-DB-2006**).

Mr. Kapil Aggarwal, Advocate
for the appellant (in **CRA-D-675-DB-2006**).

Mr. Deepender Singh, Advocate and
Mr. Harsh Jain, Advocate
for the appellant (in **CRA-D-652-DB-2006**).

Mr. Keshav Pratap Singh, Advocate
Mr. Vishal Singh, Advocate
Mr. Ankit, Advocate
for the appellant (in **CRA-D-717-DB-2006**)

Mr. Sarfraj Hussain, Advocate and
Mr. Neeraj Jain, Advocate
for the appellant(s)
(in **CRA-D-17-DB-2007 and CRA-D-738-DB-2006**).

Mr. Manish Dadwal, AAG, Haryana.

SURESHWAR THAKUR, J.

1. Since all the criminal appeals (supra) arise from a common judgment, therefore, they are amenable for a common verdict becoming recorded thereons.
2. The instant appeals are directed by the convicts-appellants, against the verdict of conviction, as made on 18.08.2006, by the learned Additional Sessions Judge, Narnaul, upon, Session Case No. 4 of 2006,

2024:PHHC:114237-DB



wherethrough, in respect of charges drawn for offences punishable under Sections 120-B, 302 read with Sections 120-B, 396 of IPC, he made a finding of conviction against the accused.

3. Moreover, through a separate sentencing order drawn on 18.08.2006, 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 :-

Offence	Sentence
Under Section 302 read with Section 120-B IPC	Rigorous Imprisonment for life with fine of Rs. 5,000/- each. In default of payment of fine convicts shall further undergo R.I. for two months.
Under Section 120-B IPC	Rigorous Imprisonment for life with fine of Rs. 5,000/- each. In default of payment of fine convicts shall further undergo R.I. for two months each.
Under Section 396 IPC	Rigorous Imprisonment for 10 years with fine of Rs. 2,000/- each. In default of payment of fine convicts shall further undergo R.I. for one month each.

4. All the sentence(s) were ordered to run concurrently. The convicts become aggrieved from the verdict of conviction (supra), besides become aggrieved from the above imposed sentence(s), thus, they led to cast thereagainst separate appeals before this Court.

Factual background

5. The genesis of the prosecution case becomes encapsulated in the appeal FIR, to which Exhibit PC is assigned.

2024:PHHC:114237-DB



6. On 23-04-2002 at about 8.30 P.M. the complainant Narender Soni was returning to his house situated in Mohalla Franshkhana, Narnaul from his shop and when he reached near the house of Hem Chand, he heard a noise of fighting but he did not pay any heed thinking that some drunkard persons were fighting but when he turned his face back, he saw a young boy of height about 5' 4" coming running from behind, who went towards the Rosewilla School. The complainant moved his face back second time and saw another young boy came running and he threw red chilly powder in his eyes. The said young boy was having a knife in his hand and he also went running towards Rosewilla School. He was a thin and lean boy of the height of 5' 7" and was wearing a white bushirt. The complainant followed him and raised noise 'Pakro, Pakro' to catch him but nobody stopped him. A motor cycle was standing near the house of Kishan Lal Sharaff and both of them ran away on the motor cycle towards Mohalla Khatikan. They were seen fleeing by Mohan Naria Pan Biriwala, wife of Dhara, Brahmin Halwai, Deepu son of Vijay Singh Mahajan and one male member of Hem Chander Shraff's family. Hem Chand deceased was in the lap of his sister in law, who sustained various injuries and from those injuries blood was oozing. Hem Chand sustained blows from knife and the said Hem Chand was taken in a rickshaw by his nephew Parmod Kumar to hospital at Narnaul. If the above said persons come in front of him (complainant) he could recognize them. The above

2024:PHHC:114237-DB



said both young boys have caused injuries to Hem Chand by the knife and owing to the said injuries he died.

7. PW-20 Inspector Rajender Singh received a telephonic message regarding admission of injured in the hospital. On receipt of this information, he reached in Government Hospital Narnaul and a rukka was given to him by the duty doctor which is Ex.PA. Narender son of Radhey Shyam resident of Mohalla Franshkhana met him and got recorded his statement Ex. PB. PW-20 made his endorsement Ex.PB/A and sent to the Police Station Narnaul through Constable Rajbir Singh No. 370 for registration of a case. On this FIR Ex. PC was recorded by Ajit Singh ASI who made his endorsement on the same as Ex. PB/1. This witness also prepared inquest report Ex.A/3. The dead body was identified by Sita Ram and Surender Kumar. After that this witness moved an application for post mortem examination of the deceased which is Ex. P/2. All the accused made disclosure statements and got recovered the looted money and other articles in pursuance thereof.

Investigation proceedings

8. 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.

Committal proceedings

2024:PHHC:114237-DB



9. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court vide order dated 22.07.2002, committed the case for trial to the Court of the Session.

Trial Court Proceedings

10. On finding a *prima facie* case, charges under Sections 120-B, 302 read with Section 120-B and Section 396 of the IPC became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

11. In support of the prosecution case, the prosecution examined twenty four witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Narnaul, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused did not examined any witness in their defence.

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

Submissions of the learned counsel for the convicts-appellants.

13. The learned counsel for the aggrieved convicts-appellants herein, have vigorously argued before this Court, that the contents of the FIR have not been proven. The person who made a report to the

2024:PHHC:114237-DB



police did not step into the witness box. Therefore, it is argued by the counsel for the appellants that thereby the genesis of the prosecution case remains under a cloud of doubt. Resultantly the charge drawn against the accused are not proven.

14. Moreover, though the eye witness to the occurrence namely one Parmod Jain, who is the real nephew of the deceased and who stepped into the witness box as PW-10, though inculpated all the accused but when during makings of cross examination(s), upon the said eye witness, he became confronted with his earlier made statement in writing, wherein, the names of the accused *Rajesh, Sanjay, Jitender, Deepak, Siya Ram* did not find occurrence. Resultantly thereby when gross improvements emerge, thus in his rendered testification before the learned trial Judge vis-a-vis his previously made statement before the police officer concerned, thereupon his testimony becomes bereft of evidentiary vigor, and, thus is required to be discarded.

Submissions of the learned State Counsel

15. 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 PW-10.

16. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the deposition of the ocular witness to the occurrence, who stepped into the witness box, as PW-10. The

2024:PHHC:114237-DB



contents of the examination-in-chief, as rendered by PW-10 are ad verbatim extracted hereinafter.

Hem chand Jain was my uncle. My family and the family of Hem Chand Jain reside in the same house situated at Mohalla Frashkhana Narnaul.

On 23.4.2002 at about 8.30/8.45 p.m. I was present at my house. I heard noise in the street. So, I came out of my house. I found that Sudama accused present in the court had caught hold of my uncle Hemchand Jain whereas Raj Kumar was giving him knife blows indiscriminately on the abdomen and chest. My uncle was having a bag in his hands. Raj Kumar snatched the bag from my uncle and ran towards Rojwila school. Sudama followed him. Raj Kumar was brandishing the knife. I followed both of them. However, on reaching Rojwila school both the accused sat on a motorcycle and sped away towards the mohalla Khatikan. When I returned to the spot I found that my mother had taken my uncle in her lap. I also found that the accused namely, Sanjay, Siya Ram, Rajesh, Jitender and Deepak were going towards the bazar. They were also present at the place of occurrence at the time Rajkumar and Sudama inflicting injuries to my uncle. In the meantime, Deepak and other inhabitants of the Mohalla also reached there. I took my uncle Hem Chand to GH Narnaul in a rickshaw where he was declared dead.

I returned to my house. At about 2.30/3 a.m. on the intervening night of 23/24.4.02 the police to my house. I pointed out the place of occurrence. Sita Ram PW and other inhabitants of the mohalla were also with me. The police party took bloodstained earth, and sheath (cover of the knife) from the place of occurrence. Both the articles

2024:PHHC:114237-DB



were sealed separately with a seal having impression SR. After use the seal was handed over to Sita Ram PW. Both the articles were taken in possession vide memo Ex. PO which bears my signature (at this state, one sealed parcel bearing the intact seal of Director, FSL, Madhuban has been opened) It contains wooden cover of knife. It is the same which was recovered from the spot. It is Ex. P17.

My uncle was having the bahis (ledger), pan card and a sum of Rs. 3,75,000/-in his bag. There was also coloured photo of my uncle in the said bag.

On 13.5.2002 I received a telephonic message from police station city Narnaul intimating me about the arrest of the accused. I was also asked by the police officials to visit Mahendergarh Jail in order to identify the accused. Accordingly, I went to District Jail Mahendergarh. I reached the said Jail at about 11 A.M. after sometime Singhara Singh alongwith one Magistrate came there. Thereafter I was called inside the jail and was asked to identify the accused from amongst 11 persons. I identify Raj Kumar accused amongst them. I had identified the accused from amongst 11 persons. The said identification parade took place in the presence of the Magistrate. My statement was also recorded by the Magistrate, seeking my willingness to identify the accused which is Ex. PH/9. It bears my signatue at Ex.PH/10.

On 15.5.2002 at about 7 a.m. Surender Singh came to me and told me that he had received a telephonic message from police station city Narnaul to reach the said police station along with me. So accompanied Surender to the police station. We reached police station city Narnaul at about 7.15 a.m. We found Raj Kumar and Sudama accused present in the court were sitting there. Singhara

2024:PHHC:114237-DB



Singh DSP, Vikram Singh SHO and other police officials were also present there. The police officials asked us to accompany them to Bijorawas at Rajashthan. So, myself and Surrender accompanied the police party to the said village in police vehicles. The accused were also with the police. At a place near the temple the accused Sudama took us to approach road leading to village Maharajwas. After travelling some distance on the said road, he got the said jeep stopped and took us and the police party towards the back of his house and got recovered the ash from underneath a heap of dung. Sudama told us that the said ash was of the Bahis. The said ash was put in a polythene bag. It was made into a parcel and sealed with the seal having impression VP. Thereafter the accused took the police party a distance of about seven feet and dug out a bag EX. P13. It was the same bag which was snatched by the accused from my uncle Hem Chand. The name of my uncle was written on the bag (Hem chand Narnaul) a sum of Rs.120000/- one pan card Ex.P14 and coloured photo Ex. P15 were also in the said bag. The details of the currency notes recovered are as under:-

- (a) Nine bundles were of currency notes of 100 denomination. Each bundles contain 100 notes.*
- (b) 56 currency notes of Rs.500/- denomination.*
- (c) Two currency notes of 1000/- in denomination.*

All the said notes were wrapped in a white paper and all the articles mentioned above were again put in bag Ex. P13. The said bag was made into a parcel and was sealed with the seal having impression VP. The said bag and the parcel containing ashes were taken into possession vide recovery memo Ex. PN which bears my signature. I have seen bag Ex. P13, pan card Ex. P14, photo Ex.P15

2024:PHHC:114237-DB



and currency notes. These are the same which were got recovered by Sudama accused.

Thereafter we again returned to the jeep. Then Raj Kumar took us to village Bijorawas and pointed out his house. Thereafter the said accused Raj Kumar led the police party to a room used for storing fodder. Thereafter the accused took out a mortorcycle which had been concealed underneath the fodder. He also took out a bag containing about Rs.1,40,000/-. The said notes were of hundred in denomination. They were 14 bundles of currency notes. Each bundles contain 100 currency notes of Rs. Hundred in demoniation. Out of them on 13 bundles letters HN were written. The said letters were in the hand of my uncle Hem Chand. I identify his handwriting as I have seen letters HN on bundles Ex. P19 to Ex. P31. These letters are in the hands of my uncle. I have seen the motorcycle standing outside the Court. It is the same motorcycle standing outside the Court. It is the same motorcycle which was got recovered by the accused from his house.

All the currency notes mentioned above i.e. 19 bundles were put in a bag which was made into a parcel and was sealed with the seal having impression VP. After use the seal was handed over to me. The said parcel containing currency notes and the motorcycle were taken in possession vide memo Ex. PN which bears my signature as attesting witness. My statement was recorded by the police. All the accused namely, Kajkumar, Sudama, Siya Ram, Sanjay, Rajesh, Jitender and Deepak are present in the court today.”

17. PW-10 also suffered the ordeal of an exacting cross examination, and, when during course thereof, he became confronted

2024:PHHC:114237-DB



with his previous statement made in writing, wherein, rather with the names of the accused *Rajesh, Sanjay, Jitender, Deepak, Siya Ram*, thus not finding occurrence. The relevant part of the cross examination is extracted hereinafter.

“ xxxx I had told the names of Rajesh, Sanjay, Jitender, Deepak, Siya Ram to the police and had told the police that I had seen them going to Bazar. (confronted with statement Ex. DC where the names of these persons are not mentioned). I had told the police that I had seen the above named persons going towards the bazar. (confronted with Ex. DC where it is not so recorded). I had told the police that at the time when injuries were being inflicted to Hem Chand by Raj Kumar and Sudama the five persons named above were also present (confronted with Ex.DC where it is not so recorded) xxxx. ”

18. Therefore, the counsel for the appellants argues, that a cloud of doubt seeps into the prosecution case and benefit thereof, is to be assigned to the accused.

19. However, for the reasons to be assigned hereinafter the above argument is rudderless. The reason being that even if assumingly the above fact, as becomes testified by the eye witness PW-10 namely Parmod Jain, whereby he apart from inculcating accused Raj Kumar and Sudama, but also inculpated Rajesh, Sanjay, Jitender, Deepak, Siya Ram, thus is a purported improvement vis-a-vis his previously made

2024:PHHC:114237-DB



statement, especially when in his previous statement made to the police officer concerned, he has not therein named (supra), but yet for the reasons to be assigned hereinafter, it cannot be argued that the verdict of conviction returned against the convicts-appellants requires any interference.

20. Conspicuously so, since during the course of cross-examination being made upon the witness (supra), he unrebuttedly stated therein that at the relevant time, he had chased the accused for sometime and subsequently returned to the crime event to look after his injured uncle. Therefore, the above speaking made by the witness (supra) in his cross examination but exemplifies that thereby the defence conceding to the incriminatory participation of the accused in the crime event. Moreover, thereby the above purported improvement or embellishment made by the eye witness PW-10, from his previously made statement in writing rather not garnering any exculpatory effect. Moreover, since the witness (supra) also identified the accused (supra) in Court and when the said made identification of the accused in Court remained unrepelled, thus on the ground that they were excepting Raj Kumar, rather unknown to the witness (supra), thereupon, there was no requirement of any prior thereto valid test identification parade being conducted by the investigating officer concerned, nor thereby the first time identification in Court of the accused, excepting accused Raj Kumar, thus suffers from any pervasive infirmity.

2024:PHHC:114237-DB



21. Reiteratedly, the omission (supra), but leads to a sequel that the identification made in the Court of the accused was a well made identification, besides when as stated (supra), the speakings (supra) occurring in his cross examination but lead to an inference that therebys the defence acquiescing to the incriminatory participation of the accused in the crime event. In sequel, the (supra) improvement(s), embellishment(s) made by PW-10 over his previously made statement in writing but thus therebys becomes eclipsed.

22. Moreover, since one of the accused namely Raj Kumar was not previously known to the witness (supra), whereby the investigating officer concerned, was led to hold a test identification parade, wherein, the witness (supra) identified the accused Raj Kumar. Resultantly since the said identification of the accused concerned, in a Test Identification Parade conducted by the investigating officer in the presence of the Magistrate, when became preceded by a previous statement made by the witness (Supra), to the police officer concerned, wherein, he described the key characteristic features of the accused concerned. In sequel, therebys when the said identification of the accused concerned in a validly conducted test identification parade, became succeeded by the said accused becoming also identified in the Court, by the witness (supra). As such, when both the test identification parade, wherein, the witness (supra), identified the accused concerned, and, also the identification made by him in Court of the accused concerned, rather

2024:PHHC:114237-DB



remaining un rebutted through cogent evidence becoming adduced by the accused concerned.

23. In sequitur, the effect of the above but naturally, is that, especially when the other co-accused also omit to exclusively assign incriminatory participation to accused Raj Kumar, who became identified in the manner (supra), thereby all the accused not only accept the valid incrimination drawn against co-accused Raj Kumar but also accept the incrimination drawn against them, by the witness (supra) irrespective of the above purported embellishments or improvements being made by him in his examination-in-chief, thus from his previously made statement in writing.

24. The further fortifying reason for making the above conclusion emanates from the factum that, unless evidence became adduced that the disclosure statement(s) and consequent thereto recoveries were vitiated, thereupons, the disclosure statement(s) and consequent thereto recoveries are required to be assigned credit worthiness, whereby the inculcation drawn against the accused becomes unflinchingly proved.

SIGNATURED DISCLOSURE STATEMENTS OF THE ACCUSED AND PURSUANT THERETO RECOVERIES.

25. During the course of investigations, being made into the appeal FIR, convicts-appellants, made their respective signed disclosure statements, to which Exs. PR, PS, PW, PW/1, PW 18/1, PW 18/3 and PW 18/7 become respectively assigned.

2024:PHHC:114237-DB



26. Pursuant to the above said signed disclosure statements, the accused ensured the effectuation of the recovery of the relevant incriminatory items, which were taken into police possession through the respectively made recovery memo(s), as detailed in the hereinafter extracted manner.

Name of the convict	Disclosure Statement	Recovery
Raj Kumar @ Raju	Ex.PR	He got recovered the weapon of offence i.e. blood stained knife vide recovery memo Ex.PL. Further recovered motorcycle used in the commission of offence as well as currency notes amounting to Rs. 1,40,000/- vide recovery memo Ex.PN.
Sudama	Ex. PS	He got recovered ashes of the ledger books, olive colour looted bag containing currency notes amounting to Rs. 1,20,000/-, Pan Card of the deceased and coloured passport photo vide recovery memo Ex.PM.
Siya Ram	Ex.PW	He got recovered Rs. 91,000/- vide recovery memo Ex.PU.
Jitender @ Jitu	Ex.PW/1	He got recovered Rs. 1000/- wrapping into a cloth parcel vide recovery memo Ex.PT.
Deepak	Ex. PW 18/1	He got recovered Rs. 10,000/- vide recovery memo Ex.PQ and demarcated the place of occurrence vide memo Ex. PW 18/2.
Rajesh @ Kalia	Ex. PW 18/3	He got recovered Rs. 5000/- vide recovery memo Ex. PW18/4 and demarcated the place of occurrence vide memo Ex. PW18/6.
Sanjay @ Sanju	Ex. PW18/7	He got recovered Rs. 3000/- vide recovery memo Ex. PW 18/8 and demarcated the place of occurrence vide memo Ex. P18/9

2024:PHHC:114237-DB



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

27. 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).

28. 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, 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.

2024:PHHC:114237-DB



FURTHER ARGUMENTS RAISED BY THE COUNSEL FOR THE APPELLANTS.

29. Though the counsel for the convicts-appellants argue that since no identification marks were carried on the currency notes, thereby the seizure(s) of the currency notes, as made through recovery memo(s) (supra) remains unconnected with the crime event. In addition, though the counsels also argue that since the recovered currency notes, rather remained un-enclosed in sealed cloth parcels, thereby there was a possibility of the apposite seizure(s), being planted on to the accused and/or qua the recovery memo(s) being fictitiously drawn.

30. However, the above pleas loose their vigor. The reason being, that the recoveries of currency notes respectively, at the instance of the accused concerned, to the investigating officer concerned, thus were made from the respective places known exclusively to them. If so, the recoveries of the currency notes become(s) *ipso facto* connected with the crime event, irrespective of no identification marks being made on the currency notes.

31. Further, a perusal of the recovery memo(s) (supra) reveals that after the effectuation of recoveries of currency notes by the accused concerned, thus at their respective instances, to the investigating officer concerned, rather the same becoming inserted in sealed parcels, thereby the argument that the recovered currency notes, thus remained unenclosed in sealed cloth parcels, rather loses its vigor, especially when there remains un-adduced any cogent evidence hence exemplifying that the said sealed parcels became tampered with.

2024:PHHC:114237-DB



32. Furthermore, even if the currency notes respectively comprised in a sum of Rs. 10,000/- and Rs. 5000/- were reflected in the recovery memo(s) Ex.PQ and in Ex. PW18/4 to become seized at the respective instances of the accused, but subsequently to a validly drawn disclosure statements, as made by the accused concerned, thereupon, even if the said currency notes remained unenclosed in sealed cloth parcels, yet the non enclosure of the said seized currency notes in sealed cloth parcels, rather does not detract from the evidentiary efficacy of either the disclosure statements or the consequent thereto recovery memo(s).

33. The reason for so concluding becomes grooved in the factum that there remains unadduced any cogent evidence exemplifying that the said drawn disclosure statements or the consequent thereto recovery memo(s) thus were respectively vitiated. The non adduction of the said evidence assigns credence to both (supra) but irrespective of the currency notes respectively comprised in a sum of Rs. 10,000/- and Rs. 5000/-, remaining unenclosed in sealed cloth parcels.

34. In addition, the argument as to the non examination of the informant/complainant, thus rendering the prosecution version to become ingrained with a pervasive doubt, but is rudderless. The reason for making the above conclusion spurs from the factum that the Investigating officer ably proved the signatures of the informant, as carried on his statement Ex.PB. If the ably proven signatures of the informant, as carried on his statement Ex.PB, thus did lead to the

2024:PHHC:114237-DB



registration of the appeal-FIR, rather were forged thereby, it was open for the accused in their defence to ask for the leadings into the witness box, vis-a-vis the complainant/informant, rather to prove that his signatures on the statement Ex.PB, which led to the registration of the appeal/FIR, thus were forged. However, the said was omitted to be done by the accused. Therefore, the investigating officer, who proved that the informant/complainant made his signatures on Ex. PB in his presence, and, which resulted in the registration of the appeal/FIR, thereupon, with the informant/complainant, signing the statement Ex.PB, in the presence of the police officials, thereby the investigating officer became well enabled to prove the statement of the informant/complainant, as borne in Exhibit PB, statement whereof, led to the registration of the FIR.

35. Even otherwise, the proven Exhibit PB, whereons, for the above reasons, the authentic signatures of the informant/complainant hence existed, thus naturally thereby, even if the said witness stepped into the witness box, thus estopped him from resiling from contents thereof. The said reason becomes embanked upon the provisions engrafted in Section 92 of the Evidence Act, provisions whereof are extracted hereinafter, whereby upon valid signatures of the author of any scribed document existing thereons, thereupon, the author of any scribed document becomes barred from leading parole evidence rather detracting from the contents thereof.

Section 92 - Exclusion of evidence of oral agreement.

2024:PHHC:114237-DB



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, [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.

2024:PHHC:114237-DB



36. Since there is no rebuttal evidence thereto, thereby, it cannot erode the efficacy of the statement Ex.PB, as made by the informant/complainant. Moreover, since there is no evidence, thus rebutting the authenticity of the signatures of the informant, as carried in his statement Ex. PB, besides when the said signatures, for reason (supra), became well proven by the investigating officer concerned. Reiteratedly the non stepping into the witness box of the informant becomes completely in consequential.

Medical Evidence

37. The doctor who conducted an autopsy on the body of the deceased, stepped into the witness box as PW-11. During the course of his examination-in-chief, he proved the post mortem report, as became authored by him. He also proved the existence thereons of his valid signatures and of his co-authors Dr. Piyush Sharma and Dr. Rakesh Sharma. The post mortem report is assigned Exhibit PP. The relevant observations, as become narrated in Exhibit (supra) are extracted hereinafter.

1. Incised wound of 1.5 x 1 cm size vertically placed spindle shaped on the left side of chest wall about 12 cm below the axilla in anterior axillary line. Clotted blood was present. On cut section extravasation of blood in surrounding tissue. Underlying intercostal muscles were divided. Pleura divided and lung was injured and blood in pleura cavity (left) was present.

2. Incised wound of 3 x 1 cm in size spindle shaped transversally placed below and medial to left nipple. On cut section there was extravasation of blood in surrounding tissue underlying intercostal muscles were cut including pericardium involving left atrium upto chamber.

2024:PHHC:114237-DB



3. *Incised wound of 2 x 1 cm in size spindle shaped transversally placed just medial to right nipple. On cut section there was extravasation of blood in surrounding tissue underlying intercostal muscles were cut and the blood was present in the right pleural cavity.*

4. *Incised wound of 3 x 1 cm in size spindle shaped obliquely placed in the midline on the lower part of sternum. On cut section there was extravasation of blood in the surrounding tissue.*

5. *Incised wound of 2 x 5 cm in size spindle shape obliquely placed on the right side of abdomen, below and lateral to the umbilicus. On cut section there was extravasation of blood in surrounding tissue and underlying muscles were cut and blood was present in peritoneum cavity.*

6. *Incised wound of 1 x.5 cm spindle shape obliquely placed on the right side of abdomen (30 cms below right nipple). On cut section there was extravasation of blood in surrounding tissue and cutting of abdominal muscles and peritoneum muscle.*

7. *Incised wound of 2 x 5 cm size on the left forearm vertically placed spindle shape in the middle of vertical aspect of left forearm. On cut section there was extravasation of blood in surrounding tissue and muscle was cut.”*

38. Further, the doctor concerned opined that the cause of death of deceased was owing to shock and hemorrhage 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.

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

2024:PHHC:114237-DB



Final Order of this Court.

40. In consequence, there is no merit in the appeals, and, they are dismissed. The impugned verdict(s), and, consequent therewith sentence(s) (supra), as imposed upon the convicts by the learned Convicting Court, are affirmed and maintained.
41. 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.
42. 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.
43. Since the main case itself has been decided, all the pending application(s), if any, also stand(s) disposed of.
44. A photocopy of this order be placed on the files of connected cases.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

03.09.2024
kavneet singh

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