



In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-124-DBA-2006 (O&M)
Reserved on: 17.12.2024
Date of Decision: 07.1.2025

State of Haryana Appellant

Versus

Sukhwinder Singh @ Sukha and another Respondents

2. CRA-D-318-DB-2005 (O&M)

Sukhwinder Singh @Sukha Appellant

Versus

State of Haryana Respondent

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

Present: Mr. Vinod Ghai, Senior Advocate with
Mr. Naresh Jain, Advocate and
Mr. Yadwinder Singh, Advocate
for the appellant(s).

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

Mr. K.S.Godara, Advocate
for respondent No. 1 (in CRA-D-124-DBA-2006).

Mr. K.B.Raheja, Advocate
for respondent No. 2 (in CRA-D-124-DBA-2006).

SURESHWAR THAKUR, J. (ORAL)

1. Since both the appeals (supra) arise from a common verdict, made by the learned trial Judge concerned, upon Sessions case bearing No. 24 of 2003, hence both the appeals (supra) are amenable for a common verdict being made thereons.

2. CRA-D-318-DB-2005 is directed against the impugned verdict, as made on 7.2.2005, upon Sessions case bearing No. 24 of 2003, by the



learned Sessions Judge, Sirsa, wherethrough, in respect of charges respectively drawn against the accused qua offences punishable under Sections 302, 201, 120-B, 34 IPC and under Section 27 of the Arms Act, thus the learned trial Judge concerned, proceeded to record a finding of conviction against the accused Constable Sukhwinder Singh and Gurvir Singh @ Goga qua commission of offences punishable under Sections 302/34 and 201/34 IPC. However, the accused Rajdeep and Sukhwinder Singh son of Jagdev Singh were acquitted of the charges framed against them.

3. Moreover, through a separate sentencing order dated 14.2.2005, the learned trial Judge concerned, sentenced both the convicts (supra) to undergo rigorous imprisonment for life for an offence punishable under Section 302/34 IPC, besides also imposed, upon the said convicts sentence of fine, as comprised in a sum of Rs. 1,00,000/- each, besides in default of payment of fine amount, he sentenced both the convicts to undergo rigorous imprisonment for a period of five years. Furthermore, the learned trial Judge concerned, also sentenced both the convicts (supra) to undergo rigorous imprisonment for a period of seven years for an offence punishable under Section 201/34 IPC. The learned trial Court also ordered that the fine amount, if realised, be paid to the widow of the deceased in lieu of compensation.

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



5. The accused-appellant Sukhwinder Singh @ Sukha becomes 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 him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst the criminal appeal bearing No. ***CRA-D-318-DB-2005***.

6. Convict Gurveer Singh alias Gora also became aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has also chosen to institute thereagainst the criminal appeal bearing No. CRA-D-252-DB-2005. However, since the said convict expired, during the pendency of the appeal (supra), therefore, vide order dated 17.12.2024, the said appeal became to become abated and was disposed of as such.

7. The State of Haryana has also instituted criminal appeal bearing No. ***CRA-D-124-DBA-2006*** with a prayer that the impugned verdict (supra) of the learned trial Court, whereby the accused concerned become acquitted, rather be modified, and, accused Sukhwinder Singh @ Sukha and Rajdeep be also convicted and sentenced for the commission of an offence punishable under Section 302 of the IPC.

Factual Background

8. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PQ is assigned. As per the prosecution story, on 19.10.2002 SI Jaibir Singh, accompanied by other police officials reached Bajekan-Kanganpur Road at about 6.00 A.M., in a police jeep in routine. At Kanganpur-Bajekan road, he noticed an iron body of the gun and, therefore, he got the jeep stopped and checked the iron body of the gun. On checking,



it was found that on the iron body of the gun the number of the gun was found engraved as "No. 1943-81 prisons, Pritam Singh and sons. An empty cartridge of 12 bore gun was also lying at said place and in addition blood stained earth, a wooden of gun fitted with a nut bolt and a piece of kikker free smeared with blood and hair were also found lying at the said place.

9. SI Jaibir Singh also noticed some signs of struggle at the said place as some prints of shoes were visible there. Accordingly SI Jaibir Singh lifted the iron body of the gun Ex. P36, broken wooden piece of the gun with nut-bolt Ex. P33, blood stained earth, empty cartridge of 12 bore gun Ex. P34 and a piece of wood having blood stains and hair Ex. P35 on it and except the iron body of the gun, the remaining articles were separately sealed into separate parcels with the seal of JB and all the sealed parcels and iron body of the gun were taken into possession vide recovery memo Ex. PR which was attested by EHC Balraj and Constable Mahesh Kumar. The iron body of the gun was kept open and was not sealed for identification purpose.

10. Since some prints of shoes were visible on the spot, SI Jaibir Singh lifted two moulds of the left and right foot from the spot with the help of Plaster of Paris and the same were signed by EHC Balraj Singh and SI Jaibir Singh and those were sealed into two separate parcels with the same seal. The parcels of the moulds were taken into possession vide recovery memo Ex.PR/1. SI Jaibir Singh, then returned to Police Station Sadar Sirsa and narrated all the facts before SI/SHO Shiv Kumar, who further informed the Deputy Superintendent of Police and the Superintendent of Police and as such, a report was incorporated in the Roznamcha of the Police Station at S. No. 39 and a true copy of same is Ex. PS. The sealed parcels and the iron body of gun were then deposited with the MHC by SI Jaibir Singh with seals



intact.

11. On the same day i.e. on 19.10.2002, complainant Karan Singh got recorded his statement to the police stating therein, that they are three brothers, and, out of them Sube Singh was the eldest, who was posted as MTO in Police Line, Sirsa. He further stated therein that on 19.10.2002, they received a telephonic message that Sube Singh was absent from his duty, whereupon he and his brother Devender Singh rushed to Police Line, Sirsa and enquired about their brother. They also tried to search their brother Sube Singh but in vain. The complainant further stated that on 22.10.2002, he was informed by some villagers of village Kanganpur that during the intervening night of 18/19.10.2002, at about 11.30 P.M., one car of red colour came from the side of Sirsa and went towards the side of village Bajekan, and, after 20-25 minutes, the said car came back. The villagers also tried to stop the said car but they failed to do so. The complainant was further informed by the villagers that they heard the sounds of gunshot and cry. The complainant also states therein that he was of the firm belief that the occupants of the said car had committed murder of his brother and taken the dead body of his brother in the said car to dispose of the same. On the basis of the statement (supra), the appeal FIR became registered.

Investigation proceedings

12. During the course of investigations, the investigating officer concerned, visited the place of occurrence in the area of village Kanganpur but since it was night time he could not inspect the place of occurrence and, therefore, he visited there again on 23.10.2002 and after inspection of the spot prepared a rough site plan of the place of occurrence. He also recorded



the statements of the witnesses under Section 161 Cr.P.C. The investigating officer concerned, again visited the place of occurrence on 24.10.2002 and got the scene of occurrence photographed. He also requisitioned the crime team to inspect the spot and on that day he lifted an Identity card (Ex.PO/1) and a driving licence (Ex. PU), both of accused Constable Sukhwinder Singh. In addition a purse (Ex.P-42) containing Rs.5/- coin and Re.1/- currency note, two passport size photographs of accused Constable Sukhwinder Singh were also lifted from the spot and all the articles were taken into possession vide recovery memo (Ex. PU). Rough site plan of place of recovery was also prepared. On the same day, the investigating officer concerned, visited Police Line, Sirsa and recorded the statements of Constable Het Ram and Constable Raj Pal and searched for the accused and deposited articles with the MHC with seals intact on the same day. On 27.10.2002, accused Sukhwinder Singh was arrested and got recorded his disclosure statement, on the basis of which relevant recoveries became effected. The said accused also identified the place of occurrence and also identified the place where the dead body was thrown, through memos to which respectively Ex. PKK and Ex. PLL became assigned. On 27.10.2002, the investigating officer concerned, along with other police officials went through the canal bank in the direction towards which the water was flowing. At Masitan Head, Devinder Singh (brother of the deceased) and one Satya Nand Met the investigating officer concerned, and, informed him that the dead body was found floating in the canal at Kannaur Head (Rajasthan), and, that they have also identified the dead body and taken out the same. The said dead body, which was without head, was photographed. Post-mortem of the dead body was conducted. Accused Rajdeep and Gurvir @ Goga



surrendered in Court and they were also joined in investigations. 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

13. 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 28.1.2003, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

14. 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 Sukhwinder Singh alias Sukha, Rajdeep and Gurveer Singh alias Goga, for the offences punishable under Section 302 read with Section 34 IPC and under Section 201 read with Section 34 IPC. Moreover, the learned trial Judge concerned also drew charges against accused Sukhvinder Singh alias Sukha son of Jagdev Singh qua the commission of offence punishable under Section 302 read with Section 120-B IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

15. In proof of its case, the prosecution examined 24 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence after tendering into evidence the reports of the FSL concerned.

16. After the closure of prosecution evidence, the learned trial



Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused chose to lead evidence in their defence, and, led one witness into the witness box.

Submissions of the learned senior counsel for the convict-appellant

17. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. They rest the above submission on the ground(s)-

(i) That there are major discrepancies in the prosecution case.

(ii) That the present case is based on circumstantial evidence and there is no direct evidence against the appellant to connect him with the alleged occurrence.

(iii) That as per the prosecution story a .12 bore gun was used in the crime event, whereas, the doctor concerned, found a bullet injury wound on the dead body of the deceased. However, since a bullet is always fired from a rifle and not from a gun. Consequently he has argued, that since there are rife contradictions inter se the medical evidence, thus with the recovery of the weapon of offence, as became effected through recovery memo Ex. PJJ/1, therebys the accused-appellant is entitled for the verdict of acquittal.

(iv) That there is a major discrepancy in the prosecution case, inasmuch as, the height of deceased ASI Sube Singh, as per his service



record, was 5'-7", whereas, the height of the recovered head less dead body was 5'-9". Therefore, he argues that the charge(s) drawn against the accused, are required to become declared to become foundered.

Submissions of the learned State counsel

18. The learned counsel for the appellant-State (in CRA-D-124-DBA-2006) has made vehement submissions before this Court, that the reasons assigned by the learned trial Judge concerned, for making an order of acquittal, upon the accused concerned, are extremely frail, besides are not based upon a sound appreciation of the evidence on record. Therefore, he contends, that the impugned verdict of acquittal be quashed, and, set aside, and, the accused-respondents be also convicted and sentenced for the charged offences.

19. The learned State counsel rests the above argument, on the ground that, when the theory of last seeing together of the deceased, and, the accused, as credibly propagated by PW-19 and PW-20, has been cogently established by the prosecution. Resultantly, when the potent incriminatory link (supra) in the chain of circumstantial evidence, thus became completely, and, unerringly established, as such, this Court is required to interfere with the verdict of acquittal, as became pronounced by the learned trial Court concerned.

Circumstantial evidence based case rested on the depositions of PW-19 and PW-20, who in their testification propagated a version qua his last seen the accused and the deceased together.

20. PW-19 Constable Het Ram, in his examination in chief, has made echoings, that on 18.10.2002, at about 8.30/9.00 P.M., he along with MTO ASI Sube Singh, Constable Rajpal and EHC Jagdish had their dinner together in M.T. Section. After dinner, EHC Jagdish went to the recreation



came to M.T. Section. The witness further deposed that he knows accused Sukhvinder Singh, as earlier he was posted in the M.T. Section, and, ASI Sube Singh was posted as MTO at that time, and, he got transferred Constable Sukhvinder Singh from the M.T. Section. He further deposed that accused Gurveer Singh alias Goga was also with accused Sukhvinder Singh when he came to M.T. Section. Accused Gurveer Singh alias Goga told ASI Sube Singh that they had arranged a party to celebrate the birth of his newly born son, and, requested him to attend the said party. The said witness further testified that though ASI Sube Singh had initially shown his unwillingness to attend the party, however, on the persuasions of both the accused, ASI Sube Singh accompanied them and they went out of the mess, through the back gate of the said mess. PW-19 further deposed that he and Constable Rajpal also went with them through the same gate in order to take milk. A red colour car was parked on the road, and at that time, accused Rajdeep was sitting in the said car. Thereupon, ASI Sube Singh, accused Constable Sukhvinder Singh, Gurveer Singh alias Goga and Rajdeep went in the said car. However, the said witness failed to identify accused Rajdeep in Court.

21. PW-19 has also identified accused Constable Sukhvinder Singh and Gurveer Singh alias Goga in Court, and, the said identification then made by the said witness of the accused in Court, rather remained unbelied. As such thereby the factum of the accused being known to the witness (supra) becomes cogently established, besides thereby, thus there was no necessity qua prior thereto any valid test identification parade being conducted, nor thereby the first time identification in Court of the supra accused, thus by the witness (supra) suffers from any infirmity.



22. Since neither any suggestions, became put to PW-19 during the latter's cross-examination, suggestive that his speakings (supra) in his examination-in-chief qua his last seeing together the accused, and, the deceased, rather at the apposite site, hence proximate to the crime site, thus are uncreditworthy, nor when theretos any answers favourable to the accused, thus emanated from PW-19. Thus, the effect of no suggestions (supra) becoming meted to PW-19, during the latter's cross-examination, thus to bely the efficacy of the above candidly spoken facts, is that, it leads to an inference that the defence concedes to PW-19 last seeing together the deceased and the accused, thus in the vicinity of the crime site. The effect thereof is but naturally, qua the apposite last seeing together theory, as espoused by PW-19, thus acquiring the firmest evidentiary vigour.

23. The statement of the prosecution witness (supra) does acquire the fullest corroboration from the testification made by PW-20 Constable Rajpal, who alike PW-19 efficaciously propagated the theory of last seeing together of the accused and the deceased. Fortifying vigour to the above, is firmly secured, thus from both the witnesses (supra), during theirs respectively becoming subjected to cross-examination, rather remaining unscathed in the said ordeal.

Signatured disclosure statement of convict-appellant
Constable Sukhwinder Singh alias Sukha son of Jarnail Singh Ex. PJJ

24. During the course of investigations, being made into the appeal FIR, convict-appellant Sukhwinder Singh alias Sukha, thus made his signatured disclosure statement, to which Ex. PJJ becomes assigned. The relevant portion of the signatured disclosure statement, as made by the accused is *ad verbatim* extracted hereinafter.



Sube Singh ASI-M.TO was nursing a grudge against me and he also got me transferred from M.T.branch about one year ago and since then I had determined to teach a lesson to Sube Singh. On 18-10-2002, I told this matter to my friends Rajdeep son of Harbhagwan, caste Kamboj, resident of Begu Road, Sirsa and Gurveer Singh alias Goga son of Kamaljeet Singh ASI, Jat Sikh, resident of M.C.Colony, Sirsa on the same day at about 7.00/8.00 P.M. We all three then by sharing a common intention got fetched the licenced gun of his father Kamaljeet Singh through Goga alias Gurbeer Singh and we all three made full preparation to end the life of Sube Singh and at about 9.00 P.M. (night), we all the three occupied Car No, DBD-6607 of red colour belonging to my brother from my house and I was on the steering wheel of the Car and parked the Car on HUDA road where a temporary gate has been made through the wall behind the Mess of Police Lines, Sirsa and after leaving Rajdeep near the Car, I and Goga alias Gurbeer brought near the Car Sube Singh ASI/M.T.O. from M.T.branch, Police Lines who was in asleep, after waking him up, with the pretext of giving him a party because on the same day, the child of Goga was taken to home from the hospital after recovery. Sube Singh ASI was made to sit in Maruti Car No.DBD-6607 and with the intention to commit his murder, brought him to a place of unknown destination at a distance of one kilometer from Bajekan road via Kanganpur, After stopping the Car, I and Rajdeep took out Sube Singh from the Car by dragging him and exhorted that he be taught a lesson for getting me transferred from M. T. Staff and then Goga who was carrying a 12 bore gun fired a shot directly at Sube Singh on my asking which hit him on the right side of his chest. Sube Singh tried to run away but he was caught by Rajdeep. I then took the gun from Goga and gave a gun blow on the head of Sube Singh as a result of which he fell on the ground. Rajdeep advised for not leaving any evidence, and he demanded the gun. After taking gun from me, Rajdeep gave a number of gun butt blows on the head of Sube Singh and fractured the head and in that process, the gun was broken and fallen down there. We all the three put the dead body of Sube Singh in the car and having lifted the butt of the gun and its barrel from the spot, we left for throwing the dead body in the Canal. Rajdeep was on the steering of the car. We all three alongwith the dead body of Sube Singh reached near the bridge of Railway of Rajasthan Canal in the area of Talwara Jheel (Raj.) where on both sides of the tow-path of the canal there were pieces of metalled road. After crossing the Railway line through the metalled road, the car was stopped and the dead body of Sube Singh ASI was taken down and was placed on the road near the tow-path and then Goga took out a Kappa from the car and gave three blows from the sharp side on the neck of Sube Singh ASI



and then all the wearing apparels of Sube Singh ASI were removed from his body and I and Rajdeep set the same ablaze and threw the ash in the canal water and then we all the three held the dead body of Sube Singh and threw it in Rajasthan Canal towards the flow of water from the bridge made on the Railway line and then we all reversed the car and reached at my house at Sirsa via Talwara Jheel, Ellenabad. I had kept concealed the barrel and butt of the broken gun after wrapping the same in a plastic bag in bad in my residential house about which no other person has the knowledge except me. The iron body of the gun after breaking had fallen down on the spot in the area of Kanganpur and because of hurry and nervousness the same remained there. Goga and Rajdeep went away in my Car No. DBD-6607 alongwith the Kappa. I can get the butt and the barrel of the gun after making identification (Nishandehi) and I can get also make identification (Nishandehi) of the place of occurrence situated in the area of Kanganpur and Rajasthan Canal where the dead body of Sube Singh was thrown.”

25. Pursuant to the above made signed disclosure statement, the convict-appellant Sukhwinder Singh alias Sukha ensured the recovery of an iron barrel of .12 bore gun having a band on which 1943-81 Pritam Singh and sons became scribed, and, one butt of gun in which one iron nut was fitted, and, on which 1943-81 became scribed, which were taken into police possession through a recovery memo, to which Ex. PJJ/1 becomes assigned.

26. The disclosure statement (supra), carries thereons the signature, of the convict-appellant. In his signed disclosure statement (supra), the convict, confessed his guilt in inflicting injuries on the person of the deceased, hence with the recovered weapon. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence. Moreover, the said signed disclosure statement, does also make speakings about 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, to the investigating officer concerned, from the place of his hiding, and, keeping the same.



27. Significantly, since the appellant has not been able to either ably deny his signatures as occurs on the exhibit (supra) nor when he has been able to prove the apposite denial. Moreover, since they he has also not been able to bring forth tangible evidence but suggestive that the recovery(ies) is/are either contrived or invented. Therefore, the exhibit(supra) is *prima facie* concluded to be holding the utmost evidentiary tenacity.

28. Moreover also since post the making of the said signed disclosure statement, thus by the convict to the investigating officer concerned, he through the recovery memo (Ex. PJJ/1), thus caused the recovery of the weapon of offence to the investigating officer concerned. Consequently, when the said made recovery(ies) is/are also not suggested by any cogent evidence to be planted recovery(ies). Resultantly, the effect thereof, is that, valid recovery(ies) was/were made vis-a-vis the incriminatory weapon of offence by the convict, to the investigating officer concerned. In sequel, the making of the valid signed disclosure statement, by the convict besides the pursuant thereto effectuation of valid recovery(ies) of the incriminatory weapon of offence, thus by the convict to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

29. However, yet for assessing the vigor of the said made disclosure statement and consequent thereto made recovery, it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statement and to the consequent thereto made recovery. The principles governing the facet (supra), become embodied in paragraphs Nos. 23 to 27 of a judgment rendered by the Hon'ble Apex Court in **Criminal**

Appeal Nos.1030 of 2023, titled as "Manoj Kumar Soni V. State of



Madhya Pradesh”, **decided on 11.8.2023**, relevant paragraphs whereof become extracted hereinafter.

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

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

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

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



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

24. ..., the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens rea is clearly not established for the charge under Section 411 IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing." [William Shakespeare, Merchant of Venice, Act 1 Scene 1.]

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

27. While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned hostile right from the word 'go'. The common version of all the seizure witnesses,



i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.

30. Furthermore, in a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal No.2438 of 2010, titled as "Bijender @ Mandar V. State of Haryana", decided on 08.11.2021**, the relevant principles governing the apposite assigning of creditworthiness become set forth in paragraph 16 thereof, paragraph whereof becomes extracted hereinafter.

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

31. Furthermore, in another judgment rendered by the Hon'ble Apex Court in **Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police", decided**

on 03.01.2024, the relevant principles governing the assigning of



creditworthiness become set forth in paragraphs 22 to 25 thereof, paragraphs whereof become extracted hereinafter.

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

23. *The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused*



had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

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

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

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

i) That the disclosure statement and the consequent thereto recovery being forged or fabricated through the defence proving



that the discovery of fact, as made in pursuance to a signed disclosure statement made by the accused to the investigating officer, during the term of his custodial interrogation, rather not leading to the discovery of the incriminatory fact;

- ii) That the fact discovered was planted;
- iii) It was easily available in the market;
- iv) It not being made from a secluded place thus exclusively within the knowledge of the accused.
- v) The recovery thereof made through the recovery memo in pursuance to the making of a disclosure statement, rather not being enclosed in a sealed cloth parcel nor the incriminatory item enclosed therein becoming sent, if required, for analyses to the FSL concerned, nor the same becoming shown to the doctor concerned, who steps into the witness box for proving that with the user of the relevant recovery, thus resulted in the causings of the fatal ante mortem injuries or in the causing of the relevant life endangering injuries, as the case may be, upon the concerned.
- vi) That the defence is also required to be impeaching the credit of the marginal witnesses, both to the disclosure statement and to the recovery memo by ensuring that the said marginal witnesses, do make speakings, that the recoveries were not made in their presence and by making further speakings that they are compelled, tutored or coerced by the investigating officer concerned, to sign the apposite memos. Conspicuously, despite the fact that the said recovery memos were not made in



pursuance to the accused leading the investigating officer to the site of recovery. Contrarily the recovery memo(s) becoming prepared in the police station concerned.

vii) The defence adducing evidence to the extent that with there being an immense gap *inter se* the making of the signed disclosure statement and the consequent thereto recovery being made, that thereby the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem employed by the investigating officer.

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

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

35. Moreover, in case the Court, in the above manner, becomes satisfied about the well made resilings by the eye witness concerned, to the



crime event, thereupon the Court may consequently draw a conclusion, that the recoveries made in pursuance to the disclosure statement made by the accused, even if they do become ably proven, yet therebys may be the said disclosure statement, and, the consequent thereto made recoveries also loosing their evidentiary tenacity. The said rule is not a straitjacket principle, but it has to be carefully applied depending upon the facts, circumstances and evidence in each case. Tritely put in the said event, upon comparative weighings being made of the well made resilings, thus by the eye witness concerned, from his previously made statement in writing, and, of the well proven recoveries made in pursuance to the efficaciously proven disclosure statement rendered by the accused, the Court is required to be drawing a conclusion, as to whether evidentiary tenacity has to be yet assigned to the disclosure statement and the pursuant thereto recovery memo, especially when they become ably proven and also do not fall foul from the above stated principles, and/or to the well made resiling by the eye witness concerned, from his previously recorded statement in writing. Emphatically, the said exercise requires an insightful apposite comparative analyses being made.

36. To a limited extent also if there is clear cogent medical account, which alike, a frailly rendered eye witness account to the extent (supra), vis-a-vis the prosecution case based upon eye witness account rather unfolds qua the ante mortem injuries or other injuries as became entailed on the apposite regions of the body(ies) concerned, thus not being a sequel of users thereovers of the recovered weapon of offence. Resultantly therebys too, the apposite signed disclosure statement and the consequent thereto recovery, when may be is of corroborative evidentiary vigor, but when other adduced prosecution



account. In sequel, thus therebys the said signed disclosure statement and the consequent thereto recovery, thus may also loose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

37. However, in a case based upon circumstantial evidence when the appositely made signed disclosure statement by the accused and the consequent thereto prepared recovery memos, do not fall foul, of the above stated principles, therebys they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

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

39. Consequently, since the statutory provisions enclosed in Section 25 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter, do not assign statutory admissibility to a simpliciter/bald confession made by an accused, thus before the police officer, rather during the term of his suffering custodial interrogation, but when the exception thereto, becomes engrafted in Section 27 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter. Therefore, therebys when there is a statutory recognition of admissibility to a confession, as, made by an accused before a police officer, but only when the confession, as made by



the accused, before the police officer concerned, but becomes made during the term of his spending police custody, whereafters the said incriminatory confession, rather also evidently leads the accused, to lead the investigating officer to the place of discovery, place whereof, is exclusively within the domain of his exclusive knowledge.

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

x x x x x

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

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

41. Now coming to the facts at hand, since the disclosure statement and the consequent thereto recovery do become efficaciously proven by the



memos become adequately impeached rather for belying the validity of drawings of the memos nor also when it has been proven that the said memos are fabricated or engineered, besides when it is also not proven that the disclosure (supra) did not lead to the discovery of the apposite fact from the relevant place of hiding, thus only within the exclusive knowledge of the accused.

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

43. Consequently, when therebys the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statement, and, the consequent thereto recovery, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus, they do corroborate the rendition of a credible account vis-a-vis the theory of last seeing together of the accused and the deceased, as becomes propagated through the prosecution witnesses (supra). Moreover, when the memos (supra) also lend corroboration to the medical account, besides when in pursuance to his above made disclosure statement, the accused also led the police party to the crime site in respect whereof memo Ex. PKK became prepared. In addition, when the accused (supra) also led the police party to the place where the dead body of ASI Sube Singh was thrown, whereupons memo Ex. PLL became prepared, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.



Post-mortem report

44. The post-mortem report, to which Ex. PSS is assigned, became proven by PW-23 Dr. Bharat Bhushan. PW-23 in his examination-in-chief, has deposed that on an autopsy being conducted on the body of deceased Sube Singh, thus his noticing thereons the hereinafter ante mortem injuries-

“1. A 3x2 cms. round bullet entry wound on the right shoulder was present. The underlying right clavicle was fractured. The exit point was in the right axilla just at the anterior axillary fold.

2. 1 recovered broken pieces of the skull bone namely pieces of spinoid and temporal bone which showed infiltration of the blood and their broken edges.

3. The 10 pieces of sticks recovered from the anus were inserted deep inside to lacerate the internal organs namely small and the large intestines, liver, diaphragm and right lung base.”

45. Furthermore, PW-23 also made a speaking in his examination-in-chief, that the cause of demise of the deceased was owing to the occurrence of injury No. 2, hence on the head of the deceased.

46. The above made echoings by PW-23, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-23 qua the demise of the deceased, thus acquires formidable force. Consequently, the above echoings, as made by PW-23, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

47. At this stage, the learned senior counsel for the appellant has argued, that the effectuation of recovery .12 bore gun, thus at the instance of accused-appellant Sukhwinder Singh, rather is on a plain reading of the ante mortem injury No. 1, as disclosed in post-mortem report (supra), but not



related to the firings therefroms of 3x2 cms round bullet. He further submits, that the said bullet as entered into the body of the deceased, thus could have entered therein, only it became fired from a firearm, wherein, rather lead pellets could be loaded, and, could not be fired from a firearm, as is the instant firearm, thus wherein evidently became enclosed cartridges, whereby there was but spreading of the incendiary granules inside the fired cartridges, which however has not occurred in the instant case.

48. The above argument not only appears to ill-negate the evidentiary worth of recovery of .12 bore firearm as became effected through recovery memo Ex. PJJ/1, at the instance of convict-appellant Sukhwinder Singh, but also appears to ill-negate the evidentiary worth of the opinion of the ballistic expert (Ex PTT), whereto the supra firearm became sent for examinations, wherein rather in the hereinafter extracted underlined results, there are graphic echoings, that 12 bore cartridge cases marked C/1, thus becoming fired from 12 bore broken SBBL gun W/1, and, not from any other firearm, rather even of the same make. Therefore, the said opinion of the ballistic expert when is the best forensic scientific opinion, thereby unless its efficacy became eroded through adduction of cogent evidence, which however, has not been done, but necessarily holds the firmest inculpatory vigour, whereby the supra argument looses its vigour.

49. Furthermore, the cause of demise of the deceased is spelt in the post-mortem report (Ex. PSS), to arise from fatal ante mortem injury No. 2, inasmuch as, broken pieces of skull bone, namely pieces of spinoid and temporal bone, showed infiltration of blood and their broken edges.

Therefore, if in the post mortem report (Ex. PSS) the same is stated to be the reason for the demise of the deceased, thereby the prosecution has been



able to connect the user of the recovered butt of the gun, as made through recovery memo Ex. PJJ/1, thus with the entailment of the said fatal injury. Moreover, when the effectuation of recovery of the said butt, thus was made through recovery memo Ex. PJJ/1, rather in pursuance to the makings of confession, by convict-appellant Sukhwinder Singh, confession whereof becomes enclosed in his signed disclosure statement (Ex. PJJ). Resultantly thereby the entailment of the said injury which led to demise of the deceased, becomes obviously proven through the making of efficacious recovery of the butt of the gun.

50. Resultantly thereby even if assuming from the recovered firearm lead pellets entered into the body of the deceased, whereas, assuming they were not releaseable from the said recovered firearm. However, the effect thereof becomes completely paled, through the un rebutted cause of demise of the deceased rather becoming stated in the post-mortem report (Ex. PSS), thus to arise from entailment of ante mortem injury No. 2 on the person of the deceased, entailment whereof, is a sequel of user of the butt of the gun, which became efficaciously recovered through recovery memo Ex. PJJ/1, than the entry into body of the deceased of pellets, as became fired from the recovered firearm.

Report of the FSL concerned, to which Ex. PTT becomes assigned

51. Through RC Nos. 425, 427 and 453 dated 27.10.2002, 30.10.2002 and 25.11.2002, 19 sealed and 2 unsealed parcels became sent, through EHC Ram Murti 691-C, Dalbir Singh 534 and Mahesh Kumar 972 to the FSL concerned. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it, in sealed cloth parcels,



extracted hereinafter.

“X X X X

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

The seal 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 seals of JB	<i>Stated to contain blood stained earth lifted from the place of occurrence (Sent to Serology Division).</i>
II.	2 seals of JB	<i>Contained one wooden piece with a nut and bolt stated to be piece of butt of gun.</i>
III.	2 seals of JB	<i>Contained 12 bore fired cartridge case.</i>
IV.	2 seals of JB	<i>Stated to contain blood stained wooden piece (Sent to Serology Division)</i>
V.	Unsealed	<i>Contained metallic body of SBBL gun bearing Sr. No. 1943-81. (Marked W/1 by me).</i>
VI.	4 seals of SK	<i>Contained one bent barrel of 12 bore SBBL gun bearing Sr. No. 1943-81 stated to have been recovered from accused Sukhvinder Singh. (Marked B/1 by me).</i>
VII.	4 of SK	<i>Contained broken wooden butt stated to be stained with blood. (Marked BT/1 by me) (First examined in Ballistics Division then sent to Serology Division).</i>
VIII.	4 seals of SK	<i>Contained one fore-end of SBBL gun bearing Sr. No. 1943-81 (Marked F/1 by me).</i>
IX.	4 seals of SK	<i>Stated to contain blood stained earth, hair and skin piece. (Sent to Biology Division).</i>
X.	4 seals of SK	<i>Stated to contain mould of right foot (Sent to General Section).</i>
XI.	4 seals of SK	<i>Stated to contain mould of left foot (Sent to General Section).</i>
XII.	5 seals of SK	<i>Stated to contain blood stained Kappa recovered from Gurbir Singh (Sent to Serology Division).</i>
XIII.	Unsealed	<i>One red coloured Maruti-800 Car bearing Reg. No. DBD-6607 of accused Rajdeep. (Got examined on 26.11.02 and returned on the same day).</i>
XIV.	4 seals of SK	<i>Stated to contain foot mould of right foot of accused Rajdeep (Sent to General Section).</i>
XV.	5 seals of SK	<i>Stated to contain foot mould of left foot of accused Rajdeep (Sent to General Section).</i>
XVI.	5 seals of SK	<i>Stated to contain shoe mould of right foot of accused Gurbir (Sent to General Section).</i>
XVII.	5 seals of SK	<i>Stated to contain shoe mould of left foot of accused Gurbir (Sent to General Section).</i>



- XVIII. 5 seals of SK Stated to contain partially burnt shirt of accused Rajdeep (Sent to Serology Division).
- XIX. 5 seals of SK Stated to contain two blood stained rubber mats (Sent to Serology Division).
- XX. 5 seals of KS Stated to contain blood stained clothes of accused Gurbir Singh (Sent to Serology Division).
- XXI. 5 seals of KS Stated to contain blood stained clothes of accused Rajdeep. (Sent to Serology Division).

Laboratory Examination

Wooden piece with a nut and bolt contained in parcel no. II, wooden piece contain in parcel No. IV, metallic body bearing Sr.No.1943-81 contained in parcel No.V, bent barrel bearing Sr. No. 1943-81 contained in parcel No. VI, broken butt contained in parcel No. VII, fore-end bearing Sr. No. 1943-81 contained in parcel No. VIII were physically examined and fitted in the laboratory.

Products of combustion of smokeless powder were detected from the barrel of 12 bore SBBL gun marked B/1. Test firings were done in the laboratory from the body and barrel of 12 bore SBBL gun marked W/1 and B/1 respectively.

The class as well as individual characteristic marks present on 12 bore fired cartridge case C/1 and those on test cartridges fired from body and barrel of 12 bore DBBL gun have been examined and compared under Stereo and Comparison Microscope.

Based on the examination carried out in the laboratory, the result of the analysis is as under:-

Result

1. The wooden piece contained parcel No. II, metallic body contained in parcel No. V, bent barrel contained in parcel No. VI, wooden butt contained in parcel No. VII and fore-end contained in parcel No. VIII could form part of 12 bore SBBL gun W/1 bearing Sr No. 1943-81 of PRISONS Pritam Singh and Sons.
2. 12 bore fired cartridge case marked C/1 has been fired from 12 bore broken SBBL gun W/1 with Sr. No. 1943-81 and not from any other firearm even of the same make and bore because every firearm has got its own individual characteristic marks.
3. Report in original from Serology, General, Biology Divisions are enclosed herewith."

52. A reading of the above underlined extracted portion of the results of the FSL concerned, tellingly speaks qua therebys the prosecution invincibly proving the user of the recovered barrel of gun, recovery whereof



became effected through Ex. PJJ/1, and, wherefrom the cartridges became fired at the body of the deceased. The supra opinion as made by the FSL concerned, when remains uneroded through any cogent rebuttal evidence becoming adduced, therebys it acquires the utmost persuasive evidentiary worth.

Report of the FSL Ex. PUU

53. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in six sealed cloth parcels and one unsealed parcel, hence made thereons an opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“X X X X

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

Received six sealed parcel(s) through Ballistic Division on 12.3.03 and one unsealed car on 26.11.02. The seals were intact and tallied with the specimen seals as per forwarding authority’s letter.

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

Parcel No.	No. and seal impression	Description of parcel(s)
VII.	3-DD/Balli	<i>It contained exhibit-7. Exhibit-7. One Gun Butt (approx .32 cms) stained with dark brown stains.</i>
XII.	5-KS	<i>It contained exhibit-12. Exhibit-12. One Drant Gun Butt (approx .44 cms) having rusty metallic blade and wooden handle.</i>
XIII		<i>Back seat grey brown in colour of red coloured Maruti car bearing No. BDB-6607.</i>
XVIII.	5-SK	<i>It contained exhibit-18. Exhibit-18. Burnt clothes stained with dark brown stains.</i>
XIX.	4-SK	<i>It contained exhibit-19. Exhibit-19. Two black rubber mats with dark brown stains.</i>
XX.	5-KS	<i>It contained exhibit-20. Exhibit-20a. One red cotton T-Shirt. Exhibit-20b. One brownish Knickers.</i>
XXI.	5-KS	<i>It contained exhibit-21. Exhibit-21a. One blue jeans pant. Exhibit-21b. One checked shirt</i>



Laboratory Examination

Laboratory examinations were carried out to detect the presence of blood on the exhibits. Blood thus detected was subjected to serological tests to determine its species of origin. Based upon these examinations the results obtained are given below:-

1. Blood was detected on exhibit-7 (Gun butt) and on exhibit 13 (back seat of car).
2. Traces of blood too small for serological tests were detected on exhibit-12 (Drant).
3. Exhibit-18 (Clothes) and exhibit-19 (Mat) were stained with blood.
4. Blood could not be detected on exhibit-20a (T-shirt); exhibit 20-b (Knickers); exhibit-21a (Pant) and exhibit-21b (Shirt).”

Results of serological analysis of blood

Exbt. No.	Name of Exhibit	Origin
7.	Gun butt	Human
13.	Back seat	Material Disintegrated
18.	Clothes	Material Disintegrated
19.	Mat	Material Disintegrated

Report of the FSL Ex. PVV

54. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in three sealed cloth parcels, hence made thereons an opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“X X X X

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

Parcel No.	and seal impression	Description of parcel(s)
I.	2-JB	Sealed cloth parcel containing exhibit-1. Exhibit-1. Small lumps of earth and loose earth (approx. 20 gms) described as Blood stained Earth.
IV.	2-JB	Sealed cloth parcel containing exhibit-4. Exhibit-4. One broken piece of wooden stick



(approx. 16 cms). A few grey and dark brown hair were found adhering to the exhibit.

- IX. 4-SK Sealed cloth parcel containing exhibit-1.
Exhibit-1. Small lumps of earth and loose earth (approx. 20 gms) described as Blood stained Earth.

Laboratory Examination

Laboratory examinations were carried out to detect the presence of blood on the exhibits. Blood thus detected was subjected to serological tests to determine its species of origin. Hair recovered from exhibit-4 (Wooden stick) and exhibit-9 (Blood stained earth) were examined morphologically and microscopically. Based upon these examinations the results obtained are given below:-

1. Blood was detected in exhibit-1 (Blood Stained Earth); exhibit-4 (Wooden Stick) and exhibit-9 (Blood Stained Earth).
2. Hair recovered from exhibit-4 (Wooden stick) and exhibit-9 (Blood stained earth) were identified to be human in origin. No opinion regarding matching of hair could be given as material for comparison was insufficient in exhibit-9 (Blood Stained Earth).

Results of serological analysis of blood

Exbt. No.	Name of Exhibit	Origin
1.	Blood stained earth	Human
4.	Wooden stick	Human
9.	Blood stained earth	Material Disintegrated

55. Though, a reading of the opinions, as made on the examined items reveals, that no conclusive opinions were made by the Serologist concerned, to the effect, that blood stains occurring on the incriminatory items being compatible with the blood stains of the deceased. However, the said inconclusivity is also of no worth, nor thereby the prime unblemished ocular account rendered vis-a-vis the crime event by prosecution witnesses (supra), rather loses its evidentiary vigour.



56. The reason for so stating arises from the factum, that unless the blood group of the deceased, as detailed in the FTM card, appertaining to the deceased, thus became supplied by the family members of the deceased to the investigating officer concerned, whereafters upon the latter sending the said supplied FTM card to the Serologist concerned, thus resulted in therebys the Serologist concerned, becoming facilitated to make able inter se matchings.

57. Therefore, in the above event, if there was but a facilitation to the Serologist concerned, to either (a) declare that there were wants of apposite compatible matchings or (b) he may have been led to declare that there were apposite compatible matchings.

58. However, in the wake of the Serologist concerned, rather not being purveyed the supra FTM card, thus he became precluded to make any effective apposite compatibilities, whereupons the apposite inconclusivity of opinion, rather cannot be construed to be a conclusive exculpatory opinion. On the contrary, if the supra facilitations became purveyed to the Serologist concerned, whereupon his becoming led to make a worthy exculpatory opinion, thereupon only the effects of supra adduced credible account, rather may become construed to be unworthwhile.

59. Reiteratedly since there is no evidence on record, thus detailing that the family members of the deceased, supplied to the investigating officer concerned, the FTM card of the deceased, for therebys the Serologist concerned, becoming well facilitated to make the apposite matchings. Resultantly, the effect thereof, is none other than, that there was lack of complete matchable material available with the Serologist concerned.

Moreover, reiteratedly the further effect thereof, is that, the lack of



conclusivity of opinion by the Serologist concerned, about the blood stains occurring on the incriminatory items either belonging or not belonging to the deceased, but is of no firm exculpatory significance, nor thereby the rendition of an unblemished credible account vis-a-vis the crime event by PWs (supra) rather loses its evidentiary tenacity.

Collection of shoe moulds and report of the FSL concerned, to which

Ex. PXX becomes assigned

60. During the course of investigations being made into the appeal FIR, the investigating officer concerned, through memo Ex. PR/1, hence collected the foot track moulds of the right and left foot shoe, thus from the crime site. The investigating officer also respectively through Ex. PC, Ex. PD and Ex. PE, thus collected the respective foot track moulds, rather respectively of accused Sukhvinder Singh, Gurvir Singh and Rajdeep Singh.

61. Through R.C. No. 426 of 27.10.02 eight sealed cloth parcels, became sent, through EHC Ram Murti 691 to the FSL concerned. The FSL concerned, thus upon making examinations of all the incriminatory items, as became sent to it in sealed cloth parcels, hence made thereons an opinion, opinion whereof, becomes *ad verbatim* extracted hereinafter.

“Description of parcel(s)

<i>Parcel No.</i>	<i>No. & Seal impression</i>	<i>Description of parcel(s)</i>
<i><u>Crime Exhibits (received in FSL on 28.10.02)</u></i>		
<i>1.</i>	<i>5-JB</i>	<i>One plaster cast of right foot wear impression. It was marked here as C/1 R.</i>
<i>2.</i>	<i>5-JB</i>	<i>One plaster cast of left foot wear impression. It was marked here as C/2 L.</i>
<i><u>Specimen Exhibits (Exbt. 10 & 11 were received in FSL on 31.10.02 and Exbt. 14 to 17 on 25.11.02)</u></i>		
<i>10.</i>	<i>4-SK</i>	<i>One plaster cast of right foot wear impression of Sukhvinder. It was marked here as S/10 R.</i>
<i>11.</i>	<i>4-SK</i>	<i>One plaster cast of left foot wear impression</i>



- of Sukhvinder. It was marked here as S/11 L.
14. 5-SK One plaster cast of right foot wear impression of Rajdeep. It was marked here as S/14 R. The exhibit was broken into pieces.
15. 5-SK One plaster cast of left foot wear impression of Rajdeep. It was marked here as S/15 L. The exhibit was broken into pieces.
16. 5-SK One plaster cast of right foot wear impression of Gurvir. It was marked here as S/16 R.
17. 5-SK One plaster cast of left foot wear impression of Gurvir. It was marked here as S/17 L.

Laboratory Examination

The crime impressions were compared with the specimen impression in respect of shape, contour, design/pattern physical of tread and wear and tear characteristics. The observations are as under:-

Observations:-

The crime impression C/1R was in agreement with specimen impression S/10 R in respect of shape, size, contour and design/pattern of tread surface.

The shape, size, contour and design/pattern of tread surface of crime impression C/2 L were not clear and comparable.

Conclusion:-

(1) The crime impression C/1 R and specimen impression S/10 R could have been caused by the same footwear.

(2) No opinion could be given about crime impression C/2 L due to lack of compared characteristics.”

62. The results of the examinations, as made over the footprints existing at the crime site with the footwears of the accused, discloses that there is apposite inter se compatibility but only qua co-convict Sukhwinder Singh. The convict (supra) could yet make an attempt to repel the effect of the said evidence but only when he was able to make such suggestions to the prosecution witness concerned, thus suggestive that the footprints left over at the crime site were a sequel of some person other than the accused trudging over the crime site. However, the said evidence became



unadduced. Moreover, when the crime site is a desolate place, thereby when no person other than the accused could have trudged over the crime site, thereby the convict becomes proven to be the only person who trudged over the crime site. Even otherwise no evidence becomes adduced by the defence that the footprints existing over the crime site were the result(s) of manipulations and deployments of stratagems by the investigating officer concerned. Consequently, thereby the supra inculpatory opinion made vis-a-vis accused-appellant Sukhwinder Singh rather acquires immense evidentiary worth. Resultantly since the said opinion of the FSL concerned, is also a potent incriminatory link in the chain of incriminatory circumstances, thereby also the charge drawn against accused-appellant Sukhwinder Singh, thus becomes proven to the hilt.

63. The learned senior counsel for the appellant has argued, that the charge drawn against the accused-appellant is required to be faulted, on the ground, that since the service records of the deceased, as became tendered by DW-1, thus revealed qua his height being 5-7", whereas, in the inquest report, the height of the deceased was shown to be 5'-1/4 ", thereby the prosecution has been unable to prove that the accused had murdered the deceased, namely ASI Sube Singh.

64. The said argument is also unworthy of acceptance, as in the inquest report there is merely a perfunctory finding that the height of the deceased was 5-1/4 ". Contrarily, when the doctor, who conducted post-mortem examination on the body of the deceased, has made the hereinafter extracted unrebutted echoings in his examination-in-chief, wherefrom thus an inevitable inference becomes marshalled, that there is but an inter se compatibility inter se the height of the deceased, which is reflected in his



service record, thus with the one, as became measured by the doctor who conducted an autopsy on the body of the deceased. Therefore, therebys the argument (supra) addressed before this Court, is unmeritworthy, and, is rejected.

“x x x x

I measured the length of the body from shoulder to heel as available body parts and calculated the total length of the body to be approximately 170 cms.

x x x x”

65. Even otherwise, the said argument is required to be rejected on the ground, that unless it is so rejected, it would bring the ill-consequences of this Court negating the inculpatory effect of recovery memo Ex. PJJ/1, wherethrough weapon of offence became recovered, besides also would ill-negate the inculpatory results (supra) as made by the ballistic expert concerned. Therefore, to ensure that the above ill-consequences rather do not arise, therebys this Court accepts that the above extracted portion of the examination-in-chief, thus making clear expressions that the body of the deceased namely ASI Sube Singh, did become put to autopsy, wherebys the charges against the accused concerned, are to be declared to become proven. Resultantly, the appeal filed by the convict-appellant Sukhwinder Singh bearing number CRA-D-318-DB-2005 is dismissed.

Reasons for upholding the verdict of acquittal and dismissing the appeal filed by the State

66. Though the prosecution witnesses concerned, have stated, that they have last seen together the accused and the deceased, inclusive of the acquitted accused namely Rajdeep and Sukhwinder Singh alias Sukha son of Jagdev Singh. However, the prosecution witnesses concerned, irrefutably

identified in Court only accused-convicts Constable Sukhwinder Singh and



Gurveer alias Goga. However, they did not irrefutably identify accused Rajdeep and Sukhwinder Singh son of Jagdev Singh. Moreover also when PW-20 had mis-identified accused Sukhwinder Singh son of Jagdev Singh as accused Rajdeep. The effect of the failure of the prosecution witnesses (supra) to unerringly identify in Court, accused Rajdeep and accused Sukhwinder Singh son of Jagdev Singh, is that, the said witnesses were unfamiliar qua the identity of the accused (supra), whereby a necessity became cast upon the said witnesses to, in their previously recorded statement in writing, thus detail the key characteristic features of the accused (supra), so that, during the course of investigations, a test identification parade becomes conducted, wherein, the prosecution witnesses could identify both the accused (supra). Consequently thereby the identification made in Court, of the accused (supra) thus by the PWs concerned, rather would hold some evidentiary value. However, when the omission (supra) did occur, and, moreover when the witnesses (supra) failed to unerringly identify the accused (supra) in Court, thereby the previously made statements by the prosecution witnesses (supra), wherein, they stated that they had last seen together accused Rajdeep with the deceased, rather is not to be assigned any credence. As such, the incriminatory role assigned to accused Rajdeep becomes weakened.

67. In addition, when none of the prosecution witnesses identified co-accused Sukhwinder Singh son of Jagdev Singh in Court, thereby the incriminatory role assigned by the prosecution witnesses (supra) to the supra accused, thus banked upon their recording in their previously made statements in writing to the police, that he was last seen together with the deceased, but naturally falters.



68. Moreover what further prompts this Court to affirm the finding of acquittal recorded vis-a-vis accused Rajdeep and Sukhwinder Singh son of Jagdev Singh, becomes borrowed from the factum, that the recovery of the clothes, as became effected at the instance of accused Rajdeep, through recovery memo Ex. PEE/1, rather became effected from an open place. Moreover when no recovery became effected from accused Sukhwinder Singh son of Jagdev Singh, besides also when the footwear moulds of both the accused (supra) become declared by the FSL concerned, to be not matching with the foot moulds, which were collected from the crime site. Resultantly the effect thereof, is that, therebys too, the criminal appeal filed by the State bearing number **CRA-D-124-DBA-2006**, is required to be dismissed.

Final Order

69. The result of the above discussion, is that, this Court does not find any merit in the both the appeals, and, is constrained to dismiss them. Consequently, both the appeals are dismissed. The impugned verdict of conviction, as becomes recorded upon the convict-appellant Sukhwinder Singh, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent thereto order of sentence is also affirmed. If the convict is on bail, thereupon, the sentence as imposed upon him, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.

70. The impugned verdict of acquittal, as made by the learned trial Court, upon accused Rajdeep and Sukhwinder Singh son of Jagdeep Singh, is also maintained, and, affirmed.

71. 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.

- 72. Records be sent down forthwith.
- 73. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

January 07, 2025
Gurpreet

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