

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(I) CRA-D-364-DB-2009
Reserved on: 01.09.2022
Date of decision: 06.09.2022

KULDEEP SINGH & ORS ...Appellants

Versus

STATE OF HARYANA ...Respondent

(II) CRR-1352-2009

PURAN SINGH ...Appellant

Versus

KULDEEP SINGH AND OTHERS ...Respondents

(III) CRA-D-1179-DB-2013

STATE OF HARYANA ...Appellant

Versus

HARDEEP SINGH AND OTHERS ...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present: Mr. R.S. Cheema, Sr. Advocate with
Ms. Sumanjit Kaur, Advocate
for the appellants in CRA-D-364-DB-2009.

Mr. Kuljit Singh Bal, Advocate
for the petitioner in CRR-1352-2009 and
for the complainant in CRA-D-364-DB-2009

Mr. Vinod Ghai, Senior Advocate with
Mr. J.S. Mehndiratta, Advocate for
appellant No.3 in CRA-D-364-DB-2009.

Mr. Anmol Malik, AAG, Haryana.

SURESHWAR THAKUR, J.

1. All the cases are being decided through a common verdict, as they arise from a common verdict of conviction/acquittal, and, also from a consequent therewith sentence(s) of imprisonment, and, of fine, as, become imposed upon each.

2. The instant appeals are directed against the verdict drawn on 10.03.2009, upon Sessions Case No.38 of 2005 by the learned Additional Sessions Judge, Kaithal, who proceeded to draw a verdict of conviction qua accused Balwinder Singh, Amir Singh, and, Kuldeep Singh (since deceased) qua a charge drawn against them for offences punishable under Sections 302, and, under Section 323 of IPC. He also recorded a finding of conviction against co-accused Gurnam Singh for a charge drawn with respect to an offence punishable under Section 302 of IPC alone. However, through the above drawn verdict, the learned trial Judge proceeded to record a verdict of acquittal against the other co-accused qua Hardeep Singh (since deceased), qua Bhagwant Singh, qua Kulwant Singh (since deceased), qua Joginder Singh (since deceased), qua Satnam Singh, qua Jagtar Singh, and, qua Gurvinder Singh.

3. In consequence to the above made verdict of conviction being recorded against the co-convicts qua a charge drawn for an offence punishable under Section 302 of IPC, he sentenced the convicts to undergo rigorous imprisonment for life, and, also imposed a sentence of fine, upon each accused comprised in a sum of Rs.10,000/-, each, besides in default of payment of fine, he sentenced the accused-convicts to undergo further rigorous imprisonment for one year. Moreover, the learned trial Judge concerned, also proceeded to, through a separate sentencing order drawn on 10.03.2009, hence impose sentence of imprisonment extending upto one year, upon convict(s) Balwinder

Singh, Kuldeep Singh (since deceased), and, Amir Singh, in respect of a charge drawn under Section 323 of IPC, besides also imposed upon the convicts concerned, a sentence of fine comprised in a sum of Rs.2500/- each, and, also in default of payment of fine amount as imposed, upon the convicts concerned, he imposed a further sentence of simple imprisonment extending upto one month. All the sentences (supra) were ordered to run concurrently.

4. The convicts (supra), became aggrieved from the above drawn verdict of conviction, and, also from the consequent therewith sentence(s) (supra), as imposed upon them, hence became led to institute thereagainst appeal being No.CRA-D-364-DB-2009 before this Court.

5. The State of Haryana as well as complainant Puran Singh also become aggrieved from the verdict of acquittal, as made by the learned Additional Sessions Judge concerned, as, recorded qua the other co-accused, and, are also led to institute thereagainst their respective appeal/revision before this Court.

6. During the pendency of the instant appeals before this Court, the demise of Kuldeep Singh, Hardeep Singh, Kulwant Singh, and, Joginder Singh, has occurred. The above factum is borne out by their respective death certificates, as became placed on record by the learned counsels for the concerned. Therefore, in so far as the above deceased are concerned, the appeals concerned, as maintained at the instances of the concerned, before this Court become abated, and, are dismissed as such.

Factual Background

7. The genesis of the prosecution case is carried in the appeal FIR, to which Ex.PA/2 is assigned, therein the complainant-informant one, Puran Singh narrates that he is an agriculturist. On 11.8.2005 in the morning, his brother

Richhpal Singh and his son Paramjit Singh alias Pamma came to the house of the complainant in order to pay the lease money of land. Ajit Singh son of Kehar Singh and Avtar Singh son of Surinder Singh, Jat Sikh, resident of village Mastgarh, were accompanying Richhpal Singh because the lease money was to be given in their presence. His nephew Partap Singh alias Sonu son of Taran Singh (since deceased) had gone to the fields. The house of the complainant is situated near the road leading from village Mastgarh to village Chaku Ladana. He alongwith Richhpal Singh and other five persons were sitting in his "Gher". At about 7/7.15 AM his nephew Partap Singh alias Sonu (since deceased) was coming back to his house from fields. He was empty handed. His house and house of the complainant is one. When Partap Singh alias Sonu reached near to his house, then from the southern side of his boundary wall, Kuldeep Singh son of Joginder Singh, Jat Sikh r/o Mastgarh, etc. whose house is also adjacent to his house, came holding stick, Gandasi and Barchhi. As per the version of the complainant, Balwinder Singh alias Judge son of Sarup Singh was holding a Gandasi; Gurnam Singh son of Kulwant Singh was holding a Barchhi; Amir Singh, Bhagwant Singh sons of Kuldeep Singh, Kulwant Singh son of Inder Singh, Hardeep Singh son of Joginder Singh, Jagtar Singh alias Tara son of Kulwant Singh, Gurvinder Singh alias Ballu son of Kulwant Singh, Satnam Singh son of Kulwant came by holding lathis in their hands. Also Joginder Singh son of Sarup Singh came on the road alongwith aforesaid persons, by holding lathis in his hand. Joginder Singh and Kulwant Singh raised a lalkara that Sonu be caught hold of and finished. He should not be spared. On hearing this noise, the complainant, his brother Richhpal Singh and nephew Paramjit Singh alias Pamma, Ajit Singh and Avtar Singh also came on the road. Right before their eyes Gurvinder alias Ballu and Satnam Singh had surrounded Partap

Singh alias Sonu. Hardeep Singh and Jagtar Singh caught hold of Partap Singh alias Sonu (since deceased). Balwinder Singh alias Judge hit Gandasi on the head of Partap Singh alias Sonu, which he was holding and which struck at the centre of the head. Gurnam Singh who was holding a Barchhi inflicted the same on the left arm of Partap Singh alias Sonu. Kuldeep Singh who was also holding a gandasi inflicted a gandasi blow on the left foot of Partap Singh alias Sonu. In the meantime, Sinder Kaur, the mother of Partap Singh alias Sonu, came running from her house and laid upon Partap Singh alias Sonu, who was already waylaid in order to save him. Then Amir Singh gave a lathi blow to Sinder Kaur. As the complainant, his brother Richhpal and nephew Paramjit Singh alias Pamma alongwith Ajit Singh and Avtar Singh came forward to save Partap Singh alias Sonu, then, Bhagwant Singh gave a lathi blow to the complainant Puran Singh. However, complainant, luckily saved. Gurvinder Singh alias Ballu, Satnam Singh, Kulwant Singh and Joginder ran after the complainant with sticks in their hands in order to attack (sic) him (complainant). But the complainant being frightened went inside the house and while standing at the courtyard, he fired a gun shot in the air in order to defend himself from the assault of the accused. Thereupon, accused ran away from the spot alongwith their respective weapons. The witness has then deposed that in case he did not had fired shot in the air, he, too, had been done to death by the accused. In the meantime, many people from the village gathered at the spot.

8. The cause of crime as per the complainant is that "adjacent to his house is the house of Kuldeep and the main way of their houses is on the road. The sons of Kuldeep and Kulwant used to do obscene acts after consuming liquor in front of the main gate of the house at the road. Yesterday on 10.8.2005 during morning time, he alongwith his nephew Partap Singh alias Sonu (since

deceased) had complained regarding these activities to Kulwant Singh, Kuldeep Singh and Joginder Singh. Upon this, there was hot exchange of words and abusing language between the complainant, Kulwant Singh and Kuldeep etc. This episode was patched up by Arur Singh, Ex. Sarpanch, Sawaran Singh son of Sardar Sunder Singh resident of village of Mastgarh. Keeping a grudge regarding this incident, Balwinder Singh etc. after hatching a conspiracy with common intention and common object and while being duly armed with deadly weapons had caused injuries to Partap Singh alias Sonu (since deceased) and his mother Sinder Kaur. He alongwith Arur Singh Ex. Sarpanch lifted Partap Singh alias Sonu from the spot and took him to government hospital, Guhla for treatment. There the doctors advised to take the injured Partap Singh alias Sonu to civil hospital, Kaithal in view of his critical condition. Instead of taking injured Partap Singh alias Sonu at Govt. Hospital, Kaithal, they took him to Rajindra Hospital, Patiala in view of his worsened condition. He was got admitted there and the complainant went to Cheeka for arranging money for treatment/medicine by leaving Arur Singh Ex. Sarpanch of village Mastgarh with injured Partap Singh alias Sonu. On returning back to Rajindera Hospital, Patiala, the complainant was informed that Partap Singh alias Sonu has succumbed to injuries.

9. On the basis of aforesaid allegations, FIR EX.PA/2 was registered and the investigation of the case was set into motion. During the course of investigation, the statements of the witnesses were recorded. The inquest proceedings Ex. PQ were got conducted. Rough site plan Ex.PX of the place of occurrence was prepared with correct marginal notes. The scaled site plan Ex. PG was also got prepared. The post mortem report regarding death of deceased Partap Singh alias Sonu son of Taran Singh and cause of death was procured by

the investigating agencies and as per the post mortem report, the cause of death was due to head injury which is ante mortem in nature and sufficient to cause death in ordinary course of natures. During the course of investigation, accused persons were arrested and interrogated.

Investigations

10. After the completion of investigations into the afore offences, the investigating officer concerned, prepared and instituted a report under Section 173 of Cr.P.C., before the learned Committal Court concerned.

Committal Proceedings

11. The learned Committal Court after receiving the report of the Investigating Officer concerned, proceeded to through a Committal order drawn, on 22.11.2005, hence commit the accused to face trial before the learned Sessions Court concerned.

Trial Court Proceedings

12. The learned trial Judge drew charges on 31.05.2006 against accused qua offences punishable under Sections 302, 341, 323 read with Sections 148, 149 of IPC, and, after the above drawn charges becoming put to each of the accused, they did not plead guilty, and, claimed trial. Therefore, the prosecution was called upon to lead evidence in support of its case.

13. The prosecution examined as many as 19 witnesses, and, thereafter the learned Public Prosecutor closed the prosecution evidence.

14. Subsequently, the accused were examined under Section 313 of the Cr.P.C., to explain the circumstances which appeared against them in the prosecution case. They denied the prosecution allegations, and, pleaded innocence, and, claimed false implication. The defence examined four witnesses, and, closed the defence evidence.

Ocular account qua the occurrence rendered by PW-1, PW-2, and, PW-3.

15. PW-1 who is also the informant in his testification occurring in his examination-in-chief, has made echoings which are in complete conformity with his previous statement recorded in writing, and, therein he has attributed the incriminatory role to co-accused Balwinder Singh, inasmuch as, his delivering a gandasi blow in the centre of head of deceased Partap Singh, and, has also assigned an incriminatory role to co-accused Gurnam Singh, inasmuch as, his delivering a barchi blow on the left arm of Partap Singh, besides attributes an incriminatory role to co-accused Kuldeep Singh (since deceased), inasmuch as, his delivering a gandasi blow on the left feet of Partap Singh. Moreover, he assigned to Amir Singh an incriminatory role, inasmuch as, his delivering a lathi blow to Partap Singh on the right side of his head. The last blow is deposed by him to result in deceased Partap Singh falling down. Sinder Kaur is deposed by him, to fall on Partap Singh, and, cover him, and, he also testifies that he tried to save both, but Amir Singh yet delivered a lathi blow to Sinder Kaur on her right arm. Moreover, though Bhagwant Singh is testified by him to attempt to deliver a lathi blow to PW-1, but he testifies that he saved himself by running away towards his house, but yet he testifies that co-accused Gurvinder Singh, Satnam Singh, Kulwant Singh, and, Joginder Singh chased him with lathis, and, came inside his house in the front of his door. Consequently, he testifies that he brought his gun from inside his house, and, came to the courtyard, and, fired a shot in the air, which led the accused to flee from the site of occurrence.

16. In summa he has testified that the fatal blows (supra), were delivered upon deceased Partap Singh respectively by Balwinder Singh, Gurnam Singh, co-accused Kuldeep Singh (since deceased), and, Amir Singh. Moreover, he has also deposed that Sinder Kaur becoming delivered a lathi blow by Amir

Singh. However, PW-3 injured-victim has deposed that yet also co-accused striking a lathi blow on her left shoulder, and, also co-accused Balwinder Singh striking her with gandasi blow from its reverse side, on her right cheek. The deposition of PW-1 acquires corroboration from the deposition of PW-3, who is the injured-victim, who in her examination-in-chief, has completely corroborated the narrations, as made by her qua the crime event, in her previously made statement in writing. Moreover, both PW-1 informant-complainant, and, also PW-3 injured-victim, besides deposed with utmost *inter-se* corroboration. Resultantly, when their depositions are also free from any taints of each grossly improving or embellishing, upon their respectively made previous statements in writing, as such credence is to be assigned to their respectively made depositions. Therefore, from above in so far as, the incriminatory role assigned to co-convicts Kuldeep Singh (since deceased), Amir Singh, and, Balwinder Singh is concerned, and, qua whom a verdict of conviction, for a charge drawn under Section 302, and, under Section 323 of IPC, has been returned by the learned trial Judge concerned, besides even qua co-accused Gurnam Singh who has been awarded a verdict of conviction for an offence under Section 302 of IPC, obviously the above assigned incriminatory roles do become most efficaciously proven.

17. The result of the assignments of credence to the depositions of PW-1, and, PW-3, who were ocular witnesses to the occurrence, is that, the findings of conviction, as became recorded against each in respect of the charges concerned, besides also the consequent therewith imposition of sentence(s) of imprisonment (supra), upon each, rather not meriting any interference being made by this Court.

Disclosure statements and consequent therewith recoveries appertaining to co-accused Balwinder Singh, co-accused Amir Singh, co-accused Gurnam Singh, co-accused Kuldeep Singh (since deceased), and, consequent therewith drawn recovery memos.

18. During the course of custodial interrogation of co-accused Gurnam Singh, he made a signed disclosure statement to which Ex.PT is assigned wherein he after confessing his guilt, revealed his willingness to ensure the recovery of barchi, to the investigating officer concerned, from the place of its hiding, and, keeping by him, given the relevant place being known only to him. In consequence thereto he caused recovery of barchi through a recovery memo to which Ex.PT/2 is assigned. The above made signed disclosure statement by co-accused Gurnam Singh, causes an inference that it acquires evidentiary vigor, as thereon his admitted signatures occur, and, which he did not ably deny nor proved the denial. Moreover, since also the consequent therewith recoveries, were made through recovery memo to which Ex.PT/2 is assigned, therefore, when he has not been able to ably prove that the recovery of barchi was fictitious or a sheer invention through a stratagem employed by the investigating officer concerned, as such, the above proven memos spark an inference that the relevant charge drawn against co-convict Gurnam Singh becomes cogently proven.

19. During the course of custodial interrogation of co-accused Kuldeep Singh (since deceased) he made a signed disclosure statement to which Ex.PZ is assigned, wherein he after confessing his guilt, revealed his willingness to ensure the recovery of gandasi, to the investigating officer concerned, from the place of its hiding, and, keeping by him, given the relevant place being known only to him. In consequence thereto he caused recovery of

gandasi through a recovery memo to which Ex.PZ/2 is assigned. The above made signed disclosure statement by co-accused Kuldeep Singh (since deceased), causes an inference that it acquires evidentiary vigor, as thereons his admitted signatures occur, and, which he did not ably deny nor proved the denial. Moreover, since also the consequent therewith recoveries, were made through recovery memo to which Ex.PZ/2 is assigned, therefore when he has not been able to ably prove that the recovery of gandasi was fictitious or a sheer invention through a stratagem employed by the investigating officer concerned, as such, the above proven memos spark an inference that the relevant charge drawn against co-convict Kuldeep Singh (since deceased) becomes cogently proven.

20. During the course of custodial interrogation of co-accused Balwinder Singh he made a signed disclosure statement to which Ex.PY is assigned, wherein he after confessing his guilt, revealed his willingness to ensure the recovery of gandasi, to the investigating officer concerned, from the place of its hiding, and, keeping by him, given the relevant place being known only to him. In consequence thereto he caused recovery of gandasi through a recovery memo to which Ex.PY/2 is assigned. The above made signed disclosure statement by co-accused Balwinder Singh, causes an inference that it acquires evidentiary vigor, as thereons his admitted signatures occur, and, which he did not ably deny nor proved the denial. Moreover, since also the consequent therewith recoveries, were made through recovery memo to which Ex.PY/2 is assigned, therefore, when he has not been able to ably prove that the recovery of gandasi was fictitious or a sheer invention through a stratagem employed by the investigating officer concerned, as such, the above proven memos spark an

inference that the relevant charge drawn against co-convict Balwinder Singh Singh becomes cogently proven.

21. During the course of custodial interrogation of co-accused Amir Singh he made a signed disclosure statement to which Ex.PBB is assigned, wherein he after confessing his guilt, revealed his willingness to ensure the recovery of lathi, to the investigating officer concerned, from the place of its hiding, and, keeping by him, given the relevant place being known only to him. In consequence thereto he caused recovery of lathi through a recovery memo to which Ex.PBB/2 is assigned. The above made signed disclosure statement by co-accused Amir Singh, causes an inference that it acquires evidentiary vigor, as thereon his admitted signatures occur, and, which he did not ably deny nor proved the denial. Moreover, since also the consequent therewith recoveries, were made through recovery memo to which Ex.PBB/2 is assigned, therefore, when he has not been able to ably prove that the recovery of lathi was fictitious or a sheer invention through a stratagem employed by the investigating officer concerned, as such, the above proven memos spark an inference that the relevant charge drawn against co-convict Amir Singh becomes cogently proven.

Inference

22. The inference which is to be drawn from the above, is that, the above cogently proven memos firmly connecting the co-accused (supra), in the commission of charged offences.

Medical Evidence (Post Mortem Report)

23. The body of deceased Partap Singh was put to autopsy, on 12.08.2005, by Dr. Parminder Singh, and, by Dr. Harpreet Singh. PW-18 Dr. Parminder Singh appeared, and, stepped into the witness box, and, in his examination he has proven the post mortem report drawn qua the deceased

Partap Singh, to which Ex.PJJ is assigned. He has testified that on his making autopsy on the person of deceased Partap Singh, both the Doctors concerned, noticing thereons the hereinafter extracted injuries.

“1. A stitched wound 10 cm in length with six stitches obliquely present on the head at vertex to frontal area and crossing the midline, posterior end of wound was fifteen CM above the right ear and anterior end was 2.5 cm above the anterior hair line. On dissection margin of the wound was clean-cut. There was diffuse extra cranial haematoma was present. Underlying bone showing a cut with infiltration of blood. There was diffuse sub-dural haematoma was present over the brain. It was also showing diffuse sub arachnoids haemorrhage.

2. Swelling 3 x 3 cm was present on the right temporal area of the head. It was 5 cm above the right ear. There was a diffuse extra cranial haematoma was present.

3. Incised wound .5 x .3 cm was present on the inner aspect of left arm 8 cm above the elbow joint. It was bone deep. Clotted blood was present.

4. Reddish abrasion 9 x 3 cm was present on the dorsum of all toes of left foot. Nail of all the toe was partial missing.”

24. The opinion carried therein qua demise of deceased Partap Singh, is that, his demise being a sequel of ante-mortem head injuries, as became entailed, upon, his person. He has deposed that the above extracted ante-mortem injuries which ultimately caused the demise of Partap Singh were causable through users of the incriminatory weapons of offences, as became recovered, through the above memo(s), at the instance of the accused concerned, to the investigating officer concerned.

25. Therefore, the above speakings made by PW-18 in his examination-in-chief, do firmly establish the trite factum, that the vivid ocular account rendered by PW-1, and, PW-3 qua the crime incident rather acquiring

corroboration from his deposition (supra), especially when as above stated neither the efficacy of drawing(s) of recovery memo(s) has been challenged, and, nor when any valid exculpatory plea has been established, during the course of PW-18 being subjected to cross-examination.

26. In nutshell apt *inter-se* corroboration is provided to the prosecution case from proven vivid ocular account besides from proven medical account.

27. Resultantly, this Court becomes constrained to affirm the findings of conviction, and, consequent therewith sentence(s) (supra), as became imposed upon the accused concerned, which however will not take effect qua co-convict Kuldeep Singh, as he has died during the pendency of the instant appeal, resultantly rendering the apposite appeal to become abated qua him.

FSL Report

28. Though, during the course of investigations being made into the appeal FIR by the investigating officer concerned, he had through recovery memos, hence caused the recover(ies) of blood stained incriminatory items, besides, had also proceeded to pack them in sealed cloth parcels, whereafter he had transmitted the cloth parcels, to the Serologist working at the FSL concerned. However, the Serologist concerned, upon making examinations of the blood stained weapons of offences, as became sent to him, rather made an inconclusive opinion that the blood stains, as, became carried thereons, rather belonging to the blood group of the deceased, and/or, to the blood group of injured-victim Sinder Kaur. However, yet, any inconclusive opinion qua the blood stains carried on the weapons' concerned, not belonging to the blood group of the deceased, and/or, to the blood group of victim-injured Sinder Kaur, would not well rest any argument qua the convicts concerned, hence deserving a verdict of acquittal being pronounced qua them.

Reason for drawing the above inference

29. The reason for forming the above conclusion, ensues from the factum that, the above inconclusivity of opinion, arises only from deficit investigations being made by the investigating officer concerned, inasmuch as, his failing to collect the FTM cards, respectively of the injured, and, of the deceased, from their respective family members, rather for ensuring that, after the makings of apposite best *inter-se* matchings *inter-se* the FTM cards concerned, with the blood stains' occurring on the weapons' of offences concerned, rather the Serologist concerned, making an opinion adversial to the prosecution or favourable to the prosecution. However, since the above FTM cards appertaining to the deceased, and, to the injured-victim Sinder Kaur, became never collected by the investigating officer concerned, from the respective family members. Resultantly, the above omission, when did not ably facilitate the Serologist concerned, to make best *inter-se* matchings/comparisons *inter-se* the blood stains' carried on the weapons' of offences concerned, with the FTM cards concerned. Therefore, for any inconclusivity of opinion, as made with respect to the blood grouping(s) of the blood stains' carried on the weapons of offences concerned, rather not relatable to the blood group of the deceased concerned, or to the blood group of victim concerned, does not engender any inference, that the co-convict(s) concerned, become entitled to a verdict of acquittal. The co-convicts concerned, would definitely become entitled to a verdict of acquittal becoming made qua them, but only after, the above apposite collections being made from the family members of the deceased, and/or, from the family members of the injured, and, if the Serologist concerned, after making comparative best *inter-se* comparisons/ matchings, hence his making an opinion qua the blood stains' carried on the weapons' of offences, rather not belonging to

the blood group of either the deceased or to the blood group of the victim-injured, otherwise not. Therefore, henceforth the investigating officers concerned, in the State of Punjab, are directed to not keep alive the above faults. For ensuring the apposite compliances, the Registry of this Court is directed to forthwith transmit a copy of this verdict to the Director General of Police Punjab, for the relevant intimations through the SSP's concerned, being transmitted to the investigating officers. Compliance with the directions (supra), be forthwith intimated, to the Registry of this Court.

Medical Evidence in respect of injured-witness Sinder Kaur

30. In pursuance to the assault, as made upon PW-3 by Kuldeep Singh (since deceased), co-accused Balwinder Singh, and, co-accused Amir Singh, she became subjected to medical examination by PW-12, who during the course of his making his examination-in-chief has proven MLR Ex.PL, and, has also detailed the hereinafter extracted injuries, as became noticed to be occurring on the person of Sinder Kaur.

“1. Swelling 3 x 3 cm in size over right cheek 1 CM anterior tragus of right pinna associated with contusion, bluish in colour over upper 1/3rd of right pinna. Tenderness present. X-ray advised.

2. Contusion reddish blue in colour 7 x 3 cm in size over superior aspect of right shoulder blade 5 cm medial to tip of the shoulder. Tenderness present. X-ray advised.

3. Contusion reddish in colour 3 x 2 cm on ventral aspect of over middle phalangeal joint of index finger of right hand. There was restriction of movements in the middle and terminal inter phalangeal joints. Tenderness present. X-ray advised.

4. Contusion reddish blue in colour 3 x 6 cm over palmer aspect of middle phalangeal of all fingers i.e. Index, middle

and ring finger and terminal phalanges of little finger of left hand. Tenderness present. X-ray advised.

5. Contusion 4 x 6 cm in size obliquely placed over anterior aspect of lower 1/3rd of right thigh.

6. Complaint of pain in left shoulder blade but no external mark of injury present. Tenderness present. X-ray advised.”

31. The learned defence counsel has not been able to establish, that the above injuries were manipulated by the victim-injured, rather when in the respectively made disclosure statements by co-accused Balwinder Singh, co-accused Kuldeep Singh (since deceased), and, co-accused Amir Singh, they confessed their guilt in inflicting the above injuries, upon the person of Sinder Kaur besides when they also caused valid recoveries of the relevant incriminatory weapons of offences to the investigating officer concerned. Therefore, through the tangible medical evidence (supra), the prosecution has been able to establish the incriminatory participation of the above co-accused qua theirs making an assault on the person of injured-victim Sinder Kaur, besides medical evidence (supra), corroborates graphic ocular account rendered qua the genesis of the prosecution case.

Submissions of learned State counsel, and, of the learned counsel for petitioner in the appeal/revision in which challenge is made to the verdict of acquittal made in respect of persons namely Hardeep Singh (since deceased), Bhagwant Singh, Kulwant Singh (since deceased), Joginder Singh (since deceased), Satnam Singh, Jagtar Singh, and, Gurvinder Singh

32. The learned State counsel has made a vehement submission before this Court that the verdict of acquittal, as made upon the co-accused concerned, is completely infirm, as it arises from gross mis-appreciation of the consistently made testifications by PW-1, and, PW-3, wherein each articulate qua their incriminatory participation in the relevant charged offences. In making the

above submission, he rests the same, upon each surviving accused, respectively making signed disclosure statements, as, became respectively comprised in Ex.PS, in Ex.PU, in Ex.PV, and, in Ex.PCC. He further submits, that since thereafter in pursuance thereto, through respectively drawn recovery memos, respectively comprised in the exhibits i.e. Ex.PS/2, in Ex.PU/2, in Ex.PV/2, and, in Ex.PCC/2, rather all the relevant recoveries became effected, at their respective instances, to the investigating officer concerned. Therefore, he contends that credence was to be meted to the above, and, that the verdict of acquittal, as made qua them through the impugned verdict requires its becoming quashed, and, set aside.

Reasons for rejecting the submission

33. However, for the reasons to be assigned hereinafter, this Court does not accept the above made submission of the learned State counsel. Even though the prosecution cited PW-2 as an ocular witness to the occurrence, and, also though he stepped, as such, into the witness box. Moreover, though, in his examination-in-chief he attributes to the accused concerned, an incriminatory role which is completely consistent with the testification, as becomes rendered by PW-1, and, PW-3, but despite his being an ocular witness to the occurrence, he has chosen to mete corroboration to the testification of PW-1, and, PW-3, only upto, the extent of his assigning an incriminatory role, to nine persons, namely Kulwant Singh, Gurvinder Singh, Jagtar Singh, Balwinder Singh, Joginder Singh (since deceased), Hardeep Singh (since deceased), Kuldeep Singh (since deceased), Bhagwant Singh, and, Amit Singh, but yet the remaining two co-accused namely Satnam Singh, and, Gurnam Singh, are not named by him to emerge/appear at the crime site. Therefore, he does speak, that only the above were available, at the crime site, and, the remaining two co-accused were

not available, at the crime site, and, if so his testimony, is inconsistent or does not corroborate the testifications of PW-1, and, PW-3. Moreover, he also in detraction to the consistent testifications, as, made by PW-1, and, by PW-3, rather omits to ascribe to all the accused, the incriminatory role of theirs raising a lalkara, and, encircling the deceased. Consequently, if he was an eye-witness, his testification was required to be purveying the completest corroboration to the testifications of PW-1, and, PW-3, not only, with respect to all accused concerned, being available at the crime site, but also in respect of all raising a lalkara, and, thereafter encircling the deceased. Since as above stated, he has excluded two amongst the co-accused from the array of co-participants in the relevant assault besides has not attributed, to even those acquitted accused, who were purportedly available, at the crime site, any incriminatory role of each raising a lalkara, and, thereafter theirs encircling the deceased. Therefore, the above emerging *inter-se* contradiction in PW-2's testification, *inter-se* qua the above fact rather with the depositions of PW-1, and, PW-3, does result in a conclusion, that the assigning of an incriminatory role to the acquitted accused, being a sequel of sheer invention, and, prevarication, at the instance of PW-1, and, PW-3.

34. Therefore, if in pursuance to the such disclosure statements being made by the above each accused, also recoveries at their respective instances of lathis, became caused to the investigating officer concerned, but the above signed disclosure statements of the acquitted accused, and, also the consequent therewith recoveries are but also inconsequential. The reason being that, the relevant recoveries, are of lathis, and, they became recovered from the house(s) of the accused concerned, but, yet when they are easily available inside the homestead(s) of farmers. Resultantly, there mere presence in the house of the

accused persons, and, their recoveries, can but be concluded to be not related to theirs becoming connected with their user in the relevant assault. Strengthened effect to the above drawn inferences become garnered from the factum, that with the above *inter-se* contradiction *inter-se* the testification of PW-2 with the testifications of PW-1, and, PW-3 rather making the apt conspicuous emergence, besides when but does completely erode the presence of the acquitted persons, at the crime site, resultantly the consequent effect thereof, is that, the even the relevant signed disclosure statement, and, also the consequent therewith recoveries rather also become amenable to be concluded to be a sequel of sheer connection or invention, at the instance of the investigating officer concerned.

Conclusion

35. In the face of the above, this Court finds no merit in the challenge made to the verdict of acquittal, as, made in respect of the acquitted accused concerned. Consequently, the verdict of acquittal, as made qua the acquitted accused concerned, is maintained, and, affirmed, and, the appeal/revision challenging the verdict of acquittal stands dismissed.

36. In view of the above discussion, the criminal appeal challenging the verdict of conviction, besides also consequent therewith order of imposition of sentence(s) of imprisonment (supra), besides of fine, is dismissed, resultantly, the verdict of conviction, besides consequent therewith sentence(s) of imprisonment, besides of fine, as, made upon each is maintained, and, affirmed.

37. However, since convict Kuldeep Singh has expired during the pendency of the appeal bearing No.CRA-D-364-DB-2009 before this Court, as such, the apposite appeal is declared as becoming abated qua him, and, is dismissed as such. Resultantly, also the above drawn verdict of conviction, and, obviously the consequent therewith order of sentence cannot be executed upon

him. If the surviving convicts are on bail thereupon the sentence of imprisonment imposed upon each is directed to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

38. Case property be destroyed after expiry of the period of limitation. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

06.09.2022
Ithlesh

(N.S. SHEKHAWAT)
JUDGE

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