

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

CRA-D-569-DBA-2005 (O&M)

Reserved on: 08.12.2022

Date of decision: 16.12.2022

STATE OF PUNJAB

...Appellant

Versus

GURMIT SINGH

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Ms. Monika Jalota, Sr. DAG, Punjab

Mr. Amaninder Singh Sekhon, Advocate
for the respondent.

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 02.02.2005, upon Sessions Case No.4 of 31.01.2004, by the learned Additional Sessions Judge, Moga, wherethrough in respect of charges drawn for offences punishable under Sections 302, 325, 449 of IPC, he made a verdict of acquittal qua the accused, but convicted the accused only, for an offence punishable under Section 323 of IPC. The State of Punjab becomes aggrieved from the above drawn verdict, and, is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

2. The genesis of the prosecution case is embodied in the FIR to which Ex.PY is assigned, thereins, it is narrated that on 19.01.2004, the copies of MLRs relating to Mastan Singh son of Naranjan Singh, and, of Baljit Kaur wife of Mastan Singh residents of village Lohgarh, were received in the police station. Responding to receipt of such copies of MLRs ASI Darshan Singh,

reached the Primary Health Centre (PHC) Dharamkot for recording their statements. He obtained written opinion of doctor about the fitness of injured persons to make statement. Doctor opined both injured as unfit to make statement. On 8.9.2003 ASI Darshan Singh along with HC Pritam Singh again went to PHC Dharamkot for recording the statements of Mastan Singh and of Baljit Kaur. After obtaining written opinion of doctor, he recorded statement of injured Mastan Singh. He got recorded that he is hailing from village Lohgarh and retired from Punjab Roadways as driver. In his neighbourhood Gurmeet Singh alias Murli son of Dulla Ram has his residential house. Adjoining his outer house there is running three karams wide street. Such street has been occupied by Gurmeet Singh alias Murli. About three days earlier Gurmeet Singh had placed loose earth against the wall of his house. He (complainant) asked him to remove the earth away from wall of his house. On 6.9.2003 at about 8.30 p.m., Gurmeet Singh knocked at his door and shouted him to open the door. He rose and answered the door by opening the same. Gurmeet Singh was holding a "Dang". He said that he would teach him for removing loose earth away from wall. By saying so Gurmeet Singh gave fist blow with "Dang" which hit on his head. He fell down. When he was lying on ground Gurmeet Singh showered blows with "Dang" on him which hit on his back, mouth, chest and both legs. In the meantime, his wife Baljit Kaur came to rescue him. Gurmeet Singh had also given blows with "Dang" on her on both legs and fingers of left hand. They raised hue and cry that they were being killed. Then Gurmeet Singh left away with his "Dang" after beating them both. He telephoned his Javaee (son-in-law) named Baljit Singh of Choudhary Wala. He made arrangement for conveyance and they both were brought in Civil Hospital Dharamkot (meant for PHC Dharamot). They were admitted in such hospital. Motive behind incident was

that Gurmeet Singh had placed loose earth alongside wall of his house and he asked him to remove such earth from there and instead of removing the earth he had beaten them both. On basis of such statement of Mastan Singh entry No: 17 dated 8.9.2003 was made in daily diary register at police station Dharamkot as no cognizable offence was found at that moment.

INVESTIGATION

3. On 10.9.2003 Mastan Singh expired at 5.30 a.m. Inquest report regarding his corpse was prepared. Then it was subjected to postmortem examination. Cause of death was kept in abeyance awaiting report of Chemical Examiner and Pathologist. Viscera of dead body of Mastan Singh was sent to Chemical Examiner Patiala. Pathological report was obtained from Sri Guru Gobind Singh Medical College & Hospital, Faridkot. After receipt of chemical report and pathological report Medical Officer opined cause of death of Mastan Singh as cumulative effect of all the injuries. On an application dated 11.12.2003, moved by police a Medical Board was constituted who opined cause of death of Mastan Singh as cumulative effect of multiple injuries. An injury on the person of Baljit Kaur was found grievous. On so enhancing offence FIR was lodged. Accused was arrested on 15.9.2003. Statements of prosecution witnesses were recorded. Scaly site plan of place of occurrence was got prepared. Rough site plan of place of occurrence was also prepared. "Dang" was got recovered and was taken into possession. Rough site plan of place of recovery of "Dang" was also prepared. Various other memos were also prepared. Statements of prosecution witnesses were recorded. After completion of investigation challan was presented before Illaga Magistrate.

COMMITTAL PROCEEDINGS

4. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 19.01.2004, the learned Judicial Magistrate Ist Class, Moga, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

5. The prosecution examined as many as 11 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he did not choose to lead any defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

6. The learned counsel for the appellant-State, has made a vehement submission before this Court, that the reasons assigned by the learned trial Judge concerned, for making an order of acquittal, upon the accused are extremely frail, besides are not based upon a sound appreciation of the evidence on record. Therefore, she contends that the impugned verdict of acquittal be quashed, and, set aside.

7. The learned State counsel rests the above argument, on the ground that though, the Doctor concerned, (PW-3), who treated the deceased Mastan Singh from 06.09.2003 upto 10.09.2003, has in his cross-examination rather made an echoing that the deceased had died owing to a sudden cardiac arrest. However, she submits that the acceptance of the above reason by the learned trial Judge concerned, to make a verdict of acquittal upon the accused, is not well founded rather is infirm. She submits that the above opinion, has been falsified, by PW-7, who proved the report of the Medical Board, wherein,

echoings occur that the demise of deceased arose from the cumulative effect of multiple injuries, as become enumerated in Ex.PD, and, which has been proven by PW-3. Thus, she submits that the report of the Medical Board proven by PW-7, does eclipse, the echoing occurring in the cross-examination of PW-3 *qua* the demise of deceased arising from his being beset with a sudden cardiac arrest. More so, she submits that since PW-3 in his cross-examination, has also deposed, that till his demise, the deceased had maintained a good vital record. Thus, there was no occasion for the learned trial Judge concerned, to yet believe the said echoing nor was there any well informed or valid reason, for the learned trial Judge concerned, to yet discard the deposition of PW-7, with the above therein echoing, inasmuch as, the demise of the deceased, even if it arose from a sudden cardiac arrest, the said sudden cardiac arrest hence becoming sequeled by the cumulative effect of the multiple injuries, as become carried in proven Ex.PD.

8. She further submits that any assignment of any credence by the learned trial Judge concerned, to Ex.PD, with occurrence therein of observations, about the thickness of the right and left vertebrae walls, of the heart region, and, that such thickness ultimately leading to the deceased suffering a sudden cardiac arrest, and, further that the said cardiac arrest being natural, also conspicuously rather is completely unmeritworthy. She submits that the above conclusion disregards the proof purveyed by PW-7, that such sudden cardiac arrest as befell, upon the deceased was rather a cumulative effect of the multiple injuries carried in proven Ex.PD. Thus, the learned trial Judge concerned, not only grossly misappraised the telling effect of the opinion of the Medical Board, as, proven by PW-7, but also assigned a completely fallacious reason, dependent solitarily upon PW-3 making a stray echoing in his cross-

examination, *qua* the demise of the deceased arising from a sudden cardiac arrest, whereas, he has completely overlooked the subsequent thereto echoings occurring in the cross-examination of PW-3, manifestative *qua* rather all the vitals of the deceased till the last stage rather being found to be completely stable.

9. She further submits, that the assignment of credence, if any, by the learned trial Judge concerned, to Ex.PP in his making a verdict of acquittal hence is also an inapt reliance thereon, as it becomes rested solely, on the premise, that it supports the echoing in the cross-examination of PW-3, that the deceased met with a sudden cardiac arrest. He has rested the above argument on the factum, that when the provisions contained in Section 293 Cr.P.C. when specify the Experts *qua* whose reports, a rebuttable presumption of truth is attached, rather do not enumerate therein, the author of Ex.PD nor when any notification as issued by the Competent Government, has been placed on record hence declaring the author of Ex.PD, as an expert rather for then rendering the said exhibit to be holding a rebuttable presumption of truth. Therefore, she argues that it was but imperative for the defence, to not permit the making of any exhibit marks thereon, rather it was open for the defence to ask the Court, to ensure the stepping into the witness box of the author of Ex.PD, so that, during the course of his becoming cross-examined, by the learned counsel, for the defence, the latter becomes enabled to put not only suggestions to him *qua* the hereinafter extracted echoings occurring in Ex.PD concerned, are not a sequel of the multiple injuries, as carried in proven Ex.PD, but also to then enable him to mete suggestions to him, that the opinion of the Medical Board proven by PW-7, rather pronouncing, that the said multiple injuries, cumulatively resulted in a sudden cardiac arrest, befalling Mastan Singh, also concomitantly hence being

completely false. In the absence of the above, she reiteratedly submits, that any assignment of any credence to Ex.PD by the learned trial Judge concerned, was completely inapt, as, Ex.PP was not a substantive piece of evidence.

SUBMISSIONS OF LEARNED COUNSEL FOR THE RESPONDENT

10. On the other hand, the learned counsel for the respondent submits, that the verdict of acquittal as has been challenged before this Court, is well merited, thus it does not require any interference being made by this Court.

REASONS FOR REJECTING THE CONTENTION OF THE LEARNED COUNSEL FOR THE RESPONDENT AND FOR ACCEPTING THE CONTENTION OF THE LEARNED STATE COUNSEL

11. The deceased Mastan Singh is the informant. He, after being declared fit to make a statement hence through an endorsement made by PW-3, and, as carried in Ex.PK, hence proceeded to report the ill fated incident to the police, resulting in the appeal FIR to which Ex.PY is assigned, becoming registered at the police station concerned. Since he died in a short span from his reporting, the ill fated incident to the police. Moreover, also though he did not step into the witness box to prove the appeal FIR, to which Ex.PY is assigned, but definitely since he, after his becoming declared fit to make a statement, to the police, did make his previous statement in writing, thereupon Ex.PY does become admissible in evidence, especially *qua* the assault becoming made on his person by the accused-convict herein. Moreover, it does also comprise a valid substantive piece of evidence against the convict concerned.

STATEMENT OF INJURED EYE WITNESS PW-8 BALJIT KAUR

12. The wife of the deceased Baljit Kaur stepped into the witness box as PW-8. She also as revealed in the deposition of PW-2, received injuries on her person. The MLR as prepared in respect of her injuries, is assigned Ex.PF, and, the said exhibit has been proven by PW-3. Since she also sustained

grievous injuries on per person, therefore, only after hers being declared fit by PW-3 rather through an apposite endorsement Ex.PH/1, as made in Ex.PH, she made a previous statement in writing to the police officer. She is the injured ocular witness to the occurrence. She has stepped into the witness box as PW-8, and in her examination-in-chief, she has spoken with candor about the incriminatory participation of the accused, in the assault, as made upon her deceased husband and also upon her. She has revealed therein qua the user of the relevant incriminatory weapon of offence i.e. Dang Ex.PX/1, by the accused. A closest and wholesome reading of her deposition as embodied in her examination-in-chief, and, her cross-examination, does unveil, *qua* hers making candid bespeakings *qua* hers rendering a taint free ocular account *qua* the genesis of the prosecution case. Significantly, when her deposition is not ridden with any vice of any gross or rife improvements or contradictions, from her previously made statement in writing nor when there are any *intra-se* contradiction *intra-se* her examination-in-chief and her cross-examination. Therefore, utmost sanctity is to be meted to her deposition, and, resultantly the prosecution has succeeded in establishing the incriminatory participation of the accused in the relevant assault.

DISCLOSURE STATEMENT OF THE ACCUSED AND CONSEQUENT THEREWITH RECOVERIES

13. During the course of the custodial interrogation of accused Gurmeet Singh alias Murli, he made a signed disclosure statement, as comprised in Ex.PX, contents whereof become extracted hereafter.

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Disclosure statement u/s 27 Evi Act

In the presence of below noted witnesses, on interrogation, aforesaid accused Gurmit Singh disclosed that, “with which dang I have caused injuries to Mastan Singh son of Niranjana Singh, that

dang I have kept concealed under the old beds lying in my residential room. Regarding which I only know and can get the same recovered on demarcation. On this, Disclosure statement of Gurmeet Singh alias Murli has been written, on which signatures of witnesses are being taken.

Accused Sd/- Gurmeet Singh alias Murli, abovesaid

Witnesses: 1) Sd/- Baljit Singh son of Karnail Singh, resident of Chaudharywala.

2) Sd/- HC Pritam Singh No.692 PS Dharamkot

Sd/- Darshan Singh ASI, P.S. Dharamkot 17-9-03”

14. A reading of the above extracted signed disclosure statement, as made by accused Gurmit Singh alias Murli, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of “Dang” Ex.PX/1, to the investigating officer concerned, from the place of his hiding, and, concealing it, the same being exclusively known to him. Since in pursuance thereof, through a recovery memo Ex.PX/1, he caused the recovery of “Dang”. Thus evidentiary vigor is to be assigned to the above memo(s), as he has not been able to either ably deny his signatures as occur on Ex.PX and on Ex.PX/1, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence, to suggest that the recovery of “Dang” is either contrived or invented. Thus, too evidentiary sanctity is to be assigned to the above drawn memos. Resultantly, corroboration therethroughs, is acquired by the credible ocular account rendered *qua* the crime event by PW-8.

MEDICAL EVIDENCE (POST MORTEM REPORT)

15. The post mortem upon the body of deceased Mastan Singh was conducted on 10.09.2003 by PW-4. PW-4 has proven *qua* his, authoring Ex.PM, as, relates to the autopsy as made upon the body of deceased Mastan Singh. He has in his examination-in-chief proven the injuries, as became echoed in Ex.PD.

The relevant injuries, as noticed by PW-4 became extracted hereinafter. He has also proven *qua* his, authoring Ex.PF, as relates to the injuries caused upon the body of injured Baljit Kaur. The relevant injuries as noticed by PW-3 on the body of injured Baljit Kaur are also extracted hereinafter.

“Injuries on the body of deceased Mastan Singh

1. *An abraded contusion of the size of 4 x 3 cm. on the head. 2 cm. right of midline and 6 cm. from anterior hair line. Fresh blood was oozing out of the abrasion. Xray was advised.*
2. *An abrasion of the size of 6 cm. length placed on the forehead. 372 cm. Left of midline and just above the eyebrow. Fresh blood was oozing out.*
3. *An abrasion of the size of 1½ x ½ cm on the nasal bridge. It was surrounded by a diffuse swelling. Fresh blood was oozing out. X-ray was advised.*
4. *An abrasion of the size of 2 x ¼ cm on the left side of nasal bridge. Fresh blood was oozing out.*
5. *A red contusion of the size of 3 x 2 cm on the left side of head along the left angle of eyes.*
6. *Left eye was black.*
7. *An abraded contusion of the size of 4 x 3 cm. on the chest. 7 cm. from shoulder girdle. Xray was advised.*
8. *An abraded contusion of the size of 1 cm. diameter on the lateral side of the left shoulder girdle.*
9. *A red contusion of the side of 6 x 3 cm. on the left shoulder tip.*
10. *A red contusion of the size of 3 x 2 cm. on the front of chest. 12 cm. from the shoulder girdle and 9 cm. left of midline.*
11. *A red contusion of the size of 14 x 3 cm on the left side of chest and back of chest. 15 cm. from the tip of scapula.*
12. *A red contusion of the size of 17 x 3.5 cm. on the left lateral side of chest and 22 cm. from the axillary tip.*
13. *A red contusion of the size of 8 x 2 cm. on the front of abdomen. 4 cm. from the lowest rib and 13 cm. From the left midline.*
14. *A red contusion of the size of 6 x 3 cm on the back of chest. 2 cm. from the shoulder girdle and 18 cm. left of midline.*

15. A red contusion of the size of 5 x 20 on the back of chest. 3 cm. right of midline and 3 cm. from the shoulder girdle.
16. A red contusion of the size of 9 x 7 cm. on the back of chest on right scapula.
17. A red contusion of the size of 11 x 4 cm on the back of chest. 1 cm. on right of midline and 14 cm. from shoulder girdle.
18. A red contusion of the size of 3 x 10.35 cm. on the back of chest. 9 cm. from shoulder girdle and 1 cm. on right of midline.
19. A red contusion of the size of 12 x 4 cm on the left scapula. X-ray was advised.
20. A red contusion of the size of 6 x ½ cm. on the back of chest. 7 cm. On left of midline and 9 cm. from the tip of scapula.
21. A red contusion of the size of 15 x 2 cm. on the back of chest. 2 cm. on the left of midline and 35 cm. from shoulder girdle.
22. A red contusion of the size of 16 x 2 cm. on the back of chest. 6 cm. right of midline. 11 cm. from the tip of scapula.
23. A red contusion of the size of 4 x 1/4 cm. on the right lateral side of chest 14 cm. from the axillary tip. Fresh blood was oozing.
24. An abraded contusion of the size of 10 x 6 cm. on the back and lateral side of chest. 22 cm. from the tip of axilla.
25. A red contusion of the size of 10 x 6 cm on the back of abdomen. 1 cm. on right of midline 10 cm. from injury no. 24.
26. A red contusion of the size of 8 x 2 cm. on the back of abdomen. 7 cm. From left of midline and 7 cm. from tip of scapula.
27. A red contusion of the size of 13 x 2 cm. on the front of left thigh. 15 cm. from knee joint.
28. A red contusion of the size of 16 x 2 cm. on the lateral side of left leg 5 cm. from knee joint. The upper half was swollen. X-ray was advised.
29. Patient was feeling complaint of pain and difficulties in the movement of the left thumb. It was also tender and diffusedly swollen.

Injuries on the body of Baljit Kaur

“1. Left index finger was diffusedly swollen and patient was feeling of restriction of movement. X-ray was advised.

2. *Patient also complained of pain and restriction of movement of left wrist joint.*

3. *There was a complaint of pain in the right left after the hit.”*

ANALYSIS OF RECOVERY OF DANG EX.PX/1

16. Though, during the course of his examination-in-chief, the apposite recovered weapon of offence, and, to which Ex.PX/1 is assigned, rather did not become shown to him, but he has yet echoed that the injuries spelt by him, in Ex.PD, and, in Ex.PF, exhibits whereof, respectively appertain to the MLRs drawn respectively *qua* Mastan Singh and *qua* his wife Baljit Kaur, were causable through, users of a blunt weapon, on the injured portions of the bodies of the injured concerned. However, irrespective of the fact, that the weapon of offence, did not became shown to PW-3, during the course of his stepping into the witness box, and though he echoed that the injuries were caused through user of a blunt weapon. Nonetheless, it does become revealed by Ex.PX/1, exhibit whereof is the recovery memo of “Dang”, being a blunt weapon. Therefore, when the contused injuries as pronounced in MLR Ex.PD and in MLR Ex.PF, are normally causable through user of a blunt weapon. Thus, such contused injuries are to be concluded to be causable through user of the blunt weapon of offence i.e. “Dang” on the respective body portions of the injured concerned. Therefore, with the opinion of the doctor rather proving *qua* the injuries becoming caused through user of a blunt weapon, respectively on the bodies of Mastan Singh and of Baljit Kaur. Thus, the said opinion not only corroborates the ocular testification of Baljit Kaur, but also lends for the above said reason, rather also corroboration to the factum *qua* in a short span of the injuries being received by Mastan Singh in the relevant assault, his rather succumbing to the said injuries.

CONTROVERSY AT HAND

17. The ire contest amongst the respectively appearing counsels before this Court, is rooted in, (i) whether the acceptance by the learned trial Judge concerned, *qua* the echoing made by PW-3, in his cross-examination hence unfolding that the cause of demise of the deceased erupted from a sudden cardiac arrest, being truthful or not. Furthermore, the further ire point devolves upon whether the pathology report Ex.PP is to be hence assigned credence. In addition, the ire controversy, also relates to the admissibility and readability of Ex.PP, on the ground (*supra*), submitted by the learned State counsel, besides, relates to whether the report of the Medical Board proven by PW-7, identifying therein, the cause of demise rather arising from the cumulative effect of the multiple injuries, does eclipse, the effect of the stray echoing carried in the cross-examination of PW-3, besides overcomes the effect, if any, of the pathology report, as embodied in Ex.PP.

ANSWERS TO THE ABOVE CONTROVERSY(IES)

18. The reason for the constitution of the Medical Board hence arose from the necessity of a forthright and pointed reason *qua* the demise of the deceased being recommended to be made rather by the Forensic Science Expert concerned, by the doctor who conducted an autopsy on the body of the deceased and who also proved the post mortem report to which Ex.PM is assigned. Though, a team of doctors did become constituted for the above purpose, and but in pursuance to the above recommendation as made by the author of the post mortem report. Moreover, even though, the report of the Medical Board, became proven by PW-7, with an echoing therein, that the cause of demise of the deceased, was the result of the cumulative effect of the multiple injuries, as reflected respectively in the proven apposite MLR, to which Ex.PD is assigned,

and, in the proven post mortem report carried in Ex.PM. However, the argument of the learned counsel for the respondent, to dispel, the vigor of the opinion, of the Medical Board carried in Ex.PU/2 and proven by PW-7, is that, since PW-7 in his cross-examination, has made echoings that neither he was a Forensic Expert nor any of the members of the Board were Forensic Science Experts. Therefore, the recommendation of the doctor, who conducted an autopsy on the body of the deceased, *qua* rather an apposite pinpointed precise opinion, be made by a Forensic Science Expert, hence has not emanated from a Forensic Science Expert. Therefore, he submits that there is no well informed reason for this Court, to accept the findings, as occur in the proven report of the Medical Board, to which Ex.PU/1 is assigned, and wherein in the relevant opinion, to which Ex.PU/2, is assigned, rather conspicuous echoings occur *qua* the cumulative effect of the proven multiple injuries concerned, begetting the demise of the deceased Mastan Singh.

REASONS FOR REJECTING THE ABOVE SUBMISSION

19. However, the above made submission is completely misfounded, and, is rejected. The reason for rejecting the above submission is grounded, in the factum, that though there was a recommendation by the doctor, who conducted an autopsy on the body of the deceased, for eliciting a pinpoint earmarked opinion, about the cause of the demise of the deceased, rather from a Forensic Science Expert. Though in pursuance thereof, the Medical Board became constituted, and, whose opinion has been proven by PW-7. Nonetheless, PW-7 in his cross-examination, has yet made an opinion that he is neither a Forensic Science Expert nor any of the members of the Medical Board were Forensic Science Experts. Thus, the said echoing has resulted in the above submission being made by the learned counsel for the accused. However, the

above submission is rested on the ground, that Forensic Science Experts, cannot at all be a team of doctors, who examine all the relevant records, and proceed to make an opinion, about the exact cause of demise of the person concerned. He argues that the term "Forensic Science Expert" is limited, only to those experts concerned, who make forensic examination of the crime site concerned, and, does not cover the team of doctors or a doctor, who conducts an autopsy on the body of the deceased concerned. However, the above submissions are completely off track, as the doctor(s), who conducts an autopsy on the body of the deceased concerned, are also Practitioners of Forensic Science. Moreover, the team of doctors, which became constituted in pursuance to a recommendation made by PW-4, who drew the post mortem report *qua* the deceased, hence are also Forensic Science Experts. The relevance of forensic science experts arises for an examination of the crime site, and, to collect therefrom the finger impressions of the accused concerned, or to collect certain incriminatory items carrying thereons finger impressions or other incriminatory items which can be put to DNA profiling. Though, they as such assist the criminal administration system in dispensing justice. However, the association of the above Forensic Science Expert, does not arise in this case, as the possible examinations, of the crime site was not required, given the instant case being rested upon the admissible dying declaration of deceased, besides, becoming rested upon a credible ocular account rendered *qua* the crime event, by an injured eye witness. It may have arisen only when the instant case was rested upon circumstantial based evidence, whereas it is not. Resultantly, the author(s) of the post mortem report, as also the team of doctors as become constituted in pursuance to a recommendation made by PW-4, to seek a Forensic Expert's opinion about the pointed and earmarked cause of demise, of the deceased,

rather do also become Forensic Science Experts. Thus, even if PW-7 has stated otherwise, the said statement cannot at all be capitalized by the learned defence counsel.

20. Both PW-4 who drew post mortem report, as well as the team of doctors as became constituted, to make an opinion about the cause of demise of the deceased, in pursuance to a recommendation made by PW-4, had assessed the pathology report to which Ex.PP is assigned. Importantly, the team of doctors as constituted, for earmarking the exact cause of demise of the deceased, did make an opinion as carried in Ex.PU/2, opinion whereof, becomes extracted hereinafter. A perusal of the said opinion clearly reveals, that the cumulative effect of the multiple injuries, as became received on the deceased's body, hence resulted in the latter's demise.

“In our opinion, after going through the all relevant record, vide RSS/16/03 Dt. 10.9.03 & chemical & pathological report of Mastan Singh s/o Niranjana Singh R/o Lohgarh, the cause of death is due to cumulative effect of multiple injuries.”

21. The author of the post mortem had borne in mind the observations occurring in the proven PMR to which Ex.PM is assigned, besides had also taken into consideration the pathology report to which Ex.PP is assigned. Moreover, he had also borne in mind the MLR to which Ex.PD is assigned. The application of mind by the author of the post mortem report, to the ante mortem assault injuries, as observed on the body of one Mastan Singh, did result, in his making an opinion, that the demise of the deceased was occasioned by the cumulative effect of the multiple injuries. The said opinion was corroborated by the Medical Board, as became constituted on the recommendation of the author of post mortem report. Therefore, unless evidence surged forth, that the post mortem report was falsely drawn or did not correctly or truthfully recite the

injuries, as carried therein, thereupon sanctity is to be assigned to the post mortem report. More so, when evidence (*supra*) is not available on record. The members of the validly constituted Medical Board, though did not make an autopsy on the body of the deceased nor drew the post mortem report. However, it appears on a reading of the cross-examination of PW-7, *qua* the team of doctors, rather taking into consideration the pathology report, and, also the post mortem report, besides, the chemical examiner report. Moreover, they have also borne in mind the MLR, to which Ex.PD is assigned. Even if in the relevant hereinafter cross-examination of PW-3, echoings occur suggestive that the cause of demise of the deceased rather arising from a sudden cardiac arrest. If so, evidentiary vigor, if any, of the pathology report as comprised in Ex.PP, becomes completely subsumed, within the domain of the proven opinion, *qua* the cause of demise of deceased, as becomes spoken by PW-7, and, as becomes embodied in PU/2. Therefore, even if the relevant echoings, as, occur in the hereinafter extracted relevant portion of the cross-examination of PW-3, and, which led him to make an opinion about the cause of demise of the deceased rather arising from a sudden cardiac arrest, yet the said opinion is surmisal.

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Patient Mastan Singh remained under my treatment from 6.9.2003 to 10.09.2003 till his death. Ex.DA is the photostat copy of bed head ticket of Mastan Singh. Before the last movement the patient had maintained good vital record of his condition. Ex.DA/1 is the note written by me in the bed head ticket. Patient had a cardiac sudden arrest. After the cardiac arrest, I gave the resustatory measure.

Xxx”

22. However, the said opinion is also extremely weak, as it occurs subsequently to PW-3 in his cross-examination speaking *qua* at the relevant time

all the vitals of the deceased were completely stable. If so, the said echoing made by PW-3 in his cross-examination, but subsequent to his yet stating therein, that all the vitals of the deceased were till the last rather completely stable, obviously does make the said subsequent stray echoing to be completely surmisal. It is merely an opinion about Mastan Singh suffering a cardiac arrest, but does not spell the cause thereof. Moreover, it renders the said echoing to be made in an ill informed manner. Therefore, no sanctity is to be assigned thereto. Contrarily, when the opinion as made by PW-4, about the cause of demise of the deceased rather arising from the cumulative effect of the multiple injuries occurring on his person, and, as enumerated in Ex.PM, becomes a well formed reason, as in making it, he had assigned credence to Ex.PP, exhibit whereof, is the report of the department of pathology, besides when the said opinion is corroborated by Ex.PU/2 proven by PW-7.

23. Therefore, when there is visible *inter-se* corroboration *inter-se* the deposition of PW-4, the author of post mortem report, and, the opinion of the Medical Board, as became constituted, but at his recommendation. Resultantly, the said *inter-se* corroborative opinion rendered by the Forensic Team or the team of Medical Practitioners, gathers credence, hence more than any credence, which is to be meted to the above isolated echoing occurring in the cross-examination of PW-3, rather merely unfolding that the demise of deceased arose from a sudden cardiac arrest. Conspicuously, also when the said opinion is completely dysjunct from the earlier thereto echoing, with speakings *qua* till the last all the vitals of the deceased being found stable. Therefore, the effect of, hence *intra-se* dichotomy or *intra-se* contradictory voicings becoming carried in the cross-examination of PW-3, is that, it ultimately, make a telling effect, upon the inconsequentiality of any stray echoing occurring in the cross-examination

of PW-3, *qua* the cause of demise of deceased purportedly arising a from sudden cardiac arrest. Importantly, when cause thereof has not been spelt.

FURTHER ARGUMENT OF THE LEARNED COUNSEL FOR THE RESPONDENT FOR CREDENCE BEING ASSIGNED TO EX.PP

24. However, yet the learned counsel for the respondent has insisted that Ex.PP, when becomes combined with the echoing occurring in the cross-examination of PW-3, wherein, the latter states that the cause of demise of the deceased, arising from a sudden cardiac arrest, thus no credence was ever assignable *qua* the *inter-se* corroborative opinion as made by PW-4, and, by the team of doctors concerned. However, even his above submission falters, as he strives to deassign creditworthiness to rather the opinion of the doctor, who drew the post mortem report, and, also attempts to oust the evidentiary vigor of the corroborative thereto opinion, as, carried in Ex.PU/2, as, proven by PW-7. However, since as above stated both had evaluated the creditworthiness of Ex.PP. Therefore, it became incumbent upon the learned defence counsel, to rather confront PW-7 with the evidentiary vigor of Ex.PP besides, it also became incumbent upon the learned defence counsel, to also pinpointedly confront PW-4 with respect to the observations, as, made in ExPP, by the professor of pathology. However, enigmatically the above has not been done. Omission of the above endeavour, thus results in a conclusion that the observations occurring in Ex.PP, being well considered by PW-4, as well as by the team of doctors, to hence frown from its' creditworthiness. The contents of Ex.PP are extracted hereinafter.

“xxx

1. Gross Examination: Received a specimen of heart without left and right atria and having normal epicardial fat, weighing 290 gms. On dissection the heart shows:

- Left ventricular wall thickness: 1.6 cms.*
- Right ventricular wall thickness: 0.6 cms.*

- *Left coronary artery shows patent lumen.*
- *Right coronary artery shows patent lumen.*
- *All the four heart valves are normal looking.*

2. Microscopic Examination: Multiple sections from the various parts of heart shows:

- *Left ventricular wall shows no pathology.*
- *Right ventricular wall shows no pathology.*
- *Left coronary artery: Shows normal arterial wall with patent lumen.*
- *Right coronary artery: Wall shows focal early atherosclerotic changes, but the lumen is patent.*

The report ends.

Sd/- (Dr. N. Singh)

Additional Professor of Pathology,

GGGS Medical College, Faridkot."

REASONS FOR REJECTING THE SAME

25. Be that as it may, yet if the learned defence counsel, deemed it fit to make any capitalization *qua* the observations occurring in Ex.PP, it was but incumbent upon him, to seek a direction from the learned trial Judge concerned, for the author of Ex.PP stepping into the witness box, for proving the echoings carried therein, besides for discrediting the echoings made by the author of Ex.PM, and, by the team of doctors who became constituted at his recommendation, and, whose opinion proven by PW-7, does corroborate, the opinion, as became initially recorded by the author of the post mortem report. However, without the author of the Ex.PP stepping into the witness box, the same became tendered, and, the above exhibit marks were made thereons. Nonetheless, the making of exhibits marks thereon, does not make it admissible in evidence nor does it becomes a substantive piece of evidence, for the relevant purpose. The author of Ex.PP, is not one of the specialists mentioned in Section 293 of Cr.P.C., nor when he hence is within the domain of Section 293 of Cr.P.C., rather notified to be an expert. Therefore, the mere tendering of Ex.PP, by the prosecutor concerned, did not make it *per-se* admissible in evidence nor

its contents gathered any rebuttable presumption of truth. Contrarily, only upon its being proven by its author it may have carried some evidentiary value. Moreover, only upon the author of Ex.PP, but on the request of learned defence counsel rather stepping into the witness box, could it be established, that the de-assigning of creditworthiness by PW-4, and, by the team of doctors concerned, rather was unmeritworthy. Consequently, it has to be reinforcingly concluded, that the de-assigning of credence either by PW-4 or by the team of doctors concerned, qua Ex.PP, is rather both meritworthy, as, predominantly the said report Ex.PM has not been proven to be either forged or fictitiously drawn. Thereupon, at least when it fell, for consideration before the author of the post mortem report, and, also thereafter fell for consideration before the team of doctors, it would then, be well considered for the relevant purpose. Reiteratedly, it imminently has no probative sanctity before this Court, for de-assigning the apposite creditworthiness to the post mortem report, spelling therein, the cause of demise of the deceased, and, also for de-assigning credit to the corroborative thereto, opinion, as, spelt by the Medical Board concerned. Thus, any further argument on its anvil before this Court is completely devoid of any merit. Moreover, any exculpatory finding(s) made on anvil of Ex.PP are also completely ill informed and mis-founded.

SUMMARIZATION OF PRINCIPLES

- I. The opinion of the treating doctor about the cause of demise of the deceased is primary evidence. However, subject to the treating doctor consistently testifying, about the cause of the demise of the deceased concerned, rather emanating from a consistently spoken cause. If the treating doctor, in a stray and isolated manner attributes the cause of demise of the deceased, to

a natural event, thereupon the above would be a well merited opinion, only when he does not speak that till the last all the vital organs of the deceased were found stable, despite multiple assault injuries, leading to his hospitalization where he ultimately died, rather becoming entailed upon him.

II. In case of multiple assault injuries received by the victim in the relevant assault, and, if the demise of the victim occurs in a short duration therefrom. Therefore, the fact of the treating doctor reporting *qua* all the vital organs rather till the last being found stable, may not assign any credit, to a stray echoing, that the cause of demise of the deceased was but natural or having no connection with the multiple assault injuries.

III. The author of the post mortem report who makes an opinion that the cumulative effect of the multiple injuries, did result, in the deceased suffering a vital cardio-respiratory arrest, is a well founded, and, also a well informed reason, if it is supported, by the multiple injuries occurring on the body of the assaulted victim, and, is also supported by his considering all the relevant records appertaining to the symptoms of heart disease, and, as become embodied in the pathology report. However, even if the pathology report, does disclose symptoms of heart disease, and/or of the victim having symptoms of heart disease, but yet even the above said symptoms, can yet become well opined to be a result of multiple injuries, as received by the assaulted victim on his person. Importantly, when in the making of the said opinion, the pathology report is borne in mind. Resultantly, credit is to be

assigned to the opinion of the doctor, who makes the post mortem report. If the opinion of the author of the post mortem report revealing therein, that the cumulative effect of the assault injuries, did lead, to the demise of the deceased, is also supported by the team of doctors, thus credence is to be assigned to the said conjoint opinion, than to the opinion of the treating doctor, who remains unfronted, either during the period of his purveying treatment to the assaulted victim or during the course of his stepping into the witness box, rather with the pathology report.

IV. The taking into consideration of the pathology report at the stage prior to the entering upon trial by the jurisdictionally empowered Court, is a well merited consideration thereof, unless evidence surges forth that it is forged or fabricated. In other words, at that stage, subject to the above rider it becomes a valid piece of evidence. Contrarily, if it is to be treated as a substantive piece of evidence, for any purpose whatsoever, inclusive of all the concerned, being confronted with it, thereupon it has to be tendered into evidence, besides requires it being proven by the author, who drew it. The reason being that the author of the pathology report, is not one amongst the Experts, as mentioned in Section 293 of Cr.P.C., nor is declared in the apposite notification to be a specialist.

FINAL ORDER

26. In view of the above, this Court finds that all the above assigned reasons by the learned trial Judge concerned, to make a verdict of acquittal, in respect of an offence punishable under Section 302 of IPC, are completely

infirm. Moreover, this Court finds that the verdict of conviction, as made by the learned trial Judge concerned, upon the convict only for an offence punishable under Section 323 of IPC, besides the consequent therewith imposition of sentence(s) upon him, are not at all meritworthy, rather suffer from a vice of gross mis-appreciation, and non-appreciation of the evidence on record.

27. Therefore, this Court is of the view that the instant appeal, merits it being allowed. Consequently after allowing the instant appeal filed by the State of Punjab, this Court quashes the impugned verdict of acquittal, as made on 02.02.2005, upon Sessions Case No.4 of 31.01.2004, by the learned Additional Sessions Judge, Moga, wherethrough he made a finding of acquittal in respect of an offence punishable under Section 302 of IPC. In consequence, accused is held guilty for committing an offence punishable under Section 302 of IPC, and, is convicted accordingly. The accused is directed to be produced in custody before this Court on 09.01.2023 for his being heard on the quantum of sentence.

28. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

29. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

16.12.2022

Ithlesh

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

(KULDEEP TIWARI)
JUDGE