

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

(I) CRA-D-1545-DB-2015
Reserved on: 30.08.2022
Date of decision: 05.09.2022

VARINDER PURI ...Appellant
Versus

STATE OF PUNJAB ...Respondent

(II) CRA-D-1324-DB-2015

VIMAL KUMAR ...Appellant
Versus

STATE OF PUNJAB ...Respondent

(III) CRA-D-1382-DB-2015

AMIT GOYAL ...Appellant
Versus

STATE OF PUNJAB ...Respondent

(IV) CRA-D-1410-DB-2015

RAJINDER SINGH ...Appellant
Versus

STATE OF PUNJAB ...Respondent

(V) CRA-D-1414-DB-2015

DIMPLE AHUJA ...Appellant
Versus

STATE OF PUNJAB ...Respondent

(VI) CRA-D-1567-DB-2015

VIKRAM GULATI ...Appellant
Versus

STATE OF PUNJAB ...Respondent

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

Present: Mr. Sunil Chadha, Senior Advocate with
Ms. Devyani Sharma, Advocate
for the appellant in CRA-D-1545-DB of 2015 and
CRA-D-1324-DB-2015.

Mr. Angel Sharma, Advocate
for the appellant in CRA-D-1382-DB-2015 and
(Amicus Curiae) in CRA-D-1567-DB-2015

Mr. Aditya Pratap Singh Nain, Advocate for
Mr. Ajay Ghangas, Advocate
for the appellant in CRA-D-1414-DB-2015.

Mr. Anil Kumar Bhardwaj, Advocate
for the appellant in CRA-D-1410-DB-2015.

Mr. Navkiran Singh, Advocate for the complainant.

Ms. Ishma Randhawa, Addl. A.G. Punjab.

SURESHWAR THAKUR, J.

1. All the criminal appeals arise from a common verdict of conviction, and, also from consequent therewith sentence(s) of imprisonment, and, of fine, as, became imposed upon each of the accused, by the learned Additional Sessions Judge, Ludhiana, through a verdict drawn on 18.08.2015, upon Sessions Case No.84 of 21.09.2010, resultantly all the appeals are amenable for a common verdict becoming recorded thereons.

2. Through the impugned verdict, the learned trial Judge concerned, proceeded to record a verdict of conviction, upon the accused in respect of charges drawn qua offences punishable under Sections 302, 307, 324, 148, 149 of IPC. Moreover, through a separate sentencing order drawn, on 18.08.2015, he imposed upon the convicts the hereinafter extracted sentence(s) of imprisonment, and, of fine, upon each of the convicts.

“Accused Varinder Puri

1. *To undergo rigorous imprisonment for Life and to pay fine of Rs.20,000/- (Rs. twenty thousand) and in default of payment of fine, to undergo imprisonment for 1(one) year under section 302 IPC.*

2. To undergo rigorous imprisonment for 3(three years) and to pay fine of Rs. 5000/-(five thousand) and in default of payment of fine, to undergo imprisonment for 2(two) months, under section 324 read with section 149 IPC.

3. To undergo rigorous imprisonment for 2(two years) under section 148 IPC.

Accused Rajinder Singh

1. To undergo rigorous imprisonment for Life and to pay fine of Rs.20,000/-(Rs. twenty thousand) and in default of payment of fine, to undergo imprisonment for 1(one) year under section 302 IPC.

2. To undergo rigorous imprisonment for 3(three years) and to pay fine of Rs. 5000/-(five thousand) and in default of payment of fine, to undergo imprisonment for 2(two) months, under section 324 read with section 149 IPC.

3. To undergo rigorous imprisonment for 2(two years) under section 148 IPC.

Accused Amit Goyal

1. To undergo rigorous imprisonment for Life and to pay fine of Rs.20,000/-(Rs. twenty thousand) and in default of payment of fine, to undergo imprisonment for 1(one) year under section 302 read with section 149 IPC.

2. To undergo rigorous imprisonment for 3(three years) and to pay fine of Rs. 5000/-(five thousand) and in default of payment of fine, to undergo imprisonment for 2(two) months, under section 324 read with section 149 IPC.

3. To undergo rigorous imprisonment for 2(two years) under section 148 IPC.

Accused Vikram Gulati

1. To undergo rigorous imprisonment for Life and to pay fine of Rs.20,000/-(Rs. twenty thousand) and in default of payment of fine, to undergo imprisonment for 1(one) year under section 302 IPC read with section 149 IPC.

2. To undergo rigorous imprisonment for 3(three years) and to pay fine of Rs. 5000/-(five thousand) and in default of payment of

fine, to undergo imprisonment for 2(two) months, under section 324 read with section 149 IPC.

3. *To undergo rigorous imprisonment for 2(two years) under section 148 IPC.*

Accused Dimple Ahuja

1. *To undergo rigorous imprisonment for Life and to pay fine of Rs. 20,000/-(Rs. twenty thousand) and in default of payment of fine, to undergo imprisonment for 1(one) year under section 302 IPC read with section 149 IPC.*

2. *To undergo rigorous imprisonment for 3(three years) and to pay fine of Rs. 5000/-(five thousand) and in default of payment of fine, to undergo imprisonment for 2(two) months, under section 324 read with section 149 IPC.*

3. *To undergo rigorous imprisonment for 2(two years) under section 148 IPC.*

Accused Vimal Kumar

1. *To undergo rigorous imprisonment for Life and to pay fine of Rs. 20,000/-(Rs. twenty thousand) and in default of payment of fine, to undergo imprisonment for 1(one) year under section 302 IPC read with section 149 IPC.*

2. *To undergo rigorous imprisonment for 3(three years) and to pay fine of Rs. 5000/-(five thousand) and in default of payment of fine, to undergo imprisonment for 2(two) months, under section 324 read with section 149 IPC.*

3. *To undergo rigorous imprisonment for 2(two years) under section 148 IPC.”*

3. The convicts became aggrieved from the aforemade verdict of conviction, and, also from the consequent therewith sentence(s) of imprisonment, and, of fine (supra), as became imposed upon each of them, and, are led to institute thereagainst the instant appeals before this Court.

FACTUAL BACKGROUND

4. The complainant in the instant case, is the father of deceased Gautam Sethi. Moreover, in the crime incident, one Tarandeep also sustained

grievous injuries on his person. Therefore, in respect of a common theretos crime incident charges (supra), became drawn against the convicts. The FIR in respect of the crime event becomes embodied in Ex.PW-3/A, and, PW-8/A. In the appeal FIR recorded the incident by the father of deceased Gautam Sethi. He has narrated that, on 30.05.2010 at 09:00 a.m., when there was bhog ceremony Sehaj Path, at the house of Bishan Singh son of Gopal Singh, and, subsequently in the evening of the above date there was a function in the house of Bishan Singh. He narrates in the appeal FIR that he along with his son Gautam, and, son's friend Tarandeep Sharma had visited the house of Bishan Singh. Moreover, he narrates that house of Varinder Puri son of Subhash Puri, is resident of House 201, Gali No.1, Sartaj Nagar, Noorwala Road, Ludhiana. At the front of house of Bishan Singh, and, who had parked his Chevrolet Spark car No.PB-10-CD-8001 then at about 05:00 p.m., when the attendees had assembled outside the house of Bishan Singh then Varinder Puri started his car in reverse side resulting it striking with the motorcycle of Satvir Singh son of Bishan Singh leading to Varinder Singh abusing Satvir Singh whereas, Satvir Singh took aside his motorcycle. Subsequently narrates that attendees went to the second floor of the house of Bishan Singh, and, then there Varinder Puri, Balwinder Singh, and, his brother Varinder, who is working as a designer in front of a Holy Path School, Sunder Nagar, New Madhopuri, Ludhiana came in the above car accompanied by two other clean shaven boys, all alighted from the car, whereas, some boys came to the crime site, on the motorcycle, and, took out their kirches, and, kirpans. Varinder Puri started to give lalkara to the attendees to "come outside", upon which all came downstairs, and, asked him the reason for his abusing them, and, in the meantime, Varinder Puri is alleged to take out his kirch, whereas, Balwinder Singh, and, Ravinder are alleged to take out their kirches

besides, the two other boys are alleged to take out their kirpans. Subsequently, he narrates that he witnesses that Varinder Puri given kirch blow to his son Gautam, which struck on his right back side, whereas Balwinder Singh delivered a kirch blow to his deceased son which struck him on the right side of the back besides Balwinder Singh delivering a kirch blow on the head of his deceased son Gautam. Subsequently, the above persons are narrated in the FIR to deliver blows with the above weapons on Tarandeep Sharma, and, caused several injuries on his person. Furthermore, he recites in the appeal FIR that he took them to the house of Bishan Singh, and, after making arrangements for a car, he took them to DMC Ludhiana along with Bishan Singh where Gautam Sethi succumbed to his injuries. The accused are alleged to flee from the crime site after leaving behind the car (supra), and, the motorcycle. The motive for the crime event is alleged to comprise in the factum that, Varinder Puri had hit the vehicle of Satvir Singh while reversing his car, resulting in his getting infuriated, which ultimately resulted in the crime event occurring, at the crime site. He has also narrated therein that even the other ocular witnesses can recognize them when they made to appear before them.

INVESTIGATION AND TRIAL PROCEEDINGS

5. During investigations, on 31.5.2010, the investigation officer prepared site plan, and, got clicked the photographs of the place of occurrence. Car No. PB-10-CD-8001 with its RC was taken into police possession, which was owned by Varinder Puri, Prop. M/s Fashion House, House no. 201, Street No. 1, Sartaj Nagar, Noorwala Road, Ludhiana. Samples of blood were taken out in a nip from the floor of the house of Bishan Singh and converted into parcels and were sealed by IO with his seal bearing impression 'MS'. A sword, stained with blood was recovered by the police party from nearby Roxi Polypack Factory and

after preparing its sketch, the same was converted into parcel and was also sealed by IO with his seal bearing impression 'MS'. Dead body of Gautam Sethi was obtained from the mortuary of DMC Hospital. Inquest report was prepared. Injury reports of Gautam Sethi and Tarandeep Sharma were obtained. Post mortem on the dead body of Gautam Sethi was got conducted from Civil Hospital, Ludhiana. Statements of witnesses under sections 161 Cr.P.C. were recorded.

6. On 31.5.2010, complainant Balraj Sethi suffered supplementary statement with IO that due to death of his son and due to depression, on 30.5.2010, he got recorded the name of Varinder Singh brother of Balwinder Singh, whereas, his correct name is Rajinder Singh. The name of second person was Amit Goyal S/o Suresh Goyal, who was accompanying Varinder Puri. These persons had caused injuries to his son Gautam Sethi and Tarandeep Sharma, due to which his son Gautam Sethi died and Tarandeep Sharma suffered injuries. Tarandeep Sharma also got recorded his statement with regard to causing of injuries on his person by the accused persons with kirch on various parts of his body. Bishan Singh also recorded in his statement the names of co-accused Raju, Shainky Nannu (the above named accused). Vimal, who also accompanied Varinder Puri, Rajinder Singh and Balwinder Singh, who came on their motor cycles and caused injuries to Tarandeep Sharma, with their kirches and swords. Upon this statement, Amit Goyal was named as accused.

7. On 5.6.2010, accused Varinder Puri surrendered before Court and after taking his production warrants and seeking permission for arrest of accused Varinder Puri, he was arrested in this case on 7.6.2010. On 9.6.2010, accused Varinder Puri suffered disclosure statement u/s 27 of Evidence Act and got recovered Kirch used by him in the occurrence, from the disclosed place. After

preparing sketch of said kirch, parcel was prepared and sealed by the IO with his seal bearing impression 'MS' and was taken into police possession. Site plan showing the place of recovery of kirch was also prepared. On 12.6.2010 accused Rajinder Singh was arrested, who on 15.6.2010, during interrogation suffered disclosure statement u/s 27 Evidence Act and got recovered the kirch used by him in the occurrence, from the disclosed place. After preparing sketch of said kirch, parcel was prepared and sealed by the IO with his seal bearing impression 'MS' and was taken into police possession. Site plan showing the place of recovery of kirch was also prepared. Injury report of injured Tarandeep Sharma was obtained from DMC Hospital, Ludhiana.

8. On 9.7.2010, ASI Baljit Singh conducted further investigations and on 10.7.2010 accused Amit Goyal, surrendered before the Court. During interrogation accused Amit Goyal, suffered disclosure statement u/s 27 Evidence Act and got recovered the kirch used by him in the occurrence, from the disclosed place. After preparing sketch of said kirch, parcel was prepared and sealed by the IO with his seal bearing impression 'MS' and was taken into police possession. Site plan showing the place of recovery of kirch was also prepared. On 12.7.2010, accused Amit Goyal also got recovered motor cycle No. PB-10CR-8548 Hero Honda Passion, as per his disclosure statement, from his house, which was also taken into custody vide separate recovery memo. On 12.7.2010, accused Amit Goyal also suffered disclosure statement that on the day of occurrence, he was accompanied by Vimal, who is residing in Bal Nagar, Shainky, who is residing in Sunder Nagar, Behind Bombay Tyre. Besides them, Nannu and Raju were also with him and also inflicted injuries to Tarandeep Singh. During investigation, registration certificates of car and motor cycle were got verified from the office of DTO, Ludhiana. Parcels of weapons, used in the

crime, were sent to Forensic Science Laboratory, Punjab, Chandigarh. On completion of investigation, challan was presented in the Court.

9. On presentation of the challan, copies thereof, and, other documents were supplied to the accused by Ld. Illaqa Magistrate, who thereafter committed the case to the Court of Ld. Sessions Judge, Ludhiana. The learned trial Judge drew charges against accused qua offences punishable under sections 302/148/149/34 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.

10. The prosecution examined as many as 16 witnesses, and, thereafter the learned Public Prosecutor closed the prosecution evidence.

11. 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 five witnesses, and, closed the defence evidence.

SUBMISSION OF COUNSELS

12. Mr. Angel Sharma, learned counsel appearing for convict Amit Goyal has made a submission before this Court that, since in his initially recorded statement, the complainant did not narrate therein, the name of co-convict Amit Goyal, and rather assigned an incriminatory role to him, only in a supplementary statement hence made on a day subsequent to the registration of FIR. Therefore, he contends that the incriminatory role, as, assigned to the co-convict Amit Goyal rather is extremely feeble.

13. He further submits that since he only caused injuries, upon victim-injured Tarandeep Sharma, but did not cause any fatal wounds on the person of

deceased Gautam Sethi, as such, he is not amenable for a verdict of conviction being made upon him in respect of a charge drawn under Section 302 of IPC, and, is rather amenable for a verdict of conviction being made only in respect of a charge drawn under Section 307 of IPC.

REASON FOR REJECTING THE ABOVE SUBMISSION

14. However, the above made submission falters, as the number of co-participants in the crime event was not immense, but was allegedly limited only upto six members, besides when both the injured-victim, and, the deceased Gautam Sethi were present, at the crime site, and, both became simultaneously attacked by one or by all the accused concerned. More importantly, with this Court recording a verdict of acquittal qua three of the members of the alleged unlawful assembly concerned, as such, results in the membership of the assailants becoming reduced to three. Therefore, when hence each of the accused shared not a common object, and, rather a common intention or joint intention, as carried in Section 34 of IPC. In sequel when the principles appertaining to vicarious liability, as carried in Section 34 of the Indian Penal Code, are more stricter than the principle of vicarious liability appertaining to members of an unlawful assembly, inasmuch as, the mere presence at the crime site, of the assailants, and, whose numbers are less than five, rather being sufficient to, irrespective of the quantum of injuries delivered, upon the deceased or the injured-victim concerned, and/or, even when no injuries being delivered upon the concerned, but rather the mere presence at the crime site, fastens upon each the larger incriminatory liability, even in respect of an offence under Section 302 of IPC. In sequel, even if co-convict Amit Goyal evidently inflicted injuries, only upon injured-victim Tarandeep Sharma, but did not cause any fatal injuries, upon the person of the deceased, yet on attracting the above

principle of joint liability, carried in Section 34 of the IPC, upon him, he becomes amenable for his becoming convicted even for an offence punishable under Section 302 of IPC.

REASON FOR REJECTING THE ABOVE SUBMISSION ABOUT CO-CONVICT AMIT GOYAL NOT BEING NAMED INITIALLY BUT BEING NAMED IN THE SUPPLEMENTARY STATEMENT

15. The reason for his making the above inference, ensues from the factum qua after co-convict Amit Goyal becoming arrested, on 10.07.2010, his on 11.07.2010 making a signed disclosure statement, as become embodied in Ex.PW-7/D, and, wherein he disclosed the place of his hiding, and, concealing the crime weapon, on a vacant plot towards western side near Kali Road, besides when in pursuance thereto, through a recovery memo carried in Ex.PW-7/E, its recovery became effected by him, to the investigating officer concerned. Consequently, the above drawn memo(s) acquire evidentiary vigor, unless evidence surged forth, and, its displaying, that not only his signatures carried thereon, became not only denied, but also the apposite denial became proven through an opinion being made by the Handwriting Expert concerned, and/or, evidence surged forth, reflective that the above recovered weapon of offence being planted onto him. However, the above evidence is grossly amiss, and, but as a natural corollary evidentiary vigor is to be assigned to the above drawn memos, as they acquire an apt incriminatory link in connecting the co-convict (supra), in the alleged crime event.

16. Furthermore, since co-convict Amit Goyal also through a disclosure statement comprised in Ex.PW-7/G, wherein, his signatures are carried rather made echoings therein that, he had concealed the crime motorcycle bearing No.PBH-10CR-8548 in his house, and, that he can cause its recovery, to the

investigating officer concerned, besides when in pursuance thereof, recovery of the above crime motorcycle, was effected through a memo drawn on PW-7/H. Consequently, the above drawn memo(s), do acquire apt evidentiary vigor, and, also comprise proof of incrimination, as, drawn against co-convict, unless evidence surged forth, and, its displaying that his signatures, as, carried thereons becoming not only denied, but also the apposite denial becoming proven through an opinion being made by the Handwriting Expert concerned, and/or, evidence surged forth reflective, that the above recovered weapon of offence being planted onto him. However, the above evidence is grossly amiss, and, but as a natural corollary, evidentiary vigor is to be assigned to the above drawn memos, as they comprise an apt incriminatory link in connecting the co-convict (supra), and, in the alleged crime event. The effect of the above attribution of evidentiary vigor, to the above drawn memos, does completely eclipse, the effect of the complainant, rather, not at the time of his initially registering an FIR, disclosing therein, the name of co-convict, rather his subsequently a day thereafter, naming him to be a co-incriminatory participant in the crime event, besides also eclipses the effect, if any, of his, for the first time identifying him in Court, and, that too without prior thereto, a valid test identification parade being conducted, during the course of investigations, wherein with his earlier thereto speaking about his key characteristic physical attributes, he did then come to make his identification.

FSL REPORT

17. Though during the course of investigations being made into the appeal FIR by the investigating officer concerned, he had through recovery memos, drawn qua each blood stained weapons' of offences, hence caused the relevant recoveries, and, 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 Tarandeep Sharma. 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 Tarandeep Sharma, 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

18. 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 Tarandeep Singh, 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.

Submissions addressed by Shri Sunil Chadha, Senior Advocate on behalf of co-convict Varinder Puri

19. The learned counsel for co-convict Varinder Puri submits, that no reliance can be assigned to the ocular account rendered qua the genesis of the prosecution case, hence by the ocular witnesses to the occurrence, who stepped into the witness box respectively, as PW-1, and, PW-2. He planks the above made submissions on the following grounds:

- a) The motive for the crime becoming not established, as the motorcycle of one Satvir Singh which became hit on account of co-convict Varinder Puri striking it while reversing his Chevrolet car (supra), rather not becoming seized.
- b) As narrated in the MLR drawn with respect to Tarandeep Sharma, and, to which Ex.PA is assigned, there being a narration

qua the crime incident taking place at Shivpuri Chowk. Therefore, the factum of taking place of the crime event, at the place deposed consistently by the prosecution witnesses concerned, does evidently, come under a cloud of suspicion

c) The non-examination of one Deepak as a prosecution witness, especially when he becomes reflected in the MLR Ex.PA, to be the person who admitted Tarandeep Sharma in the hospital for his taking treatment there.

d) The call tower locations appertaining to the cell call details of co-convict Varinder Puri when became deposed by DW-5, and, when suggest, that at the relevant time co-convict Varinder Puri, was not at the crime site, thereupon the ocular account qua the occurrence becomes completely belied. However, for the reasons to be assigned hereinafter, the above made submissions are completely fallible, and, require theirs becoming discounted.

REASONS FOR REEJECTING THE ABOVE SUBMISSION

20. The reason for making the above inference becomes embodied, upon the factum, that the credible ocular version, as spelt in respect of the narrations carried in the appeal FIR, is but spelt consistently, by not only the victim-complainant, but also by the injured-witnesses, besides by one Balraj Sethi (supra). A deep reading of the respective deposition(s) discloses, that in their respectively made testifications, they have with the utmost unanimity deposed qua the incriminatory participation of the co-convict (supra), in the extant crime event. In their respectively made testifications, as carried in their respective examination-in-chief, each bereft of any *inter-se* contradictions, make consistent speakings about the incriminatory participation of the co-convicts' in

the crime event. Moreover, their respective testifications are not stained with any vice of each grossly improving or embellishing, upon, their respectively made previous statements in writing. In consequence utmost evidentiary sanctity becomes enjoined to be meted to their respective ocular accounts rendered qua the narrations carried in the appeal FIR.

21. Though, evidently in the MLR prepared qua injured-victim Tarandeep Sharma recital occurs, qua the crime event taking place at Shivpuri Chowk, despite the crime event occurring, at the crime site, as disclosed in the site plan, to which Ex.PW-7/C is assigned, but though the above recital, becomes recorded by the Doctor concerned, and, may be, at the instance of one, Deepak, who took Tarandeep Sharma there for treatment, but yet the above factum would carry weight, only if the apposite intimation carried thereunders the signatures of the person, who made the above intimation, to the Doctor concerned. However, the above intimation about the crime event taking place, at a place other than the crime site, as disclosed in site plan (Ex.P-7/C), is not signatured by Deepak, who took Tarandeep Sharma to the hospital for treatment, and, but as a natural corollary, the above *inter-se* discrepancy *inter-se* the above narration in MLR (Ex.PA), hence with site plan (Ex.P-7/C), rather becomes completely inconsequential. Moreso, when no precise specific evidence, is adduced on record, that the house of Bishan Singh where the crime event took place, does not occur in the area described in MLR (Ex.PA). Consequently, even if the above *inter-se* dichotomy exists, yet it becomes explicable through a conclusion being drawn, that the crime site falling in the apposite area, as becomes described in the site plan.

22. The factum of non-citing of Deepak, as a prosecution witness, and, who took Tarandeep Sharma to hospital for treatment also becomes

inconsequential, as he has not been narrated in the FIR, to be an eye-witness to the occurrence, resultantly when rather the eye-witness to the occurrence have rendered a credible ocular account qua the genesis of the prosecution case, thereupon his non citing, as a prosecution witness besides his non-stepping into the witness box as a prosecution witness also becomes completely irrelevant.

23. Though, the motive for the crime is comprised in the factum of co-convict Varinder Puri while reversing his Chevrolet car (supra), his striking the motorcycle of Satvir Singh, and, though the above motive has been proven, by the consistently made depositions by the ocular witnesses to the occurrence. In sequel, no further proof of the crime motive was not required to be adduced, through the vehicle of Satvir Singh which became struck by the Chevrolet car, becoming also impounded. The reason is that, may be its non-recovery or its non impounding was a sequel of may be its registered owner tenably resisting its seizure/impounding, as it was not the crime vehicle, which it would have become, only if the co-convicts arrived, at the crime site, with each becoming borne therein. Since the motorcycle of Satvir Singh, is not the crime vehicle, thereupon irrespective of its becoming seized or impounded by the police, rather the crime motive, as, arises from its being struck by the Chevrolet car of co-convict, and, it causing infuriation in the co-convict concerned, does yet become ably proven. Resultantly, the non-seizure of the motorcycle of Satvir Singh becomes completely inconsequential.

24. Moreover, though proof become adduced by DW-5, qua the call record data qua the cell phone owned by the co-convict, from the apposite tower locations, rather revealing qua its owner being, at a place elsewhere than at the crime site, is also amenable for rejection. The reason becomes comprised in the factum, that even if it was owned by the co-convict, and, even if the mandatory

statutory certification is made on the data concerned, yet given the above mobile phone becoming not caused to be recovered, to the investigating officer concerned, by co-convict Varinder Puri, besides when resultantly, it has to be concluded that at the relevant time, it was in the possession of his family members. Reiteratedly it is held, that the cell phone of co-convict was not in possession of co-convict Varinder Puri, at the time of the crime event taking place at the crime site, rather it was in the possession of some other members of his family. Therefore, even if assuming the call tower locations appertaining to the cell phone of co-convict, do not divulge that he was present, at the crime site, yet the above does not either belittle the credible ocular account rendered qua the occurrence nor does belie the signed disclosure statement made by co-convict Varinder Puri, in sequel whereof, through a recovery memo comprised in Ex.PW-7/D, the relevant recoveries became effected, at his instance, to the investigating officer concerned.

25. Therefore, to the considered mind of this Court what ultimately constrains this Court, to unflinchingly draw a verdict of conviction qua co-convict Varinder Puri, ensues from the factum, as proven by PW-7 qua co-convict (supra), making a signed disclosure statement, to which Ex.PW-6/N is assigned, with articulations therein qua the place of his hiding, and, keeping “the kirch”, besides his unveiling therein, his willingness to cause its recovery, to the investigating officer concerned. Since in consequence thereto, through a recovery memo to which Ex.PW-7/P, is assigned its recovery became caused, at his instance, to the investigating officer concerned, therefore his inculpation is validly drawn.

CO-CONVICT RAJINDER SINGH

26. This Court also unflinchingly draws a verdict of conviction qua co-convict Rajinder Singh, given the fact, as proven by PW-7, qua co-convict

(supra), making a signed disclosure statement, to which Ex.PW-6/U is assigned, with articulations therein qua the place of his hiding, and, keeping “the kirch”, besides his unveiling therein, his willingness to cause its recovery, to the investigating officer concerned. Since in consequence thereto through a recovery memo to which Ex.PW-6/X, is assigned its recovery became caused at his instance, to the investigating officer concerned. Importantly also when no firm evidence emerged qua his ably denying his signature as occur thereons, nor when any firm evidence emerged qua the relevant recoveries being false or fictitious.

27. In consequence, this Court affirms the verdict of conviction recorded qua co-convicts Varinder Puri, Amit Goyal, and, Rajinder Singh,

MEDICAL EVIDENCE

28. The post mortem report, as became drawn in respect of Gautam Sethi, is comprised in Ex.PW-3/A, and, is proven by PW-3, and, therein the cause of demise of deceased Gautam Sethi, is attributed to the hereinafter extracted causes.

“Xxx Death occurred in this case in my opinion due to (illegible) shock of multiple injuries which was sufficient to cause death in an ordinary course.”

29. The above extracted cause, appertaining to the cause of demise of Gautam Sethi, does corroborate(s), the credible ocular account rendered in respect of the prosecution case, by the ocular witness concerned, and, also corroborates the further incriminatory proof adduced against the co-convicts concerned, and, as becomes planked, upon validly drawn disclosure statement, besides upon, the consequent therewith validly drawn recovery memos concerned.

30. The MLR of Tarandeep Sharma, is comprised in Ex.PA, and, the therein occurring injuries, are proven by PW-1(PW-8) who stepped into the witness box as PW-1(PW-8) Dr. Jasbir Singh . Therefore, the above proven MLR drawn qua injured Tarandeep Sharma, also gives support to the credible ocular account rendered qua the genesis of the prosecution case, by the prosecution witnesses concerned, and, also supports the drawing of valid memos (supra).

CO-CONVICTS DIMPLE AHUJA, VIKRAM GULATI, AND, VIMAL KUMAR

31. In so far as the co-convicts Dimple Ahuja, Vikram Gulati, and, Vimal Kumar, are concerned, they became never named in the FIR concerned, but yet inculcation became subsequently drawn against them. Even the subsequently drawn inculcation against them, does falter, in the face of theirs becoming identified for the first time, in Court, by the prosecution witnesses concerned, without prior thereto any valid test identification parade being conducted by the investigating officer concerned, besides also becomes weak, in the face, that at their respective instance, no recoveries becoming caused, to the investigating officer concerned. More particularly, and, when though accused Dimple Ahuja, is alleged to carry the alias of Shainty, but in the deposition, as, made by PW-5 concerned, he is not named Dimple Ahuja, rather is described as Shainty, but when there is no further evidence qua co-convict Dimple Ahuja also having an alias of Shanty, as such, it would be completely unjust to yet proceed to draw a verdict of conviction qua co-convict Dimple Ahuja.

SUMMARIZATION OF PRINCIPLES

- a) Section 34 of the IPC carries the principles of joint intention/ common intention, and, also prescribes the number of assailants to

be less than five, but Sections 148, and, 149 of IPC, envisages the principle of common object of the assailants, whose number is five or more. In respect of sharing of a joint intention or common intention, the mere presence of the assailants concerned, at the crime site, may be sufficient, without any delivery of any fatal wound on the deceased concerned, or of any injury upon the injured concerned, and, if in the crime incident concerned, there occurs demise, and, also any injury is entailed, upon an injured-victim concerned, and, any convict-assailant is imputed the role of injuring the victim, but not the role of inflicting/making a lethal assault, upon, the deceased, but yet he would become inculpated through the principle of joint liability envisaged in Section 34 of IPC.

b) The inconclusivity of opinion by the Serologist concerned, about stains' of blood on the incriminatory items, would not unsettle the validity of disclosure statements, and/or, of validity of recovery memos, unless the investigating officer concerned, had collected the FTM cards, of the persons concerned, and, had therealongwith also sent the blood stained incriminatory items, to the Serologist concerned, who upon making the apposite *inter-se* comparison, had disclosed that the relevant examined blood group(s) not belonging to the blood group of the deceased/injured concerned.

32. For the reasons to be assigned hereinbove the verdict of conviction, as made with respect to co-convicts Varinder Puri, Amit Goyal, and, Rajinder Singh is maintained, and, affirmed, and, also the consequent therewith

sentence(s) (supra), as became imposed upon them, are also affirmed, and, maintained and their respective appeals are dismissed.

33. However, in so far as, the verdict of conviction drawn against the co-convicts Vimal Kumar, Dimple Ahuja, and, Vikram Gulati is concerned, the same is quashed, and, set aside, and, also their respective appeals are also allowed. The personal, and, surety bonds of the acquitted accused (supra), are directed to be forthwith cancelled, and, discharged. The acquitted accused,, if in custody, and, if not required in any other case, are directed to be forthwith released from prison. Release warrants be accordingly prepared only qua the acquitted accused (supra). Fine amount, if any, deposited by the acquitted accused (supra), be forthwith refunded to them, but in accordance with law. Records of the Court below, be sent down forthwith. Case property, qua acquitted accused if not required, be dealt with, and, destroyed after the expiry of the period of limitation.

(SURESHWAR THAKUR)
JUDGE

5.09.2022

Ithlesh

(N.S. SHEKHAWAT)
JUDGE

Whether speaking/reasoned:-	Yes/No
<i>Whether reportable:</i>	<i>Yes/No</i>