

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

(I) CRA-D-178-DB-2014
Reserved on: 18.11.2022
Date of decision: 30.11.2022

SOMBIR ...Appellant

Versus

STATE OF HARYANA ...Respondent

(II) CRA-D-283-DB-2014

ANIL ...Appellant

Versus

STATE OF HARYANA ...Respondent

(III) CRA-D-578-DB-2014

RAVINDER @ MAKORA ...Appellant

Versus

STATE OF HARYANA ...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Shreenath A. Khemka, Advocate (amicus curiae)
for the appellant(s) in (CRA-D-178-DB-2014 and
CRA-D-283-DB-2014)

Mr. R.K. Nehra, Sr. Advocate assisted by
Mr. Surinder Pal, Advocate
for the appellant (in CRA-D-283-DB-2014)

Ms. Gurpal Kaur Dulat, Advocate and
Mr. Kunal Malwani, Advocate (amicus curiae)
for the appellant (in CRA-D-578-DB-2014).

Mr. Anmol Malik, DAG, Haryana.

SURESHWAR THAKUR, J.

1. Since all the criminal appeals arise from a common verdict made on 03.12.2013, upon Sessions Case No.112 of 2011/2013(RBT), by the learned Additional Sessions Judge, (Exclusive Court), Jhajjar, thus all the criminal appeals are amenable for a common verdict being made thereons.

2. Through the impugned verdict (supra), the learned Additional Sessions Judge concerned, made a verdict of conviction in respect of an offence punishable under Section 302/34 of IPC against Anil, Sombir and Ravinder alias Makora. Moreover, the learned Additional Sessions Judge concerned, also made a verdict of conviction, upon accused Sombir and Ravinder alias Makora in respect of an offence punishable under Section 25 of the Arms Act. Moreover, through a separate sentencing order drawn on 05.12.2013, the learned trial Judge concerned, imposed upon the convicts Anil, Sombir and Ravinder alias Makora the hereinafter extracted sentence(s).

“(1) To undergo rigorous imprisonment for life and to pay a fine of Rs.10,000/- each for the commission of offence under Section 302/34 IPC and in default of payment of fine to undergo rigorous imprisonment for one year.

(2) To undergo rigorous imprisonment for three years and to pay a fine of Rs.1000/- each to Sombir and Ravinder for the commission of offence under Section 25 of the Arms Act and in default of payment of fine to undergo simple imprisonment for six months.”

3. The above sentence(s) were ordered to run concurrently. However, the period spent in custody by the convicts during investigations, and, trial of the case, was in terms of Section 428 of the Cr.P.C., ordered to be set off from the above imposed substantive sentence of imprisonment. However, through the verdict (supra), the learned trial Judge concerned, made a verdict of acquittal against co-accused Jai Parkash, Sunil and Mange Ram in respect of charge(s) respectively drawn against them for an offence punishable under Section 120-B

of IPC, whereas, co-accused Maya Ram was acquitted in respect of a charge drawn for an offence punishable under Section 216 of IPC. However, there is no material on the record suggestive that, the aggrieved concerned, has preferred any appeal against the verdict of acquittal, as made in respect of the above acquitted accused.

4. All the convicts (supra) become aggrieved from the above made verdict of conviction, besides become aggrieved from the consequent therewith sentence(s) (supra), as became imposed upon each of them, thus they are led to institute thereagainst the instant appeals (supra) before this Court.

FACTUAL BACKGROUND

5. The genesis of the prosecution case is embodied in the FIR to which Ex.P28 is assigned, thereins, it is narrated that on 13.8.2010 Ramesh Kumar, SI along with Sudesh, Constable was present at Silani Gate, Jhajjar in a Government vehicle bearing registration No.HR-14E-0285 with Jai Kishan, Constable as driver on its wheel, in connection with crime and patrolling duty. Upon receiving the information through VT control room, Jhajjar about hospitalization of one young man in General Hospital, Jhajjar after he had been shot by firearm in front of Union Bank, Jhajjar, Ramesh Kumar, SI along with his associate reached at General Hospital, Jhajjar. From the emergency, he came to know that injured Surender son of Ram Singh, caste Jat, resident of Khungai had succumbed to fire-shot injury on the way. Virender, brother of deceased Surender, met him near the dead body who made the statement with the allegations that “he was posted as J.E., Jal Board, Delhi. They were three brothers. Eldest was Mahender and youngest was Surender. Surender was working for the Insurance. On that day, i.e. 13.8.2010, he along with his brothers Surender and Mahender had gone to Jhajjar for some personal work. They

reached at Union Bank, Rewari-Gurgaon road, Jhajjar at about 1.00 p.m., at the instance of Surender. They were standing in the verandah of Bank and Surender was in the eastern side. Three young boys came there on a motor-cycle. One of them was Anil son of Mange Ram, caste Brahman from their village. One of the boys, who were with Anil, took out one pistol from his pocket and shot at Surender which fire-shot hit him at the back of his head. Surender fell down in the verandah. Those three boys fled away from the spot on the motor-cycle and they could identify them if they came face to face with them. Surender was shifted to General Hospital, Jhajjar but he died on the way. Mahender was left on the spot by them. A prayer was made to take strict legal action against the culprits”.

INVESTIGATION

6. On the basis of the above-mentioned statement Exh.P48 of complainant Virender, formal FIR Exh.P28 was registered under Sections 302/34 IPC and Section 25 of the Arms Act by Umed Singh, SI on receiving ruqa Exh.P21/A from Ramesh Kumar, SI through Sudesh, Constable and Umed Singh, SI made endorsement Exh.P29 in this regard. Investigation machinery was set into motion by Ramesh Kumar, SI. The inquest proceedings on the dead body of Surender were concluded vide inquest report Exh. P2. On police request Exh.P1, the postmortem on the body of Surender was got conducted in General Hospital, Jhajjar vide post-mortem report Exh.P3. The cause of death was due to “injuries to the spinal cord and its adjacent structures (vertebral artery) which were ante mortem in nature sufficient enough to cause death in the ordinary course of nature”. On the same day, rough site plan Exh.PW21/B was prepared at the place of occurrence on the demarcation of Mahender, the brother of deceased. Surender Singh, EASI had taken photographs Exh. P30 to Exh. P32

with digital camera. Blood-stains were lifted from the floor at the place of occurrence, converted into a parcel, sealed with the seal of 'RK' and was taken into possession vide recovery memorandum Exh.P45. On that day, i.e., 13.8.2010, accused Anil Kumar was formally arrested. A sealed parcel of bullet and a sealed parcel of clothes of accused Surrender along with sample seal, handed over by attending medical officer after post-mortem, were taken into possession vide recovery memorandum Exh.P44.

7. On 15.8.2010, during interrogation, disclosure statement Exh.P42 was suffered by accused Anil to the effect that he had kept concealed Hero Honda Motorcycle bearing registration No. HR-13D/5146 at the rented accommodation of Mahender son of Sarupa in village Dadri Toi. Pursuant to disclosure statement, the said motorcycle was recovered and taken into possession vide recovery memorandum Exh.P43. The site plan Exh.PW21/C of the place of recovery of motorcycle was prepared. On 23.8.2010, accused Sombir was formally arrested. On 25.8.2010, during interrogation, accused Sombir suffered disclosure statement Exh.P37 to the effect that “he had kept concealed pistol at Gurgaon Road in front of gate of Suman City near the electricity pole of which he had the exclusive knowledge and he could get the same pistol recovered”. Pursuant to disclosure statement, one country made pistol .315 bore was recovered on the same day. The sketch Exh.P38 of the pistol was prepared. The pistol was converted into a parcel, sealed with the seal of 'RK' and was taken into possession vide recovery memorandum Exh.P39. The site plan Exh.PW21/D of the place of recovery of country made pistol was prepared. Memorandum of demarcation Exh.P40 was prepared on demarcation of accused Sombir of the place of occurrence.

8. On 27.8.2010, accused Jai Parkash was arrested. On 28.8.2010, during interrogation, accused Jai Parkash suffered disclosure statement

Exh.PW21/E regarding his handing over of pistol to accused Sombir on 12.8.2010. On 29.8.2010, further investigation was taken over by Aas Mohammad, ASI. On 3.9.2010, accused Sunil was arrested. On the same day, during interrogation, he suffered disclosure statement Exh.P33 regarding his involvement in the commission of offence. On 13.9.2010, accused Mange Ram was arrested. On that day, during interrogation, he suffered disclosure statement Exh.P34 regarding his involvement and that of other co-accused in the commission of offence. On 16.9.2010, accused Ravinder @ Makora was arrested. On 17.9.2010, during interrogation, he suffered disclosure statement Exh.P35. Memorandum of demarcation Exh.P36 was prepared on the demarcation of accused Ravinder of the place of occurrence. On 19.9.2010 when accused Ravinder retracted his earlier disclosure statement, he was further interrogated. He suffered disclosure statement Exh.P46 afresh to the effect that "he had kept concealed country made pistol along with cartridge in his room in an iron box of which he had exclusive knowledge and could get it recovered". Pursuant to disclosure statement, one country made pistol .315 bore and one live cartridge .315 bore were recovered from the iron box lying in the room of accused Ravinder. The sketches of pistol and cartridge Exh.P46/A and Exh.P46/B respectively were prepared. The country made pistol and cartridge were converted into a parcel, sealed with the seal of 'AM' and taken into possession vide recovery memorandum Exh.P47. The site plan Exh.PW22/A of the place of recovery was prepared. On 23.9.2010 on police request Exh. P24 to Armourer to mechanically test country made pistol along with live cartridge .315 bore, recovered from accused Ravinder, report Exh. P24/A was given by Parvinder, constable/Armourer. On 1.10.2010, the case property was sent to FSL, Madhuban for chemical analysis vide RC No. 163.

9. On 7.10.2010, Jai Chand Drafts man prepared scaled site plan Exh. P13. Sanction for launching prosecution against accused Sombir and Ravinder under Section 25 of Arms Act was accorded vide sanction orders Exh. P14 and Exh. P15 by Shri Chander Parkesh, IAS, the then District Magistrate, Jhajjar. On 3.11.2010 on police request Exh.PW22/B to In-charge, Registration Authority, Bahadurgarh, the details of ownership of Hero Honda Motorcycle bearing registration No.HR-13D/5146 were collected vide report Exh.P20, according to which report, the real owner of aforesaid motorcycle was Anil Sharma son of Mange Ram, Gali No.3, Shakti Nagar, Bahadurgarh. Statements of the witnesses under Section 161 Cr.P.C were recorded. Other usual steps, necessary for investigation, were also taken. After the completion of investigation, challan report under Section 173 Cr.P.C was filed against all the accused by Ajmer Singh, SHO/Inspector on 26.10.2012.

COMMITTAL PROCEEDINGS

10. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 07.03.2011 the learned Chief Judicial Magistrate, Jhajjar, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

11. The prosecution examined as many as 22 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. In defence, the learned defence counsel examined 2 defence witnesses.

SUBMISSIONS OF THE LEARNED COUNSEL(S) FOR THE APPELLANT(S)

12. The learned counsels for the convicts-appellants, have made a vigorous submission before this Court that, since in the FIR the informant has not named co-accused Sombir to be available, at the crime site, thus he submits that there was a dire necessity cast, upon the investigating officer concerned, to during the course of investigations hence conduct a valid test identification parade for ensuring that therein the co-convict Sombir becomes identified by the informant concerned. He submits that since no valid test identification parade was conducted during the course of investigations being made into the FIR, therefore, he argues that the identification, as was made, in Court of co-convict Sombir by PW-19, and, by PW-20, was a legally frail identification, and to which no credence can be assigned.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

13. Contrarily, the learned State counsel has argued that, the verdict challenged before this Court is well merited, and, does not warrant its becoming interfered with, by this Court.

THE PROSECUTION CASE IS RESTED UPON THE TESTIFICATIONS OF TWO OCULAR WITNESSES WHO HAVE RESPECTIVELY STEPPED INTO THE WITNESS BOX AS PW-19 AND PW-20

14. PW-19 in his examination-in-chief has articulated, that on 13.08.2010, he and his brothers had come to the Court at Jhajjar, in the matter of cheating pending between his brother one Surender and Mange. However, he testifies that the said case was adjourned. Thereafter PW-19 speaks that he along with his brothers reached Silani Gate, where the brother of PW-19 one Surender is spoken by him to apprise PW-19, that he intended to go to the ATM of Union Bank of India. Surender is further spoken by him to enter into the cabin of the ATM, while he and his brother Virender were standing outside the ATM cabin.

The brother of PW-19 is spoken by PW-19 to come out of the ATM cabin with two slips of mini statements of his account, and, while he was examining the same, then he echoes that Anil along with Ravinder and Sombir reached there on the motorcycle and stopped their motorcycle. Anil is deposed by him to be driving the motorcycle, whereas, Ravinder and Sombir are stated by him to be occupying the pillion thereof. The said motorcycle is spoken by him to be of Hero Honda make and is stated to be bearing Registration No.HR-13D-5146. He proceeded to identify the accused Anil present in Court and assigns to him the incriminatory role of his pointing towards his brother Surrender, to his accomplices. Sombir whom he also identified in Court, is spoken by him to take out the pistol from the pocket of his pant and thereafter is stated to fire a shot at his brother Surrender, which he states to strike on the nip of his brother. He deposed that though he tried to take care of his brother Surrender, and though Virender chased the accused, but Varinder is spoken by him to not succeed in apprehending the accused. Co-accused Ravinder is also stated by him to point a pistol at Virender. Thereafter, all of them are spoken by him to flee from the site of occurrence, on their motorcycle, towards Gurgaon. Virender is stated by him to bring Surinder to General Hospital, Jhajjar, and, PW-19 speaks that he was asked by Virender to reach the hospital after making arrangements of cash, and, after his informing the relatives concerned, about the said incident. After PW-19 had made the necessary arrangements of cash, he stayed at the site of occurrence. The police is stated to arrive, at the site of occurrence and to proceed to conduct investigations.

15. The testification of the witness (PW-19), as carried in his examination-in-chief was subjected to an exacting cross-examination. However, PW-19 successfully withstood the rigor of a grilling cross-examination.

Therefore, utmost sanctity is to be assigned to the speakings made by PW-19 in his examination-in-chief. The testification as rendered by PW-19, is free from any taints of any gross improvements or embellishments from his previously made statement in writing nor it suffers from any further taint of therein being any rife *intra-se* contradictions rather *intra-se* the speakings made by him in his examination-in-chief, and, in his cross-examination. Therefore, also utmost credence is to be assigned to the testification, as became rendered *qua* the genesis of the case by PW-19.

16. The other ocular witness to the occurrence is PW-20 Virender Singh, who has rendered the firmest corroboration to the testification as became rendered by PW-19. His testification is also free from any taints of any gross improvements or embellishments from his previously recorded statement in writing. Moreover, there are no rife *inter-se* contradictions *inter-se* the testification rendered by PW-19 and by PW-20. Therefore, the untainted *inter-se* corroborative testifications, as, rendered by PW-19 and by PW-20, do acquire sanctified evidentiary worth, also hence, therethrough the prosecution has succeeded in establishing the charge drawn against the accused.

REASON FOR REJECTING THE ABOVE MADE SUBMISSION BY THE LEARNED COUNSELS FOR THE CONVICTS-APPELLANTS

17. A deepest and wholesome reading of the testifications rendered by PW-19 and by PW-20, unveils that, both in their respective examinations-in-chief had identified Sombir to be the person who fired a shot from the incriminatory pistol at deceased Surrender. Both PW-19 and PW-20 were put to the ordeal of a rigorous cross-examination, but during the course thereof, no suggestion became put to both rather by the learned defence counsel, hence suggestive that the said echoings, as occurring in their respective examination-in-chief, is completely false. Omission (*supra*) does fillip an inference that the

said identification, in Court of Sombir by both the PW-19 and PW-20, is a truthful identification, and, also obviously did not enjoin the investigating officer concerned, to prior thereto conduct a valid test identification for enabling the concerned, to then identify the convict Sombir.

DISCLOSURE STATEMENTS OF ACCUSED AND CONSEQUENT THEREWITH RECOVERIES

18. During the course of the custodial interrogation of accused Sombir he made a signed disclosure statement as comprised in Ex.P37, contents whereof become extracted hereafter.

“xxx

Disclosure statement of accused Sombir

In the presence of below mentioned witnesses, accused Sombir S/o Krishan Jat, R/o Bamdola, In police custody during the course of interrogation at Bus Stop Jhajjar without any fear and greed by his own free will suffered a disclosure statement, that on dated 24.08.2010, the disclosure statement which was suffered by me at the court yard of Police station Jhajjar was false one, the truth is that on dated 13.08.2010. I, along with Anil S/o Mange Ram, Caste Brahman R/o Khungai and Ravinder @ Makora S/o Om Parkash, caste chamar, r/o Killa Colony Jhajjar had murdered by firing bullet shot to Surinder S/o Ram Singh Jat, R/o Khungai at the court yard of Union Bank of India Jhajjar by riding over a Motorcycle, that pistol has been kept concealed by me at Gurgaon Road in front of the gate of Suman City, under the pole of High Tension wire by wrapping into a Polythene under the soil, to which nobody known else me, I can get recovered the same by making demarcation and the said pistol had been given to me by Jai Parkash S/o Dharam Singh Luhar R/o Jhajjar. The accused and respective witnesses have apprehended their signatures on the disclosure statement. I can also demarcated the said place where, had murdered Surinder R/o khungai by making bullet fire.

Sd/- In Hindi Accused Sombir

Witnesses:-

Sd/- In Hindi, Amit s/o Ramesh Kumar R/o Chimni.

Sd/- In Hindi, Sudesh Kumar 67/JJR, Police Post Jhajjar.

Sd/- In English, SI

Police Post City Jhajjar

Dated 25.08.2010”

A reading of the above extracted signed disclosure statement as made by accused Sombir, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of pistol Ex.P39, 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.P39, he caused the recovery of pistol. Thus evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.P37, 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 recoveries are either contrived or invented. Thus, 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-19 and by PW-20.

19. During the course of the custodial interrogation of accused Anil, he made a signed disclosure statement as comprised in Ex.P42, contents whereof become extracted hereafter.

“xxx

Disclosure Statement of Accused Anil

In the presence of below mentioned witness, accused Anil S/o Mange Ram, R/o Khungai during the time of interrogation at the court yard of the Police Station, today himself without any fear and greed suffered a disclosure, that On dated 14.08.10 the disclosure

statement was suffered by me was false one, the fact is that on dated 13.08.10. I, along with Sombir S/o Krishan, R/o Bamdola and Ravinder @ Makora S/o Om Parkash, R/o Jhajjar had murdered Surinder by riding over a Motorcycle at the court yard of the bank, the said motorcycle has been kept concealed by me at Dadri Toe in my rented room, the key has also kept concealed there and the room has been locked, to whom no body known else me, I can get recovered the same by leading you after demarcation. Witnesses have appended theirs signatures over the same.

Sd/- In English Accused Anil Kumar

Witnesses:-

Sd/- In English, Charan Singh D/o Udey Singh Dalal, Ex MLA R/o Beri Gate, Jhajjar.

Sd/- In Indi, EHC Dharambir Singh, 485 Police Post City Jhajjar

*Sd/- In Hindi, SI
Police Post City Jhajjar
Dated 15.08.2010”*

A reading of the above extracted signed disclosure statement as made by accused Anil, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of motorcycle Ex.P43, to the investigating officer concerned, from the place of his hiding, and, concealing it, given the said site being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.P43, he caused the recovery of motorcycle. Thus, evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.P42, 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 recoveries are either contrived or invented. Thus, 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-19 and by PW-20.

20. During the course of the custodial interrogation of accused Ravinder alias Makora he made a signed disclosure statement as comprised in Ex.P46, contents whereof become extracted hereafter.

“xxx

Disclosure Statement of Accused Ravinder alias Makora

In the presence of below mentioned witnesses, during the course of interrogation conducted by me, ASI, accused Ravinder @ Makora S/o Om Parkash, Caste Harijan Chamar R/o Killa colony Jhajjar, today himself in police custody without any fear and greed suffered a disclosure statement that, "the civil suit regarding the land is pending between, Anil S/o Mange Ram, caste Brahman R/o Khungai and Surinder S/o Ram Singh Jat R/o Khungai. On dated 12.08.2010 at Village Bamdola where Anil S/o Mange Ram is clinic of doctor on which, I along with Anil s/o Mange Ram, Sombir S/o Krishan Jat R/o Bamdola had made a plan to shoot Surinder to take the revenge. Sombir had asked that he would made the arrangement of Pistol and I asked that I would remain present with you with arms, if any problem comes then I will use my arm, if any problem did not come then I would not use my arm, Anil had asked that he would make the arrangement of Motorcycle. I had to make the friendship of Jai Parkash S/o Dharm Singh Caste Luhar R/o Killa Colony who is my friend with Sambir S/o Krishan, Jat R/o Bamdola, Anil had promised that he will pay an amount of Rupee 50,000/- each to me and Sombir to kill Surinder. On dated 13.08.2010 there was a date of hearing of Surinder at the court of Jhajjar. As per plan Anil S/o Mange Ram had reached at court of Jhajjar court by riding over his Motorcycle, I and Sombir had also reached to the court, I and Sombir have carried out respective pistol with us. All three of us were searching for Surinder by riding over the Motorcycle of Anil, the Motorcycle was driving by Anil, Sombir was sitting in the middle, I was sitting behind to him, when we were reaching near the Union Bank of India Jhajjar then

Surinder S/o Ram Singh was standing in the court yard of the Bank. Anil had stooped the Motorcycle by seeing Surinder, all three of us have get down from the Motorcycle, Anil asked to me and Sombir that the person standing in front is Surinder he should not be escaped, and asked to make fire over him, by saying so Sombir had to make fire over Surinder by taking out the pistol from his pocket, the bullet hit to Surinder, I asked that he should not alive and asked to make one fire more, but we could not get opportunity to make second fire. All three of us have run away towards Gurgaon by riding over the Motorcycle of Anil after some distance I, and Sombir have get down from the Motorcycle by stopping the Motorcycle, and ran away towards side of field. The said Pistol which was with me at the time of occurrence the same has kept concealed by me in an iron box at my residential house, to which no body known else to me, I can get recovered the same accompanying with you. The said Pistol was given to me by Jai Parkash. Proceedings of disclosure statement has got completed.

Accused Ravinder @ Makora,

Witnesses:-

Sd/- In English, Mahender Singh S/o Ram Singh Jat, R/o Khungai.

Sd/- In Hindi, Dharambir S/o Tek Ram Jat, R/o Dhikyam Panna Dhubaldhan

*Sd/- In English
Aas Mohd. ASI CIA Jhajjar.
Dated 19.09.2010”*

A reading of the above extracted signed disclosure statement as made by accused Ravinder alias Makora, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of pistol Ex.P47, to the investigating officer concerned, from the place of his hiding, and, concealing it, given the relevant site being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.P47, he caused the recovery of pistol. Thus, evidentiary vigor is to be assigned to the above memos, as he

has not been able to either ably deny his signatures as occur on Ex.P46, 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 recoveries are either contrived or invented. Thus, 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-19 and by PW-20.

MEDICAL EVIDENCE (POST MORTEM REPORT)

21. The post mortem upon the body of deceased Surender was conducted on 13.08.2010 by PW-1. PW-1 has proven *qua* his, authoring Ex.P3, as relates to the autopsy as made upon the body of deceased Surender.

22. Moreover, he has proven that the cause of death of deceased Surender, was owing to the injuries to the spinal cord and its adjacent (vertebral artery), which are stated to be ante mortem in nature, and which are stated to be sufficient to cause death in the ordinary course of nature. The relevant ante mortem injuries as noticed by PW-1 on the body of deceased are extracted hereinafter.

“1. A lacerated wound, circular in shape of diameter 2 cms with inverted margins present on the right side of neck behind the right ear (below the mastoid process. Singeing of hairs and blacking round the wound present.

2. That a bullet 3 cm. of size, entered from right side of neck and found stuck in between second and third vertebrae.

3. That there was oozing of blood from the wound.

4. No other external mark of injuries on the body of deceased.”

FSL REPORT

23. Though blood stained incriminatory items besides the blood stained incriminatory weapon(s) of offence became transmitted through memo No.264-

R dated 28.09.10 to the FSL concerned. However, as revealed by the report of FSL to which Ex.P45 is assigned, their respective examinations, resulted in the emergence of the hereinafter extracted opinion.

“Result

- 1. The Countrymade pistol marked W/1 (Chambered for .315” cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.*
- 2. .315” fired bullet marked BC/1 has been fired from Countrymade pistol marked W/1 and not from any other firearm even of same make and bore/caliber, because every firearm has got its own individual characteristic marks.*
- 3. The gun shot residue (Nitrite & lead) were detected on the blackening area present on the collar of the shirt contained in parcel No.II.*
- 4. Report in original from Serology Division is enclosed herewith.”*

24. Though, in the wake of the prosecution cogently establishing, the charges drawn against the convicts, through the stepping into the witness box of credible eye-witness to the occurrence. Moreover, also though the prosecution has been able to prove the charge, through the validly drawn memos (supra), besides from the medical evidence (supra). However, the result of the examinations, as made on the blood stained items as sent to the FSL concerned, may have also lent further fortifying corroboration to the evidence (supra), as became adduced by the prosecution. Nonetheless, significantly, the above extracted results, as made upon the blood stained items as sent to the Serologist concerned, rather are inapt for firmly concluding, that the blood stains as carried on the relevant items hence belonging to the blood group of the concerned. Thus, in other words, there is no conclusivity of opinion by the Serologist about the human blood carried on the relevant items rather belonging to the blood group of the deceased concerned. The above inconclusivity of opinion may have

through his ensuring the collection, of the respective FTA cards, hence from the family members of the deceased concerned, and/or from the family of the accused concerned, so that they, could be sent along with the relevant blood stained items, to the Serologist concerned, for his making the best apposite comparisons thereof. It is only in the wake of the above ineptitude of investigations, that the above event occurs, that too, despite the above investigational infirmity becoming earlier also highlighted by this Court.

25. Be that as it may, a reading of the post mortem report to which Ex.P3, is assigned and which has been proven by Dr. Sunil Kumar, Medical Officer, Government Hospital Jhajjar, reveals that during the course of his making an autopsy, on the body of the deceased, rather his extracting therefrom one metallic bullet.

26. The above metallic bullet was taken into possession through memo Ex.BC/1. Moreover, on a reading of Ex.P45 it is also revealed, that four sealed parcels Mark I to IV, became received in the Laboratory concerned. All the afore parcels were transmitted through EASL Ramesh Kumar No.573, to the FSL concerned. Moreover, a perusal of Ex.P45 also makes it clear, that at the time of receipt of the above sealed parcels at the laboratory, the seals' as made thereons were found to be intact, and, a further deep reading of exhibit(s) (supra) also reveals that the English alphabets as existing on the respectively made seal impressions', rather completely tallying with the ones, as, were made on the specimen seals' concerned.

27. The above echoings found in Ex.P45, do bolster an inference, that the above sent incriminatory items to the laboratory concerned, were received there, in an untampered and unspoiled condition. Resultantly, the makings of recoveries thereof, through the relevant memos, obviously cannot be said to be

legally infirm, especially when no evidence has been adduced suggestive, that the relevant memos wherethrough the above items became recovered, were either drawn fictitiously or were forged.

28. Therefore, it cannot, at this stage be stated, that the result of the examinations as made respectively, upon, blood stained earth lifted from the place of occurrence, upon clothes of deceased Surender, upon one .315” fired bullet marked as BC/1, stated to have been taken out from the body of deceased Surender, upon one Countrymade pistol (Chambered for .315” artidges) stated to have been recovered from the accused Sombir, does not appertain, to those incriminatory items, as became validly recovered nor can it be said, that items other than the incriminatory items, as became recovered through the relevant memos, rather became sent to the laboratory concerned. If so, the result of the examinations as made by the Expert concerned, on the relevant incriminatory items, is to be construed to be made only in respect of those incriminatory items, as became validly recovered, through validly drawn memos, besides, as became thereafter sent to the laboratory concerned. Thus, the opinion of the Ballistic Expert hence has immense probative vigor, and, does nail the charge drawn against the convict.

29. Be that as it may, since the above extracted result of the examination, as made by the Ballistic Expert in respect of the recovered incriminatory pistol, does make vivid speakings, that .315 bullet Mark BC/1 became fired therefrom. Moreover, since it has also been categorically spelt therein that the gunshot residue (Nitrite & lead) were detected on the blackening area present on the collar of the shirt contained in parcel No.II. In addition, when the bullet extracted from the body of the deceased by the doctor concerned, who made an autopsy on the body of the deceased, is firmly verified

to be the one which was fired from the recovered pistol, and, further when it is pronounced in the FSL report, qua the recovered shirt of the deceased also begetting blackening in the relevant area. Therefore, as but a natural corollary not only the recovered incriminatory items become connected to the relevant recovered firearm concerned, but also the user of the firearm by the accused, to cause fatal injuries, does also become firmly established. Succinctly, corroboration from the forensic evidence, is lent, not only to the credible ocular account rendered qua the crime event by PW-19 and by PW-20, but also corroboration therethrough also is lent to the disclosure statements (supra), besides to the consequent therewith recoveries.

SUMMARIZATION OF PRINCIPLES

- I. The lack of conducting of a valid identification parade by the investigating accused concerned, during the course of investigations, may not render frail the identification, as made in Court of the accused, by the victim, but only if the said identification is not challenged in the cross examination, as made upon the PW concerned, who gives an ocular account qua the occurrence.
- II. The above is also required to get corroboration from validly drawn disclosure statements and from validly drawn recovery memos.
- III. The Forensic report speaking about the user of the firearm by the accused concerned, does also assign evidentiary vigor, to the above adduced prosecution evidence.

FINAL ORDER

30. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon each of the convicts by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeals, and, the same are dismissed. If the accused are on bail, thereupon the sentence, as imposed upon each of them be ensured to be executed by the learned trial Judge concerned, through his forthwith drawing committal warrants qua them. Case property if any be dealt with in accordance with law, but only after expiry of period of limitation for the filing of an appeal.

31. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

30.11.2022

Ithlesh

(KULDEEP TIWARI)
JUDGE

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