

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

Reserved on: 11.11.2022

Pronounced on: 17.11.2022

1. CRA-D-804-DB-2014 (O & M)

SHARWAN @ PHOTU

.....Appellant

Versus

STATE OF HARYANA

.....Respondent

2. CRA-S-536-SB-2014

RAJEEV @ RANJIYA

.....Appellant

Versus

STATE OF HARYANA

.....Respondent

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

**Argued by: Ms. Monika Jalota, Advocate
for the appellant in case CRA-D-804-DB-2014.
Mr. Ashwani Gaur, Advocate
for the appellant in case CRA-S-536-SB-2014.**

Mr. P.P.Chahar, DAG, Haryana.

**Mr. Tajinder Pal Singh, Advocate
for the complainant.**

SURESHWAR THAKUR, J.

1. Since both the criminal appeals arise from a common judgment, therefore, both are amenable for a common verdict becoming recorded thereons.

2. Both the criminal appeals are directed by the convicts concerned, against the verdict of conviction made on 18.01.2014 by the learned Additional Sessions Judge, Panipat, upon Sessions Case No. 38

of 2012. Through the above drawn verdict, the learned trial Judge recorded qua accused Sharwan @ Photu a finding of conviction in respect of a charge qua an offence punishable under Section 302 of the IPC, but in respect of a charge drawn against accused Sharwan @ Photu, for an offence punishable under Section 25 of the Arms Act, he made a finding of acquittal.

3. Moreover, through the verdict (supra), the learned trial Judge recorded a finding of conviction against co-accused Rajeev @ Ranjiya qua an offence punishable under Section 30 of the Arms Act.

4. Moreover, through a separate sentencing order drawn on 18.01.2014, the learned Additional Sessions Judge, Panipat imposed upon the convicts (supra) both sentence(s) of imprisonment as well as of fine but in the hereinafter extracted manner :-

Convict Sharwan @ Photu is sentenced as under :-

Section	Sentence	Fine	Sentence, in default of payment of fine
302 IPC	Rigorous Imprisonment for life	Rs. 10,000/-	Rigorous Imprisonment for one year

Convict Rajeev is sentenced as under :-

Section	Sentence	Fine	Sentence, in default of payment of fine
30 Arms Act	Rigorous Imprisonment for three months	Rs. 2,000/-	Rigorous Imprisonment for one month

5. Both the convicts become aggrieved from the verdict of conviction (supra), and, also become aggrieved from the consequential therewith sentence(s) (supra), as became imposed upon them by the

learned Convicting Court, and, have chosen to assail them, through theirs' constituting the instant appeals before this Court.

Factual background

6. The genesis of the prosecution case becomes encapsulated in the appeal FIR to which Exhibit PJ/1 is assigned. Therein, it is narrated that on 16.10.2010, P/SI Jaswant Singh received an information that there is a fire shot in the village Sewah, and, a person has expired and the dead body has been taken to General Hospital, Panipat. On receipt of this information, P/SI Jaswant Singh alongwith ASI Ajit Singh, ASI Raj Singh reached General Hospital, Panipat where Dharampal son of Ram Dia, brother of deceased Neeraj met him in front of dead house and got recorded his statement to the effect that he is an agriculturist. They are two brothers and both are married. He is elder and younger to him is Neeraj aged about 30 years. On that day, at about 8.15 pm, his brother Neeraj was going to his house on his motor cycle make Bullet A/F and he alongwith Rakesh son of Balraj resident of Sewah were about 10/15 paces behind him on a motor cycle make Splendor Plus bearing registration No. HR-06-4817 which was being driven by Rakesh. When his brother Neeraj reached at a street in front of the house of Raju son of Jai Karan Jat, where then there was light, then he saw that Sharwan @ Photu son of Sube Singh, resident of Sewah was standing in the street and that when his brother Neeraj crossed the street, then Sharwan @ Photu who was holding a licensed double barrel gun, fired two shots upon his brother Neeraj with an intention to kill him. His brother Neeraj, on receiving the fire shot, fell down on the road alongwith his motor cycle. He and Rakesh went to his brother and saw that Neeraj had received one fire arm injury on the left

side of his chest and also on the wrist of his right hand. They took Neeraj in their Innova car and admitted him in Prem Hospital, Panipat, where, doctors after giving him first aid, referred him to Jaipur Golden Hospital, Delhi. Thereafter, they took his brother in their Innova car but when they reached Sewah over-bridge, G.T.Road, then he saw that his brother Neeraj had succumbed to his fire arm injuries. Thereafter, they took the dead body of Neeraj to General Hospital, Panipat. He further stated that Sharwan @ Photu after firing the shot, had run away from the spot alongwith his gun. After reading the contents of his statement, he (Dharampal) put his signatures on the said statement. On the above statement, P/SI Jaswant Singh made his endorsement and sent the same to the Police Station on the basis of which present FIR was registered in this case.

Investigation proceedings

7. During investigation, P/SI Jaswant Singh conducted proceedings under Section 174 Cr.P.C., on the dead body of deceased Neeraj. He got photographed the place of occurrence. He got conducted the post mortem examination on the dead body of deceased and after doing the needful, the dead body was handed over to his family members.

8. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned, against both the accused.

Committal proceedings

9. Finding the offences under Section 302 IPC to be exclusively triable by the Court of Session, thus the learned committing

Court vide order dated 12.01.2011, committed the case for trial to the Court of the learned Additional Sessions Judge, Panipat.

Trial Court Proceedings

10. On finding a prima facie case, that accused Sharwan @ Photu had committed an offence punishable under Section 302 IPC and under Section 25 of the Arms Act, whereas, accused Rajeev had committed an offence punishable under Section 30 of the Arms Act, thereupon both the accused became charge sheeted separately on 15.02.2011, to which they pleaded not guilty, and, claimed trial.

11. In support of the prosecution case, the prosecution examined seventeen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. In their defence, the accused examined one witness Mukesh Kumar as DW-1.

12. After conclusion of the trial, as, became entered upon the FIR (supra), by the learned Additional Sessions Judge, Panipat, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the present appellants.

Submissions of the learned counsel for the convicts-appellants

13. The learned counsel appearing for the convicts-appellants has submitted with much force before this Court that the impugned judgment suffers from a gross vice of gross mis-appreciation and non appreciation of evidence germane to the charge. Therefore, he has

contended that the impugned verdict of conviction and the consequent therewith order of sentence be quashed and set aside.

Submissions of the learned State Counsel

14. On the other hand, the learned State counsel has argued that the appreciation of evidence as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

Eye Witness Account comprised respectively in the depositions of PW-8 and PW-9.

15. PW-Dharampal stepped into the witness box as PW-8. During his examination-in-chief, he voiced that on 16.10.2010 at about 08.15 PM when he and PW-9 Rakesh were coming from their fields, on a Hero Honda Motorcycle bearing No.HR-06-4817, they then sighted that the brother of PW-8, one Neeraj was also stride, his bullet motorcycle, and, the same was about 10 to 15 paces ahead of the motorcycle whereons PW-8 and PW-9 were astride. He continues to testify, that when deceased Neeraj reached near street known as NAION WALI GALI, located near the house of Raju son of Jai Karan, and where there was sufficient light, they then noticed that the accused Sharwan @ Photu whom he identified in Court, was standing there with a double barrel gun in his hand. Thereafter, he testifies that he sighted accused Sharwan @ Photu to therefrom, with an intention to kill, hence fire two shots at his brother Neeraj. One shot is spoken by him to strike the chest of deceased Neeraj and another shot is voiced by him to strike Neeraj on his right hand. After Neeraj received the gun shot injuries, PW-8 speaks about his falling down on the street, whereas, accused Sharwan @ Photu is spoken by him to flee from the

site alongwith his gun. Subsequently, both PW-8 and PW- 9 are spoken by him to shift Neeraj to Prem Hospital, Panipat, in an Innova Car, where first aid was given to him, but the doctors at Prem Hospital rather referred him for treatment to Jaipur Golden Hospital, Delhi. He continues to testify that thereafters' he and PW-Rakesh, took injured Neeraj in the Innova Car to Jaipur Golden Hospital, Delhi, but he speaks about injured Neeraj, rather enroute the above Hospital, near Village Sewah succumbing to the injuries sustained on his person. The dead body of deceased Neeraj is spoken by him to be taken to General Hospital, Panipat. He has proven his statement Exhibit PJ which he recorded before the police.

16. The above made testification embodied in the examination-in-chief of PW-8 may not also perse completely coax this court to record a finding of conviction against the convict Sharwan @ Photu, unless he had also successfully withstood the rigour of an exacting cross examination as became made upon him. Therefore, it but becomes imperative for this Court, to also thoroughly analyze the unfoldings, as occur in the cross examination(s), as made upon PW-8. The purpose of making a thorough reading of the cross examination(s), as made upon PW-8, does arise, as therefrom alone it can be determined qua whether therein he had grossly improved or embellished upon his previous statement recorded in writing, and, to also therefrom discern qua his therein contradicting the version qua the prosecution case as earlier thereto became spelt by him in his examination-in-chief.

Analysis of the cross examination of PW-8.

17. A deep reading of the cross examination as made upon PW-8, unfolds that though suggestions became meted to PW-8, to

scuttle the factum of his eye witnessing the occurrence alongwith PW Rakesh but the said suggestions became denied by him. The result of PW-8 successfully withstanding the ordeal of a rigorous cross examination, as became made upon him, by the learned defence counsel, is that, his testification is free from any taints of any gross improvements or embellishments vis-à-vis his previously made statement(s) in writing, to which Exhibit PJ is assigned, rather his lending the completest succor thereto. In other words, it has to be concluded that he has in his cross examination not contradicted the version qua the prosecution case, as becomes embodied in Exhibit PJ rather has lent corroboration thereto.

Deposition of PW-9 an eye witness to the occurrence

18. PW-9 is also an eye witness to the crime event. He like PW-8, has in his examination-in-chief completely corroborated the version qua the genesis of the prosecution case, as became initially embodied in his previously recorded statement in writing. Moreover, he too, alike PW-8 suffered the ordeal of an exacting cross examination being made upon him, but he also successfully withstood the said ordeal. Thus, it can be firmly concluded, that he has in his examination-in-chief neither grossly improved nor embellished upon his previously recorded statement in writing nor it can be concluded that in his cross examination he has contradicted the version as became earlier thereto hence narrated in his examination-in-chief. Resultantly, his testimony does corroborate the testimony of PW-8. Thus, with the testifications of PW-8 and PW-9 not suffering from any taint of any inter-se or intra-se contradictions. Resultantly, utmost credence is to be assigned theretos.

In aftermath, through the testifications of PW-8 and PW-9, it can be

with utmost formability concluded, that the prosecution has proven the charge drawn against the accused Sharwan @ Photu qua an offence punishable under Section 302 of the IPC.

Disclosure Statement of co-accused Sharwan @ Photu and consequent therewith recoveries.

19. During the course of investigations being made into the FIR, the investigating officer subjected accused Sharwan@Photu to police remand. During the course of the police remand, convict Sharwan @ Photu made a disclosure statement to which Exhibit PO is assigned. The contents of Exhibit PO are ad-verbatim extracted hereinafter.

“ On dated 15.10.2010 with my own licenced DBBL Gun Doga alongwith Mukesh son of Shri Raghbir Jat r/o Sewah had gone to Panipat Court, because Mukesh is witness in the murder case, which took place with the persons of Ugrakheri and Rajiv @ Rajia son of Ishwer Jat r/o Sewah also with his own DBBL Licensed Gun Doga alongwith Mukesh had gone to Panipat Court. Mukesh freed from Court. I had a work in the court. I said to Mukesh that you took my Doga Gun alongwith you in your vehicle. I will lift on coming in your village. Rajiv @ Rajia gave his own Doga Gun to Mukesh in front of me and said him that he has also a work and also put his Doga Gun in your home I have taken the same from your house on return. On dated 15.10.2010 I could not take my own Gun from the house of Mukesh. On dated 16.10.2010 a grudge has been arised regarding property with Neeraj son Ram Diya Jat of my village and on the same day dated 16.10.2010 in the evening quarrel arised regarding mobiles No. 9215665008 with Neeraj. I made a call on the Mobiles of Mukesh son of Raghbir and asked where is putting Gun. Mukesh said that same is putting in my bed and Gun of Rajiv @ Rajia be also is putting on the same place and he is out of station. Then I went on the house alongwith Mukesh. Then I went on the house of Mukesh and brought DBBL Gun Doga of Rajiv @ Rajia alongwith four Cartridges kept in the bed of Mukesh. I loaded two Cartridges in the same Gun and keep my eyes on the street from where Neeraj will come and stood in the street of Barber. When Neeraj was crossing on his Motor cycle in that street, I fired twice on Neeraj. Neeraj was injured on firing shot and he was expired later on. I went to the house of Mukesh alongwith two live cartridges and Gun from the

spot and lifted my licensed Gun from the bed of Mukesh and went on the Kotha of tubewell constructed in the field and stayed there during night. Both DBBL Guns and live Cartridges put into the tubewell Kotha and locked the same. Key of Lock is kept concealed near the Kotha in the field. No body know about it except me. I can tell regarding keys after demarcated that place. After demarcation of kotha, both DBBL Gun alongwith Empty Cartridges and both live cartridges can got recover. Disclosure statement recorded, read, heard and is correct. I have kept concealed nothing. I am using the Mobiles No. 9813986601. This number is of mine.”

20. A perusal of the contents of Exhibit PO which has been signaturred in English by convict Sharwan @Photu, unfolds that thereins not only convict Sharwan, has confessed his guilt in committing the murder of deceased Neeraj, but has also expressed his willingness to cause recoveries of the fire arms concerned, besides of live cartridges from the tubewell kotha, whereins he had locked them, keys whereof, he has spelt therein, to be concealed by him near the kotha in the fields, and, recoverie(s) whereof has been spelt thereins, to be voluntarily causable at his instance to the Investigating Officer concerned.

Re-Disclosure Statement of Convict Sharwan @ Photu

21. Moreover, through Exhibit PS contents whereof are extracted hereinafter, Exhibit whereof too, has been signaturred by the convict, Sharwan @ Photu, the latter made a re-disclosure statement, whereins he accepted, that the disclosure, as made on the same day, and, enclosed in Exhibit PO about his concealing two live cartridges in tubewell kotha, rather being false, whereas, the truth being that the said two live catridges were inserted in the pockets of his pant, and that on 17.10.2010, he had with his cousin Rakesh proceeded to Chandigarh, and, at the time of his going to sleep, he had taken off his trousers,

whereabouts' he had concealed the live cartridges, in a small type slab constructed in the bathroom of the rented house.

“.....In presence of the following witnesses accused Sarwan @ Photu on the Tubewell in field after recovery of DBBL Gun of self and other Gun of Raju @ Rajia alongwith two empty Cartridges without any fear and greediness disclosed that 1st disclosure statement that I gave regarding two live cartridges keeping in Tubewell Kotha, that I got recorded falsely. Truth is that, two live cartridges were put in my pocket of the pant. On dated 17.10.2010, from the kotha tubewell, I went to Chandigarh with my cousin Rakesh @ Raka and in the same night at the time of sleeping, when my pant put off, then both the cartridges were kept concealed in small type slab constructed in bathroom of rented house, I can told the location of room after walking with you and both cartridges can got recovered.”

22. Moreover, he has also disclosed therein, his readiness and willingness to get the two live cartridges recovered from the above said place to the investigating officer. However, in Exhibit PV which is also signed by the convict Sharwan @ Photu, contents whereof are extracted, he made another disclosure statement, but on 27.10.2010, wherein he again disclosed, that the place of his keeping the two live cartridges hence in a rented house of his cousin at Chandigarh rather being untruthful rather the truth being that he had got the incriminatory items recovered earlier.

“ In presence of following witnesses during police remand under police custody without any fear, greediness disclosed that on dated 26.10.2010, I got recorded my disclosure statement regarding two live cartridges of 12 bore, were kept in rented house of my cousin at Chandigarh, that I was told falsely. On dated 16.10.2010, two cartridges from the bed of Mukesh, which were of Rajiv @ Rajia that I was brought. But I did not brought four Cartridges, because in bed my licensed Gun DBBL and licensed Gun DBBL of Rajiv @ Rajia and 2 cartridges of Rajiv were also kept. That from the bed of Mukesh, I brought lifted weapons of offence two DBBL Doga Gun and two cartridges 12 bore, that I have been got recovered. Statement got recorded, hear and is correct. On 26.10.2010 I got recorded falsely regarding four cartridges.”

**Analysis of the signed disclosure statements made by convict
Sharwan @ Photu.**

23. A reading of the disclosure statements as made by convict Sharwan @Photu to the police officer during the course of the latter taking his police remand, does unfold, that therein he has confessed his guilt in the commission of the charged offence. Moreover, he has not either ably denied the existence of his signatures thereons nor has proven the said denials. Therefore, the evidentiary worth of the disclosure memo(s) (supra) is immense. However, merely on anvil of the prosecution proving the factum of valid drawing of the above disclosure statements, it cannot persuade this court, to record a finding of conviction against convict Sharwan @Photu, unless in pursuance thereto(s), the convict had also caused effectuation of the apposite recoveries to the investigating officer concerned. However, since a perusal of Exhibit PR, exhibit whereof becomes signed in English by convict Sharwan @ Photu, reveals that therethrough he had caused the recovery of a double barrel gun from the tubewell kotha, wherein, he had kept the same after committing the crime. Moreover, also when the recovery of the above weapon of offence as became effected from the tubewell kotha, did happen, after convict Sharwan @ Photu, opening the lock rather from the apposite keys whose recovery he had effected to, the investigating officer concerned, from the place depicted in Exhibit PX. In addition when the recovery of fire arms concerned alongwith two empty cartridges became effected by the convict to the investigating officer, from the site as mentioned in Exhibit PX, and, through recovery memo Exhibit PR. Resultantly immense evidentiary worth is to be assigned thereto(s).

Conjoint analysis of disclosure statement and recovery memo(s).

24. Since, in pursuance to the confession of guilt as made by the convict Sharwan @ Photu, in his signed disclosure statement, did also lead to the makings of recoveries, at his instance to the investigating officer concerned. Resultantly, the confession of guilt as made by the convict Sharwan @ Photu, does not become a bald simpliciter confession, of guilt nor is hit by the bar encapsulated in Section 25 of the Indian Evidence Act, 1872, rather it becomes both admissible and relevant. Importantly, when the site/place(s) wherefrom he caused the recovery of keys of the lock of the tubewell, wherein, he had kept the fire arms besides had kept the two empty cartridges, to the investigating officer concerned, rather evidently were site/place(s) known exclusively to the accused. Moreover, when the said site/place(s) is not proven by any cogent evidence, to be previously known to the investigating officer concerned nor when it has been obviously proven, that the said key, had been planted at the relevant place of its recovery rather by the investigating officer concerned. Therefore, recovery thereof at the convicts' instance to the investigating officer concerned cannot be said to be either engineered or concocted. If so, the making(s) of recovery of the keys of the lock of the kotha tubewell, wherein he had kept the fire arms concerned besides had kept the two empty cartridges, at the instance of the convict, to the investigating officer, rather is an efficacious recovery, whereto immense incriminatory vigour is to be assigned. In consequence, especially when on the recovery memo Exhibit PR, exists the signatures in English of the convict. Since the convict, has neither been able to ably deny the existence of his signatures on Exhibit PR nor has been able to prove the

said denial. Resultantly, the recoveries as made in pursuance to the disclosure statement(s), do acquire evidentiary sanctity. Therefore, the disclosure statement, as, made by the convict wherein he confessed his committing the charged offence, hence becomes not only admissible but also becomes cogently proven. In aftermath, this Court is constrained to conclude that through the above drawn memo(s) corroboration is lent to the credible eye witness account as testified by PW-8 and by PW-9.

Post-mortem Report.

25. The doctor who conducted an autopsy on the body of the deceased Neeraj stepped into the witness box as PW-16. During the course of his examination-in-chief, he proved the post mortem report as became authored by him and by Dr. Geeta Sharma. He also prove the existence thereons of the valid signatures of Dr. Geeta Sharma. The post mortem report is assigned Exhibit PZ. The observations as narrated in Exhibit PZ found to be existing on the body of the deceased are extracted hereinafter.

“1. An abrasion of the size 3 x 2 cm was present on posterior aspect of the right leg at middle 1/3rd.

2. Entry wound-there was a gun shot wound of entrance in the anterior thoracic wall in the first intercostal space and over the middle end of clavicle just lateral to the lateral border of sternum. The wound was oval in shape with the diameter of 3 cm horizontally and 2.8 cm vertically. The margins were inverted. The wound was surrounded by contusion ring of the size of 5 mm over right margin and 3 mm size around the rest of the wound. The margins of ring were irregular and lacerated. The lower boundary of the wound was 148 cm above under surface of left heel. The wound was surrounded by multiple punctate wound of the size of 1.5 x 1.5 mm. All over the anterior upper chest and anterior neck and it contained small hemorrhages and cherry red discolouration i.e. tattooing mark.

3. Exit wound – the wound was in form of a circular hole of the size 3.5 x 3.0 cm with everted margins. The margins were ragged, located 8 cm away from spine in the third posterior intercostal space over the back. The lower

margins of the wound were 146 cm above the under surface of left heel. There was no blackening or tattooing.

4. Track of wound – On further dissection. A track of wound was established from entry wound over anterior thoracic wall and was passing through medial end of clavicle and first intercostal space with fracture of medial end of clavical. It wag going further downword laterally and posteriorly breaching the parietal pleura with laceration of costal surface of left lung then it was going through third intercostal space uptil exit wound. Hematoma was present in the track of the wound. A plastic cylindrical foreign body of the size 4 cm was present alongwith multiple metallic foreign body of size 3 x 3 was found. It was taken out and was sealed.

5. A lacerated wound size of 10 x 5 cm over anterior and lateral aspect of the right wrist with inverted and irregular margins. One foreign body of the size 3 x 3 cm of metallic was recovered and it was sealed. On further examination the fracture lower end radius bone was present. Muscles and bones were explored. The blackening was present.

6. On the left side pleura a breach was present alongwith left haemothorax was present. The right side was pale and healthy. On the left lung laceration was present on the costal surface. It was simmered with blood. The stomach contained semi-digest food. Rest of the organ were pale and healthy.....”

26. The opinion about the cause of demise of deceased Neeraj has been testified by him to arise from hemorrhagic shock owing to injuries to left lung caused by fire arm. The fire arm injuries have been stated by him to be ante mortem nature and sufficient to cause death in the ordinary course of nature.

Analysis of the testimony of PW-16

27. The ante mortem fire injuries as became testified by PW-16 to be occurring on the body of the deceased Neeraj, do obviously connect, convict Sharwan @ Photu, to his firing gun shots from the fire arm concerned, at the deceased. Therefore, medical evidence corroborates credible ocular account qua the prosecution case and also corroborates the apposite disclosure statement besides the consequent therewith recoveries as became made through the recovery memo

(supra). In short, the above incriminatory evidence does unflinchingly prove the charge drawn against the convict.

Forensic evidence

28. The 12 bore Double barrel gun as became recovered through the appositely drawn recovery memo(s) besides the apposite recovered cartridges cases, were sent through memo no. 461-SPL of 04.11.2010, RC No. 877 of 08.11.2010, through constable Rajesh Kumar No. 107, to the FSL concerned. On an examination being made of the above, the Ballistic expert concerned, has in his report to which Exhibit PB is assigned, hence made the hereinafter extracted result(s).

“ 1. 12 bore DBBL guns marked W/1 and W/2 are firearms as defined in Arms Act 54 of 1959. Their firing mechanism were found in working order.
2. The 12 bore DBBL guns marked W/1 and W/2 had been fired through.
3. 12 bore fired cartridge cases marked C/1 and C/2 have been fired from left barrel of 12 bore DBBL gun marked W/2 and not from any other firearm even of same make and bore, because every firearm has its individual characteristic marks.....”

29. A reading of the hereinabove extracted result of the examination, as, made in respect of the fire arms concerned, besides, as made qua the fired cartridges cases respectively marked C1 and C2, reveals that the firing mechanism of the fire arms concerned was found to be in order besides also unfolds that the 12 bore fired cartridge cases respectively marked C1 and C2, becoming fired from the left barrel of the 12 bore double barrel gun, marked W2, and, theirs' not being fired from any other fire arm because it has been spoken therein, that every fire arm has its individual characteristic marks.

30. The report of the Ballistic expert has a rebuttable presumption of truth but no evidence to rebut the said presumption of

truth has been adduced by the defence. The above extracted result of the examination, as, made respectively upon the fire arms concerned, and, upon the fired cartridge cases mark C1 and C2, does obviously corroborate, the above alluded incriminatory evidence adduced against the convict Sharwan @ Photu.

31. The predominant forensic evidence hence unflinchingly proving the charge drawn against the convict, does become comprised in PW-16, rather testifying about one foreign body of the size 3/3 cm of metallic, becoming recovered from the body of deceased Neeraj, upon it becoming put to autopsy, and, thereafter it becoming sealed. The said metallic item which became extricated from the body of deceased Neeraj rather by the doctors who made an autopsy thereons, did come to be, as revealed by the report of the Ballistic expert, to which Exhibit PB is assigned, hence sent in a sealed parcel No V, by the investigating officer concerned, to the ballistic expert concerned. One lead pellet as became enclosed in a sealed cloth parcel No. V, became put to examination, and as unfolded by Exhibit PB, the same became opined to be a fired lead pellet, from a 12 bore fire arm. When PW-16 stepped into the witness box, the sealed parcel bearing the seal of the FSL concerned, became produced in court and after the retrieval therefrom of the pellets, as became enclosed in a vial, as, kept inside a plastic bag, hence the said pellets became shown to PW-16. Upon the above being shown to PW-16, he opined that they were the very same which were extracted by him from the body of deceased Neeraj, upon, his making an autopsy thereons. The effect of the FSL pronouncing, qua parcel V as sent to it, enclosing therein the pellets, as were evidently removed by PW-16, from the body of deceased Neeraj, when

he alongwith Dr.Geeta Sharma made an autopsy thereon, and, thereafter theirs evidently becoming sealed by the doctors concerned. Moreover, when subsequently, as revealed by the report of FSL, the above sealed cloth parcel became designated parcel No.V, contents whereof became provenly examined, and, thereons the above opinion was made. The result of the above extracted opinion as made upon the contents of parcel no V, does formidably suggest, that the pellets as became extricated from the body of deceased, did come to be fired from the fire arm, as became recovered through recovery memo Exhibit PR, at the instance of the convict Sharwan @ Photu to the investigating officer concerned. Since the above opinion acquires conclusivity given no evidence to rebut the same rather emerging. Consequently, when PW-16 became shown the pellets whereons the opinion (supra) was made by the ballistic expert concerned, hence leading him to identify them to be the very same which became extricated from the body of deceased. Resultantly the pellets as found within the body of the deceased Neeraj are to be concluded to be fired thereinto from the fire arm concerned, hence by convict Sharwan @ Photu. Therefore, the best forensic evidence also does conclusively prove the charge.

Conviction of Rajeev for breach of Section 30 of the Arms Act

32. The double barrel gun wherefrom fatal gun shots were fired by convict Sharwan @ Photu at deceased Neeraj, was owned by convict Rajeev. Moreover, convict Rajeev became issued a valid license in respect thereof. The factum of user by convict Sharwan @ Photu of the double barrel gun owned besides licensed in his favour, is revealed, in the disclosure statement made by convict Sharwan @ Photu, to which Exhibit PO is assigned. Moreover, convict Rajeev also in his

signed disclosure statement to which Exhibit PT is assigned, echoes that he had not safely kept the said fire arm rather had handed over the said fire arm to one Mukesh. It was from the house of one Mukesh that convict Sharwan @ Photu had removed the incriminatory fire arm, and, had fired therefrom the fatal gun shots at deceased Neeraj. Though convict Rajeev, is not the principal in the first degree, as he was not present in the crime site nor there is any evidence qua his sharing any conspiratorial *mens rea* with the principal convict Sharwan @ Photu, in the latter committing the murder of deceased Neeraj. Nonetheless, the factum of his omitting to safely keep the fire arm, thus breaches the mandate of Section 30 of the Arms Act. Moreover, it also causes breach to the relevant condition No. 10, as carried in Rule 112 of the Arms Rules, 2016. The relevant condition No. 10 becomes extracted hereinafter

“ The licensee shall ensure to keep his firearm in his possession at a secured place under lock and key when such firearm is not carried on his person or not under his direct control, however, he shall not deposit any firearm or ammunition in any bank locker.”

33. A reading of the above extracted relevant condition No. 10 of Rule 112 of the Arms Rules, 2016, does but make evident upsurgings, that despite a mandate being cast upon convict Rajeev to keep the licensed fire arm in his possession but at a secured place under lock and key. Nonetheless, since he did not evidently keep the licensed fire arm at a secured place under his lock and key rather he handed over the same to one Mukesh. Thus, when there is evident breach caused to condition No. 10 (supra) as occurs in Rule 112 of the Arms Rules 2016. Resultantly he becomes amenable for his becoming convicted besides his becoming consequently sentenced to undergo the substantive

sentence of imprisonment besides becomes amenable to deposit the fine amount as becomes imposed upon him.

PRINCIPLES

34. 1) When the disclosure statements are provenly signed by the accused and also lead to recoveries, thus, evidentiary vigour is to be assigned to both the disclosure statements and to the consequent therewith recoveries. However, if the signatures of the accused on the disclosure statement are proven to be false, thereupon, no credit is to be assigned to the disclosure statement. In sequel also no credit is to be assigned to the consequent therewith recoveries. Contrarily, the consequent therewith recoveries are to be concluded to be concocted and manufactured.
- 2) The report of the FSL concerned has a rebuttable presumption of truth, but if evidence to rebut the said presumption is not adduced, thereupon, the report of the forensic expert acquires conclusivity.
- 3) Even if the weapon of offence is owned by a person other than the principal offender, and, even when the licensed holder of the incriminatory weapon, is not, the principal offender in the first degree nor is proven to be sharing any conspiratorial *mens rea* with the principal offender, yet when he fails to ensure the safe keeping of the incriminatory weapon of offence. Thus, he becomes amenable for conviction for committing breach of the mandate of Section 30 of the Arms Act and qua consequent therewith conditions.

FINAL ORDER

35. In consequence, there is no merit in the appeals, and, they are dismissed. The impugned verdict(s), and, consequent therewith sentence(s) (supra), as imposed upon the convicts, are affirmed and maintained.

36. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be forthwith sent down.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

17.11.2022

kavneet singh

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