

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

CRA-D-535-DB-2012 (O&M)

Reserved on: 23.11.2022

Date of decision: 02.12.2022

MOHINDER SINGH AND OTHERS

...Appellants

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE KULDEEP TIWARI

Present: Mr. Pradeep Prakash Chahar, DAG, Haryana (Amicus Curiae) and
Mr. Jashandeep Singh Sandhu, Advocate
for the appellants.

Ms. Monika Jalota, Sr. DAG, Punjab

Mr. Manwinder Singh Sindhu, Advocate
for the complainant.

SURESHWAR THAKUR, J.

1. Through the impugned verdict made on 31.03.2012, the learned Additional Sessions Judge, Bathinda, upon Sessions Case No.47 of 30.10.2008, proceeded to, in respect of charges drawn for offences punishable under Sections 148/302/307/356/336/325/120-B/149 of the IPC, and, under Sections 25/27 of the Arms Act, hence make a verdict of conviction, upon, the convicts/appellants. Moreover, through a separate sentencing order drawn on 31.03.2012, the learned trial Judge proceeded to impose upon the convicts (supra) both sentence(s) of imprisonment as well as of fine but in the hereinafter extracted manner :-

Name of the convict	Convicted under section	Sentence imposed	In default of payment of fine.
Amarjit Singh	148 IPC	Rigorous imprisonment for one year	-----
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
Budh Singh	148 IPC	Rigorous imprisonment for one year	-----
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
Buta Singh	148 IPC	Rigorous imprisonment for one year	-----
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.

Name of the convict	Convicted under section	Sentence imposed	In default of payment of fine.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
Nachattar Singh @ Babu	148 IPC	Rigorous imprisonment for one year	-----
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
	25 Arms Act	Rigorous imprisonment for two years and fine of Rs.2000/-	Rigorous imprisonment for one month.
	27(1) Arms Act	Rigorous imprisonment for three years and fine of Rs.2000/-	Rigorous imprisonment for one month.
Mohinder Singh	148 IPC	Rigorous imprisonment for one year	-----
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
Sukhdev Singh	148 IPC	Rigorous imprisonment for one year	-----

Name of the convict	Convicted under section	Sentence imposed	In default of payment of fine.
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
Jaskaran Singh @ Sarwan Singh @ Sarna @ Sharanjit Singh	148 IPC	Rigorous imprisonment for one year	-----
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
Baldev Singh son of Hakam Singh	148 IPC	Rigorous imprisonment for one year	-----
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.

Name of the convict	Convicted under section	Sentence imposed	In default of payment of fine.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
Baldev Singh son of Dalip Singh	148 IPC	Rigorous imprisonment for one year	-----
	302 IPC	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---
Surjit Singh	148 IPC	Rigorous imprisonment for one year	-----
	302/149	Rigorous imprisonment for life and fine of Rs.5000/-	Further rigorous imprisonment for six months.
	325 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	325/149 IPC	Rigorous imprisonment for three years and fine of Rs.1000/-.	Further rigorous imprisonment for one month.
	323 IPC	Rigorous imprisonment for six months	---
	356 IPC	Rigorous imprisonment for one year	---

2. 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 sentence of imprisonment.

3. Moreover, through the verdict (supra), the learned trial Judge concerned, made a verdict of acquittal against co-accused Gurpreet Singh and Jagtar Singh in respect of charge(s) respectively drawn against them for offences punishable under Sections 148/302/307/356/336/325/120-B/149 of IPC and under Sections 25/27 of Arms Act. 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. Therefore, the above verdict of acquittal acquires conclusive and binding effect.

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.PW17/5 is assigned, therein, it is narrated that on 10.7.2008 a telephone call was received from Civil Hospital, Bathinda regarding receipt of dead bodies of Hardev Singh and Labh Singh and admission of injured Baldev Singh, Subhash Chander, Jindi alias Jeet Singh and Harbans Singh in the hospital. Thereupon, Inspector Devinder Singh SHO visited Civil Hospital, Bathinda along with some other police officials. There Sukhdeep Singh complainant met him and made statement to the effect that he is resident of Village Jassi Pau Wali and is a farmer. His uncle Santokh Singh etc. had purchased 3½ killas of land at village Gehri Bhagi. On that day in the morning, he along with his uncle Sukhdev Singh as well as Baldev Singh son of Gurjant Singh, Harbans Singh son of Nand Singh, Hardev Singh son of Sher Singh, residents of Village Jassi Pau Wali, Subhash son of Sohan Lal resident of Paras Ram Nagar, Bathinda, Labh Singh

son of Kartar Singh, resident of Balraj Nagar, Bathinda and Jeet Singh son of Kehar Singh, resident of Village Ablu were ploughing the said land with their two tractors. Then at about 5.00 a.m., accused Amarjit Singh son of Mohinder Singh, resident of village Gehri Bhagi came there on his tractor-trolley along with Buta Singh son of Nachattar Singh, Buta Singh son of Jora Singh, Mohinder Singh son of Jora Singh, Jaskaran Singh son of Dulla Singh, Surjit Singh son of Jora Singh, Sukha Singh son of Jora Singh, Baldev Singh son of Hakam Singh, Baldev Singh son of Dalip Singh, residents of Village Gehri Bhagi and 8-10 other unidentified persons while armed with deadly weapons including Gandasas, Takuas, Swords, Ghops and Lathies. Immediately on reaching the spot, Nachatter Singh raised a Lalkara exhorting to teach a lesson to Santokh Singh etc. for ploughing their land. Then all the accused started beating members of the complainant party with their respective weapons and caused serious injuries to them. Amarjit Singh crushed Hardev Singh under his tractor. Due to fear the complainant concealed himself in nearby field having Narma crop and witnessed this occurrence. The accused beat all the members of the complainant party and went from the spot while considering that they all have died. They also snatched guns of Hardev Singh and Labh Singh and fired gun shots. They went away from the spot along with their respective weapons on their tractor trolley. Then complainant came out and went near other members of the complainant party and saw that Sukhdev Singh, Baldev Singh, Subhash Chander, Jeet Singh and Harbans Singh were seriously injured and their legs and arms had been broken. Hardev Singh and Labh Singh were in critical condition and had received multiple injuries. Then the complainant made a phone call to his village and invited some persons to the spot. Calls were also made to Sahara Club to send Ambulances to the spot. On the said Ambulances the injured were

shifted to Civil Hospital, Bathinda by the complainant along with Gurjant Singh Sarpanch of Village Jassi Pau Wali. But Hardev Singh and Labh Singh died on the way and other injured were admitted in the hospital. The accused committed murder of Hardev Singh and Labh Singh by causing injuries to them and also caused injuries to Santokh Singh, Baldev Singh, Subhash Chander, Jeet Singh and Harbans Singh with intent to commit their murder. Motive behind this occurrence is that the accused had been stopping Santokh Singh uncle of the complainant from entering the land purchased by them. Hence, action be taken against the accused.

INVESTIGATION

6. This above given statement of complainant was attested by Devinder Singh SHO and he made endorsement thereon and sent a ruqa to the police station through C.Ranjit Singh for registration of formal FIR under Sections 302/307/325/356/336/148/149 of the IPC. Inquest reports of Labh Singh and Hardev Singh were prepared and postmortem examinations on their dead bodies were got conducted. The other injured were declared unfit to make statement by the doctor concerned. Then Devinder Singh SHO visited the spot and prepared rough site plan on demarcation of the complainant. One Eicher Tractor along with cultivators and a Maruti Car were recovered from the spot and were taken in police possession. On 11.7.2008, the injured were again declared unfit to make statement by the doctor concerned. On 12.7.2008 after obtaining fitness certificate from the doctor concerned statement of Santokh Singh was recorded. Statements of other injured were also recorded. Blood stained clothes of the injured were taken in police possession. On 14.7.2008, accused Mohinder Singh, Budh Singh, Surjit Singh and Sukhdev Singh, on 16.7.2008 accused Buta Singh, Amarjit Singh were arrested and on 28.7.2008 accused Nachattar Singh alias Babu was arrested. On 28.7.2008, information

was received regarding death of Harbans Singh, who was admitted to the hospital. Then SI Jagdev Singh visited there and prepared inquest report and got postmortem examination conducted on his dead body. Weapons used in the commission of the offence were recovered from the arrested accused. On 12.7.2008, on the basis of statement of Santokh Singh offence under Section 120-B of IPC and under Sections 25/27 of the Arms Act were added. Blood stained soil lifted from the spot and blood stained clothes and guns were sent to the Forensic Science Laboratory, Chandigarh (hereinafter referred as the FSL). Report regarding blood stained soil and blood stained clothes was received. Report regarding examination of the arm is yet to be received. The remaining accused filed applications pleading their innocence and thereupon the SSP, Bathinda constituted a Committee under the SP(D), Bathinda for holding inquiry. Hence, proceedings against the remaining accused shall be initiated after receipt of the report of the Inquiry Committee Statements of remaining witnesses were recorded. On completion of investigation, final report against the accused was presented in the trial Court.

COMMITTAL PROCEEDINGS

7. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 17.10.2008 the learned Judicial Magistrate Ist Class, Bathinda, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

8. The prosecution examined as many as 17 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 7 defence witnesses.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT(S)

9. 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 some of the co-accused 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 remaining co-convict(s) become 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 the co-accused concerned, by PW-6/B, PW-7, and, by PW-9, was a legally frail identification, and to which no credence can be assigned. Moreover, he argues that the impugned verdict of conviction suffers from a gross taint of gross mis-appreciation and non appreciation of evidence germane to the charge. Thus, he argues that the impugned verdict be quashed and set aside by this Court.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

10. 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 THREE OCULAR WITNESSES WHO HAVE RESPECTIVELY STEPPED INTO THE WITNESS BOX AS PW-6/B, PW-7 AND PW-9.

11. PW-6/B in his examination-in-chief has articulated, that he is resident of Village Jassi Pau Wali and is a farmer. He further testifies that his

uncle Santokh Singh etc. had purchased 3½ killas of land at village Gehri Bhagi. On that day in the morning, he along with his uncle Sukhdev Singh as well as Baldev Singh son of Gurjant Singh, Harbans Singh son of Nand Singh, Hardev Singh son of Sher Singh, residents of Village Jassi Pau Wali, Subhash son of Sohan Lal resident of Paras Ram Nagar, Bathinda, Labh Singh son of Kartar Singh, resident of Balraj Nagar, Bathinda and Jeet Singh son of Kehar Singh, resident of Village Ablu, were ploughing the said land with their two tractors. Then at about 5.00 a.m., accused namely Amarjit Singh son of Mohinder Singh, resident of village Gehri Bhagi came there on his tractor-trolley along with Buta Singh son of Nachattar Singh, Buta Singh son of Jora Singh, Mohinder Singh son of Jora Singh, Jaskaran Singh son of Dulla Singh, Surjit Singh son of Jora Singh, Sukha Singh son of Jora Singh, Baldev Singh son of Hakam Singh, Baldev Singh son of Dalip Singh, residents of Village Gehri Bhagi and 8-10 other unidentified persons while armed with deadly weapons including Gandasas, Takuas, Swords, Ghops and Lathies. Immediately on reaching the spot, Nachatter Singh raised a *Lalkara* for teaching a lesson to Santokh Singh etc. for ploughing their land. Then all the accused started beating members of the complainant party, with their respective weapons and also caused serious injuries to them. Amarjit Singh crushed Hardev Singh under his tractor. Due to fear, the complainant Santokh Singh concealed himself in a nearby field having Narma crop and witnessed the occurrence from there, whereafter they are spoken to leave the crime site, considering that the assaulted persons have succumbed to their injuries. He also testifies that during the course of assault the accused snatched the guns of Hardev Singh and Labh Singh and therefrom fired gun shots and whereafter they alongwith their respective assault weapons left the crime site on their tractor trolley. Then complainant came out and went

near other members of the complainant party and saw that Sukhdev Singh, Baldev Singh, Subhash Chander, Jeet Singh and Harbans Singh were seriously injured, and, that their legs and arms had been broken. Hardev Singh and Labh Singh were in a critical condition and had received multiple injuries. Then the complainant made a phone call to his village and invited some persons to the spot. Calls were also made to Sahara Club to send Ambulances to the spot. On the said Ambulances the injured were shifted to Civil Hospital, Bathinda by the complainant along with Gurjant Singh Sarpanch of Village Jassi Pau Wali, but Hardev Singh and Labh Singh died on the way and other injured were admitted in the hospital. The accused committed murder of Hardev Singh and Labh Singh by causing injuries to them and also caused injuries to Santokh Singh, Baldev Singh, Subhash Chander, Jeet Singh and Harbans Singh with intent to commit their murder.

12. The testification of witness (PW-7), an ocular witness to the occurrence, as carried in his examination-in-chief, was subjected to an exacting cross-examination. However, PW-7 successfully withstood the rigor of a grilling cross-examination. Therefore, utmost sanctity is to be assigned to the speakings made by PW-7 in his examination-in-chief. The testification as became rendered by PW-7, 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 occurring 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-7.

13. The other two ocular witnesses to the occurrence are PW-6/B Santokh Singh and PW-9 Jeet Singh, who also have rendered the firmest

corroboration to the testification as became rendered by PW-6/B. Their testification(s) are also free from any taints of any gross improvements or embellishments being made from their respectively made previous statements in writing. Moreover, therein there are no rife *inter-se* contradictions *inter-se* the testification rendered by all the afore prosecution witnesses. Therefore, the untainted *inter-se* corroborative testifications, as, became rendered by PW-7, PW-6/B and by PW-9, 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 COUNSEL FOR THE CONVICTS-APPELLANTS

14. A deepest and wholesome reading of the testifications rendered by PW-6/B, PW-7 and by PW-9, unveil that, all the three in their respective examinations-in-chief, had identified the accused persons, to be the persons who fired shots, from the incriminatory pistol(s) at the complainant party. All the three PWs were put to the ordeal of a rigorous cross-examination, but during course thereof, no suggestion became put to all, rather by the learned defence counsel, hence suggestive that the said echoings, as occurring in their respective examination-in-chief, rather are completely false. Omission (supra) does fillip an inference that the said identification, in Court of the accused persons, by all the three PWs, is a truthful identification, and, also obviously did not enjoin the investigating officer concerned, to prior thereto conduct any valid test identification for enabling the concerned, to then identify the convict.

DISCLOSURE STATEMENTS OF ACCUSED AND CONSEQUENT THEREWITH RECOVERIES

15. During the course of the custodial interrogation of accused Nachhattar Singh @ Babu, he made a signed disclosure statement as

comprised in Ex.PW-14/B, contents whereof become extracted hereafter.

“xxx

Disclosure statement of accused Nachhattar Singh @ Babu

In the presence of below noted witnesses accused Nachhattar Singh @ Babu disclosed that “on 10.7.08 during the fight snatched rifles out of which one 12 bore and one 315 bore from Santokh Singh party in which three 12 bore and one 315 bore, I have kept conceal in my house, to which I knew only and can get recover to you”. On this disclosure statement has been prepared. Memo is being got attested from the witnesses and accused Nachhattar Singh.

LTI said accused Nachhattar Singh

Witness: Sd/- Balwant Singh 1489 P.S. Sangat

Sd/- HC Mhanga Singh 1830 P.S. Sangat

Sd/- Gurdev Singh SI, PS Sangat 28.7.08”

A reading of the above extracted signed disclosure statement as made by accused Nachhattar Singh @ Babu, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of 12 bore rifle Ex.PW-14/C, 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.PW-14/C, he caused the recovery of 12 bore rifle. 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.PW-14/B, 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-6/B, PW-7 and by PW-9.

16. During the course of the custodial interrogation of accused Mohinder, he produced one cudgel before the investigating officer concerned.

Accused Buta Singh produced one chopper, accused Surjit Singh produced one iron rod, accused Sukhdev Singh @ Sukha produced one small axe, accused Amarjit Singh produced one mobile phone mark Nokia 1108 Code No.0519567, and cash worth Rs.8000/-, one chopper, one tractor mark Jeetar 2511, without number plate, alongwith trolley. Accused Buta Singh produced one chopper and one mobile phone of Nokia Model 2600 before the investigating officer concerned. The above caused recoveries by the accused concerned to the investigating officer concerned remain unchallenged, through an efficacious cross examination being made, either upon the investigating officer concerned, or upon any marginal witness thereto. The consequent effect thereof, is that, all the relevant recoveries/productions of incriminatory items, do become related not only to the accused but also their user by the accused in the commission of the charged offences, does also also become cogently established. Conspicuously also when no firm evidence has been adduced suggestive that the said recoveries/ productions are invented, false or contrived. Therefore, corroboration through the above production(s)/recoveries of the relevant assault weapons, and or, of the other incriminatory items, does firmly corroborate rather the un-tainted ocular account rendered qua the prosecution case by the ocular witnesses (supra).

MEDICAL EVIDENCE (POST MORTEM REPORT)

17. The post mortem upon the body of deceased Harbans Singh was conducted on 26.07.2008 by PW-1. PW-1 has proven *qua* his, authoring Ex.PB, as relates to the autopsy as made upon the body of deceased Harbans Singh.

18. Moreover, he has proven that the cause of death of deceased Harbans Singh, was owing to hemorrhage, shock and septicemia caused by the injuries, 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.

- “(i) Right lower leg amputated below knee joint with L.W. Present with C.B. muscle bone exposed and damaged.*
- (ii) Stitched wound 10 cm, long on left lower leg on dissection under lying bones were found fractured.*
- (iii) Stitched wound 8 cm on right shoulder, on dissection underlying bone was found fractured.*
- (iv) Right mandible broken with few tooth missing.*
- (v) Swelling 8 cm x 4 cm on right elbow, on dissection underlying bone was found fractured.*
- (vi) Stitched wound 12 cm, long on occipital area of scalp, underlying bone was found fractured with lacerations of brain matter with intra cranil clot present in brain cavity.”*

19. The post mortem upon the body of deceased Hardev Singh was conducted on 10.07.2008 by PW-2. PW-2 has proven *qua* his, authoring Ex.PF, as relates to the autopsy as made upon the body of deceased Hardev Singh.

20. Moreover, he has proven that the cause of death of deceased Hardev Singh, was owing to hemorrhagic shock caused by the injuries, 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-2 on the body of deceased are extracted hereinafter.

- “(i) Lacerated wound 12 cm x 4 cm, on the back of right leg, placed vertically muscles are exposed, clotted blood present. On dissection both bone found fracture.*
- (ii) Lacerated wound 12 cm x 4 cm, on the enterio medial aspect on right left on the middle 1/3rd.*
- (iii) Contusion 6 cm x 3 cm, present on the front of left leg on lower 1/3rd on dissection both found fractured.*

(iv) *Contusion 2 cm x 0.25 cm, on the left leg on front aspect present on middle 1/3rd.*

(v) *Lacerated wound 1.5 cm x 0.25 cm, present on the chin anterior aspect.*

(vi) *Contusion 4 cm x 2 cm, on the anterior lateral aspect just below the left chest. On dissection spleen found injured, lot of blood present around it. ”*

21. The post mortem upon the body of deceased Labh Singh was also conducted on 10.07.2008 by PW-2. PW-2 has proven *qua* his, authoring Ex.PK, as relates to the autopsy as made upon the body of deceased Labh Singh.

22. Moreover, he has proven that the cause of death of deceased Labh Singh, was owing to hemorrhagic shock caused by the injuries, 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-2 on the body of deceased are extracted hereinafter.

“(i) Lacerated wound 7 cm x 0.35 x 0.5 cm, on the left side of forehead, just lateral to midline, 5 cm, about the base of nose, clotted blood present, on dissection underlying bone found fractured, meninges found injured, laceration of brain matter present, subarachnoid hemorrhage present and inter cerebral haematoma 4 cm x 5 cm was present.

(ii) Lacerated wound 3 cm x 1 cm, horizontally placed on the front of right leg, just below the knee joint, clotted blood was present. On dissection, underlying bone found fractured.

(iii) Lacerated wound 2 cm x 0.5 cm, 1 cm, lateral to injury no. 2, horizontally placed on the right leg, clotted blood present. On dissection underlying bone found fractured.

(iv) *Lacerated wound 2 cm x 0.25 cm, horizontally placed 5 cm below the injury no. 2, on the right leg. Clotted blood was present. On dissection underlying bone found fractured.*

(v) *Lacerated wound 1.5 cm x 0.25 cm, on the front of right leg, just below the injury no. 4.*

(vi) *Lacerated wound 1 cm x 0.5 cm, on the front of left leg, 5 cm, below the knee joint, clotted blood present. On dissection underlying bone found fractured.*

(vii) *Reddish abrasion 2 cm x 1 cm, on the middle of left leg. Clotted blood present. ”*

23. The medical examination on the body of injured Baldev Singh was made on 10.07.2008 by PW-3. PW-3 has proven *qua* his, authoring Ex.PW-3/A, as relates to the injuries suffered on the body of injured Baldev Singh. The relevant injuries as noticed by PW-3 on the body of deceased are extracted hereinafter.

“(i) Lacerated wound 2 cm x 1.5 cm, on front of left leg in its upper 1/3rd fresh bleeding was present.

(ii) A lacerated wound 2 cm x 1.5 cm, on front of left leg on lower 1/3rd. Fresh bleeding was present.

(iii) Swelling on back of left hand and wrist.”

24. The medical examination on the body of injured Gindi @ Jit Singh was made on 10.07.2008 by PW-3. PW-3 has proven *qua* his, authoring Ex.PW-3/B, as relates to the injuries suffered on the body of injured Gindi @ Jit Singh. The relevant injuries as noticed by PW-3 on the body of deceased are extracted hereinafter.

“(i) A reddish contusion 3 cm x 3 cm, on forehead just above the root of nose.

(ii) A reddish contusion 7 cm x 7 cm, on back of left elbow and in upper part of left forearm.

(iii) *A lacerated wound 5 cm x 0.30 cm, on the medial aspect of left index finger on its distal 2/3 part. Fresh bleeding was present.*

(iv) *A lacerated wound 3 cm x 0.25 cm, on front of left leg in its middle 1/3rd. Fresh bleeding was present.*

(v) *Lacerated wound 2 cm x 0.3 cm, on the dorsal surface of left foot in its middle part.*

(vi) *Lacerated wound 1 cm x 0.2 cm. On medial aspect of right left in its middle 1/3rd. ”*

25. The medical examination on the body of injured Subhash Chand was made on 10.07.2008 by PW-3. PW-3 has proven *qua* his, authoring Ex.PW-3/C, as relates to the injuries suffered on the body of injured Subhash Chand. The relevant injuries as noticed by PW-3 on the body of deceased are extracted hereinafter.

“ (i) *Lacerated wound 15 cm x 8 cm. On front of right leg in its middle exposing fractured pieces bones.*

(ii) *Lacerated wound 4 cm x 2 cm. On front of right leg 3 cm, medial to injury no. 1.*

(iii) *Lacerated wound 10 cm x 3 cm, on postero medial aspect of right knee.*

(iv) *Lacerated wound 2 cm x 2 cm, on antero medial aspect of left leg in its upper 1/3rd.*

(v) *Lacerated wound 3 cm x 1 cm, on back of middle phalanx of middle finger of left hand.*

(vi) *Swelling at right hand and right wrist.*

(vii) *Swelling at left hand and left wrist.*

(viii) *Contusion on right shoulder and right arm up to lower 1/3rd of arm, with two lacerated wounds 0.5 cm x 0.5 cm, each in upper 1/3rd.*

(ix) *Lacerated wound 7 cm x 3 cm, on lateral aspect of upper 1/3rd of left thigh.*

(x) *7 cm x 2 cm, lacerated wound on lateral aspect of left knee.*

(xi) *10 cm x 5 cm, lacerated wound on back of left thigh in its middle.*

(xii) *Swelling on left arm. Tenderness was present. ”*

26. The medical examination on the body of injured Santokh Singh was made on 10.07.2008 by PW-3. PW-3 has proven *qua* his, authoring Ex.PW-3/E, as relates to the injuries suffered on the body of injured Santokh Singh. The relevant injuries as noticed by PW-3 on the body of deceased are extracted hereinafter.

- “(i) Lacerated wound 2 cm x 1 cm, on outer aspect of middle of right leg.*
- (ii) Lacerated wound 1 cm x 1 cm, on medial aspect of lower part of right leg.*
- (iii) Lacerated wound 2 cm x 1 cm, anterior aspect of left leg, 7cm, below knee.*
- (iv) 3 cm x 0.5 cm x bone deep lacerated wound on right parietal area 5 cm, supero posterior to upper border of pinna. Fresh bleedings was present in all injuries.”*

The inferences from the proven MLRs drawn in respect of the injured witness, are that, the above disclosure statements besides, the consequent therewith recoveries, do garner therefrom corroboration, besides the testifications of the injured eye-witnesses to the occurrence, do also therefrom acquire evidentiary strength, given theirs receiving assault injuries on their respective persons, through users of the respectively recovered incriminatory weapons of offence, at the instance of the accused concerned. Thus, also the injured prosecution witness concerned, become empowered to render a vivid ocular account qua the occurrence. Moreover, even if they are injured witnesses and even if they also are may be interested eye-witnesses but when for reasons (supra), theirs respectively rendered testifications are untainted. Thus sanctity has to be imputed to their statements on oath. Therefore, reiteratedly their interestedness also becomes completely waned. More so, when an injured eye witness would, unless cogently proven to be not available, at the crime site, hence render a truthful account in respect of relevant crime event.

FSL REPORT

27. Through reference No.581/2008/FSL/Pb./Sero./Exam, of 27.08.2008 and through reference No.231/08/FSL/Fall./Exam., of 16.10.2008, certain incriminatory items/weapons of offence became sent through C. Balwant Singh No.844 to the FSL concerned, for examinations thereof, being made by the Expert concerned. A perusal of the result of the examination as made by the FSL, on the 12 bore DBBL and on .315/8MM bolt action rifle, though makes it forthrightly clear, that the same had been used, but the ballistic expert has refrained from making any firm opinion, about the timing of bullets/pellets being fired therefrom. The report of the Ballistic Expert is carried in Ex.PX. The relevant result is extracted hereinafter.

“Result

- 1. The chemical examination of barrel wash of 12 bore DBBL gun no.49538 contained in parcel 'B' under reference indicates that it had been used. However, its last date of fire cannot be ascertained.*
- 2. The chemical examination of barrel wash of .315"/8MM bolt action rifle no.AB05-5748 contained in parcel 'C' referred above indicates that it had been used. However, its last date of fire cannot be ascertained.*
- 3. No definite opinion is offered with respect to two .12 bore cartridge cases marked C/1 and C/2 (contained in parcel 'A' referred above), fired from 12 bore DBBL gun No.49538 due to lack of sufficient individual characteristic marks.”*

ANALYSIS OF THE OPINION OF THE BALISTIC EXPERT AND CONCLUSIONS THEREFROM

28. Thus, even if the ballistic expert, has refrained from giving a firm opinion about the time when the relevant firearm was used, so as to relate it to the time of the crime occurrence happening at the crime site. However, the above want of opinion does not at all denude the opinion made by the Ballistic

Expert concerned about the user of 12 bore DBBL gun No. 49538, and or, user of rifle No. AB05-5748. Conspicuously also when the signed disclosure statement(s) made by the convict(s) concerned, rather has been for reasons (supra), concluded to be completely valid, besides when the same also concomitantly hold the requisite evidentiary worth, thus, also the effectuation of the relevant recoveries when are but a sequel thereof. Resultantly, then the relevant recoveries are also valid, and but, do embody the best incriminatory evidence, especially when the same are neither proven to be concocted nor tainted. Therefore, irrespective of the ballistic expert not making any vivid echoing in Ex.PX, with respect to the time of user of the crime weapon by the convict, yet the factum of its user at the relevant time by the convicts, does become fully established, from the credible ocular account rendered qua the crime event. If so, the further sequel thereof, is that, even if opinion no.3 thereof, qua does not earmark the fact of firing of .12 bore cartridge cases mark C-1 and C-2, from the DBBL gun No. 49538, and that too on account of lack of sufficient individual characteristic marks. Nonetheless, when the factum of evident user of the relevant weapon of offence, rather is sufficient, to clinch an invincible finding, that the .12 bore DBBL gun No. 49538, was the assault weapon, wherefrom the bullets/cartridges were fired, given the said factum of user of the gun (supra), rather becoming echoed in Ex.PX. Thereupon, the factum of .12 bore cartridge mark C-1 and C-2, not being opined to become fired from the DBBL gun No.49538 hence becomes insignificant, as may be the said recovery may pertain to some other weapon. Even if assumingly so, yet the stark incriminatory factum, is the evidently voiced opinion in Ex.PX qua firing occurring from .12 bore DBBL gun No.49538. Since the fired therefrom bullets/cartridges are obviously spent bullets nor when they are recovered.

Therefore, also the unfired .12 bore cartridge cases Mark C-1 and C-2 from the DBBL gun No.49538, or even if they are assumingly not amenable to be fired from .12 bore DBBL gun No.49538. Nonetheless, the said fact may not at all denude the vigor of the unrecovered spent bullets rather becoming evidently fired from gun (supra).

29. Moreover, the other incriminatory items i.e. soil alleged to be stained with blood, as contained in parcel 'A', soil alleged to be sada mitti, as contained in parcel 'B', soil alleged to be stained with blood, as contained in parcel 'C', soil alleged to be sada mitti, as contained in parcel 'D', soil alleged to be stained with blood, as contained in parcel 'E', soil alleged to be sada mitti, as contained in parcel 'F', soil alleged to be stained with blood, as contained in parcel 'G', soil alleged to be sada mitti, as contained in parcel 'H', soil alleged to be stained with blood, as contained in parcel 'I', soil alleged to be sada mitti, as contained in parcel 'J', turban marked Ex.K-1, Kameez marked as Ex.K-2, Banian marked as Ex.K-3 and a pice of cloth marked as Ex. K-4, as contained in parcel 'K', Kurta marked L-1, Pyjama marked as Ex.L-2, as contained in parcel 'L', Kameez alleged to be stained with blood, as contained in parcel 'M', Kurta marked as Ex. N-1, Pyjama marked as Ex.N-2, as contained in parcel 'N', besides Kameez alleged to be stained with blood, as contained in parcel 'O', also became sent to the FSL concerned, for examinations thereof, being made by the Expert concerned. The result of the examinations made upon the above incriminatory items is extracted hereinafter:-

“The exhibits contained in the parcels A, C, E, G, I, K, L, M, N and O are stained with human blood.

No demonstrable blood could be detected on the exhibits contained in the parcels B, D, F, H and J. ”

30. A perusal of the result of the examinations as made upon the above sent items to the Serologist concerned, is completely suggestive of the factum of the crime occurrence taking place at the crime site. If so, therefrom also corroboration is acquired by the credible eye witness account rendered by the ocular witness to the occurrence besides corroboration therefrom, is also acquired qua user of the assault weapon by the accused concerned.

SUMMARIZATION OF PRINCIPLES

(i) The untainted testifications of ocular witnesses to the occurrence even if they are interested witnesses, inasmuch as, theirs also receiving injuries on their respective persons at the crime site yet they do acquire evidentiary vigor, unless evidence surges forthwith suggestive, that the MLRs drawn in respect of the injured eye witnesses are false or fictitious, and/or may be do not relate to the happening of the crime event, on the relevant date and time, at the crime site. Moreover, the validly recorded disclosure statements of the convicts concerned, besides the consequent therewith validly made recoveries of all the incriminatory items, when become sent in an untampered sealed cloth parcel(s) to the FSL concerned, for their respective examination, and, result in an opinion qua the purported blood stained clothes as a matter of fact being stained with blood. Thus, the above gathering of blood stains thereons, as opined by the FSL, does an open inference, that the crime event did happen at the crime site. Reiteratedly the ocular account rendered qua the prosecution case does attain therefrom the firmest corroboration.

(ii) In addition, if there is a firm opinion by the FSL concerned, about the user of the recovered assault weapon, but there is also an opinion that the sent thereto cartridges concerned, becoming never fired from the assault weapon. However, the said fact would not assign any leverage to the defence, if there is unimpeached credible evidence about the user of the crime weapon, as comprised in the report of the FSL. Thus, the said fact would become not relevant to denude the vigor of user of the crime weapon(s), at the crime site by the accused concerned, from whom valid recoveries were made, and, also when credible ocular account supports the imputation of guilt to the accused concerned. However, only if the disclosure statements of the convict concerned, and consequent therewith recoveries are evidently validly made. Moreover, if the spent or fired cartridges from the recovered assault weapon do not become collected or recovered by the investigating officer concerned, but yet an opinion is made by the Ballistic Expert concerned, that in fact the incriminatory weapon of offence, as became sent to the FSL concerned, did become validly used or shots being fired therefrom. Therefore, irrespective of the factum of the timing of the happening of firing of bullets/cartridges from the assault weapon, especially when untainted credible account becomes rendered by the prosecution witnesses concerned, rather does completely suggest, that the crime event happened at the crime site.

31. In coming to the above conclusion, this Court finds strength from the judgment of Hon'ble Apex Court rendered in case titled '**Gulab Versus State of Uttar Pradesh**' to which **Criminal Appeal No.81 of 2021**, is assigned, wherein a similar expostulation of law occurs.

FINAL ORDER

32. 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 appeal, and, the same is 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.

33. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

2.12.2022

Ithlesh

(KULDEEP TIWARI)
JUDGE

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