

In the High Court of Punjab and Haryana at Chandigarh

1. CRA-D-39-2020 (O&M)
Reserved on: 26.04.2023
Date of Decision: 3.5.2023

Tinku and othersAppellants

Versus

State of HaryanaRespondent

2. CRA-D-412-2021 (O&M)

Sachin and othersAppellants

Versus

State of HaryanaRespondent

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

Present: Mr. Aman Pal, Advocate
for the appellants (in CRA-D-39-2020).

Mr. Shokeen Singh Verma, Advocate
for appellant No. 2 (in CRA-D-412-2021).

Mr. Raman Sharma, Addl. A.G., Haryana.

SURESHWAR THAKUR, J.

1. Since both the above appeals arise from a common verdict, made by the learned trial Judge concerned, hence both the appeals (supra) are amenable for a common verdict being made thereons.

2. The instant appeals are directed against the impugned verdict, as made on 16.11.2019, upon Sessions Case No. 38 of 2017, by the learned Additional Sessions Judge, Hisar. Through the above said verdict, the learned trial Judge concerned, convicted all the accused, for the commission of offences punishable, under Sections 302, 326 read with Sections 148, 149 of the IPC. Besides, accused Sachin son of Ram Chander and Goldi were

also convicted for the commission of an offence punishable under Section 25 of the Arms Act, 1959. Moreover, through a separate sentencing order, drawn on 18.11.2019, the learned trial Judge concerned, sentenced all the convicts to undergo rigorous imprisonment for life, for commission of an offence punishable under Section 302 read with Section 149 of the IPC, besides also imposed, upon them sentence of fine comprised in a sum of Rs. 25,000/- each, and, in default of payment of fine amount, he sentenced the convicts to undergo simple imprisonment for a period of one year each. Further, the learned trial Judge concerned, also sentenced the convicts to undergo rigorous imprisonment for a period of five years, for an offence punishable under Section 326 read with Section 149 of the IPC, besides also imposed, upon the convicts sentence of fine comprised in a sum of Rs. 10,000/- each, and, in default of payment of fine amount, he sentenced the convicts to undergo simple imprisonment for a period of six months each. Moreover, the learned trial Judge concerned, also sentenced the convicts to undergo rigorous imprisonment for a period of one year, for an offence punishable under Section 148 of the IPC. In addition, the learned trial Judge concerned, also sentenced convicts Sachin son of Ram Chander and Goldi to undergo rigorous imprisonment for a period of one year, for an offence punishable under Section 25 of the Arms Act, 1959, besides also imposed, upon them sentence of fine comprised in a sum of Rs. 2,000/- each, and, in default of payment of fine amount, he sentenced the convicts to undergo imprisonment for a period of one month.

3. The accused-convicts become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent therewith sentence(s) of imprisonment, and, of fine as became imposed,

upon them, by the learned convicting Court concerned, and, hence have

chosen to institute thereagainst the instant criminal appeals, before this Court.

Factual Background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. P4 is assigned. The narrations carried in Ex. P4, are that on 22.01.2017, Sub Inspector/Station House Officer Satbir Singh alongwith Exemptee Assistant Sub Inspector Dholu Ram No. 997, Constable Suresh Kumar No.1647, and, Assistant Sub Inspector Jitender No. 1505 was present in school, Krishna Colony for checking, in official vehicle bearing No. HR99YB/1906 being driven by Constable Surya Kant No. 338 where he received a telephone call that two boys have been stabbed with knife at Tikona Park, Hansi, and, they have been taken to Civil Hospital, Hansi. Upon this, Sub Inspector/Station House Officer Satbir Singh alongwith accompanying police officials reached Civil Hospital, Hansi where he came to know that Sumit @SP has been brought dead to the hospital whereas, Sunil @ Sunny has been admitted in the hospital. Virender Singh brother and Mahinder Singh, father of Sumit @ SP alongwith other persons were present in the hospital, and, Virender son of Mahinder Singh Saini got recorded his statement to Sub Inspector/Station House Officer Satbir Singh alleging therein that he hails from Sainiyan Mandi, Hansi, and, is working at a footwear shop. They are two brothers and younger one is Sumit @ SP. Sumit was working as Property Dealer, and, was running his office in a street at Tikona Park, Hansi. At about one year ago, Sunil Shooter and Mohan quarrelled with his brother Sumit at their house but the matter was patched up with the intervention of brotherhood. At about one month ago, Sachin, Rahul and Goldi also quarrelled with his brother Sumit but they did

his brother Summit @ SP alongwith Sunil @ Sunny son of Ramesh Kumar, resident of Mandi Sainiyan, Hansi was going on a motor cycle to his office in the street at Tikona Park, Hansi. He went to Jammu and Kashmir Society for some personal work. When his brother reached in front of the office of Tinku, in the street at Tikona Park, Hansi, in the meantime, Sunil @ Shooter son of Pyare Lal, Sachin son of Ram Chander, Goldi son of Roshan Lal, residents of Mandi Sainiyan, Hansi and Rahul son of Balwan, resident of Laxman Chotra Hansi holding knife in their hands came out from the office of Tinku whereas Tinku son of Pyare Lal, resident of Prem Nagar, Hansi, Sachin @ China son of Krishan Saini, resident of Mandi Sainiyan, Hansi and Mohan son of Ram Ditta, resident of Bogha Ram Colony, Hansi also came out from the office of Tinku empty handed. Thereafter Tinku, Sachin @ China and Mohan caught hold Sumit and Sunil, and, thereafter Sachin and Rahul gave a knife blow at the heart on the left side and another knife blow on the right side of stomach of his brother Summit @ SP. Consequently, his brother fell down. Thereafter Sunil @ Shooter, Sachin, Rahul and Goldi gave one knife blow each to Sunil @ Sunny and Sunil @ Sunny also fell down. He and his father Mahinder Singh have seen Sunil @ Shooter, Sachin, Rahul, Goldi, Tinku, Sachin @ China and Mohan at the spot when injuries with knife were being inflicted to Sumit and Sunil. On an alarm being raised by him and his father, all the accused alongwith their respective knives fled away towards Bogha Ram Colony, Hansi saying that they have eliminated both of their enemies. He alongwith his father with the help of other persons shifted Sumit @ SP and Sunil @ Sunny to Civil Hospital, Hansi in a private vehicle where Sumit @ SP succumbed to his injuries and Sunil @ Sunny has been referred to Hisar keeping in view the multiple injuries sustained by

Suresh Kumar No. 1647 for registration of the case. Upon receipt of the ruqa in the police station, a formal FIR for commission of offence punishable under Sections 147, 148, 302, 307, 120B IPC and under Section 25 of the Arms Act was registered against the accused.

Investigation proceedings

5. During investigations, proceedings under Section 174 Cr.PC were carried out, and, post-mortem on the dead-body of deceased Sumit was got conducted. After post-mortem examination, dead-body of Sumit was handed over to his relatives. Place of occurrence was inspected and its rough site plan was prepared. The scene of crime team was summoned which lifted blood from the spot. Statements of witnesses under Section 161 Cr.P.C. were recorded. On 23.01.2017, accused Sachin, Rahul and Goldi were arrested. They also got place of occurrence demarcated. In pursuance of disclosure statement, accused Sachin got recovered one knife and one pistol alongwith four live cartridges. Rough sketches of knife and pistol were prepared. Thereafter in pursuance of disclosure statement, accused Rahul got recovered one pistol alongwith four live cartridges. Its rough sketch was prepared. Accused Goldi also got recovered one knife. Its rough sketch was also prepared. Thereafter on 06.02.2017, accused Sunil @ Shooter was arrested. He also got place of occurrence demarcated in pursuance of his disclosure statement. Medical record and clothes of injured Sunil were taken into police possession and were sent to Forensic Science Laboratory, Madhuban for examination. Opinion of Doctor was sought and the injury No.1 upon injured Sunil was declared grievous and not dangerous to life, therefore, Section 307 IPC was deleted and Section 326 IPC was added. Scaled site plan of place of occurrence was prepared. Accused Sachin @

Ram Ditta could not be arrested despite strenuous efforts. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

6. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 1.5.2017, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

7. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against the accused, on 26.5.2017, for the offences punishable under Sections 302, 326 read with Section 149 of the IPC, and, under Sections 147, 148, 120-B of the IPC, and, besides under Section 25 of the Arms Act. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. Thereafter, through an order, made by the learned trial Judge concerned, on 20.9.2017, on an application moved by the prosecution under Section 319 of the Cr.P.C., co-accused Sachin @ China, Tinku, and, Mohan were ordered to be summoned to face trial along with other co accused.

9. Thereafter, vide order dated 7.3.2018, the learned trial Judge proceeded to draw a fresh charge sheet against all the accused for commission of offences punishable under Sections 302, 326 read with Section 149, 147, 148, 120-B IPC, and, Section 25 of the Arms Act. The

afore drawn charges were put to the accused, to which they pleaded not

guilty, and, claimed trial.

10. In proof of its case, the prosecution examined 15 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. The accused also chose to adduce defence evidence, and, led one witness into the witness box.

11. As above stated, the learned trial Judge concerned, proceeded to convict the accused for the charge (supra), as became drawn against him, and, also as above stated, proceeded to, in the hereinabove manner, impose the sentence(s) of imprisonment, as well as of fine, upon the convicts.

Submissions of the learned counsel for the appellants

12. The learned counsel for the appellants has made a serious challenge to the impugned verdict of conviction, and, consequent therewith sentence(s) of imprisonment, as became imposed upon the convicts. In the above regard, he made the hereinafter submissions.

(i) No incriminatory role can be fastened, upon convict Sunil @ Shooter, as in pursuance to his signed disclosure statement, he did not cause the recovery of the relevant weapon of offence, to the investigating officer concerned, rather only demarcated the crime site, through a memo as occurs in Ex. P1. Therefore, it is argued, that since any disclosure statement, as made by the accused to the investigating officer concerned, thus for the same becoming not hit by the provisions of Section 25 of the Indian Evidence Act, rather the apposite recoveries, at the instance of the maker of the disclosure statement, are to be imperatively caused by him to the investigating officer concerned. However, since in pursuance to the

disclosure statement, as made by the accused (supra), to the investigating officer concerned, he did not cause the relevant recoveries. Resultantly, the confession of guilt, as made by accused Sunil @ Shooter in his signed disclosure statement, is inadmissible in evidence, the same being hit by the embargo cast in Section 25 of the Indian Evidence Act.

(ii) That since co-accused Tinku, Sachin @ China s/o Krishan, and, Mohan Lal, during the course of investigations, being carried into the FIR Ex. P-4, neither recorded their disclosure statements, before the investigating officer concerned, nor caused any recovery(ies) in pursuance thereto. Therefore, it is argued, that the inculcation, as made against the accused (supra), does suffer from the stain of the same being a false, doctored or an engineered implication.

(iii) That motive for the crime event taking place, at the crime site, inasmuch as, prior to the occurrence, deceased Sumit, quarrelling with Sunil @ Shooter and Mohan, but subsequently, a settlement occurring amongst them, besides a month prior to the occurrence, Sachin, Rahul and Goldi also quarrelling with deceased Sumit, but yet no complaint being made in respect thereof to the police. Therefore, the purported motive, if any, in the accused committing the crime event, when does not become proven, thus for lack of proof of motive, the charge drawn against the accused but staggers.

(iv) That though the prosecution led into the witness box, two purported ocular witnesses to the occurrence, inasmuch as, PW-1, and, PW-3. However, the imperative legal requirement, that they were yet enjoined to testify, thus with complete inter se corroboration, thus qua the crime event, rather is not fulfilled. The reason for the above argument becomes planked, on the echoings, existing in the cross-examination of PW-1, whose perusal

reveals, that PW-3 Virender, had arrived at the place of occurrence, when

the assailants were in the process of causing injuries to the eye witness (PW-1), and, also to deceased Sumit, besides also reveal, that an echoing occurs therein, that in the presence of Virender, thus only deceased Sumit was given the relevant injury by the accused. Moreover, PW-3, since in his cross-examination, has made a speaking that the accused were seen by him to be fleeing from the crime site, but when he arrived there. Therefore, it is argued by the learned counsel for the appellants, that PW-3, cannot be construed to be rendering a credible eye witness account in respect of the happening of the crime event, nor he can be stated to mete corroboration to the deposition of the injured eye witness (PW-1). Resultantly, it is argued that the charge drawn against the accused thus staggers.

(v) That since the injured eye witness PW-1, did not name, the assailants to the doctor, who made an examination of his injuries, and, which resulted in his drawing of MLR (Ex. P-18). Therefore, it is argued, that his testification, as, carried in his examination-in-chief, thus naming therein the accused, rather is an improvement or embellishment viz-a-viz the MLR drawn in respect of the injuries entailed, upon his person, purportedly in sequel to the assault made at the crime site by the accused. Resultantly, no probative vigour is to be assigned to his testification.

Reasons for rejecting the above made submissions

13. Importantly, in a case rested, upon eye witness account, which is thus credible, on account of it being free from any gross or rife improvement(s) or embellishment(s) over the previously made statement in writing, by the eye witness concerned, before the investigating officer concerned. Therefore, obviously immense creditworthiness is to be assigned to the deposition of an ocular witness to the occurrence. Resultantly also in

the above event, for mere lack of proof of motive by the prosecution, rather

the charge drawn against the accused thus would not stagger.

14. The submission, as made by the learned counsel for the appellants, that since only some of the accused, in pursuance to their respectively recorded disclosure statements, caused recoveries of the relevant weapons of offence(s) to the investigating officer concerned, whereas the other accused (*supra*), did not cause such recoveries, to the investigating officer concerned, thereupon, the said appositely recorded bald and simpliciter disclosure statements, thus are bald and simpliciter confessions of guilt, resultantly they are hit by Section 25 of the Indian Evidence Act, besides are inadmissible in evidence, rather is liable to be rejected. The said rejection occurs, as this Court, for reasons to be assigned hereinafter, thus assigns credence to the depositions of the injured eye witness (PW-1). Moreover, the argument raised before this Court, by the learned counsels for the appellants, that since the injured eye witness (PW-1), in the apposite MLR (Ex. P-18), did not name therein the assailants, therefore, his testification, as, made before the learned trial Judge concerned, but naming therein the accused assailants, is thus an improvement or embellishment over Ex. P-18, rather is also not a validly made argument. The reason being that, for the reasons to be assigned hereinafter, this Court construes the deposition of PW-1 to be both credible, and, trustworthy.

15. Lastly, an argument is also addressed by the learned counsels for the appellants, before this Court, that given the admission occurring in the cross-examination of PW-1, with clear voicings therein, that PW-3 had only noticed the injuries being suffered by deceased Sumit, and, when PW-3 also in his cross-examination stated, that he had arrived at the crime site, only when the accused, were in the process of fleeing therefrom, thus

occurrence, and, also is rather as required by law thus not corroborating the testification of PW-1. Nonetheless the above submission is also liable to be rejected but on the premise that this Court, for reasons assigned hereinafter rather construes the deposition of PW-1, to be of immense creditworthiness.

Evaluation of the testification of injured eye witness (PW-1)

16. PW-1, in his deposition, embodied in his examination-in-chief, has supported the deposition of the prosecution case, as becomes embodied in the FIR (Ex. P-4). However, his deposition, in his examination-in-chief, thus making inculcation against the accused, is not sufficient to conclude, that hence, the prosecution has been able to prove the charge drawn against the accused. Necessarily, an in depth analysis of his deposition, as occurring in his cross-examination, is also required to be made, so as to ascertain therefrom whether he has not made gross or rife improvement, upon, his previously made statement in writing to the investigating officer concerned. In the above regard, this Court has thoroughly perused his deposition, as occurs in his cross-examination. The striking aspect of his cross-examination, is that, the defence ensuring therein his thus making incriminatory speakings, which but patently signify the presence of the accused, at the crime site, and, also unfold their participation in the crime event, rather in the manner, as has been spoken by him, thus in his examination-in-chief. Therefore, the said elicitations, as, made by the learned defence counsel, do obviously stem an inference, that thereby the defence has conceded to both the presence of the accused at the crime site, and, also to theirs making the relevant assaults, both on the injured eye witness (PW-1), besides on the deceased Sumit.

17. The reasons for drawing the above inference, is rested upon, the relevant speakings occurring in the cross-examination of PW-1, who on

the apposite incriminatory affirmative suggestions, being meted to him, by the learned defence counsel, but answered them affirmatively. The pointed affirmative incriminatory suggestions, whereto affirmative answers became meted by PW-1, are related to the accused, making the motorcycle driven at the relevant time, by the deceased, rather to stop at the crime site, but only PW-1 alighting from the motorcycle, yet deceased Sumit remaining atop the motorcycle. Moreover, appertain to the defence also meteing an incriminatory suggestions to PW-1, about accused Rahul holding a pistol and knife, and, that the other co-accused also holding knives, all wheretos, thus affirmative answers hence emanated from PW-1. Subsequently, since the defence has yet taken to make suggestions to PW-1, which are in complete corroboration to the incriminatory echoings, as made by him in his examination-in-chief, wherein trite inculpations become assigned to each of the accused. Therefore, the effect of the above admissions of guilt, as made by the accused, resultantly forestalls the learned counsel for the appellants to argue, that the non naming of the assailants, by PW-1 in Ex. PW-18, thus makes his deposition, as, made before the learned trial Judge concerned, to be uncreditworthy, the same purportedly being an embellishment and improvement over Ex. P-18. Moreover also the effect of the recovery(ies) of weapon(s) of offence, being made from some of the co-accused, and, not from the other accused, thus assumes no significance. In addition, even if PW-3 the informant, assumingly arrived at the crime site, when the assailants were in the process of fleeing therefrom, thus also becomes underwhelmed, in the face of the above admissions of guilt, as, made by the accused, but from the above unrebutted incriminatory elicitations, as made from him, during the course of the learned defence counsel subjecting him to

cross-examination.

MLR of the injured eye witness Sunil (PW-1)

18. Dr. Chander Shekhar, who medico legally examined, the injured eye witness Sunil (PW-1), has stepped into the witness box as PW-10. During the course of his examination-in-chief, he has deposed that he prepared the MLR in respect of injured eye witness Sunil, and, to which Ex. P-18 became assigned. Furthermore, in his examination-in-chief, he has voiced, that on his making the examination of the injuries on the person of Sunil, he noticed thereons the hereinafter extracted injuries.

- “1. Incised wound 5 x 1 cm at right wrist joint medial aspect.
X-ray and ortho opinion was advised for this injury.*
- 2. Incised wound 4 x 1 cm at left gluteal region medail side.
X-ray and ortho opinion was advised for this injury.”*

19. Since PW-10 has also spoken in his examination-in-chief, that the above injuries were entailed, upon the relevant portion of the body of injured Sunil, through users thereons of a sharp edged weapon. Therefore, the said echoing when remained unrebutted through any efficacious cross-examination, being made, upon him by the learned defence counsel. Resultantly leads to an inference, that the said injuries were caused through user of sharp edged weapons on the person of injured eye witness Sunil, besides also to an inference that the recovery of said weapons of offence, as made through the respectively drawn recovery memos, thus being valid recovery. Moreover, the validly made recoveries as well as the proven cause of defence assigning mutual corroboration to each other. Moreover, reiteratedly the said validly made recoveries acquire corroboration, from the above made depositions of PW-10, wherein, he has spoken that the fatal ante mortem injuries were entailed on the body of deceased, through users

been able to assign both corroboration, and, creditworthiness to the deposition of the injured eye witness, who stepped into the witness box as PW-1.

Signed disclosure statements of convict Sachin, and, pursuant thereto recovery memo

20. During the course of investigations, being made into the appeal FIR, convict Sachin son of Ram Chander made a signed disclosure statement, on 24.1.2017, to which Ex. P7 is assigned. The signed disclosure statement, as made by the accused (supra) is ad verbatim extracted hereinafter.

“x x x x
On dated 22.1.2017, I alongwith Goldi son of Roshan Lal R/o Mandi Sainian Hansi, Rahul son of Balwan Singh Saini R/o Laxman Chotra Hansi, Sunil Shooter, Tinku, Sachin alias China and Mohan etc. inflicted knife blows to Sumit alias SP son of Mahinder Saini and Sunny son of Ramesh Kumar Rs/o Mandi Sainian. I inflicted knife blows to Sunny son of Ramesh and Goldi inflicted knife blows to Sumit alias SP. Rahul also inflicted one knife blow to Sunny son of Ramesh. We all three came to know in the morning that Sumit had expired. The knife with which I inflicted injuries has been concealed by me in the room at Roorkie of Naveen son of Sadhu Ram R/o Hansi, who works at RO shop at Roorkie and I can get the same recovered from Roorkie (UP). No body except me knows about the knife, where the same has been concealed at the house of Rakesh. I can get the same recovered after demarcation.

x x x x x”

21. On 25.1.2017, convict Sachin son of Ram Chander made another signed disclosure statement, to which Ex. P-30 is assigned. The signed disclosure statement, as made by accused Sachin, is ad verbatim extracted hereinafter.

On dated 22.1.2017 in the day time, I alongwith Rahul son of Balwan, Goldi son of Roshan Lal alongwith our friends Sunil Shooter son of Pyare Lal Saini R/o Mandi Sainian, Hansi, Tinku son of Pyare Lal Saini R/o Mandi Sainian, Hansi Sachin alias China son of Krishan Saini R/o Mandi Sainian, Hansi, Mohan son of Ram Ditta Punjabi Ro Boga Ram Colony, Hansi made a planning to kill Sumit alias SP son of Mahinder Singh and Sunny son of Ramesh caste Saini Rs/o Mandi Sainian, Hansi. At that time, I and Rahul were having one knife each, Goldi was empty handed. After making planning by us. I. Rahul and Goldi we three came to Tikona Park, Hansi in search of Sumit and Sunny. When we reached Tikona Park, Hansi, at that time Sumit and Sunny were going towards Mandi on motor cycle. Then we all three stood at the corner of street at Tikona Park in their wait. After some time, we saw coming Sumit and Sunny on motor cycle, then we all three came in the street. When Summit and Sunny entered in the street, Rahul stood in front of them by aiming knife and I stood behind them with knife. I and Rahul both launched attack with knives upon Sumit and Sunny with an intention to kill them. When Sumit and Sunny tried to ran away, then Goldi encircled them from front. I and Rahul started inflicting knife blows to Sumit and Sunny. I gave knife blow in the chest of Sumit and Rahul gave knife blow in the right side stomach of Sumit, as a result of which, Sumit fell there. Then Goldi took knife of Rahul. Goldi gave knife blows on the back and hand of Sunny. Then Sumit and Sunny raised alarm, then people started seeing in the street. Then we alongwith our respective weapons fled away towards Boga Ram Colony, Hansi. Thereafter, we snatched motor cycle of one person at Boga Ram Colony at the point of knife and we all three went towards Nehru College and concealed our knives adjoining to the wall and fled away towards Uchana via Sisai Luhari. I can get my knife recovered after demarcation, where I concealed the same. The motor cycle which we have snatched at Boga Ram Colony has been left by us near Uchana Court. I

can get the motor cycle recovered after demarcating that place. Besides this, about two months Rahul had brought two pistols and eight live cartridges from Roorkie. Out of which Rahul gave me one pistol and four live cartridges to me. This pistol and four live cartridges have also been concealed by me with my knife near the wall of Nehru College.

x x x x x”

22. Pursuant to the above signed disclosure statement, convict Sachin son of Ram Chander got recovered one knife, which was taken into police possession through recovery memo Ex. P-34. He also got recovered .32 bore country made pistol, regarding which a separate case has been registered against the convict (supra).

Signed disclosure statements of convict Goldi, and, pursuant thereto recovery memo

23. During the course of investigations, being made into the appeal FIR, convict Goldi made a signed disclosure statement, on 24.1.2017, to which Ex. P8 is assigned. The signed disclosure statement, as made by the accused (supra), is ad verbatim extracted hereinafter.

“x x x x

On dated 22.1.2017, I alongwith Rahul son of Balwan Singh caste Saini R/o Laxman Chotra Sisai Bridge, Sachin son of Ram Chander caste Kumhar r/o Mandi Sainian Hansi, Sunil Shooter, Tinku, Sachin alias China and Mohan etc. inflicted knife blows to Sumit alias SP son of Mahinder Saini and Sunny son of Ramesh Kumar Rs/o Mandi Sainian. I inflicted knife blow on the chest of Sumit and gave second blow on his flank. In the morning, we came to know that in the morning that Sumit had expired. The knife with which I inflicted injuries has been concealed by me at Roorkie adjoining the room of Naveen son of Sadhu Ram R/o Hansi, who works at RO shop at Roorkie and I can get the same recovered by accompanying you and I can get the place of occurrence demarcated.

x x x x x”

24. On 25.1.2017, convict Goldi made another signed

disclosure statement, to which Ex. P-32 is assigned. The signed disclosure statement, as made by the accused Goldi, is ad verbatim extracted hereinafter.

“x x x x
On dated 22.1.2017 in the day time, I alongwith Rahul son of Balwan, Sachin son of Ram Chander alongwith our friends Sunil Shooter son of Pyare Lal Saini R/o Mandi Sainian, Hansi, Tinku son of Pyare Lal Saini R/o Mandi Sainian, Hansi, Sachin alias China son of Krishan Saini R/o Mandi Sainian, Hansi, Mohan son of Ram Ditta Punjabi Ro Boga Ram Colony, Hansi made a planning to kill Sumit alias SP son of Mahinder Singh and Sunny son of Ramesh caste Saini Rs/o Mandi Sainian, Hansi. At that time, Rahul and Sachin were having one knife each, I was empty handed. After making planning by us. I, Sachin and Rahul we three came to Tikona Park, Hansi in search of Sumit and Sunny. When we reached Tikona Park, Hansi, at that time Sumit and Sunny were going towards Mandi on motor cycle. Then we all three stood at the corner of street at Tikona Park in their wait. After some time, we saw coming Sumit and Sunny on motor cycle, then we all three came in the street. When Sumit and Sunny entered in the street, Rahul stood in front of them by aiming knife and Sachin stood behind them with knife. Rachul and Sachin both launched attack with knives upon Sumit and Sunny with an intention to kill them. When Sumit and Sunny tried to ran away, then I encircled them from front. Rahul and Sachin started inflicting knife blows to Sumit and Sunny. Sachin gave knife blow in the chest of Sumit and Rahul gave knife blow in the right side stomach of Sumit, as a result of which, Sumit fell there. Then I took knife of Rahul. Goldi gave knife blows on the back and hand of Sunny. Then Sumit and Sunny raised alarm, then people started seeing in the street. Then we alongwith our respective weapons fled away towards Boga Ram Colony, Hansi. Thereafter, we snatched motor cycle of one person at Boga Ram Colony at the point of knife and we all three went towards Nehru College and

concealed our knives adjoining to the wall and fled away towards Uchana via Sisai Luhari. I can get my knife recovered after demarcation, where I concealed the same. The motor cycle which we have snatched at Boga Ram Colony has been left by us near Uchana Court. I can get the motor cycle recovered after demarcating that place.

x x x x x”

25. Pursuant to the above signed disclosure statement(s), convict Goldi got recovered one knife, which was taken into police possession through recovery memo Ex. P-36. He also got recovered .32 bore country made pistol, regarding which a separate case has been registered against the convict (supra).

Signed disclosure statements of convict Rahul, and, pursuant thereto recovery memo

26. During the course of investigations, being made into the appeal FIR, convict Rahul made a signed disclosure statement, on 24.1.2017, to which Ex. P9 is assigned. The signed disclosure statement, as made by the accused (supra), is ad verbatim extracted hereinafter.

“x x x x

On dated 22.1.2017, I alongwith Goldi son of Roshan Chamar R/o Ravidass Chowk, Hansi, Sachin son of Ram Chander caste Kumhar r/o Mandi Sainian Hansi, Sunil Shooter, Tinku, Sachin alias China and Mohan etc. inflicted knife blows to Sumit alias SP son of Mahinder Saini and Sunny son of Ramesh Kumar Rs/o Mandi Sainian. I inflicted knife blow to Sunny son of Ramesh after taking the knife from Sachin. In the morning, we all three came to know that in the morning that Sumit had expired. The knife with which I inflicted injuries has been concealed by me at Roorkie at the room of Naveen son of Sadhu Ram R/o Hansi, who works at RO shop at Roorkie and I can get the same recovered by accompanying you and I can get the place of occurrence demarcated.

x x x x x”

27. On 25.1.2017, convict Rahul made another signed disclosure statement, to which Ex. P-31 is assigned. The signed

disclosure statement, as made by the accused Rahul, is ad verbatim extracted hereinafter.

“x x x x
On dated 22.1.2017 in the day time, I alongwith Sachin son of Ram Chander, Goldi son of Roshan Lal alongwith our friends Sunil Shooter son of Pyare Lal Saini R/o Mandi Sainian, Hansi, Tinku son of Pyare Lal Saini R/o Mandi Sainian, Hansi, Sachin alias China son of Krishan Saini R/o Mandi Sainian, Hansi, Mohan son of Ram Ditta Punjabi R/o Boga Ram Colony, Hansi made a planning to kill Sumit alias SP son of Mahinder Singh and Sunny son of Ramesh caste Saini Rs/o Mandi Sainian, Hansi. At that time, I and Sachin were having one knife each, Goldi was empty handed. After making planning by us. I, Sachin and Goldi we three came to Tikona Park, Hansi in search of Sumit and Sunny. When we reached Tikona Park, Hansi, at that time Sumit and Sunny were going towards Mandi on motor cycle. Then we all three stood at the corner of street at Tikona Park in their wait. After some time, we saw coming Sumit and Sunny on motor cycle, then we all three came in the street. When Sumit and Sunny entered in the street, I stood in front of them by aiming knife and Sachin stood behind them with knife. I and Sachin both launched attack with knives upon Sumit and Sunny with an intention to kill them. When Sumit and Sunny tried to ran away, then Goldi encircled them from front. I and Sachin started inflicting knife blows to Sumit and Sunny. Sachin gave knife blow in the chest of Sumit and I gave knife blow in the right side stomach of Sumit, as a result of which, Sumit fell there. Then Goldi took knife of Rahul. Goldi gave knife blows on the back and hand of Sunny. Then Sumit and Sunny raised alarm, then people started seeing in the street. Then we alongwith our respective weapons fled away towards Boga Ram Colony, Hansi. Thereafter, we snatched motor cycle of one person at Boga Ram Colony at the point of knife and we all three went towards Nehru College and concealed our knives adjoining to the wall and fled away towards Uchana via Sisai

Luhari. I can get my knife recovered after demarcation, where I concealed the same. The motor cycle which we have snatched at Boga Ram Colony has been left by us near Uchana Court. I can get the motor cycle recovered after demarcating that place. Besides this, about two months I had brought two pistols and eight live cartridges from Roorkie. Out of which I gave one pistol and four live cartridges to Sachin. One pistol was with me and same has been concealed by me near the wall of Nehru College.

x x x x x”

28. Pursuant to the above signed disclosure statement(s), convict Rahul got recovered one country made pistol along with four live cartridges, and, qua which a separate case had been registered against him.

Signed disclosure statements of convict Sunil @ Shooter

29. During the course of investigations, being made into the appeal FIR, convict Sunil @ Shooter made a signed disclosure statement, to which Ex. P-12 is assigned. The signed disclosure statement, as made by the accused (supra), is ad verbatim extracted hereinafter.

“x x x x

On dated 22.1.2017, I alongwith my friends Sachin son of Ram Chander Kumhar R/o Mandi Sainian, Hansi, Rahul son of Balwan Saini Ro Laxman Chotra, Hansi, Goldi son of Roshan Lal Chamar R/o Mandi Sainian, Hansi, Tinku son of Pyare Lal Saini R/o Prem Nagar, Hansi, Sachin alias China son of Krishan Saini R/o Mandi Sainian, Hansi, Mohan son of Ram Ditta Punjabi R/o Bogha Ram Colony, Hansi made a planning to kill Sumit alias SP son of Mahinder Singh and Sunny son of Ramesh caste Saini Rs/o Mandi Sainian, Hansi after sitting in the office of Tinku situated at Tikona Park At that time, Sachin and Rahul were having one knife each, Goldi was empty handed We all prepared Sachin, Rahul and Goldi to commit the murder of Sumit and Sunny. After making our planning, we all went away. We went away from there after leaving Sachin, Rahul and Goldi at the office of Tinku for committing the murder of Sumit and Sunny. After some time, we came to know that Sachin, Rahul and Goldi inflicted knife injuries to Sumit and Sunny Sumit had died after receiving knife injuries and Sunny has been taken to Hisar from Hansi for treatment. All

these injuries have been inflicted as per our planning. I can get the place demarcated, where we hatched conspiracy after sitting there for doing murder. I know the houses of all the persons. Besides them, I know the whereabouts of Tinku, Mohan and Sachin alias China which they have made at Rajgarh (Rajasthan) I know them. I can get them arrested by accompanying you.

x x x x x”

30. On the same day, i.e. 7.2.2017, convict Sunil @ Shooter made another signed disclosure statement, to which Ex. P-13 is assigned. The signed disclosure statement, as made by the accused (supra), is ad verbatim extracted hereinafter.

“x x x x

On dated 22.1.2017, I alongwith my friends Sachin son of Ram Chander Kumhar R/o Mandi Sainian, Hansi, Goldi son of Roshan Lal Chamar R/o Mandi Sainian, Hansi, Sachin alias China son of Krishan Saini R/o Mandi Sainian, Hansi, Tinku son of Pyare Lal Saini R/o Prem Nagar, Hansi, Rahul son of Balwan Saini R/o Laxman Chotra, Hansi and Mohan son of Ram Ditta Punjabi R/o Bogha Ram Colony, Hansi made a planning to kill Sumit alias SP son of Mahinder Singh and Sunny son of Ramesh caste Saini Rs/o Mandi Sainian, Hansi after sitting in the office of Tinku situated at Tikona Park At that time, Sachin and Rahul were having one knife each, Goldi was empty handed We all prepared Sachin, Rahul and Goldi to commit the murder of Sumit and Sunny. After making our planning, we all went away. We went away from there after leaving Sachin, Rahul and Goldi at the office of Tinku for committing the murder of Sumit and Sunny. After some time, we came to know that Sachin, Rahul and Goldi inflicted knife injuries to Sumit and Sunny. Sumit had died after receiving knife injuries and Sunny has been taken away from Hansi for treatment. All these injuries have been inflicted as per our planning. I can get the place demarcated, where we hatched conspiracy after sitting there for doing murder. I told a lie regarding the location of Tinku, Sachin alias China and Mohan at Rajgarh (Rajasthan). I have no knowledge regarding their whereabouts and locations. Now I have disclosed true facts to you.

x x x x x”

convict Sunil @ Shooter got demarcated the place of occurrence, vide demarcation memo, to which Ex. P-14, is assigned.

32. The disclosure statement(s) (supra), carry therein the signatures in English of the convicts concerned. In their signed disclosure statements (supra), the convicts concerned, confessed their guilt in committing the murder of deceased Sumit, by inflicting injuries on his person, hence with the weapons of offence concerned. Moreover, they also make therein speakings, about theirs alone being aware about the location of theirs respectively hiding and keeping the incriminatory weapons of offence, and, also unravel or evince their readiness, and, willingness to cause the recovery(ies) of the incriminatory item(s) to the investigating officer concerned, from the respective place(s) of their(s) hiding, and, keeping the same.

33. The above disclosure statements, do acquire utmost evidentiary solemnity, as thereons exist the signatures in English of the convicts, which, however, they have neither ably denied nor have efficaciously proven the said denial. Moreover, thus the above confession of guilt is neither a bald or a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues from the factum, that in pursuance thereof, through proven recovery memos, the convicts concerned, thus caused the recovery(ies) of the incriminatory weapons, to the investigating officer concerned.

34. Since the recovery(ies) of the incriminatory weapons, as made through recovery memos (supra), have not been proven to be false or contrived recovery(ies), inasmuch as, has not been cogently established, that prior to the making(s) of the above recovery(ies), rather the investigating

officer concerned, had taken to plant the same at the apposite sites of

recovery(ies), nor when any cogent evidence, becomes adduced rather vividly exemplifying, that the place(s) of the apposite recovery(ies), rather were open place(s), hence leaving scope for any person, other than the convict(s) to place them there. Thus, the above recovery(ies) are but to be concluded to be validly made recovery(ies), besides also it has to be concluded, that the recovered incriminatory weapons of offence thus were the very same assault weapons, which became used by the accused in committing the murder of the deceased concerned.

Post-mortem report

35. The autopsy on the body of deceased Sumit was conducted by PW-9 Dr. Vijay Sarup, who has proven the post-mortem report, to which Ex. P-15, is assigned. He has tendered into evidence his affidavit, to which Ex. P-16, is assigned. The ante mortem injuries, which he observed to be occurring on the body of deceased Sumit Kumar, are ad verbatim extracted hereinafter.

1. *There is stab wound of size 3.75 cm horizontally placed 18 cm below supra sternal notch near midline with regular margins on both sides, there is a tract directed downwards and left laterally. On dissection there is fracture of fracture of underlying two ribs seen, abdominal cavity full of blood, peritoneum rupture and rupture of left lobe of liver seen. There is corresponding cut marks seen on jacket and t-shirt.*
2. *I/w of size 3x1.5 cm on right side of abdomen present 18 cm above anterior superior iliac spine in midaxillary line. On dissection injury is upto deep fascia, underlying muscles cut.*

36. PW-9, in his examination-in-chief, has stated that the cause of demise of the deceased concerned, was due to shock and hemorrhage, as a result of abdominal injury, which is sufficient to cause death in the ordinary

course of nature. Moreover, he has also stated that the said injury is causeable through use thereof of a knife. Since the above made deposition by PW-9, corroborates the deposition(s) of the injured eye witness (PW-1), besides also corroborates the recoveries, as made at the instance of the accused concerned, to the investigating officer concerned, but in pursuance to their respectively recorded signed statements, as made by the accused concerned, before the investigating officer concerned. Therefore, a firm conclusion can be made, that the prosecution has been able to invincibly prove, that the cause of demise (supra), as stated by PW-9, was but a sequel of the assault, as deposed by the credible eye witness account, rendered by PW-1, thus made on the person of deceased Sumit by the accused concerned. Even in respect of the other co-accused, who were not wielding weapon(s) of offence, at the crime site, and, also even if they did not strike the said weapons of offence, on the person of deceased Sumit, but when they were evidently at the crime site, and, with the relevant common object. Therefore, inculcation was also liable to be drawn against them, as aptly done by the learned trial Judge concerned, especially when for reasons (supra), the defence has conceded both to the presence, as also to the incriminatory participation of all the accused at the crime site.

Final order

37. The result of the above discussion, is that, this Court does not find any merit in both the appeals, and, is constrained to dismiss them. Consequently, both the appeals are dismissed. The impugned verdict of conviction, as becomes recorded upon the convicts-appellants, by the learned convicting Court, is maintained, and, affirmed. Moreover, the consequent therewith order of sentence(s) is also affirmed. If the convicts

are on bail, thereupon, the sentence(s) as imposed upon the convicts-

appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

38. Records be sent down forthwith.

39. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 3rd, 2023
Gurpreet/Ithlesh

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