

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

Reserved on: 02.12.2022

Pronounced on: 18.01.2023

1. CRA-D-474-DB-2013

Subhash @ Makkar and othersAppellants

Versus

State of HaryanaRespondent

2. CRA-D-1529-DB-2013

DharampalAppellant

Versus

State of Haryana and othersRespondents

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

Argued by: Mr. Salil Bali, Advocate
for the appellants.

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

Mr. Sumeet Goyal, Sr. Advocate assisted by
Mr. Rose Gupta, Advocate
Mr. Shivam Kaushik, Advocate
Mr. Paramvir Parmar, Advocate
for the complainant in CRA-D-474-DB-2013 and
for the appellant in CRA-D-1529-DB-2013.

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. **CRA-D-474-DB-2013** is directed by the convicts-appellants, against the verdict of conviction, as made on 26.03.2013, by the learned Additional Sessions Judge, Hisar, upon, Sessions Case

No.65 of 2010, wherethrough, in respect of charges drawn for offences punishable under Section 120-B IPC and under Section 302 of the IPC read with Section 149 IPC, he made a finding of conviction against the accused.

3. Moreover, through a separate sentencing order drawn on 01.04.2013, the learned trial Judge proceeded to impose upon the convict (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

Convicts Subhash @ Makkar, Ram Kumar, Baru Ram and Santro.

u/s 302 read with Section 149 IPC	All the convicts/accused are sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2,000/- each. In default of payment of fine, the convicts/accused shall further undergo rigorous imprisonment for a period of 15 days.
u/s 120-B IPC	All the convicts/accused are sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 500/- each. In default of payment of fine, the convicts/accused shall further undergo imprisonment for a period of 2 days.

4. All the sentence(s) were ordered to run concurrently. The convicts become aggrieved from the verdict of conviction (supra), besides become aggrieved from the above imposed sentence(s), thus, they led to cast thereagainst the instant appeal **CRA-D-474-DB-2013** before this Court.

5. **CRA-D-1529-DB-2013** is directed by the complainant-Dharampal, against the verdict of acquittal made on 26.03.2013, upon the accused-respondent No. 6-Vikas @ Vicky, by the learned Additional Sessions Judge, Hisar, upon Sessions Case No. 65 of 2010.

Factual background

6. The genesis of the prosecution case becomes encapsulated in the appeal FIR to which Exhibit PH/1 is assigned. The present FIR

is lodged at the instance of father of the deceased Satyawar. The informant-complainant Dharampal, has made narrations therein that that he is resident of village Pabra. In the year 1999 he had purchased 6 acre of land from Subhash son of Datu Ram, resident of village Pabra and sale deed and mutation are in his name. After about three years. Santro wife of Subhash and his sons filed a civil case in civil Courts against him regarding this land on the ground that he had purchased the said land after administering liquor to Subhash and the said case has been decided in his favour. During the pendency of trial of that case, Subhash and his family members convened a panchayat, so that the said land be returned back to them by him. Upon this, he agreed that he would return back the said land on payment of sale amount of the land, but Subhash and his family members did not pay the said amount. It was further alleged that Subhash and his brother Ram Kumar, his wife Santro, his brother in law Baru and Rakesh used to threaten him and his family to return their land otherwise he and his family would be finished. About 8-10 days prior to the occurrence, Vicky @ Vikas came on leave from Jail and threatened him with dire consequences if the land is not returned. On 25.10.2009 at about 7 AM, he alongwith his nephew Ram Phal were going towards their fields situated towards Kinala. His son Satyawar was going at a distance of about half killa from them for answering the call of nature and when he reached near Dasuwala Johar, a Tata Sumo crossed them in a very fast speed and hit Satyawar with force on his back in their presence. His son Satyawar then tried to save himself, the Tata Sumo again tried to hit his son and his son again tried to save himself. In the meantime, Ram Kumar, Baru,

Rakesh and Santro alighted from the Tata Sumo and fell him on the ground and Subhash ran over Tata Sumo upon Satyawar and thereafter the said vehicle hit the stack of bricks. It was also alleged that the complainant and his companion raised alarm and upon hearing the alarm, accused ran away from the spot after leaving there the vehicle and while fleeing they also declared that they have taught them a lesson for not handing over the land and the complainant party will be finished one by one in the same manner. The complainant further stated in his statement that he and Ramphal arranged a vehicle and took his son to Hisar and upon reaching to the hospital, the doctor declared him dead. The complainant also stated that Satyawar has died due to the impact of the vehicle as well as the run over of vehicle and that accused Subhash and his family members have caused the injuries in a criminal conspiracy. Request for initiating action against the accused was made.

Investigation proceedings

7. Upon the said statement a case under sections 147, 120-B and under Section 302 of IPC was got registered by the Investigating Officer Ranbir Singh, SI through constable Surender Singh No. 632. Special report was sent to the Illaqa Magistrate and the Superior Officers and the Investigating Officer started conducting the proceedings under section 174 of Cr. P.C. During the inquest proceedings, the Investigating Officer recorded the statements of Dharam Pal and Ram Phal. Thereafter, the Investigating Officer of the case got performed the post mortem examination of the dead body, and, after completion of the examination, the doctor handed over a sealed parcel containing clothes of the deceased, which was taken into

possession. After completion of proceedings at General Hospital, Hisar, the Investigating Officer alongwith other police officials went to the spot situated in village Pabra prepared rough site plan of the spot, the spot got photographed and during the inspection of the spot, the Tata Sumo No.HR-51B/1037 and other articles were also taken into possession.

8. On the next date, the accused Subhash was arrested. He was got medico legally examined from CHC Barwala. Statements of the witnesses under section 161 of Cr. P.C. were recorded and thereafter, after completion of investigation, challan qua Subash was prepared by Krishan Lal, SI/SHO.

9. Accused Ram Kumar was arrested on 10.12.2009 by the then SHO Krishan Lal, who on 23.12.2009 recorded statements of PW EASI Satbir Singh and Photographer Amit. After completion of investigation, challan qua accused Ram Kumar was prepared and presented by said SI/SHO Krishan Lal.

10. On 29.01.2010 accused Baru Ram surrendered himself in the court and thereafter he was formally arrested on 30.01.2010 by Rajender Parshad ASI.

11. Accused Santro surrendered herself in the court on 04.06.2010 and she was formally arrested on 05.06.2010.

12. Accused Vikas alias Viky was arrested on 12.12.2010, who suffered disclosure statement, and, in pursuance thereto, he pointed out the place of occurrence, and, also appended his signatures on the memo prepared by the Investigating Officer. The statements of the witnesses were recorded by Inspector Ranbir Singh, and, thereafter Krishan Lal,

SI/SHO prepared supplementary challan qua accused Vikas. Moreover, Challan against accused Rakesh was filed before the Juvenile Justice Board, as he was a juvenile on the date of the crime incident.

13. During the course of investigation, vehicle bearing no. HR-51B1037 was mechanically examined by the motor mechanic, Police Line, Hisar, scaled site plan was also prepared by the Halka Patwari, photographs of the vehicle in question besides the articles present at the spot were also taken into possession. FSL Report was received from FSL Madhuban, Haryana vide which the sent thereto blood stained clothes of the deceased, were examined, and, in the FSL report, it was observed that the clothes were having human blood.

14. 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.

Committal proceedings

15. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court vide order dated 19.02.2010, committed the case for trial to the Court of the learned Sessions Judge, Hisar.

Trial Court Proceedings

16. On finding a prima facie case, charges under Sections 147/149/302/120-B of the IPC became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

17. Initially, six witnesses were examined but on arrest of all the accused, de novo trial was commenced, and, in support of the

prosecution case, the prosecution examined fourteen 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 i.e. Dr. Joginder Kapoor, SMO, General Hospital, Hisar.

18. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Hisar, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the appellants Subhash @ Makkar, Ram Kumar, Baru Ram and Santro in appeal CRA-D-474-DB-2013, whereas, he passed a verdict of acquittal, qua accused Vikas @ Vicky (respondent No. 6 in CRA-D-1529-DB-2013), in respect of the charges drawn against him, in the appeal FIR.

Submissions of the learned counsel for the convicts-appellants.

19. (1) The learned counsel appearing for the convicts-appellants has contended with much vigor before this Court, that the verdict of conviction, and also the consequent thereto order of sentence(s), as became imposed upon the convicts, by the learned Convicting Court, are not sustainable in the eyes of law. To strengthen the above submission, he has referred to certain inter-se contradictions occurring inter-se the previously recorded statement in writing of an eye witness to the occurrence namely one Dharampal, who stepped into the witness box as PW-5, rather with his testification, as comprised in his cross-examination. The improvement or embellishment or the

writing of one Dharampal, and, which led to the registration of FIR, to which Exhibit PH/1 is assigned, with his deposition embodied in his cross-examination, is submitted by him, to a gross as well as a stark improvement, from his previously made statement in writing. The said gross improvement, is contented to become comprised, in the factum, that in the previously made statement in writing, and, to which Exhibit P-10, is assigned, the complainant had made a simpliciter echoing, that the accused, other than Subhash had caught hold of Satyawar, and had caused him to fall on to the road, whereafter, Subhash pulverized Satyawar under the wheels of Tata Sumo vehicle, whereas, upon his being subjected to cross-examination, where, upon his being confronted with his previous statement in writing, it emerged that the complainant Dharampal, had in digression from his previously made statement, in writing, rather echoed that all the accused alighted from Tata Sumo vehicle, whereafter, they caught hold of Satyawar, and, when Satyawar stood up, rather all pushed him back on the ground, with his face upward, and, subsequently, accused Subhash pulverized the deceased Satyawar under the wheels of Tata Sumo vehicle, which he was driving at the relevant time. Therefore, the learned counsel for the convicts argues, that given the above stark or gross improvement inter-se the previously made statement in writing by the complainant, and, to which Exhibit P-10, is assigned, rather with his cross-examination (supra), thereupon, the genesis of the prosecution case, becomes doubtful and also that no valid foundation is erected by the prosecution, to incriminate the accused.

(2) That, the learned Convicting Court also failed to appreciate that DW-1 Dr. Joginder Kapoor, SMO General Hospital, Hisar, who on 27/10/2009 had medico legally examined the accused rather proving, upon his stepping into the witness box, hence the existences of the hereinafter extracted injuries, on the person of accused Subhash. Moreover, when the speakings as made by him, also reveal that the timings of entailment of the apposite injuries, do become related, to the incident which occurred at the crime site. Therefore, the fatal injuries, as became sustained by deceased Satyawar, were but attributable to the accused Subhash rather suddenly applying the brakes of the Tata Sumo vehicle, hence for obviating the offending vehicle colliding with Satyawar and, but with the consequent effect, that he had no *mens rea* to pulverize deceased Satyawar under the wheels of the said vehicle. He submits, that the above exculpatory evidence, has been completely ignored, and, as such the impugned verdict requires an interference being made by this Court.

“ 1. There was multiple abrasion present on the dorsal aspect of the right hand 2 x 0.5 cm and 1.5 cm x 1 cm in side swelling was present on right hand.

2. There was a bruise present on the right leg 3 cm x 5 cm in side on the anterior aspect.

3. There was a swelling of 1 x 1 cm on the lower lip on the right side having a complaint of pain.”

(3) That with the inquest report comprised in Exhibit PL making an echoing, that the demise of Satyawar occurred in a road side accident. Therefore, the same is also construable to be suggestive of the

above exculpatory plea, as, raised by the convicts becoming completely proven by them.

(4) That since on the reverse of a document issued, from the General Hospital, Hisar, to which Exhibit PO is assigned, there is an echoing that the dead body of Satyawan, as became received at the hospital concerned, was declared to beget demise in a road side accident. Therefore, the above declaration existing on the reverse of Exhibit PO also corroborated the exculpatory plea, as raised by accused, that the accused had no *mens rea* in causing the demise of Satyawan in a road side accident, through the accused concerned, pulverizing him under the wheels of a Tata Sumo vehicle, but the said demise occurred in a road side accident, inasmuch as, the deceased Satyawan, who was a pedestrian at the relevant site, rather was attempted to be saved by the accused concerned, from his becoming pulverized under the wheels of the Tata Sumo vehicle, especially when the deposition of DW-1, suggests that the injuries sustained by accused Subhash, were a result of sudden application of brakes thereons, by the accused concerned, besides is also suggestive, that the injuries proven by DW-1, are relatable to the time, when the ill fated incident occurred at the site concerned.

(5) That the disclosure statement, as made by the accused concerned, and, which is embodied in Exhibit PY, and, in pursuance whereof, the demarcation of the crime site, was made, and, in sequel whereof Exhibit PZ became prepared, also does not comprise valid incriminatory evidence, of theirs' comprising evidence qua any recoveries of any incriminatory items, being made at the instance of the

accused concerned, to the investigating officer concerned, as the mere identification of the site concerned, without any recovery of the weapon of offence being made, does make the confession, as exists in the disclosure statement of the accused, to be a mere bald and simpliciter confession, and, that thereto the bar constituted under Section 25, of the Indian Evidence Act, 1872, becomes attracted. The contents of Exhibit PY are ad-verbatim extracted hereinafter. Therefore, no valid evidentiary worth can be given to either Exhibit PY or to Exhibit PZ. Thus, the crime event does not become unflinchingly proven.

“... In the presence of following witnesses, aforesaid accused Vikas @ Vicky, during police custody, without any fear disclosed that “On 15.10.2009, I had asked Dharampal son of Sohan Lal, Jat, resident of Pabra to bear the dire consequences for not leaving the land. As per our plan, on 25.10.2009, Raj Kumar, Baru and my mother Santro had caught hold of Satyawan son of Dharampal and my father Subhash Chand had driven Tata Sumo over Satyawan. I can demarcate the place of occurrence.”

Sd/-(in Hindi)

Vikash @ Vicky.

(6) Lastly, the examination of Dr. Neha Syal who prepared Exhibit PO was imperative, to ensure that proof emanates in respect of the truth of echoings, occurring on the reverse of Exhibit PO, whereas, her non examination tantamounts to the prosecution admitting that the echoings therein are truthful and but with consequential effect that the above raised exculpatory pleas do acquire corroboration therefrom.

Submissions of the learned State Counsel

20. On the other hand, the learned State counsel has argued with much vigor before this Court, that the impugned verdict of conviction and consequent thereto order of sentence, as imposed upon the convicts, is well merited, and, that it does not require any interference being made by this Court.

Reasons for rejecting the submissions of the learned counsel for the convicts.

21. (1) The criminal machinery was put in motion, at the instance of one Dharampal. The appeal FIR is enclosed in Exhibit PH/1, therein though, as aptly submitted by the learned counsel for the convicts, the informant-complainant one Dharampal, had attributed to the accused, other than accused Subhash, the incriminatory role of theirs' alighting from Tata Sumo vehicle, and, theirs' nabbing Satyawar, and, thereafter theirs' making him fall on to the ground. However, even if the informant-complainant, while being subjected to an exacting cross examination, though did make an echoing, that all the accused inclusive of Subhash, had alighted from the Tata Sumo vehicle, and that then they had nabbed Satyawar, and, further upon Satyawar confronting them, they threw him on to the ground, with his face upward, and, subsequently accused Subhash pulverizing Satyawar under the wheels of the Tata Sumo vehicle. Even if the above apposite inter-se contradiction, and or, inter-se embellishment or improvement, does surface, from the previously signed statement made by Dharampal, and, to which Exhibit P-10 is assigned, from his deposition recorded in Court. However, to the considered mind, of this Court, the above is

neither a gross nor a glaring inter-se improvement or embellishment, with his previously made signed statement, in writing, and which becomes enclosed in Exhibit P-10. The reason for forming the above conclusion, stems from the fact, that unless the defence had established through meeting of suggestions to PW-Dharampal, that his deposition in his examination-in-chief, was completely incredible, inasmuch as, his attribution to each of the accused of theirs' being available at the crime site, rather is prevaricated. Thus, even if in his cross-examination Dharampal, did in the above manner rather minimally improve or embellish upon his previously made statement in writing, yet the said purported improvement or embellishment, does not reiteratedly, cast any doubt or any impact upon the credibility of PW-Dharampal, especially when in his examination-in-chief, rather he makes a pointed incrimination against all the accused, inasmuch as, all being available at the crime site. Moreover, when preeminently the said incrimination, as above stated, is not proven to be false or prevaricated. Furthermore, also when the accused other than Subhash, are attributed the incriminatory roles of theirs' conspiring with the principal accused Subhash, in the latter pulverizing deceased Satyawar, under the wheels of the Tata Sumo vehicle. In addition, also when in the wake of accused Subhash, through DW-1 attempting to establish, that he did not with an penally inculpable *mens rea* rather cause the demise of the deceased in a road side accident, but only had made an unsuccessful attempt to save him, from his being brought under the wheels of Tata Sumo vehicle, which he was driving at the relevant time. Though, in the wake of the above, the accused concerned had attempted to establish, that bereft of

his nursing any penally inculpable *mens rea* to pulverize deceased Satyawar rather under the wheels of Tata Sumo vehicle rather the road side mishap occurred. Nonetheless, the inference which stems from the above plea, is that, the accused does admit his presence at the crime site, and, also admits the factum of his occupying the steering wheel of the offending vehicle concerned, thus, resultantly it brings home a further inference qua the ultimate act of Satyawar being put to death becoming committed by the principal accused Subhash. The further inference therefrom, is that, the incrimination drawn against other accused irrespective of the afore minimal improvement or embellishment, as made by PW-Dharampal, in his deposition recorded before the learned trial Judge concerned, with his previously made signatored statement to which Exhibit P-10, is assigned, but is valid, and or, the above minimal apposite improvement, is but, of no relevance to either conclude that his testification as an eye witness, is incredible nor the apposite digression is of any relevance to conclude, that yet the other accused who criminally conspired with the principal accused, were not available at the crime site, especially when reiteratedly no evidence suggestive, that they were unavailable alongwith the principal accused at the crime site rather has become adduced by the convicts, through suggestions compatible therewith rather hence becoming meted to the prosecution witnesses concerned.

(2) Though the learned counsel appearing for the convicts has argued with much vigor before this Court, that since in the inquest report, to which Exhibit PL is assigned, there is a reference of deceased Satyawar, suffering his demise in a road side accident, and,

also when the above factum is occurring on the reverse of Ex. PO. Therefore, the exculpatory plea raised by the accused was a validly raised plea. However, even the above submission falters, inasmuch as, on to the reverse of Exhibit PO, a paper becomes pasted rendering undecipherable or unreadable the contents borne therein. Therefore, this Court had through an order made on 02.12.2022, order whereof becomes extracted hereinafter, and also through an order made, on 21.12.2022, order whereof also becomes extracted, rather had made the hereinafter extracted directions upon the Director FSL, Madhuban.

Order dated 02.12.2022

“1. The learned counsel appearing for the co-convicts in CRA-D-474-DB-2013 stated at bar that during the pendency of the instant appeal before this Court, the demise of co-convict Ram Kumar has occurred. Therefore, the appeal bearing CRA-D-474-DB-2013 insofar as it pertains to deceased co-convict Ram Kumar is rendered abated and is dismissed as such.

2. CRA-D-1529-DB-2013 was admitted against the acquittal of respondent No.6 only. The argument of the learned counsel for the convict/appellants is rested on the factum that the writing on the reverse of Ex. PO is made by Dharampal. He argued that at the time of admission of Satyawar in General Hospital, Hisar, an intimation on the reverse of Ex.PO, was made, to the attending doctor to the effect that he had suffered injuries in sequel to a roadside accident. However, only photocopy thereof has been shown to the Court. Original of the said writing, occurring on the reverse of Ex.PO, is not readable as a page is pasted thereon, as such, the Registry of this Court is directed to, in a sealed cover, take Ex. PO (Page 243) to the F.S.L. Madhuban and thereafter, the F.S.L. Madhuban shall, with the apparatus available with it, and, without causing

spoiling or damage to the document concerned, ensure that the page pasted on the reverse side of Ex.PO is detached therefrom. After the above is done, the said document be, within 4 days, returned in a sealed cover to the Registry of this Court.

3. *Arguments heard.*

4. *Judgment reserved.”*

Order dated 21.12.2022

“1. This Court on 2.12.2022 had made the hereinafter directions upon FSL, Madhuban, the relevant paragraph is extracted hereinafter:-

“2. CRA-D-1529-DB-2013 was admitted against the acquittal of respondent No.6 only. The argument of the learned counsel for the convict/appellants is rested on the factum that the writing on the reverse of Ex. PO is made by Dharampal. He argued that at the time of admission of Satyawar in General Hospital, Hisar, an intimation on the reverse of Ex.PO, was made, to the attending doctor to the effect that he had suffered injuries in sequel to a roadside accident. However, only photocopy thereof has been shown to the Court. Original of the said writing, occurring on the reverse of Ex.PO, is not readable as a page is pasted thereon, as such, the Registry of this Court is directed to, in a sealed cover, take Ex. PO (Page 243) to the F.S.L. Madhuban and thereafter, the F.S.L. Madhuban shall, with the apparatus available with it, and, without causing spoiling or damage to the document concerned, ensure that the page pasted on the reverse side of Ex.PO is detached therefrom. After the above is done, the said document be, within 4 days, returned in a sealed cover to the Registry of this Court.”

2. However, though the Registry of this Court has thereafter made compliance therewith, and which led to the docket concerned, being sent at the FSL, Madhuban, but the official concerned, at the establishment of the FSL, Madhuban, appears to decline to accept the docket.

3. Therefore, this Court on 20.12.2022 had directed the Director, FSL, Madhuban to personally appear before this Court. The Director, FSL, Madhuban is apologetic about

the above misconduct on the part of the official concerned, handling the DAK at the establishment of the FSL, Madhuban. However, the Director, FSL, Madhuban is directed to draw action in accordance with law against the official concerned, who declined to accept the docket, as became forwarded thereto, by the Registry of this Court.

4. *The docket concerned, is personally handed over to the Director, FSL, Madhuban. The order extracted above be forthwith meted compliance.*

5. *IOIN stand disposed of.”*

(3) In compliance to the above made orders, the report of the FSL about the contents occurring on the reverse of Exhibit PO, has been placed on record. The opinion as made thereon, is, ad verbatim extracted hereinafter.

“ Minute and detailed examination of the questioned writing on the other side of slip marked 'Q' when deciphered appears to read as :

'Body brought by Dharmpal (fa - her) from Pawra as a result of RSA'

figure 6 in circle and signature reading as Goyal.

In addition to this, overwriting has been observed in character 'D' and portion of the slip marked 'Q' is missing in between characters reading as 'a' and 'h' of the word (fa her).

The writing on the other side of slip Ex PO marked 'Q' has been deciphered without un-pasting/detaching it form white sheet marked 'P'.”

(4) Significantly, even if assuming the reverse of Exhibit PO, does carry echoings about the dead body of the deceased, being brought at the Hospital concerned, and also assumingly if it has an echoing, that the demise of the deceased concerned, was suffered in a road side accident. However, the said disclosure is of no exculpatory impact. The reason becomes embodied in the factum, that the said echoings are not under the hands and signatures of PW-Dharampal.

Only if complainant Dharampal had provenly authored the above

echoings, as occur on the reverse of Ex.PO, and, which were but unreadable, by the trial Court nor became exhibited nor were admissible evidence at that stage, given qua on all the said echoings, an undetached page becoming pasted. In other words, the prime exculpatory evidence, as became necessitated to become adduced, qua the truth of the echoings occurring on the reverse of Exhibit PO, rather became comprised in its becoming provenly authored by Dharampal. However, a reading of the report/opinion of the FSL, does not disclose, that the above said echoings became authored by Dharampal. Therefore, even if there is a reference therein, about the dead body of Satyawan being brought at the hospital concerned, and, that it was a road side accident, yet the said echoing has no exculpatory effect. As but a natural corollary, Dr. Neha Syal was not required to be led into the witness box to prove that the said echoing was authored by PW-Dharampal nor she was required to prove that the said echoing occurred on an intimation being made by Dharampal, as Dharampal had made a signed statement Exhibit P-10 to the police officer, wherein, he attributed an incriminatory role to the accused concerned, leading to the registration of the FIR to which Exhibit PH/1 is assigned.

(5) Even otherwise, even if there is a mere reference in the inquest report to which Ex.PL is assigned, about the demise of Satyawan, happening in a road side accident, but even the said echoing is inconsequential, for assigning thereto any exculpatory effect, as this Court, for reason (supra), had assigned credence to the deposition of Dharampal, who is the informant complainant, and, who apart therefrom is also an ocular witness to the occurrence.

(6) Though the learned counsel, for the convicts, has argued that the disclosure statement, as made by the accused concerned, and, to which Exhibit PY is assigned, did only lead to identification of the crime site, and, in respect whereof Exhibit PZ became prepared. Therefore, he contends that when no incriminatory material was recovered, at the instance of the accused in pursuance to disclosure statement embodied in PY, thus, the mere identification of the crime site in pursuance to the disclosure statement, is a simpliciter or bald confession of guilt, and, is hit by Section 25 of the Indian Evidence Act, 1872. However, even the above submission falters, as the accused admitted qua his at the crime site, rather driving Tata Sumo vehicle, and, when the said vehicle became recovered through memo Ex.PD/PJ. Therefore, the Tata Sumo vehicle becomes the offending vehicle or the crime vehicle, thereupon, does render inconsequential, the inadmissibility in evidence, hence of the mere identification of the crime site rather occurring at the instance of the accused concerned, in pursuance to the apposite disclosure statement to which Ex.PY is assigned. Contrarily, the recovery of the crime vehicle through memo Ex.PD/PJ, does invincibly establish, the guilt of the accused concerned, in the commission of the charged offences. Predominantly also when the above factum of the accused concerned occupying the steering wheel of the crime vehicle, at the relevant time, is not denied, excepting that he did not crush the deceased under the wheels of the said vehicle rather with a penally inculpable *mens rea*, but had only tried to save him from his being brought under the wheels of the vehicle, in sequel whereto, he did also sustain the injuries (supra) as became proven by

DW-1, especially when the said argument has been hereinafter rejected by this Court.

(7) The further argument(s), as addressed before this Court by the learned counsel for the convict appellants, is that, the accident occurred without the accused concerned nursing a penally inculpable *mens rea*, inasmuch as, the accused concerned for obviating Satyawar rather being brought under the wheels of Tata Sumo vehicle, did proceed to, apply brakes thereons, and, with the said factum becoming supported by the deposition of DW-1, thus, as above stated, it has been submitted that the accused, did not hence nurse any penally inculpable *mens rea*. However, even the above made submission is completely rudderless. The reason for forming the above inference, stems from the factum, that the crime event occurred at crime site, as denoted in the site plan to which Exhibit P-8 is assigned. The drawings of Exhibit P-8, has not been proven to be either false or fictitious. Therefore, sanctity is to be assigned to the unfoldings as become carried in Exhibit P-8. If so, when there are unfoldings therein, that the crime event occurred at a distance of 3 karams from the metal road. Therefore, with the above factum becoming not falsified, resultantly, the exculpatory plea, as raised by the convicts, that deceased Satyawar had appeared on the metaled portion of the road, and for obviating the Tata Sumo vehicle hence striking his person, the accused concerned, had made application of brakes thereons, resulting in injuries, as pronounced by DW-1 occurring on his person, is but, a completely false plea. The further reason for forming the above inference stems from, the factum that the very fact qua no contro-version being made to the

factum, as pronounced in Exhibit P-8 of the crime event taking place outside the metaled road, is thus, but a loud bespeaking, about the accused concerned, travelling outside the metaled road, but with the relevant inculpable penal *mens rea*, to pulverize Satyawar under the wheels of the Tata Sumo vehicle. In consonance the charges drawn against the accused concerned, become invincibly proven.

(8) Further support to the above made inference becomes derived from the factum, that through Exhibit P8/PF/1, the chapals of the deceased were found lying at point B. The makings of Exhibit P8/PF/1, has not been denied. If so, the prosecution case, qua the accused concerned while driving the Tata Sumo Vehicle, did initially unsuccessfully strive to pulverize Satyawar, under the wheels of the said vehicle, and but naturally, in the said rescueratory effort Satyawar's chappals were left at the crime site. If so, as but a natural corollary, the attempt of Satyawar to save himself from his being brought under the wheels of Tata Sumo vehicle, did become evidently thwarted, and yet when subsequently, he was pulverized under the wheels of the Tata Sumo vehicle, thereupon, but obviously no conclusion other than his being ensured to be fatally pulverized, by the accused concerned, under the wheels of the Tata Sumo vehicle, rather does supur, and, does but obviously boost a firm inference that the accused hence carried the penally inculpable *mens rea*.

Medical Evidence

22. PW-8, Dr. Vishal Goyal, who made an autopsy on the body of the deceased Satyawar, has tendered in evidence, his sworn affidavit Ex.PM, containing all details, particulars, injuries and cause of death,

probable time in between injuries and death and the conducting of the post mortem examination of deceased Satyawar. The recorded observations, as made therein on his making an autopsy, upon, the body of deceased, are extracted hereafter.

1. Obliquely placed lacerated wound extending from centre of right axilla upto umbilicus. On cut dissection right sided ribcage was fractured and haemothorax and haemo peritoneum was present. Contusion of right lung and L.W. over liver was present.

2. Multiple abrasions of varying sizes present over right shoulder and right arm.

23. Moreover, PW-8 voices in his deposition, that the cause of death was hemorrhage and shock owing to injuries on vital organs, which were ante mortem in nature and sufficient to cause death in ordinary course of life, besides, in his examination-in-chief he has deposed that there could be a possibility that the deceased was lying on the road having faced towards road, and, that some vehicle had crossed over his body. However, he has further deposed that the possibility of the death of the deceased for the above said reason was very remote. PW-8, in his examination-in-chief, has also proven the ruqa Ex.PO, sent by Dr.Neha Syal, with whom he was working and had seen her while writing.

24. The above made opinion regarding possibility of death of the deceased while lying on the road having faced towards road, and, some vehicle crossing over his body, though has been pronounced to be remote by PW-8, but the proven incrimination as made by PW-Dharampal, an ocular witness to the occurrence, about all the accused

being available at the crime site, and, further with an admission by the principal accused Subhash, of his being available at the crime site, inasmuch as, his making an unsuccessful attempt to save deceased Satyawar, from his being brought under the wheels of Tata Sumo vehicle, which he was driving at the relevant time, rather does connect the convicts, with the pulverizing of the deceased under the wheels of the Tata Sumo vehicle, irrespective of the above opinion being made by PW-8 Dr. Vishal Goyal. Resultantly the prosecution has unflinchingly proven the charge drawn against the convicts.

Finding of acquittal drawn in respect of accused Vikas

25. Accused Vikas has been attributed to visit the house of complainant and threatening the complainant party. However, his presence at the relevant site of occurrence never became cogently proven by the prosecution nor in the statement made by complainant-PW-Dharampal, he has been alleged to participate in the crime event. Merely by giving threats to the complainant party, he cannot be concluded to be conspiring/participating with the other accused in the crime event.

26. Accused Vikas alias Vicky further in his signed disclosure statement, to which Exhibit PY is assigned, had demarcated the place of occurrence and in pursuance to the said disclosure Exhibit PZ i.e. memo of demarcation of place of occurrence became drawn. Since the above apposite exhibits have been pronounced by this Court to be holding no evidentiary vigor. Therefore, in view of the above, the verdict of acquittal, as made upon, accused Vikas @ Vicky, by the learned Convicting Court, is upheld.

Principles of Law

1) In case there is any contradiction inter-se the medical account and the eye witness account, thereupon, the credible eye witness account is to be assigned preponderance and precedence over the medical account.

2) The effect of minimal digressions or contradictions inter-se the previously made statements in writing by the ocular witness to the occurrence with his echoings in his testification recorded before the Court, are insignificant, especially when the echoing made by the ocular witness about the presence of all the accused, at the crime site, remains unrebutted and uncontroverted through adduction of cogent evidence.

Final Order

27. In consequence, there is no merit in both the appeals, and, they are dismissed. The impugned verdict(s), and, consequent therewith sentence(s) (supra), as imposed upon the convicts **Subhash @ Makkar, Ram Kumar, Baru Ram and Santro**, in the appeal **CRA-D-474-DB-2013**, by the learned Convicting Court, are affirmed and maintained whereas, the verdict of acquittal, as made upon the accused-respondent No. 6-Vikas @ Vicky in appeal **CRA-D-1529-DB-2013**, is upheld.

28. If the convicts (supra) are on bail, thereupon, the sentences(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

29. 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 sent down forthwith.

30. Since the main case itself has been decided, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

18.01.2023
kavneet singh

(KULDEEP TIWARI)
JUDGE

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