

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

CRA-D-1004-DB-2016 (O & M) and
CRA-D-1153-DB-2016
Reserved on:13.03.2023
Date of Decision: 12.04.2023

SureshAppellant(s)

Versus

State of Haryana and othersRespondent(s)

AND

CRA-D-1153-DB-2016

RameshAppellant(s)

Versus

State of HaryanaRespondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Atul Lakhanpal, Sr. Advocate,
with Mr. Arvinder Pal Singh, Advocate,
for the appellant (in CRA-D-1004-DB-2016).

Mr. Lal Singh Sandhu, Advocate,
for the appellant (CRA-D-1153-DB-2016).

Mr. Ankur Mittal, Addl. A.G., Haryana,
and Mr. Saurabh Mago, AAG, Haryana.

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of two appeals i.e. CRA-D-1004-DB-2016 (O & M) and CRA-D-1153-DB-2016, which are directed against the judgment of the Additional Sessions Judge, Hisar dated 12.10.2016 in FIR No. 26 dated 30.01.2012 lodged under Sections

Adampur, in which conviction has been recorded of both the appellants Suresh and Ramesh for the abovesaid offences under IPC whereas, Suresh has also been held guilty for commission of the abovesaid offences under Section 25 of the Arms Act. Resultantly, they were convicted and sentenced to undergo life imprisonment and pay a fine of Rs.10,000/- each. They are stated to have undergone actual period of 9 years, 6 months and 27 days in the case of Suresh as on 16.02.2023 whereas Ramesh has undergone actual period of 5 years, 10 months and 25 days way back on 31.08.2018 as per the custody certificates which are on record.

2. The reasoning given by the trial Court to accept the prosecution version is that the recovery of the pistol was from Suresh because he was apprehended immediately after the incident and the pistol had dropped from his hand. Since he was apprehended at the spot, the pistol had been collected by the police and the report of the ballistic expert spoke against Suresh. The presence of Ramesh and the intention was held to be clear that he had exhorted Suresh to kill the deceased Mewa Singh, who was a Chowkidar and was not giving the gas cylinders on demand. It was held that in the FIR, it had been mentioned that the accused had entered the godown and fired two shots outside the room and thereafter the deceased had been shot who was yet to get up from his sleep and, therefore, it was held that there was a motive as such also. The eye witness account was held to be truthful and the apprehension of Suresh at the spot by the complainant Surinder and Pardeep, which the Court found no reason to disbelieve and the fact that there was a recovery memo which was prepared on 30.01.2012 itself (Ex.P-14) wherein, even a cotton swab had been taken from the right hand grip of Suresh in

order to ascertain whether there was gun powder residue present on his right hand or not and which had showed up positive in the report of the FSL. Resultantly, finding had been recorded that Suresh had handled the weapon and fired the shots and since webbing of the residue has been done on 30.01.2012, there was no question of any after thought version or result of padding by the police.

3. The argument that Suresh was not present at the spot and had not committed any offence was accordingly rejected while placing reliance upon the inquest report (Ex.P-29) wherein also, his name was mentioned and that serious injuries were noticed on his body and the button of the shirt was also broken. It was held that the act of the complainant and Pardeep was also natural because they gripped the person who was the main accused in killing the deceased and their energies had been directed towards him and thus, the co-accused Ramesh had succeeded in running away. The said button (Ex.P-18) was also recovered which had matched with the shirt of Suresh (Ex.P-39). The fact that the FIR was registered at 11.35 p.m. during a short span of time of the shooting made the prosecution version truthful and ruled out the chances of false implication of Suresh by the police. The contention of the defence counsel that the prosecution had failed to produce the medico-legal report of Suresh was rejected on the ground that there was no requirement to produce the same as he had not received any injuries in the crime but rather received injuries after committing the crime when he was apprehended. It had accordingly been held that merely because the Investigating Officer had chosen to investigate the matter in a particular manner, the complainant should not suffer for that. Resultantly, it was held that both the accused had

committed house trespass by entering the godown of Sham Gas Agency and in order to commit the murder of Mewa Singh and, thus, were held guilty under Section 449 IPC and the recovery of .315 bore country made pistol alongwith the possession of three cartridges and one live cartridge which had misfired also made Suresh liable to be convicted under the Arms Act.

4. Mr. Lakhanpal, Sr. Counsel, appearing for appellant-Suresh, has submitted that it is a case of a blind murder and Suresh was never arrested on the spot but was arrested two days later on 01.02.2012. It is pointed out from Ex.P-28 that when the statement of Surinder Kumar-complainant was recorded, the police official in his endorsement has not stated that Suresh had been arrested at that point of time. Reliance was placed on the statement of PW11 retired S.I. Dalbir Singh, who had recorded the statement of the complainant-Surinder Kumar (Ex.P-1) wherein, it has been mentioned that Pardeep and Surinder Kumar had produced accused Suresh in the Court before him during investigation at the spot. However, later on he had deposed that he had arrested Suresh on 01.02.2012 who had resultantly suffered his disclosure statement (Ex.P-4) regarding his involvement in the commission of offence. It is submitted that his blood stained shirt was worn by him at the time of the arrest as per the statement and which was thus taken into possession vide Ex.P-5 which would be highly unlikely after a period of two days. It is further submitted that Nihal Singh was an officer working as Food and Supplies Inspector at Adampur and stated to have accompanied the present appellants and thereafter fled away, but it has come in the statements of the witnesses that he was also present at the spot thereafter when the Senior Superintendent of Police, Hisar and DSP Hisar had visited the site. It

is thus, contended that it is highly unlikely that being a co-accused, he would be present when the higher officials were present having run away earlier while referring to the same cross examination of PW-11 Dalbir Singh. Accordingly, it is contended that the statement of Balwan Singh (Ex.D-1) which was recorded under Section 175 Cr.P.C. specifically mentioned that Nihal Singh, the maternal uncle of Suresh, was present at the spot. Thus, it is the case of the defence counsel that the incident could have taken place at 7.00 p.m. as per the statement of PW-12 Dr. Venu Dhandha and the FIR was only lodged at 11.35 by alleging that the incident took place at 10 o'clock. Accordingly, it is argued that there was sufficient time to introduce the alleged eye witness and the other eye witness Pardeep was not examined and had rather given up and, therefore, the evidence has to be examined in detail and the benefit of doubt had to be extended. Similarly, the owner of the gas agency was not examined to prove the fact of the employment of both the deceased and the complainant Surinder Kumar. It is submitted that the motive is also very weak as the allegations were that the gas cylinder was not being supplied to Ramesh for refilling and Mewa Singh, the Chowkidar was not giving him a gas cylinder despite his visits 4-5 times in the gas godown office, which would be clear from the disclosure statement allegedly taken from Suresh (Ex.P-4). It is submitted that apparently he was only a Chowkidar and had nothing to do with the issuance of the slips and rather it was the duty of the other two namely Surinder Kumar and Pardeep. It is accordingly contended that Nihal Singh had also undergone polygraphic test and had been exonerated. He had only been summoned under Section 319 Cr.P.C. vide subsequent order dated 13.08.2015 as he and Hansraj were found

to be innocent in the supplementary challan furnished on 26.08.2013. The order under Section 319 Cr.P.C. had been stayed which was passed in Crl. Rev. No. 3061 of 2015 by the Single Bench of this Court.

5. Counsel for the State, on the other hand, has justified the conviction on the ground that there was no delay and there was an eye witness account and there was no reason as such to falsely implicate the accused. It is submitted that the cotton swab test would go on to show that gun powder was detected from the hand of Suresh and, therefore, it was argued that the conviction has been rightly recorded and there is no occasion as such made out to interfere in the well reasoned order passed by the trial Court. It is submitted that on account of delay in recording of the evidence as such, the discrepancies might have arisen in the statement of the complainant.

6. After having gone through the record, we are of the considered opinion that there are certain issues which the trial Court has brushed aside which would go to the root of the matter and cast serious doubts about the presence of the alleged eye witnesses and the factum of arrest of Suresh Kumar, which has not been dispelled in any manner. The sequence of events would go on to show that PW11 S.I. Dalbir Singh recorded the statement of Surinder Kumar (Ex.P1), who was an alleged eye witness and was working with the deceased alongwith one Pardeep in Sham Gas Agency, Mandi, Adampur. It was his case that the two appellants Suresh and Ramesh alongwith Nihal Singh Bishnoi, Food and Supplies Inspector, who is the maternal uncle of Suresh had come at 10.00 p.m. The two appellants had entered the godown after opening the gate whereas Nihal Singh Bishnoi had kept on standing on the road outside the gate of the godown. Suresh had

fired in the air with the .315 bore country made pistol which he was carrying and he was asked not to do so but both of them forcibly entered inside the room whereby the second round had been fired which struck the roof. The motive as such was that the deceased Mewa Singh @ Fauji was not giving gas cylinders to Ramesh and, therefore, the said appellant had exhorted upon Suresh to fire upon him. Suresh had then put a round of bullet in the pistol and fired directly at the forehead of Mewa Singh and thereafter both of them had tried to run away. With great struggle, the complainant Surinder and Pardeep had apprehended Suresh at the spot whereas Ramesh had run away taking the advantage of the darkness and Nihal Singh Bishnoi had also ran away from the spot. The information was given to the police station, Adampur, which was admittedly only two kilometers away and also to the family members of Mewa Singh and his elder brother Balwan Singh had reached the spot. It was also mentioned that Suresh Kumar, one of the appellants herein, had received injuries when he was apprehended at the spot.

7. Thus, it is apparent that the incident is of 10.00 p.m. and the brother had been summoned from his village, which was approximately 50 kilometers away and was already present when the police party reached there. From the statement of PW11 SHO Dalbir Singh itself and from cross examination, the police party had reached at 10.00 p.m. as on receipt of information as they were on patrolling duty in the Grain Market at that point of time. It has also come in his cross examination that the place where they received the information and the police station is about half a kilometer and 10-15 persons were already present from the public who were found in the room and some in the *varandah*. A perusal of the FIR which was lodged at

11.35 p.m. would also go on to show that there was a distance of two kilometers from the police station and the documentation done by the SHO at the spot was done at 11.15 p.m. in which it has been mentioned that Balwan Singh was also present when the police party had reached at the spot and when Surinder's statement had been recorded and intimation had been sent to the police station for registration of case and FIR number. The photographer was also to be asked to be deputed at the spot as per Ex.P-28. However, in the said exhibit (Ex.P28), which are the police proceedings, there is no mention that the appellant Suresh had been apprehended and was available at the spot.

8. The disclosure statement of the accused-Suresh, one of the appellants (Ex.P-4) interestingly is also not dated 30.01.2012 when the police party was present when naturally if he was there at the spot, it should have been recorded on that day and rather it is dated 01.02.2012, which has now been admitted to be the date of arrest of the said appellant, which would be clear from the statement of the PW-11 SHO Dalbir Singh himself, though in the initial portion, he had stated that Pardeep and Surinder had produced accused Suresh before him and he had conducted personal search of Suresh and also taken into possession the gun powder with a cotton swab from the right hand of the said accused and put the same in the plastic vial. This process of Suresh's hand being coated with gun powder and sample of which was taken with the help of the cotton (Ex.P-14) has been adversely taken by the Sessions Court as a strong circumstance and process done on 30.01.2012 which was also witnessed only by Balwan Singh and Pardeep, the brother and the other eye witness who was never produced. The signatures of the

accused Suresh do not find mention on this sampling which was allegedly conducted and, therefore, casts a serious doubt that the sample was taken from his hand and there was nothing to show that he was in the custody of the police at that point of time. Therefore, the trial Court has placed unnecessary reliance upon this sampling process. Similar is the fact that the blood of the deceased which was lifted with the help of the cotton swab and put in the plastic container and sealed with the seal 'DS' was allegedly done on 31.01.2012 (Ex.P-16) and not on the night of 30.01.2012 itself. Again there was nothing to show that it was done in the presence of the accused-Suresh, one of the appellants herein, who was allegedly in the custody of the investigating agency. Ex.P-16 is again only signed by Balwan Singh and Pardeep.

9. The recovery memo of the .315 bore country made pistol which was found at the spot and a sketch of which had been prepared by the SHO again on 30.01.2012 (Ex.P-15) also does not bear the signatures of accused Suresh, who was allegedly in the custody of police and the said document is again signed only by Balwan Singh and Pardeep, which again casts a doubt that he was present and in the custody having been apprehended at the spot. PW-11 SHO Dalbir Singh, in his examination, has admitted that he arrested Suresh only on 01.02.2012 who then suffered a disclosure statement Ex.P-4. A perusal of the said document would go on to show that the motive which is alleged is that the appellant Suresh had met his maternal uncle Nihal Singh Bishnoi with the co-convict and told him that Ramesh had a slip for refilling of cylinders on 30.01.2012 but the deceased Mewa Singh, who was the godown keeper, was not giving him the gas cylinder despite the fact that he

had visited 4-5 times in the gas godown office. Nihal Singh Bishnoi is stated to have told him to teach a lesson to the deceased and accordingly since Ramesh had purchased a .315 bore country made pistol from Sharwan, who is stated to have died some time back, both the appellants are stated to have consumed liquor at the shop of Ramesh, who is a Barber and then reached the gas godown on his motor cycle. On opening the gate as per directions of the maternal uncle, they had fired two shots in the air and the third shot at the forehead of Mewa Singh and he had been caught at the spot and his pistol had fallen down and one round of pistol had misfired which he had in his pocket, which was taken into possession. As per his disclosure statement, he had received injuries in the incident but he did not know who had caused injuries to him but Ramesh, the co-convict had fled away on his motor cycle.

10. Thus, apparently, the motive aspect is also very weak which has been put forth. Nothing has come on record that there were any booking slips in favour of Ramesh, which the Chowkidar was not honouring. It has also now come in the statement of the witnesses that Nihal Singh Bishnoi was present when the senior police officials were also present. We also find it to be a very strange conduct on behalf of the person who is stated to be an accused that he would come back to the site of the crime when the police personnel who were investigating the crime were present and that also in the presence of the same eye witnesses who had stated against him, which would go on to show that the evidence of the alleged eye witnesses is to be examined with due care and caution, specially keeping in view the fact that one of them Pardeep was given up on the ground that he had been won over by the accused and was not likely to support the prosecution case.

11. Another interesting aspect is that there was no memo regarding the arrest of Suresh on 30.01.2012 and there is a recovery of the stripped half sleeves shirt which was stained with the blood of the said appellant and one of its steel button is stated to have fallen on the spot which was allegedly recovered. The shirt (Ex.P-5) was apparently again recovered only on 01.02.2012, two days after the occurrence and not on 30.01.2012 itself and there is nothing to show that there were any signatures on the recovery memo of the accused and only signatures of two police officials i.e. PW-3 S.I. Dev Raj and Constable Mahender Mohan were present. It is hard to believe that a person would be walking around for two days after having committing a murder and having blood stains on his half sleeves shirt on a winter morning, which again makes the recovery itself doubtful, on the basis of which, again the correlation with a button which was recovered from the spot had weighed with the trial Court while recording conviction.

12. The site plan (Ex.P-9) was only drawn up on 25.02.2012 by PW-5, draftsman Raju EHC, who in his deposition stated that the site plan (Ex.P-9) was drawn at the pointing of the SHO Dalbir Singh, which is apparently 26 days after the incident. Even in the said site plan, there is no reference of any room where the appellant Suresh is stated to have been detained and locked up and there is only reference to marks A to F, where the body of the deceased was lying on the *diwan* (bed). Mark 'B' was where the .315 bore country made pistol was stated to be lying, mark 'C' was where the empty cartridge was stated to be lying in the room and mark 'D' was where the blood was stated to be lying. Outside the room and beyond the *varandah* at marks 'E' and 'F', there were two empty cartridges which were stated to be lying and

taken into police possession. Thus, no sanctity can be given to the site plan as apparently it was drawn up after 26 days and neither there is any mention herein also that the second room which has been shown in the same was a room where Suresh had been detained by the alleged eye witnesses. The sketch of the country made pistol which was done on 30.01.2012 (Ex.P-15) also suffers from the same illegality in the sense that there are no signatures of Suresh on it and only signatures of Balwan Singh and Pardeep figure on the said document. It is also pertinent to notice that neither any effort was made to lift the finger prints from the weapon which was lying on the spot to co-relate it with the finger prints of the accused-appellant Suresh, who is stated to have opened fire which would have conclusively proved that he had handled the weapon apart from the fact that there is a serious doubt as to whether he was apprehended at the spot, as stated.

13. It has also come in evidence that on account of the injuries he had received while being apprehended, he is stated to have been sent to General Hospital, Adampur for getting his medico legal examination done for the injuries present on his body. Nothing has been brought on record by the prosecution that his medico legal examination was done when he was sent in police custody regarding the injuries present which would have corroborated the fact that he was actually arrested on 30.01.2012 on having been apprehended at the spot and the medico legal examination would have verified his presence. Thus, in the absence of these documents in the form of a formal arrest memo and his signatures on the relevant recoveries which were conducted on the spot and neither any medical having been conducted, we are of the considered opinion that the presence itself is doubtful.

14. Therefore, the reasoning given by the trial Court that the injuries were received by him were not at the time of the incident but after he had committed the crime when he had been apprehended does not cover up the gap in the prosecution/investigation theory regarding his presence at the spot. The discrepancies regarding these aspects apparently are well relied upon by the defence to the extent that it was a case of blind murder. We have perused the photographs (Exs.P31 to P36), which would show the position of the deceased that he was lying on the bed when he was shot dead and was still in his quilt. Strangely enough, the weapon was also recovered in the said room. The case of the alleged eye witnesses is that on a cold January night at 10.00 P.M., the two appellants alongwith Nihal Singh Bishnoi had come to the spot and Suresh had opened fire twice before putting another cartridge in the pistol and hitting the deceased in his forehead in the presence of the other two eye witnesses, no one of whom were injured or made any attempt to stop Suresh from carrying out the said act. It is the own case of the complainant Surinder that when the first shot had been fired in the air and the second had hit the roof of the *varandah*, in contradiction to the earlier version that the second shot was fired in the room itself and then they had pushed him and Pardeep aside and gone into the room where Mewa Singh was found. Ramesh had then exhorted that Mewa Singh was not issuing cylinders to him and he should be killed. Suresh had then fired the third short, which hit him on the forehead. It was only at that time the scuffle had taken place and Suresh had been over powered and had been taken in the adjoining room and the room had been bolted from outside whereas the other two had run away.

At this time, information was stated to have been given to Balwan, the

brother of Mewa Singh to reach immediately alongwith the family members and a call had been made to the Adampur Police to reach.

15. It has come in the statement of Surinder that Balwan and his family members reached the spot and the facts were disclosed to him and then Surinder had given the statement to the police which had arrived on the spot (Ex.P-1). It is his categorical statement that Balwan Singh had arrived within 30 minutes after the occurrence and the police had arrived at the spot after arrival of Balwan Singh, which is again highly unlikely since admittedly, PW-9 Balwan Singh has stated that on getting the information about the murder of his brother from Surinder on telephone by Suresh due to firing from the pistol and the fact that Suresh had been apprehended at the spot, he had reached there alongwith other relatives and another brother of the deceased namely Pardeep Singh. He admitted in his cross examination that the distance between his village Sarwaha to Hisar was 20 kilometers and from Hisar to Adampur, distance is about 30 kilometers. It is his case that he had reached within 30 minutes at Adampur, which is not possible in a winter night on a village road. He also stated that accused Suresh had also injuries on his body when he was taken out from the room while denying the suggestion that it was a blind murder by some unknown person and the Food Inspector was wrongly been implicated to extort money. In his statement, he himself stated that the police party had reached the spot after some time and started the inquest proceedings and sent the accused in police custody to General Hospital, Adampur for getting his medico legal examination done for the injuries present on his body which, as discussed earlier, has not come on record. PW-1 Surinder also, as noticed, was already deposed about the fact

that the police arrived after the arrival of Balwan Singh, which is also difficult to accept since admittedly the police station was only two kilometers away and as per the statement of the police party, they were already patrolling and even were at the closer distance when the information had been received regarding the firing incident and they had reached at the spot.

16. Thus, regarding this aspect even we have to examine the statement of the doctor i.e. PW-12 Dr. Venu Dhandha, to whom a suggestion was put and it has been suggested to her that the possibility of death in this case at 7.00 p.m. could not be ruled out and the fact that the bullet shot was fired only from one yard on account of the fact that there was blackening found on the person of the deceased.

17. Thus, it can be rightly held that the incident had taken place at an earlier point of time and not at 10.00 p.m. as portrayed, to ensure that there was a cover up to put forth the case that there was no delay in lodging of the FIR. The brother had already been summoned and was present at the spot before the police party reached and thus, in such circumstances, it seems that the statement was then recorded of Surinder Kumar wherein, specific allegations were made against the two appellants. It is also to be noticed that Ramesh, who was arrested later on 08.02.2012, had given a disclosure statement in which one motor cycle had been recovered on 09.02.2012 (Ex. P-8) and the prosecution sought to involve him by virtue of attributing the motive in line with the earlier disclosure statement made by Suresh which was recorded on 09.02.2012 (Ex.P-6). The same was that he had got a slip for refilling of the cylinder and on account of the deceased not giving the gas supply of cylinders and being fed up, he had disclosed the

same to Suresh, the co-appellant at 8.00-9.00 p.m., who had come to his barber shop where they were consuming liquor. At that point of time, he had complained to Suresh that his maternal uncle was a Food and Supply Inspector and he was not getting cylinder under his leadership and Suresh had told him that Mewa Singh was not a man of good sound mind and he did not care for anyone. The gas agency had been obtained by him in spite of opposition of his maternal uncle Nihal Singh Bishnoi, who was willing to obtain the gas agency for Suresh and it was in such circumstances they had gone to the gas godown to take their revenge, which is a further improvement of the motive aspect. Apparently, the net was cast even wider and passed on to Nihal Singh Bishnoi, who has been summoned in an application under Section 319 Cr.P.C. by the trial Court on 31.08.2015, which order is stayed in a criminal revision preferred by him. One Hansraj was also brought in the loop and eventually he was not challaned and the trial Court had noted that there was a supplementary challan which was awaited and eventually vide order dated 06.06.2015, it was noticed that he was arrested under Section 216 IPC but found innocent and challan was not filed against him and, therefore, he need not appear in future.

18. Thus, it would go on to show that the prosecution story cannot be accepted as gospel truth though it is alleged to have been based on an eye witnesses account of namely Surinder, who is stated to be working at the said gas agency. Interestingly, his employment aspect has also not been proved on record in as much as it was put to the SHO that the statement of Moti Ram Aggarwal, the proprietor of the gas agency was never recorded. Similarly, it was also put to the said officer that whether any booking slip or document

had been recovered from Ramesh regarding the gas connection of Sham Gas Agency or from the owner of the gas agency. Therefore, the employment aspect of Surinder apparently also of being employed by the proprietor of the Agency and being present at the spot is not proved beyond a shadow of doubt. Apparently, as noticed, Pardeep, the other eye witness was given up on an application filed that he had colluded with the accused on 12.10.2015 and eventually, an order was passed by the trial Court on the said date on the statement of the public prosecutor that having been won over by the accused, the said witness was given up.

19. Thus, this Court has to be extra cautious as such when the statement of the alleged sole witness Surinder is examined with great caution and the factum of Suresh alleged to have been apprehended at the spot but not having been shown as arrested by the Investigating Agency or having been medically examined on 30.01.2012 though injured causes has put a serious dent in the prosecution story. Therefore, the statement of Surinder has to be read with further caution as to whether he was present at the spot, as alleged. It is to be noticed that the statement of Balwan Singh was recorded under Section 175 Cr.P.C. regarding the fact that his brother had been shot dead by Suresh alongwith his maternal uncle and Ramesh, which was as per the telephonic information received by him and he had stated that Nihal Singh and Suresh Kumar were present at the spot alongwith another person who had fled away by saying that they were taking revenge for not giving the gas cylinder. It was at that stage he was also associated with the inquest proceedings and similar is the statement recorded of Pardeep, the other eye witness that the loading of the bullets had been done at the spot one by one

and then the firing had taken place which, as noticed above, we find difficult to accept that the apprehension at the spot was not done when there were two other persons available and present who apparently suffered no injury and two shots had already been fired by loading the country made pistol. The inquest proceedings also show the presence of Balwan Singh and Pardeep and the incident of around 10.00 p.m. whereas, in the site plan again, the dead body of the deceased had been shown as mark 'A' and the .315 bore country made pistol was recovered from mark 'B' whereas, empty cartridge was mark 'C' and the blood was shown at mark 'D'. There is no reference to the fact that Suresh was apprehended and locked in the adjoining room which is shown as a Kitchen and nothing was depicted in the said inquest report also apart from the fact that he had been apprehended and produced before him and had received many injuries from head to legs, which is again contradicted on account of no medical examination having been done, though specific statements have been recorded that he was sent to the civil hospital for medical examination. No record had been produced to show the said factum of the same having been conducted on 30.01.2012 or on 31.01.2012. His arrest having been admitted on 01.02.2012 thus takes the prosecution case nowhere and is in contradiction to the eye witness account that he was apprehended at the spot.

20. Resultantly, we are of the considered opinion that mere matching the bullet from the .315 bore country made pistol (W/1) which was recovered at the spot and the lead bullet recovered from the body of the deceased Mewa Singh will not hold the appellants responsible for his murder. Similarly, the cotton swab which is stated to have been taken from the right hand of the

accused Suresh which allegedly had gun shot residue on it would as per Ex.P-38, the report of the Forensic Science Laboratory would also be of no value once the recovery memo (Ex.P-14) never showed the presence of the accused on 30.01.2012.

21. In such circumstances, we are of the considered opinion that the trial Court failed to take these important aspects into account while recording the conviction and accepting the statement of the alleged eye witness as a gospel truth. Accordingly, the benefit of doubt would necessarily have to flow to the appellants in the facts and circumstances.

22. Resultantly, we allow the appeals and set aside the order of conviction dated 12.10.2016. The appellants Suresh and Ramesh be set free, in case they are not required in any other criminal case.

(G.S. SANDHAWALIA)
JUDGE

12.04.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes