

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

(I) CRA-D-86-DB-2017 (O&M)
Reserved on: 13.03.2023
Date of decision: 23.03.2023

AJAY KUMAR AND OTHERS

...Appellants

Versus

STATE OF HARYANA

...Respondent

(II) CRA-D-34-DB-2017 (O&M)

SANJAY @ CHELA AND OTHERS

...Appellants

Versus

STATE OF HARYANA

...Respondents

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

Present: Mr. Ruhani Chadha, Advocate
for appellants (in CRA-D-86-DB-2017) and
for appellant No.2 (in CRA-D-34-DB-2017)

Mr. L.S. Sidhu, Advocate
for appellants No.1 and 3 (in CRA-D-34-DB-2017)

Mr. Pradeep Parkash Chahar, DAG, Haryana

SURESHWAR THAKUR, J.

1. Since both the criminal appeals arise from a common verdict made on 07.11.2016, upon Sessions Case No.48 of 2014/2015, by the learned Additional Sessions Judge, Hisar, thus both the criminal appeals are amenable for a common verdict being made thereons.

2. Through the impugned verdict (supra), the learned Additional Sessions Judge concerned, made a verdict of conviction in respect of offences

punishable under Section 148 of IPC, under Section 302 of IPC read with Section 149 of IPC, and, under Section 323 of IPC read with Section 149 of IPC. Moreover, the learned Additional Sessions Judge concerned, also made a verdict of acquittal upon accused in respect of an offence punishable under Section 447 of IPC. Moreover, through a separate sentencing order drawn on 09.11.2016, the learned trial Judge concerned, imposed upon the convicts the hereinafter extracted sentence(s).

Under section 148 IPC	All the convicts shall undergo rigorous imprisonment for a period of three year each and payment of Rs.2,000/- as fine each and in default thereof the convict shall further undergo simple imprisonment for three months each.
Under section 302 IPC read with section 149 IPC	All the convicts shall undergo rigorous imprisonment for life and payment of Rs.50,000/- as fine each and in default thereof the convict shall further undergo simple imprisonment for six months each.
Under section 323 IPC read with section 149 IPC	All the convicts shall undergo rigorous imprisonment for a period of one year each and payment of Rs.1,000/- each as fine and in default thereof the convict shall further undergo simple imprisonment for one month each.

3. The above sentence(s) were ordered to run concurrently. However, the period spent in custody by the convicts during investigations, and, trial of the case, was in terms of Section 428 of the Cr.P.C., rather ordered to be set off from the above imposed substantive sentence of imprisonment.

4. All the convicts (supra) become aggrieved from the above made verdict of conviction, besides become aggrieved from the consequent therewith sentence(s) (supra), as became imposed upon each of them, thus they are led to institute thereagainst the instant appeals (supra) before this Court.

FACTUAL BACKGROUND

5. Brief facts of this case are that on 13.1.2014 SI Karamjit Singh received a telephonic message to the effect that Ram Mehar son of Tulsi Ram and Ved Parkash son of Om Parkash R/o Village Puthi have received injuries in

a quarrel and are admitted in General Hospital Hisar. On receipt of this information SI Karamjit alongwith other police officials visited General Hospital Hisar and they collected the MLR and ruqqa from the doctor and the doctor disclosed that injured Ram Mehar has been referred to NC Jindal Hospital Hisar whereas injured Ved Parkash was not on bed. Thereafter SI Karamjit received an information that injured Ram Mehar is admitted in CMC hospital, Hisar. Thereafter they reached CMC Hospital, Hisar where the doctor has declared the patient unfit for making statement. In the meanwhile Ved Parkash injured met the police party and got recorded his statement to the effect that on 13.1.2014 at about 7.30 p.m Sanjay alias Chela son of Satta, Ajay Kumar son of Raghbir, Chandi, Ravinder sons of Balwan, Sarwar and Neer sons of Bhikhu, Narender son of Rohtash, Bhoop son of Bhalle, residents of village Puthi entered in his plot with intention to take forcible possession. They came there with the tractor trolly and JCB. His father prevented him from doing so, then they started beating them with lath, Sanjay, Ajay, Chandi and Sarwar caused injuries in the shoulder and chest of his uncle. Neer and Ravinder hit lath on his person. Narender and Bhoop Singh gave them fist bows. Chandi tried to kill his uncle Ram Mehar by crushing from his car. When they raised hue and cry for help, then all the accused persons fled away from the spot. His uncle Shiv Kumar admitted them in General Hospital, Hisar from which his uncle Ram Mehar was referred to Jindal Hospital, Hisar. Request was made for taking necessary action against the culprits. On the basis of statement of Ved Parkash the present case was registered at Police Station Narnaund under sections 147, 148, 323, 307 IPC. Investigation was carried out by SI Karamjit. During investigation accused were arrested. Ram Mehar injured expired on 24.1.2014 and offence under section 302 IPC was added. After completion of investigation and other usual formalities challan was presented into the learned trial Court.

COMMITTAL PROCEEDINGS

6. Since the afore offences were exclusively triable by the Court of Session, thus vide committal order dated 23.04.2014, the learned Judicial Magistrate Ist Class, Hisar, committed the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 11 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. In defence, the learned defence counsel examined one defence witness.

SUBMISSIONS OF THE LEARNED COUNSELS APPEARING FOR THE CONVICTS-APPELLANTS

8. The learned counsels appearing for the convicts-appellants, have vehemently argued, that no credence is assignable to the testifications of the purported ocular witness to the occurrence, who respectively stepped into the witness box as PW-2 and PW-3. In making the above submission, the learned counsels for the convicts-appellants submit, that though PW-2, in his examination-in-chief, makes speakings about PW-4 being present alongwith him at the crime site. However, yet they submit that since a reading of the testification made by PW-4 in his cross-examination reveals, that he had accepted, that in his previous statement to which Ex.D1 is assigned, the names of the accused rather do not exist therein. Therefore, the counsels for the convicts-appellants argue that resultantly, the testification of the injured eye-witness who stepped into the witness box as PW-2 also loses its creditworthiness, and, but with a further consequent effect, that the purported

eye-witness account, as became rendered qua the crime event rather does become completely staggered.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

9. On the other hand, the learned State counsel, has vigorously contended before this Court, that the impugned verdict of conviction, as well as the consequent therewith sentence of life imprisonment, as becomes imposed upon the convicts-appellants, is well merited, as the same is planked upon a worthy appraisal of the evidence germane to the charge.

10. For the reasons to be assigned hereinafter the submissions (supra) as addressed before this Court by the learned counsels for the convicts-appellants are rejected.

11. Firstly a closest reading of the examination-in-chief of PW-2, who is an injured eye-witness to the occurrence, does palpably unfold, qua his attributing an incriminatory role to all the accused. However, the above attribution by PW-2 in his examination-in-chief, of an incriminatory role to the appellants, in the crime event, though was attempted to be shred of its efficacy, through the defence counsel subjecting him to an exacting cross-examination. Moreover, though a reading of his cross-examination but reveals qua his minimally improving, and/or, digressing from his previously made statement in writing. However, the stark factum of the hereinafter extracted echoings, rather occurring in the cross-examination of PW-3 Ved Parkash, do completely underwhelm, as also completely eclipse the effects, if any, of any minimal improvements or digressions as made by PW-2 from his previously recorded statement in writing.

“I do not know the number of lathi blows given by Sanjay, Chandi, Ajay and Sarwar to the deceased. Ram Mehar had received the injuries first of all and he had received four injury but none of his injury led to any bleeding. I received three injuries including the

fracture of the left hand finger. I did not have any bleeding. I and my father did not catch hold of the lathis of any of the accused to save Ram Mehar. None of the accused gave any lathi injury to my father. The injuries were caused to Ram Mehar at a distance of 20 feet from the road and 30 feet from the Khoka. The tractor drivers had not started unloading the earth when the accused were causing injuries to us. I had stated in my statement dated 09.04.2015 that the tractor drivers stopped the unloading of the earth at that time. Volunteered I admitted this fact mistakenly to show the parking of the tractors for unloading. Ram Mehar fell down after the receipt of the lathi injuries with his right arm touching the ground. The scorio was parked on the pakka road at that time. Only Chandi Ram had gone to the scorio to start it. I do not remember if I had stated before the police that all the four accused had boarded the vehicle while running. Confronted with statement Ex. P1 wherein it is not so recorded. The scorio had been parked on the pakka road towards the village abadi. We did not try to lift Ram Mehar or put him aside when we saw the scorio vehicle being driven from the road towards us nor we jumped aside when the vehicle came towards us. The scorio did not cross over the body of Ram Mehar either from the head side or from the leg side. Volunteered it crossed over the chest portion. I did not state this fact before the police. I do not know if the scorio touched the legs of Ram Mehar but it had crossed over his left arm. There was no freshly filled earth. I had admitted in my statement dated 09.04.2015 that there was freshly filled earth. I did not care to see any tyre marks on the spot through which the scorio had been driven. No damage was caused to the scorio on the wind screen or on the body and we did not pelt any stones nor gave any lathi blows on the scorio. It was driven away towards the road. The incident lasted for five to seven minutes and we left the spot for treatment within 10 minutes.”

12. A reading of the above extracted relevant portion of the echoings made by PW-2 in his cross-examination, does mobilize, an inference that the said speakings, do coax this Court, to construct the following inferences; a) the defence conceding to the availability of the accused at the crime site; b) theirs

conceding to the user of the crime weapons by the accused, thus respectively on the person of the injured eye-witness PW-2, as also on the person of deceased;

c) In addition, the availability of the crime vehicle at the crime site is also clearly spoken therein. The makings of the above inference, ensue from a reading of the hereinabove extracted inculpatory speakings made by PW-2, in his cross-examination, and, they are reiteratedly but an expression of the defence conceding to the incriminatory participation of the accused in the crime event.

MEDICO-LEGAL REPORT OF INJURED EYE-WITNESS

13. PW-7 (Dr. Sandeep Beniwal) conducted examination on the body of injured eye witness PW-2, and, thus resulting in his observing on his body, the hereinafter extracted injuries. The MLR of the injured-victim is assigned Ex.P-12.

“1. Diffuse swelling present over Left elbow joint. No external injury mark +nt. Adv. X-ray Lt arm -Ap & lateral, Ortho surgeon opinion.

2. LW. Present over Ant. Surface of Base of Lt finger size – 1x0.5cm.

3. Pt. c/o Pain over middle part of Rt leg. Adv-xray rt leg – Ap view and lateral view and General surgeon opinion.”

The inference to be drawn from the proven MLR, is that, the injured eye-witness received injuries on his person but at the crime site, and, through an assault being made on his person by the accused. Therefore, the above Ex.P-12 also supports an inference that he rendered a credible eye-witness account qua the crime event.

DISCLOSURE STATEMENT OF THE CONVICT AND CONSEQUENT THEREWITH RECOVERIES

14. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the convict, Chandi Ram being put to police remand, he made a signed disclosure statement, to which Ex.P18 is assigned. The contents of the Ex.P18 are ad verbatim extracted hereinafter.

“Disclosure statement of convict Chandi Ram

In the presence of following witnesses, aforesaid accused Chandi Ram during police custody of his own sweet will without any fear or pressure disclosed that "in their village near bus stand, Ram Mehar son of Tulsi and Ved Parkash son of Om Parkash caste Brahmin, Rs/o Puthi etc. were having possession over Shamlat land, over which they have prepared Bitora and cow dung cakes. I and my friend Chela used to run Fish Seed hatchery shop in the shop of Bhim R/o Puthi. Bhim asked them to vacate his shop, then I along with my friend Chela Ram son of Surat Singh, Sarwan alias Sarwar son of Bhikhu Ram made a planning that in front of their shop on Shamlat land, over which Ved Parkash and Ram Mehar are having possession, wants to take forcible possession over the land to run the shop of Fish Seed hatchery. After making planning on 12.1.14, they managed Ajay son of Raghbir, caste Jat R/o Puthi to put earth on that land with his tractor trolley to take forcible possession. He was also told that he should bring tractor trolley and he will also be partner. Then we four on that very day put earth on the land possessed by Ved Parkash and Ram Mehar with the help of tractor of Ajay and took that land into their possession. Thereafter on 13.1.14, alongwith Chela and Sarwar all three reached there in his scorpio vehicle No. HR-62-2729 and where they started the work of levelling of earth which was already put there. They all three had already planned that if today Ram Mehar and Ved Parkash etc. came on the land to obstruct them, then they will be done to death. Thereafter, they saw Ram Mehar, Ved Parkash and their other family members coming there to oust them from that place, then they took out dandas from their vehicle and they launched attack on Ram Mehar and Ved Parkash and in the meantime, other family members ran towards them for assaulting them. Then as per planning Chela and Sarwar told me that they should sit in the vehicle and whoever comes in front of the vehicle, ran over him. On this they all three ran towards the vehicle for sitting. I and Chela sat in the vehicle and then I started the vehicle and I accelerated the vehicle for running over Ram Mehar, Ved Parkash and others. I gave direct hit of the vehicle to Ram Mehar, who was standing in front of vehicle, as a result of which he fell down and thereafter, I crossed the vehicle over Ram Mehar. During this incident, Sarwar could not sit in the vehicle and they caught hold of Sarwar. I along with Chela fled away from there along with the vehicle and during the night we were here and there and today in the morning we returned to our respective houses. Today we have come present before you in the presence of Sarpanch Raju and Bhiku. I can get recovered scorpio vehicle and danda used in the commission of crime from my house. Disclosure statement of accused has

been written, on which accused and witnesses have put their respective signatures.

Sd/- In (Hindi)

Chandi Ram accused.

Sd/- (In English)

SI Karamjeet, IC PP Bass Dt:14.1.14

Witness:

HC Surinder Singh No.1213

PP Bass Sd/- (In English)

C. Sammat Singh no.329

PP Bass Sd/- (In English)”

15. A reading of the above extracted signed disclosure statement as made by accused Chandi Ram, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of scorio vehicle and danda Ex.P33, to the investigating officer concerned, from the place of his hiding, and, concealing them, the same being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.P33, he caused the recovery of scorio vehicle, and, of danda. Thus evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.P18, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above drawn memos.

16. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the convict, Sarwar being put to police remand, he made a signed disclosure statement, to which Ex.P19 is assigned. The contents of Ex.P19 are ad verbatim extracted hereinafter.

“Disclosure statement of convict Sarwar

In the presence of following witnesses, aforesaid accused Sharwan alias Sarwar during police custody of his own sweet will without any fear or

pressure disclosed that "in their village near bus stand, Ram Mehar son of Tulsi and Ved Parkash son of Om Parkash caste Brahmin, Rs/o Puthi etc. were having possession over Shamlat land, over which they have prepared Bitora and cow dung cakes. I and my friend Chandi and Chela Ram used to run Fish Seed hatchery shop in the shop of Bhim R/o Puthi. Bhim asked them to vacate his shop, then I along with my friend Chandi and Chela Ram made a planning that in front of their shop on Shamlat land, over which Ved Parkash and Ram Mehar are having possession, wants to take forcible possession over the land to run the shop of Fish Seed hatchery. After making planning on 12.1.14, they managed Ajay son of Raghbir, caste Jat R/o Puthi to put earth on that land with his tractor trolley to take forcible possession. He was also told that he should bring tractor trolley and he will also be partner. Then we four on that very day put earth on the land possessed by Ved Parkash and Ram Mehar with the help of tractor of Ajay and took that land into their possession. Thereafter on 13.1.14, I alongwith Chandi and Chela all three reached there in scorpio vehicle No. HR-62-2729 of Chandi and where they started the work of levelling of earth which was already put there. They all three had already planned that if today Ram Mehar and Ved Parkash etc. came on the land to obstruct them, then they will be done to death. Thereafter, they saw Ram Mehar, Ved Parkash and their other family coming there to oust them from that place, then they took out dandas from their vehicle and they launched attack on Ram Mehar and Ved Parkash and in the meantime, other family members ran towards them for assaulting them. Then as per planning Chela and Chandi told me that they should sit in the vehicle and whoever comes in front of the vehicle, ran over him. On this they all three ran towards the vehicle for sitting. Chela and Chela sat in the vehicle and then Chandi started the vehicle and accelerated the vehicle for running over Ram Mehar, Ved Parkash and others. Chandi gave direct hit of the vehicle to Ram Mehar, who was standing in front of vehicle, as a result of which he fell down and thereafter, Chandi crossed the vehicle over Ram Mehar. During this incident, I could not sit in the vehicle and they caught hold of me. Chandi and Chela fled away from there along with the vehicle. Thereafter also fled away from the spot along with danda. In the night, I hid myself in my fields. Today we have come present before you in the presence of Sarpanch Raju and my father Bhiku. I can get recovered danda used in the commission of crime from my house. Disclosure statement of accused has been written.

*Sd/- In (Hindi)
Sarwan accused.*

Sd/- (In English)

SI Karamjeet, IC PP Bass Dt: 14.1.14

Witness:

HC Surinder Singh No.1213

PP Bass Sd/- (In English)

C. Sammat Singh no.329

PP Bass Sd/- (In English)”

17. A reading of the above extracted signed disclosure statement as made by accused Sarwar, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of danda Ex.P34, to the investigating officer concerned, from the place of his hiding, and, concealing it, the same being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.P34, he caused the recovery of danda. Thus evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.P19, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above drawn memos.

18. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the convict, Chela Ram alias Sanjay being put to police remand, he made a signed disclosure statement, to which Ex.P20 is assigned. The contents of Ex.P20 are ad verbatim extracted hereinafter.

“Disclosure statement of convict Chela Ram alias Sanjay

In the presence of following witnesses, aforesaid accused Chela Ram during police custody of his own sweet will without any fear or pressure disclosed that "in their village near bus stand, Ram Mehar son of Tulsi and Ved Parkash son of Om Parkash caste Brahmin, Rs/o Puthi etc. were having possession over Shamlat land, over which they have prepared Bitora and cow dung cakes and my friend Chandi used to run Fish Seed hatchery shop in the shop of Bhim R/o Puthi. Bhim asked them to vacate his shop, then along with my friend Chandi, Sarwan alias Sarwar son of Bhikhu Ram made

a planning that in front of their shop on Shamlat land, over which Ved Parkash and Ram Mehar are having possession, wants to take forcible possession over the land to run the shop of Fish Seed hatchery. After making planning on 12.1.14, they managed Ajay son of Raghbir, caste Jat R/o Puthi to put earth on that land with his tractor trolley to take forcible possession. He was also told that he should bring tractor trolley and he will also be partner. Then we four on that very day put earth on the land possessed by Ved Parkash and Ram Mehar with the help of tractor of Ajay and took that land into their possession. Thereafter on 13.1.14, I alongwith Chandi and Sarwar all three reached there in scorio vehicle No.HR-62-2729 of Chandi and where they started the work of levelling of earth which was already put there. They all three had already planned that if today Ram Mehar and Ved Parkash etc. came on the land to obstruct them, then they will be done to death. Thereafter, they saw Ram Mehar, Ved Parkash and their other family members coming there to oust them from that place, then they took out dandas from their vehicle and they launched attack on Ram Mehar and Ved Parkash and in the meantime, other family members ran towards them for assaulting them. Then as per planning Chandi and Sarwar told me that they should sit in the vehicle and whoever comes in front of the vehicle, ran over him. On this they all three ran towards the vehicle for sitting. I and Chandi sat in the vehicle and then Chandi started the vehicle and Chandi accelerated the vehicle for running over Ram Mehar, Ved Parkash and others. Chandi gave direct hit of the vehicle to Ram Mehar, who was standing in front of vehicle, as a result of which he fell down and thereafter, Chandi crossed the vehicle over Ram Mehar. During this incident, Sarwar could not sit in the vehicle and they caught hold of Sarwar. Along with Chandi fled away from there along with the vehicle and during the night we were here and there. Today we have come present before you. I can get recovered danda used in the commission of crime from my house. Disclosure statement of accused has been written, on which accused and witnesses have put their respective signatures.

Sd/- In (Hindi)

Chela Ram accused.

Sd/- (In English)

SI Karamjeet, IC PP Bass Dt: 14.1.14

Witness:

HC Surinder Singh No.1213

PP Bass Sd/- (In English)

C. Sammat Singh no.329

PP Bass Sd/- (In English)”

19. A reading of the above extracted signed disclosure statement as made by accused Chela Ram alias Sanjay, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of danda Ex.P35, to the investigating officer concerned, from the place of his hiding, and, concealing it, the same being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.P35, he caused the recovery of danda. Thus evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.P20, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above drawn memos.

20. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the convict, Ajay Kumar being put to police remand, he made a signed disclosure statement, to which Ex.P21 is assigned. The contents of Ex.P21 are ad verbatim extracted hereinafter.

“Disclosure statement of convict Ajay Kumar

In the presence of following witnesses, aforesaid accused Ajay Kumar during police custody of his own sweet will without any fear or pressure disclosed that "in their village near bus stand, Ram Mehar son of Tulsi and Ved Parkash son of Om Parkash caste Brahmin, Rs/o Puthi etc. were having possession over Shamlat land, over which they have prepared Bitora and cow dung cakes. My friend Chandi, Chela Ram and Sarwar used to run Fish Seed hatchery shop in the shop of Bhim R/o Puthi. Bhim asked them to vacate his shop. Then my friends Chandi, Chela Ram sand Sarwar made a planning that in front of their shop on Shamlat land, over which Ved Parkash and Ram Mehar are having possession, wants to take forcible possession over the land to run the shop of Fish Seed hatchery. After making planning on 12.1.14. they told me to put earth on that land with my tractor trolley, so that they could take possession over land and they will also become me a partner in the land. Due to lust, put earth in that land with my

tractor trolley on the same day. Thereafter on next day 13.1.14 Chandi Ram, Chela Ram and Sarwar were present there in the evening, where Ved Parkash and Ram Mehar also reached there and quarrel took place between them and in the quarrel, Ram Mehar and Ved Parkash received injuries. During this quarrel, I was not present at the spot. The tractor trolley with which I put earth in that land is parked in my house I and can get the same recovered. Disclosure statement of ccused has been written.

Sd/- In (Hindi)

Ajay Kumar accused.

Sd/- (In English)

SI Karamjeet, IC PP Bass Dt: 14.1.14

Witness:

HC Surinder Singh No.1213

PP Bass Sd/- (In English)

C. Sammat Singh no.329

PP Bass Sd/- (In English)”

21. A reading of the above extracted signed disclosure statement as made by accused Ajay Kumar, reveals that he had therein not only confessed his guilt, but had also disclosed that he can ensure the causings of recovery of tractor trolley Ex.P28, to the investigating officer concerned, from the place of his hiding, and, concealing it, the same being exclusively known to him. Since in pursuance thereof through a recovery memo Ex.P28, he caused the recovery of tractor trolley. Thus evidentiary vigor is to be assigned to the above memos, as he has not been able to either ably deny his signatures as occur on Ex.P21, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive that the recoveries are either contrived or invented. Thus, evidentiary sanctity is to be assigned to the above drawn memos.

MEDICAL EVIDENCE (POST MORTEM REPORT)

22. The post mortem upon the body of deceased Ram Mehar was conducted on 21.01.2014 by PW-6. PW-6 has proven *qua* hers, authoring

Ex.P10, as relates to the autopsy as made upon the body of deceased Ram Mehar. However, the medico legal examination on the person of deceased Ram Mehar was conducted on 13.01.2014 by PW-7.

23. Moreover, she has proven that the cause of death of deceased Ram Mehar, was owing to shock and hemorrhage, from the ante mortem injuries described. All the injuries were declared to be ante mortem and were also declared to be sufficient to cause death in ordinary course of life. The relevant ante mortem injuries as noticed by PW-6 on the body of deceased are extracted hereinafter.

“1. Swelling of right side of shoulder on further dissection there was fracture of left clavicle and left scapula seen.

2. Swelling of left arm on further dissection fracture of left humerus seen.

3. Severe chest injury there were multiple rib fracture and on further dissection there was extensive injury to bilateral lungs seen. Bilateral lungs show diffuse infiltrates, edema and consolidation.”

24. Even though, the incriminatory weapon of offence was not shown either to PW-6 or PW-7, during the course of theirs making testifications, before the learned trial Judge concerned. However, yet the said factum does not in the least detract from the efficacy of the proven memos (supra) nor does in the least eclipse the inculpatory effect of the well rendered ocular account qua the crime event, hence by PW-2 i.e. the injured eye-witness.

CONCLUSION

25. The conclusion to be drawn from the above, are that, the said cogently proven disclosure statements, and, the consequent therewith recovery memos, do comprise sound proof qua a vital incriminatory link. Moreover, the said proven memos, do also corroborate, the above made inference, as has been planked, upon, the above acquiesced incriminatory echoings as made by PW-2, in his cross-examination. Thus, this Court is coaxed to make a firm conclusion

that the prosecution has been able to firmly prove the charge against the accused.

FINAL ORDER

26. This Court finds no merit the appeals, as such both the appeals stand dismissed. If the appellants are on bail, thereupon they are ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

27. Records be sent down forthwith.

28. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

23.03.2023

(KULDEEP TIWARI)
JUDGE

Ithlesh

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