

In the High Court of Punjab and Haryana at Chandigarh

1.

CRA-D-696-DB-2002
Reserved on: 22.8.2023
Date of Decision: 25.8.2023

State of Haryana

.....Appellant

Versus

Kaptan Singh alias Parveen Kumar

.....Respondent

2.

CRA-D-858-DBA-2002

State of Haryana

.....Appellant

Versus

Arjan Singh and others

.....Respondents

3.

CRA-S-1081-SB-2002

Kaptan Singh alias Parveen Kumar

.....Appellant

Versus

State of Haryana

.....Respondent

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

Present:

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. P.P.Chahar, Sr. DAG, Haryana.

Mr. Vikas Chaudhary, Advocate,
Legal Aid Counsel for the appellant (in CRA-S-1081-SB-2002)
for the respondent (in CRA-D-696-DB-2002).

Mr. Omkar Chauhan, Advocate
for respondent No. 3 (in CRA-D-858-DBA-2002).

SURESHWAR THAKUR, J.

1.

Since all the above appeals arise from a common verdict, as made on 6.5.2002/13.5.2002, by the learned trial Judge concerned, upon Session Case bearing No. 9 of 2000, hence the appeals (supra) are amenable for a common verdict being made thereons.

2.

All the appeals (supra) are directed against the impugned

verdict, as made on 6.5.2002, upon Session Case bearing No. 9 of 2000, by the learned Judge, Special Court, Karnal, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 452, 307 read with Section 34 of the IPC, and, under Section 25 of the Arms Act, 1959, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellant-convict Kaptan Singh @ Parveen Kumar. However, the other co-accused namely Kuldeep, Arjan and Babu Ram were acquitted from the charges drawn against them. Moreover, through a separate sentencing order, drawn on 13.5.2002, the learned trial Judge concerned, sentenced the convict-appellant Kaptan Singh @ Parveen Kumar in the hereinafter extracted manner:-

<i>Under Section</i>	<i>Sentence</i>	<i>Fine (in Rs.)</i>	<i>In default of payment of fine</i>
307 IPC	Rigorous imprisonment for six years	1000/-	To undergo rigorous imprisonment of three months
452 IPC	Rigorous imprisonment for two years	1000/-	To undergo rigorous imprisonment of three months
25 of the Arms Act	Rigorous imprisonment for one year	500/-	To undergo rigorous imprisonment of one month

3. All the above imposed sentences of imprisonment, were ordered to run concurrently.
4. Convict-appellant Kaptan Singh @ Parveen Kumar becomes aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, and, hence has chosen to institute thereagainst **CRA-S-1081-SB-2002**, before this Court.

before this Court for enhancement of sentence, awarded to convict-appellant Kaptan Singh @ Parveen Kumar.

6. Moreover, The State of Haryana has preferred ***CRA-D-858-DBA-2002***, before this Court, against the verdict of acquittal, as made by the learned trial Judge concerned, qua the acquitted persons (supra).

7. During the pendency of the CRA-D-858-DBA-2002, before this Court, the respective demises of acquitted persons i.e. Arjan Singh, and, Babu Ram, thus occurred, and, as such through an order made on 30.5.2023, by this Court, the appeal hence directed against the verdict of acquittal, as became made against the afore, thus was declared to become abated. Consequently, this Court does not deem it fit, and, appropriate to either delve into, nor deem it apt to adjudicate, upon the incriminatory role, as became assigned to the above acquitted deceased(s).

Factual Background

8. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex. PA/2 is assigned. The narrations carried in Ex. PA/2 are, that complainant-injured Mohinder Singh, an agriculturist by profession, along with his family members including his mother Chand Kaur and father Raghbir Singh was residing in village Rangruti Khera. On 19.7.1999 having enjoyed their dinner he and his wife Sunita Devi had gone to sleep in the veranda in their house. His mother Chand Kaur and brother's wife Kalawati were sleeping in the courtyard of the house. His brother Balraj and his maternal uncle's son Balwinder Singh were sleeping on the rooftop. At about mid-night all the four accused having entered into the courtyard of the complainant's house went near his cot spread in the veranda. Having heard the shuffling of their feet the complainant woke up all of a sudden.

Accused Arjan Singh then caught hold of his hair from backside. Accused

Kuldeep Singh caught his right hand. Accused Babu Ram then exhorted accused Kaptan Singh to fire a shot at him. Accused Kaptan Singh then fired a shot with his pistol which hit the complainant in his chest. The bullet fired from the pistol pierced his chest. On hearing the sound of above fire arm shot the complainant's wife Sunita Devi got up and caught hold of Arjan Singh. Having got himself released this Arjan Singh alongwith other three accused fled from there. In the meantime complainant's mother Chand Kaur, his brother's wife Kalawati also got up. They saw all the four accused fleeing from there. After the above episode, complainant's brother Balraj and Balwinder named above arrived there. The complainant narrated the whole episode to them, and, thereafter he became unconscious. He was shifted to CHC, Assandh. The medical officer attending on him sent ruqa Ex. PH to the station house officer, police station Assandh. On receipt of this ruqa ASI Ramesh Chand (PW9) reached CHC, Assandh. There on his request Ex. PJ he was informed by the concerned medical officer that the injured had been referred to General Hospital, Karnal. He then rushed to General Hospital, Karnal. There he came to know that the injured had not reached there, rather he had gone to PGI, Chandigarh. He rushed to PGI, Chandigarh, and, having reached there he moved the application Ex. PK for seeking opinion regarding the fitness of the injured to make statement. Vide Ex.PK/1 Dr. Puneet in PGI, Chandigarh opined that the injured was fit to make statement. The statement (Ex.PA) of the complainant Mohinder Singh was recorded. Therein besides narrating the above episode the complainant further alleged, that the motive for assaulting him was that in the year 1990 there had been a fight between them, and, the accused. In that fight Sultan Singh and Arjan Singh had sustained injuries. For causing those injuries, he (complainant)

and his brother Balraj Singh and some others were booked in a criminal

case. After facing trial in that case, they were acquitted of the charge. In order to take revenge, the accused, in furtherance of their common intention, fired a shot at him. On the basis of the above statement, the appeal FIR was registered.

Investigation proceedings

9. During investigations, the investigating officer concerned, recorded the statements of the prosecution witnesses under Section 161 of the Cr.P.C. Blood stained bed sheet (Ex. P-2) was taken into possession vide recovery memo Ex. PL. Rough site plan was prepared. MLR report of the injured was obtained. All the accused were arrested. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

10. Since the offence under Section 307 of the IPC, was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 14.2.2000 hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

11. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against all the accused, for the offences punishable under Sections 452, 307 read with Section 34 of the IPC. Moreover, the learned trial Judge concerned, also framed charges against convict-appellant Kaptan Singh for the offences punishable under Section 307 of the IPC, and, for an offence punishable under Section 25 of the Arms Act, 1959. The afore drawn

charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

12. In proof of its case, the prosecution examined 12 witnesses, and, thereafter the learned Public Prosecutor concerned, after tendering into evidence the report of the FSL concerned, thus closed the prosecution evidence. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but therein, the accused pleaded innocence, and, claimed false implication. They also led seven witnesses into the witness box.

Submissions of the learned counsel for the convict-appellant

13. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

Submissions of the learned State counsel

14. On the other hand, the learned State counsel has argued before this Court, that the appeal, as preferred by the convict-appellant, be dismissed. He has further argued before this Court, that the appeal filed by the State against the verdict of acquittal, only qua co-accused Kuldeep Singh, as made by the learned trial Court concerned, requires an interference, thus being made by this Court in the exercise of its appellate jurisdiction, and, that the said appeal be allowed, and, the acquitted accused be also convicted for the charged offences. Moreover, he has also argued, that the appeal filed by the State against the convict-appellant, be allowed, and, that the substantive sentence of imprisonment, imposed upon the

convict-appellant, thus be enhanced.

Analysis of the depositions of the eye witnesses i.e. PW-1, and, PW-2, who are respectively the injured witness, and, the wife of the injured witness.

15. The injured witness, stepped into the witness box as PW-1, and, in his deposition, thus occur echoings, which clearly concur with his previously made statement in writing to the police officer concerned.

16. Be that as it may, yet to unmask whether he has indulged in the vices of gross improvement(s) or embellishment(s) hence from his previously made statement in writing to the police, and, to which Ex. PA, is assigned, it is but, imperative to also read his testification, as carried in his cross-examination.

17. The relevant portion of his cross-examination, wherein, thus echoings occur which are magnificatory qua thereby the defence conceding to the incriminatory participation of all the accused in the crime event, is extracted hereinafter.

“ X X X X

On 19.8.99 we had gone to sleep at about 10.00 P.M. This I am stating with regard to all the family members. On hearing the noise of shuffling of feet/shoes I got up all of a sudden and stood up by the side of the cot on which I was lying. At that time accused Arjun, Kaptan and Kuldip were hardly at a distance of ten 10 feet away from me in the courtyard. Fourth one was Babu Ram who was following them at a distance of about 10 feet in the courtyard itself. He kept on standing there in the courtyard whereas the other three entered into the Varandha. The width of courtyard in front of my varandha is about 20 feet. The width of varandha is nine feet. On hearing my voice, my wife also got up. I had called her. After I was shot at my other family members sleeping on the roof top also came down. I was shot at when I was standing from a distance of about one feet. I had not seen the bullet ejected by the pistol. After I was shot at I fell down on my cot. Blood has spilled over my bed. Immediately I got up, I was caught hold by my hair by Arjun from my right side. Kuldip caught hold of my right arm and gave it a turn. My father had arrived there about 15/20 minutes after the occurrence as he was sleeping in a Barra. My mother had called him from there. I narrated the whole episode

to my brother Balraj, my mother, my father and my maternal uncle's son Balwinder @ Billu. I became unconscious about 10/15 minutes of narrating the occurrence to the persons named above. I had not seen any other accused except Kaptan armed with any weapon. House of Dalbir son of Zile Singh is situated in front of our house. At 10 feet wide street passing through in between our houses. Our houses have four walls, which is pacca. Its height on the front side of our house is about 20 feet. On other three sides houses of neighbourers are situated. I had not seen any other person from the village having arrived at the scene of the occurrence. I was taken to Assandh in a van belonging to Guddu of my village. I do not know who had brought that van. I regained consciousness way to Assandh and there I came to know that Balraj, Balwinder, Dalbir son of Zile Singh were accompanying me. Guddu was driving the van. I had not sipped water on the way. I had narrated the sequence of the occurrence to all of them three. We reached police station Assandh about a half an hour after the occurrence. Again said we had not reached the police station, but hospital. I had not asked any body to report the matter in the police station. It is wrong to suggest that when we go from our village police station comes first and then the hospital at Assandh. The doctor was available at Assandh. He injected glucose. We had all told the Medical officer that Rors had shot me. I had shown my injuries to the doctor. I had told my name, but not of the accused, to the doctor. We remained in that hospital for about 10/15 minutes. No reference chit was given by the doctor. He orally advised to go to PGI, Chandigarh. Then we rushed to Chandigarh. Before going to Chandigarh we had gone to Dr. Parveen at Karnal. Within one hour we reached from Assandh to Karnal. Dr. Parveen also put me on drip. Having asked my name he also asked us to go to Chandigarh. We had not come across any police official either at Assandh or at Karnal. On the next day the police met at Chandigarh in PGI at about 1/1.30 p.m. That police had come from police station, Assandh. I made my statement before the police narrating the episode. At PGI Chandigarh I had disclosed my name parentage besides the manner in which the occurrence had taken place, before the medical officer attending on me. I had not mentioned the names of accused before him. It is wrong to suggest that I had stated before that doctor that some unknown person had shot at me when I was asleep. I was discharged from PGI Chandigarh about 10/12 days after my admission.

I do not know whether enquiry was conducted by DSP with regard to the occurrence or not. I have never heard that

*in the above enquiry conducted by DSP he found all the
accused to have been falsely roped in this case.*
x x x x”

18. The above made inference(s) hence spurring from the above acquiesced suggestions by PW-1, as became put to him by the learned defence counsel, thus resultantly coax this Court to assign the apt incriminatory role to convict Kaptan Singh @ Parveen Kumar, in the relevant crime event.

19. Furthermore, the deposition of PW-2, who is also an ocular witness to the crime event, thus completely corroborates the taint free narrative, as became spoken in respect of the crime event hence by PW-1.

20. Alike PW-1 also certain incriminatory suggestions became meted to PW-2, and, thereto affirmative answers, which becomes extracted hereinafter, thus emanated from PW-2, thereby the it has to be concluded, that as such the defence concedes to the incriminatory participation of all the accused in the crime event.

“x x x x
*I had not heard the sound or voice of anyone else except the
shuffling of feet on account of which I woke up all of a sudden. I
saw the accused for the first time, after I got up, in the
courtyard. My mother-in-law Chand Kaur and my Jethani
(husband's elder brother's wife) Kalawati were sleeping in the
courtyard. I got up in my house first of all. I was followed by
my husband. My husband got up suo moto. When my husband
was trying to get up from the cot he was caught hold of by his
hair in the meantime. Despite the fact that accused Arjun had
caught hold of his fair and accused Kuldip had turned his arm
he got up. My husband did not try to get rid off the clutches of
the accused*
x x x x”

**Signed disclosure statement of convict Kaptan Singh @ Parveen
Kumar Ex. PN**

21. During the course of investigations, being made into the appeal

FIR, convict Kaptan Singh made a signed disclosure statement, to which

Ex. PN is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“x x x x
About 1-¾ months ago, on the intervening night of
19/20.8.1999 I had fired shot upon Mohinder Singh s/o Raghbir
Singh, caste Jat with .315 bore pistol. I had wrapped that pistol
in a polythene and buried the same under the ground at the
gher of Banti r/o Jatti P.S. Rai. Only I had the knowledge
regarding the same and I can get the same recovered
x x x x”

22. Pursuant to the above signed disclosure statement, convict Kaptan Singh @ Parveen Kumar got recovered .315 bore pistol, which was taken into police possession through recovery memo Ex. PO.

23. The disclosure statement (supra), carries the signature, in Hindi, of convict Kaptan Singh @ Parveen Kumar. In his signed disclosure statement (supra), convict Kaptan Singh @ Parveen Kumar confessed his guilt in committing the crime event, by inflicting injuries on the injured persons concerned, hence with the incriminatory weapon of offence. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence, at the place concerned, and, his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon of offence to the investigating officer concerned, from the place of his hiding, and, keeping the same.

24. The above disclosure statement, does acquire, the utmost evidentiary solemnity, as thereons exist the signatures, in Hindi, of the convict concerned, which, however, he has neither ably denied nor proven the said denial. Moreover, the above confession of guilt is neither a bald or a simpliciter confession, nor is hit by the bar, encapsulated in Section 25 of the Indian Evidence Act. The reason for drawing the above inference, ensues

from the factum, that in pursuance thereof, through a proven recovery memo, the convict-appellant, thus caused recovery of the incriminatory weapon of offence, to the investigating officer concerned.

25. Since the recovery of the incriminatory weapon of offence, as made through recovery memo Ex. PO, has not been proven to be a false or a contrived recovery, inasmuch as, it has not been cogently established, that prior to the making of the above recovery, rather the investigating officer concerned, had taken to plant the same at the apposite site of its recovery, nor when any cogent evidence becomes adduced rather vividly exemplifying, that the place of the apposite recovery rather was an open place, hence leaving scope for any person, other than the convict to place it there. Thus, the above recovery is not only to be concluded to be a validly made recovery, but is also to be concluded to be of the very same incriminatory weapon, which did become used by convict Kaptan Singh, in causing the relevant assault.

26. The above made recoveries in pursuance to the disclosure statement, made by the convict before the police officer concerned, whereons his uncontested signatures exists, do also corroborate, the untainted depositions rendered qua the crime event, by the thereto ocular witnesses (supra).

27. Though, the weapon of offence, as became recovered through recovery memo Ex. PO, was not sent to the ballistic expert concerned. However, the non-despatch of the weapon of offence to the ballistic expert concerned, hence for an opinion being made thereons, about the said firearm becoming used in the commission of the charged offences, rather does not purvey any capitalization to the convict or to the other co-accused, to make

founded. The reason for making the above submission stems from the unblemished testifications, but with inter se corroboration, thus becoming rendered qua the crime event, hence by the ocular thereto witnesses (supra). Necessarily hence, it has to be concluded, that even the above want, does not yet bely, the prosecution version, as became spelt by the credible eye witnesses to the crime event.

MLR of injured witness Mohinder Singh

28. Dr. Rupinder Singh Saini, who medico legally examined the injured witness Mohinder Singh, has stepped into the witness box as PW-3, and, during the course of his examination-in-chief, he has proved the MLR of injured witness Mohinder Singh, to which Ex. PB, is assigned. He has also proven the existence of the hereinafter extracted injuries on the person of injured Mohinder Singh.

“1. Entry site midsternal at third inter costal space approximately 2.5 cm (wound stutured). Exist site left shoulder posterior aspect approximately 1 cm x 1 cm each.”

29. The said witness has opined that the injury was caused by bullet within the duration of few days, and, the patient could have died if timely, and, proper treatment was not given to him..

30. Though, it is argued by the learned counsel for the convicts, that since in the MLR, there is a narration that the assault, which became perpetrated, upon the victim, was so perpetrated by an unknown assailant. Therefore, it is argued, that convict Kaptan Singh @ Parveen Kumar is entitled for a verdict of acquittal. However, since during the cross-examination, as became made upon PW-1, he has denied that he had made the above statement to the doctor concerned, who examined him. Therefore, when underneath the MLR Ex. PB, the signatures of the victim, also do not

exist. Resultantly, it has to be concluded, that the assault, as became perpetrated upon him, was so made, not thus by the unknown assailants, as declared in the MLR Ex. PB, whereons exist only the signatures of the examining doctor concerned, and, thereby obviously without the said purported intimation becoming conveyed by the victim to the doctor. Contrarily, an inference becomes generated that the said echoing was surmisedly made by the examining doctor concerned, thereby thereto, thus no credence can become assigned.

31. Thus, the valid disclosure statement (supra), as made by the convict concerned, and, also consequent thereto valid recovery, as became caused to the investigating officer concerned, besides the credible statements of the injured eye witnesses, thus do also become fully supported by the above credible medical accounts/evidence(s).

32. Consequently, the appeal preferred by the convict-appellant Kaptan Singh @ Parveen Kumar bearing ***CRA-S-1081-SB-2002***, is dismissed.

CRA-D-858-DBA-2002

33. For the reasons to be assigned hereinafter, the appeal filed by the State i.e. ***CRA-D-858-DBA-2002***, against the verdict of acquittal, as made by the learned trial Judge concerned, deserves to be allowed, insofar as acquitted accused Kuldeep Singh is concerned, who alone is stated to be surviving at the extant stage.

34. The reason for making the above conclusion generates from the infirmity of the reasons for acquittal, as became recorded qua him, reasons whereof are encapsulated in paragraphs 34, 35 and 36 of the impugned verdict, paras whereof are extracted hereinafter:-

opinion. None of these three accused is shown to be armed with any weapon. All of them were empty handed as stated by PW1 and PW2. In that situation when Kaptan Singh was to fire a shot with his pistol at the complainant it is hard to believe that complainant was overcome before being assaulted by Kaptan Singh in the fashion stated above. Had the occurrence taken place in the broad day light and after a scuffle/fight between the complainant and the accused it could have been believed that apprehending that the complainant might make his escape good or could retaliate accused Babu Ram had exhorted accused Kaptan Singh to open fire. When such was not the situation and the complainant was asleep the story of the prosecution that these three accused had also accompanied accused Kaptan Singh while committing the offence is not worth believing.

35. Even if the story of the prosecution is taken to be as it is as reflected in Ex. PA and as deposed by PW1 and PW2 these three accused cannot be taken to have participated in the commission of the crime. Accused Arjan and Kuldeep were allegedly standing behind the complainant when he was asleep. Arjan accused is stated to have caught hold of his hair whereas Kuldeep accused is alleged to have given a turn to his right arm. While standing behind the complainant they must not have desired the accused Kaptan Singh to fire a shot at complainant as in that event there was every likelihood that the pellets having pierced into the body of the complainant further cause injury to either of the above two accused after crossing the body of the complainant. Accused Kaptan Singh could also miss the target and in that event had the bullet whizzed past the complainant either of the two accused were likely to be Injured. Therefore, these accused could not be taken to have subjected themselves to such a risk of being injured in that occurrence and that too at the hands of the co-accused Kaptan Singh. It all goes a long way to suggest that these three accused had not even gone to the spot.

36. It shall also be worthwhile to highlight here that like the above three accused none would like to enter the house of his enemy empty handed and that too during odd hours i.e. at midnight knowing fully well that other family members like brother, cousin, wife and sister-in-law of the complainant were also sleeping in the same premises. This is for obvious reason. Had the family members woken up and retaliated in that event there would have been no occasion for any of them to make their escape good. In such a situation the whole story projected by the prosecution that these three accused (empty handed) accompanied Kaptan Singh accused with a purpose to get the complainant assaulted at the hands of accused Kaptan Singh and that too with a fire arm”

35. It appears that the learned trial Judge concerned, has dis-imputed credence to the inter se taint free, thus corroborative testimonies, as

became rendered by the ocular witnesses to the crime event. Since for

reasons (supra), this Court has concluded, that the defence has conceded to the incriminatory participation of all the accused in the crime events. Therefore, merely for the reason that the assault injury became not perpetrated by the acquitted accused, thus could not be a well informed reason for making a verdict of acquittal qua the acquitted accused concerned, especially when there is credible acquiesced eye witness account, rendered qua the crime event, thus by the ocular witnesses thereto.

36. Apparently, the learned trial Judge concerned, has proceeded on the plank, that since the acquitted accused concerned, was standing behind the injured complainant, thereby if the bullet, as became allegedly released from the pallet of the firearm, thereupon there was every possibility of the same striking hence even the person of the acquitted accused concerned. Resultantly it was untenably concluded that the participation of the acquitted accused in the crime event, thus does not acquire any evidentiary worth.

37. The above made reason is completely fallacious, as the learned trial Judge concerned, has lost sight of an echoing existing in the cross-examination of PW-1, wherein he has deposed, that the bullet, so released from the firearm concerned, hence wielded by the principal accused Kaptan Singh @ Parveen Kumar, thus becoming released, when he was only one feet away from the victim-complainant, and/or, that the firing of the bullet was from point blank range. In sequitur the holding of the victim concerned, by the acquitted accused concerned, if may be, he was then standing behind the victim thus thereby, he could not be concluded to bring any endangerment to the life of the acquitted accused. Resultantly, and, also in the wake of the above, the above reason, is completely frail, and, is liable to be rejected.

38. Consequently, the appeal preferred by the State i.e. ***CRA-D-858-DBA-2002***, against the verdict of acquittal pronounced qua co-accused

Kuldeep Singh, is thus allowed. Thus, respondent No. 3-Kuldeep Singh is also convicted for commission of offences punishable under Sections 307, 452 read with Section 34 of the IPC.

39. The above imposed sentences are ordered to run concurrently. However, the period spent in custody by the convict, during the investigations, and, trial of the case, is, in terms of Section 428 of the Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon the convict.

CRA-D-696-DB-2002

40. For the reasons to be assigned hereinafter, the appeal filed by the State i.e. ***CRA-D-696-DB-2002*** for enhancement of the substantive sentence of imprisonment, upon the convict-appellant, is partly allowed.

41. The learned trial Court concerned, imposed upon convict-appellant Kaptan Singh @ Parveen Kumar, in respect of an offence punishable under Section 307 of the IPC, thus the substantive sentence of imprisonment extending upto a tenure of six years. However, the learned counsel for the State has argued, that yet there is necessity of enhancement of the tenure of the substantive sentence of imprisonment (supra), from six years, thus to a higher term.

42. The above argument appears to be meritless. The reason becomes comprised in the factum, that even if the maximum tenure of the imposable substantive sentence of imprisonment upon the convict, for a charge drawn for an offence punishable under Section 307 of the IPC, rather is upto life imprisonment. However, this Court does not deem it fit to impose upon the convict-appellant, the above maximum imposable tenure of substantive sentence of imprisonment, upon, the convict concerned, in

proportionality governing the meting or awarding of sentence, upon the convict concerned, for the charges (supra), thus appears to have been well borne in mind, by the learned trial Judge concerned. Resultantly the above awarding of sentence does not appear to be either disproptrionate to the charge(s) (supra), nor is amenable for being modified. Contrarily, it appears to be a just, and, fair imposition of the substantive sentence of imprisonment, upon the convict-appellant qua a charge drawn for commission of an offence punishable under Section 307 IPC.

43. Be that as it may, the sentence of fine, as imposed upon the convict-appellant concerned, in respect of the charge (supra), as comprised in a sum of Rs. 1000/-, rather warrants interference, as it does not taken into account, thus victim compensation, as ordained by Section 357 of the Cr.P.C. Resultantly, for ensuring that victim compensation is also adjudged. Therefore, this Court enhances the sentence of fine, as became imposed upon the convict-appellant concerned, for the charge (supra), from Rs. 1000/- to Rs. 50,000/-. Furthermore, in default of payment of fine, he is also sentenced to undergo rigorous imprisonment extending upto one year. On realization of the fine amount from the convict, the same shall be disbursed as victim compensation to the aggrieved-victim.

44. Consequently, the appeal preferred by the State i.e. ***CRA-D-696-DB-2002***, is partly allowed.

Final order

45. In consequence, the appeal filed by the convict-appellant i.e. ***CRA-S-1081-SB-2002*** is dismissed. The impugned verdict of conviction, as becomes imposed upon the convict-appellant Kaptan Singh @ Parveen Kumar, by the learned convicting Court, is maintained, and, affirmed, besides the consequent thereto sentence(s) of imprisonment, as became

imposed upon the convict-appellant, by the learned convicting Court, is maintained, and, affirmed, but the sentence of fine is modified in terms (supra). If the convict-appellant is on bail, thereupon, the sentence(s) as imposed upon the convict-appellant, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

46. In addition, the appeal preferred by the State i.e. ***CRA-D-858-DBA-2002***, is allowed. Respondent No. 3-Kuldeep Singh is ordered to be produced in Court, on 4.9.2023 for his receiving the sentence.

47. The appeal preferred by the State i.e. ***CRA-D-696-DB-2002***, in terms (supra), is also thus partly allowed.

48. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

49. Records be sent down forthwith.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

August 25th, 2023
Gurpreet

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