



**In the High Court for the States of Punjab and Haryana
At Chandigarh**

(I) CRA-D-648-DB-2003 (O&M)

Rishi Pal and others ... Appellants

Versus

The State of Haryana ... Respondent

(II) CRA-D-931-DBA-2003 (O&M)

State of Haryana ... Appellants

Versus

Saminder and others ... Respondents

Date of Decision:-17.5.2024

**CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present:- Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai and Ms. Kashish Sahni, Advocates,
for the appellants in CRA-D-648-DB-2003.

Ms. Sheenu Sura, DAG, Haryana.

Mr. Sunil Panwar, Advocate,
for the complainant in CRA-D-648-DB-2003.

Mr. Pawan Kumar Hooda, Advocate,
for the respondents in CRA-D-931-DBA-2003.

Appeal qua appellant No.1 – Rishi Pal,
in CRA-D-648-DB-2003 is abated.



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GURVINDER SINGH GILL, J.

1. This judgment shall dispose of the above-mentioned two appeals, which are directed against the same judgment i.e. judgment dated 29.7.2003 passed by learned Additional Sessions Judge, Jind in respect of a trial arising out of FIR No.118, dated 9.7.2001 registered at Police Station City Narwana, under Sections 148, 302 read with Section 149 of Indian Penal Code and Section 25 of Arms Act.
2. While the State of Haryana has filed appeal i.e. CRA-D-931-DBA-2003 challenging the acquittal of the respondents namely Saminder, Balwan and Darbara, the accused namely Rishi Pal, Satish @ Lali and Mahipal, appellants in CRA-D-648-DB-2003 assail their conviction for offences punishable under Sections 302 read with Section 34 of Indian Penal Code and for which they have been sentenced to undergo rigorous imprisonment for life in addition to payment of fine of Rs.2,000/- each. Vide said judgment accused Satish @ Lali has also been sentenced to undergo rigorous imprisonment for 1 year apart from fine of Rs.1,000/- for having committed offence punishable under Section 25 of Arms Act.
3. The matter pertains to killing of Narpal Singh in Old Grain Market, Narwana on the afternoon of 9.7.2001. The FIR (Ex.P-2) was lodged on the basis of statement of Gora Singh, wherein he alleged that his father has two more brothers and that Narpal Singh is his cousin. It is stated that in the year 1987 Ved Parkash, resident of Village Ismail Pur was murdered by Narpal, who was sentenced to undergo life imprisonment, but was acquitted by the High



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Court and on account of which sons of said Ved Parkash nursed a grudge against Narpal Singh. The complainant alleged that on 9.7.2001, he alongwith Joginder son of Nihal Singh, Joginder son of Sheela Ram and Narpal went to Old Grain Market, Narwana. After getting free from the work at about 01:30-02:00 P.M., they started moving towards Railway Road, Narwana from Old Grain Market, Narwana. Narpal Singh was walking a little ahead of them. At the same time, Balwan, Saminder, Rishi Pal @ Kulu, Mahipal and Lali were coming towards Old Grain Market, Narwana from Railway Road, Narwana. The complainant alleged that when they were near a cloth shop towards Railway Road, then the said five persons attacked Narpal. It is alleged that Saminder fired from his pistol at Narpal as a result of which Narpal fell down in the adjoining cloth shop alongwith his licensed gun. Balwan, who was carrying a knife, inflicted blows to Narpal while he was lying down. Rishi Pal @ Kulu inflicted blows to Narpal with his sword. Mahipal, who was carrying a 'dadar' inflicted blows with the same to Narpal. Satish @ Lali, who was carrying a firearm, fired at Narpal while Narpal was lying fallen. The complainant and others raised alarm and the said five persons, upon noticing persons gathering at the spot, left the place of occurrence while taking alongwith the barrel of the licensed gun of Narpal by breaking the same. The accused while leaving issued threats proclaiming that they had taken revenge for murder of Ved Parkash. Narpal died at the spot. The complainant alleged that he left Joginder son of Sheela Ram and Joginder son of Nihal Singh to safeguard the dead-body and proceeded towards police station to lodge the FIR.



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4. After lodging of FIR, inquest proceedings were conducted by the police. The dead-body of Narpal Singh was subjected to post-mortem examination. The accused were arrested by the police and requisite investigation was conducted during the course of which blood stained soil was collected from the spot. It is further the case of prosecution that all the accused, upon interrogation suffered separate disclosure statements and pursuant to which each one of them got recovered the weapons of offence used by them. Upon conclusion of investigation, challan was presented against accused before the Illaqa Magistrate, who committed the matter to the Court of Sessions vide commitment order dated 30.10.2001. Learned Additional Sessions Judge, Jind to whom the case was entrusted framed charges against the accused on 11.1.2002. The prosecution, in order to establish its case, examined as many as 16 PWs. A gist of statements of witnesses is as under:-

PW-1 Kuldeep Singh, Draftsman, Court Complex, Narwana	He proved the site plan Ex.P-1 of the place of occurrence prepared by him at the asking of the Investigating Officer.
PW-2 Constable Hoshier Singh	He is a formal witness, who deposed regarding delivery of special reports to Illaqa Magistrate and to police officer on 9.7.2000.
PW-3 Constable Brahma Nand	He is also a formal witness, who deposed that on 9.8.2001 MHC Suresh Kumar had handed over 10 sealed parcels to him directing him to deposit the same in FSL, Madhuban, which he accordingly deposited in FSL, Madhuban.



PW-4 Head Constable Suresh Kumar	Head Constable Suresh Kumar stated that the case property i.e. weapons of offence, garments of deceased, parcels of blood stained earth, pellets, empty cartridges etc. recovered from the place of occurrence were deposited with him and that the same were dispatched to FSL through Constable Brahma Nand on 9.8.2001.
PW-5 Dr. S.S. Dabar, Medical Officer, General Hospital, Sector-16, Chandigarh	He deposed that he had conducted post-mortem examination of dead body of Narpal Singh and proved the port-mortem report as Ex.P-8.
PW-6 Gora Singh	Said witness is the complainant, who stated in tune with the version recorded in the FIR as regards the manner of occurrence.
PW-7 Joginder Singh son of Sheela Ram	He is an eye-witness of the occurrence and stated in tune with the prosecution version regarding the manner of occurrence.
PW-8 Ved Pal	He is an witness to the disclosure statements made by Saminder Singh, Balwan and Rishi Pal as Exs.PA, PB and PC, wherein they have disclosed about the places, where they had kept concealed the weapons of offence used by them i.e. pistol, knife and sword. The said witness also attested the recovery memos when the accused got recovered the aforesaid weapons.
PW-9 Virender	He is an attesting witness of the disclosure statements of Mahipal and Darbara recorded as Exs.PN and PO, wherein the said accused disclosed about the place where they had kept concealed the weapon of offence i.e. a ‘datar’ and a rifle. He (Virender) also attested the recovery memos prepared at the time when the weapons were got recovered by the accused.



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PW-10 Partap Singh, Reader to District Magistrate, Jind	He proved the sanction order Exs.PT, PU and PV issued by the District Magistrate according sanction to prosecute the accused for offence under Arms Act.
PW-11 Baldev Krishan	He is a photographer, who proved the photographs clicked at the place of occurrence as Exs.P-33 to P-38.
PW-12 Rajinder Singh	He is a formal official witness, who stated that after the post-mortem was conducted, the dead-body was handed over to Gora and Joginder Singh vide Ex.PX.
PW-13 SI/SHO Ram Phal	He stated that upon receipt of 'ruqa' Ex.P-16, he had recorded the formal FIR (Ex.P-2).
PW-14 SI Babu Lal	He stated that he had recorded the initial statement (Ex.P16) of complainant-Gora Singh and had partly investigated the case.
PW-15 Inspector Wazir Singh	He stated that he had taken over the investigation from Sub Inspector Babu Ram. He stated in respect of investigation conducted by him in the matter.
PW-16 Head Constable Surjeet Singh, Armourer	He stated that he had technically examined the rifle and had submitted his report Ex.PLL.

5. Upon conclusion of evidence of prosecution, statements of accused in terms of provisions of Section 313 Cr.P.C. were recorded, wherein they denied the prosecution case in toto and pleaded false implication due to party faction. However, the accused did not lead any evidence in their defence.
6. The Trial Court, upon marshalling the evidence led by the prosecution, held that the prosecution had failed to establish the charges framed against three of the accused namely Saminder, Balwan and Darbara and acquitted them of all the charges framed against them. However, the remaining three accused namely Rishi Pal, Satish @ Lali and Mahipal were held guilty of having



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committed offences punishable under Section 302 IPC and Section 25 of Arms Act and were sentenced accordingly.

7. Learned counsel for the appellant(s)/accused, while assailing the impugned judgment, broadly made the following submissions:

- i) that the presence of the complainant at the place of occurrence is highly doubtful mainly on account of the below mentioned reasons:
 - a) that the very fact that the inquest report does not bear signatures of the complainant casts a serious doubt regarding his presence;
 - b) that it remains unexplained as to why the complainant did not make any effort to save the deceased and as to why the accused did not choose to cause any injury to the complainant;
 - c) that the police station is barely 500 meters away from the place of occurrence and the police had come to the spot along with the complainant and it was thereafter that the inquest proceedings were conducted, but despite the same his signatures are conspicuously missing.
- ii) that the medical evidence is not in tune with the ocular version inasmuch as the incised wounds found on the deceased are all of equal width and which would suggest that the same had been caused with same or similar weapon, whereas the prosecution version is that he had been inflicted injuries with a sword as well as with a 'datar';



- iii) that the motive attributed does not seem plausible inasmuch as the motive regarding alleged murder of Ved Parkash's father was rather rendered stale inasmuch as the murder had taken place more than a decade back i.e. in the year 1987;
- iv) that the report of FSL also does not help the case of prosecution particularly as regards the usage of knife, sword and datar as no opinion regarding presence of human blood has been furnished by the Serologist;
- v) that there is a delay of almost one month in sending the empty cartridges and weapons to the FSL, which remains unexplained and casts a doubt as to whether the samples remained intact throughout or not;
- vi) that since the case of the prosecution has already been disbelieved qua three of the co-accused, a duty was cast upon the Trial Court to have scrutinized the case of prosecution with all the more caution and minutely and under such circumstances the appellants deserve to be given the benefit of doubt in the absence of sterling quality of evidence;
- vii) that the presence of the complainant or of the eye-witnesses allegedly accompanying him is not explained or justified as it has not been put forth as to for what business they all were present in the Old Grain Market, Narwana on the day of occurrence though the residence of the complainant is about 7 kilometers away from the said place;



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viii) that the deceased himself was involved in several cases and thus had several enemies, who could have eliminated him, whereas the appellants being easy targets, have been falsely implicated on the basis of false statement of the complainant.

ix) that the eye witnesses have made improvements inasmuch as while in the FIR, there is no allegation pertaining to inflicting of firearm injuries on neck, but pursuant to receipt of post-mortem report, the witnesses have stated in a manner to be in tune with the injuries recorded in post mortem report;

8. On the other hand, learned State counsel submitted that not only the conviction of the aforesaid three convicts/appellants namely Rishi Pal, Satish @ Lali and Mahipal deserves to be maintained, but as a matter of fact it is a case where the acquittal of the other three co-accused i.e. the respondents namely Saminder, Balwan and Darbara also needs to be reversed, who have been acquitted, despite clinching evidence against them. Learned State counsel submitted that even if the deceased was not found to have sustained any injury from the weapons got recovered by the accused, the same *ipso facto* cannot lead to acquittal of such accused in case their presence is otherwise established from the evidence on record.
9. Learned State counsel submitted that Saminder Singh (acquitted accused) is alleged to have fired from the country made pistol hitting Narpal on the right side of his neck and since the medical evidence does show injuries on the neck of deceased, his complicity is clearly evident, but the learned Trial Court had brushed aside the same by incorrectly observing that no injury was found



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on the neck. Learned State counsel further submitted that the complainant as well as the eye-witnesses have stated consistently regarding the participation of all the six accused and, as such, the three acquitted accused namely Saminder, Balwan and Darbara ought also to be convicted for offence under Section 302 IPC.

10. This Court has considered rival submissions addressed before this Court and has also gone through the evidence on record with the able assistance of the learned counsel.
11. It is the specific case of prosecution that on the day of occurrence, the deceased was attacked by the accused, who inflicted injuries to him with the help of firearms, swords, knives and *datar*. As per the report of post-mortem examination of the dead body of Narpal Singh conducted by PW-5 Dr. S.S. Dabar, Medical Officer, General Hospital, Sector 16, Chandigarh, the dead-body was found to be bearing the following injuries:
 - “1. An incised wound on the left fronto temporel parietal region measuring 12 cm x 1 cm going deep into the skull bone. There was infiltration of blood into the tissues.
 2. An incised wound over the left temple 5 cm x 1 cm going deep into the skull bone.
 3. An incised penetrating wound 2.5 cm x 5 cm in the middle of fore-head just above the bridge of noser going deep into the skull bone. On dissection the under lying skull bone was broken.
 4. An incised wound lying vertically over the nose measuring 5 cm x 1 xm going deep into the facial bone breaking them. Nose was flattened.



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5. An incised wound lying obliquely over the left ala of the nose and extending towards the upper lip and angle of mouth breaking the under lying bone and teeth.
6. Another incised wound 5 cm x 1 cm lying over tip of nose and philtrum.
7. An incised wound over the left maxilla just below the left eye measuring 5 cm x 1 cm breaking the under lying maxillary bone into pieces.
8. Another incised wound over the left side of face extending from the left angle of mouth to the tip of mastoid cutting the ear lobule measuring 12 cm x 1 cm going deep into the oral cavity.
9. Another incised wound just below the above wound going deep into the oral cavity and breaking the mandible and teeth of the lower jaw measuring 10 cm x 1 cm.
10. Two incised wounds over the chin measuring 5 cm x 1 cm each breaking the under lying lower jaw.
11. There were multiple incised wounds over the left side of the neck measuring 5 cm x 1 cm to 8 cm x 1 cm going deep into the neck and cutting all the major vessels of the neck and survival vertebrae.
12. There was a lacerated wound on the right supra clavicular region at the base of the neck measuring 3 cm x 1.5 cm with ragged margins and blackening of the edge. There was tattooing around the wound and front of the right side of chest. There was corresponding hole in the shirt. The wound was going deep into the muscles of the back just above the scapular spine. Multiple pellets (14) and a cork recovered from the wound.



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13. Another lacerated wound 3 cm x 1.5 cm just below the left nipple going obliquely towards the left axilla. There were multiple abrasions around the wound. The edges of the wound were black and inverted. There were tatoo marks around the wound. Multiple pellets (10) were recovered from the pectoral muscles and tissues of axilla.
 14. There was incised wound over the right thigh anteriorly in the lower 3rd measuring 5 cm x 1 cm muscle deep.
 15. Another incised wound over the right knee measuring 5.01 cm cutting the patella through the through.
 16. An incised wound on the medial aspect of right upper leg measuring 5 cm x 1 cm muscle deep.
 17. An incised wound over the right foot measuring 5 cm x 1 cm cutting the underlying metatarsal bone.
 18. There was incised penetrating wound over the abdomen in the centre just below the Xiphoid process.
 19. Two other incised wounds over the left side of abdomen just above the iliac crest and in the lumbar region measuring 2.5 cm x .5 cm each and muscle deep.”
12. There were a total of 19 injuries out of which 17 were incised wounds while 2 were lacerated wounds with blackening of edges. PW-5 Dr. S.S. Dabar, Medical Officer, General Hospital, Sector 16, Chandigarh, who had conducted the post-mortem examination of deceased Narpal Singh, opined that the cause of death was due to injuries on the face and neck, which were sufficient to cause death in ordinary course of nature. He further stated that only two injuries mentioned at serial Nos. 12 and 13 were caused with firearm



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and that as many as 24 pellets were recovered underneath the two firearm wounds. The aforesaid doctor was examined at length, but nothing substantial could be elicited during his cross examination so as to doubt his credibility or his opinion in any manner. It is thus evident that the deceased had died an unnatural death on account of the injuries sustained by him, which were in the nature of incised wounds and firearm injuries.

13. The complainant, while in the witness-box has stated in tune with the version unfolded by him in the '*ruqa*' (Ex.P-16) broadly to the effect that on 9.7.2001, he accompanied by Joginder son of Nihal Singh, Joginder son of Sheela Ram and Narpal had gone to Old Grain Market, Narwana and had visited the shop of Krishan Gopal, Commission Agent and that while they were leaving and were proceeding to Railway Station, the accused namely Balwan, Saminder, Darbara, Rishi Pal @ Kulu, Mahipal and Lali came from the opposite side out. He stated that Saminder was armed with a pistol; Darbara and Balwan were both armed with knives; Rishi Pal @ Kulu was carrying a sword; Satish @ Lali was carrying a country made pistol and Mahipal was armed with a '*dagar*'. He stated that all the said persons attacked Narpal Singh, who was walking a few steps ahead of them. He stated that Saminder fired a shot from his pistol hitting Narpal Singh on the right side of his neck and that Narpal Singh, in order to escape, fell inside a cloth shop nearby and thereafter the accused started inflicting incised wounds with their respective weapons. Satish @ Lali fired at Narpal Singh from his country made pistol on the left side of his chest from a close range.



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14. To a similar effect is the testimony of eye-witness i.e. PW-7 Joginder son of Sheela. Both the witnesses were cross-examined on behalf of the accused, but the witnesses remained firm on their statements. No such substantial inconsistency or discrepancy could be brought about during the course of cross-examination which could cause any dent in case of prosecution. Though the learned counsel vehemently argued that the presence of complainant is doubtful at the spot as his signatures were missing on the inquest report, but there is no such rule or requirement that all the witnesses present at the spot are required to sign on the inquest report. The police would normally insist on two or more witnesses, who are aware of the facts who would be required to sign upon the inquest report. Since it is the case of the prosecution right from the inception of FIR that Joginder son of Sheela Ram and Joginder son of Nihal Singh were present at the spot, therefore, once the said two witnesses had signed on the inquest report, the mere fact that the complainant did not sign upon the same, cannot be treated as a suspicious circumstance.
15. The contention of the appellants/accused that the complainant did not try to save the deceased or that he himself did not sustain any injury would discount his presence at the spot cannot be accepted inasmuch as it is very rare that an unarmed person would go ahead to save another person, when 5 armed assailants are brutally inflicting injuries to such other person. Though there could be few exceptions, but under normal circumstances, it can safely be expected that a person witnessing a gory murder, would be scared to intervene. Thus the absence of injury on complainant or the complainant not



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having saved the deceased would not cause any dent in the case of prosecution.

16. The prosecution has attributed a motive to the accused for elimination of the deceased to be that he had murdered Ved Parkash. Learned counsel representing the appellant(s)/accused has, however, disputed the said motive being stale inasmuch as the murder of Ved Parkash had allegedly taken place about more than a decade prior to the instant occurrence. Though it can be said that the motive, which could have prompted the accused to murder the deceased, had arisen more than a decade earlier, but it is well settled that the prosecution is not obliged to establish motive in each and every case especially in a case where there is direct evidence. A reference in this context may be made to a judgement of Hon'ble Supreme Court reported as 2010 (3) RCR (Crl.) in case State of U.P. Krishna Master & Ors., wherein it has been that prosecution is not supposed to prove motive when it relies on direct evidence i.e. evidence of eye witnesses. Hon'ble Apex Court in (2016) 10 SCC 663 Saddik @ Lalo Gulam Hussein Shaikh & Ors vs. State of Gujarat held as follows:

“ It is settled legal position that even if the absence of motive, as alleged, is accepted, that is of no consequence and pales into insignificance when direct evidence establishes the crime. Therefore, in case there is direct trustworthy evidence of witnesses as to commission of an offence, the motive part loses its significance. Therefore, if the genesis of the motive of the occurrence is not proved, the ocular testimony of the witnesses as to the occurrence cannot be discarded only on the ground of



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absence of motive, if otherwise the evidence is worthy of reliance.”

17. The aforesaid view has recently been reiterated by Hon’ble Supreme Court in Madan v. State of U.P., 2023 SCC OnLine SC 1473, while observing as under:

“It is a settled law that though motive could be an important aspect in a case based on circumstantial evidence, in the case of direct evidence, the motive would not be that relevant. In this respect, we may gainfully refer to the judgment of this Court in the case of ***State of Andhra Pradesh v. Bogam Chandraiah and Another (1986) 3 SCC 637***, which reads thus:

"11.Another failing in the judgment is that the High Court has held that the prosecution has failed to prove adequate motive for the commission of the offence without bearing in mind the well settled rule that when there is direct evidence of an acceptable nature regarding the commission of an offence the question of motive cannot loom large in the mind of the court....."

18. It thus need not be emphasized more that where there is direct evidence, no need to prove motive. It is only in cases of circumstantial evidence that motive assumes humonguous importance.
19. The Trial Court after considering the evidence had acquitted three of the co-accused. However, the said fact by itself would not *ipso facto* lead to an inference that the entire case of the prosecution needs to be discarded. It is the duty of the Court to sift grain from chaff and in case some evidence is found



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to be not trustworthy qua some of the accused, such accused can certainly get benefit of the same, but the evidence which is found to be credible and also finds corroborated can safely be accepted qua the other co-accused.

20. As already discussed above, it is a case where the ocular version stands fully corroborated from the medical version. Additionally, the factum of recovery of weapons of offence at the instance of the accused would also lend corroboration to the testimonies of the complainant and the eye-witnesses and would support the case of prosecution. The factum of the accused having made disclosure statements and having got recovered the weapons of offence from the disclosed places stands duly established from the testimonies of PW-7 Joginder son of Sheela, PW-8 Ved Pal, PW-14 Sub Inspector Babu Lal and PW-15 Inspector Wazir Singh, who have been duly cross-examined on behalf of the accused, but their testimonies remained unshattered and, as such, the factum of recovery of weapons at the instance of the accused can safely be taken into account to lend support to the case of the prosecution.
21. As noticed above, a large number of injuries were found on the dead body i.e. as many as 19 injuries out of which 17 were incised wounds and two were gunshot injuries. It is correct that PW-5 Dr. S.S. Dabar, during the course of cross-examination, stated that the width of all the incised wounds is 1 cm. excepting for the incised wounds mentioned at serial Nos.2 and 3 i.e. on the temple and forehead of the deceased and the same could be caused by sword and also stated that all the injuries could have been caused by sword, but the same would not rule out that the injuries could not have been caused with any



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other weapon. A '*datar*' also has a sharp edge like a sword though smaller in size. Normally, there would be no great difference in the thickness of blade of a '*datar*' and a sword. The presence of accused, in any case, is fully established from the testimonies of the complainant and the eye-witness and the factum of such large number of injuries would certainly a handywork of large number of persons. Consequently, the aforesaid statement made by the doctor during cross-examination cannot be said to be advantageous to the accused in any manner.

22. The report of FSL (Ex.P-5) also corroborates the case of prosecution as regards the usage of a country made pistol inasmuch as it has specifically been opined that the cartridge case recovered from the place of occurrence had been fired from the country made pistol i.e. .12 bore pistol, which had been got recovered at the instance of accused Satish @ Lali.
23. When the recovered knife and sword were sent to Serologist, the same were found to be smeared with blood, but the origin of the blood could not be specified during serological analysis as it was reported that 'material disintegrated'. A report of Serologist or FSL is in the nature of a corroborative evidence and the fact that definite opinion could be furnished by the Serologist regarding the blood found being human blood on account of disintegration of the material sought to be got analysed, cannot be inferred to absolutely rule out the involvement of the accused. The prosecution can very well establish its case on the basis of other evidence led by it. Though an argument was raised that there has been a delay of about 1 month in sending



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the weapons of offence and empty cartridges to FSL, but in the absence of any other evidence to show that the parcels had been tampered with or that the same were not having seals, the delay cannot *ipso facto* work in favour of the accused. A perusal of the report of FSL shows that it is specifically recorded therein that the seals affixed on the parcels were found to be intact and tallied with the specimen seal. As such, the contention on behalf of the appellants made in this regard thus cannot be accepted.

24. Though the deceased might have himself been involved or wanted in some criminal cases, but the said fact could assume importance if the prosecution seeks to establish its case on the basis of circumstantial evidence. However, the instant case is a case based on direct evidence and thus the fact that the deceased himself was involved in couple of other cases, would not cast any aspersion on the case of the prosecution.
25. Having sifted the evidence and upon considering the submissions addressed before this Court, no infirmity is found in the findings of guilt of the appellants namely Rishi Pal, Satish @ Lali and Mahipal (in CRA-D-648-DB-2003) as recorded by the Trial Court.
26. Coming to the appeal filed by the State i.e. CRA-D-931-DBA-2003 challenging acquittal of accused Saminder, Balwan and Darbara, this Court finds that the complainant never named Darbara Singh in the FIR, which was the first information and he had named that only 5 persons had attacked Narpal Singh on the said day. Even the witnesses namely Joginder son of Nihal Singh and Joginder son of Sheela Ram did not name Darbara Singh,



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when their statements were recorded by the police during the course of investigation. However, both the said witnesses named Darbara Singh for the first time, when they were examined in the Court. The Trial Court thus rightly discarded their statements being improvement.

27. The accused Saminder Singh and Balwan have been given the benefit of doubt by Trial Court. As far as accused Saminder is concerned, he is alleged to have fired from his pistol on the neck of Narpal Singh (deceased). Said Saminder had got one .315 bore pistol. However, no such injury was found on the dead body, which could have been said to be a result of firing from .315 bore pistol. The firearm injuries found on the neck of the deceased were apparently a result of shot fired with .12 bore pistol. As a matter of fact, 24 pellets were recovered from underneath the said two injuries on the neck, which would clearly make the prosecution version regarding Saminder having fired from .315 bore pistol doubtful.

28. As far as accused Balwan is concerned, it is the case of prosecution that accused Balwan, pursuant to his disclosure statement, had got a knife recovered under bushes by the side of road. The Trial Court, while examining the nature of injuries particularly in context of the opinion of doctor, observed that the doctor had opined that all the incised wounds could have been caused with a sword. The Trial Court observed that having regard to the nature of injuries, the same could have been caused with a sword or a sickle but not with a knife. It could be said that the injuries with the help of a sword and sickle would be caused with a swing action of the arm, a knife being lighter in weight would normally be used for causing stab injuries and not for



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inflicting long deep cuts. In the present case, all the injuries are deep incised wounds, which apparently had been caused with some heavy weapon or with a weapon used with force. Usage of knife for causing such like injuries is rather remote. Under such circumstances, the Trial Court, having given benefit of doubt to the aforesaid two accused namely Saminder Singh and Balwan, cannot be said to have committed any error. Consequently, we do not finding any ground for reversing the findings of the Trial Court qua acquittal of accused Saminder, Balwan and Darbara.

- 29. As a result of the discussion made above, both the appeals are dismissed and judgment dated 29.7.2003 passed by learned Additional Sessions Judge, Jind is hereby upheld.
- 30. Since substantive sentence of imprisonment as imposed upon appellant/accused No.2 - Satish @ Lali and appellant/accused No.3 - Mahipal in CRA-D-648-DB-2003 had already been suspended during pendency of the appeal, they be arrested immediately to undergo their remaining part of the sentence as the appeal challenging their conviction stands dismissed. Intimation be sent to the quarters concerned.
- 31. A copy of this order be placed on the file of connected case.

(GURVINDER SINGH GILL)
JUDGE

17.5.2024
Pankaj

(N. S. SHEKHAWAT)
JUDGE

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No