

2024:PHHC:122089-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CRA-D-855-DB-2003
Reserved on: 09.09.2024
Pronounced on: 17.09.2024

Darbara Singh and OthersAppellants

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Argued by: Mr. Hemant Saini, Advocate with
Ms. Neha, Advocate
for the appellants.

Mr. Maninderjit Singh Bedi, Addl. A.G., Punjab.

Ms. Isha Randhawa, Advocate with
Mr. Tajeshwar Singh Buttar, Advocate
for the complainant.

SURESHWAR THAKUR, J.

1. The instant appeal is directed by the convicts-appellants, against the verdict of conviction, as made on 27.09.2003, by the learned Additional Sessions Judge (Adhoc), Amritsar, upon, Session Case No. 397/2003/FTC, wherethrough, in respect of charges drawn for offences punishable under Sections 302/326/324/34 IPC, he made a finding of conviction against the accused.
2. Moreover, through a separate sentencing order drawn on 27.09.2003, the learned trial Judge concerned, proceeded to impose

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upon the convicts (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

“ I have heard the accused convict and their counsel in the matter of sentence. Taking into consideration the submission of the accused and their counsel of lenient view and other circumstances of the case, Sukhchain Singh is awarded life imprisonment and fine of Rs. 2000/- and in default, two months R.I. u/s 302 IPC and Darbara Singh and Gurbinder Singh each, is awarded life imprisonment and fine of Rs. 2000/- and in default two months R.I. u/s 302/34 IPC, that Darbara Singh is awarded R.I. for one year u/s 324 IPC and Sukhchain Singh and Gurbinder Singh each is awarded the same sentence u/s 324/34 IPC, Gurbinder Singh is awarded one year R.I. u/s 324 IPC and Darbara Singh and Sukhchain Singh are awarded one year R.I. under Section 324/34 IPC. All the sentences shall run concurrently. ..”

3. The convicts-appellants become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon them, by the learned convicting Court concerned, and hence have chosen to institute thereagainst the instant appeal before this Court.

Factual background

4. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PE/2 is assigned. The informant one Ravinder Singh has made narrations therein that their house is in the

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Singh had installed tubewell in his fields. He had illegally connected the electric wire from the electric pole near the house of Jamiat Singh to run his tubewell. That electric wire was connected from over the house of Jamiat Singh and the same had become naked, therefore, the members of the family of Jamiat Singh had felt current thereof three four times before the occurrence. Jamiat Singh and his family members had requested Darbara Singh to remove the wire, coming over their house but he did not agree for that. Before the alleged occurrence, the wire got broken and fallen on the house of Jamiat Singh. Darbara Singh was informed about that. On 6.10.2000, Darbara Singh tried to connect the wire but Jamiat Singh did not allow him to do so, as he did not want the wire to be over his house. Darbara Singh did not tolerate this and he raised hue and cry calling his sons, to teach a lesson to Jamiat Singh for asking him to remove the wire. Thereafter, Darbara Singh fetched *gandasi* from his nearby *Behak* and following him, his son Sukhchain Singh carrying *kirpan*, Gurbinder Singh armed with *gandasi* came there. Darbara Singh gave *gandasi* blow to Jamiat Singh on his left wrist, on which Jamiat Singh fell down and then Sukhchain Singh inflicted three *kirpan* blows one after the other on his head. When his son Ravinder Singh tried to intervene, then accused Gurbinder Singh gave him *Gandasi* blow on the right side of his head. Darbara Singh gave him *gandasi* blow on his left wrist and Gurbinder Singh gave him another *gandasi* blow on his left arm near elbow. In the meanwhile, hearing noise, Swaran Singh who is son of the uncle of Ravinder Singh

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came there and then all the accused fled away with their respective weapons.

5. Jamiat Singh in injured condition was rushed to Guru Nanak Dev Hospital, Amritsar and thereafter, he was got admitted to Shri Muni Lal Chopra Hospital, Amritsar. In the meanwhile, SI Ram Lubhaya of Police Station, Jandiala received wireless message about this occurrence. He alongwith police officials went to Muni Lal Chopra Hospital, Amritsar, where Jamiat Singh and Ravinder Singh were admitted. He went to Civil Hospital, Amritsar and presented an application to SMO for his opinion about the condition of the injured to make statement. Dr. Vikramjit Singh after examining the injured declared Jamiat Singh unfit to make statement whereas, Ravinder Singh was found fit to give statement. SI Ram Lubhaya recorded the statement of Ravinder Singh Ex PE, which with endorsement Ex PE/1 was sent to police station, where FIR Ex PE/2 was registered u/s 324/34 IPC. Statement of Sarwan Singh was also recorded. Jamiat Singh remained throughout unfit to make statement. He succumbed to the injuries on 25.10.2000 and offence u/s 302 IPC was added against the accused.

Investigation proceedings

6. After completion of investigation by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

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**Committal proceedings**

7. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court, committed the case for trial to the Court of the learned Sessions Judge, Amritsar.

Trial Court Proceedings

8. On finding a *prima facie* case, charges under Sections 302/326/324/34 IPC became framed, against the accused concerned, to which they pleaded not guilty, and, claimed trial.

9. In support of the prosecution case, the prosecution examined fifteen witnesses. After completion of recording of the depositions of the prosecution witnesses, the learned Additional Sessions Judge, Amritsar, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and, pleaded innocence. The accused examined two witnesses in their defence.

10. Moreover, a statement was made by Darbara Singh that he had instituted a complaint u/s 325, 326, 323, 324/34 IPC against Ravinder Singh and Sarwan Singh in the Court of Illaqa Magistrate and copy thereof is Ex.CX and copy of his statement made in the preliminary proceedings was Ex. CCX/2.

11. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge (Adhoc), Amritsar, the latter proceeded to make the afore verdict of conviction,

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and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellants.

Submissions of the learned counsel for the convicts-appellants.

12. The learned counsel for the aggrieved convicts-appellants herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent therewith sentences (supra), as imposed, upon the convicts-appellants, both become ridden with a gross infirmity of gross mis-appreciation, and non-appreciation of the evidence, existing on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

Submissions of the learned State Counsel and the learned counsel for the complainant.

13. On the other hand, the learned State counsel and the counsel for the complainant have argued that the appreciation of evidence as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

Case dependent upon the testimony of eye witness-complainant PW-3.

14. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the deposition of the ocular witness to the occurrence, who stepped into the witness box, as PW-3. The contents of the examination-in-chief, as rendered by PW-3 are ad verbatim extracted hereinafter.

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Jamiat Singh deceased was my father. We have our residence in a Behak in the area of village Wadala Johal. Darbara Singh accused is my uncle. Their residence is adjacent to our Behak. On 6.10.2000 at about 11-00 A.M., Darbara singh tried to take the electric connection from the electric pole of tube-well towards his Behak over our residential Behak and he also used naked earth wire for taking the electricity to his behak. We received electric shock 2/3 times from that electric wire. We requested them to remove the electric wire passing over our behak, but accused did not removed the electric wire. 3/4 days prior to 6.10.2000, that electric wire fell down due to dust storm. My father requested Darbara Singh to remove the electric wire and take the same from different route so that it may not pass over our Behak.

On 6.10.2000 at 11-00 A.M., Darbara Singh tried to connect the electric wire from over our house. My father objected and requested the accused not to do so. Darbara Singh raised a lalkara and asked his sons to bring weapons to teach us a lesson for not allowing them to connect the electric wire and in the meanwhile, Darbara Singh brought one gandasi from his Behak and his sons Sukhchain Singh came there with a kirpan and Gurbinder Singh armed with a gandasi came there. All the three accused are present in the court today. Darbara Singh gave a gandasi blow which hit on the left wrist of my father Jaimat Singh and he fell on the ground. Then Sukhchain Singh gave 3 kirpan blows which hit on the head of my father. My father was

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a Amritdhari Sikh and he used to keep Kanga over his head in the hair and used to tie a turban over the head as Namdhari Sikh. I stepped forward to rescue my father. Then Gurbhinder Singh accused gave gandasi blow which hit on the right side of my head. Darbara Singh then gave a gandasi blow which hit on my left wrist. Gurbhinder Singh gave another gandasi blow which hit on my left arm near the elbow. We raised alarm Mar ditta mar ditta and in the meanwhile Sarwan Singh s/o Gulzar singh was attracted to the spot and he witnessed the occurrence. Thereafter all the three accused ran away alongwith their respective weapons. Sarwan Singh got me and my father Jamiat Singh admitted in Guru Nanak Dev Hospital, Amritsar in the emergency ward. As both of us were in serious condition, we were taken to Muni Lal Chopra Hospital, Amritsar and got admitted there. Police came there and recorded my statement Ex. PE in the evening of 6.10.2000 which was read over to me and I signed in token of its correctness. My father succumbed to the injuries received by him on 25.10.2000. Police prepared the inquest proceedings of my father Ex. PC. I and my uncle Sardara Singh identified the dead body of my father and my statement was also recorded in the inquest proceedings which was also signed by me.”

15. PW-3 also suffered the ordeal of an exacting cross examination, and, yet during the course thereof, the defence counsel failed to elicit from him, any echoing qua the deposition(s) (supra), as, comprised in his examination-in-chief rather being engineered, false, or,

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contrived. Therefore, complete credence is to be assigned to the deposition of PW-3.

16. The relevant contents of the cross examination of PW-3 are also extracted hereinafter. On an incisive reading of the said contents, it becomes revealed, that thereby the convicts admitted not only the crime event taking place, but also they admitted their incriminatory participation therein.

“Darbara Singh came to our house at the time of occurrence to connect the broken ends of the wire and to remove the same. We did not allow him to connect the broken ends of wire. At that time myself and my father were present there. Other family members of mine were not present at that time. After my father objected to connecting of the wire, Darbara Singh raised a lalkara. After raising the lalkara to the effect to bring sota, he ran towards his Behak and brought gandasi from there. Behak of the accused is at a distance of 30 karams from where he has raised lalkara. Within few second Darbara Singh returned with his son. We did not arrange for any weapon, during the interval Darbara Singh went to fetch the Gandasi with his son. We did not tried to run away from the place of occurrence. I was at a distance of 2/3 karams from my father when Darbara Singh accused caused him the first injury. We did not ask the accused not to attack us when we had seen them coming armed with us as the accused was the brother of my father. My father also did not ask the accused not to act rashly. I did not step forward to intervene when Darbara Singh tried to

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attack my father as there was no such time i.e. time was short to intervene as accused have attacked spontaneously. Darbara Singh is aged about 50/55 years. It is incorrect that he is about 70 years old and is elder to my father and I am intentionally giving his age less than actual age to justify as to why I could not intervene. Jamiat Singh sustained the first injury on his left wrist. We did not run on receipt of injury. I did not intervene even after the first injury as the number of assailant was 3. My father fell on the ground while his face was down after receiving the first injury. He did not sit or collapsed but fell flat on sustaining the injury. So long as my father kept receiving injury I did not intervene. I stepped forward thereafter towards the accused and then I was given injuries by the accused. After sustaining injuries on my person I raised raula and thereafter again said Swaran Singh was already present when this occurrence had taken place. He had not come after hearing my raula. xxxx xxxx

It is further incorrect to suggest that Darbara Singh after sustaining some injuries started shouting and running towards his house, whereas Jamiat Singh deceased was chasing him with a gandasi in his hand. It is further incorrect to suggest that on hearing, the shrieks of Darbara Singh, Sukhchain Singh accused, who is son of Darbara Singh and was present at the Behak at that time came running from his Behak with a gandasi in his hand. It is further incorrect to suggest that to save Darbara Singh from his onslaught of Jamiat Singh, Sukhchain Singh caused some injuries to the deceased to disarm him. It

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is further incorrect to suggest that on receiving the said injuries, Jamiat Singh stopped chasing Darbara Singh and sat there whereas Sukhchain Singh took his father to his house.xxxx xxxx.

17. Apart from the accused, through making cross examination upon PW-3, wherein they as unfolded in the (supra) extracted relevant portions thereof, thus admitted their incriminatory participation in the crime event, thus they also therein, though did espouse the possible exculpatory plea of theirs committing the fatal assault, through theirs lawfully exercising their right of private defence of their respective body(ies).

18. Be that as it may, though the suggestions to the said effect became denied by PW-3, whereupon there was but a dire requirement cast upon the accused, to through adducing cogent evidence, thus establish the trite principles rather governing the well raising of the exculpatory plea, qua theirs committing the fatal assault, through theirs exercising the right of private defence of their respective body(ies) or property(ies). The said trite principles become embodied in.

a) The complainant being proven to be the initiator of the aggression.

b) Proof becoming rendered qua the superiority of the numerical strength of the complainant party vis-a-vis the numerical strength of the accused.

c) Proof becoming rendered qua the complainant party

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wielding more deadly weapons than the weapons which became wielded by the accused party.

19. However, despite suggestions being meted to PW-3, rather devolving upon qua therebys the accused raising the exculpatory plea of right of private defence, but when as stated (supra), the said plea became denied by PW-3. Resultantly as stated (supra), the accused were required to be through adducing cogent evidence, thus establish the above principles, rather governing the well raisings, besides proof thereto being made qua the espoused exculpatory plea of right of private defence of property or of person. However, after the said denials being made, yet in the proceedings drawn under Section 313 Cr.P.C., the accused omitted to raise the said exculpatory plea nor when obviously no cogent evidence became adduced rather for sustaining the said plea, therebys the principles (supra) but remained completely unproven.

20. In sequel, the surmisely raised plea of right of private defence, without the said becoming cogently established, through adduction of firm cogent evidence, thus subsequent to the closure of proceedings drawn under Section 313 Cr.P.C., thus begets an inference that the said plea became waived and abandoned. Consequently, the effect of waiver or abandonment of the said plea, at the instance of the accused, is but that, the admissions (supra), as arise from the inculpatory suggestions (supra) becoming meted to PW-3, during the course of his becoming cross-examined, do obviously emerge to the

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fore front. As but a natural corollary thereto, the fatal assault as became committed on the person of the deceased is to be concluded to be made with the *mens rea* to commit the murder of the deceased.

Corroboration lent to the statement of PW-3 by the deposition of PW-4 and analysis of the testification(s).

21. The statement of PW-3 is fully corroborated by the deposition of PW-4. He too, has spoken therein qua his witnessing the commission of the penal act by the accused upon the victim. Even during the ordeal of a rigorous cross-examination, to which he was subjected to, he remained unscathed.

22. A conjoint analysis of the testification(s), as made by the ocular witnesses (supra), to the relevant occurrence suggests, that their respectively made statements are not ridden with any taint of theirs making any gross improvements or embellishments vis-a-vis their respectively recorded previous statements in writing. Moreover, their respectively made testification(s) are also free from any taint of any intra-se contradiction(s) intra-se their respectively made testification(s). Moreover when they also render unblemished inter-se corroboration(s) to their respectively rendered ocular accounts qua the penal occurrence. Thus, completest credence is to be meted to their respectively made testification(s). Therefore, on the basis of the respectively made testification(s), by the credible ocular witnesses to the occurrence, thus, the charge against the accused but stands fully established.

SIGNATURED DISCLOSURE STATEMENT(S) OF THE ACCUSED AND PURSUANT THERETO RECOVERIES.

Signatured disclosure statement of accused Sukhchain Singh.

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23. During the course of investigations, being made into the appeal FIR, convict Sukhchain Singh made a signed disclosure statement, to which Ex.PK is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of following witnesses Sukhchain Singh Channa s/o Darbara Singh Jat r/o Wadala Johal while in police custody disclosed that I have kept concealed a kirpan without sheath in the heap of paddy straw in the Court yard with which I have caused injuries to Jamiat Singh during fight. Only I know it and can get recover.”

24. Pursuant to the above signed disclosure statement, convict Sukhchain Singh ensured the effectuation of the recovery of the weapon of offence i.e. Kirpan, which was taken into police possession, through recovery memo Ex. PK/2.

Signed disclosure statement of accused Gurbinder Singh.

25. During the course of investigations, being made into the appeal FIR, convict Gurbinder Singh made a signed disclosure statement, to which Ex.PL is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of following witnesses Gurbinder Singh @ Gora s/o Darbara Singh Jat r/o Wadala Johal while in police custody disclosed that I have kept concealed a Gandasi in the court yard of my house in the heap of paddy straw with which I have caused injuries to Ravinder Singh during fight. Only I know it and can get recover.”

26. Pursuant to the above signed disclosure statement, convict Gurbinder Singh ensured the effectuation of the recovery of the

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weapon of offence i.e. *Gandasi*, which was taken into police possession, through recovery memo Ex. PL/2.

Signed disclosure statement of accused Darbara Singh.

27. During the course of investigations, being made into the appeal FIR, convict Darbara Singh made a signed disclosure statement, to which Ex.PM is assigned. The signed disclosure statement, as made by the accused is ad verbatim extracted hereinafter.

“In the presence of following witnesses accused Darbara Singh aforesaid while in police custody disclosed that I have kept concealed one Gandasi after cleaning it in the wheat chaff in my house with which I gave injuries to my brother Jamiat Singh and nephew Ravinder Singh. Only I know about it and can get recover....”

28. Pursuant to the above signed disclosure statement, convict Darbara Singh ensured the effectuation of the recovery of the weapon of offence i.e. *Gandasi*, which was taken into police possession, through recovery memo Ex. PM/2.

INFERENCES DRAWN FROM THE DISCLOSURE STATEMENT(S) AND RECOVERY MEMO(S).

29. The disclosure statements (supra), carries thereons the signatures, of the convicts-appellants. In their respective signed disclosure statements (supra), the convicts-appellants, confessed their guilt in committing the crime event, by inflicting fatal injuries on the deceased/injured concerned, hence with the user of the incriminatory weapon(s) of offence. The further speaking therein is qua their keeping, and, concealing the incriminatory weapon(s) of offence, at the

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place(s) concerned, and, qua theirs alone being aware about the location of their hiding and keeping the same, and, also revealed their willingness to cause the recovery(ies) of the incriminatory weapon(s) of offence, to the investigating officer concerned, thus from the respective place(s) of theirs hiding, and, keeping the same.

30. The above disclosure statements, do acquire, the utmost evidentiary solemnity, as thereons exists the signatures, of the convicts-appellants, which, however, they have neither ably denied nor proven the said denial. Moreover, the above confession of guilt is neither a bald nor 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, thus through proven recovery memo(s) Ex. PK/2, Ex.PL/2 and Ex.PM/2, rather the convicts-appellants, caused the recovery(ies) of the incriminatory weapon(s) of offence, to the investigating officer concerned, whereby the disclosure statements (supra) and consequent therewith recovery(ies) are admissible besides readable in evidence.

31. Since the recovery of the incriminatory weapon(s) of offence, as made through recovery memo(s) (supra), has not been proven to be false or a contrived recovery(ies), inasmuch as, it has not been cogently established, that prior to the making of the above recovery(ies), rather the investigating officer concerned, had taken to plant the same at the apposite site of its/their recovery(ies), nor when any cogent evidence becomes adduced rather vividly exemplifying, that

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the place(s) of the apposite recovery(ies) rather was an open place, hence leaving scope for any person, other than the convicts-appellants to place it/them there. Thus, the above recovery(ies) are not only to be concluded to be a validly made recovery(ies), but are also to be concluded to be of the very same incriminatory weapon(s), which did become used by convicts-appellants, in causing the relevant fatal assault.

Medical Evidence

32. The doctor who conducted an autopsy on the body of the deceased Jamiat Singh, stepped into the witness box as PW-1. During the course of his examination-in-chief, he proved the post mortem report, as became authored by him. He also proved the existence thereons of his valid signatures. The post mortem report is assigned as Exhibit PA. The relevant observations, as become narrated in Exhibits (supra) are extracted hereinafter.

1. Lineous scar 10 x 0.4 cm on left side of head in temporor parietal region with stitch marks on both sides of scar, scab was present at places, horizontally placed, starting from 1 cm above ear pinna to vault of skull. On dissection Burhole was found underneath the scar and rounded piece of bone was lying over the brain. Extra dural haematoma a brownish coloured was present on left parietal region.

2. Lineous scar 11 x 4.4 cm was present on right side of head in temporo parietal region with stitch marks and scab at places,

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horizontally placed. On dissection multiple pieces of right temporal and parietal bones were found underneath the injury extra dural haematoma was present on right side and dura matter was found lacerated by thrusting on bone chips.

3. Stitched wound 6 x 2 cm was present on top of head on its midline with 5 stitches intact. On dissection underlying frontal bone was found having cut fracture, obliquely placed.

4. Linear scar present on back of left wrist 5 x 0.5 cm in length obliquely placed. On dissection lower end of radius was found having fracture.

5. Linear scar 3.8 x 0.5 cm was present on base of left thumb on its dorsum, obliquely placed.

33. Further, the doctor concerned opined that the cause of death of deceased was owing to septicemic shock as a result of injuries (supra) to the vital organs described above. All the injuries were declared to be ante mortem in nature and also were declared to be sufficient to cause death in the ordinary course in nature. Moreover, all the injuries were stated to be caused by sharp edged weapons.

34. Since the medical account but corroborates eye witness account besides also lends corroboration to the memo(s) (supra) thereby the charge against the accused is concluded to be efficaciously proven.

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Final Order of this Court.

35. In consequence, there is no merit in appeal and the same is accordingly dismissed. The impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convicts by the learned Convicting Court, is affirmed and maintained.
36. If the convicts (supra) are on bail, thereupon, the sentences(s) as imposed upon the convicts-appellants, be ensured to be forthwith executed by the learned trial Judge concerned, through his forthwith drawing committal warrants.
37. The case property, if any, be dealt with in accordance with law after the expiry of period of limitation for the filing of an appeal. The records be sent down forthwith.
38. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

17.09.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

(SUDEEPTI SHARMA)
JUDGE

: **Yes/No**
: **Yes/No**