

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

CRA-D-367-2022 (O&M)
Reserved on: 09.01.2024
Date of decision: 22.01.2024

PATIRAM @ PATRAM

...Appellant

Versus

STATE OF HARYANA

...Respondent

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Ashish Handa, Advocate
for the appellant.

Mr. Pradeep Parkash Chahar, Sr. DAG, Haryana

SURESHWAR THAKUR, J.

1. The instant appeal is directed against the verdict drawn on 23.03.2022, upon Sessions Case No.SC-194-2018, instituted on 03.07.2018, by the learned Additional Sessions Judge, Jhajjar, wherethrough, in respect of a charge drawn for an offence punishable under Section 302 of IPC, he recorded a verdict of conviction against the convict. Moreover, through a separate sentencing order of 25.03.2022, the learned trial Judge concerned, imposed, upon, the convict, the sentence of life imprisonment, besides also imposed, upon the convict sentence of fine, as comprised in a sum of Rs. 5,000/-, and, in default of payment of fine amount, he sentenced the convict to undergo imprisonment for a period of one year.

2. The period spent in prison by the convict, during investigation or trial, was, in terms of Section 428 of Cr.P.C., ordered to be set off from the above imposed substantive sentence(s) of imprisonment, upon, the convict.

3. The convict becomes aggrieved from the above drawn verdict of conviction besides also becomes aggrieved from the above drawn order of sentence, thus, he is led to institute thereagainst the instant appeal before this Court.

FACTUAL BACKGROUND

4. The case of the prosecution is that, on 19.03.2018, SI Narender along with other police officials in connection with patrol duty was present at Panchmukhi Chowk, Linepar Bahadurgarh. Mahender informed that in his rented accommodation someone murdered Neeraj. SI Narender and other police official and Mahender reached the spot. Manoj Kumar complainant in his statement stated that he, Mansa Ram and Neeraj are brothers residing in rented accommodation of Mahender. 10-15 persons of his village were also residing in the rented accommodation. He and Mansa Ram were doing labour work. Neeraj was working in HASILTY Ford Factory. Today, at about 6/6:15 p.m., his brother Neeraj came to room, went outside to tap and started bathing. He, Pankaj, Bhagat Ram, Alok and Nanu were sitting in rented room of Pankaj. Patiram was sitting in his room. All of a sudden, from tap they heard noise. He, Nanu, Alok, Bhagat Ram and Pankaj came out and saw Patiram giving knife blows to Neeraj. All of them tried to catch hold of Patiram. After giving 4-5 knife blows Patiram fled away. When they were making arrangement for private car, Neeraj died at the spot in courtyard. On statement, FIR was registered.

INVESTIGATION

5. During investigation, inquest proceedings were carried out. Blood stains were lifted from the floor. Post-mortem of the dead body was got conducted. On 26.04.2018, accused Patiram was arrested. In pursuance to his confessional statement, Patiram got recovered knife and shirt. Rough and scaled site plans were prepared. Statements of witnesses were recorded. After completion of investigation, challan was filed. Copy of challan was given to accused as per Section 207 Cr.P.C.

COMMITTAL PROCEEDINGS

6. Since the afore offence was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made, on 05.06.2018, hence proceeded to commit the accused to face trial before the Court of Session.

TRIAL PROCEEDINGS

7. The prosecution examined as many as 17 witnesses and, subsequently, the public prosecutor closed the prosecution evidence. After the closure of the prosecution case, the learned trial Judge drew proceedings under Section 313 Cr.P.C., wherein, the accused pleaded innocence, and, claimed false implication. However, he choose to lead only one defence evidence.

SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT

8. Learned counsel for the appellant submits, that the impugned verdict of conviction, and, the consequent thereto order of sentence are liable to be quashed and set aside. In his making the above argument, he has hinged them, on the hereinafter premises.

- i) That since the investigating officer concerned, while stepping into the witness box as PW-16, has in his cross-examination, made

the hereinafter extracted echoings, but manifestative, that there is discrepancy inter se Ex.PW-10/B, vis-a-vis the weapon of offence, as became recovered through Ex.PW-10/C. Therefore, he has argued that with the above rifle inter se discrepancy inter se the dimensions, and, sizes of weapon of offence, as spoken by the witness concerned, thus with the recovery memo. Consequently, thereby he has argued that no efficacy can be assigned to the recovery of the weapon of offence, as became effected, through recovery memo Ex.PW-10/C. The relevant speakings as occur in the cross-examination of PW-16 are extracted hereinafter.

“xxx

The recovery memo was prepared by me in my handwriting. Accused disclosed before me that the knife was pertaining to him. The sketch of the knife was also prepared by me. I prepared the correct sketch of the knife Ex.PW10/B. It is correct that a line has been shown on the sketch Ex.PW10/B after the handle of the knife which is not so in the case property Ex.P1. It is correct that margin of the knife shown in sketch is beyond the boundaries of knife itself. It is correct that the original knife is serrated blade on one side but the same is not present in the sketch Ex.P10/B. It is correct that few line are there on the handle of the knife but those line are not there in the sketch Ex.PW10/B. It is also correct that the work concord and other few words are mentioned on the blade of knife Ex.P1 but these words were not mentioned on the sketch Ex.PW10/V. Volunteered stated that sketch Ex.PW10/B was prepared by me with the help of pen after putting the knife on the paper. It is wrong to suggest that the sketch Ex.PW10/B is not related with the knife Ex.P1.”

ii) Moreover, when PW-10 has also in his cross-examination made echoings which are in tandem with the echoings (supra), as became made by the investigating officer concerned. Therefore, the

learned counsel for the appellant has vigorously argued, that no efficacy can be assigned either to the disclosure statement PW-10/A, nor any worthwhile evidentiary vigor becomes garnered, by the consequent thereto recovery, as became effected through recovery memo Ex.PW-10/C. In consequence, he has argued, that the prosecution has been unable to prove the guilt of the appellant qua the charge as became drawn against him.

iii) That since amongst 5 of the ocular witnesses to the occurrence, 4 have turned hostile. In consequence, he submits, that the deposition of a singular ocular witness to the crime event, thus supportive of the prosecution case, does thereby become unamenable, for foisting any evidentiary vigor thereto.

iv) Cumulatively on scores (supra), the learned counsel for the appellant has argued, that neither there is any worthwhile or creditworthy evidence on record, adduced by any purported ocular witness to the occurrence nor is there any efficacious recovery of the weapon of offence Ex.PW-10/B. Therefore, he has most vigorously argued, that the impugned verdict of conviction, and, the consequent thereto order of sentence, as becomes imposed upon the appellant are liable to be quashed, and, set aside.

SUBMISSIONS OF THE LEARNED STATE COUNSEL

9. The learned State counsel has argued, that the impugned verdict of conviction, and, consequent thereto sentence (supra), as became imposed upon the convict by the learned trial Judge concerned, is meritworthy, as the same does not suffer from any taint of any gross mis-appreciation or non-appreciation

of any evidence germane to the charge. Therefore, he contends that the impugned verdict of conviction be maintained, and, affirmed by this Court.

ANALYSIS OF THE SUBMISSIONS ADDRESSED BEFORE THIS COURT BY THE LEARNED COUNSEL FOR THE APPELLANT, AND, BY THE LEARNED STATE COUNSEL AND REASONS FOR ACCEPTING THE SUBMISSIONS OF THE LEARNED STATE COUNSEL AND FOR REJECTING THE SUBMISSIONS OF THE LEARNED COUNSEL FOR THE APPELLANT ARE HEREUNDERS

10. The arguments (supra), as becomes raised before this Court, rather relating to there being inter se discrepancy(ies) inter se the sketch of knife Ex.PW-10/B, rather with the recovery thereof, as became made through recovery memo Ex.PW-10/C, and, resultantly thereby no evidentiary vigor, is to be assigned to recovery memo, rather does not find any favour with this Court, and, the same is rejected for the hereinafter made reasons.

11. The reason for making the said inference becomes anchored upon;

a) The contents of the disclosure statement as made by the appellant, and, which is embodied in Ex.PW-10/A, contents whereof become extracted hereinafter, do on their perusal but graphically exemplify, that thereins, the appellant had after confessing his guilt vis-a-vis the crime event, had shown his willingness to ensure to the investigating officer concerned, thus the recovery of the weapon of offence from the place of its keeping and hiding, given the relevant site being known exclusively to him.

DISCLOSURE STATEMENT OF THE APPELLANT AND CONSEQUENT THEREWITH RECOVERIES

12. During the course of investigations being made into the FIR, the investigating officer concerned, had put the accused to police remand. During the course of the appellant, being put to police remand, he made a signed

disclosure statement, to which Ex.PW-10/A is assigned. The contents of the Ex.PW-10/A are ad verbatim extracted hereinafter.

“Disclosure statement of Accused

In the presence of following witnesses accused Patiram @ Patram S/o Amresh caste Yadav R/o Ahlad Nagar Titihiriya District Shrabasti Uttar Pradesh, in police custody, without any fear lure or coercion, himself suffered disclosure statement that the disclosure statement suffered by me earlier was false due to fear. The fact is that Neeraj S/o Rajit Ram caste Paswan of my village used to talk to my wife privately. Due to this I counseled Neeraj a lot but Neeraj did not refrain from his act. As a result I was nourishing a grudge with Neeraj. I planned in my village itself that whenever Neeraj will be alone at Bahadurgarh, I shall finish him. On 19-3-18, in evening at about 6.15 o'clock, when Neeraj was taking a bath from the hand pump in the courtyard then I brought vegetable cutting knife from my room and inflicted knife blows to Neeraj while taking bath on the left hand and left side in the waist. On receiving knife blows Neeraj fell down there itself. I fled from the place of occurrence with the knife. The knife was stained with lot of blood and the arm of the shirt which was worn was also stained with blood. I rubbed the knife in the sand and cleaned with water. The shirt was also washed 2-3 times with the soap. I have concealed the knife and shirt under the beddings kept on the cooler in the rented room of my brother Balram at Jhajjar Road Bahadurgarh. None else I know about the same. I can demarcate and get the same recovered. I can demarcate the place where I murdered Neeraj by inflicting knife blows. The disclosure statement of the accused was reduced into writing. Witnesses and the accused appended there signatures of the disclosure statement.

Accused Pati Ram
Sd/- in Hindi Pati Ram

Witnesses: HC Randeep Singh 623
P.S. Line Par B.Garh
Sd/- in English HC

Witness C. Anil 152
P.S. Line Par B.Garh
Sd/- in English

Sd/- In English SI
P.S. Line Par B.Garh
Dt. 27-4-18”

13. A reading of the above extracted signed disclosure statement, as made by appellant, reveals that he had therein not only confessed his guilt, but

had also disclosed, that he can ensure the causings of recovery of knife, and, shirt Ex.PW-10/C, to the investigating officer concerned, from the place of his hiding, and, concealing them, given the said site being exclusively known to him. Since in pursuance thereof, through a recovery memo Ex.PW-10/C, he caused the recovery of knife and shirt. Significantly, since the appellant has not been able to either ably deny his signatures as occur on Ex.PW-10/A, nor has been able to prove the apposite denial. Moreover, since he has also not been able to bring forth tangible evidence but suggestive, that the recoveries are either contrived or invented. Therefore, both the memos are concluded to be holding the utmost evidentiary tenacity.

14. Furthermore, since thereons occur the signatures of the appellant, which he has neither ably denied nor proved the said denial through his adducing into evidence the apposite exculpatory evidence of the handwriting expert concerned. Therefore, besides when no further evidence has been adduced by the appellant, thus unveiling the factum, that the said disclosure statement was made by him under duress of compulsion becoming exerted, upon him, by the police officer concerned. In consequence, validity is to be foisted, upon the disclosure statement Ex.PW-10/A.

15. Since in pursuance to the making of disclosure statement Ex.P-10/A by the appellant to the investigating officer concerned, thus recovery of knife and shirt from the place of its hiding and keeping them, rather became effectuated. Therefore, when also no evidence becomes adduced by the appellant, thus unveiling, that the said recovery was tainted, through a mechanism becoming deployed by the investigating officer concerned, inasmuch as, his planting the recovered knife, at the site from where it became recovered. In consequence, this

Court is led to assign absolute evidentiary sanctity to both disclosure statement Ex.PW-10/A and to recovery memo Ex.PW-10/C.

16. The further reason for making the above conclusion, becomes sparked from the factum, that after the recovery of the knife being made, through recovery memo Ex.PW-10/C, the same as revealed in the deposition of PW-9, as enclosed in PW-9/B and PW-9/C, thus became deposited in a sealed condition in the malkhana concerned. In consequence, the recovery of the weapon of offence resulted in its becoming enclosed in a sealed cloth parcel, whereafter it became deposited in the same condition, in the malkhana concerned. Furthermore, when the recovered knife, through PW-10/C became evidently sent, in an unspoiled and untampered condition to the FSL concerned, rather as revealed by the report of the FSL concerned, enclosed in Ex.PX, wherein, the hereinafter extracted echoings occur, echoings whereof are completely suggestive, qua the items enclosed in the cloth parcel, thus becoming received at the FSL concerned, rather in the very same condition, in which they became deposited in the malkhana concerned, besides whereafter theirs becoming retrieved therefrom.

“Description of parcel(s) and condition of seal(s)

Three sealed parcel(s). The seals were intact and tallied with the specimen seals as per forwarding authority letters.”

17. In consequence, with therebys there being rather no cogent evidence of tamperings being done, with the sealed cloth parcel, wherein, became enclosed knife Ex.PW-10/B. Resultantly, thereby it has to be concluded, that the investigating officer concerned, did immediately, after effecting recovery of knife through recovery memo Ex.PW-10/C, thus enclose it, in a sealed cloth parcel, besides therebys he became completely precluded, to plant therein any incriminatory weapon of offence, but contradistinct to the weapon of offence, as became recovered through recovery memo Ex.PW-10/C.

18. What assigns the gravest momentum to the above conclusion, becomes derived from the factum, that knife Ex.PW-10/C became produced in Court, in a sealed cloth parcel, and after its becoming retrieved therefrom, it becoming also shown to the prosecution witnesses concerned. Since the prosecution witnesses concerned, to whom recovered knife Ex.PW-10/B, as became recovered through recovery memo Ex.P-10/C, become shown, in Court, thus proved that it was the very same knife, as became recovered, through recovery memo Ex.PW-10/C. Therefore, when at that stage, there was no efficacious cross-examination made upon the prosecution witnesses concerned, but suggestive that the knife as became retrieved from the cloth parcel concerned, was not the knife as became recovered through recovery memo.

19. In consequence, the effects of, wants of the makings of the above suggestions, to the prosecution witnesses concerned, to whom the recovered knife, became shown in Court, is that, the prosecution waiving and abandoning the rearing of any exculpatory plea, thus founded, upon the factum, that the knife as became produced in Court, was not the knife which became recovered through Ex.PW-10/C.

20. The further effect of the above waiver, is that, any discrepancy inter se sketch of knife carried in Ex.PW-10/B, and, the recovery thereof, as made, through Ex.PW-10/C, does becomes completely waned and blunted. Predominantly on the ground, that for all the reasons (supra), this Court rather assigning the gravest evidentiary solemnity, to the disclosure statement, and, to the recovery memo, respectively embodied in Ex.PW-10/A and Ex.PW-10/C, besides to the untampered and unspoiled condition in which the sealed cloth parcel containing therein, the incriminatory knife, thus becoming received at the FSL concerned, but as revealed by the report of the FSL Ex.PX.

21. A perusal of the sketch of knife Ex.PW-10/B, discloses, that the investigating officer concerned, who prepared the same in the presence of PW-10, has made echoings therein, that the said sketch has been drawn, with the help of the original, and, has also made speakings therein, that it is not possible to draw the sketch rather in complete conformity with the original knife, whereby, he became led to attach, the original knife along with the sketch of knife, as, enclosed in Ex.PW-10/B. The effect of the above speakings, is but naturally that even if the sketch of the knife as enclosed in Ex.PW-10/C, rather is unveiled by the statement (supra), as existing in the cross-examination of the prosecution witnesses concerned, to thus not completely concur with the dimensions of the knife, as became recovered, through recovery memo Ex.PW-10/C.

22. Nonetheless, the above discrepancy is self clarificatory, thus from the speakings (supra), occurring in Ex.PW-10/B. Predominantly also when for all the reasons (supra), this Court has concluded, that for want of adequate excuplatory evidence, becoming adduced by the appellant, rather for belying the efficacy of drawings of disclosure statement, and, the consequent thereto drawn recovery memo Ex.PW-10/C, wherethrough knife Ex.PW-10/B, became recovered. Resultantly thereby predominance is to be assigned to the memos (supra), than to the sketch, which even if is discrepant with the validly drawn memos, especially, when the purported discrepancy inter se memos (supra), and PW-10/C sketch of knife enclosed in Ex.PW-10/B, is but self explained rather from the speakings (supra), as occur in Ex.PW-10/B. Therefore, but naturally the said inter se discrepancy is completely unworthy, so as to negate the recovery of the incriminatory weapon of offence as became made through recovery memo Ex.PW-10/C. Importantly, also for the rerason that the said knife became produced in a sealed condition before the Court concerned, and, at that stage the

exculpatory argument raised today, became rather for the reasons (*supra*), thus waived or abandoned, thereby the defence is deemed to acquiesce to the validity of recovery of knife through the relevant memo, besides is deemed to acquiesce to the inconsequentiality of the apposite inter se discrepancy.

23. Though the prosecution cited 5 witnesses as ocular witnesses to the occurrence. However, though only one amongst the five purported ocular witnesses to the occurrence rather supported the prosecution case. Nonetheless, the wants of the other prosecution witnesses, thus supporting the charge drawn against the appellant, rather becomes overcome by the creditworthy testimony, which became rendered in respect of the crime event, by an ocular witness to the occurrence, who stepped into the witness box as PW-1.

24. The reason for forming the above inference, becomes garnered, from the factum, that a wholesome and closest reading of the deposition of PW-1, unveils, that the said witness has neither grossly improved nor embellished upon his previously made statement, in writing to the police officer concerned, nor has he made any rife intra se contradiction intra se his deposition comprised in his examination-in-chief, and, the one enclosed in his cross-examination. If so, the testification rendered by the said witness, is to be construed to be confidence inspiring. Resultantly, upon assigning creditworthiness to the deposition of PW-1, who rendered a graphic, besides a vivid ocular account to the crime event, thus thereby too, when the prosecution has clinchingly proven the validity of drawings of disclosure statement, and, of the recovery memo.

25. In sequel, the above purported discrepancy inter se the description of the knife as detailed in recovery memo Ex.PW-10/A, with the one as detailed

in the sketch thereof, as embodied in Ex.PW-10/B, does also becomes completely minimized.

MEDICAL EVIDENCE (POST MORTEM REPORT)

26. The autopsy upon the body of deceased Neeraj, was conducted on 20.03.2018, by PW-7. PW-7 has proven *qua* his, authoring Ex.PW-7/A, as relates to the autopsy as made upon the body of deceased.

27. Moreover, he has proven that the cause of death of deceased Neeraj, is hemorrhage and shock, as arising from the injuries, as detailed in Ex.PW-7/A, and, from the complications as arose therefrom. All the injuries were declared to be ante mortem and were also declared to be sufficient to cause death in ordinary course of nature. The relevant ante mortem injuries as noticed by PW-7 on the body of deceased are extracted hereinafter.

“1. One incised wound is present over left arm located 25 cm from left shoulder, 3 cm lateral to midline of size 3 cm x 1 cm of spindle shaped of bright red color with sharp margins. Underline tissue is ecchymosed.

2. One incised wound is present over the abdomen in midline located 13 cm below the xiphoid process of size 3 cm x 1 cm of red color underline tissue is echhymosed. On opening the abdominal cavity peritoneum is lacerated free blood present in abdominal cavity, small intestine and large intestine is lacerated.

3. One incised wound is present over the left side of chest located 28 cm from midline and 17 cm above the ASIS of size 3 cm x 1 cm of red color of spindle shape. Underline tissue is echhymosed, underline spleen is ruptured.”

28. The incriminatory weapon of offence was shown to PW-7, during the course of his making his testification(s), before the learned trial Judge concerned. In his testification he has spoken that “possibility of injuries due to above-mentioned knife cannot be ruled out”. He has further spoken that the

parcel of knife was again sealed with his three seals of “MK” and two seals of “NS”, his opinion Ex.PW-7/D, is also testified to bear his signatures. The effect of the above, is that, especially when no efficacious cross-examination was made upon the said prosecution witness, by the learned defence counsel, thus thereby, the defence conceding qua the said ante mortem injuries declared in PMR were, as such, inflicted with the users, on the relevant portion of the body of the deceased, thus of recovered knife, rather by the accused. Consequently, thereby medical evidence also corroborates the memos (supra).

FSL REPORT

29. The relevant cloth parcel became sent to the FSL concerned, through SI Dharamvir Singh No.56/JJR. After examinations of the items, enclosed therein, thus being made at the FSL concerned, hence the expert concerned, drew the hereinafter extracted conclusions.

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LABORATORY EXAMINATION

Laboratory examinations were carried out to detect the presence of blood on the exhibits through chemical test. Blood thus detected was subjected to serological tests to determine its species of Origin. Based upon these examinations the results obtained are given below:-

- 1. Blood was detected on Exhibit-1 (Blood stained earth).**
- 2. Blood could not be Exhibit-2 (Shirt) and Exhibit-3 (Knife).**

NOTE: 1. Results of serological analysis of blood are attached herewith.
2. After the examinations the exhibits along with their original wrappers have been sealed with the seal of FSL(H) SERO.
3. The results relates only to the items tested above.

Xxx

Results of serological analysis of blood

<u>Sr. No.</u>	<u>Name of exhibit</u>	<u>Origin</u>
1.	Blood stained earth	Human

Sd/- Dr. Surjit 23/05/18
Dr. SURJIT
Senior Scientific Officer (Serology)
Forensic Science Laboratory (H)
Madhuban, Karnal”

30. Though, the examinations of the incriminatory items, as enclosed in the sealed cloth parcel, did not result, in any positive opinion, becoming rendered by the Serologist concerned, thus suggestive, that the blood found on the items sent there, rather matching with the blood group of the deceased. However, yet no exculpatory effect is gathered therefrom. The reason becomes sparked from the factum, that this Court assigns vigor to the disclosure statement, recovery memo, and, to the testification of an ocular witness to the occurrence, who stepped into the witness box, as PW-1.

31. Even otherwise, this Court has earlier made directions, upon, the Director General of Police, Punjab to ensure, that all the investigating officers concerned, who collect incriminatory material rather with thereons, thus existing the blood stains, of the deceased or of the accused, to thus, ensure, that for clinching findings, thus being rendered thereons, by the Serologist concerned, vis-a-vis, the compatibility of blood stains carried on the incriminatory material, with the blood group, of the deceased, qua the investigating officer concerned, being coached and tutored, that they also collect from the family members of the accused, and, family members of the deceased, rather the respective FTA cards concerned. However, it is not known whether the said earlier made directions have been complied with.

32. Therefore, a copy of this verdict be forthwith sent to the Director General of Police, Punjab, so that within a period of three months from today, an intimation is made to this Court whether the earlier made directions (supra), have or have not been complied with by all concerned, and, if remaining uncomplied with, an explanation be called for from all concerned, vis-a-vis the reasons, for not meeting compliance with the earlier made directions by this Court.

FINAL ORDER

33. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the convict by the learned trial Judge concerned, does not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thereupon he is ordered to be forthwith taken into custody, through the learned trial Judge concerned, forthwith drawing committal warrants against the accused. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

34. Records be sent down forthwith.

(SURESHWAR THAKUR)
JUDGE

22.01.2024

Ithlesh

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No

(LALIT BATRA)
JUDGE