

2024:PHHC:161383-DB



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 08.11.2024
Pronounced on: 04.12.2024

1. CRA-D-845-2022 (O & M)

Anoop Singh and AnotherAppellants
Versus
State of PunjabRespondent

2. CRA-D-722-2022 (O & M)

Gurdev SinghAppellant
Versus
State of PunjabRespondent

3. CRA-D-962-2022

Salwinder Singh @ ShindaAppellant
Versus
State of PunjabRespondent

4. CRA-AD-311-2022

Amarjit Kaur and AnotherAppellants
Versus
State of Punjab and AnotherRespondents

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

Argued by: Mr. Viren Sibal, legal aid counsel and
Mr. Harinder Singh, Advocate for
Mr. Satwant Mehta, Advocate
in CRA-D-845-2022 for the appellant(s).

Mr. Vivek K.Thakur, Advocate

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for the appellant(s) in CRA-D-722-2022 and
respondent No. 2 (in CRA-AD-311-2022).

Mr. Sunny Saggar, Advocate
for the appellant(s) (in CRA-D-962-2022).

Mr. Anas Ahmed, Advocate (legal aid counsel)
for the appellant(s) (in CRA-AD-311-2022).

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J.

1. Since all the criminal appeal(s) (supra), involve common questions of facts and law. Therefore, they are amenable to be decided through a common order.
2. **CRA-D-845-2022, CRA-D-722-2022 and CRA-D-962-2022** are directed by the convicts-appellants, against the verdict of conviction, as made on 04.08.2022, by the learned Additional Sessions Judge, Tarn Taran, upon, Sessions Case No. 34 of 02.08.2018, wherethrough, in respect of charges drawn for offences punishable under Sections 302/307/324/201/148/149 of the IPC, and under Sections 25/27 of the Arms Act, he made a finding of conviction against the accused.
3. Moreover, through a separate sentencing order drawn on 05.08.2022, the learned trial Judge concerned, proceeded to impose upon the convicts (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-

Accused	Under Sections	Sentence
Anoop Singh	302 IPC	Rigorous Imprisonment for life and fine of Rs.2,00,000/- and in default of payment of fine

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		simple imprisonment for four years. Out of the above amount Rs. 1,00,000/- will be paid to the victim/legal heirs of deceased Davinder Singh and Mohkam Singh.
	307/149 IPC	R.I. for ten years and fine Rs. 50,000/-. In default of payment of fine S.I. For two years.
	Section 27 of Arms Act	R.I. for three years and fine Rs. 10,000/-. In default of payment of fine S.I. for six months.
Amardeep Singh	302 IPC	Rigorous Imprisonment for life and fine of Rs.2,00,000/- and in default of payment of fine, simple imprisonment for four years. Out of the above amount Rs. 1,00,000/- will be paid to the victim/legal heirs of deceased Mohkam Singh.
	307 IPC read with Section 149 IPC	R.I. for ten years and fine Rs. 50,000/-. In default of payment of fine S.I. For two years.
Salwinder Singh	302 IPC	Rigorous Imprisonment for life and fine of Rs.2,00,000/-. In default of payment of fine, simple imprisonment for four years. Out of the above amount Rs. 1,00,000/- will be paid to the victim/legal heirs of deceased Davinder Singh.
	201 IPC	R.I. for seven years and fine Rs. 10,000/-. In default of payment of fine, S.I. for two years.
	307 IPC read with Section 149 of the IPC	R.I. for ten years and fine Rs. 50,000/-. In default of payment of fine S.I. For two years.
Gurdev Singh	307 IPC	Rigorous Imprisonment for ten years and fine of Rs.1,00,000/- in default of which further S.I. for two years. Out of the above amount Rs.50,000/- will be paid to injured Harpal Singh.
	302 IPC read with Section 149 IPC	Rigorous Imprisonment for ten years and fine Rs.50,000/- in default of payment of fine S.I. for two years.

4. All the sentences were ordered to run concurrently. However, the period of sentence already undergone by the convicts during the course of investigation and pendency of the trial, was set off against the period of sentences awarded to them. Further, vide order dated 18.08.2022, as passed by the learned Additional Sessions Judge, Tarn Taran, a correction was made in the order of sentence, inasmuch as, qua the sentence imposed upon convict Gurdev Singh under Section

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302/149 IPC was corrected to '*Rigorous Imprisonment for life*' instead of the earlier thereto made sentence '*Rigorous Imprisonment for ten years*'.

5. 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 separate criminal appeals, before this Court.

6. **CRA-AD-311-2022** has been instituted respectively by the widows of the deceased Mohkam Singh and deceased Davinder Singh praying that the conviction awarded upon the accused-respondent No. 2 Gurdev Singh be maintained and sentence be enhanced in accordance with the provisions of law.

7. Further, it has been prayed therein that a heavy amount of fine may kindly be awarded and be paid as compensation to the legal heirs.

Factual background

8. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PW11/3 is assigned. Thereins the complainant Gurvail Singh son of Jagir Singh has made narrations that he is resident of village Sito Meh Jhugian and is engaged in agriculture work. His paternal uncle Mohkam Singh son of Mukhtiar Singh has constructed his house in the fields and he is owner of 4 killas of land

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and has taken the possession of the land in a legal manner from the revenue authorities. Anoop Singh son of Harbans Singh, resident of Sito Nau Abad was objecting to the said possession. On 27.06.2017 at about 12:00 noon when he along with his paternal uncle Mohkam Singh and his cousin brother namely Davinder Singh son of Mohkam Singh were cultivating the said land with the help of a tractor. At that point of time, Naunihal Singh son of Buta Singh resident of Sito Meh Jhugian also came to the spot. Anoop Singh son of Harbans Singh armed with .12 bore gun, Amardeep Singh alias Laddi son of Anoop Singh armed with .12 bore gun, Paramjit Kaur wife of Anoop Singh empty handed. Suba Singh son of Harbans Singh armed with *dang*. Salwinder Singh alias Chhinda son of Suba Singh armed with .32 bore revolver and Gurdev Singh Lambardar, Avtar Singh both armed with rifle entered the land of Mohkam Singh. Paramjit Kaur alongwith Suba Singh raised a *lalkara* that a lesson be taught to Mohkam Singh and others for ploughing the fields. On this, Amandeep Singh @ Ladi fired a gun shot with .12 bore DBBL rifle directly aiming towards Mohkam Singh, which hit Mohkam Singh on his chest and then again Amandeep Singh @ Ladi fired another shot with .12 bore DBBL rifle towards Mohkam Singh which hit him on lower part of his abdomen. The bullet pallets also hit Mohkam Singh on his legs and other parts of the body. Thereafter, Salwinder Singh @ Shinda fired gun shot with his .32 bore revolver directly aiming at Davinder Singh, which hit Davinder Singh on his face. Thereafter, Anoop Singh fired a gun shot with .12 bore

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DBBL rifle, which hit on the chest and other body parts of Davinder Singh. Mohkam Singh and Davinder Singh fell on the ground. The complainant raised alarm "*Maar ditta Maar ditta*" and on hearing the raula and the noise of gun shot fires, Sarwan Singh son of Joginder Singh and Harpal Singh son of Sukhraj Singh came to the spot. Thereafter, Amandeep Singh @ Ladi fired the shot directly aiming towards Sarwan Singh with the intention to kill him, which hit on the chest of Sarwan Singh, and then Gurdev Singh Numberdar, fired a gun shot directly aiming towards Harpal Singh which hit Harpal Singh on his body parts. The entire occurrence was witnessed by the complainant and Naunihal Singh. On this people from the surrounding area gathered at the spot and the assailants ran away along with their respective weapons from the spot.

9. The motive behind the occurrence is that Anoop Singh accused used to claim his illegal right over the land which was in possession and occupation of Mohkam Singh, and Anoop Singh also used to object to the physical possession of Mohkam Singh over the land. The complainant along with Naunihal had arranged for the vehicle and took Mohkam Singh, Davinder Singh, Sarwan Singh and Harpal Singh to Civil Hospital Patti, for medical treatment where Doctors declared Mohkam Singh and his son Davinder Singh as dead. Sarwan Singh and Harpal Singh were admitted there for treatment. On the basis of the said statement, FIR was registered.

Investigation proceedings.

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10. Accused Anoop Singh son of Harbans Singh was arrested on 28.06.2017 and on the same day, accused Salwinder Singh @ Chhinda, who had come to the police station for getting his statement recorded for a cross version was arrested. He also got recorded his statement, on the basis of which DDR was recorded.

11. After completion of investigations 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.

Committal proceedings

12. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court vide order dated 19.07.2018, committed the case for trial to the Court of Session.

Trial Court Proceedings

13. On finding a *prima facie* case, charge under Sections 302, 307, 148, 149, 324, 201 IPC and Sections 25/27/54/59 of the Arms Act became framed against the accused concerned, to which they pleaded not guilty, and, claimed trial.

14. 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, Tarn Taran, drew proceedings under Section 313 of the Cr.P.C., but therein, the accused claimed false implication, and,

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pleaded innocence. In their defence, the accused examined two witnesses Dr. Rajbir Singh, as DW-1 and CT Pawandeep Singh as DW-2.

15. After conclusion of the trial, as, became entered into the FIR (supra), by the learned Additional Sessions Judge, Tarn Taran, the latter proceeded to make the afore verdict of conviction, and, also made the consequent therewith sentence(s) (supra), upon, the accused-appellants.

Submissions of the learned counsel for the convicts-appellants.

16. The learned counsel for the aggrieved convicts-appellants herein, has vigorously argued before this Court, that the impugned verdict of conviction, and consequent thereto 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, they have argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

17. The counsel for the appellants have vigorously argued that investigating officer (PW-11), though in the site plan, has mentioned the crime site to be borne on Khasra No.32/1, but yet when, in his examination-in-chief he deposed that the actual Khasra number of the crime site is 32/10. Therefore, he argues that the supra testification causes doubt about the actual site of the crime event. Consequently, in the wake of the said discrepant evidence relating to the exact khasra

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number wherever the crime event took place, thus leads into a further argument that the benefit thereof be assigned to the present accused. Furthermore, he argues that since the accused were in lawful possession of the above stated khasra number 32/1, therebys, since an imminent threat qua the vested right of the accused over the supra khasra number rather ensued from the victims, comprised in theirs illegally occupying the said khasra number. Resultantly to baulk the victims from assuming illegal possession over Khasra No. 32/1, the accused lawfully exercised their right of private defence of property as well as they lawfully exercised their right of private defence of their respective bodies. Consequently, he argues that as such, the benefits of the exception(s) to criminal liability, as embodied in Section 96 of the IPC, was required to be endowed vis-a-vis the accused.

18. The counsels for the convicts-appellants have further argued that since a DDR was recorded in respect of the injuries becoming entailed upon the accused, during the course of the scuffle which occurred inter-se the accused and the victim, therebys, the entailment of the said injuries on the persons' of the accused, but is personificatory, of their being an exchange of injuries amongst the concerned, and, that the said exchange of injuries was only in the exercise of their right to private defence of property and of person.

19. The occurrence which took place at the crime site was even otherwise unpremeditated, rather was a sequel of dire and sudden provocation becoming provided to the accused, by the complainant

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party, thus, arising from the complainant party assuming illegal possession of the lands, in respect whereof, rather the accused were in lawful possession, whereby, the offence of murder was not made out nor the consequent thereto punishment was required to be imposed, as untenably done. Contrarily, he submits that thereby the offence of murder was required to be converted to an offence of culpable homicide not amounting to murder, and/or the offence, if any, which become allegedly committed was well within the contours of the exception No. 2, to the offence of murder, exception(s) whereof become embodied in Section 300 of the IPC, exceptions whereof become extracted hereinafter.

“300. Murder.-

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly)- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly)- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Exception 1.- *When culpable homicide is not murder.— Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation or causes the death of any other person by mistake or accident. The above exception is subject to the following provisos:—*

(First)- That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

(Secondly)- That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

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(Thirdly)- That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.— Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder is a question of fact.

Exception 2 - Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law and causes the death of the person against whom he is exercising such right of defence without premeditation, and without any intention of doing more harm than is necessary for the purpose of such defence.

Exception 3 - Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant and without ill-will towards the person whose death is caused.

Exception 4 - Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation.— It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5 - Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.”

For the reasons to be assigned hereinafter, the supra made arguments by the learned counsel for the appellants before this Court are not accepted and as such they are rejected.

20. Initially for the reason that there are renditions of credible eye witnesses' accounts vis-a-vis the crime event, thus respectively by PW-1 (eye witness), PW-2 (injured-eye witness) and by PW-3 (injured-eye witness).

Case dependent upon the testimony of eye witness-complainant PW-1.

21. For proving the charges (supra) drawn against the convicts, the prosecution made reliance upon the deposition of the complainant, who stepped into the witness box as PW-1, who thereby rendered an

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ocular version qua the crime event. The contents of the examination-in-chief, as rendered by PW-1 are ad verbatim extracted hereinafter.

Stated that I am resident of above mentioned address and working as agriculturist. Mohkam Singh son of Akhtyar Singh was my uncle(Chacha Ji) and used to reside at the behak in the fields of Seeto Meh Jhuggian. My uncle owned four acres of land at village Seeto Nau Abad and he was having the possession of the said four acres of land. Anoop Singh accused son of Harbans Singh used to object the possession of Mohkam Singh on the above said land. On 27.06.2017 at about 12.00 Noon, I alongwith my uncle Mohkam Singh, his son Davinder Singh and Naunihal Singh were ploughing the fields with tractor and at that time, accused Amandeep Kaur again said Paramjit Kaur wife of Anoop Singh empty handed, accused Anoop Singh armed with 12 bore DBBL rifle, Amandeep Singh @ Ladi armed with 12 bore DBBL rifle, Suba Singh armed with dang, Gurdev Singh present in the court today armed with rifle, Salwinder Singh @ Shinda was armed with 32 bore Revolver came at the spot. Paramjit Kaur alongwith Suba Singh raised a lalkara that lesson for ploughing the fields should be taught to them. On this Amandeep Singh @ Ladi fired shot with 12 bore DBBL rifle directly aimed towards Mohkam Singh which landed on his chest and then again Amandeep Singh @ Ladi fired shot with 12 bore DBBL rifle towards Mohkam Singh which hit him on lower part of his abdomen. The bullet pallets also hit Mohkam Singh on his legs and other parts of the body. Thereafter, Salwinder Singh @ Shinda fired the shot with his 32 bore Revolver directly aimed at Davinder Singh which hit on his face. Thereafter Anoop Singh fired the shot with his 12 bore DBBL which hit on the chest and other body parts of Davinder Singh. Mohkam Singh and Davinder Singh fell on the ground and I raised raula Maar ditta Maar ditta and on hearing the raula and on the noise of fired shots Sarwan Singh son of Joginder Singh and Harpal Singh son of Sukhraj Singh came on the spot. Thereafter, Amandeep Singh @ Ladi fired the shot directly aimed towards Sarwan Singh with the

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intention to kill him which hit on his chest and then Gurdev Singh Numberdar fired direct shot towards Harpal Singh which hit on his body parts. Entire occurrence was witnessed by me and Naunihal Singh. On this people from the surrounding gathered at the spot and the assailants ran away alongwith their respective weapons from the spot. The motive behind the occurrence is that Anoop Singh accused used to claim his illegal right over the land which was in possession and occupation of my uncle Mohkam Singh and also used to object the physical possession of Mohkam Singh over the land. I alongwith Naunihal arranging for the vehicle and took Mohkam Singh, Davinder Singh, Sarwan Singh and Harpal Singh to Civil Hospital Patti for medical treatment where Doctors declared Mohkam Singh and his son Davinder Singh dead and Sarwan Singh and Harpal Singh were admitted there for treatment. The dead bodies of the Mohkam Singh and Davinder Singh were kept in dead house in Civil Hospital at Patti. Thereafter, I left Naunihal Singh at Civil Hospital Patti and I alongwith Sarwan Singh son of Jagir Singh went to inform the police and I got recorded my statement Ex. PA with the police and same was read over and explained to me and I appended my signatures at point A in Punjabi underneath the statement in token of its correctness. I identify accused Gurdev Singh Numberdar, Anoop Singh, Amandeep Singh and Salwinder Singh present in the court today. Paramjit Kaur and Suba Singh are not present today in the court.

22. PW-1 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, contrived. Therefore, completest credence is to be assigned to the deposition of PW-1.

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23. Conspicuously also when a closest scrutiny of the relevant portion of the cross examination, as became made by the witness (supra), does fortifyingly enhance a conclusion, that thereby the defence acquiescing to the presence of the witness (supra) at the crime site, when the crime event took place there. The said portions of the cross examination of the witness (supra) are extracted hereinafter.

“..... I had accompanied Mohkam Singh to the place of occurrence as he first came to my house and picked me up from my house to have a look at the land for the purpose of levelling it. My house is at the distance of about 1.5 km from that of Mohkam Singh. Naunihal Singh reached the place of occurrence later on as he too visited my house for the purpose of levelling the land and on being told by my brother that I had accompanied Mohkam Singh to the place of occurrence, he too reached there.....”

“xxxx I was standing at a distance of about 15-16 karams when bullets hit Mohkam Singh and Davinder Singh. Salwinder Singh might be at a distance of 5-6 karams when Davinder Singh sustained gun shot injuries. It is correct that land of Suba Singh also adjoins the land where the occurrence took place. It is wrong to suggest that Salwinder Singh was ploughing his fields during the occurrence. It is also wrong to suggest that he got attracted to the place of occurrence on seeing huge gathering. It is wrong to suggest that Salwinder Singh suffered gun shot injuries as a result of firing from Mohkam Singh. I do not know if Salwinder Singh remained admitted in the hospital.....”

24. Moreover, since the said witness did also deny the suggestions, that the accused Salwinder Singh had also sustained fire

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arm injuries, whereupon, with the said denial also remaining unfalsified, through the MLR of the latter also making corresponding speakings, whereas, the MLR of supra not making speakings corresponding to the denied supra suggestions made to the supra. Resultantly the cumulative effect of the above, is that, especially, when no effective cross examination became made upon the witness to the extent that :

a) The crime site being evidently owned by the accused.

b) The victims being the initiators of the aggression to the extent, that despite the accused assuming lawful possession of the disputed site, yet the victims baulking their said effort.

c) To the further extent that the accused party was lesser armed, was lesser in numerical strength, whereas, the numbers of the victim-complainant party was numerically superior vis-a-vis the numerical strength of the accused, besides was yielding more lethal weapons of offence, than the ones which became used as well as became potentialized, rather by the accused, thus to deliver lethal fire arm injuries, respectively on the person of deceased Mohkam Singh and upon the person of deceased Davinder Singh.

25. The further inferences from the above, but are that :

a) The accused being disabled to propagate that the lethal assault, as became perpetrated upon the complainant party, rather leading to the respective demises of one Mohkam Singh and one

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Davinder Singh, thus were made in the exercise of right to private defence of body and/or property.

b) Assuming so, even if the said assault was lawfully perpetrated but in the purported exercise of right of private defence of body or of property, therebys, in the face of the evident inferior numerical strength of the complainant party vis-a-vis the superior theretos numerical strength of the accused party, besides evidently with the accused being more heavily armed than the complainant party, therebys too, the principle of proportionality inter-se the threat ensuing from the victim party vis-a-vis the accused ably repelling the same, but naturally becomes breached, whereupons, the benefit of the supra exception to the fastening of criminal liability cannot be bestowed to the accused.

26. Furthermore, the benefit of the exception No. 2 to the offence of murder, as embodied in Section 300 of the IPC, with speakings therein to the extent, if the right of private defence, was evidently exercised in good faith and also without pre-meditation besides, when the scuffle was evidently neither pre-meditated nor was a sequel of sudden and grave provocation, therebys their being apposite mitigations, thus also cannot be endowed to the accused. Conspicuously so, when the effect of the above acquiescence, by the defence, as emanating from the above extracted portion of the speakings made by the witness (supra) in his cross examination, is but candidly, qua therebys the accused nursing a *mensrea* to murder the

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deceased, and that too, but bereft of good faith, theirs thus lawfully exercising their right of private defence of body. Importantly also when given the evident lesser numerical strength of the complainant party, than the superior thereto numerical strength of the accused, besides when the accused being evidently more well armed, than the complainant party was, therebys, also there has been excess use of force by the accused, inasmuch as, theirs proceeding to eliminate the accused.

27. Cumulatively therebys, since all the supra stated ingredients, as relating to the endowments of the benefits of the exceptions (supra), as enumerated in Section 300 of the IPC, rather to the accused, rather remain not cogently proven, through the adduction of the apposite thereto best evidence. Therefore, the charged offence of murder cannot be mitigated to an offence of culpable homicide not amounting to murder.

Corroboration lent to the statement of PW-1 by the deposition of injured/victim/eye witnesses PW-2 and PW-3 and analysis of the testification(s).

28. The statement of PW-1 is fully corroborated by the deposition of other injured/eye witnesses to the relevant occurrence, i.e. by PW-2 and PW-3. They too, have therein spoken qua their witnessing the commission of the penal act, by the accused, thus respectively upon deceased Mohkam Singh and upon deceased Davinder Singh, besides made speakings therein qua the accused inflicting injuries upon their respective persons. Even during the ordeal of a rigorous cross-examination, to which they were subjected to, they remained unscathed.

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29. 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). In addition, when they also render unblemished inter-se corroboration(s) to their respectively rendered credible 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 supra credible ocular witnesses to the occurrence, thus, the charge against the accused but stands fully established.

Reasons for rejecting the argument posed before this Court that the crime site is owned by the accused, as the investigating officer has stated that the site plan is incorrectly drawn, whereas, the exact Khasra number of the crime site is Khasra No. 32/10.

30. Now assuming that some credence may be assigned to the (supra) statement made by the Investigating Officer concerned, wherebys, there may emerge some discrepancy vis-a-vis the exact khasra number, whereovers, the crime event took place, thereupon too, the defence cannot well erect any exculpatory plea. The reason for so stating, becomes sparked from the factum that when for the accused becoming ably endowed with the benefit of the exceptions to the

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fastening of criminal liability, as embodied in Section 96 of the IPC, thus the evidence discharging onus shifts upon them. Resultantly the effect of the apposite evidence adducing discharging onus, rather shifting on to the present appellant(s), was that, they were required to be adducing best cogent proof to establish that irrespective of the supra discrepant evidence, relating to the exact Khasra number whereover, the crime event took place, qua the crime event occurred on Khasra No.32/1 which became owned by them. The said best evidence qua the supra became comprised in a valid demarcation becoming made vis-a-vis the crime site, by the empowered revenue officer, thus suggestive that the crime event took place over khasra Number 32/1 which was owned by them. Reiteratedly, the said demarcation, thus was irrespective of the statement (supra) becoming made by the Investigating Officer. However, the best evidence (supra) to prove the veracity of the exculpatory plea (supra) raised by the defence rather remained un-adduced. Contrarily, though the demarcating revenue officer stepped into the witness box as PW-5, and, though in his examination-in-chief, he stated that Khasra No. 32/10, is owned by Mohkam Singh. Resultantly when therebys even if assumingly the investigating officer concerned, has stated that the correct Khasra number whereover the crime event took place was 32/10, besides the said stated khasra number being contradictory to the one, as stated in the site plan, wherein, it is stated that crime event took place at Khasra No. 32/1.

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31. Be that as it may, when even in respect of Khasra No.32/10, the Revenue Officer, in his deposition has stated that the same was owned by one Mohkam Singh, the ancestor of the complainant party. Therefore, subsequently the accused were to avail the right to ask for a re-demarcation being made of the disputed crime site, by an empowered Revenue Officer, so that, thereby it becomes uncovered whether the disputed site became comprised in Khasra No.32/10, owned by one Mohkam Singh or whether it occurred on Khasra No.32/1, rather owned by the accused. However, even the said recourse remained un-adopted by the accused. Resultantly, it has to be concluded that :

a) Irrespective of the Investigating Officer making a discrepant statement with respect to the exact site of the crime event taking place, inasmuch as, whether over Khasra No. 32/10, or over Khasra No. 32/1, the latter whereof is stated in the site plan, yet the said inter-se discrepancy rather does not endow any privilege qua the accused to contend that they were to be assigned the benefit thereof, nor the accused can claim that the crime ever took place over Khasra No. 32/1, khasra number whereof, is owned by them.

b) nor they can claim that in theirs defending their vested rights over the said Khasra number, they exercised both the right of private defence of property and/or person

c) nor they can contend that the benefit of the exceptions to the fastening of criminal liability, as embodied in Section

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96 of the IPC but were to be assigned to them, especially, when for proving the ingredients thereof rather the evidence discharging onus rested on them, whereas, for omission (supra) the said evidence adducing discharging onus remained completely un-discharged by them.

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

32. During the course of investigations, being made into the appeal FIR, convicts-appellants Salwinder Singh, Amardeep Singh @ Laddi, Anoop Singh made their respective signed disclosure statements, to which Ex. PW5/3, Ex. PW 5/10, Ex. PW11/10 become respectively assigned. The said disclosure statements are extracted hereinafter.

Ex. PW5/3

“In the presence of following witnesses during investigation, the accused of this case Salwinder Singh @ Shinda admitted before me SI that “on dated 27.06.2017 during fight I used Revolver 32 bore. I hide it in my residential home, in bed by covering it in cloth and only I know about it. I can get the same recovered.....”

Ex. PW5/10

“In the presence of following witnesses during investigation, the accused of this case Amardeep Singh @ Laddi admitted before me Insp/SO that “on dated 27.06.2017 during fight at the place of occurrence of fight, the rifle 12 bore used. I hide it in my residential house in bed's box by covering it in cloth and only I know about it. I can get the same recovered.....”

Ex. PW11/10

“In the presence of following witnesses during investigation, the accused of this case Anoop Singh son of Harbans Singh Caste Jatt R/o Sita Nau Abaad admitted before me that “on dated 27.06.2017 during the fight the 12 bore rifle which I was using, my son Amardeep Singh @ Laddi took that rifle from me and shot down

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Mohkam Singh son of Akhtyar Singh, Dawinder Singh son of Mohkam Singh, Harpal Singh son of Mukhtyar Singh and Sawran Singh @ Pama son of Joginder Singh. When above said Mohkam Singh and Davinder Singh fell down on ground due to gunshots, my son Amardeep Singh @ Laddi ran away from the place of occurrence with the rifle 12 bore. He only know about the rifle and only my son can recover that rifle.....”

33. The disclosure statements (supra), carries thereons the signatures, of the convicts-appellants. In their signed disclosure statements (supra), the convicts, confessed their guilt in inflicting injuries on the person of the deceased, hence with the recovered weapons. The further speaking therein is qua their keeping, and, concealing the incriminatory weapons of offence. Moreover, the said signed disclosure statements does also make speakings about their alone being aware about the location of their hiding and keeping the same, and, also revealed their willingness to cause the recovery of the incriminatory weapons, to the investigating officer concerned, from the place of their hiding, and, keeping the same.

34. Significantly, since the appellants have not been able to either ably deny their signatures as occurs on the exhibits (supra) nor when they have been able to prove the apposite denial. Moreover, since they have also not been able to bring forth tangible evidence but suggestive that the recovery(ies) is/are either contrived or invented. Therefore, the exhibits (supra) are *prima facie* concluded to be holding the utmost evidentiary tenacity.

35. Significantly also, since post the making of the said signed disclosure statement, thus by the convicts to the investigating officer concerned, they through the respective recovery

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memos, thus caused the recovery of the weapons of offence to the investigating officer concerned. Consequently, when the said made recovery(ies) is/are also not suggested by any cogent evidence to be planted recovery(ies). Resultantly, the effect thereof, is that, valid recovery(ies) was/were made vis-a-vis the incriminatory weapons of offence by the convicts, to the investigating officer concerned. In sequel, the making of the valid signed disclosure statements, by the convicts besides the pursuant thereto effectuation of valid recovery(ies) of the incriminatory weapons of offence, thus by the convicts to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

36. However, yet for assessing the vigor of the said made disclosure statements and consequent thereto made recovery(ies), it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statements and to the consequent thereto made recovery(ies). The principles governing the facet (supra), become embodied in paragraphs Nos. 23 to 27 of a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal Nos.1030 of 2023, titled as "Manoj Kumar Soni V. State of Madhya Pradesh", decided on 11.8.2023**, relevant paragraphs whereof become extracted hereinafter.

23. The law on the evidentiary value of disclosure statements under Section 27, Evidence Act made by the accused himself seems to be well established. The decision of the Privy Council in Pulukuri Kotayya and others vs. King-Emperor holds the field even today wherein it was held that the provided

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information must be directly relevant to the discovered fact, including details about the physical object, its place of origin, and the accused person's awareness of these aspects. The Privy Council observed:

The difficulty, however great, of proving that a fact discovered on information supplied by the accused is a relevant fact can afford no justification for reading into s. 27 something which is not there, and admitting in evidence a confession barred by s. 26. Except in cases in which the possession, or concealment, of an object constitutes the gist of the offence charged, it can seldom happen that information relating to the discovery of a fact forms the foundation of the prosecution case. It is only one link in the chain of proof, and the other links must be forged in manner allowed by law.

*24. The law on the evidentiary value of disclosure statements of co-accused too is settled; the courts have hesitated to place reliance solely on disclosure statements of co-accused and used them merely to support the conviction or, as Sir Lawrence Jenkins observed in **Emperor vs. Lalit Mohan Chuckerburty**, to “lend assurance to other evidence against a co-accused”. In **Haricharan Kurmi vs. State of Bihar**, this Court, speaking through the Constitution Bench, elaborated upon the approach to be adopted by courts when dealing with disclosure statements:*

13. ...In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right.

*25. In yet another case of discrediting a flawed conviction under Section 411, IPC, this Court, in **Shiv Kumar vs.***

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State of Madhya Pradesh overturned the conviction under Section 411, declined to place undue reliance solely on the disclosure statements of the co-accused, and held:

24. ..., the disclosure statement of one accused cannot be accepted as a proof of the appellant having knowledge of utensils being stolen goods. The prosecution has also failed to establish any basis for the appellant to believe that the utensils seized from him were stolen articles. The factum of selling utensils at a lower price cannot, by itself, lead to the conclusion that the appellant was aware of the theft of those articles. The essential ingredient of mens rea is clearly not established for the charge under Section 411 IPC. The prosecution's evidence on this aspect, as they would speak of the character Gratiano in Merchant of Venice, can be appropriately described as, "you speak an infinite deal of nothing." [William Shakespeare, Merchant of Venice, Act 1 Scene 1.]

26. Coming to the case at hand, there is not a single iota of evidence except the disclosure statements of Manoj and the co-accused, which supposedly led the I.O. to the recovery of the stolen articles from Manoj and Rs.3,000.00 from Kallu. At this stage, we must hold that admissibility and credibility are two distinct aspects and the latter is really a matter of evaluation of other available evidence. The statements of police witnesses would have been acceptable, had they supported the prosecution case, and if any other credible evidence were brought on record. While the recoveries made by the I.O. under Section 27, Evidence Act upon the disclosure statements by Manoj, Kallu and the other co-accused could be held to have led to discovery of facts and may be admissible, the same cannot be held to be credible in view of the other evidence available on record.

27. While property seizure memos could have been a reliable piece of evidence in support of Manoj's conviction, what has transpired is that the seizure witnesses turned

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hostile right from the word 'go'. The common version of all the seizure witnesses, i.e., PWs 5, 6, 11 and 16, was that they were made to sign the seizure memos on the insistence of the 'daroga' and that too, two of them had signed at the police station. There is, thus, no scope to rely on a part of the depositions of the said PWs 5, 6, 11 and 16. Viewed thus, the seizure loses credibility.

37. Furthermore, in a judgment rendered by the Hon'ble Apex Court in **Criminal Appeal No.2438 of 2010, titled as "Bijender @ Mandar V. State of Haryana", decided on 08.11.2021**, the relevant principles governing the apposite assigning of creditworthiness become set forth in paragraph 16 thereof, paragraph whereof becomes extracted hereinafter.

*16. We have implored ourselves with abounding pronouncements of this Court on this point. It may be true that at times the Court can convict an accused exclusively on the basis of his disclosure statement and the resultant recovery of inculpatory material. However, in order to sustain the guilt of such accused, the recovery should be unimpeachable and not be shrouded with elements of doubt. We may hasten to add that circumstances such as (i) the period of interval between the malfeasance and the disclosure; (ii) commonality of the recovered object and its availability in the market; (iii) nature of the object and its relevance to the crime; (iv) ease of transferability of the object; (v) the testimony and trustworthiness of the attesting witness before the Court and/or other like factors, are weighty considerations that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (See: **Tulsiram Kanu vs. The State; Pancho vs. State of***

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Haryana; State of Rajasthan vs. Talevar & Anr and Bharama Parasram Kudhachkar vs. State of Karnataka).

38. Furthermore, in another judgment rendered by the Hon'ble Apex Court in *Special Leave Petition (Criminal) No.863 of 2019, titled as "Perumal Raja @ Perumal V. State, Rep. By Inspector of Police", decided on 03.01.2024*, the relevant principles governing the assigning of creditworthiness become set forth in paragraphs 22 to 25 thereof, paragraphs whereof become extracted hereinafter.

*22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In **Mohmed Inayatullah v. State of Maharashtra**¹², elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposed to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly,*

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it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

23. The facts proved by the prosecution, particularly the admissible portion of the statement of the accused, would give rise to two alternative hypotheses, namely, (i) that the accused had himself deposited the physical items which were recovered; or (ii) only the accused knew that the physical items were lying at that place. The second hypothesis is wholly compatible with the innocence of the accused, whereas the first would be a factor to show involvement of the accused in the offence. The court has to analyse which of the hypotheses should be accepted in a particular case.

24. Section 27 of the Evidence Act is frequently used by the police, and the courts must be vigilant about its application to ensure credibility of evidence, as the provision is vulnerable to abuse. However, this does not mean that in every case invocation of Section 27 of the Evidence Act must be seen with suspicion and is to be discarded as perfunctory and unworthy of credence.

25. The pre-requisite of police custody, within the meaning of Section 27 of the Evidence Act, ought to be read pragmatically and not formalistically or euphemistically. In the present case, the disclosure statement (Exhibit P-37) was made by the appellant – Perumal Raja @ Perumal on 25.04.2008, when he was detained in another case, namely, FIR No. 204/2008, registered at PS Grand Bazar,

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Puducherry, relating to the murder of Rajaram. He was subsequently arrested in this case, that is FIR. No.80/2008, which was registered at PS Odiansalai, Puducherry. The expression “custody” under Section 27 of the Evidence Act does not mean formal custody. It includes any kind of restriction, restraint or even surveillance by the police. Even if the accused was not formally arrested at the time of giving information, the accused ought to be deemed, for all practical purposes, in the custody of the police.

39. Now the principles set forth therein are that the defence, is required to be proving;

- i) That the disclosure statement and the consequent thereto recovery being forged or fabricated through the defence proving that the discovery of fact, as made in pursuance to a signed disclosure statement made by the accused to the investigating officer, during the term of his custodial interrogation, rather not leading to the discovery of the incriminatory fact;
- ii) That the fact discovered was planted;
- iii) It was easily available in the market;
- iv) It not being made from a secluded place thus exclusively within the knowledge of the accused.
- v) The recovery thereof made through the recovery memo in pursuance to the making of a disclosure statement, rather not being enclosed in a sealed cloth parcel nor the incriminatory item enclosed therein becoming sent, if required, for analyses to the FSL concerned, nor the

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same becoming shown to the doctor concerned, who steps into the witness box for proving that with the user of the relevant recovery, thus resulted in the causings of the fatal ante mortem injuries or in the causing of the relevant life endangering injuries, as the case may be, upon the concerned.

vi) That the defence is also required to be impeaching the credit of the marginal witnesses, both to the disclosure statement and to the recovery memo by ensuring that the said marginal witnesses, do make speakings, that the recoveries were not made in their presence and by making further speakings that they are compelled, tutored or coerced by the investigating officer concerned, to sign the apposite memos. Conspicuously, despite the fact that the said recovery memos were not made in pursuance to the accused leading the investigating officer to the site of recovery. Contrarily the recovery memo(s) becoming prepared in the police station concerned.

vii) The defence adducing evidence to the extent that with there being an immense gap *inter se* the making of the signed disclosure statement and the consequent thereto recovery being made, that therebys the recovered items or the discovered fact, rather becoming planted onto the

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relevant site, through a stratagem employed by the investigating officer.

40. Therefore, unless the said defence(s) are well raised and are also ably proven, thereupon the making of a disclosure statement by the accused and the consequent thereto recovery, but are to be assigned credence. Conspicuously, when the said incriminatory link in the chain of incriminatory evidence rather is also the pivotal corroborative link, thus even in a case based upon eye witness account.

41. Be that as it may, if upon a prosecution case rested upon eye witness account, the eye witness concerned, resiles therefrom his previously made statement. Moreover, also upon his becoming cross-examined by the learned Public Prosecutor concerned, thus the judicial conscience of the Court become completely satisfied that the investigating officer concerned, did record, thus a fabricated apposite previously made statement in writing, thereby the Courts would be led to declare that the said made apposite resilings are well made resilings by the eye witness concerned, thus from his previously made statement in writing.

42. Moreover, in case the Court, in the above manner, becomes satisfied about the well made resilings by the eye witness concerned, to the crime event, thereupon the Court may consequently draw a conclusion, that the recoveries made in pursuance to the disclosure statement made by the accused, even if they do become ably proven, yet thereby may be the said disclosure statement, and, the consequent

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rule is not a straitjacket principle, but it has to be carefully applied depending upon the facts, circumstances and evidence in each case. Tritely put in the said event, upon comparative weighings being made of the well made resilings, thus by the eye witness concerned, from his previously made statement in writing, and, of the well proven recoveries made in pursuance to the efficaciously proven disclosure statement rendered by the accused, the Court is required to be drawing a conclusion, as to whether evidentiary tenacity has to be yet assigned to the disclosure statement and the pursuant thereto recovery memo, especially when they become ably proven and also do not fall foul from the above stated principles, and/or to the well made resiling by the eye witness concerned, from his previously recorded statement in writing. Emphatically, the said exercise requires an insightful apposite comparative analyses being made.

43. To a limited extent also if there is clear cogent medical account, which alike, a frailly rendered eye witness account to the extent (supra), vis-a-vis the prosecution case based upon eye witness account rather unfolds qua the ante mortem injuries or other injuries as became entailed on the apposite regions of the body(ies) concerned, thus not being a sequel of users thereovers of the recovered weapon of offence. Resultantly therebys too, the apposite signed disclosure statement and the consequent thereto recovery, when may be is of corroborative evidentiary vigor, but when other adduced prosecution evidence, but also likewise fails to connect the recoveries with the

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medical account. In sequel, thus therebys the said signed disclosure statement and the consequent thereto recovery, thus may also lose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

44. However, in a case based upon circumstantial evidence when the appositely made signed disclosure statement by the accused and the consequent thereto prepared recovery memos, do not fall foul, of the above stated principles, therebys they acquire grave evidentiary vigor, especially when in pursuance thereto able recoveries are made.

45. The makings of signed disclosure statement and the consequent thereto recoveries, upon able proof becoming rendered qua both, thus form firm incriminatory links in a case rested upon circumstantial evidence. In the above genre of cases, the prosecution apart from proving the above genre of charges, thus also become encumbered with the duty to discharge the apposite onus, through also cogently proving other incriminatory links, if they are so adduced in evidence, rather for sustaining the charge drawn against the accused.

46. Consequently, since the statutory provisions enclosed in Section 25 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter, do not assign statutory admissibility to a simpliciter/bald confession made by an accused, thus before the police officer, rather during the term of his suffering custodial interrogation,

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but when the exception thereto, becomes engrafted in Section 27 of the Indian Evidence Act, provisions whereof becomes extracted hereinafter. Therefore, therebys when there is a statutory recognition of admissibility to a confession, as, made by an accused before a police officer, but only when the confession, as made by the accused, before the police officer concerned, but becomes made during the term of his spending police custody, whereafters the said incriminatory confession, rather also evidently leads the accused, to lead the investigating officer to the place of discovery, place whereof, is exclusively within the domain of his exclusive knowledge.

“25. Confession to police-officer not to be proved.—No confession made to a police-officer, shall be proved as against a person accused of any offence.

x x x x x

27. How much of information received from accused may be proved.—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

47. Significantly, it would not be insagacious to straightaway oust the said made signed disclosure statement or the consequent thereto recovery, unless both fall foul of the above principles, besides unless the said principles become proven by the defence. Contrarily, in case the disclosure statement and the consequent thereto recovery enclosed in the respective memos, do not fall foul of the above principles rather when they become cogently established to link the accused with the relevant charge. Resultantly, if the said comprises but

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a pivotal incriminatory link for proving the charge drawn against the accused, thereby the snatching of the above incriminatory link from the prosecution, through straightaway rejecting the same, but would result in perpetration of injustice to the victim or to the family members of the deceased, as the case may be.

48. Now coming to the facts at hand, since the disclosure statements and the consequent thereto recovery(ies) do become efficaciously proven by the prosecution. Moreover, when none of the marginal witnesses, to the said memos become adequately impeached rather for belying the validity of drawings of the memos nor also when it has been proven that the said memos are fabricated or engineered, besides when it is also not proven that the disclosure (supra) did not lead to the discovery of the apposite fact from the relevant place of hiding, thus only within the exclusive knowledge of the accused.

49. Conspicuously also, when the said disclosure statements are but not a bald or simpliciter disclosure statements, but evidently did lead to the making of efficacious recovery(ies), at the instance of the accused, to the police officer concerned.

50. Consequently, when thereby the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statements, and, the consequent thereto recovery(ies), when do become efficaciously proven, thereby theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the

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rendition of credible eye witness account vis-a-vis the crime event. Moreover, when the memos (supra) also lend corroboration to the medical account, thereby through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

Medical Evidence

51. The doctor who conducted an autopsy on the body(ies) of deceased Mohkam Singh and deceased Davinder Singh, stepped into the witness box as PW-6. During the course of his examination-in-chief, he proved the post mortem reports, as became authored by him. He also proved the existence thereons of his valid signatures. The post mortem reports are respectively assigned as Ex. PW6/A and PW6/F. The relevant observations, as become narrated in Exhibit PW6/A are extracted hereinafter.

PMR of deceased Mohkam Singh (Ex.PW6/A)

1. *Multiple lacerated punctured wounds 0.25 cm x .25 cm were present on the front of the chest, upper part of the abdomen, infra umbilical region and upper part of right thigh. Margins of all the injuries were inverted. Clotted blood present. On dissection of chest track of all the wounds were explored. On the exterior surface of right uppr lobe of lung, a punctured lacerated wound was found. 50 cc of clotted blood present. A metallic piece was found in the clotted blood. Similarly a punctured lacerated wound was seen on the left upper lobe of lung. 20Cc of clotted blood found in the left upper lobe of the lung. A metallic piece was found.*

2. *A punctured wound was seen on the left ventricle of heart. A metallic piece was found in the left ventricle. On dissection of neck, carotid vessel on the left side of neck was punctured when track*

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was explored. A metallic piece was recovered from deep muscle of neck.

3. *On dissection of abdomen, massive laceration and clotted blood present on the surface of liver and peritoneum when the punctured wound on surface of liver explored, a metallic piece was found in the right lobe. 50 cc of clotted blood present.*

4. *On dissection of inguinal region and infraumbilical region, lacerated punctured wound was present on the surface of bladder, clotted blood present in the cavity of bladder.*

5. *On dissection of right thighs, punctured wound was explored. Track goes deep into the fascia and muscles. 10 cc of clotted blood present. A metallic piece recovered from the deep muscles. Another metallic piece was recovered from the deep muscle of lateral side of right thighs.*

52. Further, the doctor concerned opined that the cause of death of deceased Mohkam Singh was owing to firearm injuries leading to haemorrhage and shock. 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.

53. The relevant observations, as become narrated in Exhibit PW6/F are extracted hereinafter.

PMR of deceased Davinder Singh (Ex.PW6/F)

1. *A lacerated punctured wound 0.25 cm x 0.25 cm present on the right side of upper lip. Margins were inverted clotted blood present. On dissection of upper lip and gums, a metallic piece was found in the gums. Clotted blood present in the mouth.*

2. *Multiple lacerated punctured wound measuring 0.25 cm x 0.25 cm present on the upper part of chest, neck, upper abdomen, bilateral thighs. Margins of all wounds were inverted. Clotted blood*

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3. *Multiple lacerated wound were present on the bilateral thigh. Margins were inverted. On dissection two metallic pieces were found in the right thigh deep in the muscles. 10 cc clotted blood present.*

54. Further, the doctor concerned opined that the cause of death of deceased Davinder Singh was owing to firearm injuries leading to haemorrhage and shock. 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.

55. Moreover, PW-6 also medico legally examined injured Harpal Singh and injured Sarwan Singh on 01.07.2017. During the course of his examination-in-chief, he proved the MLRs, as became authored by him. He also proved the existence thereons of his valid signatures. The MLRs are respectively assigned as Ex. PW6/M and PW6/Q.

56. The relevant observations, as become narrated in Exhibit PW6/M are extracted hereinafter.

1. *Two lacerated punctured wounds each 0.25 x 0.25 cm present on the interior aspect of right shoulder and left shoulder. Clotted blood blackish brown present. Margins were not clear because of clotted blood. Advised X-ray.*

2. *Two lacerated would punctured each 0.25 cm x 0.25 cm on the lateral aspect of right forearm lower part and posterior aspect of right forearm upper one third part. Blackish brown clotted blood present. Margins were not clear due to clotted blood. Advised X Ray.*

3. *A lacerated punctured wound 0.25 x 0.25 cm present on the lateral aspect of right leg upper half. Blackish brown clotted blood present. Margin not clear. Advised X-ray.*

4. *A lacerated wound 0.25 x 0.25 cm present on the anterior medical aspect of left upper just above the knee joint. Blackish brown clotted blood present. Margin not clear. Advised X-ray.*

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57. Further, the doctor concerned after getting the X-ray reports, opined that all the injuries, as became entailed upon injured Harpal Singh were simple in nature and were caused by firearm.

58. The relevant observations, as become narrated in Exhibit PW6/Q are extracted hereinafter.

1. Four lacerated punctured wounds each measuring 0.25 cm x 0.25 cm were present on the front of upper part of chest. Blackish brown clotted blood was present. Margins of the wound were not clear due to clotted blood. Injury was kept under X-ray.

59. Further, the doctor concerned after getting the X-ray report, opined that the injuries as became entailed upon injured Sarwan Singh were simple in nature and were caused by firearm.

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

Report of the ballistic expert Ex. PX/1.

61. Through Reference No. 486/2017Ball/FSL/Exam of 03.01.2018, three sealed parcels, and two unsealed parcels became sent, through HC Gurmeet Singh No. 1954/TT to the FSL concerned. After the ballistic expert making an examination of the items, as became sent to him, he made the hereinafter extracted opinion, to which Ex. PX/1, is assigned.

“X X X X

Articles received	Three sealed parcels marked 'A' to 'C', parcels marked 'A' and 'B' sealed with a seal of 'RK', parcel marked 'C' sealed with a seal of
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'SS' and two unsealed parcels marked 'D' and 'E' in the laboratory.

Seals were found intact and tallied with the specimen seals.

Parcel 'A' contained Eight 12 bore 'KF' Special' cartridge cases marked C/1 to C/8 in the laboratory.

Parcel 'B' contained One 12 bore DDBL gun bearing No. 27516-A/9, Y-82 marked W/1 in the laboratory.

Parcel 'C' contained One 0.32 inch 'IOF' revolver bearing No. FG-53893 marked W/2 in the laboratory.

Parcel 'D' contained Ten cartridges of 12 bore.

Parcel 'E' contained Five test cartridges of 0.32 inch.

Result of Examination

- 1. 12 bore DDBL gun bearing No. 27516-A/9, Y-82 marked W/1 contained in parcel 'B' and one 0.32 inch 'IOF' revolver bearing No. FG-53893 marked W/2 contained in parcel 'C' referred above are in working condition.*
- 2. One 12 bore 'KF' cartridge case marked C/7 contained in parcel 'A' **had been fired** through left barrel of 12 bore DDBL gun bearing No. 27516-A/9, Y-82 marked W/1 contained in parcel 'B' referred above.*
- 3. One 12 bore 'KF' cartridge case marked C/8 contained in parcel 'A' **had been fired** through right barrel of 12 bore DDBL gun bearing No. 27516-A/9, Y-82 marked W/1 contained in parcel 'B' referred above.*
- 4. Six 12 bore 'KF' cartridge cases marked C/1, C/2, C/3, C/4, C/5 and C/6 contained in parcel 'A' had not been fired through 12 bore DDBL gun bearing No. 27516-A/9, Y-82 marked W/1 contained in parcel 'B' referred above.*

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62. A reading of the hereinabove extracted opinion, thus vividly unveils, that two shots became fired respectively from the left and right barrel of the 12 bore DBBL gun No. 27516-A/9, Y-82. However, the ballistic expert has further opined that six 12 bore 'KF' cartridges contained in parcel 'A' had not been fired through the 12 bore DDBL gun bearing No. 27516-A/9, Y-82.

63. However, the latter opinion (supra), does not yet negate, the evidentiary worth of the credible eye witness account rendered vis-a-vis the crime event, nor does it negate the evidentiary tenacity of the respective appositely recorded disclosure statements, and, consequent thereto recoveries, whereby the weapon of offence (supra) became recovered. As such, the latter opinion (supra) relating to the non firing of the six 12 bore 'KF' cartridges from the above 12 bore DDBL gun, rather has no exculpatory effect. Even otherwise, the supra latter opinion becomes benumbed through the earlier thereto opinion whereby, the recovered weapons of offence have been stated to the ones, wherefrom, the fatal bullets became fired.

64. Importantly also since the relevant cloth parcels, thus travelled in an untampered, and, unspoiled condition to the FSL concerned. Moreover, reiteratedly when for the reasons (supra), this Court has assigned probative sanctity to the signed disclosure statements, and, to the consequent thereto prepared recovery memo(s). Resultantly, the results of the examination(s), as made on the items enclosed in an untampered, and, unspoiled cloth parcels, when do

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clearly indicate the inculpatory role of the convicts-appellants. Therefore, as but a natural corollary thereof, this Court is of the firm view, that the prosecution has been able to cogently establish the guilt of the accused-appellants in the relevant crime event.

65. Moreover, PW-14 Rashpal Singh, Clerk posted in the office of District Magistrate Tarn Taran, has proven that the arm licence No. Ex. PT bearing No. 1789/PS Patti/DM/Amritsar, was issued in the name of appellant Anoop Singh and that one 12 bore DDBL gun No. 27516 and one 32 bore revolver bearing No. FG53893, both have been entered in the above said license. As such, the incriminatory weapon of offence (supra) is thereby proven to be in the name of the convict-appellant Anoop Singh.

66. Thus, conjoint readings of the report of the doctors concerned, who proved the apposite MLRs of the injured eye witnesses concerned, and, of the apposite post-mortems report of the deceased concerned, along with the efficaciously proven signed disclosure statements (supra) as made by the convict-appellants, besides of the consequent thereto made valid recovery(ies), thus through recovery memos (supra), does thereby foster an inference, that thereby there is *inter se* corroboration *inter se*, the ocular account with the medical account, with the report of the ballistic expert, besides with the memos supra. In summa, this Court finds no gross perversity or absurdity in the appreciation of the adduced relevant evidence, as became made by the learned trial Judge concerned.

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**Final Order of this Court.**

67. In consequence, there is no merit in appeals **CRA-D-845-2022**, **CRA-D-722-2022** and **CRA-D-962-2022** and the same are 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.

68. 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.

69. Insofar as **CRA-AD-311-2022**, respectively filed by the widows of the deceased Mohkam Singh and deceased Davinder Singh is concerned, since the instant case is not a rarest of the rare case, thus thereby this Court is constrained to not impose capital punishment, upon the convicts. However, the imposition of the fine amount of Rs.50,000/- upon the convict-respondent No. 2-Gurdev Singh under Section 302/149 IPC is extremely minimal, and, is required to be enhanced, as the fine amount is required to be on its realization disbursed to the family members of the deceased, besides thereby there would be no disparity with the fine amounts, as became imposed upon other co-convicts. Therefore, **CRA-AD-311-2022** is allowed only to the extent, that the above sentence of fine comprised in the sum of Rs. 50,000/-, as imposed upon the convict-respondent No. 2 under Section 302/149 IPC, is ordered to be enhanced to Rs. 2,00,000/- (Two

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Lakhs). Further on realization of the said fine amount, the same shall be disbursed as victim compensation to the family members (appellants herein) of the deceased. However, in default of payment of fine amount (supra), the convict-respondent No. 2 shall undergo further simple imprisonment for four years. All the sentence(s) (supra) shall run concurrently.

70. 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.

71. A photocopy of this order be placed on the files of other connected cases.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

04.12.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No