



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

CRA-27-DB-2005 (O&M)
Date of Decision:-17.1.2025

Dilbag Singh and others ... Appellants

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL
HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. R.S. Cheema, Senior Advocate with
Ms. Sumanjit Kaur, Advocate for the appellants.

Mr. Ranvir Singh Arya, Additional Advocate General, Haryana.

GURVINDER SINGH GILL, J.

1. The appellants herein assail judgment dated 20.11.2004 passed by learned Sessions Judge, Karnal vide which appellants namely Dilbag Singh, Shamsher Singh and Ravinder Singh have been held guilty and sentenced as under:

Name of the Convict	Offence Under Section	Imprisonment
Dilbag Singh	302/34 IPC	Life Imprisonment
	25 of Arms Act	Two Years
	27 of Arms Act	Five Years
Shamsher Singh	302/34 IPC	Life Imprisonment
	25 of Arms Act	Two Years
Ravinder Singh	25 of Arms Act	“undergone” period

2. The matter arises out of FIR No.419, dated 17.9.2003 registered at Police Station Assandh, under Sections 302/307/4 of Indian Penal Code and Sections



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(2)

25/27 of Arms Act, lodged at the instance of Yashvir Singh (son of deceased Ranvir Singh), wherein it is alleged that on 17.9.2003 when he alongwith his brother Yudhvir Singh and his father Ranvir Singh (deceased) was returning home from their fields on a motorcycle, they were waylaid by his two uncles namely Dilbag Singh and Ravinder, who were accompanied by Shamsher Singh. Dilbag Singh and Ravinder were carrying country made pistols, whereas Shamsher Singh was carrying a double barrel .12 bore gun. Dilbag Singh fired 4 shots from his pistol hitting complainant's father on his neck, chin, chest and below his left armpit. Ravinder Singh also fired 3 shots at complainant's father hitting his left arm, waist and below right shoulder. When the complainant and his brother raised alarm, the accused rushed towards them as well. Shamsher Singh fired a shot in the air with his double barrel .12 bore gun. However, the complainant and his brother managed to save themselves by running towards the paddy fields. The accused thereafter went away on their motorcycle leaving complainant's father dead at the spot. The complainant alleged that there was a dispute over land amongst them and his uncle Dilbag Singh on account of which Dilbag Singh, Ravinder Singh and Shamsher Singh had murdered his father.

3. Immediately after lodging of the FIR, the police reached at the spot and photographed the place of occurrence, lifted blood stained soil, a shoe of the deceased and also took into possession the motorcycle on which the deceased and complainant were riding. Inquest proceedings were conducted. The dead body of deceased was taken to hospital and was subjected to post-mortem examination.



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(3)

4. On the next day i.e. on 18.9.2003, Inspector/SHO Darshan Lal (PW-14) again visited the place of occurrence and recovered a bullet '*sikka*', and an empty cartridge from the paddy fields of Om Parkash, Ex. Sarpanch, where the occurrence had taken place. On 19.9.2003, the accused were produced before Inspector/SHO Darshan Lal by Raj Rup, Ex.Sarpanch of Village Ballah and were arrested. The motorcycle used by the accused was also taken into possession. It is further the case of prosecution that on 20.9.2003, upon interrogation, the accused suffered a disclosure statements pursuant to which they got recovered two country made pistols and a double barrel .12 bore licenced gun of Dilbag Singh. Statements of the witnesses were recorded under section 161 Cr.P.C.. Upon conclusion of investigation, challan was presented against the accused before the Illaqa Magistrate, who committed the matter to the Court of Sessions, Karnal vide commitment order dated 2.12.2003. Learned Sessions Judge, Karnal, upon finding sufficient grounds to frame charges against the accused for offences under Sections 302/34, 307/34 of Indian Penal Code and Sections 25/27/54/59 of Arms Act accordingly framed charges vide order dated 7.1.2004.
5. The prosecution in order to substantiate his case examined as many as 14 witnesses. The gist of their testimonies is stated herein-under:

PW-1 ASI Jagdish Chand stated that on 17.9.2003 he was posted as Assistant Sub Inspector in Police Station Assandh and that upon receipt of a *ruqa* (Ex.PA) through Constable Ram Mehar Singh, he recorded formal FIR (Ex.PA/1) and after recording the same he sent special reports through Head Constable Suraj Bhan to be delivered to Illaqa Magistrate as well as to other higher police officers.



PW-2 Vinod Kumar, Ahlmad stated that he was working as 'Ahlmad' in the office of District Magistrate, Karnal and had seen him signing and writing. He proved the sanction order (Ex.PB) vide which sanction had been recorded by District Magistrate for prosecuting the accused under Arms Act.

PW-3 Paramjit Singh, Halqa Patwari, Ballah, District Karnal stated that he had prepared the site plan (Ex.PC) of the place of occurrence.

PW-4 Suraj Bhan, Head Constable stated that on 17.9.2003 ASI Jagdish Chander after recording the FIR had handed over special report to him, which he delivered to the Illaqa Magistrate as well as to the Superintendent of Police, Karnal.

PW-5 Head Constable Inder Singh tendered his affidavit (Ex.PD) in evidence, wherein he stated that he was posted as MHC in '*Malkhana*', Police Station Assandh and that on 17.9.2003 Inspector/SHO Darshan Singh had deposited a sealed parcel containing blood stained soil, another sealed parcel containing '*Juti*' (shoe) and motorcycle bearing registration No.DL-3SQ-5484 in the '*malkhana*'. He further stated that on 18.9.2003, a parcel containing carbon of bullet of .315 bore gun, another parcel containing empty cartridges of .12 bore gun, a parcel containing a jar containing pieces of skin of deceased Ranvir Singh, a parcel containing clothes of deceased and a parcel containing '*Juti*' of deceased were deposited with him in '*malkhana*'. He further deposed that on 19.9.2003 a motorcycle bearing registration No.HR-40-7234, a country made pistol .315 bore, another country made pistol .315 bore and a double barrel gun of .12 bore were deposited with him. He further deposed that



on 7.10.2003 he had handed over sealed parcels containing blood stained soil, carbon of bullet, empty cartridges .12 bore gun, skin of deceased Ranvir Singh, clothes of deceased Ranvir Singh, country made pistol .315 bore, country made pistol .315 bore and double barrel gun .12 bore to Constable Ram Mehar for the purpose of depositing the same in the office of Forensic Science Laboratory, Madhuban and that as long as the case property remained in his charge, the same was not tampered with.

PW-6 Constable Ram Mehar Singh tendered his affidavit (Ex.PE) in evidence, wherein he deposed that on 7.10.2003 the parcels of case properties, which had been handed over to him by Inder Singh, MHC, were deposited by him in the office of FSL, Madhuban on the same day and that as long as the said case property remained in his possession the same was not tampered with.

PW-7 Dr. S.K. Nagpal, Medical Officer, C.H.C., Assandh stated that he alongwith Dr. K.B. Mehta, Medical Officer and Dr. J.K. Gulati, Medical Officer had conducted post-mortem examination on the dead body of Ranbir Singh and had described the injuries found on the dead body. He further stated that the cause of death was due to gut shot injuries leading to *haemopneumo-thorax*, which was sufficient to cause death. He proved the post-mortem report as Ex.PF/1.

PW-8 Yashveer, who is son of the deceased and at whose instance the FIR was lodged, resiled from his earlier statement recorded before police and stated that he had not seen the occurrence and that none of the accused had caused any injury to his father. The Trial Court upon finding that the witness had resiled from his earlier statement, permitted the



Public Prosecutor to cross-examine the witness, wherein the witness was confronted with his statement (Ex.PA), but the witness denied having made any such statement.

PW-9 Yudhveer, who is another son of the deceased also resiled and stated that he had not seen any of the accused inflicting injuries to his father and that he could not say as to who had caused injuries to his father. The Trial Court permitted the Public Prosecutor to cross-examine the witness, wherein the witness was confronted with his statement (Ex.PH), but the witness denied having made any such statement

PW-10 Bhupinder Singh stated that on 18.9.2003 he was present in the village and that neither he was joined by the police in investigation on the said date nor any empty cartridge or bullet was recovered from the fields of Om Parkash in his presence. The witness was declared hostile and was cross-examined by the Public Prosecutor, wherein he was confronted with his statement (Ex.PK) made to the police under Section 161 Cr.P.C. and also with the recovery memo (Ex.PL). He was also confronted with the disclosure statements (Exs.PM & PN) and the recovery memo (Ex.PO) but he took a stand that his signatures had been taken on plain papers.

PW-11 Ramesh stated that his real sister was married to Ranbir Singh (deceased) and that neither he was associated with the investigation on 20.9.2003 nor any of the accused was interrogated in his presence and nor any accused suffered disclosure statement in his presence and nor any recovery was effected in his presence. The said witness was declared hostile and was cross-examined by the Public Prosecutor, wherein the disclosure statement, recovery memo etc. were put to him.



PW-12 Head Constable Krishan Kumar stated that on 18.9.2003 he alongwith Inspector/SHO Darshan Lal visited the place of occurrence from where a bullet (*sikka*), .315 bore gun and an empty cartridge of .12 bore gun were recovered, which were duly sealed and taken into possession vide recovery memo (Ex.PL).

PW-13 ASI Taqdeer Singh stated that on 17.9.2003 he alongwith Inspector/SHO Darshan Lal had visited the place of occurrence i.e. paddy fields of Om Parkash, Ex. Sarpanch from where blood stained soil and a left shoe were recovered and said articles were taken into possession. He further deposed that on 20.9.2003 the accused Dilbag Singh was interrogated by Inspector/SHO Darshan Lal in his presence, who suffered a disclosure statement (Ex.PN) regarding having concealed the country made pistol. He also deposed that Ravinder Singh accused also made a disclosure statement (Ex.PR) as regards concealing a country made pistol. He further deposed about accused Shamsher Singh having made a disclosure statement (Ex.PU) as regards concealment of .12 bore gun. He stated that pursuant to the aforesaid disclosure statements the accused got the two pistols and the gun recovered from the nominated places, which were taken into possession vide recovery memos Exs.PO, PS and PW respectively.

PW-14 Inspector/SHO Darshan Lal, who is Investigating Officer of the present case, stated in detail with regard to the entire investigation conducted by him in the matter right from recording of statement (Ex.PA) of the complainant upto the presentation of challan. He further stated that upon conclusion of the investigation a challan was presented against the



accused on 30.10.2003. He proved the documents prepared during the course of investigation including disclosure statements, recovery memos. etc.

6. Upon conclusion of investigation, the entire prosecution evidence was put to the accused in terms of Section 313 Cr.P.C. to enable them to explain the circumstances appearing against them to which the accused pleaded false implication and took a plea that the police officials had themselves fired from the gun and the pistols and planted the same upon them so as to create evidence. The accused, however, did not lead any evidence in their defence.
7. The Trial Court, upon marshaling the evidence on record, held that the prosecution had been successful in establishing that the accused Dilbag Singh and Shamsher Singh had committed an offence punishable under Section 302/34 of Indian Penal Code. The accused Ravinder Singh was, however, acquitted of the charges framed against him under Section 302 IPC. While all the accused were acquitted in respect of charges under Section 307 of Indian Penal Code, they were held guilty for having committed offences under Arms Act. The accused/appellants aggrieved by their conviction and sentence have challenged judgment dated 20.11.2004 by way of filing the instant appeal.
8. Learned counsel representing the appellants while assailing the impugned judgment made the following broad submissions:
 - (i) that it is a case where none of the two alleged eye-witnesses, who are sons of deceased, have supported the case of the prosecution;
 - (ii) that although the prosecution relies heavily upon report of FSL i.e. Ex.PG, as per which two country made pistols as well as .12 bore



double barrel gun were in working order and had been fired through but in the absence of any other substantive corroborative evidence, the report of FSL *ipso facto* could not be made a basis for conviction more particularly when the eye-witnesses to the alleged occurrence had resiled;

(iii) that the weapons i.e. 2 pistols and a gun had been planted upon the accused and that the factum of recovery is not only doubtful, but stands absolutely demolished from the testimonies of the prosecution witnesses themselves inasmuch while the weapons allegedly recovered are stated to have been deposited in the 'malkhana' on 19.9.2003, PW-13 ASI Taqdeer Singh and PW-14 Inspector/SHO Darshan Lal, Investigating Officer, in whose presence the disclosure statements had been made and the recovery of weapons had been effected stated categorically that said disclosure statements and recoveries were made on 20.9.2003;

(iv) that even the alleged recovery of 'sikka' and empty shell on 19.9.2003 is suspect inasmuch as although the police had visited the place of occurrence on 18.9.2003 when it lifted the blood stained soil and a shoe of the deceased from the spot, but somehow aforesaid articles were not noticed or taken in possession on the said day and are shown to be lifted on the next day and further even the recovery memo Ex.PL regarding recovery of 'sikka' and empty shell bears overwriting where date is mentioned.

9. Learned counsel for the appellants thus submitted that it is apparently a case where the prosecution has padded evidence to be successful in its case,



whereas despite such padding the case of the prosecution suffers from grave infirmities and resultantly the conviction of the appellants is absolutely unsustainable.

10. Opposing the appeal, learned State counsel submitted that it is a case where the occurrence had been witnessed by two sons of the deceased whose statements were recorded by the police during the course of investigation, but somehow it appears that the accused had been able to intimidate the said two witnesses, who were young boys and had lost their father and who turned hostile, but in any case the case of the prosecution otherwise stands fully established from the report of FSL, which clearly shows that the bullet (*sikka*) and empty cartridge recovered from the spot had been fired from the pistols and the gun, which were got recovered by the accused. Learned State counsel submitted that there is perhaps some minor discrepancy in the mention of date by the witness as regards the date of recovery of the weapons in question and that on account of such minor discrepancy, it cannot be construed that a false case has been planted upon the accused particularly when there is other corroborative evidence particularly in the shape of report of FSL indicating that the accused had fired at the deceased. Learned State counsel thus prayed for dismissal of the appeal.
11. This Court has considered rival submissions addressed before this Court.
12. Since it is a case of homicidal death stated to have been caused by firearm injuries, it is apposite to first of all refer to the medical evidence. The prosecution examined PW-7 Dr. S.K. Nagpal, Medical Officer, C.H.C., Assandh, who had conducted the post-mortem examination on the dead body



of Ranbir Singh and who found the following injuries on the dead-body of deceased:

- “1. There was an abrasion 4 cm x 0.75 CM on the medial aspect on the lower leg just above the medial malleolus. Reddish crust was present.
2. There was an elliptical wound of size 3 CM X 1.5 CM on the anterior chest wall right side 9 CM above and lateral to the nipple. Blackening around the wound was present. Bleeding was also present.
3. There was a round wound 1.25 CM X 0.75 CM on the anterior chest wall left side 4.5 CM away from the midline and 8 CM below and medial to the left nipple. Blackening around the wound was present.
4. There was a round 1 CM 1 CM wound was present on the left side of the chest in the mid axillary line 11 CM below the armpit. Skin burn was present around the wound, obliquely located. Blackening around the wound was present.
5. There was a wound 1 CM X 1 CM on the right side anterior chest wall over the medial end of the right clavicle. Blackening around the wound was present.
6. A wound 1 CM X 0.75 CM on the poster-lateral aspect of the left forearm 10 CM above the wrist joint. Blackening around the wound was present.
7. There was a wound 1 CM X 1 CM on the right upper back over the ribs 5 CM below the inferior angle of the scapula. Blackening around the wound was present.
8. There was a wound 1.5 CM X 1 CM on the right upper back 13 CM above the injury No.7. Blackening around the wound was present.
9. Multiple small circular blackish abrasion of 0.25 CM diameter present on the anterior chest wall both sides and on the upper abdomen and on the lateral aspect of the left upper arm.”



13. PW-7 opined that the cause of death was due to gun shot injuries leading to *haemopneumo-thorax*, which was sufficient to cause death.
14. The description of injuries would show that although no bullet or pellet was found from the dead-body, but blackening around 5 out of the 9 wounds was noticed, which is indicative of the injuries having been caused by a firearm as has also been opined by the doctor. Nothing substantial could be elicited during the course of cross-examination so as to doubt the opinion or credibility of the doctor. While the factum of homicidal death of Ranbir Singh stands substantiated, the material question before this Court is as to whether the accused can be attributed the injuries caused to the deceased with firearm or not. The controversy may be crystallised to the following issues:
- (i) Whether the factum of recovery of pistols and gun pursuant to disclosure statements of accused is fully borne out and stands substantiated from the evidence led by prosecution or as to whether there is any element of doubt in the same?
 - (ii) Whether in the absence of any oral or substantive evidence, the case of the prosecution can be said to be established solely on the basis of report of FSL as per which the .315 bullet (*sikka*) and 12 bore fired cartridge had been fired from the weapons allegedly recovered from the accused.
15. In order to answer question No.1, the evidence in the shape of disclosure statements, recovery memos and also the statements of the witnesses to the said disclosure statements and recovery memos needs to be examined.



16. PW-13 ASI Taqdeer Singh and PW-14 Inspector/SHO Darshan Lal, Investigating Officer, have both stated to the effect that on 20.9.2003, the accused Dilbag Singh was interrogated by PW-14 Inspector/SHO Darshan Lal in the presence of PW-13 Taqdeer Singh during the course of which he suffered disclosure statement (Ex.PN) regarding his having concealed a country made pistol in the a heap of dry fodder near a deserted brick kiln. Both the aforesaid witnesses further deposed that pursuant to the said disclosure statement accused Dilbag Singh led the police party to the nominated place from where the country made pistol (Ex.P-6) was recovered and was taken into possession vide recovery memo (Ex.PO).
17. A perusal of the aforesaid documents Exs.PN and PO show that both bear the date 20.9.2003 and are also signed by PW-10 Bhupinder Singh and PW-11 Ramesh. Leaving aside the fact that the aforesaid two witnesses did not support the case of the prosecution as regards the disclosure statements and the recovery memos, the case of the prosecution gets seriously dented from the fact that PW-5 Inder Singh, who was posted as MHC, categorically deposed that the pistols and the gun were deposited in the '*malkhana*' on "19.9.2003", which is rather in sharp contradiction with the case of the prosecution regarding the recoveries having been effected on "20.9.2003".
18. Similar is the position regarding the disclosure statements made by Ravinder Singh and Shamsher Singh i.e. Ex. PR and Ex.PU and corresponding recovery memos Ex. PS and Ex. PW, wherein also while PW-13 ASI Taqdeer Singh and PW-14 Inspector/SHO Darshan Lal, Investigating Officer have stated that the disclosure statements and recoveries were made on 20.9.2003,



PW-5 Inder Singh, who was posted as MHC, stated that the said articles were deposited on 19.9.2003.

19. Learned State counsel submitted that the said incorrect mention of date of deposit as '19.9.2003' instead of '20.9.2003' is perhaps a typographical error only, but somehow the State has not led any evidence from which it could be said that the same is a typographical error inasmuch no extract from register No.19 has been produced on record from which it could be ascertained as to whether the case property was deposited on 19.9.2003 or on 20.9.2003. The said discrepant statement regarding the date of deposit of case property would create a serious doubt in the case of the prosecution as regards the factum of such recoveries particularly when the two independent witnesses have also not supported the case of the prosecution. The case of the prosecution being bereft of any substantive evidence and the factum of recovery of weapon having been rendered doubtful it is certainly not safe to base conviction solely on the basis of report of FSL.
20. The Courts, generally, would refrain from basing conviction on the uncorroborated testimony of an *Expert* alone. However, such rule is a rule of caution and prudence only and is not a rigid rule of universal application that Court should insist upon corroboration of the evidence of an *Expert* in each and every case. The Court should satisfy itself as to the value of the evidence of the *Expert* in the same way as it must satisfy itself of the value of other evidence
21. Hon'ble Supreme Court in 1977(2) SCC 210 Magan Bihari Lal vs. The State of Punjab, while referring to earlier precedents as regards evidentiary value of expert's opinion held as under:



“It is now well settled that expert opinion must always be received with great caution and perhaps none so with more caution than the opinion of a handwriting expert. There is a profusion of precedential authority which holds that it is unsafe to base a conviction solely on expert opinion without substantial corroboration. This rule has been universally acted upon and it has almost become a rule of law. It was held by this Court in *Ram Chandra v. State of U. P.*, AIR 1957 Supreme Court 381 that it is unsafe to treat expert handwriting opinion as sufficient basis for conviction, but it may be relied upon when supported by other items of internal and external evidence. This Court again pointed out in *Ishwari Prasad v. Md. Isa*, AIR 1963 Supreme Court 1728 that expert evidence of handwriting can never be conclusive because it is, after all, opinion evidence, and this view was reiterated in *Shashi Kumar v. Subodh Kumar*, AIR 1964 Supreme Court 529 where it was pointed out by this Court that expert's evidence as to handwriting being opinion evidence can rarely, if ever, take the place of substantive evidence and before acting on such evidence, it would be desirable to consider whether it is corroborated either by clear direct evidence or by circumstantial evidence. This Court had again occasion to consider the evidentiary value of expert opinion in regard to handwriting in *Fakhruddin v. State of M. P.* AIR 1967 Supreme Court 1326 and if uttered a note of caution pointing out that it would be risky to found a conviction solely on the evidence of a handwriting expert and before acting upon such evidence, the court must always try to see whether it is corroborated by other evidence, direct or circumstantial.”

22. Hon'ble the Apex Court in 2011(6) RCR (Criminal) 396 Abdulwahab Abdulmajid Baloch Vs. State of Gujarat wherein the accused had been convicted by trial Court mainly on the basis of recovery of weapon and on the basis of report of Ballistic Expert, extended benefit of doubt and set aside the conviction while holding as under:

“24.Be that as it may, we feel that only because the recovery of a weapon was made and the Expert opined that the bullet found in the body of the deceased



was fired from one of the weapons seized, by itself cannot be the sole premise on which a judgment of conviction under Section 302 could be recorded. There was no direct evidence. Accused, as noticed hereinbefore, was charged not only under Section 302 read with Section 34 of the Indian Penal Code but also under Section 302 read with Section 120B thereof. The murder of the deceased was said to have been committed by all the accused persons upon hatching a conspiracy. This charge has not been proved. The learned trial judge itself opined that the recovery having been made after nine months, the weapon might have changed in many hands. In absence of any other evidence connecting the accused with commission of crime of murder of the deceased, in our opinion, it is not possible to hold that the appellant on the basis of such slender evidence could have been found guilty for commission of offence punishable under Section 302 of the Indian Penal Code.”

23. Hon’ble Supreme Court in 2022(8)SCC 536, Ravi Sharma vs State (Government of NCT of Delhi), while setting aside conviction wherein the prosecution had relied upon report of Ballistic expert, observed regarding the nature of report of Ballistic expert as under:

“18. The report of the Ballistic Expert is obviously a scientific evidence in the nature of an opinion. It is required to use this evidence along with the other substantive piece of evidence available. The report is inconclusive with respect to the firearm belonging to the appellant being used for committing the offence.”

24. In case of a Ballistic Expert, his opinion even if found flawless and impeccable would not go beyond establishing only one circumstance, viz., that a given cartridge or bullet has been fired in a particular weapon. And, by itself, it would not show as to when that weapon was fired and by whom it was fired. The opinion of the *Ballistic Expert* has great corroborative value only and is useful in ascertaining whether the direct evidence is true or not. It follows therefrom that when the charge against the accused is one of murder by shooting with a firearm, the Court will not, as a rule of prudence and



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caution, convict the accused *solely* on the basis of the testimony of the *Ballistic Expert*, without there being other convincing evidence from which it can be indubitably deduced that the crime bullets or cartridges were fired by the accused and none else from that weapon.

25. In view the discussion made above, wherein both the eye-witnesses of the prosecution have resiled and there is no other corroborative evidence to substantiate the case of the prosecution, it is certainly unsafe to rely solely upon the report of FSL, particularly when the factum of recovery of weapons itself is rendered highly doubtful. Consequently the impugned judgment, wherein the accused have been held guilty, cannot sustain and is liable to be set aside.
26. The instant appeal, as such, is allowed and impugned judgment dated 20.11.2004 and order of sentence dated 23.11.2004 passed by learned Sessions Judge, Karnal are hereby set aside. The appellants are acquitted of all the charges framed against them. Their bail bonds/surety bonds shall stand discharged.
27. A copy of this judgment be sent to the quarters concerned. Case property be dealt with under rules upon expiry of limitation for filing appeal.

(GURVINDER SINGH GILL)
JUDGE

17.1.2025
Pankaj

(JASJIT SINGH BEDI)
JUDGE

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