In the High Court of Punjab and Haryana at Chandigarh

1. **CRA-D-1311-DB-2013 (O&M)**
Reserved on: 4.11.2024
Date of Decision: 20.11.2024

Bhupinder Singh .....Appellant

Versus

State of Punjab .....Respondent

2. **CRA-D-1365-DB-2013 (O&M)**

Navdeep Kaur .....Appellant

Versus

State of Punjab and another .....Respondents

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

Argued by: Mr. Vinod Ghai, Senior Advocate assisted by
Mr. Arnav Ghai, Advocate
for the appellant (in CRA-D-1311-DB-2013) and
for respondent No. 2 (in CRA-D-1365-DB-2013).

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

Mr. Navkiran Singh, Advocate with
Ms. Harpreet Kaur, Advocate
for the complainant.

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SURESHWAR THAKUR, J.

1. Since both the appeals (supra) arise from a common verdict, made by the learned trial Judge concerned, hence both the appeals (supra) are amenable for a common verdict being made thereons.

2. ***CRA-D-1311-DB-2013*** is directed against the impugned verdict, as made on 1.10.2013, upon case Sessions case bearing No. 25 of 16.10.2012, by the learned Additional Sessions Judge, Hoshiarpur, wherethrough in respect of charges respectively drawn against the accused

qua offences punishable under Sections 302, 212, 216 IPC and under Sections 25 and 27 of the Arms Act, 1954, thus the learned trial Judge concerned, proceeded to record a finding of conviction against accused-appellant Bhupinder Singh under Section 302 IPC and under Sections 25 and 27 of the Arms Act, 1954. However, co-accused Mandeep Singh stands acquitted of the charges framed against him qua the commission of offences punishable under Sections 212 and 216 IPC.

3. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the accused-appellant Bhupinder Singh, in the hereafter extracted manner-

Under Section	*Sentence*
302 IPC	*To undergo imprisonment for the whole of his life and to pay fine of Rs. 50,000/- (Rupees Fifty thousand only). In case of default of payment of fine the convict shall undergo rigorous imprisonment for a period of two years.*
25/54/59 Arms Act	*To undergo rigorous imprisonment for a period of three years and to pay fine of Rs. fine of Rs. 5,000/- (Rupees Five thousand only). In default of payment of fine to further undergo RI for six months.*
27/54/59 Arms Act	*To undergo rigorous imprisonment for a period of five years and to pay fine of Rs. fine of Rs. 7,000/- (Rupees Seven thousand only). In default of payment of fine to further undergo RI for one year.*

4. All the above imposed sentences of imprisonment upon the convict-appellant, were ordered to run concurrently.

5. Complainant Navdeep Kaur has preferred criminal appeal bearing No. ***CRA-D-1365-DB-2013*** seeking enhancement of the sentence being awarded to the convict, and, with a further prayer therein, that the compensation amount be awarded to the legal heirs of the deceased.

Factual Background

6. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex. PW-7/B is assigned. As per the prosecution case, complainant Navdeep Kaur wife of Bhupinder Singh daughter of Balbir Singh got recorded her statement before SI Shiv Singh, wherein she stated that she was resident of Ward No. 3 Miani and is a household lady. Her marriage was solemnized in the year 2006 with Bhupinder Singh son of Harbhajan Singh, resident of Ward No.5, Village Miani, PS Tanda, District Hoshiarpur. Her husband had come from Germany. She was not having cordial relations with her husband, as he used to ask her for divorce forcibly. Her mother-in-law Kudeep Kaur, her brother-in-law (Jeth) Sukhwinder Singh used to take side of her husband for harassing her. Her Jeth and Jethani had come from Germany 2-4 days ago, and, all of them had conspired to eliminate her mother and brother. On the fateful day, her husband called her mother and her brother Lovepreet Singh to his house at village Miani, where her mother-in-law Kuldeep Kaur was also present. Her husband started quarelling with her mother and brother without any reason and also insulted them. Out of fear, her mother and brother came out of her in law's house, and, when they were going to sit in their car bearing No. PB-07R-4114, her husband made two fire shots from his pistol towards her brother Lovepreet Singh, which hit him on his right shoulder and the right side of his chest. Upon raising alarm by her mother, her husband made a fire shot from his pistol towards his mother, which hit her on the right side of her chest, as a result thereof, she fell down on ground. The occurrence took place at about 1.00 PM near Punjab National Bank, Miani and witnessed by Malkiat Singh son of Amar Singh resident of village Bhoolpur

who had come to village Miani for his personal work. She further states thereins, that after making arrangement of vehicle, her brother Lovepreet Singh and her mother were shifted to Civil Hospital, Tanda where both of them were declared brought dead by doctors. She further got recorded that death of her mother and brother was caused by her husband Bhupinder Singh in conspiracy with said Kuldeep Kaur, Shukhwinder Singh and Harpreet Kaur. On the basis of the said statement, the appeal FIR became recorded.

Investigation proceedings

7. During the course of investigations, the investigating officer concerned, prepared the inquest report qua the dead bodies of Surinder Kaur and of Lovepreet Singh, and, the dead bodies were deposited in the mortuary. On the same day the investigating officer concerned, visited the place of occurrence and inspected the spot and prepared rough site plan and the investigating officer concerned, took into possession car bearing No. PB-07-R4112. The post-mortem on the dead bodies were got conducted. After the post mortem examination the dead bodies were handed over to the relatives of deceased. Clothes of the deceased were also taken into possession along with the parcel containing two bullets which were taken out by the doctors from the dead body of Lovepreet Singh. On 11.6.2012, accused Bhupinder Singh surrendered himself in the Court and on receipt of information, the investigating officer obtained the production warrants from learned Ilaqa Magistrate and after obtaining the permission, he arrested accused Bhupinder Singh, and, the intimation of his arrest was given to the counsel for the accused.

8. During investigations, accused Bhupinder Singh suffered

disclosure statements Ex.PW7/M, Ex. PW7/N and Ex.PW7/O but no recovery of revolver and empty cartridges was effected. On 17.6.2012 accused Bhupinder Singh again suffered disclosure statement Ex. PW6/C, and, pursuant to his above made disclosure statement, he got recovered one envelope containing a revolver .32 bore, five empty cartridges and seven live cartridge from the disclosed place, which were taken into possession vide recovery memo Ex. PW6/D. After conclusion of investigations, the investigating officer concerned, proceeded to institute a report under Section 173 of the Cr.P.C., before the learned committal Court concerned.

Committal Proceedings

9. Since the offence under Section 302 of the IPC was exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 3.10.2012, hence proceeded to commit the accused to face trial before the Court of Session.

Trial Proceedings

10. The learned trial Judge concerned, after receiving the case for trial, after its becoming committed to him, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against accused-appellant Bhupinder Singh for the offences punishable under Sections 302 IPC and under Sections 25 and 27 of the Arms Act, and, also drew charges against accused Mandeep Singh for the offences punishable under Sections 212 and 216 IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

11. In proof of its case, the prosecution examined 09 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the

prosecution evidence.

12. After the closure of prosecution evidence, the learned trial Judge concerned, drew proceedings, under Section 313 of the Cr.P.C., but thereins, the accused pleaded innocence, and, claimed false implication. The accused led one defence witnesses into the witness box.

Submissions of the learned senior counsel for the appellant

13. The learned counsel for the aggrieved convict-appellant has argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. They support the above submission on the ground, that they are based on a gross misappreciation, and, non-appreciation of evidence germane to the charge. He rests the above submission on the ground(s), that the case of the prosecution is full of contradictions and improvements.

(i) He has also argued that since PW-1 Dr.Vinay Sharma, has also admitted in his cross-examination, that in the inquest report, there is mentioning of only one gun shot injury on the dead body of Surinder Kaur, whereas, in the post-mortem report of the said deceased, contra thereto speakings occurring, inasmuch as, it becomes echoed thereins, that three gun shot injuries occurring on the body of deceased Surinder Kaur, therebys the said discrepancy makes the charge to stagger.

(ii) The learned senior counsel has further argued that since PW-2 Malkiat Singh is not an independent witness, and is only a procured witness, who has been introduced by the prosecution, thereupon the testimony of the said witness is required to be discarded.

(iii) Furthermore, it is argued that the prosecution has failed to show any motive qua the alleged offence.

(iv) Moreover, the learned senior counsel has also argued, that since two bullets, as became extracted from the body of deceased Lovepreet Singh, thus were not sent for examinations thereof to the FSL concerned, therebys the prosecution case becomes staggered.

Submissions of the learned State counsel

14. On the other hand, the learned State counsel has argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict, are well merited, and, do not require any interference, being made by this Court in the exercise of its appellate jurisdiction. Therefore, he has argued that the appeals (supra), as preferred by the convicts-appellants be dismissed.

Submissions of the learned counsel for the complainant

15. The learned counsel for the complainant has argued that the prosecution case is based on direct evidence, which is duly corroborated by link evidence, wherebys the prosecution version has been proved beyond any reasonable doubt. He has further argued that since the post-mortem report clearly speaks about two injuries occurring on the body of deceased Lovepreet Singh and three injuries occurring on the body of deceased Surinder Kaur, thereupon besides with the eye witness account rendered respectively by the complainant Navdeep Kaur and by Malkiat Singh being mutually consistent, therebys implicit reliance is required to be placed thereons, thus cumulative therebys the charge against the accused becomes proven to the hilt.

Analysis of the depositions of the eye witnesses to the occurrence, who respectively stepped into the witness box as PW-2 and PW-3

16. Complainant Navdeep Kaur, stepped into the witness box as PW-3. The deposition, as made by the said witness, in her examination-in-

chief, becomes extracted hereinafter.

> *"I am housewife. My marriage took place on 15.10.2006 with Bhupinder Singh accused present in the court. Bhupinder Singh had come from Germany. After marriage the relations were not cordial between us. He was forcibly demanding divorce from me. Besides my husband, my mother in law Kuldeep Kaur, elder brother of my husband Sukhwinder Singh and his wife Harpreet Kaur were there in the family. The abovesaid persons alongwith my husband used to harass me. My Jeth and Jethani had come from Germany two/four days prior to the occurrence. They hatched a plan as to how to kill my mother and my brother. On 2.6.2012, my husband called my mother Surinder Kaur and my brother Lovepreet Singh called to his house at ward No.5 Minai adjoining to Punjab National Bank, for meeting. At about 12:45 PM my mother and my brother came to my house. Then my husband without any reason started fighting with my mother and brother. My mother and my brother out of fear came out of the house. My mother and my brother used to sit in the car and my husband followed them, at that time it was around 1:00 PM. Then my husband took away revolver from his waist (dabb). He fired two shots upon my brother which hit on his right shoulder and right flank. When my mother raised roula, then accused fired three shots upon my mother which hit on her flank. My brother came on Ritz car. Malkiat Singh PW came to the spot and witnessed the occurrence. After firing shorts my husband and my mother-in-law entered into the house. I do not know what happened with revolver from which accused fired shot. I and Malkiat Singh took my mother and my brother to Civil Hospital, Tanda. Where doctor declared them dead. My statement Ex. PW3/A was got recorded by the police, which bears my signature. It was read over to me and I appended my signature after admitting the same to be correct. Police also recorded by supplementary statement.*
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> *Prior to this occurrence, my Jeth and Jethani gave beatings to me and I reported the manner to the police of PS Tanda and compromise effected with them in writing. Today, I have seen the Photostat copy of the compromise. The original of which was given to the Police of PS Tanda. It bears my signature and that of Harpreet Kaur. It also bears the signature of my husband Bhupinder Singh and my Jeth Sukhwinder Singh. Copy of the compromise is Mark-A. Accused Bhupinder Singh is present in the Court".*

17. In her examination-in-chief (supra), the said witness has voiced a narrative, qua the genesis of the prosecution case, which is in complete tandem with her previously made statement, in writing, and, to which Ex.PW-3/A becomes assigned. Though, she was subjected to the ordeal of a grilling cross-examination by the learned counsel for the accused, but she remained unscathed in the said ordeal.

18. Since a wholesome reading of her testification, as carried in her examination-in-chief, and, in her cross-examination, does not unfold, qua thereins rather becoming carried any rife improvements or embellishments viz-a-viz her previously recorded statement, in writing, nor when her testification suffers from any further taint of its being ridden with any *intra se* contradiction, thus *intra se* her examination-in-chief, and, her cross-examination, therefore, utmost sanctity is to be assigned to his testification.

19. The deposition of PW-3 becomes supported by the depositions of the other eye witness to the occurrence, namely Malkiat Singh, who stepped into the witness box as PW-2. The echoings occurring in the examination-in-chief of PW-2 are in complete harmony with the echoings, as became rendered in respect of the crime event by PW-3. In sequel, the testifications rendered by PW-2, and, PW-3 vis-a-vis the crime event, when rather are in complete inter se alignment, as such, their respectively made testifications were amenable to become relied, upon, as aptly done by the learned trial Court concerned.

Signatured disclosure statement of convict-appellant Bhupinder Singh Ex. PW6/C

20. During the course of investigations, being made into the appeal FIR, convict-appellant Bhupinder Singh, thus made his signatured disclosure statement, to which Ex. PW6/C becomes assigned. The signatured disclosure

statement, as made by the accused is *ad verbatim* extracted hereinafter.

> *"x x x x*
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> *I with which revolver I killed my mother-in-law Surinder Kaur w/o Balbir Singh r/o Miani PS Tanda and brother-in-law Lovepreet Singh s/o Balbir Singh r/o Miani PS Tanda with my revolver shot them dead. That revolver in a polythene along with cover and live cartridges I kept in my fields at v. Miani near the grave of my grandfather by putting the same in polythene envelope along with empties and live cartridges buried the same by digging the ditch. I only knew about this. I can got it recovered by giving the demarcation.*
>
> *x x x x"*

21. Pursuant to the above made signatured disclosure statement, the convict-appellant ensured the recovery of a .32 bore revolver along with five empty covers, and, of seven live cartridge, all of which were taken into police possession, through a recovery memo, to which Ex. PW6/D becomes assigned.

22. The disclosure statement (supra), carries thereons the signature, of the convict-appellant. In his signatured disclosure statement (supra), the convict, confessed his guilt in inflicting injuries on the person of both the deceased, hence with the recovered weapon. The further speaking therein is qua his keeping, and, concealing the incriminatory weapon of offence. Moreover, the said signatured disclosure statement does also make speakings about his alone being aware about the location of his hiding and keeping the same, and, also revealed his willingness to cause the recovery of the incriminatory weapon, to the investigating officer concerned, from the place of his hiding, and, keeping the same.

23. Significantly, since the appellant has not been able to either ably deny his signatures as occurs on the exhibit (supra) nor when he has

been able to prove the apposite denial. Moreover, since they he has also not been able to bring forth tangible evidence but suggestive that the recovery(ies) is/are either contrived or invented. Therefore, the exhibit(supra) is *prima facie* concluded to be holding the utmost evidentiary tenacity.

24. Significantly also, since post the making of the said signatured disclosure statement, thus by the convict to the investigating officer concerned, he through the recovery memo (Ex. PW6/D), thus caused the recovery of the weapon 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 weapon of offence by the convict, to the investigating officer concerned. In sequel, the making of the valid signatured disclosure statement, by the convict besides the pursuant thereto effectuation of valid recovery(ies) of the incriminatory weapon of offence, thus by the convict to the investigating officer concerned, but naturally *prima facie* corroborates and supports the case of the prosecution.

25. However, yet for assessing the vigor of the said made disclosure statement and consequent thereto made recovery, it is apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statement and to the consequent thereto made recovery. 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 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:*
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> > *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.*
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> *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:*
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> > *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.*
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> *25. In yet another case of discrediting a flawed conviction*

under Section 411, IPC, this Court, in ***Shiv Kumar vs. 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 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.*

26. 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 consideraions that aid in gauging the intrinsic evidentiary value and credibility of the recovery. (****See: Tulsiram Kanu vs. The State; Pancho vs. State of Haryana; State of Rajasthan vs. Talevar & Anr and Bharama Parasram Kudhachkar vs. State of Karnataka)****.*

27. 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, 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.*
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> *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, 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.

28. Now the principles set forth thereins 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 signatured

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 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 signatured disclosure statement and the consequent thereto recovery being made, that therebys the recovered items or the discovered fact, rather becoming planted onto the relevant site, through a stratagem employed by the investigating officer.

29. 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.

30. 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, therebys 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.

31. 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 therebys may be the said disclosure statement, and, the consequent thereto made recoveries also loosing their evidentiary tenacity. The said 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.

32. 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 signatured 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 medical account. In sequel, thus therebys the said signatured disclosure statement and

the consequent thereto recovery, thus may also loose their evidentiary vigor. Even the said rule has to be carefully applied depending upon the facts, circumstances, and, the adduced evidence in every case.

33. However, in a case based upon circumstantial evidence when the appositely made signatured 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.

34. The makings of signatured 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.

35. 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, 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."*

36. Significantly, it would not be insagacious to straightaway oust the said made signatured 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 a pivotal incriminatory link for proving the charge drawn against the accused, therebys 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.

37. Now coming to the facts at hand, since the disclosure statement and the consequent thereto recovery 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.

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

39. Consequently, when therebys the above evident facts rather do not fall foul of the above stated/underlined principles in the verdicts (supra). Consequently, both the disclosure statement, and, the consequent thereto recovery, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the rendition of a credible eye witness account vis-a-vis the crime event by the prosecution witnesses (supra). Moreover, when the memos (supra) also lend corroboration to the medical account, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

Post-mortem report

40. The post-mortem reports of deceased Lovepreet Singh and of deceased Surinder Kaur, to which respectively Ex. PC and PD are assigned, became proven by Dr. Vinay Sharma (PW-1). PW-1 in his examination-in-chief, has deposed that on an autopsy being conducted on the body of deceased Lovepreet Singh by him along with the Board of Doctors consisting Dr. Karamjit Singh and Dr. J.S.Dhami, thus theirs noticing

thereons the hereinafter ante mortem injuries-

> *"1. Lacerated wound (entry wound) with inverted margins measuring 1 x 1 cm present on lateral aspect of upper one third of right arm. Margins were abraded with blackening on the wound. On probing and dissection the wound tracked medially, downwards and anteriorly traversing underlying sub cutaneous tissue muscle intercostal space, right pleura, right lung and after traversing through right lung a metallic bullet was present posterior to the right margin of sternum 8 cm below the suprasternal notch which was removed and preserved to be handed over to the police. Right pleural cavity contained about 1½ liter of blood.*
>
> *2. Lacerated wound (entry wound) with inverted margins measuring 1 x 1 cm present on posterolateral aspect of right side of chest in lower part 3 cm above subcostal margin. Margins were abraded with blackening around the wound. On probing and dissection the wound tracked upwards medially and anteriorly traversing underlying subcutaneous tissue, intecostal space, right lobe of liver, right lung, crossed midline, left lung and after traversing left intercostal space, metallic bullet was present on left side of chest, 3 cm and 4 cm lateral to left nipple which was removed and preserved to be handed over to the police. Left pleural cavity contained one liter of blood. Peritoneal cavity contained one liter of blood."*

41. PW-1 further deposed that on the same day, he along with Board of Doctors consisting Dr. Karamjit Singh and Dr. Shashi Dhawan conducted an autopsy on the body of deceased Surinder Kaur, and, they noticed thereons the hereinafter ante mortem injuries-

> *"1. Lacerated wound (entry wound) with inverted margins measuring 1 x 1 cm present on left side of chest, lateral aspect upper part in mid axillary line 15 cm below left acromioclavicular joint. Margins of wound were contused and abraded with blackening around the wound. Corresponding cut present on kameez which was encircled and signed and kameez*

preserved to be handed over to the police.

2. Lacerated wound (exit wound) with Everted margins measuring 1.5 x 1.5 cm present on right side of chest in mid axillary line 28 cm below right acromioclavicular join.

On dissection of thoracic cavity the wound extended from injury No.1 medially and downwards traversing underlying intercostals space, left pleural cavity, left lung, right lung and after passing through it tracked to injury No.2. Left pleural cavity contained 1 litter of blood and right pleural cavity contained 1½ liter of blood.

3. Lacerated wound (entry wound) in inverted margins measuring 1 x 1 cm present on right side of chest anterior aspect, 8 cm from mid line and 10 cm below right sternoclavicular joint. Margins were abraded with blackening around the wound. Corresponding cut was present on the bra and kameez which was encircled and signed and kameez and bra was preserved to be handed over to police.

4. Lacerated wound (exit wound) with E verted margins measuring 1.5 x 1.5 cm present on upper 1/3 rd of lateral aspect of right side of chest 22 cm below acromio clavicular joint, corresponding cut was present on kameez which was encircled and signed and kameez was preserved to be handed over to police. On dissection the wound extended from injury No.3, laterally downwards and backwards traversing intercostals space, right pleural cavity, right lung and after passing through it the wound tracked to injury No.4.

5. Lacerated wound (entry wound) with inverted margins measuring 1 x 1 cm present on middle part of anterior aspect of left arm, 18 cm below left acromio clavicular joint. The margins were abraded with blackening around the wound, corresponding cut was present on kameez which was encircled and signed and kameez preserved to be handed over to police.

6. Lacerated wound (exit wound) with E verted margins measuring 1.5 x 1.5 cm present on medial side of upper part of left arm 18 cm above medial epicondyle of left humerus. Corresponding cut was present on kameez which was encircled

and signed and kameez preserved to be handed over to police."

42. Furthermore, PW-1 also made a speaking in his examination-in-chief, that the cause of demise of both the deceased (supra) was owing to shock and haemorrhage, as a result of injuries (supra) to vital organs, which were stated to be ante mortem in nature, and, also sufficient to cause death in the ordinary course of nature.

43. The above made echoings by PW-1, in his examination-in-chief, became never challenged through any efficacious cross-examination, being made upon him, by the learned defence counsel. Therefore, the opinion, as made by PW-1 qua the demise of the deceased, thus acquires formidable force. Consequently, the above echoings, as made by PW-1, in his examination-in-chief, do relate, the fatal ante-mortem injuries to the time of the crime event hence taking place at the crime site.

Report of the ballistic expert Ex. PW7/Q.

44. Through letter No. 51793 of 25.7.2012, three sealed parcels, and one unsealed parcel became sent, through HC Bhajan Singh No. 1839 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. PW7/Q, is assigned.

"x x x x

Articles received	*Three sealed parcels marked A to C, each parcel sealed with seal of 'SS' and one unsealed parcel marked 'D' in the laboratory.*
	Seals were found intact and tallied with the specimen seal.
Parcel 'A' contained	*Five 0.32 inch 'KF S&WL' cartridge cases marked C/1 to C/5 in the laboratory.*
Parcel 'B' contained	*Seven 0.32 inch 'KF S&WL' cartridge marked L/1 to L/7 the laboratory.*

Parcel 'C' contained *One 0.32 inch Arminious Revolver marked W/1 in the laboratory.*

Parcel 'D' contained *Four test cartridges of 0.32 inch.*

Result of Examination

On the basis of careful scientific examination it has been concluded that:-

1. On chemical examination of barrel wash of 0.32 inch Arminious Revolver marked W/1 contained in parcel 'C' under reference, residue of smokeless powder has been detected. Hence, W/1 had been used in firing. However, its last date/time of fire can't be ascertained.

2. Three 0.32 inch 'KF S&WL' cartridge cases marked C/1 to C/3 contained in parcel 'A' had been fired from 0.32 inch Arminious Revolver marked W/1 contained in parcel 'C' referred above. However, it is not possible to link two 0.32 inch cartridge cases marked C/4 and C/5 contained in parcel 'A' with 0.32 inch Arminious Revolver marked W/1 referred above.

3. Seven 0.32 inch 'KF S&WL' cartridges marked L/1 to L/7 contained in parcel 'C' under reference are live cartridges."

45. A reading of the hereinabove extracted opinion, thus vividly unveils, that 0.32 inch revolver marked as W/1 has been opined to be used in firing. Furthermore, it also makes candid underlinings, that the fired 0.32 inch cartridge cases marked as C/1 to C/3, thus becoming fired from 0.32 inch revolver marked as W/1. However, it is also opined "that it is not possible to link the cartridge cases marked as C/4 and C/5, thus with 0.32 inch revolver marked as W/1."

46. On the above score, the learned senior counsel for the appellant has argued, that therebys the cartridge cases marked as C/4 and C/5 when

remain unlinked with .32 inch Arminius Revolver, as such, a severe dent is caused to the prosecution case.

Reasons for rejecting the above arguments

47. However, the said argument is rejected on the ground, that when the ballistic report (supra) rather in respect of cartridge cases marked as C/4 and C/5 declares that "it is not possible" to link the said cartridge cases with 0.32 inch Arminius Revolver marked as W/1. Therefore, the supra words used in the opinion (supra), thus do not obviously underline a clear and candid exculpatory opinion. Contrarily, the above words only reflect some inability on the part of the ballistic expert, to make the possible inter se link of 0.32 inch cartridge cases marked as C/4 and C/5 thus with 0.32 inch Arminius Revolver marked as W/1. The said lack of possibility of apposite linkages may also arise from some lack of the best state of art examination facilities existing at the Ballistic Division concerned. Resultantly therebys the said lack of the possibility of the apposite inter se linkage is but not of a telling exculpatory effect. Therefore, the said opinion does not comprise the ablest exculpatory scientific evidence, nor does it underwhelm the efficacy of the otherwise credible ocular account rendered vis-a-vis the crime event by the ocular witnesses (supra). Furthermore, the supra words also do not underwhelm the recovery of the firearm, made at the instance of the accused-appellant to the investigating officer concerned, especially when the said recovered firearm, thus for the supra stated reasons, but is the most efficacious recovery wherebys it acquires evidentiary tenacity.

48. The ballistic expert has also detailed in the opinion (supra) that the fire arm was, as such, used in the commission of the fatal assault, upon

the deceased. If so the effect thereof, is that, the above lack of possibility of the apposite linkage also getting benumbed.

49. Moreover reiteratedly, the inquest report as prepared under Section 174 Cr.P.C., is not made on an incisive autopsy being made upon the body of the deceased by the doctor concerned. Therefore, since only on an incisive autopsy being made on the dead body of the deceased, thus the relevant uncoverings do surgeforth, whereupons the post-mortem report holds paramount efficacy vis-a-vis the preliminary findings recorded in the inquest report drawn in terms of Section 174 Cr.P.C.

50. Emphatically when the above opinion made by the ballistic expert, thus unfolds qua the user of the recovered firearm by the accused-appellant. Thus irrefutably therebys the prosecution has proven, that the accused had, through firing the apposite bullets from .32 bore revolver, hence committed the double murder of the deceased (supra).

51. Importantly also since the relevant cloth parcels also 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 signatured disclosure statement, and, to the consequent thereto prepared recovery memo. Resultantly, the examination(s), as made on the items enclosed in an untampered, and, unspoiled cloth parcels when do clearly indicate the inculpatory role of the convict-appellant. 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-appellant in the relevant crime event.

52. Even if in the inquest report, it is mentioned that only one fire shot was fired upon deceased Surinder Kaur, whereas, in the post-mortem report it becomes stated that three gun shot wounds were found to be existing on the body of deceased Surinder Kaur. However, for the reasons to be assigned hereinafter the said inter se discrepancy inter se the inquest report, and, the post-mortem report yet does not belittle either the credible eye witness account, nor does it belittle the evidentiary efficacy of the recovery memo wherethrough the weapon of offence became recovered. The reasons for stating so is comprised in the factum, that the inquest report becomes drawn only on a preliminary examination being made of the body of the deceased concerned, whereas, in the exercise of making an autopsy of the body of the deceased concerned, the latter's body is surgically opened, wherebys, it facilitates an intensive examination being made of the inner regions of the body of the deceased. Since after an incisive surgical examination being made of the inner regions of the body of deceased Surinder Kaur, three gun shot wounds were found to be occurring thereons. In sequel, preponderance is required to be assigned to the makings of the incisive surgical examination of interior body of the deceased concerned, thus by the doctor, than to a preliminary non-incisive non-surgical methodology, as became adopted by PW-1 to discover the number of bullets injuries on the body of the deceased.

53. Be that as it may, though the eye witness to the occurrence, namely, Navdeep Kaur (PW-3), has admitted in her cross-examination, that in her first statement to the police, she had stated that only one bullet became fired by the convict-appellant upon her mother, from the incriminatory firearm. Though therebys, there is a prima facie contradiction

with PW-1, who conducted an autopsy on the body of the deceased Surinder Kaur, who contrarily stated, that three fire shots were fired from the recovered revolver. However, the said inter se discrepancy, does not yet belittle the credible ocular account rendered by the eye witness, namely, Navdeep Kaur (PW-3), as the shots were fired from the revolver, wherebys with the bullets emanating therefrom, when do emanate in quick succession, whereupon it becomes difficult for an eye witness to precisely count the number of bullets fired from the revolver. In sequel, the discrepancy arising from PW-3 admitting in her cross-examination that in her first statement to the police, she had stated that only one bullet became fired by the appellant from the recovered revolver, whereas, the post-mortem report detailing that three fire shots became fired at the body of the deceased, besides with the inquest report detailing that only one shot was fired upon the deceased, rather does not acquire any consequent exculpatory effect, nor does the said purported inter se discrepancy, benumbs the unbesmirched ocular account rendered vis-a-vis the crime event by PW-2 and PW-3.

Further submission of the learned senior counsel for the appellant

54. Though, the learned senior counsel has argued, that since the investigating officer concerned, during the course of his cross-examination, stated that two bullets, as were extracted from the body of deceased Lovepreet Singh, were not sent for examinations thereof to the FSL concerned, therebys he has argued that the ocular account rendered vis-a-vis the crime event becomes eclipsed.

Reasons for rejecting the above submission

55. However, the said argument is rejected, as the non sending of the bullets, extracted from the dead body of deceased Lovepreet Singh for

examinations thereof along with the firearm wherefrom it became fired, does not render inconsequential rather the vivid credible ocular account rendered vis-a-vis the crime event, especially when the firearm has been irrefutably declared to be the one wherefrom the bullets became fired.

56. Thus, conjoint readings of the report of the doctor concerned, who proved the apposite post-mortem reports of both the deceased concerned, along with the efficaciously proven signatured disclosure statement (supra) as made by the convict-appellant, besides also with the consequent thereto made valid recovery through recovery memo (supra), does therebys foster an inference, that therebys there is *inter se* corroboration *inter se the* ocular account with the medical account and 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.

57. Lastly, the non proof of motive by the prosecution looses its vigour, thus on the ground, that the motive may be required to be proven in a prosecution cases rested upon circumstantial evidence, but may not acquire any efficacious proof qua thereto becoming adduced by the prosecution, especially besides obviously when credible eye witness account became rendered by the eye witnesses to the instant crime event. Therefore, the lack of proof of motive by the prosecution becomes completely inconsequential.

58. Therefore, with the afore observations, the criminal appeal (supra) filed by the convict-appellant is dismissed.

59. Insofar as ***CRA-D-1365-DB-2013*** filed by the complainant is concerned, since the instant case is not a rarest of the rare case, thus therebys

this Court is constrained to not impose capital punishment, upon the convict-appellant. However, the imposition of the fine amount of Rs. 5,000/- and Rs. 7,000/- upon the accused-appellant qua commission of offence(s) respectively under Sections 25 and 27 of the Arms Act, 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. Therefore, ***CRA-D-1365-DB-2013*** is allowed only to the extent, that the above sentences of fine comprised in the sum of Rs. 5,000/- and Rs. 7,000/-, as imposed upon the convict-appellant being ordered to be enhanced to Rs. 50,000/- each. Further on realization of the said fine amount, the same shall be disbursed as victim compensation to the family members of the deceased. However, in default of payment of fine amount (supra), the convict-appellant shall undergo further rigorous imprisonment for one year.

Final Order

60. The result of the above discussion, is that, this Court does not find any merit in the appeal preferred by the appellant, and, is constrained to dismiss it. Consequently, ***CRA-D-1311-DB-2013*** is dismissed. The impugned verdict of conviction, as becomes recorded upon the convict-appellant, by the learned convicting/Trial Court, is maintained, and, affirmed. Moreover, the consequent thereto order of sentence is also affirmed. If the convict is on bail, thereupon, the sentence as imposed upon him, be ensured to be forthwith executed by the learned trial Judge concerned, through his drawing committal warrants.

61. ***CRA-D-1365-DB-2013*** preferred by the complainant is partly allowed to the extent (supra).

62. The case property be dealt with, in accordance with law, but after the expiry of the period of limitation for the filing of an appeal.

63. Records be sent down forthwith.

64. The miscellaneous application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

November 20th, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No