**In the High Court of Punjab and Haryana at Chandigarh**

1. **CRA-D-556-DBA-2008 (O&M)**
**Reserved on: 09.09.2024**
**Date of Decision: 18.09.2024**

State of Punjab

.....Appellant

Versus

Jasbir Singh and others

.....Respondents

2. **CRA-S-852-SB-2001 (O&M)**

Jasbir Singh

.....Appellant

Versus

State of Punjab

.....Respondent

3. **CRR-169-2002 (O&M)**

Jarnail Singh

.....Petitioner

Versus

Jasbir Singh and others

.....Respondents

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

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

Mr. Vinod Ghai, Sr. Advocate assisted by
Mr. Tanvir S. Grewal, Mr. Arnav Ghai, Advocates
for the appellant (in CRA-S-852-SB-2001)
for respondent No.1 in CRA-D-556-DBA-2008.

Mr. T.P.S. Tung and Mr. G.S. Kaura, Advocates
for respondent Nos. 2, 7 and 8 in CRA-D-556-DBA-2008

Mr. P.P. Chahar, Advocate (Legal Aid Counsel)
for respondent No.6 CRA-D-556-DBA-2008.

Ms. Kirandeep Kaur, Advocate for
Mr. Kamaldip Singh Sidhu, Advocate
for the petitioner (in CRR-169-2002)

Proceedings qua respondents No.3 to 5 stand abated.

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**SURESHWAR THAKUR, J.**

1. Since both the above appeals (supra) as well as the criminal revision (supra) arise from a common verdict, made by the learned trial Judge concerned, hence all the appeals/revision (supra) are amenable for a common verdict being made thereons.

2. All the appeals/revision (supra) are directed against the impugned verdict, as made on 07.06.2001, upon session case bearing No.41 of 23.11.1998, by the learned Sessions Judge, Ludhiana, wherethrough in respect of charges drawn against the accused qua offences punishable under Sections 148, 302, 324, 323/149 of the IPC, thus the learned trial Judge concerned, proceeded to record a finding of conviction against appellant-convict namely Jasbir Singh for an offence punishable under Section 304-I of the IPC. Importantly also the learned trial Judge concerned, acquitted the remaining accused for the charges drawn against. Moreover, through a separate sentencing order of even date, the learned trial Judge concerned, sentenced the appellant-convict in the hereinafter extracted manner.

> *"xxx*
>
> *I hereby sentence convict Jasbir Singh to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.2,000/- or in default to undergo further rigorous imprisonment for three months under Section 304-I of the Indian Penal Code.*
>
> *xxx"*

3. Since the accused-convict became aggrieved from the above drawn verdict of conviction, besides also, became aggrieved from the consequent thereto sentence(s) of imprisonment, and, of fine as became imposed, upon him, by the learned convicting Court concerned, thereupons he choose to institute thereagainst criminal appeal bearing No.CRA-S-852-SB-2001.

4. The State of Punjab as well as the complainant has also filed criminal appeal bearing No.CRA-D-556-DBA-2008 and criminal revision bearing No.CRR-169-2002, thus respectively, seeking the recording of finding of conviction qua the convicts-accused, thus for an offence punishable under Section 302 read with Section 149 of the IPC.

***Factual Background***

5. The genesis of the prosecution case becomes embodied in the appeal FIR, to which Ex.PW9/A/2 is assigned. The narrations carried in Ex.PW/A/2 are, that the case was registered on the basis of a statement Ex.PW9/A made by Machhinder Singh, resident of village Punia before the police. In that statement it was mentioned by him that on the day of occurrence i.e. on 18.8.1998 he and his brother Malkiat Singh, nephew Jagtar Singh and Harmanjit Singh deceased and various others had gone to village Takhar to see village fair there. After seeing the village fair Machhinder Singh P.W. 9 and Malkiat Singh P.W. 10, Joga Singh P.W. 15, Tarlochan Singh P.W. 13 and others were returning village Takhar to their own village Punia on the tractor being driven by Jasbir Singh son of Mohinder Singh of Village Punia. On that day i.e. on 18.8.1998 at about 6.00 P.M. when Machhinder Singh and others mentioned above reached near the electric tubewell motor of Ajmer Singh of village Punia about one kilometer behind the village Abadi of Punia all the accused namely Jasbir Singh alias Jassi, Swaran Singh, Nirmal Singh and Rajinder Singh while armed with Kirchs and Karamjit Singh, Charan Singh, Ranjit Singh and Rai Singh armed with sticks were found causing injuries to Harmanjit Singh since deceased and Jagtar Singh P.W. 14. At that time accused Jasbir Singh gave a kirch blow hitting Harmanjit Singh deceased on the left side of the

chest. While the accused also gave some blows to Jagtar Singh injured with their weapons, Machhinder Singh P.W. and others then got down from the tractor and rushed forward to rescue Harmanjit Singh deceased and Jagtar Singh P.W.14 from the accused. At that time the accused also caused some blows to Malkiat Singh, Tarlochan Singh and Joga Singh injured with their weapons. After causing injuries to Harmanjit Singh deceased and Jagtar Singh, Malkiat Singh and Tarlochan Singh Joga Singh injured the accused decamped from the spot with their respective weapons. After the occurrence Harmanjit Singh deceased and other injured were sent to Civil Hospital, Samrala in a vehicle arranged at the spot. On reaching the hospital Harmanjit Singh deceased was declared dead in the hospital. On the basis of Ex.P.W. 9/A made statement by Machhinder Singh P.W. 9 before the police formal FIR No.69 of 1998, copy Ex.P.W.9/A2 under Sections 148, 302, 324, 149 of the Indian Penal Code was registered against the accused at police station Samrala. Upon registration of the case ASI Avtar Singh P.W. 17 took up the investigation of the case. He then visited the spot and prepared site plan Ex.P.W.17/A of the place of occurrence with correct marginal notes. He also lifted some blood stained earth from the spot, which was sealed into parcel and taken into possession vide seizure memo Ex.PD attested by the prosecution witnesses. Thereafter, he rushed to Civil Hospital, Samrala and prepared inquest report Ex.PC on the dead body of Harmanjit Singh deceased. At that time the dead body was identified by Gurmeet Singh and Jarnail Singh P.Ws. and after completing the necessary formalities of investigation the accused were challaned and sent up to the learned trial Court for trial.

***Committal Proceedings***

6. Since the offences punishable under Section 302 of the IPC, were exclusively triable by the Court of Session, thus, the learned committal Court concerned, through a committal order made on 26.10.1998, hence proceeded to commit the accused to face trial before the Court of Session.

***Trial Proceedings***

7. The learned trial Judge concerned, after receiving the case for trial, made an objective analysis of the incriminatory material, adduced before him. Resultantly, he proceeded to draw charges against accused, for the commission of offences punishable under Sections 148, 302, 324, 323/149 of the IPC. The afore drawn charges were put to the accused, to which they pleaded not guilty, and, claimed trial.

8. In proof of its case, the prosecution examined 17 witnesses, and, thereafter the learned Public Prosecutor concerned, closed the prosecution evidence. 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. However, they choose to lead three witnesses in their defence evidence.

***Submissions of the learned counsel for the appellants-accused***

9. The learned counsel for the aggrieved convicts-appellants have argued before this Court, that both the impugned verdict of conviction, and, the consequent thereto order of sentence, thus require an interference. He supports the above submission on the ground, that it is based on a gross misappreciation, and, non-appreciation of evidence germane to the charge.

10. The learned counsel for the appellant has vigorously argued before this Court that the complainant party were the aggressors and the

accused have acted in defence.

11. The said argument is premised on the ground, that the learned trial Judge concerned, has not borne in mind the genesis of the prosecution, as, becomes embodied in the appeal FIR to which Ex.PW/9/A/2 becomes assigned. He further submits that injured Joga Singh while making his statement under Section 161 Cr.P.C., stated that after the people gathered at the place of occurrence, that then the accused fled away from the spot with their respective weapons. However, when the said witness stepped into the witness box as PW-15, he stated that rather after causing injuries, the accused ran away from the spot with their respective weapons. Resultantly, he submits that when the said witness, thus in his previously made statement only made echoings about the gathering of the people at the place of occurrence, and did not make echoings about the injuries being caused by them, whereas, upon his stepping into the witness box, his making echoings about the accused after causing injuries rather theirs fleeing from the crime site. In consequence, he submits that the above made echoing by PW-15 Joga Singh, thus in digression to his previously made statement in writing, is rather a dire improvement or embellishment over the said previously made statement in writing. Consequently, he argues that therebys the genesis of the prosecution case becomes shaken as such the appellant deserves acquittal.

**MLR of the accused**

12. PW-3 medically examined the injured person Jasbir Singh and prepared the medico legal report in respect of the injuries entailed on the person of the injured-accused. The relevant injuries as noticed by PW-3 on the body of the injured is extracted hereinafter. The said MLR become assigned Ex.PL/1. The contents of the said MLR is *ad verbatim* extracted

hereinafter.

> *"1. An abrasion of 2 cm diameter dark brown scalp present over it. It was present on lateral upper part of left leg.*
> *2. A bluish black discolouration (bruise) which was present on lower part of left eye, imperceptible margin about 4 x 4 cm diameter. No swelling.*
> *3. An old bruise of brownish black colour of 4 x 3 cms on anterior side of left shoulder. Movements of shoulder was normal. No swelling.*
> *4. An old linear bruise of black colour horizontally placed on middle of back of chest. No swelling. Respiratory movements were normal. Chest, CVS, P/A normal."*

13. PW-3 also medically examined the injured person Nirmal Singh and prepared the medico legal report in respect of the injuries entailed on the person of the injured-accused. The relevant injuries as noticed by PW-3 on the body of the injured is extracted hereinafter. The said MLR become assigned Ex.PM/1. The contents of the said MLR is *ad verbatim* extracted hereinafter.

> *"1. An abrasion of 4x0.1 cm on lateral side of chest in middle, dark brown scalp present over it.*
> *2. Slight swelling of left forearm near left wrist joint. Movement were painful and restricted. Advised X-ray left forearm, including wrist A.P and lateral view.*
> *3. An infected wound 4cms x 1 cm x 0.2 cms on left chin in lower 1/3rd, pass present in the wound, slight healing has started from the edges. It type can not be commented."*

14. PW-4 medically examined the injured person Swarn Singh and prepared the medico legal report in respect of the injuries entailed on the person of the injured-accused. The relevant injuries as noticed by PW-4 on the body of the injured is extracted hereinafter. The said MLR become assigned Ex.PN/1. The contents of the said MLR is *ad verbatim* extracted hereinafter.

> *"1. A stitched wound 4.5cm in in length obliquely placed on parietal region left side of head 12 cm from upper margine of left ear 5 cm from midline. Pus with some dirty blood was present on the wound.*
>
> *2. Two parallel bruise present on back left side (i) 10x2 cm bruise brown in colour obliquely placed on back of chest left side extending from midline from cervical spine C7 obliquely and downward towards spine of scapula. (ii) 3x1.5 cms bruise brown in colour obliquely placed and parallel to above bruise present on back of left near the outer and of the above bruise 2 cm below the (i) bruise and 6 cm from midline.*
>
> *3. Two healing abraided wound were present on back (I) 9x0.5 cms healing abraided wound present obliquely placed present or back or chest right upper, 2 cm from inner margine of upper half of right scapula, scalp brown colour present on lower half and upper half part no scab and white in colour. (ii) 1x1 cm healing abraided wound present on the back exactly in the midline at back level of anterior superior spine brown in colour present on wound at L3 vertebra."*

15. PW-5 medically examined the injured person Rajinder Singh and prepared the medico legal report in respect of the injuries entailed on the person of the injured-accused. The relevant injuries as noticed by PW-5 on the body of the injured is extracted hereinafter. The said MLR become assigned Ex.PO/1. The contents of the said MLR is *ad verbatim* extracted hereinafter.

> *"1. An old healed injury was present on right forearm on medial side 10 cms below the medial epicondyle of numerus bone."*

16. PW-5 also medically examined the injured person Ranjit Singh and prepared the medico legal report in respect of the injuries entailed on the person of the injured-accused. The relevant injuries as noticed by PW-5 on the body of the injured is extracted hereinafter. The said MLR become assigned Ex.PP/1. The contents of the said MLR is *ad verbatim* extracted hereinafter.

> *"1. An old recovered abrasion 4 cms x .5 cm was present on left arm 7 cms below the acromian.*
>
> *2. Sign of prickly heat of skin in an area of 4.5 cms diameter on the back of chest on right side 2 cms medial to medial border of right scapula bone."*

17. Learned counsel for the appellant submits that since the MLRs of the accused become proven respectively by PW-3, P-4 and PW-5, therebys he argues that the injuries detailed therein became caused on the respective bodies of the injured-accused, thus in pursuance to theirs propagating their right of private defence and/or therebys there being a sudden scuffle at the crime site, as a sequel of a sudden provocation becoming purveyed to the accused by the complainant, therebys he submits that either the accused are entitled to the purveying to them of the benefit(s) of the exceptions to criminal liability, as relates, to the fatal crime assault becoming spurred from the accused exercising their right of private defence. In the alternative, he submits that since in view of a sudden scuffle erupting at the crime site, on creation of a sudden provocation to the accused by the complainants-victims. In sequel, the offence committed by the accused is liable to be converted from culpable homicide amounting to murder to an offence of culpable homicide not amounting to murder, and, therebys the accused are required to be convicted under Section 304 Part-I of the IPC.

**Reasons for rejecting the same**

18. The submission as addressed before this Court by the learned counsel for the respondents-accused, that the respondents-accused had well exercised their right of private defence, and that the respondents-accused were not the aggressors, but does not hold any vigor.

19. Be that as it may, even if assuming that most of the co-accused, did suffer injuries, besides also assuming that the said suffered injuries by

the said accused, thus were in the instant crime event, but yet after the accused becoming declared fit to make a statement, thus they were required to be launching proceedings against the accused, but with propagations therein qua the injuries entailed on their respective persons, hence exemplified that the assault as become perpetrated by them upon the complainant party, rather became perpetrated in the valid exercisings by them of the right of private defence. However, no cross version in respect of the crime event became reported by the accused persons. The effect of evident omission(s) (supra), on the part of the above accused, to after their becoming declared fit to make a statement, thus launch penal proceedings against the complainant party, is but only that, the accused (supra) even if they became entailed with injuries on their respective persons', which are but only simple injuries, thus in the very same occurrence, whereins, the deceased was murdered, yet the said entailment of simple injuries on the person(s) of the accused, rather cannot be construed to become so entailed, thus in the valid exercising by them vis-a-vis their right of private defence. Contrarily, the effect of the propagation (supra) by the accused, is that, thereby they concede to their participation in the crime event, wherebys they lend corroboration to the deposition(s) of the injured-victims to the crime event.

20. Now proceeding to further dwell, upon, the tenacity of the argument raised before this Court, that the respondents-accused, did well exercise their right of private defence of property, as well as their respective body(ies), it is but necessary to delve, into the records, to gather therefroms, whether the crime site was evidently possessed by the respondents-accused, besides it is also required to be discerned from the evidence available on

record, that whether the aggression became initiated, by the respondents-accused, and/or, by the complainant party, besides is also required to be gauged from the records whether the numerical strength of the accused party, rather was lesser or inferior to the numerical strength of the complainant party. Moreover, it is also required to be fathomed from the evidence available on record whether the accused were equally armed as was the complainant party. Significantly also it is required to be determined whether the accused exceeded or did not exceed the exercisings of their rights of private defence of body, and/or, of persons.

21. In determining the above, it is but necessary to allude to the grave factum, that the numerical strength of the complainant party was 5, whereas, the numerical strength of the accused was 8. Therefore, given the superior numerical strength of the accused party, than the numerical strength of the complainant party, thus therebys besides, when the complainant party were also not as well armed as was the accused party, who were respectively wielding weapons of offences, especially when some of the recovered weapons are also lethal weapons. Conspicuously reiteratedly when also for omission (supra), neither any criminal action became drawn against the complainant party nor any weapons of offence become recovered at their respective instances, therebys an inference becomes marshalled, that the complainant party did not wield any weapon of offence. Resultantly, thereby a further conclusion becomes garnered, especially from *inter se* the superior numerical strength of the accused party, vis-a-vis, the numerical strength of the complainant party, besides from *prima facie* with the complainant party not being either so well armed, and/or *prima facie* being not co-equally armed, as was the accused party, *qua* therebys the accused party did exceed

their right of private defence of body, and, of property. In sequel, there was disproportionality *inter se* the threat, if any, as became purportedly generated by the complainant party, thus with the responses thereto as meted by the accused party.

22. Conclusion (supra) that the accused did exceed their right of private body and person, but becomes firmly marshalled from the factum that the effect of the assault becoming perpetrated by the accused vis-a-vis the deceased, but begot the demise of the deceased, wherebys naturally the right of private defence of body and of property, thus become exceeded. Preponderantly also when for omission (supra), it cannot be said, that the complainant party were the initiators of the aggression, therebys too, the accused cannot well propagate that the legal assault as made on the person of the deceased, was made in theirs ably exercising the right of private defence either of person or property.

**Plea of *alibi* taken by accused Rajinder Singh and Karamjit Singh and the reasons for its rejection**

23. Learned counsel for the appellants argued that the accused Rajinder Singh was not available at the crime site, as the said accused was, at the relevant time of occurrence somewhere else. Other accused Karamjit Singh also pleaded that at the relevant time of occurrence, he was present at the house of Karnail Singh. To prove his defence, he examined one Karnail Singh, who stepped into the witness box as DW-1. In his deposition he has deposed that the accused Karamjit Singh and has brother Surinder Singh had made electrical fittings in his house from 15.08.1998 to 20.08.1998.

**Rejection of plea of *alibi***

24. However, initially the said pleas of *alibi* respectively taken by accused Rajinder Singh and by accused Karamjit Singh, are rejected for the

reason, that the accused Rajinder Singh could not produce any cogent evidence to prove his plea of alibi. On the other hand, accused Karamjit Singh tried to prove the plea of *alibi* by bringing into the witness box DW-1 one, Karnail Singh. But the said witness could not help him, for the reason that he has not mentioned in his deposition that throughout from 15.08.1998 to 20.08.1998, accused Karamjit Singh was available at the house of DW-1. In the present case, the incident took place at 6.30 p.m., as such, it cannot be ruled out that the accused Karamjit Singh could not be available at the crime site at the time of alleged occurrence, hence the said plea also becomes rejected.

***Submissions of the learned State counsel and complainant***

25. On the other hand, the learned State counsel as well as the learned counsel for the complainant have argued before this Court, that the verdict of conviction, and, consequent thereto sentence(s) (supra), as become imposed upon the convict-appellant, are well merited, and, do not require any interference, being made by this Court, thus in the exercise of its appellate jurisdiction. Therefore, they have argued that the appeal, as preferred by the convict-appellant, be dismissed. Furthermore, they have also argued that all the accused-respondents be convicted for the charged offences punishable under Sections 148, 302, 324, 323/149 of the IPC.

**Analyses of the depositions of the eye witnesses' to the occurrence who respectively stepped into the witness box as PW-9, P-10, & PW-13 to PW-15**

26. All the witnesses (supra), in their respectively made depositions, as comprised in their respective examinations-in-chief, ascribed to all the accused, thus the incriminatory role, inasmuch as, with theirs wielding the respective incriminatory weapons of offence, theirs hence

inflicting injuries on the person of the injured and the deceased.

27. It is evident on a reading of depositions of the above witnesses, that all of them, were aware of the identity(ies) of the accused. Resultantly, when there is also no efficacious cross-examination made upon all the eye witnesses (supra), thus suggestive, that the present accused were unknown to all of them nor when any affirmative answer thereto became meted, thus by the eye witnesses (supra). Therefore, the first time identification, by them thus, in Court vis-a-vis the identities of the accused concerned, rather even without prior thereto any valid test identification parade being held, thus does not make the apposite identifications, rendered only in Court rather to be lacking in any evidentiary vigor.

28. Be that as it may, an incisive and wholesome reading of the depositions of the said eye witnesses to the occurrence unfolds that; a) All of them did not either grossly improve nor grossly embellished upon their previously recorded statements in writing, b) All of them have in respect of the crime event, thus made a version in complete alignment with the version embodied in the FIR, c) All of them have narrated an ocular account vis-a-vis the crime event which is but free from any taint of any *inter se* or *intra se* contradiction. Resultantly, therebys the eye witness account as became rendered by them vis-a-vis the crime event, rather is to be assigned the completest evidentiary vigor, wherebys the prosecution has been able to cogently establish the charge drawn against the accused. Conspicuously also therebys the above purportedly made improvement and embelishment by the witness (supra), over his previously rendered statement in writing, thus is merely minimal thereby looses its consequential exculpatory effect, if any.

***Signatured disclosure statements of the accused and pursuant thereto recoveries***

29. During the course of investigations, being made into the appeal FIR, convicts-appellants, made their respective signatured disclosure statements, to which Exs.PW16/A, PW16/D, PW16/E, PW16/F, PW16/G, PW16/H, PW16/J, and PW16/K/4, become respectively assigned.

30. The disclosure statements (supra), carry thereons the signatures, of the convicts concerned. In their signatured disclosure statements (supra), convicts, confessed their guilt in inflicting injuries on persons' of the injured and deceased, hence with the recovered weapons. The further speaking therein is qua theirs keeping, and, concealing the incriminatory weapons of offence. Moreover, the said signatured disclosure statements do also make speakings about theirs alone being aware about the location of theirs 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 theirs hiding, and, keeping the same.

31. Significantly, since the appellants have not been able to either ably deny their signatures as occur 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 recoveries are either contrived or invented. Therefore, all the exhibits are *prima facie* concluded to be holding the utmost evidentiary tenacity.

32. Significantly also, since post the making of the said signatured disclosure statements, becoming made, thus by the convicts to the investigating officer concerned, each of them through their respective recovery memos bearing No.Ex.PW16/B, PW16/D/1, PW16/E/1, PW16/F/1, PW16/G/1, PW16/H/1, PW16/J/1, and PW-16/K/1, thus caused the recoveries of the weapons of offence to the investigating officer concerned.

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

33. However, yet for assessing the vigor of the said made disclosure statements and consequent thereto made recoveries, it apt to refer to the principles governing the assigning of creditworthiness to the said made disclosure statements and to the consequent thereto made recoveries. 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 11.08.2023***, 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:*
>
> > *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. 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.*

34. 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 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)****.*

35. 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.*

*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.*

36. 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.

37. 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.

38. 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.

39. 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.

40. 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, 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, 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.

41. 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.

42. 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.

43. 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.*
>
> *Xxx*
>
> ***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."*

44. 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.

45. Now coming the facts at hands, since the disclosure statements and the consequent thereto recoveries 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 recoveries (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.

46. 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.

47. 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 recoveries, when do become efficaciously proven, therebys theretos immense evidentiary tenacity is to be assigned. Preeminently also when thus they do corroborate the rendition of credible eye witness account vis-a-vis the crime event. Moreover, when the memos (supra) also lend corroboration also to the medical account, therebys through all the links (supra), the charge drawn against the accused becomes proven to the hilt.

**Testification of prosecution witnesses**

48. PW-9 in his examination-in-chief echoes that after causing injuries to Harmanjit Singh, Jagtar Singh, Malkiat Singh, Tarlochan Singh and Joga Singh, thus the accused ran away from the spot with their respective weapons. He further echoes therein, that at that time, they picked up some sticks from the branches of the trees and wielded the same in self defence, thereafter the accused managed to run away from the spot. A perusal of the said examination-in-chief of the witness (supra) underscores the factum of the crime event taking place, besides also supports that rather than the accused propagating the right of private defence, thus the complainant party underscoring that they were led to baulk the assault through their adopting the above modes. Moreover, since the defence has not further suggested to the defence (supra), in the cross-examination made upon him, that apart from the above manners of the complainant attempting to balk the assault perpetrated upon their person, qua theirs also through their wielding deadly weapons resulted in grievance wounds became entailed

upon the person of the accused. Therefore, the effect of the omission (supra), cast a grave dent being caused, the defence that the incriminatory assault was a sequel of the accused, thus exercising their right of private defence of body. The examination-in-chief of the witness (supra) becomes extracted hereinafter.

> *"I belong to village Poonian. I am working as driver with Hans Raj Kalra of village Machhiwara. On 18-8-98 a village fare was to be held in village Takhran. On that day I along with my brother Malkiat Singh, nephew Jagtar Singh, PW Harmanjit Singh and various others of my village went to village Takhran to see that mela. After seeing the fare, I along with my brother Malkiat Singh PW Joga Singh, and Tarlochan Singh were returning to our village on the tractor of Jasbir Singh of village Poonian. It was about 5-45/6 p.m., at that time. On way back when we had reached near the electric motor of Ajmer Singh of our village at a distance of about one K.M. from behind the village Abadi. We found all the accused namely Jasbir Singh alias Jassi armed with kirch, Nirmal Singh armed with kirch, Ranjit Singh armed with soti, Swaran Singh armed with kirch, Charan Singh armed with soti, Rajinder Singh armed with kirch and Karamjit Singh armed with stick present there. At that time accused Rai Singh was armed with stick was also present with other accused. At that time all the eight accused had way laid Harmanjit Singh and Jagtar Singh PWs. At that time we stopped our tractor there and tried to intervene to save Harmanjit Singh and Jagtar Singh from the accused. However, at that time, accused Jasbir Singh gave a kirch blow hitting Harmanjit Singh PW in the left side of the chest. At that time the accused also caused kirch blows to Jagtar Singh PWs, Malkiat Singh, Joga Singh and Tarlochan Singh were also caused kirch blows by the accused. At that time, I retraced myself to save my self from the accused. At that time many persons were attracted to the spot. After causing the injuries to Harmanjit Singh, Jagtar Singh, Malkiat Singh, Tarlochan Singh and Joga Singh the accused ran away from the spot, with their weapons. At that time we picked up some sticks from the branches of the trees and wielded the same in self defence and thereafter the*

*accused managed to run away from the spot. After the occurrence all the injureds were rushed to Samrala hospital in a vehicle arranged by me at the spot. However, at that time I rushed to the village to arrange money from the village. I was present in my house when I was informed that Harmanjit Singh had died while on way to the hospital. I then rushed to P.P. Nelon for informing the police about the occurrence. Police party however, met me in the area of village Poonian on the boundary of Tharkan-Poonian villages. I then made my statement before the police, which was read over and explained to me, before I signed the same in token of correctness. My statement is Ex.PW-9/A.*

*Prior to the occurrence one Ajmer Singh of our village had teased Paramjit Kaur alias Rani who is a cousin of Harmanjit Singh deceased. At that time Harmanjit Singh and his brothers and some women of village, cut the mustaches of of Ajmer Singh afore said. However, later on the matter was compromised with the intervention of the village panchayat. Accused, however, nursed a grudge against Harmanjit Singh and others and caused injuries to Harmanjit Singh deceased and others on that day. Ajmer Singh aforesaid belongs to the party of the accused. After recording my statement, the police accompanied me to the spot. At that time some blood stained earth was lifted from the spot which was sealed into parcel, sealed with the seal of investigating officer and taken into possession vide seizure memo Ex.PD attested by PWs. My statement was recorded by the police. The parcel of the blood stained earth is Ex.P-7."*

49. The witness (supra) became subjected to a rigorous cross-examination, relevant portion whereof becomes extracted hereinafter. A keen perusal thereof, however underscores the factum that therebys the accused, thus conceding not only the factum of the crime event taking place but also theirs acquiescing to their incriminatory participation thereins. Since the said witness in his cross-examination echoed, that the boundary line separating village Takhran from village Poonian, is at a distance of 5-6 killas from the place of occurrence. Moreover, since he states that he saw the occurrence from a distance of about 8-9 karams and that none excepting the

accused and the complainant party was present at the spot. Moreover, since further during the course of his cross-examination, he made the hereinafter extracted echoings. Resultantly, the said made unrebutted echoings palpably comprise the accuseds' acquiescence qua the witness (supra) eye witnessing the occurrence. Consequently, immense credence is to be assigned to the testification rendered by the witness (supra), vis-a-vis the crime event. Moreover, reiteratedly therebys the accused not only admit their incriminatory participation in the crime event, but also admit *qua* the crime event taking place, in the manner deposed by them.

> *"I had told the police that at the time of the occurrence I retraced myself to save myself from the accused (Attention of the witness drawn to his statement Ex.PW-9/A, wherein this fact is not specially mentioned). I had also told to the police that at that time we picked up some sticks and wielded the same in self defence and thereafter the accused managed to run away. (Attention of witness drawn to his statement Ex.PW.9/A, wherein this fact is not mentioned). I had told the police that after the occurrence I rushed to the village for arranging the money (attention of the witness drawn to his statement Ex.PW-9/A wherein this fact is not mentioned). On that day when I reached home I was informed by the inmates of my house that Harmanjit Singh had died while on way to the hospital. I might have inadvertently stated in my statement above that I was present in my house when I was informed about the death of Harmanjit Singh. My wife told me about the death of Harmanjit Singh. My wife did not know the person who informed her about the death of Harmanjit Singh. My house is at a distance of 1 k.m. from the place of occurrence. I am illiterate and only can sign the papers. I do not know any person in the name of Pawan Singh. I however, know Inder Pal Singh of Samrala. I know Pawan Singh son of Shri Jagjit Singh of village Poonian. He didn't meet me in the village fair on that day. He however met*

*me on various occasions after the occurrence. But did not meet me on the day of the occurrence. After the occurrence I reached my house in about 3 to 4 minutes. I started from the spot at about 6 p.m. soon after the occurrence. Police persons were present in the fair. I did not tell anything to any police officers on duty about the occurrence. I remained at my house for about 10 minutes on that day. Police party met me in this case at about 6-20 p.m. It took about 15-20 minutes in recording my statement, by the police. I remained with the police for about 35 to 40 minutes. My statement as recorded by the police once. Again said there after when I accompanied the police party to the spot they also recorded my statement at the spot. I had also signed my statement recorded at the spot. Village Takharan is at a distance of 1½ k.m. from my village. No village fair was held in Gurdwara Shaheedan on that day. I cannot say, whether any langer was held in Gurdwara Shaheedan on that day or not. I cannot say whether all the wrestlers who come to participate in the fair first visit the Gurdwara to pay respect there or not. Civil Hospital Samrala might be at a distance of 10 k.m. from the place of occurrence. It is correct that police station Machhiwara falls on the way while on way from the place of occurrence to Civil Hospital, Machhiwara via Gari Bridge. On that day we had gone to see the village fair together on foot. Village Poonian is at a distance of 4 k.m. from P.P. Neelon, in case we have to go via boat. However, the ordinary road passage is 8 to 9 k.m. While on way from Poonian to P.P. Nelon, via Kucha path, one does not have to pass through Takhran. In case we have to proceed from village Poonian to P.P. Nelon via village Thakran, the distance is about 8-9 k.m. The boundary line separating village Takhran from village Poonian is at a distance of 5-6 killas from the place of occurrence. I saw the occurrence from a distance of about 8-9 karams. None excepting the accused and the complainant party was present at the spot. Ajmer Singh is the uncle of accused Jasbir Singh from paternal side. I cannot however, tell the exact*

*relationship between the two. No specific place was earmarked for parking of vehicles, in the village fair. There was no mutual fight between the parties and the accused were infact causing injuries to Harmanjit Singh and others. Some persons were passing from that side at the time of the occurrence. I do not know who was the owner of the vehicle in which the injured were sent to Civil Hospital, Samrala. At that only time driver was in that vehicle. I did note the number of that vehicle. The vehicle was arranged at the spot when the same passed from that side. All excepting Harmanjit Singh were in senses, hen they were sent to the hospital. The injured were having serious injuries on their persons. Driver of the vehicle was not related to any of us. I did not accompany the injured to the hospital as I had to the village to arrange money. Driver of the vehicle was asked to drop the injured out side the hospital. I do not know whether Jarnail Singh and Gurmit Singh had attended the village fair or not. On the day of the occurrence I had not gone to the house of Jarnail Singh. Gurmit Singh son of Shri Bachan Singh has got a separate house. I did not meet Jarnail Singh and Gurmit Singh in the village on that day. I had not accompanied the police to the hospital. When I accompanied the police party to the spot, Halqa DSP was not present there. However, Halqa DSP and Inspector of the Police Station came after that. I cannot say after how much time they came to the spot. Police party lifted some blood stained earth from the spot and the writing work was also done at that time at the spot. I did not make any payment regarding the vehicle in which the injured were sent to the hospital. I did not inform any lamberdar sarpanch, member sarpanch or any other person, after I reached the village after the occurrence on that day. Many persons had collected at the spot when the police party reached there. The occurrence took place in 2-3 second. I was freed by the police party from the spot. Accused Karamjit Singh belongs to village Seh. Accused Rajinder Singh belongs to village Katari. I cannot say at what distance village Seh and*

*Katari are located from village Poonian. Accused Karamjit Singh used to reside in our village with his maternals before the occurrence. We started back from the village fair at about 5-35 p.m. Ajmer Singh whose mustaches was allegedly cut is a different person from Ajmer Singh whose electric motor is situated nearby. Occurrence took place in the fields of Ajmer Singh by the side of the road. Place of occurrence is three karams behind the passage (pathway). At that time we had wielded some sticks in the defence. I also cannot tell the number of stick blows caused by me. Similarly I cannot tell the stick blows caused by other PWs. At that time sticks were lying nearby as the branches of the trees had been recently removed from the trees. The fair remains open till about 8 p.m. during the fair days. Harmanjit Singh deceased was my real nephew. He had also accompanied us to the village fair. On that day we had taken seats on the body of the tractor and the same was without any trolley. Jarnail Singh father Harmanjit Singh owns tempo. It is correct that the aforesaid tempo was involved in an accident resulting in injuries to Ghaman Singh Majbi of village Ranwan. There was no dispute between Jarnail Singh and Ghaman Singh over payment of money. Volunteered, a case as filed regarding that accident. Jarnail Singh lost that case and necessary payment was made to Ghaman Singh. It is incorrect to suggest that Ghaman Singh was intentionally caused injuries by Harmanjit Singh with the tempo. Deepa is a nephew of Bant Singh sarpanch. I do not know whether Harmanjit Singh had caused injuries to Deepa aforesaid. I do not know whether Harman Jit Singh had also caused injuries to Jassi of Samrala. It is incorrect to suggest that Harmanjit Singh had enmity with various persons and used to pick up quarrel with different persons, and also with the students in the college. It is correct that Deepa was earlier caused injuries by Harmanjit Singh. Volunteered, accused Ranjit Singh and his brother had also caused injuries to said Deepa. I cannot say whether all the accused had also gone to attend the village fair or not. It is*

*incorrect to suggest that Harmanjit Singh deceased used to pick up quarrel with every person unnecessarily. It is also incorrect to suggest that Harmanjit Singh deceased sustained injuries in the fair at the hands of some unidentified persons. It is also incorrect to suggest that the other PWs self suffered injuries on their person. It is also incorrect to suggest that the other PWs self suffered injuries on their person. It is also incorrect to suggest that the accused have been falsely implicated in this case. It is incorrect to suggest that Ajmer Singh whose mustache allegedly cut was not in any way related to the accused or any of them. It is also incorrect to suggest that Ajmer Singh aforesaid does not reside in our village. It is incorrect to suggest that I have deposed falsely being related to Harmanjit Singh deceased. It is also incorrect to suggest that at the time of alleged occurrence accused Jasbir Singh was admitted in Civil Hospital, Ludhiana much prior to the alleged occurrence.*

*It is incorrect to suggest that accused Rajinder Singh is not related to the other accused. Volunteered, he called Nirmal Singh and Jasbir Singh as his maternal uncle. I have never gone to village Katari. I know the father of accused Rajinder Singh for the last 2-3 years. I have not dealing with the father of accused Rajinder Singh. I am not working as a driver privately and have no fixed house of working. I, however, go almost daily. It is correct that police party generally remain on duty on the Gari bridge. It is incorrect to suggest that I was not present at the time of alleged occurrence. It is also incorrect that at the time of the alleged occurrence I was away on duty and got the case falsely registered against the accused, due to enmity with the accused. It is incorrect to suggest that I have deposed falsely."*

50. Moreover, reiteratedly conspicuously also since there is no suggestion to the said witness in his cross-examination, appertaining to the hereinabove principles governing the makings of a well espousal

appertaining to the relevant assault becoming perpetrated in the exercise of the right of private defence of body nor also when there is no admission to the said suggestions, thereupon the right of private defence remains unproven. Contrarily, reiteratedly in the wake of the above admissions, the accused reiteratedly admit not only crime event taking place but also admit theirs participation in the crime event. Reiteratedly when principles governing the exercise of private defence, as stated (supra) are subject to the accused proving;

a) That the complainant were the aggressors.

b) The accused proving that after the exercise of right of private defence arose from the aggression becoming initiated by the complainant and not by the accused.

c) To prove that the numerical strength of the complainant party was far superior than to the numerical strength of the accused.

d) The accused proving that the complainant party were wielding more deadly weapons that the weapons wielded by the accused party.

51. Since for reasons (supra) thus proof for satiating the principles (supra) remains unadduced, therebys the benefit of the apposite exceptions to criminal liability rather cannot, as argued by the learned counsel for the accused, become afforded to the accused.

52. Likewise, similar echoings occur in the cross-examinations of the other eye witnesses to the crime event, who respectively stepped into the witness box as P10, PW13 to PW-15. Consequently, inferences as became drawn, after a wholesome evaluation of the testimoney of PW-9, are also to be drawn vis-a-vis the testifications made by eye witnesses (supra).

53. Though, the learned counsel for the accused has argued that even if the plea of right of private defence fails, yet when the crime event

which took place at the crime site, was a sequel of a sudden provocation becoming purveyed by the complainant party to the accused, therebys the conviction is required to be modified from an offence of murder to an offence of culpable homicide not amounting to murder, and, that consequent thereto sentence of imprisonment is to be imposed, but the said contention is rejected.

54. The reason for forming the above inference ensues from the factum that no suggestions to the said effect became put to the witnesses concerned, nor any answer favourable to the accused became rendered by the prosecution witnesses. Therefore, but obviously the said contention is out rightly rejected.

**MEDICAL EVIDENCE (POST MORTEM REPORT)**

55. The autopsy upon the body of deceased Harmanjit Singh was conducted on 19.08.1998 by PW-1 along with Dr. Shashi Kant and Dr. Tarkjot Singh. PW-1 has proven *qua* his, authoring Ex.PA, as relates to the autopsy as made upon the body of deceased.

56. Moreover, he has proven that the cause of death of deceased Harmanjit Singh, was owing to hemorrhage and shock caused by injury No.1 and 2 which were sufficient to cause death in the ordinary course of nature. All the injuries were declared to be ante mortem in nature. The relevant ante mortem injuries as noticed by PW-1 on the body of deceased are extracted hereinafter.

> *"1. Penerating incised wound 2cm x ½ cm with inverted margine on the left side of front of chest, 9 cm from the nipple, 3cm from midline and 3rd intercostal space.*
>
> *2. Penerating incised wound 1cm x 1cm with overated margins on the left side of back of chest, 12 cm from midline and 4cm below lower and of scupla. On dissection of injuries*

*No.1 and 2 there were heamothorax 2cm x ½ cm injury in the left lung. There were heamo pericardium and 2cm x ½ cm cut passing through the interior and posterior ball of left ventrical. The track of injury communicated with injury No.2."*

57. The incriminatory weapon(s) of offence(s) (Ex.P1) was shown to PW-1, thus during the course of his making his testification(s), before the learned trial Judge concerned. In his testification he has spoken that "injuries on the person of the deceased could be result of the Kirch (Ex.P1)". The effect of the above, is that, especially when no efficacious cross-examination was made upon the said prosecution witness, by the learned defence counsel, thus thereby, the defence conceding qua the said ante mortem injuries declared in PMR were, as such, inflicted on the relevant portion of the body of the deceased, with the users, rather by the accused-Jasbir Singh, thus of recovered Kirch. Consequently, thereby medical evidence also corroborates eye witness account as well as the recovery memos (supra).

**FINAL ORDER**

**CRA-D-556-DBA-2008 and CRR-169-2002**

58. Therefore, for the reasons to be assigned hereinafter the learned trial Judge concerned, has mis-directed himself, in convicting the convict Jasbir Singh, only for offences punishable under Sections 304 Part I IPC, and, not convicting any of the other co-accused rather for offence(s) punishable under Section 302 of the IPC, whereas, the charge framed against all the accused, thus related to an offence punishable under Section 302 of the IPC, besides became rested on the plank that the accused rather had with a common object formed an unlawful assembly. Therefore, if cogent evidence did make, thus palpably appearances, thus suggestive that all the accused had evidently formed an unlawful assembly, evidence whereof, has

imminently surged forth. Resultantly, even if the lethal assault was caused by one of the accused, whereas, the other co-accused caused grievous injuries on the person of the injured. Nonetheless, each of the accused who formed an unlawful assembly, rather merely on the above score, qua the fatal injury becoming not caused by each of them, but becoming caused only by one of them, inasmuch as, the lethal injury becoming caused by convict Jasbir Singh, thus were not required to be saved from the attraction qua them vis-a-vis the principle of vicarious criminal liability, as enshrined in Section 149 of the IPC. The reason for drawing the above conclusion emanates from the factum, that all the accused, thus not only formed an unlawful assembly but also thereby they are deemed to be holding a common object. In sequel, when reiteratedly all the co-accused concerned, who were evidently members of an unlawful assembly, besides shared a common object, thus with the principal accused (supra), thereupons all the accused were also required to be convicted for a charge drawn for an offence punishable under Section 302 of the IPC, irrespective of the factum, that the fatal injury becoming not being caused by each of them, but becoming caused by only one of them, inasmuch as, the same becoming caused by accused Jasbir Singh. Resultantly, therebys the finding of acquittal, as became recorded by the learned trial Judge concerned, vis-a-vis all the accused for a charge drawn for an offence punishable under Section 302 read with Section 149 of the IPC, requires becoming interfered with.

59. Reiteratedly therebys when there was a sharing of common object along with the principal accused concerned. Consequently, even if the other co-accused did not cause the lethal wound but when they also caused grievous ante mortem injuries upon the deceased, upon theirs joining an

unlawful assembly and were evidently prosecuting a common object, thus with the principal accused. Resultantly, each of the accused were liable to be convicted for an offence punishable under Section 302 read with Section 149 of the IPC.

60. Strength to the above inference ensues from the factum that the evident formation of an unlawful assembly, and also evidently prosecuting a common object besides the concomitant thereto common object etching in the minds of each of the members of the unlawful assembly, thereupon unless some of the members of the unlawful assembly were evident bystanders to the crime event, therebys each of the members of the unlawful assembly, irrespective of the fatal blow being struck by only one of them, thus were required to be attributed an incriminatory role, at par with the incriminatory role assigned to the principal convict-appellant Jasbir Singh.

61. Since the accused were not bystanders to the crime event thereupons, when they did evidently made incriminatory participations in the crime event, therebys thus reiteratedly all of them became vicariously liable for the offence of murder, as became committed by the principal accused and/or by the principal in the first degree, inasmuch as, by convict Jasbir Singh.

62. Accordingly, in view of the above, the instant appeal/revision are allowed. Consequently after allowing the instant appeal/revision filed respectively by the State of Punjab, and by the complainant, this Court quashes the impugned verdict of acquittal, as made by the learned trial Judge concerned, wherethrough, he made a finding of acquittal in respect a charge drawn for an offence punishable under Section 302 of IPC, and modifies the same to the extent that respondent Nos. 1, 2, 6, 7 and 8 are held guilty for an

offence punishable under Section 302 read with Section 149 of the IPC. The accused are directed to be produced in custody before this Court, on 30.09.2024 for theirs being heard on the quantum of sentence. If the accused concerned, are on bail, therebys they are ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused.

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63. In consequence, the impugned verdict of conviction, and, also the consequent therewith order of sentence, as becomes respectively recorded, and, imposed, upon the appellant-convict by the learned trial Judge concerned, do not suffer from any gross perversity, or absurdity of gross mis-appreciation, and, non-appreciation of the evidence on record. In consequence, there is no merit in the appeal, and, the same is dismissed. If the appellant is on bail, thus he is ordered to be forthwith taken into custody through the learned trial Judge concerned, forthwith drawing committal warrants against the accused.

64. Case property, if any, be dealt with in accordance with law, but only after the expiry of the period of limitation for the filing of an appeal.

65. Records be sent down forthwith.

66. Miscellaneous application(s), if any, is/are, also disposed of.

**(SURESHWAR THAKUR)**
**JUDGE**

**(SUDEEPTI SHARMA)**
**JUDGE**

**18.09.2024**
**Ithlesh**

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