2025.PHHC.045669-DB

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

1. **CRA-D-399-DB-2004 (O&M)**

Davinder Singh … Appellant

Versus

State of Punjab ... Respondent

2. **CRR-2128-2004 (O&M)**

Gurdeep Singh … Petitioner

Versus

State of Punjab ... Respondent

Date of Decision:- **03.04.2025**

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

Present: Mr. Narinder Singh, Advocate,
for the appellant in CRA-D-399-DB-2004 and
for the respondents in CRR-2128-2004.

Mr. Sidharth Attri, AAG, Punjab.

Mr. H.S.Randhawa, Advocate as Amicus Curiae and
Mr. Gursharan Singh, Advocate,
for the petitioner in CRR-2128-2004.

GURVINDER SINGH GILL, J.

1. This judgment shall dispose of above-mentioned appeal as well as criminal revision, as it is the same very judgment dated 06.04.2004 passed by learned Additional Sessions Judge (Ad hoc), Fast Track Court, Faridkot, which is being assailed. While in CRA-399-DB-2004, appellant

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– Davinder Singh assails his conviction for offences under Sections 302, 458 IPC and under Section 27 of the Arms Act, the petitioner – Gurdeep Singh in CRR-2128-2004 challenges the acquittal of Gurpal Singh and Rahul Bhupinder Singh and also seeks enhancement of sentence as imposed upon Davinder Singh.

2. The matter arises out of FIR No.175 dated 15.07.2001, under Sections 302, 307, 458, 120-B, 34 IPC and Section 25/27/30 of the Arms Act (Ex.PK/1) lodged on the basis of statement (Ex.PK) of Gurdeep Singh. The translated gist of the statement (Ex.PK) leading to recording of FIR reads as under:

> "I am resident of village Rupana and I am into cultivation. We are 3 brothers and 5 sisters, who all are married. My elder brother Sukhdev Singh has expired. I alongwith my brother's family reside with parents, whereas my elder brother Ajaib Singh resides separately at a short distance from us. On 14.07.2001 at about 9.30 PM, our neighbour Gurmeet Singh came to our house. The electric bulb in the courtyard was glowing. Davinder Singh son of Gurpal Singh, who was carrying a 12 bore double barrel gun accompanied by his son Rahul Bhupinder Singh @ Bhinda entered the gate of our house. Bhinda raised a *lalkara* exhorting his companion that a lesson be taught to Davinder Singh son of Sukhdev Singh for teasing their daughter Navdeep Kaur. Davinder Singh son of Gurpal Singh fired from his 12 bore double barrel gun at my father Naranjan Singh, who was sitting on a cot and the shot hit on his face. Davinder Singh reloaded his gun and fired another shot. In order to save ourselves, we hid in the verandah. When we raised alarm killed-killed, Davinder Singh and his son Bhinda went out of the house alongwith their gun. On hearing gun shots being fired, our neighbourer Baldev Singh and Sohan Singh came running towards our house. However, Davinder Singh fired at them as well in order to kill them and the pellets hit Baldev Singh on the back of his right thigh and hit Sohan Singh on his back, right buttock, back of both thighs as well as on his

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lower legs and left wrist. Thereafter, Davinder Singh and his son Bhinda ran towards their house with their gun. My brother Ajaib Singh took my father Naranjan Singh, Baldev Singh and Sohan Singh to Civil Hospital, Muktsar for treatment where my father Naranjan Singh succumbed to his injuries. Sohan Singh and Baldev Singh were, however, admitted for treatment. The motive was that Davinder Singh and others suspected that his daughter Navdeep Kaur was having illicit relations with my nephew Davinder Singh. Gurpal Singh had handed over his licensed 12 bore double barrel gun to his son Davinder Singh and sent them to attack us with an intention to kill us. I was proceeding alongwith Sarpanch Nishan Singh to lodge the report, when you met me. Action be taken. Sd/- Gurdeep Singh."

3. Pursuant to recording of the aforesaid statement of Gurdeep Singh by SI Santokh Singh, formal FIR (Ex.PK/1) came to be lodged. SI Santokh Singh proceeded to the hospital alongwith other police officials and conducted inquest proceedings. The post-mortem examination on the dead body of Niranjan Singh was got conducted and thereafter the dead body was handed over to the heirs of the deceased. SI Santokh Singh visited the place of occurrence from where blood stained soil was lifted and prepared into parcel. Two empty cartridges were also taken into possession from inside the *deori* (gate) and another two empty cartridges were picked up from outside the gate in the street, which were separately prepared into parcels. Accused Davinder Singh was arrested on 18.07.2001 and upon interrogation, he made a disclosure statement (Ex.PX) and pursuant thereto got recovered a 12 bore double barrel gun. An Arms License in the name of Gurpal Singh (father of Davinder Singh) was also produced, which was taken into possession separately.

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4. Upon conclusion of investigation, challan was presented against accused Davinder Singh son of Gurpal Singh, Rahul Bhupinder Singh @ Bhinda and Gurpal Singh in the Court of Sub Divisional Judicial Magistrate, Muktsar on 28.08.2001, who committed the case to the Court of Sessions vide order dated 01.09.2001. Learned Additional Sessions Judge, Muktsar framed charges against Davinder Singh under Sections 458/302/307 IPC and under Section 25/27 of the Arms Act. Whereas Rahul Bhupinder Singh and Gurpal Singh were charged for offences under Sections 458 and 302/307 read with Section 34 IPC and under Section 30 of the Arms Act on 03.10.2001 to which they pleaded not guilty and claimed trial.

5. The prosecution in order to establish its case examined as many as 15 PWs. The gist of their statements is briefly referred to herein under:-

PW-1 Dr. N.R.Duggal, who had conducted post-mortem examination on the dead body of Naranjan Singh on 15.07.2001, proved the post-mortem report as Ex.PA, wherein he described the injuries found on the dead body of Naranjan Singh and opined that the cause of death was due to cardio respiratory arrest as a result of shock due to injury to vital organ i.e. brain, which was sufficient to cause death in an ordinary course of nature. He also stated with regard to the x-ray examination conducted by him on 17.07.2001 in respect of injuries sustained by Sohan Singh and Baldev Singh.

PW-2 Dr. Jagrity, Medical Officer, Civil Hospital, Muktsar, who had medico legally examined Baldev Singh and Sohan Singh on 14.07.2001, proved their MLRs as Ex.PF and Ex.PG respectively, wherein he described the injuries found on their person.

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PW-3 Baldev Singh stated that about 4/5 months back, when he was going towards market (*bazar*) at about 9.00 PM, he came to know that there had been firing, but he had not witnessed any occurrence. The said witness was, however, declared hostile and was permitted to be cross-examined by the Public Prosecutor.

PW-4 Gurdeep Singh (complainant) stated in tune with the allegations got recorded by him in the FIR.

PW-5 Gurmit Singh (eye-witness) stated that on 15.07.2001 at about 9.30 PM, he went to the house of Gurdeep Singh (complainant). He stated that when he was talking with Gurdeep Singh, his father Naranjan Singh was sitting on a cot in the courtyard, Davinder Singh who was carrying a double barrel gun and Rahul Bhupinder Singh empty handed came there. He stated that Rahul Bhupinder Singh raised a *lalkara* exhorting his companion to teach a lesson for teasing their daughter Navdeep Kaur and thereafter accused Davinder Singh son of Gurpal Singh fired a shot from his 12 bore double barrel gun hitting Naranjan Singh on his face, forehead and chest. He stated that accused Davinder Singh reloaded his gun and fired another shot at him (Gurmit Singh) and Gurdeep Singh (complainant), but in order to save themselves, they hid in the *verandah*. Thereafter Davinder Singh and his son Bhinda went out of the house alongwith their gun. On hearing gun shots being fired, Baldev Singh and Sohan Singh came running towards complainant's house. PW-2 described the injuries sustained by Baldev Singh and Sohan Singh in the same manner as described by the complainant.

PW-6 Surjit Singh Gill, Draftsman, stated that he had prepared a scaled site plan of the place of occurrence (Ex.PL).

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PW-7 Satnam Singh, photographer, stated that he had visited the place of occurrence on 15.07.2001 and had taken photographs Ex.P1 to Ex.P4 and proved negatives thereof as Ex.P5 to Ex.P8.

PW-8 Davinder Singh son of Sukhdev Singh, nephew of Gurdeep Singh (complainant) stated that about 1 year ago, he had love affair with Navdeep Kaur, daughter of accused Davinder Singh and that she used to make telephone call to his house. He stated that when his mother complained to the wife of accused Davinder Singh, he came to their house and threatened them that if he (accused Davinder Singh) saw him (PW-8 Davinder Singh) with his daughter Navdeep Kaur, then whole of their family would be eliminated, as they are defaming his daughter.

PW-9 Palwinder Singh son of Ajaib Singh stated that on 15.07.2001, SI Santokh Singh visited the place of occurrence and that apart from lifting blood stained soil, he had taken into possession two empty shells of 12 bore from the *deori* (gate) and two other empties from outside the gate.

PW-10 Ajaib Singh, brother of Gurdeep Singh (complainant) and son of Naranjan Singh (deceased), stated that on 18.07.2001, when he went to the Police Station Sadar Muktsar, Ajit Singh, owner of Petrol Pump, produced accused Davinder Singh and Gurpal Singh before SI Santokh Singh. He stated that Gurpal Singh and Davinder Singh were interrogated by SI Santokh Singh in his presence. He further deposed regarding the recoveries effected pursuant to disclosure statements made by accused during interrogation.

PW-11 HC Major Singh, who is a formal witness, tendered his affidavit Ex.PU in evidence, wherein he deposed that on 22.07.2001, he was posted as MHC, Police Station Sadar Muktsar and that on the said day, HC Surinder Singh had handed him over the case

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property including parcels containing blood stained soil, empty cartridges and 12 bore double barrel gun. He further stated that on 26.07.2001, the case property was sent through Constable Gurjant Singh for depositing the same in the office of FSL, Punjab, Chandigarh, but due to certain objections having been raised by the said office, he (Constable Gurjant Singh) returned two parcels containing blood stained soil and simple soil with him. He stated that thereafter on 06.08.2001, after removing the objections, he had again handed over the said two parcels to Constable Gurjant Singh, which he deposited in the office of FSL, Punjab, Chandigarh on the same day and that as long as the parcels remained in his possession, the same were not tampered with.

PW-12 Constable Gurjant Singh, who is a formal witness, has tendered into evidence his affidavit Ex.PV, wherein he deposed that on 26.07.2001, MHC Major Singh had handed over to him the case property including parcels containing 12 bore double barrel gun, empty cartridges, blood stained soil and simple soil for depositing the same in the office of FSL, Punjab, Chandigarh and that on the next day i.e. 27.07.2001, he deposited the parcels containing 12 bore double barrel gun and 4 empty cartridges in the said office, but due to certain objections having been raised by the said office in respect of two parcels containing blood stained soil and simple soil, he returned the same with MHC Major Singh. He stated that thereafter on 06.08.2001, MHC Major Singh after removing the objections had again handed over him the said two parcels, which he deposited in the office of FSL, Punjab, Chandigarh on the same day and that as long as the parcels remained in his possession, the same were not tampered with.

PW-13 HC Balwinder Singh stated that on 15.07.2001, upon receipt of information in the police station, he was associated the police

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party headed by SI Santokh Singh and they started for the hospital, but they met Gurdeep Singh (complainant) and Sarpanch Nishan Singh near Kotkapura chowk and SI Santokh Singh got recorded Gurdeep's Singh statement Ex.PK, on the basis of which FIR Ex.PK/1 came to be lodged. He stated about the preparation of inquest report by SI Santokh Singh and as regards the entire investigation conducted by SI Santoskh Singh and also proved various memos prepared during course of the same. He stated with regard to the recoveries effected pursuant to the disclosure statement made by the accused Davinder Singh. He also stated that he identified the signatures of SI Santokh Singh (since died).

PW-14 HC Surinder Singh, who is a formal witness, tendered his affidavit Ex.PAA in evidence, wherein he deposed that on 15.07.2001, he was posted as MHC, Police Station Sadar Muktsar and that on the said day, SI Santokh Singh had deposited with him the case property i.e. parcels containing blood stained soil, simple earth, 4 empty cartridges of 12 bore. He stated that on 18.07.2001, SI Santokh Singh had deposited with him a parcel containing 12 bore double barrel gun and that upon his transfer from Police Station Sadar Muktsar to Police Lines, Muktsar, the case property was handed over to Major Singh.

PW-15 Gurmit Singh, Sub Station Operator, 66 KV Grid, Sub Station, Rupana, produced the summoned record pertaining to electric supply and stated that there was electric supply at 9.15 PM.

6. The prosecution after tendering into evidence reports of FSL (Ex.PBB, Ex.PCC & Ex.PDD) closed its evidence.

7. Upon closure of the prosecution evidence, statements of accused were recorded in terms of Section 313 Cr.P.C., wherein they denied the case of prosecution and pleaded false implication. The relevant extract from the

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statement of accused Davinder Singh recorded in terms of Section 313 Cr.P.C. is as under:

> "I am innocent. I am MA, B.Ed. and was posted as Lecturer in a school of our village. My daughter Navdeep Kaur was graduate. After her examination, she had gone to her maternal parents about 1 month prior to the present alleged occurrence. Gurdeep Singh PW is adopted son of Mangal Singh, who owned 17-18 killas of land and he died issueless. 6-7 years prior to the alleged occurrence, said Mangal Singh gave Rs.10 lakhs to PW Gurdeep Singh. Other brothers of Gurdeep Singh were demanding share in the land and money from Gurdeep Singh which he inherited from Mangal Singh and on that account PW Gurdeep Singh was not on speaking terms with his brothers and father and was residing with his family in his farm house at a distance of 1 and half KM from the place of occurrence. On 14.07.2001 at about 9.30 PM, there was electric supply breakdown in the village. There was hue and cry about the arrival of *Kala Kaccha* thieves and the people due to fear and panic started firing indiscriminately. Naranjan Singh also fired with his gun while going out in the street as a result therefore, Sohan Singh and Baldev Singh PWs were injured and in that exchange of firing, Naranjan Singh sustained fire arm injuries and carried to his courtyard and he died. His dead body was taken to CH Mukhtsar by his son Ajaib Singh alone and learnt from the doctor about the nature of fire arm. ASI Baljit Singh, sister's son of Gurdeep Singh PW was called. Nishan Singh, Sarpanch of village Rupana was also called. Said Sarpanch was closed to Mr. Parkash Singh Badal, the then CM, Punjab. Our family opposed said Nishan Singh in the elections. On that account, Nishan Singh and others after deliberations, got me and other members of my family implicated in the case. I and my father were brought by the police alongwith licensed gun of my father on 15.07.2001 and were illegally detained by the police. My brother Shivraj Singh had given telegrams to higher authorities."

8. Accused – Gurpal Singh in his statement recorded in terms of Section 313 Cr.P.C. while professing his innocence pleaded as under:

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> "I am innocent. PWs are inimical towards me and my family members. I alongwith my son Davinder Singh were brought from our house by the police on 15.07.2001 alongwith my licensed gun and cartridges. My son Shivraj Singh gave telegrams to higher authorities about our illegal detention in this context."

9. Accused – Rahul Bhupinder Singh in his statement recorded in terms of Section 313 Cr.P.C., while taking plea of alibi, pleaded as under:

> "I am innocent. At the time of alleged occurrence, I was less than 18 years of age as my date of birth is 08.08.1983. About 1 week prior to the occurrence, I had gone to village Maujgarh to my maternal uncle Wakeel Singh. I was arrested in the case on 16.07.2001 from village Maujgarh. My uncle Wakeel Singh moved applications to higher authorities against my false implication. Bhupinder Singh, DSP, Muktsar conducted enquiry while visiting the spot and I was found to be innocent. Application Ex.DB was moved by SHO of P.S.Muktsar for getting me discharged and a supplementary report under Section 173(8) Cr.P.C. was also moved to the Court."

10. In their defence, the accused have examined two witnesses. **DW-1** DSP Bhupinder Singh, who had conducted enquiry on an application moved by Wakeel Singh, stated that on 29.08.2001, he had gone to village Rupana and upon investigation, accused Rahul Bhupinder Singh was found to be innocent, as it was found that he was not present in the village and had gone to his maternal parents at village Maujgarh, Haryana. **DW-2** Wakeel Singh stated that in the first week of July, 2001, his nephew Rahul Bhupinder Singh had come to meet him at his village and that on 14.07.2001, he was with him. He stated that on 15.07.2001, he came to know about his (Rahul Bhupinder Singh) involvement in a case and that he had moved an application for enquiry to SSP, Muktsar, which was marked to DSP Bhupinder Singh.

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11. The learned trial Court, upon marshalling the evidence on record, acquitted Gurpal Singh and Rahul Bhupinder Singh of the charges framed against them, but held accused Davinder Singh guilty of having committed offence punishable under Sections 302, 458 IPC and under Section 27 of the Arms Act and sentenced him as under:

Under Section 302 IPC	-	To undergo life imprisonment and to pay a fine of Rs.2000/- and in default of payment of fine to undergo further RI for 3 months.
Under Section 458 IPC	-	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.1000/- and in default of payment of fine to undergo further RI for 2 months
Under Section 27 of the Arms Act	-	To undergo rigorous imprisonment for three years and to pay a fine of Rs.500/- and in default of payment of fine to undergo further RI for 1 month

12. Learned counsel for the appellant – Davinder Singh, while assailing his conviction, submitted that he has falsely been implicated in the present case and that falsity of the case would be evident from the fact that one of the star witnesses of the prosecution namely PW-3 Baldev Singh, who was immediate neighbour of the complainant, did not support the case of prosecution at all. It has further been submitted that even the other eye-witness namely PW-5 Gurmit Singh had been introduced falsely, which would be evident from the fact that he has stated the date of occurrence to be 15.07.2001, whereas the occurrence in question had taken place on 14.07.2001. It has been submitted that even the Investigating Officer namely SI Santokh Singh has not been examined by the prosecution and that as such, given the fact that there is delay in sending the case property including blood stained soil etc. to the FSL, wherein certain objections had been raised, no sanctity can be attached to such kind of evidence.

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Learned counsel submitted that in fact as on the date of alleged occurrence, a group of thieves and dacoits had come to the village and due to panic, villagers started firing indiscriminately, wherein Naranjan Singh also fired from his gun and it was during the exchange of firing that Naranjan Singh sustained injuries and lost his life. It has, thus, been submitted that the impugned judgment could not sustain and is liable to be set aside.

13. Opposing the appeal, learned State counsel submitted that it is a case where not only the complainant PW-4 Gurdeep Singh has stated in tune with the allegations leveled in the FIR, even PW-5 Gurmit Singh, who resided in neighbourhood, has fully supported the case of prosecution and has narrated the occurrence identically and that the slight discrepancy in the mentioning of the date of occurrence, which is stated to be 15.07.2001 instead of 14.07.2001 is merely on account of mistake, which could have occurred due to the fact that he was deposing in the Court after a gap of more than 1½ years. It has been submitted that the fact that the occurrence had taken place on 14.07.2001 is fortified from the medical evidence inasmuch as PW-2 Jagrity, Medical Officer, Civil Hospital, Muktsar stated that deceased as well as injured Sohan Singh and Baldev Singh were brought in hospital on 14.07.2001. Even the opinion of PW-1 Dr. N.R.Duggal as regards time of death is in tune with the case of prosecution that the death of Naranjan Singh had taken place on 14.07.2001. It has, thus, been submitted that having regard to the consistent ocular version as given by the complainant (PW-4 Gurdeep

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Singh) and PW-5 Gurmit Singh, which is fully corroborated from the medical evidence, the case of the prosecution is fully established as had been held by the trial Court.

14. We have considered rival submissions addressed before this Court and with the assistance of learned counsel have also perused the record of the case.

15. Since it is a case of homicidal death on account of gun-shot fire, it is apposite to first of all briefly refer to the medical evidence led by the prosecution in this regard. PW-1 Dr. N.R.Duggal, who had conducted the post-mortem examination on the dead body of Naranjan Singh, proved the post-mortem report as Ex.PA and described the injuries found on the dead body as under:

> "1. Multiple lacerated wound present in an area of approximately 20"x20" over the face mainly right side, right temporal region forehead neck, upper part of chest and right shoulder. They were about 25 in number. Their sizes vary from .02 to .02 cms to 1x0.2 cm margins of wound inverted except 3 wounds on the left side of the neck which have E verted margins. Blood clot and liquid blood was oozing out on pressing these wounds. On dissection, there were two holes in the temporal bone on the right side. Middle minengial artery was torn, cranial cavity contain blood. Covering of the brain had lacerated wounds in the same area. Two pellets recovered from brain tissue. 2 cms from the surface and tracks were found leading to the wounds in covering of the brains. There was fracture right mistored bone corresponding to the lacerated bone on the bridge of nose. A pellet was recovered from nasal cavit. One pellet recovered from the muscle of the right shoulder."

16. PW-1 Dr. N.R.Duggal while describing the injuries specifically stated as regards recovery of pellets from the dead body which is in tune with the case of prosecution. In any case, the factum of death on account of firing

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of gun-shot is not disputed by Davinder Singh (accused) although Davinder Singh in his statement recorded in terms of Section 313 Cr.P.C. has given a different version regarding the occurrence of firing.

17. The occurrence is sought to be established from the testimony of complainant (PW-4 Gurdeep Singh), who is son of the deceased and was present in the house when the occurrence had taken place. Given the fact that the occurrence had taken place in the house of Gurdeep Singh, his presence therein is most natural and cannot be doubted. While narrating the occurrence, PW-4 Gurdeep Singh specifically stated that on the day of occurrence i.e. on 14.07.2001 when he alongwith PW-5 Gurmit Singh was present in his house, then accused Davinder Singh alongwith his son Rahul Bhupinder Singh entered into their house. He stated that pursuant to a *lalkara* raised by Rahul Bhupinder Singh, his father (Davinder Singh), who was carrying a gun, fired from the same hitting the deceased. PW-4 further stated that one more shot was fired in their house, but he as well as PW-5 Gurmit Singh managed to save themselves by taking cover in the *verandah* and that thereafter when they raised alarm, the accused went out in the street and since two more neighbourers namely Baldev Singh and Sohan Singh had also been attracted on account of noise of gun firing, accused fired two shots at them as well as a result of which both of them sustained injuries. The aforesaid version is fully corroborated from the testimony of PW-5 Gurmit Singh.

18. Although PW-3 Baldev Singh was injured in the occurrence and was also cited as a prosecution witness, but when he stepped into the witness-box,

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he did not support the case of prosecution. PW-3 resiled from his statement and stated that he had just come to know about the firing, but had not witnessed any occurrence. The aforesaid statement is apparently false inasmuch as he himself was injured in the occurrence, as is borne out from the medical evidence in the shape of testimony of PW-2 Dr. Jagrity, Medical Officer, Civil Hospital, Muktsar, who had medically examined Baldev Singh on 14.07.2001 itself and found the following injuries on his person:

> "1. A lacerated wound .2 cm x .2 cm on back of right thigh 15 cm above the knee joint. Fresh bleeding was present."

19. PW-2 Dr. Jagrity was cross-examined on behalf of the accused, but nothing substantial could be elicited during the course of her cross-examination so as to either doubt her veracity or her opinion. Having regard to the aforesaid position, wherein the testimonies of the complainant (PW-4 Gurdeep Singh) and of PW-5 Gurmit Singh alongwith medical evidence in the shape of statement of PW-2 Dr. Jagrity shows the presence of PW-3 Baldev Singh, it is apparent that PW-3 Baldev Singh had deposed falsely in the Court to help the accused. As such, his statement need not be relied upon. There is no other evidence to the contrary so as to doubt the veracity of the testimonies of PW-4 Gurdeep Singh and PW-5 Gurmit Singh.

20. Although learned counsel attempted to assail the case of prosecution on the ground that the Investigating Officer SI Santokh Singh has not been examined by the prosecution, but this Court finds that it was on account of

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the fact that SI Santokh Singh had expired that he was not examined, as has been stated by PW-13 HC Balwinder Singh, who had remained associated with SI Santokh Singh during investigation. PW-13 HC Balwinder Singh has stated in detail with regard to the investigation conducted by SI Santokh Singh and has identified the signatures of SI Santokh Singh. In any case, the factum of the accused having suffered disclosure statement and the recovery pursuant thereto is also borne out from the testimonies of PW-10 Ajaib Singh and PW-13 HC Balwinder Singh. Under these circumstances, non-examination of SI Santokh Singh will not dent the case of prosecution in any manner particularly when it is a case based on eye-witness account and not solely on circumstantial evidence where the role of the investigator would assume all the more importance.

21. As far as delay in submitting the case property in FSL is concerned, a perusal of the testimonies of PW-11 HC Major Singh and PW-12 Constable Gurjant Singh does show that there is some delay in depositing of case property on account of the fact that some objections were raised by the laboratory in respect of two parcels containing blood stained soil and simple soil and thereafter the said two parcels were sent again for depositing in the FSL after removal of objections. Both PW-11 HC Major Singh and PW-12 Constable Gurjant Singh have stated that as long as case property remained in their possession, the same was not tampered with. A perusal of the report of FSL would indicate that sample seals were intact and were not tampered with. There is nothing on record to

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show that there has been any kind of tampering or substitution of the case property as the seals were found to be intact. Under these circumstances, the delay *ipso facto* would not affect the case of prosecution.

22. Coming to the defence plea raised by Davinder Singh, appellant Davinder Singh in his statement recorded in terms of Section 313 Cr.P.C. has taken a plea that on 14.07.2001, a group of dacoits comprising *Kala Kaccha* gang had come to the village and the people due to fear started firing indiscriminately and that Naranjan Singh also fired with his gun and it was due to exchange of firing that Naranjan Singh had lost his life. However, said plea is not substantiated in any manner inasmuch as in case dacoits had come to the village and the villagers had fired indiscriminately, there would have been some report with the police in this regard. Neither any PW stated in this regard nor any other witness had been examined to establish the aforesaid plea of firing on account of arrival of the *Kala Kaccha* thieves/dacoits in the village on 14.07.2001. As such, the said plea raised by Davinder Singh that the deceased died due to exchange of firing on arrival of the *Kala Kaccha* thieves/dacoits in the village is absolutely hollow and is not substantiated.

23. In view of the aforesaid discussion, this Court finds that the case of the prosecution stands fully established from the consistent testimonies of PW-4 Gurdeep Singh (complainant) and PW-5 Gurmit Singh, which stand substantiated from the medical evidence. The report of FSL (Ex.PCC) establishes that the empty cartridges recovered from the spot had been fired from the gun recovered from accused. The fact that one of the

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injured/eye-witness had resiled would not affect the case of prosecution. The defence plea is far from substantiated. As such, the findings of the trial Court as regards guilt of appellant Davinder Singh do not warrant any interference and are hereby affirmed. Finding no merit in the appeal, the same is hereby dismissed.

24. As far as revision filed on behalf of the complainant seeking reversal of the findings in respect of acquittal of Gurpal Singh and Rahul Bhupinder Singh is concerned, the evidence on record would not justify reversal of the findings of acquittal, as there is hardly any credible evidence to establish their involvement in the matter. As regards prayer of the complainant for enhancement of sentence in respect of Davinder Singh is concerned, the instant case would not fall in the category of 'rarest of rare cases' so as to justify the death penalty. Consequently, the revision is found to be sans merits and is hereby dismissed.

(GURVINDER SINGH GILL)
JUDGE

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JUDGE

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

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