



CRA-290-DB-2006 and connected cases

-1-

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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

Reserved on: 07.11.2024

Pronounced on: 04.12.2024

1. CRA-290-DB-2006

DevenderAppellant

Versus

State of HaryanaRespondent

2. CRA-392-DB-2006

Phool Singh and OthersAppellant

Versus

State of HaryanaRespondent

3. CRA-421-DB-2006

Sube SinghAppellant

Versus

State of HaryanaRespondent

4. CRR-1591-2006

BhupinderPetitioner

Versus

Kartar Singh and OthersRespondents

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

Argued by: Mr. Vinod Ghai, Senior Advocate with
Mr. Arnav Ghai, Advocate
Ms. Kashish Sahni, Advocate
for the appellant(s)
(in **CRA-290-DB-2006 and CRA-392-DB-2006**).



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Mr. P.R.Yadav, Advocate
for the appellant(s) (in **CRA-421-DB-2006**).

Mr. Kapil Aggarwal, Advocate
for the petitioner (in **CRR-1591-2006**).

Mr. P.P.Chahar, Sr. DAG, Haryana.

Mr. Sushil Jain, Advocate (Amicus Curiae).
for respondent No. 7 (in CRR-1591-2006)

Mr. Anas Ahmed, Advocate (legal aid counsel)
for respondent No. 8 in CRR-1591-2006.

SURESHWAR THAKUR, J.

1. Since the criminal appeal(s) (supra) as well as the revision petition (supra), involve common questions of facts and law. Therefore, they are amenable to be decided through a common order.

2. **CRA-290-DB-2006, CRA-392-DB-2006 and CRA-421-DB-2006** are directed by the convicts-appellants, against the verdict of conviction, as made on 28.03.2006, by the learned Additional Sessions Judge, Rewari, upon, Sessions Case No. 5 of 1999/2005, wherethrough, in respect of charges drawn for offences punishable under Sections 148, 302, 324 and 323 IPC read with Section 149 of the IPC, under Section 201 IPC and Section 27 of the Arms Act, he made a finding of conviction against the accused.

3. Moreover, through a separate sentencing order drawn on 30.03.2006, the learned trial Judge concerned, proceeded to impose upon the convicts (supra) both sentence(s) of imprisonment as well as of fine, but in the hereinafter extracted manner :-



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Accused	Under Sections	Sentence	Fine	In default
Kartar Singh, Sube Singh, Phool Singh, Samar Singh, Devender	302/149 IPC	Rigorous Imprisonment for life	Rs. 2000/- each	R.I. for six months
--do--	148 IPC	Rigorous Imprisonment for one year		
--do--	324/149 IPC	R.I. for one year each	Rs. 1000/- each	R.I. for two months each.
--do--	323/149 IPC	R.I. for six months	--	--
Phool Singh, Ram Kishore and Davender	201 IPC	R.I. for four years	Rs. 1000/- each	R.I. for two months each.
Phool Singh	27 of the Arms Act	R.I. for three years	Rs. 500/-	R.I. for one month

4. All the sentences were ordered to run concurrently. However, the period of sentence already undergone by the convicts during the course of investigation and pendency of the trial, was set off against the period of sentences awarded to them.

5. The convicts-appellants become aggrieved from the above drawn verdict of conviction, besides also, become aggrieved from the consequent thereto sentences of imprisonment, and, of fine as became imposed upon them, by the learned convicting Court concerned, and hence have chosen to institute thereagainst separate criminal appeals, before this Court.



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6. Moreover, through the above drawn verdict, thus the learned trial Judge concerned, proceeded to record a finding of acquittal qua accused Naresh and Ishwanti.

7. **CRR-1591-2006** has been instituted by the complainant-Bhupinder, praying that the conviction awarded upon the accused-respondents be maintained. However, the sentence imposed be enhanced, thus in accordance with law. Further, it has been prayed therein that a heavy amount of fine may kindly be awarded and be paid as compensation to the legal heirs.

8. The further prayer therein is that respondents No. 7 and 8 may be dealt with in accordance with law, and, they be convicted under Sections 302/149 IPC and they be also sentenced accordingly.

Factual background

9. The genesis of the prosecution case, becomes embodied in the appeal FIR, to which Ex.PD/1 is assigned.

10. As per the prosecution version, on 09.09.1998, Baldev Singh, the then SI/SHO, PS Bawal alongwith other police officials were present in the area of Bawal for patrolling duty and there they received an information on the wireless set that complainant Bhupinder Singh and Nand Lal had been both admitted in CHC, Bawal after sustaining injuries in an occurrence. Immediately, he alongwith other police officials rushed to CHC, Bawal and came to know that both the injured had already been referred to Government Hospital, Rewari and after taking MLR of Bhupinder, he rushed to Government Hospital, Rewari and recorded the statement of complainant Bhupinder, who alleged that



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he was resident of village Tikla and was a student of 11th standard in school at Pranpura. On 6.9.1998 on an application preferred by one Subh Ram, a distant grandfather of the complainant, shamlat land of Bidiawala Kua was got demarcated and in the demarcation it was found that the house of accused Davender and the land under cultivation of accused Davender and Kartar were actually situated on the land of co-sharer Nand Lal and because of this, accused Davender and Kartar Singh had been nourishing grudge against Subh Ram and Nand Lal.

11. On 8.9.1998 at about 10-00 p.m. complainant Bhupinder alongwith his uncle Nand Lal and one Partap son of Dhani Ram was present in the courtyard in front of their house and they were witting on a cot. In the mean while, accused Kartar Singh with a spear, accused Samar Singh with lathi, accused Sube Singh with Jelly, accused Davender with gun and other accused Phool Singh also with gun, in furtherance of their common intention arrived there and immediately attacked his uncle Nand Lal. Accused Davender fired a shot from his gun at the back on the right side and accused Phool Singh fired another shot on the left arm of said Nand Lal. Accused Kartar Singh inflicted a spear on the right palm of the complainant, whereas, accused Samar Singh inflicted a lathi blow on the head of complainant. The other accused Sube Singh inflicted a jelly blow on the left hand of the complainant. After sustaining bullet injuries, Nand Lal became unconscious and thereafter he (complainant) as well as Partap brought the injured Nand Lal to his house. The accused Naresh and Ishwanti



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arrived there and they threw stones and brick-bats. Thereafter, complainant and his uncle Ishwar, Ex-Sarpanch and Partap arranged for a vehicle and brought said Nand Lal to CHC, Bawal where both of them were given first aid. As the condition of Nand Lal deteriorated so he was referred to Civil Hospital, Rewari where his uncle Nand Lal was given medical treatment. However, after some time, the said Nand Lal succumbed to the injuries. On the basis of aforesaid statement, FIR was got registered.

Investigation proceedings

12. After completion of investigations by the investigating officer concerned, into the FIR (supra), he instituted an affirmative report under Section 173 Cr.P.C., before the learned Committal Judge concerned.

Committal proceedings

13. Finding the offence punishable under Section 302 of the IPC, to be exclusively triable by the Court of Session, thus the learned committal Court vide order dated 23.12.1998, committed the case for trial to the Court of Session. The said case was committed against six accused namely Kartar Singh, Sube Singh, Phool Singh, Samar Singh, Naresh and Ishwanti.

14. Subsequently, supplementary challan against the other two accused namely Ram Kishore and Davender was committed by the then learned JMIC, Rewari vide order dated 23.07.1999, to the Court of Session.



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**Trial Court Proceedings**

15. On finding a *prima facie* case, charges under Sections 148, 302, 324, 323, 452 read with Section 149 IPC, 120-B IPC and Section 27 of the Arms Act became framed, against all the eight accused, to which they pleaded not guilty, and, claimed trial.

16. Since one of the accused Davender Kumar, was an army personnel and owing to exigencies of duty, he did not put in appearance before the Court, thereupon, since the trial qua him could not progress. Resultantly, vide order dated 02.07.2001, passed by the then learned Addl. Sessions Judge, Rewari, the trial qua co-accused Davender Kumar was ordered to be separated from the trial, as became entered upon other seven co-accused. Ultimately, on 24.10.2001 supplementary challan against Davender was presented before the then learned Additional Sessions Judge, Rewari and thereafter on 05.12.2001 co-accused Davender, put in appearance and he was accordingly charge-sheeted under Sections 148, 302, 324, 323, 452 read with Section 149 and 120-B IPC and Section 27 of Arms Act.

17. Subsequently, in the present case two separate trials were entered into i.e. one titled as **State Vs. Davender** and another titled as **State Vs. Kartar Singh and others**. In both the cases, prosecution witnesses were examined separately.

18. The prosecution in order to prove its case against accused Davender examined twenty seven witnesses, whereas, the prosecution



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in order to prove its case against the remaining accused i.e. Kartar Singh and others thus examined 17 witnesses.

19. Thereafter, an application under Section 311 Cr.P.C., was preferred by the prosecution with averments, that since after submission of supplementary challan against accused Davender, thus resulted in his trial becoming separated from the other co-accused i.e. Kartar Singh and others. Therefore, the prosecution witnesses in both the trials became separately examined in Sessions case titled as **State Vs. Davender** and in Sessions case titled as **State Vs. Kartar**. However, at the time of recording of the statements of the prosecution witnesses in case titled as **State Vs. Davender**, the statements of Prosecution Witnesses Nos. 21 to 26 were wrongly recorded in the said case, whereas, the statements of the witnesses (supra) were to be recorded in case titled as **State Vs. Kartar and others.**

20. Since, the counsel for the accused in case titled as **State Vs. Kartar and Others** made his no objection to the allowing of the application moved by the learned Public Prosecutor, thus with a prayer therein, that the evidence recorded in Sessions case titled as **State Vs. Davender**, be read as evidence in Sessions case titled as **State Vs. Kartar Singh and Others.** Resultantly, the said application was allowed, whereupon, the statements of witnesses **PW-21 to 26**, as recorded in case titled as **State Vs. Davender**, rather were ordered to be placed on the file of Sessions case titled as **State Vs. Kartar Singh and Others.** Consequently, the statement of PW-27, as recorded in case



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titled as State Vs. Davender was ordered to be read as PW-21, as evidence in the said case, whereas, the statements of witnesses PW-21 to PW-26, as recorded in case titled as State Vs. Davender were ordered to be read as PW-18 to PW-23 in case titled as State Vs. Kartar Singh and Others. The relevant part of the said order is extracted hereinafter.

“Sh. Amarjeet Yadav, learned counsel for accused Kartar etc. has no objection if the application is allowed. So, the statement of the witnesses PW21 to PW26 recorded in the case titled State Vs. Devender are ordered to be placed with the statement of the witnesses of the case titled State Vs. Kartar etc. Accordingly, for future reference PW-27 Inspector Baldev Singh recorded in case titled State Vs. Devender shall be read as PW21 in the case titled State Vs. Devender etc. the witness PW21 to PW26 recorded in case titled State Vs. Devender shall be read as PW18 C. Hari Kishan, PW19 SI Asim Khan, PW20 HC Ishwar Singh, PW21 HC Ashok Kumar, PW22 ASI Dharambir and PW23 HC Ishwar Singh in case titled State Vs. Kartar Singh etc. The application is accordingly allowed.

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

Submissions of the learned counsel for the convicts-appellants.

22. The learned counsel for the aggrieved convicts-appellants herein, has vigorously argued before this Court, that the impugned



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verdict of conviction, and consequent thereto sentences (supra), as imposed, upon the convicts-appellants, both become ridden with a gross mis-appraisal of evidence existing on record. Therefore, he has argued that the appeal be accepted, and, the verdict, as challenged before this Court, be quashed, and set aside.

23. He rests the said submission on the ground, that since after the making of an order on 02.07.2001, by the then learned Additional Sessions Judge, Rewari, there was separation of trial of Sessions case titled as **State Vs. Davender** from Sessions case titled as **State Vs. Kartar Singh and Others**. As such, when separate witnesses entered into the witness box in the supra separated trials. Consequently, he further argues that there was but a requirement of separate verdicts becoming passed on two separate trials, as became entered, dehors the fact that they both arose from a common FIR.

24. He further submits that the learned trial Judge, rather has untenably, thus only on the basis of an un-objected to application filed under Section 311 Cr.P.C., rather by the learned Public Prosecutor, with a prayer therein that statements of witnesses PW-21 to PW-26, as recorded in Sessions case titled as **State Vs. Davender**, have been wrongly recorded in the said case, besides the statements rendered by the witnesses (supra) have to be read alongwith the statements of witnesses in Sessions case titled as **State Vs. Kartar Singh and others**, thus made a legally infirm affirmative order thereons. In other words, the statements of witnesses PW-21 to PW-26, as recorded in Sessions



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case titled as **State Vs. Davender** were ordered to be read as PW-18 to PW-23, in Sessions case titled as **State Vs. Kartar Singh and others.** In sequel, the prosecution witnesses, who became cited to testify in Court in Sessions case titled as **State Vs. Davender** were untenably led into the witness box to testify in Sessions Case titled as **State Vs. Kartar Singh and Others.** Consequently, the effect of the said mis-steppings into the witness box of the prosecution witnesses concerned, thus, upon in a trial in respect whereof, they were not required to depose, besides the makings of joint appraisals of evidence, through an impermissible joinder of separated trials, whereafter, an impermissible common verdict became pronounced on both the trials, thus, has resulted in a gross mis-appraisal of evidence, whereby, the impugned common judgment passed on two separated trials becomes vitiated.

25. The learned counsel for the appellants submits, that therebys gross vitiation has seeped into the impugned common verdict and consequent thereto sentence(s) and as such the said is required to be cured through passing of an order, thus, quashing the impugned common verdict, whereafter, an order of remand is to be made by this Court, but with a direction to the Remandee Court to, after segregating both the Session cases, thus ensure the re-stepping into the witness box of those prosecution witnesses, who are cited to depose in the apposite Session trial besides to subsequently hear separate arguments on both the cases, and, to pass separate verdicts respectively upon Sessions case



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titled as State Vs. Davender and Sessions case titled as State Vs. Kartar Singh and Others.

26. The said submission is supported by a judgment rendered by the Apex Court in case titled as *A.T.Mydeen and Another Vs. The Assistant Commissioner, Customs Department*, to which *Criminal Appeal No. 1306 of 2021 @ SLP (Crl.) No. 374 of 2020* became assigned, wherein, the principle against impermissibility of evidence recorded in one trial being read as such, in the separated therefrom distinct trial, becomes expounded in paragraphs No. 37 to 40 of the said verdict, paragraphs whereof are extracted hereinafter.

37. Now, merely because the seven witnesses produced by the prosecution were the same in both the cases would not mean that the evidence was identical and similar because in the oral testimony, not only the examination-in-chief but also the cross-examination is equally important and relevant, if not more. Even if the examination-in-chief of all the seven witnesses in both the cases, although examined in different sequence, was the same, there could have been an element of some benefit accruing to the accused in each case depending upon the cross-examination which could have been conducted may be by the same counsel or a different counsel. The role of each accused cannot be said to be the same. The same witnesses could have deposed differently in different trials against different accused differently depending upon the complicity or/and culpability of such accused. All these aspects were to be examined and scrutinised by the Appellate Court while dealing with both the appeals separately and the evidence recorded in the respective trials giving rise to the appeals.

38. We cannot proceed on presumption and assume that everything was identical word to word. We are therefore, not inclined to accept the submission of Mr. Banerjee and in fact both the judgments relied upon by Mr. Banerjee having similar facts as the present case lay down the same proposition of law that evidence of one trial can be



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read only for the purposes of the accused tried in that trial and cannot be used for any accused tried in a separate trial. The view taken by the Calcutta High Court in 1928, expressed by Rankin, C.J., has been appropriately followed and accepted and is the correct view.

39. The provisions of law and the essence of case-laws, as discussed above, give a clear impression that in the matter of a criminal trial against any accused, the distinctiveness of evidence is paramount in light of accused's right to fair trial, which encompasses two important facets along with others i.e., firstly, the recording of evidence in the presence of accused or his pleader and secondly, the right of accused to cross-examine the witnesses. These facts are, of course, subject to exceptions provided under law. In other words, the culpability of any accused cannot be decided on the basis of any evidence, which was not recorded in his presence or his pleader's presence and for which he did not get an opportunity of cross-examination, unless the case falls under exceptions of law, as noted above.

40. The essence of the above synthesis is that evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence."

27. He further submits when in the face of the above infirmity noticed therein, which is alike to the one which exists in the case at hand, thus the Apex Court in paragraph No. 44 thereof, paragraph whereof becomes extracted hereinafter, rather after setting aside the impugned therein verdict(s), remanded the case to the Court concerned, for the purpose (supra). Resultantly, he argues that a similar order is required to be passed by this Court.

44. There is another reason why we are inclined to send back both the matters to the High Court which is fundamental. We find that the learned single Judge of the High Court has apparently not adopted the correct procedure prescribed under law and therefore, the



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judgment of the High Court needs to be set aside. Once a common judgment is set aside for one appeal, it cannot be upheld for another appeal. There cannot be a severance of the judgment particularly when it arises in a criminal case, where the rights of the accused are as important as the rights of a victim. Therefore, it would be in the fitness of things and in the interest of the parties that the matters are remanded to the High Court for a fresh decision in accordance with law and in light of the discussion and observations made above.

Submissions of the learned State Counsel

28. On the other hand, the learned State counsel has argued that the appreciation of evidence, as made by the learned Convicting Court, is merit-worthy, and, that it does not require any interference being made by this Court.

29. He further submits that since the learned counsel for the accused has made his no objection to the application under Section 311 Cr.P.C., thereby, no gross infirmity is made by the learned trial Judge in appraising against the accused rather the evidence adduced in a trial, which he did not face, despite the said evidence becoming adduced in a separated therefrom trial, nor the passing of a common verdict on two separate and distinct trials becomes vitiated.

Inferences of this Court.

30. For the reasons to be assigned hereinafter, the arguments (supra) addressed before this Court by the learned counsel for the appellant are accepted, whereas, the arguments (supra) addressed before this Court by the learned State Counsel are rejected.

31. The reason for stating so becomes aroused, from the factum that irrespective of any no objection being made by the learned



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counsel for the accused for the allowing of the Public Prosecutor's application (supra), thus with (supra) prayers made therein, which resulted in an affirmative order (supra) becoming passed thereons, yet the determination of the inculpability of the accused facing trial in a Sessions case, which was separated from the other separated trial, thus was to be made only upon:

a) The prosecution witnesses respectively cited in Session case titled as **State Vs. Davender** and in Sessions case titled as **State Vs. Kartar Singh and Others**, thus, therein alone theirs stepping into the witness box.

b) Their being an imperative necessity of separate appraisal being made of the testification(s) rendered by the witnesses concerned, but in distinct separate trials, thus through separate verdicts becoming pronounced, rather than, common verdicts becoming pronounced, despite the makings of an affirmative consensual order (supra).

c) Importantly also when the earlier passed order by the then learned Additional Sessions Judge, Rewari, on 02.07.2001, whereby, the trial qua co-accused Davender was ordered to be separated from the trial, as became entered upon other seven co-accused, rather remaining unchallenged, whereby, it acquired binding and conclusive effect. Resultantly the said was impermissible for being reviewed, even for no protest becoming made by the defence counsel to the application (supra), as filed by the learned Public Prosecutor.



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Contrarily, with the learned trial Judge while allowing the said application, whereto, no protest was made by the learned defence counsel, thus has impermissibly reviewed the earlier order dated 02.07.2001, vide which the trial in Sessions case titled as **State Vs. Davender** was separated from the trial entered qua Sessions case titled as **State Vs. Avtar Singh and Others**. The said review was reiterated grossly impermissible, whereby also the consensual affirmative order passed on 13.03.2006 upon the application filed by the Public Prosecutor under Section 311 Cr.P.C., thus becomes non-est and void. In sequel, the joinder of trials is vitiated with a gross illegality.

32. If the order (supra) became passed by the learned trial Judge concerned, and, also when adherence was made thereto by the learned trial Judge concerned, but yet the deepest fallibility which becomes ingrained in deference being made to the supra affirmative consensual order, thus also becomes aroused from the said deference rather breaching the verdict (supra) rendered by the Apex Court, wherein, the hereinafter principles becomes underlined.

a) The principle of separation of trials, thus rendering it impermissible for the learned trial Judge to yet join them.

b) Moreover, since separate reports under Section 173 Cr.P.C., became filed before the learned trial Judge concerned by the Investigating Officer concerned. Moreover, when subsequent thereto separate charges became framed in respect of the accused, by the learned trial Judge concerned, who were named in a common FIR.



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c) Furthermore, when the set of prosecution witnesses, as became so cited, to step into the witness box, thus were to be examined separately, both by the prosecution and by the learned defence counsel in two separated trials. However, when separate Sessions cases become respectively titled as **State Vs. Davender** and titled as **State Vs. Kartar Singh and Others**, whereupons, they were but to be tried separately but with separate prosecution witnesses, who became cited as such in both the cases, thus being separately led into the witness box. In other words, the above dire necessity arising from separation of apposite trials, thus becoming separately conducted, upon the accused, though named in a common FIR, but was required to be strictly adhered to by the learned trial Judge, rather than the learned trial Judge rendering the supra consensual impermissible order for the joinder of the earlier thereto separated trials, which for supra stated reasons is but naturally an impermissible review of the order dated 02.07.2001, wherebys, Sessions trial case titled as State Vs. Davender and Sessions trial case State Vs. Avtar Singh and Others became separated from each other. Resultantly, therebys gross pervasive breaches become caused to the mandate (supra), as encapsulated in the supra verdict pronounced by the Apex Court., wherein, it has been expostulated that separated trials though arising from may be a common FIR, rather cannot be joined.

33. Furthermore, the said impermissibly adduced evidence has also but become naturally mis-appraised, through the joining of trials



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and also through the passing of a common verdicts rather on two separate trials, whereto respectively Sessions case titled as **State Vs. Davender** and Sessions case titled as **State Vs. Avtar Singh and Others**, thus became respectively assigned.

Final Order of this Court.

34. For all the reasons stated above, there is merit in the appeals (supra). In consequence, **CRA-290-DB-2006, CRA-392-DB-2006 and CRA-421-DB-2006** are allowed. The impugned verdict, and, consequent therewith sentence(s) (supra), as imposed upon the convicts by the learned Convicting Court, are quashed and set aside, and, the *lis* is remanded to the trial Judge concerned, for

i) The prosecution witnesses cited in one Sessions case being permitted to step into the witness box but only in that Sessions case in respect whereof, they become so cited.

ii) Separate Sessions case number be ascribed to Sessions case titled as **State Vs. Davender** and to Sessions case titled as **State Vs. Avtar Singh and Others**.

iii) The arguments on two Session cases (supra) be heard separately.

iv) Moreover, separate judgments being pronounced on the supra separated and contra distinct Session case(s), to which respectively Sessions case titled as **State Vs. Davender** is ascribed and upon the distinct therefrom Sessions case titled as **State Vs. Avtar**



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Singh and Others but with a further direction to the learned trial Judge concerned, thus to conclude the same within a period of six months.

35. Insofar as *CRR-1591-2006*, filed by the complainant is concerned, since the impugned verdict of conviction and consequent therewith sentences have been set aside, therefore, the instant revision petition has become rendered infructuous.

36. Since the main case itself has been decided, thus, all the pending application(s), if any, are also disposed of as such.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

04.12.2024

kavneet singh

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No