

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Reserved on 17.11.2018

Date of decision : 03.12.2018

1. CRA-D No. 338-DB of 2003 (O&M)

Dharminder Kumar and another	 Appellants
versus	
State of Punjab	... Respondent

2. CRA-D No. 388-DB of 2003 (O&M)

Raj Kumar @ Vijay Kumar @ Raju	 Appellant
versus	
State of Punjab	... Respondent

3. CRR No. 1446 of 2003 (O&M)

Simerjit Kaur	 Petitioner
versus	
State of Punjab and others	... Respondents

Coram: **Hon'ble Mr. Justice Rajiv Sharma**
 Hon'ble Mr. Justice Harinder Singh Sidhu

Present Mr. Kulvir Narwal, Advocate, for the appellants
 in CRA-D No. 338-DB of 2003,
 Mr. Vikram Kumar Advocate for
 Mr. R. P. Dhir, Advocate, for the appellant
 in CRA-D No. 388-DB of 2003.

 Ms. Daljot Kaur, Advocate for
 Mr. K. S. Dadwal, Advocate, for the petitioner
 in CRR No.1446 of 2003.

 Mr. Rajesh Bhardwaj, Sr. Deputy Advocate General, Punjab.

Rajiv Sharma, J.

1. This judgment will dispose of three cases bearing CRA-D No. 338-DB of 2003, CRA-D No. 388-DB of 2003 and CRR No. 1446 of 2003, as common questions of law and facts are involved therein.

2. The aforesaid appeals and revision are instituted against the judgment and order dated 14.3.2003 rendered by Additional Sessions Judge (Adhoc), Fast Track Court, Hoshiarpur in Session case No. 48/FTC/2000/2002, whereby appellants Dharminder Kumar, Surinder Kumar alias Shinda, Raj Kumar @ Vijay Kumar @ Raju and Mukhtiar Singh @ Gogi were charged and tried for the offence punishable under Section 302/201/34 IPC. Appellants Dharminder Kumar, Surinder Kumar alias Shinda, Raj Kumar @ Vijay Kumar @ Raju were convicted and sentenced to undergo imprisonment for life under Section 302 IPC and to pay a fine of ₹ 2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month each. Mukhtiar Singh @ Gogi was acquitted.

3. The appellants in CRA-D No. 338-DB of 2003 and CRA-D No. 388-DB of 2003 were convicted and sentenced to undergo imprisonment for life and to pay a fine of ₹ 2,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for one month each.

4. Criminal Revision No. 1446 of 2003 has been preferred by Simerjit Kaur widow of Krishan Avtar deceased against the acquittal of Mukhtiar Singh @ Gogi, the fourth accused.

5. The complaint was lodged at the instance of Mehar Singh. According to him, he had taken 6-7 acres of land on *theka* in the area of village Ajowal. On 17.6.2000 at about 7.15 A. M., he had gone to his fields. He found dead body of an unidentified person with injuries on his person. Somebody had thrown the dead body in the fields. He left Harjit Singh at the spot to guard the body. He went to police station to lodge the report. FIR was registered and the matter was investigated by the police. The body was

sent for post-mortem examination. On the basis of disclosure statements made by the accused persons, recoveries were effected. The challan was put up after completion of all the codal formalities.

6. The prosecution examined a number of witnesses in support of the case. The statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. Mukhtiar Singh alias Gogi was acquitted. The appellants were convicted and sentenced, as noticed above. Hence, the present appeals and revision against the judgment and order dated 14.3.2003.

7. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State and the counsel for petitioner- Simerjit Kaur have vehemently argued that the prosecution has proved the case against Mukhtiar Singh alias Gogi as well.

8. We have heard learned counsel for the parties and gone through the record carefully.

9. According to PW2 Balbir Singh (brother-in-law of deceased Krishan Avtar), he came to see his sister Simerjit Kaur on 16.6.2000 in Nai Abadi Naloiyan. His sister told him that Krishan Avtar had gone on duty. He did not come back till about 9.00 p.m. He went in search of him. He found him sitting in the *Ahata* taking liquor with four persons. He requested his brother-in-law to accompany him to go home. He told him that he would come later on. Next day, dead-body of his brother-in-law was found. He identified the accused in the Court. PW2 Balbir Singh is the material witness. His sister Simerjit Kaur was married with Krishan Avtar. Krishan Avtar was working in Telegraph Department. PW2 Balbir Singh has also

deposed that he came at 2.00 night time and again said that he did not turn up and on the next day, his dead-body was recovered. In his cross-examination, he deposed that the accused were not identified by him before the Magistrate as the police had arrested number of persons. He came to know that the accused, who had committed the murder, were arrested on 27.7.2000. Thereafter, they were produced before the Court.

10. PW3 Lakhbir Singh has testified that on 27.6.2000, one Raj Kumar came to his fields. He made extra-judicial confession before him that he along with three other persons had committed the murder of one person. Name of that person was not disclosed. He also did not disclose the name of other three persons. Raj Kumar told him that he has some intimacy with police personnel so he should be produced before the police. PW3 took Raj Kumar to the police station but the person, who was known, was transferred. Raj Kumar told that he would come after 3-4 days, but he did not turn up. In his cross-examination, he told that he came to CIA Staff on 27.6.2000.

11. PW4 Mehar Singh deposed that he was agriculturist by profession. He had taken 6/7 acres of land on lease from one Harjit Singh. On 17.6.2000 at about 7.00 a.m., he went to his fields. He discovered one dead-body. The police was informed.

12. Dr. M. L. Puri (PW7) has conducted the post-mortem examination. He has noticed the following injuries on the dead-body:-

- “1. Reddish brown multiple abrasion all over the anterior part of neck.
2. Reddish brown contusions of variable size extending all over the face on both sides. These contusions extending towards fore-head and both temporal

region. Nose depressed and on dissection nasal bone fractured.

3. Diffused swelling 10cm x 5cm in the occipital region of scalp. On dissection huge blood collection (haematoma) present over the skull vault, extending towards left temporal region. On opening the skull, haematoma was present in the occipital region and temporal region left side. Brain membrane lacerated and subdural collection of blood clot present.
4. Multiple reddish brown abrasions were present on the anterior and posterior part of left fore-arm.
5. Reddish brown contusions were present 7cm x 3.5cm in the lower abdomen placed horizontally.
6. Reddish brown contusion 8cm x 5cm in the lower part of left chest was present. On dissection, 6th, 7th and 8th ribs were fractured and pleural cavity contained blood. Left lung lacerated.
7. Skin peeled off on the medical aspect of left leg.”

13. According to him, the cause of death was head injury leading to haemorrhage and shock, which was sufficient to cause death in ordinary course of nature. All injuries were ante-mortem.

14. PW13 Simerjit Kaur deposed that her husband was serving in Telegraph Department, Hoshiarpur. He went on bicycle on 16.6.2000 at about 1.00 P.M. She had seen the dead-body of her husband in hospital.

15. PW14 Partap Chand testified that he was holding licence of *Ahata* for serving liquor at village Naloyian. He knew Krishan Avtar, who for sometime used to take liquor at his *Ahata*. About 2 years back, Krishan Avtar came to his *Ahata* to consume liquor at about 10.00 p.m. and after taking liquor, he went away.

16. PW16 SI Tejpal deposed that statement was made before him by PW Mehar Singh. He visited the spot. Inquest report was prepared. Recoveries were effected.

17. The case of the prosecution precisely is that Krishan Avtar had gone to consume liquor. PW2 Balbir Singh requested him to come back to his house. He told Balbir Singh that he would come back soon. Thereafter, his dead-body was found in the morning. PW2 Balbir Singh has categorically stated in his statement that he had gone to bring back Krishan Avtar from the *Ahata*. He has also stated that Krishan Avtar came at 2.00 A.M. but again said that he did not come back. In case Krishan Avtar had come home, his presence could not be missed by PW Balbir Singh. Moreover, PW Balbir Singh had identified the accused for the first time in the Court. The case of the prosecution is that the accused were arrested on 2.8.2000. PW Balbir Singh in his cross-examination stated that the accused were already arrested on 27.7.2000. The alleged recoveries were made when the accused were already in the custody of the police.

18. PW3 Lakhbir Singh has been introduced by the prosecution to prove that one of the accused Raj Kumar had made extra judicial confession before him. He testified that on 27.6.2000 Raj Kumar had come to him. He took him to the police. The officer, who was known to him, was already transferred. Raj Kumar told that he would come after 2-3 days. In his cross-examination, PW3 Lakhbir Singh categorically deposed that he has not stated so in his statement recorded under Section 161 Cr.P.C. In case Raj Kumar had made extra judicial confessional statement to PW3 Lakhbir Singh, he should have informed the police or the *Pardhan* of the area. His statement does not inspire confidence. He was not a man of authority.

19. PW14 Partap Chand has not stated that the deceased had left in the company of the accused. The entire case is based on circumstantial evidence. In order to prove the case on the basis of circumstances, the chain must be complete. All the circumstances must point out conclusively towards the guilt of the accused. In the instant case, the chain is not complete.

20. PW2 Balbir Singh has deposed that Krishan Avtar came at 2.00 night time and again said that he did not turn up and on the next day, his dead-body was found in the morning. According to him, the accused were arrested on 27.7.2000. According to the prosecution, the accused were arrested on 2.8.2000. The prosecution has failed to link the accused with the commission of murder of Krishan Avtar. The accused were identified by PW2 Balbir Singh for the first time in the Court.

21. Their Lordships of the Hon'ble Supreme Court in State of H.P. Vs Lekh Raj and another, (2000) 1 Supreme Court Cases 247 have held that identification of accused for the first time in the trial is a weak evidence. Their Lordships have held as under:-

“3. Respondent 2 has been acquitted by the High Court on the ground that his identity could not be established by the prosecution at the trial. The admitted position is that the name of respondent 2 was not known to the prosecutrix and thus his name was not mentioned in the FIR. She had, in the written report lodged with the Superintendent of Police, Mandi on 11-10-1993, stated that Respondent 1 "with another person whose name is not known to the complainant intercepted the complainant from her back and gagged her mouth. They pounced upon her and made her lie down on the road and had forcible sexual intercourse with her". In her

statement before the trial court the prosecutrix admitted that she had not known Respondent 2 earlier and further that no Identification parade was conducted by the investigating agency. She further admitted having seen Respondent 2 in the Court only after the day of occurrence. How Respondent 2 was named as an accused person is a mystery shrouded with doubts which has not been properly and sufficiently explained by the prosecution. During the investigation of a crime the police agency is required to hold identification parade for the purposes of enabling the witness to identify the person alleged to have committed the offence particularly when such person was not previously known to the witness or the informant. The absence of test Identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Identification parade may also not be necessary in a case where the accused persons are arrested at the spot. The evidence of identifying the accused person at the trial for the first time is, from its very nature, inherently of a weak character. This Court in Budhsen v. State of U.P. held that the evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances the complainant or the witness came to pick out the particular accused person and the details of the part which he allegedly played in the crime in question with reasonable particularity. In such cases test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely without such or other

corroboration. Though the holding of identification proceedings are not substantive evidence. Yet they are used for corroboration purposes for believing that the person brought before the court was the real person involved in the commission of the crime. The identification parade even if held, cannot, in all cases, be considered as safe, sole and trustworthy evidence on which the conviction of the accused could be sustained. It is a rule of prudence which is required to be followed in cases where accused is not known to the witnesses or the complainant.”

22. Their Lordships of the Hon'ble Supreme Court have again reiterated in Mahabir vs State of Delhi, AIR 2008 SC 2343 that much evidentiary value cannot be attached to the identification of the accused in Court. Their Lordships have held as under:-

“15. It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in Court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in Court.”

23. In Mulla and another vs State of Uttar Pradesh (2010) 3 Supreme Court Cases 508, their Lordships of Hon'ble the Supreme Court have held that where identification of an accused by a witness is made for the first time in Court, it should not form the basis of conviction. Their Lordships have held as under:-

“42. Failure to hold test identification parade does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Where identification of an accused by a witness is made for the

first time in court, it should not form the basis of conviction.”

24. In Kunjumon Alias Unni vs State of Kerala (2012) 13 Supreme Court Cases 750, their Lordships of Hon'ble the Supreme Court have held that trial Judge will be circumspect in accepting identification of an accused by witness in Court. Their Lordships have held as under:-

“15. We have gone through the decisions referred to by the High Court and find that only Sk. Hasib is of any relevance. In that case, this Court explained the purpose of a TIP. It was observed that an identification parade is held at the investigation stage by the investigating officer for a twofold purpose: to identify the property subject matter of the alleged offence or the person concerned in the alleged offence and to assure the investigating authority that the investigation is proceeding along the right lines. For this reason, the identification parade should be held at the earliest, so that memory does not fade in the meanwhile. More importantly, however, to ensure that the identification parade inspires confidence and is fair and effective, certain precautions need to be taken. In spite of this, it was held, relying on *Vaikuntam Chandrappa v. State of A.P.* That: (Sk. Hasib case, SCC pp. 776-77, para 5)

"5... the substantive evidence is the statement of a witness in court and the purpose of test identification is to test that evidence, the safe rule being that the sworn testimony of the witness in court as to the identity of the accused who is a stranger to him, as a general rule, requires corroboration in the form of an earlier identification proceeding."

Consequently, if there is no substantive evidence against an accused, a TIP will not assist the prosecution.”

25. As far as Mukhtiar Singh @ Gogi is concerned, DW1 Dr. Prem Bharti has deposed that his eye sight was weak. No recovery was effected from him. His acquittal is upheld.

26. Accordingly, the appeals are allowed. The appellants are acquitted of the charges framed against them. The judgment and order dated 14.3.2003 are set aside. Consequently, Criminal Revision preferred by Simerjit Kaur widow of Krishan Avtar against the acquittal of Mukhtiar Singh @ Gogi, is dismissed.

27. Since the appellants are already on bail, they need not to surrender. Their bail bonds are discharged.

(Rajiv Sharma)
Judge

03.12.2018
vs

(Harinder Singh Sidhu)
Judge

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