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Date of decision : 28.08.2019

1.

Bajinder Singh @ Virender @ Chhotu
@ Chhoti

..... Appellant

versus

State of Punjab

..... Respondent

2.

Gurpreet Singh and another

..... Appellants

versus

State of Punjab

..... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR.JUSTICE HARNARESH SINGH GILL

Present : Mr. Vinod Ghai, Senior Advocate with
Ms. Kanika Ahuja, Advocate
for the appellant (s).

Mr. Sandeep Vermani, Addl. A.G., Punjab.

AJAY TEWARI, J. (Oral)

1. These are two appeals arising out of the same incident. None has been appearing on behalf of the appellants in ***CRA-D-1084-DB-2013***. On the asking of the Court Shri Vinod Ghai, Senior Advocate has very graciously accepted to appear as Amicus Curiae on behalf of the appellants. He states that since he has prepared the case on behalf of his

client i.e. Bajinder Singh @ Virender @ Chhotu @ Chhoti, he would have no problem in addressing arguments on behalf of the other appellants also.

2. In the circumstances, Shri Vinod Ghai, Senior Advocate is appointed as Amicus Curiae to assist this Court on behalf of the appellants in other connected case.

3. This order shall dispose of above mentioned two appeals. Since common questions of law and facts are involved therein, they are being decided by this common order. For the sake of convenience the facts are being taken from **CRA-D-1017-DB-2013**.

4. These appeals have been filed against the conviction of the appellants under Sections 302/307/224/225 IPC and 25 of the Arms Act in FIR No.01 dated 24.01.2010 registered at Police Station GRPs Abohar. The sentence awarded to the appellants is as under:-

Gurpreet Singh			
Offence	Sentence of imprisonment	Fine	Indefault of payment of fine
U/S 225/109 IPC	RI 02 years	Rs.1000/-	RI 01 month
U/S 302/34 IPC	Imprisonment for life	Rs.5000/-	RI 02 months
U/S 307/34 IPC	RI 05 years	Rs.2000/-	RI 01 month
Sukhpal Singh @ Gora			
U/S 225 IPC	RI 02 years	Rs.1000/-	RI 01 month
U/S 302/34 IPC	Imprisonment for life	Rs.5000/-	RI 02 months
U/S 307/34 IPC	RI 05 years	Rs.2000/-	RI 01 month
Bajinder Singh @ Virender			
U/S 225 IPC	RI 02 years	Rs.1000/-	RI 01 month
U/S 302/34 IPC	Imprisonment for life	Rs.5000/-	RI 02 months
U/S 307/34 IPC	RI 05 years	Rs.2000/-	RI 01 month

5. The above substantive sentences of imprisonment shall run concurrently.

6. As per the first information ASI Krishan Kumar, H.C. Jagtar Singh and Constable Subhash Chand were escorting appellant Gurpreet Singh who was detained in Karnal Jail to Gidderbaha in Punjab for his appearance in Court slated for 25.01.2010. The train No.3007-UP Abha Express in which they were travelling arrived at Gidderbaha Railway Station at 08.52 pm. As the train was coming to a halt shots were fired (by un-known persons as per the FIR) hitting ASI Krishan Kumar and HC Jagtar Singh. In the confusion, dark and fog they managed to take appellant Gurpreet Singh with them. HC Jagtar Singh later succumbed to the injuries. Constable Subhash Chand was the only one from amongst the police party who did not suffer any injury and immediately after the incident phoned up his police station in Karnal and got recorded a DDR exhibit PW 16/A and in that also it was mentioned that the attack had been carried out by un-known persons. Four days later he got recorded a statement under Section 161 Cr.P.C. exhibit DW 1/A and it was on this date that he introduced the other characters of this saga. As per him they had escorted appellant-Gurpreet Singh firstly from Karnal to Kaithal by bus and then from Kaithal to Narwana by another bus to catch this train. When they reached Narwana four persons came to meet Gurpreet Singh and he introduced them as Paras, Choti, Fauji and Sukhpal Singh to the police party escorting him. It would be apposite to mention here itself that this is the corner stone of the identification of the remaining appellants and is as follows :-

“x x x When we reached Narwana Railway Station

then at their four persons were reached to met Gurpreet Singh accused, whose introduction was made by Gurpreet Singh accused as his friends named ; Paras, Choti, Fauji and Sukhpal Singh and along with us were ride in the train x x x .”

7. Even while appearing to give evidence both Constable Subhash Chand, PW-1 and the injured ASI Krishan Kumar PW-3 have mentioned this assertion as the basis of the identification. There were subsequent clarifications to this identification by means of various disclosure statements suffered by the various persons who have been arrested from time to time from where the police is alleged to have come to know that Choti was appellant Bajinder Singh @ Virender and Paras was actually Vikram. Interestingly the fourth person Fauji has neither been identified nor any person been arrested or sent up to trial who may have been the fourth person. During their testimony in Court, both PW-1 and PW-3 after mentioning the source of their identification (as above) further identified the appellants in Court.

8. The first argument of learned senior counsel appearing on behalf of the appellants is that the genesis of the identification is extremely doubtful. As per him this was a very bold, well planned and sharply executed operation and it was absolutely out of character for the four persons to go and specifically meet Gurpreet Singh at the Railway Station Narwana, get introduced and expose themselves to the police party. In such a situation it would be more natural for such persons to try and ensure that they kept under the radar of the police so that they may not be identified at any stage. He has further argued that appellant

Sukhpal Singh was arrested on 01.02.2010 and there was no disclosure

from him in the entire judicial file. Appellant Gurpreet Singh was arrested on 29.01.2010 and on his disclosure the handcuffs with which he was adorned at the time of the incident was recovered. The other co-accused Paras was arrested on 21.01.2010 and on his disclosure two pistols were recovered which however have not been connected with the present case in any manner. (Ultimately Paras jumped bail and has been declared a proclaimed offender). He apparently also disclosed to the police that the person mentioned as Choti was actually appellant Bajinder Singh @ Virender who was then arrested on 21.01.2010.

9. Learned senior counsel has argued that though as many as 35 PWs appeared in the case the crucial testimony is only of eye witness Subash Chand and injured witness ASI Krishan Kumar. He has argued that if this initial story trotted out regarding the genesis of the information is discounted then also they could have been found guilty if a test identification parade (TIP) had been conducted and the two witnesses had identified them but no such thing was done and they were identified only in the Court after they had appeared on numerous dates.

10. In these circumstances, he has claimed that the involvement of appellant Bajinder Singh @ Virender @ Choti and Sukhpal Singh has not at all been established, leave alone proved beyond reasonable doubt and prays for acquittal of these two appellants on this ground. Identification first time in Court by a witness should not be relied upon unless it is corroborated by the previous identification in the TIP or any other evidence for the purpose to test the observation, grasp, memory, strength, and trustworthiness of the evidence of identification of an accused.

11. In the case of *Noorahammad and others Vs. State of Karnataka, 2016(1) RCR (Criminal) 961*, it is held that the identification of the accused by the prosecution witness for the first time after a gap of more than 2 years from the date of incident is not beyond reasonable doubt and the same should be seen with suspicion.

12. As regards appellant Gurpreet Singh it is his argument that Gurpreet Singh had set up a defense that infact before reaching Gibberbaha there was a falling out amongst the police and infact both ASI Krishan Kumar and H.C. Jagtar Singh shot at each other and he had taken the benefit of that confusion and bad lane to escape.

13. Learned State counsel has sought to defend the genesis of the identification. He has emphasized that even the best planned crimes are sometimes exposed by a silly mistake and has stated that the fact of the four accomplices having met Gurpreet Singh at the Railway Station and having been introduced by him to the police officers can not be discounted totally. As per him it could happen. Developing this argument further he asserts that once the genesis of a identification is acceptable then their subsequent identification in Court is also eminently credible. As regards Gurpreet Singh it is his case that from the sequence of events it is clear that the escape of Gurpreet Singh was a very well planned maneuver and for Gurpreet Singh to try and assert that there was a falling out between the policemen and they shot at each other is not only highly incredible but, more importantly, no such suggestion was put to either ASI Krishan Kumar or Constable Subhash Chand in this regard and therefore Gurpreet Singh can not escape his liability.

14. In our considered opinion, the arguments of both sides are too extreme. On the one hand we find ourselves in agreement with the assertion of the learned counsel for the appellants that in the backdrop of the facts which have emerged it does not stand to reason that the persons who had planned to free Gurpreet Singh from the custody of armed police would be foolish enough to expose themselves by going up to meet him at the Railway Station and for him to so conveniently introduce them to the police officers who were escorting him. It would have been a different story if after being apprehended they were subjected to a TIP. Had that happened and if ASI Krishan Kumar or Constable Subhash Chand had identified them at that TIP it would have been a different matter altogether. But nothing like this was done, for reasons best known to the police.

15. In the circumstances, their subsequent identification in Court at the time of giving evidence by these two officers-after they had appeared in the trial on so many dates-can not be given any credence. We consequently acquit appellants Sukhpal Singh and Bajinder Singh @ Virender @ Choti and direct that they be set free in case they are not wanted in any other case.

16. As regards Gurpreet Singh we find the argument of learned State counsel to be more powerful. The defense sought to be projected under Section 313 Cr.P.C. by Gurpreet Singh has to be rejected. Because neither any evidence was led thereof nor was even put to ASI Krishan Kumar or Constable Subhash Chand when they had appeared to give testimony. Once that is behind us the sequence of events and the testimony of Subhash Chand clearly reveals that Gurpreet Singh was

aware of the fact that an attempt would be made to free him from custody and was prepared for it and that is why he was able to immediately react and escape. If he was aware that an attempt would be made to flee him from the custody of three policemen one of whom was armed with a carbine and another with a service revolver it is clear that he was aware that it would be a violent attempt and that there is all probability that weapons would be used and someone could be hurt or killed and that is what precisely happened.

17. Resultantly, the appeal bearing **CRA-D-1084-DB-2013** qua Gurpreet Singh is dismissed and his conviction and sentence is maintained.

18. The appeal bearing **CRA-D-1084-DB-2013** qua appellant No.2 namely Sukhpal Singh @ Gora and appeal bearing **CRA-D-1017-DB-2013** filed by the appellant-Bajinder Singh @ Virender @ Chhotu @ Choti is allowed and both the appellants are acquitted of the charges. Personal bond/surety, if any, stands discharged.

19. Since the main cases have been decided, the pending C.M. Applications, if any, also stand disposed of.

(AJAY TEWARI)
JUDGE

(HARNARESH SINGH GILL)
JUDGE

28.08.2019

pooja sharma-I

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No