

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

(1) CRA-D-998-DB-2016 (O&M)
Date of Decision: 11.02.2020.

Manish @ Boxer and another

.....Appellants

VS.

State of Haryana

.....Respondent

(2) CRA-D-1028-DB-2016 (O&M)

Pardeep

..... Appellant

VS.

State of Haryana

.....Respondent

**CORAM : Hon'ble Mr. Justice Jitendra Chauhan and
Hon'ble Mrs. Justice Archana Puri.**

Present : Mr. R.N. Kush, Advocate,
for the appellants in CRA-D-998-DB-2016.

Mr. R.S. Dhull, Advocate,
for the appellant in CRA-D-1028-DB-2016.

Mr. Vikrant Pamboo, DAG Haryana.

JITENDRA CHAUHAN.J.

The captioned two appeals have been preferred against the common judgment dated 18.10.2016 and order dated 19.10.2016 passed by Additional Sessions Judge, Hisar, vide which the accused/appellants and their co-accused Neeraj, were convicted and sentenced as under:-

Offence	Sentence	Fine	In default
394 IPC	Imprisonment for life	Rs.25,000/-	RI for 3 years
397 IPC	RI for 7 years	--	--
25 of Arms Act	RI for 3 years	Rs.5000/-	RI for 6 months

All the substantive sentences were ordered to run concurrently.

The brief facts of the case as noticed in the judgment passed by the trial Court in paragraph No. 3 are reproduced as under:-

“3. The facts of the prosecution case, in brief, are as follows:-

“That on 1.1.2013 telephonic information was received from Police Post General Hospital, Hisar regarding the admission of Sham Lal son of Sita Ram in the hospital, upon which ASI Ranbir Singh along with other officials reached there and obtained medical ruqqa an MLR and on enquiry the doctor informed that injured Sham Lal has been taken to Sarvodaya Hospital, Hisar, for treatment by his family members. Thereafter, ASI Ranbir Singh reached Sarvodaya Hospital, Hisar and sought opinion of doctor regarding fitness of injured and injured was declared unfit to make statement. Anurag son of Sham Lal met the police party and got recorded his statement to the effect that he runs a shop of Laptop, LCDs and mobile etc. in Sector 13 Market, Hisar. On 1.1.2013 at about 6.45 PM he and his maternal cousin Ramesh son of Mahender Goal were standing on the counter inside the shop and 2-3 customers were also present there. In the mean while four young boys entered the show room, who had muffled their faces with handkerchief and they pushed the customers and demanded money from them. They were having pistol in their hands. He had a black coloured bag in which the earnings of the whole day i.e. Rs.1,50,000/- was there. His father was sitting in the cabin of the show room with Sanjiv Chaudhary. On seeing the CCTV machine his father came outside and asked them what is the matter. On this, one of those boys fired upon his father which hit below the right side shoulder of his father. His father fell down. He gave his bag to one of them. One of the boys had taken off the handkerchief from his face. Thereafter, they went away. He does not know from which vehicle they came and left.

Yogesh took his father to Jindal Hospital, Hisar and then to Sarvodaya Hospital, Hisar. The complainant requested that action be taken against the assailants.”

On completion of the investigation, challan/report under Section 173 Cr.P.C was presented in the Court. The case was committed to the Court of Session.

The accused were charge-sheeted under Sections 394 and 397 IPC and Section 25 of the Arms Act, 1959. They pleaded not guilty and claimed trial.

It is pertinent to mention here that during trial, co-accused Pardeep son of Mahesh was declared juvenile in conflict with law vide order dated 15.10.2013 and his separate challan was filed before Juvenile Justice Board, Hisar.

In order to prove its case, the prosecution had examined PW-1 Anurag Bansal, PW-2 Sham Lal, PW-3 EASI Rameshwar, PW-4 Dr. Prem Singh, PW-5 Sub Inspector Vijay Singh, PW-6 ASI Ranbir Singh, PW-7 ASI Johri Mal, PW-8 ASI Sohan Singh, PW-9 Raju Walia Dratsman, PW-10 Sub Inspector Miya Singh, PW-11 Dr. B.B. Bangar, PW-12 Constable Surender Singh, PW-13 ASI Sahib Ram, PW-14 Sub Inspector Krishan Lal, PW-15 Dr. Umesh Kalra, PW-16 Sub Inspector Phool Kumar, PW-17 Sub Inspector Gopi Chand, PW-18 Inspector Pardeep, PW-19 Sub Inspector Ranbir Singh and closed the evidence.

The statements of the accused under Section 313 Cr.P.C were recorded in which all the incriminating circumstances appearing

in the prosecution evidence were put to the accused to which the accused denied and pleaded false implication. All the accused have pleaded that no recovery has been effected from them.

No witness in defence evidence was examined by the accused.

After appraisal of evidence, the learned trial court vide impugned judgment dated 18.10.2016 and order dated 19.10.2016 convicted and sentenced the accused as narrated in the first paragraph of the judgment.

Thus, CRA-D-998-DB-2016 has been filed by accused/appellants, Manish @ Boxer and Krishan @ Lucky whereas, CRA-D-1028-DB-2016 has been filed by accused/appellant Pardeep.

It is contended by the learned counsel for accused/appellants, Manish @ Boxer and Krishan @ Lucky that no description of any accused is mentioned in the FIR. The accused are alleged to be with muffled faces except the one who was alleged to have removed the handkerchief from the face. It is further contended that accused/appellant Krishan was not identified by any of the eye witnesses at the time of trial. Even the alleged currency notes amounting to Rs.2500/- were not identified by any of the prosecution witnesses. The recovery of one pistol and two live cartridges is not a sufficient circumstance to establish presence of the accused.

It is further contended that so far as accused/appellant Manish is concerned, the recovery of Rs.3000/- is not identified to be

the robbed property. The recovery of pistol introduced by the Police cannot be believed as the bullet is allegedly recovered from underneath the skin of the victim and had not caused any internal damage to his body which indicates that the pistol was planted later on.

On behalf of accused/appellant Pardeep son of Jal Karan, it is contended that no test identification parade was conducted by the investigating officer of the case. The identity of the accused/appellant has not been proved by the witnesses.

On the other hand, it is contended by the learned State counsel that the prosecution has amply substantiated the charge against the accused from the testimonies of prosecution witnesses, the disclosure statements made by accused Manish, Krishan and Pardeep and recoveries effected in pursuance thereof. The looted money and pistols were recovered at the instance of the accused. As per report of FSL, Madhuban, Ex.PZ firing mechanisms of pistols were found in working order and further the bullet recovered from the place of occurrence and removed from the body of injured Sham Lal were fired from the country made pistols of .32 bore and .315 bore recovered from the accused. Complainant Anurag (PW-1) and injured Sham Lal (PW-2) have fully supported the prosecution version. The accused have been rightly convicted and sentenced. There is no flaw in the impugned judgment and order.

We have heard the learned State counsel and have gone through the case file very carefully.

It emerges from the record that the FIR in question was registered on 01.01.2013 with the allegations that at about 6.45 p.m., complainant Anurag along with his cousin Yogesh was present at counter of his shop then all the accused entered his shop and demanded money from him. The sale proceed of that day was in the black bag which was around 1.5 lac. Sham Lal, father of complainant, Anurag, who was present in the cabin, on seeing CCTV footage came outside the cabin and asked the boys as to what was the matter, upon which the accused fired upon him, one of which hit floor of the shop and second hit his father below the right shoulder. Father of complainant fell down on the ground and thereafter, complainant due to fear, handed over the bag with cash amounting to Rs.1.5 lakh to one of the accused. In the said process, accidentally the face of one of the boys was unmuffled and at that time the complainant had the occasion to see the face of that accused. During his deposition, the complainant minced no words in identifying the accused-appellant Manish in the Court as the same accused. PW-2 Sham Lal injured also identified three accused in the Court during trial. The injured was shifted to Jindal Hospital, from where he was brought to Civil Hospital, Hisar where he was medico legally examined and thereafter, he was admitted in Sarvodaya Hospital, Hisar where he was treated for injuries. On 22.01.2013 the accused were arrested and from their possession, pistols were recovered. The accused suffered disclosure statements regarding their involvement and got recovered part of the robbed money from the

place of concealment. They also got recovered bag containing their clothes which were worn by them on the day of occurrence. The bag was identified by complainant, PW-1 Anurag in the Court. The country made pistol of .32 bore and .315 bore which were used by accused were also recovered in FIR No.96 dated 21.01.2013 registered at Police Station Sadar, Hisar. The empty cartridges and blood lying on the roof were lifted from the spot. The lead of the bullet which was handed over by doctor of Sarvodaya Hospital, Hisar was taken into possession. One empty cartridge was also recovered. Accused Krishan got recovered Rs.3800/- and Rs.3000/- where accused Pardeep son of Jal Karan got recovered Rs.3500/- which was the stolen money. Further, accused Manish has been identified by PW-1, Anurag Bansal whereas the remaining accused have been identified by PW-2 Sham Lal-injured.

The contention raised by the learned counsel for the appellants that they have been falsely implicated, cannot accepted as gospel truth as there is no evidence of previous hostility between the parties or any motive in the complaint for false implication of the accused in the FIR. Moreover, the complainant does not stand to gain in any manner to shield the real culprits and falsely implicate some innocent persons. The place of occurrence, the identity of accused coupled with scientific evidence clearly go to establish that the accused were the perpetrators of the crime.

The identification in Court is a substantive piece of

evidence. The argument of the learned counsel for the appellants that no test identification parade was conducted during investigation, and as such the appellants deserve to be given benefit of doubt, is not tenable. Hon'ble the Supreme Court in Heera and another vs. State of Rajasthan, 2007 AIR(SC) 2425, has held as under:-

“6. As was observed by this Court in Matru v. State of U.P. (1971(2) SCC 75) identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See Santokh Singh v. Izhar Hussain (1973(2) SCC 406). The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

7. It is trite to say that the substantive evidence is the evidence of identification in Court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused

persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in Court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly 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, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigating agency to hold or confers a right upon the accused to claim, a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification should be a matter for the Courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. [See Kanta Prashad v. Delhi Administration (AIR 1958 SC 350), Vaikuntam Chandrappa and others v. State of Andhra Pradesh (AIR 1960 SC 1340), Budhsen and another v. State of U.P. (AIR 1970 SC 1321) and Rameshwar Singh v. State of Jammu and Kashmir (AIR 1972 SC 102)].”

In view of the above discussion, it is established on record that the accused/appellant were the perpetrators of the crime. The recoveries of pistols from them prove that the same were used in the commission of the crime. The robbed money has been recovered from the accused. In view of this, the prosecution has been able to prove its case against the accused beyond a shadow of reasonable doubt. Thus, there is no merit in the present appeals. The same are hereby

dismissed.

Photocopy of this order be placed on the file(s) of other
connected case(s).

(JITENDRA CHAUHAN)
JUDGE

(ARCHANA PURI)
JUDGE

11.02.2020.
SN

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