

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Joymalya Bagchi

And

The Hon'ble Justice Ajay Kumar Gupta

C.R.A. 123 of 2013

Md. Sohel @ Pintu & Ors.

-Vs-

The State of West Bengal

For the Appellant : Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. Rajdeep Majumder, Adv.
Mr. Pritam Roy, Adv.
... for appellant Pramod Singh @
Langra Pramod

Mr. Avishek Sinha, Adv.
Ms. Anasuya Sinha, Adv.
Ms. Pallavi Priyadarshee, Adv.
... for appellant Nos. 1, 2 and 4

For the State : Mr. Nuguive Ahmed, Ld. A.P.P.
Ms. Zareen N. Khan, Adv.
Ms. Trina Mitra, Adv.

Heard on : 12.12.2022, 13.12.2022,
19.12.2022 and 13.02.2023

Judgment on : 22.02.2023

Joymalya Bagchi, J.:-

1. Appeal is directed against the judgment and order dated 21.01.2013 and 22.01.2013 passed by the learned Additional District &

Sessions Judge, F.T.C.-I, Sealdah in Sessions Trial No. 5(1) 06 arising out of Sessions Case No. 3(11)05 convicting the appellants for commission of offence punishable under sections 302/34 of the Indian Penal Code and 25(1B)(a)/27 of the Arms Act and sentencing them to suffer imprisonment for life and pay a fine of Rs. 2,000/- each, in default, to suffer simple imprisonment for one year each for the offence punishable under section 302/34 I.P.C. and appellants Md. Riaz @ Natu Riaz @ Md. Siddique and Pramod Singh @ Langra Promod to suffer simple imprisonment for two years each and to pay a fine of Rs. 1,000/- each, in default, to suffer simple imprisonment for six months each for the offence punishable under section 25(1B)(a) of the Arms Act and appellants Md. Riaz @ Natu Riaz @ Md. Siddique and Pramod Singh @ Langra Promod to suffer simple imprisonment for five years each and pay a fine of Rs. 1,000/- each, in default, to suffer simple imprisonment for one year each for the offence punishable under section 27 of the Arms Act. All the sentences to run concurrently.

Prosecution case:-

2. Prosecution case against the appellants is as follows:-

One Md. Ahmed @ Bata used to reside with his wife and three minor children at 7D, Abinash Chowdhury Lane, Kolkata – 700046. Initially, Md. Ahmed @ Bata worked in a *bidi* factory. Couple of months

prior to the incident he was involved in construction work on a small plot at Punjabi Para with Md. Asfaque and Sk. Raju. The plot belonged to Wahid Murad of 63, Tiljola Road. On 08.07.2005 at 10.30 PM Bata received a phone call. Zeenat Begam @ Bharti (P.W. 3) his wife was beside him. After talking over the phone Bata looked tensed. When Zeenat enquired he responded a notorious person was demanding Rs. 50,000/-. Thereafter, they went to sleep. As children were afraid of darkness, a dim light was kept burning in the room. After sometime Zeenat heard knocking on the door. Someone was calling her husband by his name. She woke her husband up. They turned on the big light of the room. It was around 1:15 AM. Her husband opened the front door. Two persons were standing outside the door. One was of medium height and the other was comparatively tall. They were medium built. Both were wearing shirt and trousers. They dragged her husband out of the room. Her husband shouted '*save me save me*'. They shot her husband on the head. He fell down on the ground. There were 3/4 other persons. They also fired at him. Her husband lay in a pool of blood. The miscreants tried to drag her husband but suspecting he had died, they fled away. Fired cartridges were strewn on the passageway. Her neighbours assembled at the spot. She stated she could identify the appellants. Police came to the spot. She made statement to the police which was registered as Topsia P.S. Case

No. 81 dated 09.07.2005 under sections 302/34 IPC and 25(1B)(a)/27 of the Arms Act. Victim was taken to hospital where he was declared dead. Police also seized blood stained earth, fired bullets and cartridges from the place of occurrence.

3. In the course of investigation, appellants were arrested. On the showing of Md. Riaz and Pramod Singh improvised pistols were recovered. During T.I. Parade Zeenat Begum identified the appellants. Ballistic expert P.W. 14 opined that the bullets and the cartridges seized and/or recovered from the body of the deceased could be fired from improvised pistols. Sanction was obtained from the appropriate authority and charge sheet was filed.

4. Charges were framed under section 302/34 against the appellants. Charges under sections 25(1B)(a)/27 of the Arms Act were also framed against Riaz and Pramod. Appellants pleaded not guilty and claimed to be tried.

5. In the course of trial, prosecution examined 24 witnesses and exhibited a number of documents. Defence of the appellants was one of innocence and false implication. It is their specific defence that there was no electricity in the premises. To probabilise this defence they examined D.W. 1, an officer of Calcutta Electric Supply Corporation.

6. In conclusion of trial, the trial Judge by judgment and order dated 21.01.2013 and 22.01.2013 convicted and sentenced the appellants, as aforesaid.

Prosecution evidence:-

7. P.W. 3, Zeenat Begam is the most vital witness. She deposed she used to reside with her husband Md. Ahmed @ Bata and three minor children at 7D, Abinash Chowdhury Lane, Kolkata – 700046. Their room was on the second floor. There was a staircase in the building with a corridor on each floor. On two sides of the corridor there are four rooms each. Lights were fitted on staircase of corridor including entrance of each room. In the evening usually lights on the staircase were switched on. Her husband was an employee of a *bidi* manufacturing company. Subsequently, he got involved in promoting business. On 08.03.2005 around 10.30 PM her husband received a phone call. Thereafter, he became tensed. On query, he stated that the caller was a dangerous person and had demanded Rs. 50,000/-. Thereafter, they went to sleep. They switched off the main light but kept a dim light burning. Around 1:00 AM she heard someone calling her husband by his name and knocking at their door. She woke up and told her husband to look into the matter. Her husband switched on the main light and opened the door. She saw two persons from the main light of their room and the light in

the corridor. They dragged her husband into the corridor and shot at him. 3/4 persons were standing on the landing space of the staircase. They also fired at him. They tried to drag her husband but suspecting he was not alive, they fled. She shouted for help. Hearing her shout, the other flat owners came to the spot. One Rocky who was her *dharmabhai* also came to the spot. Police arrived at the spot. She made statement to police. She proved her signature on the statement. Police seized articles at the spot. She handed over the mobile phone of her husband. She identified the appellants in jail. She described the physical attributes of the appellants. In cross-examination, she stated there was no electric meter standing in her name. The scar marks were not present on the appellants when she identified them in jail.

8. P.W. 4, Salim Ahmed is a resident of the second floor of the building. He deposed family of Bata used to reside on the said floor. Hearing the cries of Zeenat, he came out and found body of Bata lying in front of his door. He resiled from his statement before the police and was declared hostile. He, however, identified the signatures on the seizure list prepared by police. In cross-examination by defence he stated there was no fusion of light in the corridor of the building.

9. P.W. 11, Md. Mustafa is a neighbour. Hearing the news, he reached the house of Bata. He found the lights were burning on the

staircase. Bata was lying in a pool of blood. Zeenat and others were at the spot. She was crying. Police came to the spot. Photographer took photograph. He identified the photographs. In cross-examination he stated he did not tell the police lights were burning in the corridor.

10. P.W. 15, Md. Jahangir is an occupant of the second floor of 7D, Abinash Chowdhury Lane. He deposed though there was no direct electric connection in the premises, electricity was drawn to the premises from another building. Voltage used to be low. There was no electricity outside his room. He also stated on 08.07.2005 an incident occurred in the house. There was a knock on his door. He switched on his torch. He was declared hostile and was cross-examined with regard to his earlier statement to police. He, however, admitted his signature on the seizure list prepared by police.

11. P.W. 16, Sk. Imtiaz is another occupant of 7D, Abinash Chowdhury Lane. He was declared hostile. He was cross-examined with regard to his previous statement to police. He deposed there was no electric arrangement in the corridor and staircase of the room.

12. P.W. 10, Arunava Sengupta is an employee of CESC Ltd. He deposed there was no interruption of power supply at 7D, Abinash Chowdhury Lane and its surrounding locality at the relevant point of time.

13. P.W. 5, Wahid Murad is the owner of the plot of land at 47/A, Tiljola Road, Panjabipara. He deposed Bata, Raja, Asfaque had entered into a verbal agreement with him for making construction to the said site.

14. P.W. 21, S. Alam deposed SIM card purchased in his name was used by Md. Ahmed @ Bata.

15. P.W. 9, Samar Kumar Das was attached as ASI in Topsia Police Station. On 08.07.2005 at 2:00 hours he received a telephone call from an unknown person stating there was firing at Mahendra Chatterjee Lane. He informed the matter to the duty officer M.M. Chatterjee and diarized the fact resulting in General Diary Entry No. 623 dated 08.07.2005.

16. P.W. 18, S.I. Murari Mohan Chatterjee was on night patrol duty. Upon receiving information, he proceeded to the spot. He found street lights were glowing in front of the premises. The premises were a four storied building. He went to the second floor. He found there was light on the staircase. He found one person lying in a pool of blood wearing a *lungi*. One woman was crying. He found empty cartridges and two bullet heads on the floor. He found a hole on the western side of the wall. Superior police officers came to the spot. Photographer took photograph of the place of occurrence. Body was removed to NRS Medical College & Hospital where the doctor declared him dead.

17. P.W. 12, Dr. Bibhas Halder examined the body of Md. Ahmed at NRS Medical College & Hospital. He deposed the patient was brought dead. He proved the report (Exhibit – 21).

18. P.W. 17, Subrata Kumar Jha attached to Entally Police Station held inquest over the body of the deceased at NRS Medical College & Hospital (Exhibit – 20).

19. P.W. 13, Dr. Samar Singha Das held post mortem over the body. He found five lacerated injuries and three gunshot injuries on the deceased. He recovered two bullets from the body of the deceased (Material Exhibits – VIII and IX). He opined the gun shot injuries are sufficient to cause death in ordinary course of nature. Victim was fired at a close range. The lacerated injuries were due to fall on hard surface after receiving gunshot injuries. He proved the post mortem report (Exhibit – 22).

20. P.W. 1, Bikash Ch. Majee is the plan maker. He visited the house. He prepared rough sketch map (Exhibit – 1). On the basis of the rough sketch map, a final sketch map was prepared (Exhibit – 2). He deposed the room on the Northern Side of Md. Kamal belonged to the deceased. The square space marked 'cot' denotes a wooden cot and one point 'F' and two other points 'LL' denotes the bulbs and one fan. He also deposed in the corridor there are points marked by 'L' indicating bulb

point. In cross-examination, he admitted there was no light fitted just outside the door of Md. Bata. There is also no existence of 'L' or 'LP' at the entrance of 7D, Abinash Chowdhury Lane.

21. P.W. 2, Sandip Coomar is the photographer who took photographs of the place of occurrence.

22. P.W. 19, Mintu Mallick conducted T.I. parade in respect of the appellants. He deposed on 03.08.2005, he held T.I. parade in respect of Md. Sohel. Identifying witnesses were Md. Hasnian and Golam Mostafa. On 22.08.2005, he again held T.I. parade in respect of Md. Sohel @ Pintu. Identifying witness was Zeenat Begam (P.W. 3). P.W. 3 identified Md. Sohel. He proved his report (Exhibit – 37). On 03.10.2005, he held T.I. parade in respect of Md. Riaz, Pramod Singh, Md. Jaffar and Uttam Routh. Identifying witnesses were Zeenat Begum and Md. Hasnain. P.W. 3 identified them. He proved the reports (Exhibits – 39 and 40). In cross-examination, he admitted right leg of Pramod is polio affected. With regard to the cut marks on the face and body of the appellants, he stated that he had noticed the cut and other marks on their body at the time of deposition and not at the time of T.I. examination.

23. P.W. 22, Giasuddin Mondal is the first investigating officer. He went to the place of occurrence. He found the body of Md. Ahmed lying in a pool of blood. He was wearing a black and blue check *lungi* and black

and white check *gamcha* (wrapper). He found two empty cartridges and two bullet heads at the place of occurrence. He found semi circular mark on the cemented floor. He found Zeenat Begam was crying at the spot. He recorded the statements of Zeenat (Exhibit – 42). During investigation, he recorded statements of witnesses under section 161 Cr.P.C. He took photographs of the victim at the place of occurrence. Body of the victim was removed to NRS Medical College & Hospital. He seized empty cartridges and bullet heads from the place of occurrence. He prepared seizure list (Exhibit – 9). He identified the bullet heads and the cartridges in Court. He seized the mobile phone of the deceased from Zeenat. On 13.07.2005, he handed over the investigation to P.W. 23, Sukanta Bhowmik.

24. P.W. 23, Sukanta Bhowmik was attached to Homicide Squad under DD, Lalbazar. During investigation, he interrogated Md. Sohel @ Pintu who was in custody in another case. Thereafter, he was shown arrested in the present case. On 23.09.2005, he interrogated Md. Riaz, Pramod Singh and Md. Jaffar who were arrested in another case. He made prayer for showing the arrest in the present case. On 24.09.2005, Md. Riaz made a disclosure statement (Exhibit – 45/1) as follows:-

“I will be able to show police the place where I had kept concealed the fire arm which I used in the commission of the above noted crime if I am taken by police.”

Pursuant to such statement Md. Riaz took the police to railway crossing near Gobra burial ground. A number of people assembled at the spot. Md. Riaz brought out a polythene packet and handed it over to him. In presence of witnesses, an old improvised single shooter pistol was recovered from the packet. He seized the articles under a seizure list (Exhibit – 46). He sealed and labelled the fire arm. He identified the fire arm (Material Exhibit – IV). Pramod Singh also made a disclosure statement (Exhibit – 46/1):-

“I will be able to show the place where I had kept concealed the fire arm which I used in the commission of the above noted crime if I am taken by police.”

Thereafter, Pramod took police to Kantapukur near Dhobiatola CPT Quarter. He brought out a black coloured polythene packet from under a cemented slab. An improvised single shooter fire arm was seized. He seized the fire arm under a seizure list (Exhibit – 47). He forwarded the accused persons for T.I. parade examination. He sent the seized articles and other items including the wearing apparels for FSL and ballistic examination. He collected post mortem and ballistic report. He also collected report from CESC Limited. He obtained sanction from Commissioner of Police and submitted charge-sheet.

25. P.W. 7, Md. Azad is a witness to the recovery of the fire arms, on the showing of Riaz. He proved the signature on the seizure list. He also identified the said appellants. Upon being recalled after about a year for

cross-examination, the witness however did an U-turn and stated he had not seen the fire arms or Riaz previously. He admitted he was a witness in a police case 7/8 years ago.

26. P.W. 8, Laxman Bin deposed regarding recovery of fire arms on the showing of Pramod Singh. He proved his signature on the seizure list. On the day of his examination, he was unable to identify Pramod. Subsequently, he identified Pramod and stated he had denied to identify the said accused earlier out of fear.

27. P.W. 14, Pranab Kumar Ghosh, Senior Scientific Officer proved the FSL and Ballistic reports. P.W. 20 proved the sanction.

28. D.W. 1, Sraboni Seth another employee of CESC Ltd. examined on behalf of the defence deposed electric connection was given to premise No. 7D, Abinash Chowdhury Lane in August 2007.

Zeena Begam (P.W. 3) the sole eye-witness – whether reliable:-

29. Zeena Begam (P.W. 3) is the wife of the deceased Md. Ahmed @ Bata. She is the sole eye-witness. Incident occurred at 1:30 AM in the night between 8/9th July, 2005. She was sleeping with her husband and minor children. Earlier in the night around 10:30 PM her husband had received a threatening phone call. He confided in her that the caller had demanded Rs. 50,000/-. It may not be out of place to record that her husband had taken up a promoting job at a nearby plot. While they were

asleep a dim light was burning in the room. At 1:30 AM she heard a knock on the door. She called her husband and asked him to enquire. When he opened the door, she saw two persons were in front of the door. They dragged her husband out of the room and shot at his head. 3/4 persons were standing on the landing. They also shot at her husband. Thereafter, they fled.

30. Mr. Basu, Senior Counsel and Ms. Sinha for the appellants submitted P.W. 3 is not a reliable witness. She is a lying witness and could not have seen the miscreants. There was no electricity in the house. Motive to commit the crime is a made up story. Her description of the appellants in FIR is at variance to her deposition in Court. Her identification during TI Parade is also doubtful.

31. On the other hand, Mr. Ahmed submitted Zeenat Begam is a truthful witness. She saw the incident and identified the appellant both in the course of the TI Parade and in Court. Her deposition is corroborated by other witnesses.

32. When a case is based on a sole eye-witness version, it is the duty of the Court to shift the evidence of the said witness and examine whether witness is:- (a) wholly reliable; (b) wholly unreliable or (c) partly reliable and partly unreliable. In case the witness is wholly reliable, the prosecution case would succeed but if she is unreliable, the same ought

to fail. In the case witness is partly reliable and partly unreliable, the Court ought to look for corroboration before recording a conviction on her version.¹

33. Let me analyse the evidence of Zeenat Begam (P.W. 3) with regard to various aspects of the case and see whether her evidence is reliable and corroborated by other evidence on record.

(i) Place and time of occurrence:-

34. Zeenat Begam deposed incident occurred at 1:30 AM in the night of 8/9th July, 2005. They used to reside on the second floor of 7D, Abinash Chowdhury Lane, Kolkata – 700046. On the fateful night she was sleeping with her husband and three minor children in the room. At 1:30 AM she heard a knock on the door. She woke up and told her husband to open the door. Thereafter, her husband was shot by the miscreants. He fell down in the corridor laying in a pool of blood. She raised hue and cry. Soon after the incident P.W. 4, a neighbour, P.Ws. 11, 15 and 16 (other residents of the premises) came to the spot. Some of these witnesses were declared hostile. But they admitted Zeenat Begam's husband Md. Ahmed was lying with bleeding injuries in front of the room. P.W. 18, S.I. Murari Mohan Chatterjee also came to the spot. He found the deceased lying in a pool of blood wearing a *lungi*. He found Zeenat crying at the spot. He also found empty cartridges and two bullet heads

¹Vadivelu Thevar vs. State of Madras, AIR 1957 SC 614

on the floor. He noticed a hole in the wall. P.W. 22, Giasuddin Mondal, first investigating officer seized blood stained earth, empty cartridges and two bullet heads from the place of occurrence under a seizure list. P.Ws. 4 and 15 admitted their signatures on the seizure list. Evidence of the aforesaid witnesses corroborate the eye-witness Zeenat Begam with regard to the fact that her husband was shot dead in front of her room by miscreants at 1:30 AM on the 8/9th July, 2005.

Cause of death:-

35. P.W. 13, Dr. Samar Singha Das found three gunshot injuries on the deceased. He also noticed other lacerated injuries. He proved the post mortem report (Exhibit - 22). He recovered two bullets from the body of the deceased. He opined gunshot injuries are sufficient to cause death in ordinary course of nature. Victim had been fired at close range. He further opined lacerated injuries were due to fall on hard surface after receiving gunshot injuries. The aforesaid medical evidence corroborates ocular version of Zeenat Begam (P.W. 3) with regard to the manner in which her husband was murdered. Zeenat deposed when her husband opened the door two persons dragged him out of the room. They shot at him. 3/4 other persons were standing at the landing. They also shot at him. As a result, he fell down in the corridor laying in a pool of blood. They tried to drag his body but noticing he had died they fled. Post

mortem doctor noted gunshot injuries on the body of the deceased. He also noted the lacerated wounds which were caused due to fall as well as dragging of the body. Cause of death as per the eye-witness is established through medical evidence.

Identification of the appellant by Zeenat Begam (P.W. 3):-

(a) Light at the place of occurrence:-

36. It is contended there is no light at the place of occurrence. In this regard reference is made to the evidence of Zeenat who admitted there was no electric meter in her name or that of her husband. Learned Counsel also referred to D.W. 1 who stated electric connection was given to the premises in August 2007 i.e. after the occurrence. They also referred to the evidence of hostile witnesses i.e. P.Ws. 15 and 16 who stated there was no electricity in the corridor or staircase in front of the room. Reference was also made to the deposition of the plan maker P.W. 1 who did not find an electric bulb connection in front of the room of the deceased.

37. Evidence on record shows the premise bearing no. 7D, Abinash Chowdhury Lane is a four storied building. Each of the floor was occupied by various residents. One of the rooms on the second floor was occupied by the deceased Md. Ahmed and his family. P.W. 11, a resident of the said floor candidly admitted they had obtained electric connection in the

house from another premises. P.W. 1, plan maker noted two electric bulb connections and one fan connection inside the room of Md. Ahmed. He also noted electric bulb connection in the corridor. In view of the aforesaid materials on record it is absurd to conclude that a four storied building occupied by a large number of residents having multiple electric bulb connections at various places had no electricity. Electric connection to the building was not a lawful one. It had been obtained illegally from another premises. Two electric bulb points in the room of Mr. Ahmed and electric bulb point in the corridor are noted by the plan maker, P.W. 1. P.W. 10, an officer by Calcutta Electric Supply stated there was no disconnection of electricity in the locality at the material point of time. These circumstances corroborate the version of Zeenat Begam (P.W. 3) that she had seen the miscreants in the glow of the big light which had been switched on in the room as well as in the light of the corridor. Ambient light from the said bulbs were sufficient for her to identify the appellants.

(b) Identification by Zeenat Begam during TI parade and in Court:-

38. Learned Counsels submitted identification by Zeenat Begam (P.W. 3) during TI Parade as well as in Court is doubtful. The description of the two miscreants who dragged out Md Ahmed in FIR and in Court are contradictory. One of the appellants Pramod Singh was lame in one leg. This fact is not noted in the FIR. There were scar marks on the faces and

bodies of other appellants. No precaution was taken by Magistrate (P.W. 19) during TI Parade examination to cover up the lameness or the scar marks on the appellants.

39. There was delay in holding TI parade examination. Md. Sohel was arrested on 14.07.2005. He was remanded to police custody till 28.07.2005. On 28.07.2005 prayer was made for TI Parade examination. Date was fixed by the Court for TI parade examination on 03.08.2005. Notice was given to Zeenat Begam (P.W. 3), one Md. Hasnian and Golam Mostafa (P.W. 11). Due to illness Zeenat could not attend the TI Parade examination on 03.08.2005. Report of the said examination was produced in Court (Exhibit - 35). After she recovered, on 08.08.2005 another prayer was made for TI parade examination of Md. Sohel. Court fixed the date on 22.08.2005. On that day Zeenat Begam identified Md. Sohel. Magistrate proved the report (Exhibit – 37).

40. On 23.09.2005 the other appellants, namely, Pramod Singh, Riaz and Zafar were arrested. On the prayer of the investigating agency TI parade was held on 03.10.2005. Zeenat Begam identified the said appellants. TI parade report produced in Court (Exhibit – 39).

41. Identification during TI parade is not substantive evidence. Its purpose is to corroborate the identification of the accused by the witness in Court. There is no hard and fast rule with regard to the time frame

within which a TI parade is to be conducted. It is expected the examination must be conducted at the earliest. Delay, if any, must be explained through cogent materials to rule out any foul play. There is a delay of over a month in the TI parade examination of Md. Sohel. However, the delay is duly explained. Md. Sohel was in police custody for a fortnight i.e. till 28.07.2005. Thereafter, prayer was made for TI parade examination which was fixed on 03.08.2005. While other witnesses attended TI parade, no notice could be served upon Zeenat Begam as she was unwell. This fact has not been disputed by the defence. Immediately upon her recovery on 08.08.2005 another prayer was made for holding TI parade examination of Md. Sohel. The Court fixed date for examination on 22.08.2005. Zeenat identified Md. Sohel on that date. From the narration of events it is evident due to illness of the witness she was unable to attend the first examination held on 03.08.2005. Upon her recovery on 08.08.2005 another prayer was made for TI parade examination. Court fixed date for examination on 22.08.2005. Delay in TI parade examination was due to illness of the witness and the date fixed as per the convenience of the Court. This would not cast an aspersion on the investigating agency that it intentionally delayed the TI parade examination of the accused so as to erode its credibility.

42. Other appellants were arrested on 23.09.2005 and the TI parade was held on 03.10.2005 i.e. within 10 days of their arrest. Hence, TI parade examination cannot be said to be unreliable on the ground of unexplained delay.

43. Judicial Magistrate (P.W. 19) who held the TI parade examination deposed he had taken all precautions while conducting the said examination. It is contended Pramod is lame in one leg. No effort was made to cover up this deficiency. P.W. 3 did not state this fact in FIR or before investigating officer. Hence, his identification Court or during TI parade is doubtful. One of the legs of Pramod Singh is polio affected. It is thinner than another leg. During the incident as well as TI parade examination Pramod was wearing trousers. The thinness of the polio affected leg could not have been noticed because of the aforesaid wearing apparel. It is contended Pramod walks with a limp. This fact ought to have been noticed by P.W. 3 and recorded in the FIR during investigation. P.W. 3 is the wife of the deceased. Incident occurred in the middle of the night. Though she noted the stature, complexion and height of two of the appellants who dragged out her husband (one of whom being Pramod), it is possible due to the suddenness of the event and the firings at her husband she was distracted and missed out the gait of Pramod Singh.

44. She described the two miscreants in the FIR as medium built, one taller than the other. She also stated one was fairer than the other. Her description in the FIR fits the actual physical features of Riaz and Pramod. Her description in the FIR is doubted as she stated in Court both the assailants were of black complexion. However, in another part of her deposition she clarified that Riaz was of fair complexion. Deposition of a witness has to be read as a whole. A stray sentence cannot be picked up of a context to create a semblance of contradiction. In the FIR Pramod and Riaz have been described as persons of medium built, one of whom was taller than the other. One was fairer in complexion to the other. These attributes recorded in the FIR as per P.W. 3. do not run counter to the physical attributes of the appellants who were present in Court. A stray observation that both the assailants were of black complexion does not erode the credibility of their identification in Court.

45. It is also argued the appellants had scar marks on their faces and bodies. They could have been identified by those marks. No steps were taken by the TI parade Magistrate to cover up the identifying marks. This argument has little substance. Both the identifying witness (P.W. 3) as well as TI parade Magistrate (P.W. 19) stated that the scar marks on the faces or on the bodies of the appellants are noted by them for the first

time in Court. These marks were not present during TI parade examination cannot be said to be based on marks on their bodies.

46. Quality of identification depends on the ability of the witness to recollect the physical attributes of the appellants and report the same at the earliest opportunity. P.W. 3 disclosed the physical attributes of Riaz and Pramod in the FIR. Her failure to note that one of the legs of Pramod was polio affected and was thinner than the other is of little substance as Pramod was wearing trousers and the legs were covered. She had ample opportunity to see the appellants when they fired at her husband at close range. As discussed above, light in her room as well as in the corridor gave sufficient luminescence for identification. Electricity had been obtained in the house albeit unlawfully from an adjoining premises. Identification of the appellants by P.W. 3 in Court is credible and cannot be faulted.

Recovery of improvised firearms on the disclosure statement of Md. Riaz and Pramod:-

47. P.W. 23, Sukanto Bhowmik deposed Pramod during investigation stated he would be able to show where the firearms were concealed which was used for committing the crime. He recorded the statement as Exhibit 46/1. Pursuant to the said statement Pramod took the police to Dhobiatola CPT Quarter. He brought out a black coloured polythene packet containing an improvised single shooter firearm from a

drain covered by a cemented slab. P.W. 23 seized the firearm under a seizure list (Exhibit 47). P.W. 8, Laxman Bin is an independent witness who proved the recovery on the showing of Md Riaz. He proved his signature on the seizure list. Initially, he was unwilling to identify the accused. Subsequently, during re-examination he identified Pramod. He stated he had not identified the appellant earlier out of fear.

48. Similarly, Md. Riaz on interrogation made a disclosure statement to P.W. 23 which was exhibited as Exhibit – 45/1. Pursuant to the statement on 24.09.2005 Riaz took P.W. 23 to the railway crossing near Gobra burial ground. From under an old railway stag Riaz brought out a polythene packet containing an improvised single shooter revolver. P.W. 7, Md. Azad is the independent witness to the seizure. He has identified his signature on the seizure list. He also identified the appellants in Court. Initially, examination of the witnesses was closed as the defence lawyers were absent. The said witness was recalled for cross-examination after one and half years. Upon being recalled, the witness did a volte face and refused to support the prosecution case. The manner in which the cross-examination was deferred leaves a brooding doubt in the mind of this Court that the witness was won over in the meantime. Earlier, the defence lawyers had absented themselves and the Court was constrained to discharge the witness. After a lapse of more than a year

the witness was recalled for cross-examination. This gave opportunity to win over the witness. During cross-examination the witness resiled from his deposition- in-chief. In ***Vinod Kumar vs. State of Punjab***² the Apex Court sounded a note of warning and observed delayed cross-examination of witnesses gives opportunity to win over such witnesses. The Court deprecated the practice of adjournment during examination of witnesses. The pernicious impact of delayed cross-examination is self-evident from the manner in which P.W. 7 resiled from his deposition in chief, as aforesaid. In such situation it is the duty of the Court to shift the evidence and rely upon such portions which appear to be convincing and reject the rest. Hence, I choose to give little credence to the inconsistent stance taken by P.W. 7 in the course of his delayed cross-examination.

49. From a pragmatic assessment of the evidence on record, I hold recovery of the improvised pistol on the disclosure statement of Riaz and Pramod has been proved beyond doubt.

Report of Arms / Ballistic Expert:-

50. P.W. 14, Pranab Kumar Ghosh is the senior scientific officer. He deposed he received various articles including two improvised firearms, empty cartridges, bullets recovered from the place of occurrence. He also deposed he received a packet containing two bullets from NRS Hospital. He opined the barrels of the improvised firearms, namely, Exhibits 'M'

² (2015) 3 SCC 220

and 'N' bore traces of firing showing they had been used earlier. They were in working condition. Irregular scratch marks on one of the bullets Exhibit – K1 (obtained from NRS Hospital) matched with the scratch marks on the test fired bullets, Exhibits B24 and B25 which had been fired through Exhibit 'M', i.e. one of the improvised firearms. Similarly, scratch marks on Exhibit 'C' (a soft nosed bullet recovered from the place of occurrence) matched with the test fired bullets Exhibits B 23 and B 25 fired through Exhibit 'N', i.e. the other improvised firearm.

51. From the aforesaid findings it was concluded that bullets marked 'K1' and 'C' were fired from the improvised pistols marked 'M' and 'N' respectively. The reports were duly proved. The aforesaid report showed the bullets recovered from the body of the deceased and also from the place of occurrence had been fired from the improvised pistols recovered on the showing of Riaz and Pramod Singh. Absence of bullet marks on the *lungi* or wrapper does not improbabilise the prosecution case. Injuries were noted on the head and chest of the victim. *Lungi* is worn on the lower part of the body and the wrapper is generally kept around the shoulder. Two of the bullets were found lodged inside the body. As a result no singeing or bullet holes were found on the *lungi* or wrapper.

Conclusion:-

52. Analysis of the evidence on record shows the murder was committed by the appellants in the presence of P.W. 3. She is an eye-witness and has identified the appellants during TI parade as well as in Court. Her evidence is corroborated by other evidence on record including medical evidence, recovery of firearms and the arms expert/ballistic expert's report which shows the bullets retrieved from the body of the deceased and the place of occurrence were fired from the improvised pistols recovered on the showing of two of the appellants, namely, Riaz and Pramod. Evidence on record establishes the guilt of the appellants beyond doubt.

53. In the light of the aforesaid discussion, conviction and sentence of the appellants are upheld.

54. The appeal is accordingly, dismissed.

55. Period of detention suffered by the appellants during investigation, enquiry and trial shall be set off from the substantive sentence imposed upon him in terms of Section 428 of the Code of Criminal Procedure.

56. Let a copy of this judgment along with the lower court records be forthwith sent down to the trial Court at once.

57. Photostat certified copy of this judgment, if applied for, shall be made available to the appellant upon completion of all formalities.

I agree.

(Ajay Kumar Gupta, J.)

(Joymalya Bagchi, J.)

PA