

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

CRA S-1524-SB of 2004 (O&M)

Reserved on:-11.01.2023

Date of Decision : 17.01.2023

Prem Chand

...Appellant

Vs.

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. T.K. Gupta, Advocate for
Mr. K.K. Yogi, Advocate
for the appellant.

Mr. Rajinder Kumar, DAG, Haryana.

N.S.SHEKHAWAT, J

The present appeal is directed against the judgment of conviction dated 03.06.2004 and order of sentence dated 04.06.2004 passed by the learned Additional Sessions Judge, (Fast Track Court), Bhiwani, whereby, the appellant was convicted for the offences punishable under Section 341 and 307 of IPC and was sentenced to undergo simple imprisonment for fifteen days under section 341 IPC. He was also sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1000/- under Section 307 IPC alongwith default stipulation.

The brief facts of the case are that on receipt of the information from General Hospital, Bhiwani, on 25.01.2003 regarding admission of injured Naresh Kumar son of Kanshi Ram, the police officials reached there and found that Naresh Kumar had suffered firearm injuries and had already been referred to P.G.I.M.S., Rohtak. SI Balwant Singh collected the MLR of Naresh Kumar and parcels

containing the clothes of Naresh from General Hospital, Bhiwani, and went to P.G.I.M.S., Rohtak for recording the statement of Naresh, injured, who was found to be unfit for statement. SI Balwant Singh found Jai Parkash, brother of injured Naresh Kumar and he recorded his statement. Jai Parkash stated that Naresh Kumar was his younger brother and was married to Meena daughter of Subhram about four years back, but he had divorced Meena after some time. About one year back, Naresh Kumar married to Suman Devi daughter of Jagmal. Suman Devi was earlier married Karan Singh son of Ran Singh (accused) and divorce had taken place between Suman Devi and Karan Singh. About 09 days ago, Suman Devi had gone to her parental house at village Jui. On 25.01.2003, Naresh Kumar @ Billu, injured had gone to village Jui to bring Suman Devi back. Naresh Kumar and Suman Devi reached Loharu and Jai Parkash was also present in Loharu due to some personal work and they met at Bus Stand Loharu. All three of them hired a Maruti car, 1000CC, bearing registration No. HR16-B-6898 driven by Devender Singh for going their village. At about 3.00 p.m., on 25.01.2003, they were on their way to their village, one Armada vehicle way laid their car. Naresh Kumar, injured, and the driver were in the front row whereas the complainant and Suman Devi were sitting on the back seats of the car. All of a sudden, two young persons armed with pistols alighted from Armada and one of them Karan Singh son of Ran Singh (accused),

who were known to the complainant earlier and he could identify them, if brought before him, who was of weak physique, slim and was of blackish complexion. Both the accused forced the complainant and driver Devender Singh to come out of the car at pistol point and Karan Singh fired a shot at Naresh Kumar with an intention to kill him after opening the front left window of the car and the fire shot hit him on his left shoulder. Another person fired shot from the driver seat side, which hit on the right side of his brother Naresh and his brother fell down in the car. Karan Singh again fired the shot which hit on the shoulder and near the back of his brother. The other person also fired another shot, which did not hit his brother and went over the car. Both the assailants remarked that it was done due to marriage of Suman Devi with Naresh. The complainant, Suman Devi and driver Devender Singh raised the noise to save them and certain persons present in the fields reached there and on seeing them Karan Singh and unknown person fled away in the Armada vehicle. Naresh Kumar, injured was shifted to Loharu in the same vehicle and after arranging for vehicle at Loharu they took him to General Hospital Bhiwani from where he was referred to P.G.I.M.S., Rohtak.

After necessary investigation, on 08.05.2003, SI Gagan Singh joined Prem Chand, present accused/appellant in the investigation of the case. Prem Chand suffered a disclosure statement Ex.PO and led the police party and got identified the spot, where he

had left the vehicle used for the commission for the crime. The site plan Ex.PK of the place was prepared and the statements of the witnesses were recorded. Karan Singh was declared as proclaimed offender and could not be arrested at that time. Ultimately, the challan was presented against the present appellant and finding a prima facie case, for the commission of offence, charge under Sections 341, 307 and 34 IPC and Section 27 of the Arms Act was ordered to be framed against the present appellant, to which, he pleaded not guilty and claimed trial.

In support of the prosecution case, the prosecution examined 19 witnesses.

Out of the said witnesses, a brief account of all the material witnesses is given hereinafter:-

Jai Parkash, complainant, was examined as PW1, who supported the case of the prosecution. He stated that Karan Singh accused had fired shots at Naresh Kumar and he did not know the name of second accused, but the said person was present in the Court and he had fired a shot, which hit on the head of Naresh Kumar. Even, the second accused also fired another shot, which hit the car (appellant/present accused). However, he did not name the present appellant/accused. In his cross-examination, he stated that he had no grudge against the second accused, who was accompanying Karan Singh, accused. Second accused did not threaten them with respect to

the marriage of Suman Devi with Naresh. However, second accused present in the Court (appellant) threaten them of dire consequence at the spot. He further stated that he had mentioned in his statement to the police about the physical appearance of the second accused including his complexion as SANWLA (blackish). He further admitted that second accused was present in the Court, but the said person was not of much fair complexion and complexion of the said accused was wheatish. He further admitted that the name of the second accused was not mentioned in Ex.PA and even while preparing the recovery memos Ex.PB and Ex.PC, he did not know the name of the second accused and, therefore, the name of the second accused was not mentioned in the said memos. Naresh, injured, appeared as PW2 also supported the case of the prosecution. He also identified the accused as second person involved in the occurrence. However, in his cross-examination, he stated that he did not remember the exact date, his statement was recorded after 2/3 days of the occurrence. He had not mentioned the name of the second accused in his statement recorded by the police, but he was duly confronted with his statement under Section 161 Cr.P.C., Ex.DA, wherein the name of second accused was mentioned as Prem Chand. He came to know about the name of second accused as Prem Chand after 15/20 days of the occurrence and was conveyed to him by the police. Even police met him after 2/3 days of the occurrence at P.G.I.M.S., Rohtak. Suman

Devi, wife of injured was examined as PW3 and she deposed on similar lines. However, in her cross-examination, she admitted that she had mentioned the physical appearance of the second accused as having SANWLA complexion (blackish complexion). However, she admitted that the accused present in the Court (Prem Chand) was having whitish complexion. She stated that she came to know about the name of second accused as Prem Chand after his arrest by the police, i.e. about 5/6 months of the occurrence. The prosecution examined Dr. M.K. Garg, Medical Officer, General Hospital, Bhiwani, as PW4, who had given opinion Ex.PC regarding injured Naresh Kumar, in which, the patient had been referred to P.G.I.M.S., Rohtak. PW6 Shiv Kumar, Medical Record Technician, P.G.I.M.S., Rohtak was examined as PW6, who stated that injured Naresh Kumar remain admitted in P.G.I.M.S., Rohtak w.e.f. 26.01.2003 to 14.02.2003. Dr. Vinod Kumar Pathak PW7 had radiologically examined patient Naresh and submitted that on X-ray, a radio opaque shadow of metallic density and size and shape of bullet was seen in the left side of the soft tissue of the neck at the level of C-4 vertebra. Another radio opaque shadow of metallic density and size and shape of bullet was seen in soft tissue of cranial vault on the right side and two chips of bullet were also seen nearby it in the region of parietal bone. Similarly, radio opaque shadow of metallic density and size and shape of bullet was seen in the abdomen, however, no fracture was

seen and exhibited his report as Ex.PE. The prosecution examined PW8 Dr. Anil Sharma, who had prepared the MLR Ex.PF of Naresh Kumar injured and found the following injuries on his person:-

1. *A lacerated wound of 2 x .5 cm in right side of the head with swelling present around it for which surgeon's opinion was advised.*
2. *2 x 1 cm wound on the scapula with inverted margins and ragged margins, muscles were torn. Adjacent area around wound was burnt. Surgeon's opinion was advised.*
3. *.5 x .5 cm wound with everted margins on the back just in the middle, for which Surgeon's opinion was advised.*
4. *There was swelling in the left scapula with pain and tenderness in the area for which ortho surgeon's opinion was advised.*

The prosecution examined Dr. Vikas Yadav, who was posted in the Department of Orthopaedics in P.G.I.M.S., Rohtak. He stated that Naresh Kumar injured was admitted with diagnosis of bullet injury in scalp, neck, lumbar spine with para paresis. On 28.01.2003, two bullets were removed, i.e. one from scalp (right parietal region) and another from back of neck under local anaesthesia. He stated that the patient was discharged on 14.02.2003 in stable condition. PW13 HC Mahender Singh was examined, on whose presence, ASI Gagan Ram had interacted Prem Chand accused/appellant on 08.05.2003 and he had made disclosure

statement Ex.PN. As per the disclosure statement, Armada jeep used in the crime was left by him and Rajesh on a road. However, in his cross-examination, he admitted that nothing was recovered in pursuance to the disclosure statement made by the accused. ASI Gugan Singh was examined as PW17, who was posted as Investigating Officer on 08.05.2003 and had joined the accused/appellant in the investigation of the case. During the investigation, he made disclosure statement Ex.PO to the effect that he could get recovered the pistol and could demarcate the spot. Thereafter, ASI Gugan Singh and the accused went to the spot and he identified the spot of occurrence as well as the spot where he kept the vehicle used in the crime. The prosecution examined PW19 SI Balwant Singh, who had recorded the statement of the complainant, conducted the investigation and recorded the statement of various witnesses.

After completion of the prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C., and he pleaded his false implication. He stated that he was not present at the place of occurrence and alleged that he had been falsely involved at the instance of Satbir, close relative of the complainant due to old enmity. However, he did not lead any evidence in defence

I have heard learned counsel for the parties and perused the trial Court record with their able assistance.

Learned counsel for the appellant has vehemently argued that in the instant case, the present appellant was not known to any witness and was not named in the FIR. Even Naresh, injured had named him in his statement under Section 161 Cr.P.C., on 20.03.2003, without any basis as admittedly he was not even known to Naresh Kumar. Thus, the appellant was ordered to be arrested on 08.05.2003 without any incriminating evidence. Since the appellant was not known to the witnesses, it was mandatory for the prosecution to hold test identification parade and identification by the witnesses for the first time in the Court carried no value. Still further, the appellant had no reason to fire shots at the complainant side and even during the course of the trial, no motive has been proved against the present appellant. Even no recovery of pistol, i.e. weapon of offence was effected from the petitioner and there was no evidence to connect him with the commission of the crime. Thus, the appellant is liable to be acquitted by this Court.

The arguments raised by the learned counsel for the appellant have been vehemently opposed by the learned State counsel by submitting that the appellant had actively participated in the occurrence and PW1 to PW3 had duly identified him in the Court during the course of trial and his identity stood established. All the three witnesses had not only identified him but had assigned specific role to the present appellant. Still further, the alleged occurrence had

taken place on 25.01.2003 whereas the appellant/accused was arrested after a period of more than 3 months, i.e. on 08.05.2003 and there are chances that the appellant had destroyed the weapon of offence in the meantime. Thus, the non recovery of weapon of offence from the present appellant will not affect the case of the prosecution in any manner and prayed for upholding the impugned judgment passed by the learned trial Court.

I have considered the rival submissions made by the learned counsel for the parties relating to the identification of the accused for the first time in the Court. From a perusal of initial complaint Ex.PA lodged by Jai Parkash, it is evident that the appellant had not been named by him. Still further, the second assailant was mentioned to be a thin, slim and of blackish complexion. Even, Naresh injured was fit to make statement after 2/3 days and even he was discharged in stable condition on 14.02.2003. However, his statement was not recorded by the police till 20.03.2003. Even, in his statement under Section 161 Cr.P.C., Naresh Kumar, injured had named the present appellant. However, when he appeared as a witness, subsequent to that, in the trial Court, he clearly stated that he did not know the second accused and had not mentioned the name of second accused in his statement recorded by the police. Even he came to know about the name of the accused as Prem Chand and the same was conveyed to him by the police. Thus, it is apparent that when the

present appellant was arrested on 08.05.2003, there was no evidence with the police against the present appellant. It is surprising that the police firstly arrested the present appellant on 08.05.2003 and, therefore, it appears that the evidence was created. PW2 Naresh, injured clearly stated that he did not know the second accused, i.e., the present appellant, still, in his statement under Section 161 Cr.P.C., recorded on 20.03.2003 his name has been mentioned by the police illegally.

Still further, it is the admitted case of all the witnesses of the prosecution that they were not aware of the identity of the present appellant. Thus, it was mandatory for the police to hold test identification parade. Even, it has been held in number of judgements that the evidence given by the witnesses during the course of trial is the substantive piece of evidence of identification of an accused. However, by the time the witnesses normally stepped into the witness box, to depose, there would be substantial time gap between the date of incident and the actual examination of the witnesses. If the accused or the suspects were known to the witnesses earlier and their identity was never in doubt, the lapse of time may not qualitatively affect the evidence about the identification of such accused, but the difficulty may arise, if the accused were unknown. In such cases, the question may arise about the correctness of the identification by the witnesses. The lapse of time between the stage when the witnesses had seen the

accused during occurrence and the actual examination of the witnesses may be such that the identification by the witnesses for the time in the box may be difficult for the Court to place complete reliance on. In order to lend assurance that the witnesses had, in fact, identified the accused or suspects at the first available opportunity, the 'TIP', which is part of the investigation affords a platform to lend corroboration to the ultimate statements made by the witnesses before the Court.

It has been held by the Hon'ble Supreme Court of India in the matter of **Noora Ahmad and others Vs. State of Karnatka, 2016**

(3) SCC 325 as follows:-

25. This Court in the case of Dana Yadav alias Dahu and Ors. v. State of Bihar, 2002(4) RCR (Criminal) 314 : (2002) 7 SCC 295 has elaborated upon the importance of test identification parade in great details. The relevant para Nos. 6, 7 and 8 read thus: (SCC pp. 302-04)

"6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of an accused for the first time in court by a witness should not be relied upon, the same being from its very nature, inherently of a weak character, unless it is corroborated by his previous identification in the test identification parade or any other evidence. The purpose of test

identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by a catena of decisions of this Court in the cases of Kanta Prashad v. Delhi Admn., Vaikuntam Chandrappa, Budhsen, Kanan v. State of Kerala, Mohanlal Gangaram Gehani v. State of Maharashtra, Bollavaram Pedda Narsi Reddy, State of Maharashtra v. Sukhdev Singh, Jaspal Singh v. State of Punjab, Raju v. State of Maharashtra, Ronny, George v. State of Kerala, Rajesh Govind Jagesha, State of H.P. v. Lekh Raj and Ramanbhai Naranbhai Patel v. State of Gujarat.

7. Apart from the ordinary rule laid down in the aforesaid decisions, certain exceptions to the same have been carved out where identification of an accused for the first time in court without there being any corroboration whatsoever can form the sole basis for his conviction. In the case of Budhsen it was observed: (SCC p. 132, para 7)

"7.....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."

8. In the case of State of Maharashtra v. Sukhdev Singh it was laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. In the case of Ronny it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held. In that case, the accused concerned had a talk with the identifying witnesses for about 7/8 minutes. In these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In the case of Rajesh Govind Jagesha it was laid down that the absence of test identification parade may not be fatal if the accused is sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on the spot immediately after the occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for conviction without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this

Court. In the case of State of H.P. v. Lekh Raj it was observed (at SCC p. 253, para 3) that:

"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".

Adverting to the facts of the instant case, it is apparent that none of the witnesses knew the present appellant also and thus it was mandatory to hold the test identification parade in the facts and circumstances of the instant case.

Furthermore, in the present case, the complainant stated that the second assailant was thin, slim and of SANWLA (blackish complexion), whereas while appearing as prosecution witness, PW1 clearly admitted that the present appellant was of wheatish complexion. Even, PW3 Suman Devi, eye witness also clearly admitted that the present appellant was of whitish complexion. Thus, in such a situation, the identification by these three witnesses, i.e. PW1 to PW3 should be viewed with suspicion and it is not safe to rely on their testimonies to convict the present appellant. Apart from that, it is apparent that the alleged occurrence had taken place on 25.01.2003 whereas the present appellant was arrested after three

months on 08.05.2003. Even, during the course of the trial, the disclosure of the present appellant was recorded, which led to marking of the place of occurrence by him. It is a matter of record that the place of occurrence was already known to the police and no fact was discovered in pursuance to the disclosure statement suffered by the present appellant. Even, no recovery of weapon of offence had taken place in pursuance to the said disclosure statement and this again raises a question mark on the case of the prosecution.

Further, it has been alleged that the injured namely Naresh had married Suman Devi about 1 ½ year back. Suman Devi was earlier married to Karan Singh, co-accused and due to the said grudge, Karan Singh had fired on Naresh, injured with an intention to kill him. However, no motive has been alleged against the present appellant and he has no reason to participate in the said occurrence. Thus, it is held that the prosecution had miserably failed to prove the case against the present appellant beyond reasonable doubt and the failure to hold test identification parade in the instant case is fatal to the prosecution and the appellant is entitled to benefit of doubt in the instant case.

In view of this, the impugned the judgment of conviction dated 03.06.2004 and order of sentence dated 04.06.2004 passed by the learned Additional Sessions Judge, (Fast Track Court), Bhiwani,

are set-aside and the appeal succeeds. As a consequence, the appellant is ordered to be acquitted.

All pending applications, if any, are disposed of, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

17.01.2023
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No