

Reserved on: 08.02.2023
Pronouncement on: 11.04.2023

Appellant Kulwant Singh @Kanta in CRA-S-737-SB-2009

Under Section 397 IPC	Rigorous imprisonment for seven years and to pay a fine of Rs.500,-/. In default of payment of fine, he shall further undergo rigorous imprisonment for one month.
Section 25 of Arms Act	Rigorous imprisonment for one year and to pay a fine of Rs.500,-/. In default of payment of fine, he shall further undergo rigorous imprisonment for one month.

Appellant Jasvir Singh @Jasvir Kumar in CRA-S-805-SB-2009 (O&M)

Under Section 392 IPC	Rigorous imprisonment for five years and to pay a fine of Rs.500,-/. In default of payment of fine, he shall further undergo rigorous imprisonment for one month.
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The FIR in the instant case was got registered by Sanjay Bansal complainant, whose was running a petrol pump under the name and style of M/s Madan Lal Dina Nath at village Nangal, District Barnala. At about 03:45 PM on 02.10.2007, the complainant along with his employees Rajwinder Singh and Sukhwinder Singh, were present at the petrol pump and the complainant had gone to bathroom for urination. In the meantime, two young persons came there on a motorcycle TVS Star, without any number for taking the petrol. They had got the petrol filled for a sum of Rs.200 and asked for the change. Rajwinder Singh went inside the room near the cash counter and the aforesaid persons also entered the room and by showing pistol to Rajwinder Singh, they had removed Rs.1000/- and mobile phone Nokia 3315 from the pocket of Rajwinder Singh. When these persons were taking out cash from the cash box,

Rajwinder Singh push one of them and his head struck on the cash counter. Rajwinder Singh raised alarm and the complainant and Sukhvinder Singh also rush to the spot. The person, who was carrying the pistol, after showing them the pistol, fled away from the spot, whereas the person who had sustained injury on his head was apprehended at the spot. The person, who was apprehended at the spot, disclosed his name and address as Jasvir Singh @Jassi, son of Sarwan Singh Pandit, resident of Majhuke and the person, who fled away from the spot was known to be Kulwant Singh son of Charan Singh, resident of Majhuke. In this process, Rajwinder Singh had also sustained injury. The complainant and Bhupinder Singh shifted Rajwinder Singh as well as Jasvir Singh to Civil Hospital and got them admitted there. The Investigating Officer reached at the spot and collected blood stained earth from the spot and prepared the parcels. The unregistered motorcycle as well as chilly powder were taken into possession and the site plan was prepared.

During the course of investigation, accused Kulwant Singh was apprehended on 09.10.2007 and in pursuance of the disclosure statement made by Kulwant Singh, a pistol of 303 bore and a Mobile Phone Nokia 3315 and Rs.500 were recovered from him. Jasvir Singh was formally arrested from the hospital and after completion of the investigation, challan was presented against both the appellants/accused.

In support of the charge, the prosecution examined seven witnesses. The complainant was examined as PW-1, who supported the case of the prosecution, as mentioned in the FIR. He was also a witness to the recovery of blood stained earth from the spot as well as the motorcycle of the accused.

Even the packet of chilly powder was taken into possession from the spot vide the memo Ex.PD, which was attested by him. PW-1 Sanjay Bansal, complainant also identified both the accused/appellants present in the Court. He categorically deposed that the accused Kulwant Singh and Jasvir Singh were present in the Court and had come on the motorcycle to his petrol pump. Similarly, PW-2 Rajwinder Singh also supported the case of the prosecution and deposed on similar lines with PW-1 Sanjay Bansal. He also stated that Kulwant Singh and Jasvir Singh, who were present in the Court, had come to the petrol pump on an unregistered motorcycle. He also stated that Jasvir Singh was caught at the spot, whereas, Kulwant Singh had fled away. However, during the course of investigation, he was also arrested. He identified both the accused present in the Court. The prosecution further examined PW-3, ASI Sampuran Singh, who had recorded the formal FIR Ex.PA/2 on the basis of the statement Ex.PA/1 made by PW-1 complainant. PW-4 Gurmail Singh, Armourer from Police Lines, Barnala was examined, who had checked the pistol of 303 bore recovered from the accused and found the same in the working condition. PW-5 Gurjit Singh, Manager, Gill TVS Showroom, Nihal Singh Wala, deposed that as per his record, the motor cycle in question was purchased by Jasvir Singh, appellant. Baldev Raj, Senior Assistant from the office of SDM, Barnala appeared as PW-6 and identified the signatures of the District Magistrate on the sanction order. PW-7 Dr.Asha Gupta had medico-legally examined Rajwinder Singh, witness as well as Jasvir Singh appellant/accused. Both the persons had suffered the injuries and their MLRs were duly proved on record.

After the closure of the prosecution evidence, the statement of accused was recorded under Section 313 Cr.PC. Jasvir Singh, accused stated that he had not committed any offence and was falsely involved by concocting a false and frivolous story and was involved due to political rivalry. No recovery has been effected from him. Similarly, Kulwant Singh@Kanta stated that he was innocent and had been falsely implicated in the instant case by lifting him from his home. The accused did not lead by defence evidence.

I have heard the learned counsel for the parties and with their able assistance, I have gone through the trial Court record carefully.

Learned counsel for the appellants vehemently argued that the impugned judgment is based on mis-appreciation of evidence and law. Learned counsel further contended that the story of the prosecution case was highly improbable. Jasvir Singh, appellant/accused was not present at the spot and was unarmed and even his participation in the alleged crime was doubtful. Learned counsel further submitted that Kulwant Singh@Kanta was not at all present at the spot and was taken away by the police from his home. Even no test identification parade was held and the identification in the Court for the first time was a weak evidence. Thus, he was entitled for benefit of doubt and was liable to be acquitted. Countering the said submissions, learned State counsel submitted that in the instant case, there was ample incriminating evidence against the appellants. They had been duly identified in the Court by the prosecution witnesses. The Learned State counsel submitted that the identification of an accused in a Court is a substantive piece of evidence. Apart from 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 established the identity of the accused, are relevant under Section-9 of the Evidence Act.

I have heard learned counsel for both the sides and considered their respective submissions. Before discussing the evidence in the present case, it would be appropriate to refer the law laid down by the Hon'ble Supreme Court in the matter of "**Dana Yadav @ Dahu and others Vs. State of Bihar, 2002 AIR SC 3325 : 2002(4) RCR (Criminal) 314** held as follows:-

“ 35. Shri Mishra further submitted on the basis of the analyses of evidence of identification that so far as appellant Nos. 2, 4, 6 and 7 are concerned, there remains evidence of identification by a solitary witness in which event chances of mistaken identification cannot be ruled out. It may be stated that in cases where the accused is not known to the prosecution witnesses and is identified in the test identification parade as well as in court by a solitary witness, the evidence of identification by him has to be scrutinised with greater care and caution than in the case of known accused and should not be accepted unless free from all reasonable doubts. In the present case, these appellants were not unknown but were fully known to the prosecution witnesses. Therefore, their identification by a solitary witness can certainly form the basis of conviction, more so when the evidence is consistent and has been found to be credible. This being the position, in our view, the submission is devoid of any merit.

In view of the law analysed above, we conclude thus :

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.

(b) In cases where according to the prosecution the

accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini inquiry as to whether the denial is bonafide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case court comes to the conclusion that the denial is bonafide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily inure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same ipso facto can not be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence

adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of accused by a witness in court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable despatch for the purpose of enabling the witnesses to identify either the properties which are subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

(e) 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, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, 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 previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above.”

Still further, the Hon'ble Supreme Court as held in the matter of

“Amit Singh Bhikamsing Thakur v. State of Maharashtra, 2007 AIR

(Supreme Court) 676: 2007(1) R.C.R.(Criminal) 618 :-

“17. In Harbhajan Singh v. State of Jammu and Kashmir, (1975) 4 SCC 480, though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in Court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16th December, 1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held :-

"In view of this corroborative evidence we find no

*substance in the argument urged on behalf of the appellant that the Investigating Officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in **Jadunath Singh v. State of U.P. (AIR 1971 Supreme Court 363)** absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villages only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant.”*

22. In **Ramanbhai Naranbhai Patel and others v. State of Gujarat, 2000(1) RCR (Criminal) 93 (SC) : (2000(1) SCC 358)** after considering the earlier decisions this Court observed:-

*"It becomes at once clear that the aforesaid observations were made in the light of the peculiar facts and circumstances wherein the police is said to have given the names of the accused to the witnesses. Under these circumstances, identification of such a named accused only in the Court when the accused was not known earlier to the witness had to be treated as valueless. The said decision, in turn, relied upon an earlier decision of this Court in the case of **V.C. Shukla v. State (AIR 1980 Supreme Court 1382)** wherein also Fazl Ali, J. speaking for a three-Judge Bench made similar observations in this regard. In that*

*case the evidence of the witness in the Court and his identifying the accused only in the Court without previous identification parade was found to be a valueless exercise. The observations made therein were confined to the nature of the evidence deposed to by the said eye-witnesses. It, therefore, cannot be held, as tried to be submitted by learned Counsel for the appellants, that in the absence of a test identification parade, the evidence of an eye-witness identifying the accused would become inadmissible or totally useless; whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case. It is, of course, true as submitted by learned Counsel for the appellants that the later decisions of this Court in the case of **Rajesh Govind Jagesha v. State of Maharashtra, 1999(4) RCR (Criminal) 754 (SC)** and **State of H.P. v. Lekh Raj, 2000(1) RCR (Criminal) 10 (SC)**, had not considered the aforesaid three-Judge Bench decisions of this Court. However, in our view, the ratio of the aforesaid later decisions of this Court cannot be said to be running counter to what is decided by the earlier three-Judge Bench judgments on the facts and circumstances examined by the Court while rendering these decisions. But even assuming as submitted by learned Counsel for the appellants that the evidence of, these two injured witnesses i.e. Bhogilal Ranchhodbhai and Karsanbhai Vallabhbbhai identifying the accused in the Court may be treated to be of no assistance to the prosecution, the fact remains that these eye-witnesses were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well within imprinted in their minds especially when they were assaulted in broad daylight. They could not be said to be interested in roping*

in innocent persons by shielding the real accused who had assaulted them."

22. *These aspects were highlighted in Malkhansingh and Others v. State of M.P., 2003(3) RCR (Criminal) 550: 2004(1) Apex Criminal 318: (2003(5) SCC 746)."*

Now, while appreciating the evidence of PW-1, Sanjay Bansal and PW-2 Rajwinder Singh in the light of the abovesaid principles of law, it can be safely held that both the witnesses had duly identified the appellants in the Court. Jasvir Singh was apprehended at the spot and there was no dispute with regard to the identity of the said accused. Even he suffered injuries at the spot and was taken to the hospital, where Dr. Asha Gupta had conducted the medico-legally examination regarding the injuries suffered by him. Consequently, the receipt of injury, as mentioned in the MLR and proved by PW-7 Dr. Asha Gupta, corroborates the prosecution story as well as presence of Jasvir Singh at the spot. Still further, after his arrest, Jasvir Singh had disclosed the name of Kulwant Singh@Kanta as the person, who was accompanying him at the time of commission of the crime. Later on, Kulwant Singh @Kanta, appellant was also arrested and on his disclosure statement, Mobile Phone Nokia 3315 and the pistol used in the crime were recovered from him, which conclusively proved his involvement in the commission of the crime. Thus, the findings recorded by the learned Trial Court are ordered to be upheld. No other point was urged before this Court.

In view of the above discussion, the findings recorded by the learned Trial Court are upheld and both the appeals are ordered to be dismissed. The Learned Trial Court has recorded valid reasons for convicting

and sentencing the present appellants. The impugned judgment of conviction and order of sentence dated 17.02.2009, passed by the Court of Additional Sessions Judge, Barnala, are accordingly upheld.

All pending applications, if any, are also disposed off, accordingly.

The Trial Court record be sent back.

11.04.2023
Hitesh

(N.S.SHEKHAWAT)
JUDGE

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