



2025:DHC:7319



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 21.08.2025

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CRL.A. 13/2016

MANOJ @ RAJESH

.....Appellant

Through: Mr. Kanhaiya Singhal, Mr. Prasanna, Mr. Pulkit, Mr. B. Singh, Mrs. Vani Singhal, Mr. Rahul Bhaskar, Mr. Rishabh Bhardwaj, Mr. Ranjeet Pandey and Mr. Ajay Kumar, Advocates.

versus

STATE

.....Respondent

Through: Mr. Pradeep Gahalot, APP for State with SI Pinki, P.S. Sultanpuri.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of the present appeal filed under Section 374(2) Cr.P.C., the appellant seeks to assail the judgment of conviction dated 15.10.2015 passed by the Ld. ASJ/Special Judge NDPS (N-W), Rohini Courts, Delhi in SC No.72/2014 arising out of FIR No. 64/2008 registered under Sections 307/506/34 IPC and Sections 25/27 of the Arms Act at P.S. Sultan Puri, Delhi whereby though the appellant was acquitted for the charge under Sections 25/27 of the Arms Act, however convicted for the commission of offence under Sections 307/34 IPC.

Vide order on sentence dated 19.10.2015, appellant has been sentenced to undergo RI for 5 years with fine of Rs.20,000/- and in default



of payment of fine to further undergo SI for 2 months for the offence punishable under Sections 307/34 IPC.

2. The facts, in a nutshell, noted by the Trial Court are extracted hereunder:

“...on 01.02.2008 DD No. 10 was lodged at police post Budh Vihar, where after the investigating officer SI Deepak Malik reached Jaipur Golden Hospital, Sector-3, Rohini. In the hospital, injured Vipin @ Rinku was found admitted and under treatment in ICU. The SHO of police station Sultan Puri also reached there with MLC no.2053 dated. 01.02.2008 prepared at Brahm Shakti Hospital pertaining to same, injured Vipin @ Rinku. In the said MLC, Vipin was stated to be fit for statement. But, since Vipin was in ICU in the Jaipur Golden Hospital, his statement was not recorded. However, statement of eye witness Amit Kumar, who was also present at Jaipur Golden Hospital, was recorded.

In his statement, Amit Kumar stated that Vipin was son of his material uncle (mama) and that about 2-3 months prior to 1.02.2008, Vipin had a quarrel with accused Roop Kishore @ Bobby. Thereafter, on 31.1.2008 when Vipin was roaming in park of Sector-23, Rohini, Vipin again had verbal arguments with Roop Kishore @ Bobby and accused Roop Kishore @ Bobby threatened to kill Vipin. Vipin told about it to Amit when Vipin returned home from the park. Thereafter on 1.02.2008, Amit (the complainant) and Vipin (the victim) were proceeding towards Budh Vihar Market at about 10.30 AM. When they reached near Meera Devi Public School, Rithala Road, accused Roop Kishore @ Bobby along with his two associates came from front side. As soon as the complainant, victim and the accused came nearer, accused Roop Kishore @ Bobby and his two associates started abusing and beating. Accused Roop Kishore @ Bobby suddenly took out one country made pistol and fired a bullet on the stomach of Vipin. Associate of accused Roop Kishore @ Bobby pulled out a knife and attacked Vipin on his head. When complainant Amit tried to rescue Vipin, the third associate caught hold of Amit and gave beatings to Amit. Threat



was also extended that if anything was said, the complainant would be killed. As soon as public persons started gathering on noticing the commotion, accused Roop Kishore @ Bobby and his two associates fled. From the spot, complainant Amit and injured Vipin went to Brahm Shakti Hospital where he was treated. Thereafter, father of Vipin, namely Om Prakash reached Brahm Shakti Hospital and then Vipin was shifted to Jaipur Golden Hospital. Complainant claimed that he can identify the other two associates of Roop Kishore @ Bobby also. On this complaint, FIR was registered U/s 307/506/34 of IPC.”

3. Notably, the challenge to the decision by the co-convict/*Roop Kishore @ Bobby* through **CRL.A. 1339/2015** came to be decided vide judgment dated 04.08.2017 rendered by the Coordinate Bench of this Court whereby the conviction and sentence of the said co-convict was upheld.
4. During the trial, in total, 14 prosecution witnesses were examined. Injured/*Vipin* was examined as PW-2, and eye witness/*Amit* was examined as PW-3. The police officials, who apprehended the appellant and recovered the weapon of offence, were examined as PW- 12 & PW-13. The rest of the witnesses were formal witnesses who deposed about various aspects of the investigation. In defence, the statement of the appellant was recorded under section 313 CrPC, wherein he denied the prosecution’s case, and stated that he had been falsely implicated in the present matter.
5. Mr. Singhal, Ld. Counsel for the appellant has assailed the impugned judgment on multiple counts. The first contention relates to the identification of the appellant. It is submitted that the appellant was unknown to *Vipin*, the complainant/injured, as well as to the independent witness/*Amit*. The recovery of knife at the instance of the appellant is also doubtful. Further, the weapon of offence was not even identified by the injured. Thirdly, it is



stated that the statement recorded under Section 313 Cr.P.C., no question was put to the appellant to indicate that the appellant either shared a common intention or had used the knife with the intention to kill the injured.

6. The submissions are contested by Ld. APP for the State, who submits that this Court has confirmed the view of the Trial Court while dismissing the appeal filed by co-convict/*Roop Kishore @ Bobby*. He submits that even otherwise, the prosecution was able to conclusively establish the identity of the appellant as well as the recovery of knife at his instance.

7. A perusal of the records reveals that the investigation in the present case commenced on the recording of DD No.10 on 01.02.2008. The statement of public witness *Amit Kumar* (PW-3), cousin of the injured/*Vipin*, was recorded, wherein he stated that around 2/3 months prior to the incident, the *Vipin* had a quarrel with one *Bobby*, whereafter a settlement was arrived at between them. On 31.01.2008, when *Vipin* had gone to a park at Sector 23, *Rohini*, another quarrel took place over earlier issues when *Bobby* extended threats to him. The witness further stated that on 01.02.2008, he along with *Vipin*, were going towards *Budh Vihar* Market at about 10.30 am when they reached near *Meera Devi* Public School, the said *Bobby* along with two other persons, started abusing and also gave beatings to *Vipin*. While accused *Bobby* took out a firearm/Katta and fired a gunshot, which hit *Vipin* on his stomach, the other person took out a knife and hit *Vipin* on his head. The third person also caused injuries to the witness, whereafter, when the public gathered, all three ran away. The statement of *Vipin* (PW-2) came to be recorded on 06.02.2008, in which he stated on the same lines.

8. Interestingly, in the said statement of the injured as well as the public witness who happened to be the cousin of the injured, neither the names nor



the description of the said two persons, who allegedly accompanied *Bobby*, were stated. The record further reveals that the appellant came to be arrested on 03.02.2008 in *Agra*, whereas statement of the injured was recorded on 06.02.2008 i.e., after 3 days of the arrest, however, name of the present appellant still did not figure out in his statement. During the investigation, the recoveries were shown to be affected on the disclosure of appellant as well as the co-accused *Bobby*. The charge was framed under Sections 307/323/506/34 IPC as well as under Sections 25/27 of the Arms Act against the present appellant, as well as co-accused/*Bobby*.

9. Vide the impugned judgment, the Trial Court had disbelieved the recoveries and thus acquitted the accused persons for the charge under the Arms Act. A perusal of the decision rendered by the Co-ordinate Bench in **CRL.A. 1339/2015** preferred by *Roop Kishore @ Bobby* would show that insofar as *Roop Kishore @ Bobby* is concerned, the said accused was well known to the injured as well as the public witness, and is stated to have having entered into a quarrel on two earlier occasions. He was named in the *Rukka* as well as the first statement of the injured recorded on 06.02.2008, whereas, as noted above, the present appellant was neither named nor his description was given in the said statement. The Coordinate Bench further noted that insofar as *Roop Kishore @ Bobby* is concerned, he was duly identified not only by the injured but also by the public witness and a clear role of causing firearm injury was attributed to him. Curiously, with respect to the appellant in the present appeal, indisputably, no judicial TIP was conducted and further the appellant's identification for the first time came in trial during the recording of testimony of the injured as well as the public witness, which took place in the year 2014 i.e. after a gap of six years.



10. Interestingly, the injured (PW-1) though identified *Roop Kishore @ Bobby*, however, stated in categorical terms that he did not know the other two assailants. While pointing towards the present appellant, the injured stated that he appeared to be the one, however, he did not recognize him clearly. The exact words stated by him are *“I was not aware of the other two associates of Bobby but out of them it appears that one person is present in the court but I do not recognize him very clearly (the witness has physically pointed out towards accused Manoj).”*

The injured, when shown to weapon of offence allegedly recovered i.e. knife, again stated that he was not sure and could not say conformingly whether it was the same knife with which he was assaulted.

11. The public witness, *Amit*, examined as PW3, identified the appellant as well as the knife. As noted above, the deposition of PW3 came to be recorded on 19.11.2014, whereas the incident is of 01.02.2008. At this stage, this Court takes note of the decision in Dana Yadav @ Dahu & Ors. v. State of Bihar reported as **(2002) 7 SCC 295** wherein the Court concluded as under:

“38. 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 bona fide 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 bona fide, 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 enure 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 cannot 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.”

12. Recently in Amrik Singh v. State of Punjab reported as **(2022) 9 SCC 402**, Supreme Court commented on identification for the first time in trial, cautioning that the Court should look for some other corroboration. The relevant extract of the decision is as under:

“19. Now so far as the reliance placed upon the decision of this Court in the case of Malkhansingh (supra) relied upon by learned counsel appearing on behalf of the State in support of her submissions that the TIP is not substantive evidence and in fact the substantive evidence is that of identification in Court is concerned, on facts the said decision shall not be applicable to the facts of the case on hand. Even in the said decision it is observed what weight must be attached to the evidence of identification in court, which is not preceded by a test



identification parade, is a matter for the courts of fact to examine. In the case before this Court, it was found that the crime was perpetrated in broad daylight; the prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other; before the rape was committed, she was threatened and intimidated by the accused; after the rape was committed, she was again threatened and intimidated by them. On such facts it was found that it was not a case where the identifying witness had only a fleeting glimpse of the accused on a dark night.

20. *Similarly, another decision of this Court in the case of Md. Kalam (supra) relied upon by learned counsel appearing on behalf of the State also shall not be applicable to the facts of the case on hand. It is observed in the said decision that 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. It is observed that the purpose of TIP therefore is to test and strengthen the trustworthiness of that evidence. It is observed that 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. It is further observed that the said 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. Therefore, on facts it was observed that failure to hold a TIP would not make inadmissible the evidence of identification in Court. It is further observed that the weight to be attached to such identification should be a matter for the courts of fact.*

21. *Even applying the law laid down by this Court in the aforesaid decisions and looking to the facts narrated hereinabove, we are of the opinion that it would not be safe and/or prudent to convict the accused solely on the basis of their identification for the first time in the Court.”*



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13. Concededly, during the recording of the statement of the appellant under Section 313 Cr.P.C, no question was put to the extent that the appellant had shared a common intention with *Roop Kishore @ Bobby* to kill and cause injuries with the said intent. As if this is not enough, the knife, statedly, used in the incident, did not show any blood on it and further, the same was also not sent to FSL. Neither any opinion on the injury allegedly inflicted with knife was sought nor was the knife shown to Dr. *R.B. Singh* (PW-8), who exhibited the MLC of the injured. Resultantly, the appellant has been able to make out a case in his favour and distinguish the decision rendered for co-convict/*Roop Kishore @ Bobby*. Consequently, the appeal succeeds and the appellant is acquitted of the charge for the offence under Sections 307/34 IPC. His Bail bonds are cancelled and surety is discharged.

14. Appeal is disposed of in the above terms.

15. Copy of the judgment be communicated to the Trial Court as well as concerned Jail Superintendent for information and necessary compliance.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 21, 2025

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