

Before Anita Chaudhry, J.

SANDEEP KUMAR—Appellant

versus

STATE OF HARYANA—Respondent

CRA No.494-SB of 2011

October 25, 2013

Indian Penal Code, 1860 - S.392, 394, 395 - Code of Criminal Procedure, 1973 - S.162&313 - Arms Act, 1959 - S.25- Test Identification Parade - Appellant convicted by trial Court u/s 392 IPC and S.25 of Arms Act, 1954 - Complainant had got FIR registered without giving description of accused - 15 days later on secret information police arrested Sandeep - Three more persons arrested - Complainant identified only two persons - Trial convicted 2 appellants - Appeal filed by them - Held, identification in Court is considered to be evidence of weak character - Prior test identification is to test and strengthen trustworthiness of witness - Object of identification parade to identify persons not previously known - Identification parade not conducted under supervision of Illaqa Magistrate - Identification parade conducted by police cannot be taken to be reliable evidence - Appeal allowed.

Held, that the complainant had not given any clue to the police. No details, their height, any identification mark or complexion were provided. The FIR was against unknown persons. After 15 days a secret informer informs the police that Sandeep was involved and his interrogation led the police to arrest the remaining accused. As per the complainant, there were four persons in the car. The police had arrested four persons but the complainant identified only two of them and gave a clean chit to the others. The complainant had not given the registration number of the vehicle which the police procured on its own.

(Para 12)

Further held, that in order to establish the identity of the accused as a general rule, the substantive evidence of a witness is accepted and identification in the Court is considered to be evidence of a weak character.

The purpose of prior test identification is to test and strengthen the trustworthiness of the witness. There may be exceptions to the general rule where the Court is impressed by a particular witness on whose testimony it can safely rely without any other corroboration.

(Para 15)

Further held, that the identification parades are generally held with the primary object of enabling the witnesses to identify persons who were not previously known to them. These parades are governed by Section 162 Cr.P.C. and is necessary to be generally held under the supervision of a Magistrate. The purpose is to eliminate any suspicion of unfairness and to eliminate the chance of testimonial error. The complainant has stated that he was called to the police station for the test identification parade and he had identified Sandeep and Amit. A perusal of the test identification memo Ex.PC shows that the parade was not conducted under the supervision of the Illaqa Magistrate. The witness to the memo are two police officials.

(Para 17)

Further held, that the identification parade conducted by the police cannot be taken to be a reliable piece of evidence nor it inspires confidence. The Investigating Officer had not called the Magistrate. He had not called some independent persons to join the identification parade. It appears that only three persons were paraded before the complainant making it easy for him. It has to be seen that when a person has only a fleeting glimpse of a person then the police has to ensure fairness to the accused so that the Court who has to judge the value of the identification evidence may take it into consideration. There is no evidence regarding the number of persons made to stand with the accused at the time of identification parade. There is no evidence what those persons wore or that their general appearance was similar to the accused. The evidence regarding identification deserves to be rejected. The identification for the first time in the Court is meaningless. The prosecution had projected four persons who were involved in the crime. The complainant failed to identify two of them, though the police had set up a case that some articles belonging to complainant were also recovered from them. The evidence of identification parade relating to the accused is inadmissible and when the evidence is seen, it is found that the prosecution had failed to prove its case.

(Para 17)

Further held, that upon marshaling the evidence on record and excluding the test identification parade, it is found that the prosecution evidence cannot be accepted. There is no credible evidence to persuade this Court to uphold the conviction. Consequently, both the appeals are allowed.

(Para 18)

Gorakh Nath, Advocate for the appellant (in CRA No.494-SB of 2011).

Tanu Bedi, Advocate for the appellant (in CRA No.980-SB of 2011).

Manuj Nagrath, Deputy Advocate General Haryana for the respondent-State.

ANITA CHAUDHRY, J.

(1) These are two appeals arising out of the judgment of conviction dated 31.01.2011 and order of sentence dated 07.02.2011 passed by Additional Sessions Judge, Kurukshetra who convicted the appellants for the offence punishable under Section 392 IPC. Appellant Amit was also held guilty under Section 25 of the Arms Act and they were sentenced to the following punishment:-

Accused Name	Offence u/s	R.I.	Fine	In default of payment of fine
Sandeep	392 IPC	10 years	Rs. 50,000/-	03 years
Amit	392 IPC	10 years	Rs. 50,000/-	03 years
"	25 of the Arms Act	03 years	Rs. 5,000/-	02 months

Both the sentence were ordered to run concurrently.

(2) The facts may now be detailed. Satish Kumar complainant PW3 was a Railway employee working in Delhi. He had come to Ambala to attend a marriage. On 16.02.2009 after attending the ceremony, he came to the main bus stand for taking a bus for Delhi. At 9:45 P.M. one Indica car came and stopped near him. Two boys were sitting on the back seat.

The driver was in the age group of 30 years. One boy wearing a "Murki" (car stud) was sitting on the back seat. He asked him if he wanted to go to Delhi and they would charge the bus fare. One more person at that moment sat in the car on the front seat. As and when the complainant agreed and he was asked to sit in the middle seat. The car had reached Shahabad then the boy wearing the murki asked him for the fare. The complainant took out his money. The person demanded the entire amount and put a weapon on his chest and removed the two rings from his finger. He also took out the documents from his pocket including his driving license, identity card, visiting cards, Rs. 700/- and a mobile phone bearing no.9891828223. He was hit on the head while he was alighting from the car and blood started oozing. They then fled away in the car. Satish Kumar approached the police and lodged the FIR No.41 dated 17.02.2009 in Police Station Shahabad, District Kurukshetra for the offence punishable under Section 394/397 IPC and also under Section 25/54/59 of the Arms Act.

(3) There was no lead in the case and the investigation was entrusted to CIA Staff, Kurukshetra. They found that Sandeep Kumar was using the mobile phone which was snatched from the complainant. The calls were traced and Sandeep was arrested and he got the mobile recovered on 07.03.2009. The names of Sushil, Amit and Yashpal were also disclosed by him and they were subsequently arrested and the police recovered one ring, visiting card and Khukri from Amit. The police recovered one ring, one visiting card from Sushil. Car bearing registration No.RJ-05CA-0649 and one identity card was recovered from Yashpal. The police completed the investigation and laid a report against all the accused persons for commission of offences punishable under Section 394, 397 IPC and Section 25 of the Arms Act.

(4) Charge was framed against all the accused under Section 392/395 read with Section 397 IPC. Amit Kumar was also charged under Section 25 of the Arms Act. The accused pleaded not guilty and claimed trial.

(5) The prosecution had examined Satish Chander - PW3 who disclosed about the incident and stated that he had identified accused Sandeep and Amit Kumar and identification memo was prepared. He failed

to identify Yashpal and Sushil. Prosecution also examined Dr. Sunita Kumari – PW1 who had medico-legally examined the complainant besides the police officials who were associated in the investigation of this case.

(6) In the statements recorded under Section 313 Cr.P.C. all the accused abjured the trial and pleaded their false implication.

(7) The trial Court acquitted Yashpal and Sushil and convicted Amit and Sandeep and sentenced them to the punishment mentioned here-in-before.

(8) I have heard the submissions made on behalf of both the sides and have gone through the record very carefully.

(9) It was contended on behalf of the appellants that the complainant had lodged a report with the police and had not given description of any of the assailants nor he had noted the registration number of the vehicle and the prosecution has not explained how the investigating officer came to know the involvement of the appellants and that is the mystery which has not been unrevealed and in the absence of any evidence the whole case collapses. It was urged that Sita Ram SI had stated that he had received secret information regarding Sandeep and he was brought to the CIA Staff then he suffered a disclosure and there is no evidence as to how the secret informer had specific information that Sandeep was the person who was involved. It was contended that if the crime had been committed by these persons they would not have kept the identity card and the visiting card or the rings with them. It was urged that the trial Court had acquitted two of the accused though some recoveries were also effected from them. It was urged that Amit had suffered a first disclosure that he had sold the ring in Himanchal Pradesh but no recovery was effected and then another disclosure was recorded two days later and the ring was recovered. It was urged that there was no specific mark of identification on the ring. It was contended that the identification parade was held by the police and they had not joined the Magistrate and the evidentiary value of the identification parade has to be considered. It was urged that Sushil Kumar was not identified by the complainant and in the cross-examination, the complainant gave a clean chit to Yashpal. It was urged that it would not be possible for the complainant to identify the persons who were sitting on different seats

and no recovery has been effected in the presence of the complainant and if the complainant had heard their names he must have mentioned the same in his complaint and the complainant had improved the version and indulged in exaggeration. It was urged that the MLRs show that there was history of injury in an assault and it does not refer to any robbery or dcoity on the highway. It was urged that recovery was effected from the houses but it was not shown who owned the houses therefore, the recovery has been planted. It was urged that the entire story revolves around the car but the police did not try to trace the owner and the car was recovered from Yashpal who has been acquitted. It was urged that according to the complainant it was Sandeep who had used the weapon but it was recovered from Amit. It was urged that the Khukhri was not sent to the FSI, and it was rusted unnecessarily as the same would not have used. Reliance was placed upon *Budhsen and another versus State of U.P. (1)*, *Ramkishan Mithanlal Sharma versus State of Bombay (2)*, *Abdul Hameed versus State (Delhi Administration) (3)* and *Pratham versus State of Haryana (4)*.

As against it, the contention of the State was that the police had no enmity to falsely implicate the appellants and the identification parade was carried out and the property involved in the crime, owned by complainant was recovered from the appellants. Judgment as well as order of sentence passed by trial Court deserves to be affirmed.

(10) It would be relevant to refer to the statement made by Satish Chander PW3. He had spoken about the manner in which the incident had occurred. He was waiting to take a bus for Delhi at 9:45 P.M. when a car came and stopped near him. The complainant had given the registration number of the vehicle in his statement made in the Court but the registration number was not disclosed to the police in the complaint. The complainant had stated that two persons were sitting on the rear seat and one on the driver seat and they offered to take him to Delhi by charging normal fare. He stated that a knife was placed on his chest and all his money, identity card, visiting card, diary and mobile phone were snatched. He stated that he was thrown out of the car near the Truck Union, Shahabad and was hit by an iron Khukhri. On 08.03.2009 he was joined in the investigation

- (1) 1970(2) SCC 128
- (2) (1955) 1 SCR 903
- (3) 1985(1) RCR (Cr.) 579
- (4) 2011(4) RCR (Cr.) 665

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of the case and accused Sandeep, Amit and Sushil were produced before him for identification and he identified Sandeep and Amit but did not identify Sushil. He stated that two days later he identified his articles and had taken them on superdari. He stated that all the four persons who were present in the Court had snatched his articles and had caused injuries. In the cross-examination he stated that he did not know accused Sushil nor could identify him. He stated that Sushil was not in the car on that day. He admitted that he had not given the model of the car or registration number to the police. He stated that accused Yashpal was not in the car that day and he could not tell as to who was in the car. He stated that he only recognized accused Amit and Sandeep. He also stated that he knew their names as they were calling each other by their names.

(11) Sita Ram SI of the CIA Staff – PW10 was an important witness of the prosecution as he had received secret information and then arrested accused Sandeep who was interrogated and during interrogation he revealed the names of his companions as Sushil and Amit Kumar. He stated that police remand of the accused was obtained and thereafter Sushil and Amit were arrested from Karnal on 06.03.2009. The Investigating Officer admitted that he did not know the name of the owner of the car and he had not joined him in the investigation of the case.

(12) From the above, it can be seen that the police got the lead on the basis of a secret information received by Sita Ram SI. The complainant had not given any clue to the police. No details, their height, any identification mark or complexion were provided. The FIR was against unknown persons. After 15 days a secret informer informs the police that Sandeep was involved and his interrogation led the police to arrest the remaining accused. As per the complainant, there were four persons in the car. The police had arrested four persons but the complainant identified only two of them and gave a clean chit to the others. The complainant had not given the registration number of the vehicle which the police procured on its own.

(13) It has come in the evidence that the police came to know the details of Sandeep as they were tracking the mobile number of the complainant but strangely the prosecution has not produced the call details of the mobile No. 9891828223 which was the most important evidence and has been held back by the prosecution for one reason or the other, it could have helped the prosecution to connect the accused to the crime.

(14) The complainant has spoken about the test identification parade carried out by the police. The entire case depends on the identification by the complainant. For the sake of repetition, it is necessary to mention again that the description of the assailants had not been provided to the Investigating Officers for them to proceed for the arrest of the alleged offenders. It is unfortunate that the person who recorded the FIR did not even make an attempt to ask the complainant of the description of those persons .

(15) In order to establish the identity of the accused as a general rule, the substantive evidence of a witness is accepted and identification in the Court is considered to be evidence of a weak character. The purpose of prior test identification is to test and strengthen the trustworthiness of the witness. There may be exceptions to the general rule where the Court is impressed by a particular witness on whose testimony it can safely rely without any other corroboration.

(16) The identification parades are generally held with the primary object of enabling the witnesses to identify persons who were not previously known to them. These parades are governed by Section 162 Cr.P.C. and is necessary to be generally held under the supervision of a Magistrate. The purpose is to eliminate any suspicion of unfairness and to eliminate the chance of testimonial error. The complainant has stated that he was called to the police station for the test identification parade and he had identified Sandeep and Amit. A perusal of the test identification memo Ex.PC shows that the parade was not conducted under the supervision of the Illaqa Magistrate. The witness to the memo are two police officials.

(17) The identification parade conducted by the police cannot be taken to be a reliable piece of evidence nor it inspires confidence. The Investigating Officer had not called the Magistrate. He had not called some independent persons to join the identification parade. It appears that only three persons were paraded before the complainant making it easy for him. It has to be seen that when a person has only a fleeting glimpse of a person then the police has to ensure fairness to the accused so that the Court who has to judge the value of the identification evidence may take it into consideration. There is no evidence regarding the number of persons made to stand with the accused at the time of identification parade. There is no evidence what those persons wore or that their general appearance was

similar to the accused. The evidence regarding identification deserves to be rejected. The identification for the first time in the Court is meaningless. The prosecution had projected four persons who were involved in the crime. The complainant failed to identify two of them, though the police had set up a case that some articles belonging to complainant were also recovered from them. The evidence of identification parade relating to the accused is inadmissible and when the evidence is seen, it is found that the prosecution had failed to prove its case.

(18) Upon marshaling the evidence on record and excluding the test identification parade, it is found that the prosecution evidence cannot be accepted. There is no credible evidence to persuade this Court to uphold the conviction. Consequently, both the appeals are allowed. The orders of conviction and sentence passed by the trial Court are set aside and the appellants are acquitted and their bail bonds and surety bonds stand discharged. Lower Courts record be sent back.

J.S. Mehnidiratta