

Shiv Kumar and ors. Vs. State

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Court : Delhi

Decided On : Jun-01-2011

Judge : Pradeep Nandrajog; Suresh Kait, Jj.

Acts : Indian Penal Code (IPC) - Sections 394, 396, 398, 34; Code of Criminal Procedure (CrPC) (CRPC) - Sections 161, 313; Evidence Act - Section 9

Appeal No. : CRL.A.NO.77/1999; CRL.A.NO.414/1998; CRL.A.NO.415/1998; CRL.A.NO.496/1998

Appellant : Shiv Kumar and ors.

Respondent : State

Advocate for Def. : Mr.Pawan Sharma; Mr.Harsh Prabhakar, Advs.

Advocate for Pet/Ap. : Mr.Vikrant Sarin; Ms.Madhulika Sarin, Advs.

Judgement :

1. Appellants Parkash, Mahinder Singh, Bijender Singh, Surender Singh, Shiv Kumar and co-accused Pooran faced trial for the charges of having committed dacoity in the house bearing Municipal No.257, Gali No.1, Shalimar Bagh village, Delhi in the intervening night of 25th and 26th April 1992 and having murdered Jasbir Singh while committing dacoity. We would be referring to Jasbir Singh as the deceased hereinafter.

2. Vide impugned judgment and order dated 11.09.1998 appellants Parkash, Mahinder Singh, Bijender Singh, Surender Singh and Shiv Kumar have been held guilty of committing offences punishable under Sections 394, 396 and 398 IPC read with Section 34 IPC whereas co-accused Pooran has been acquitted of all the charges leveled against him. Vide order dated 14.09.1998 appellants Parkash, Mahinder Singh, Bijender Singh, Surender Singh and Shiv Kumar have been sentenced to undergo imprisonment for life for the offences punishable under Section 396 IPC and RI for five and seven years for the offences punishable under Sections 394 and 398 IPC respectively.

3. A synoptical resume of the case set up by the prosecution against the appellants is that criminal law was set into motion, when at around 01.40 A.M. on 26.04.1992, DD entry No.24A, Ex.PW-30/A, was recorded at Police Station Shalimar Bagh to the effect that a wireless information has been received that a murder has taken place at house bearing Municipal No.257, Gali No.1, Sheesh Mahal.

4. On receipt of the afore-noted DD entry, Inspector Rohtash Singh Tanwar PW-30, accompanied by Const.Rakesh PW-21 and SI Sri Kishan went to the house in question where they found the deceased breathing his last and his mother Joginder Kaur, in an injured condition, both of whom were removed to the hospital. On reaching the hospital the deceased succumbed to his injuries as recorded in the MLC Ex.PW-13/A of the deceased. Joginder Kaur was given medical aid at the hospital. We note that on MLC Ex.PW-13/C of Joginder Kaur, following is recorded:-

"Name of the relative or friend B/B S.I. Sri Krishan PS Shalimar Bagh

..

Date and hour of arrival 2.10 AM 26/4/92

..

Injuries

1. Incised wound 1 1/2" x 1/5" on the left side of the forehead and parietal area

2. Incised wound (illegible) of the Rt hand

.."

5. On 26.04.1992, at about 02.15 A.M. the doctor declared Joginder Kaur to be fit for making a statement, whereupon Inspector Rohtash Singh Tanwar, recorded the statement Ex.PW-7/A of Joginder Kaur which reads as under:-

"I reside with my husband and son Jasbir Singh aged 19 years at the above said address. A printing press is being run in the ground floor of the said house. I have three daughters, all of whom are married. Today, at about 09.30 P.M. my husband went from the house to participate in a religious function in Gandhi Nagar and he goes there every Saturday night since last about ten years. At about 10.00 P.M. after properly locking the main door of the house I and my son went to sleep in a room in the rear portion of the house and the lights of the room situated in the middle portion of the house were switched on at that time. At about 01.00 A.M. about five-seven young boys aged about 20-22 years who were wearing pants and half-sleeve shirts and appeared to be villagers from their appearance and dialect entered the room.

Two-three of the said boys were carrying knives in their hands and the rest were carrying ropes and iron rods in their hands. On entering the room, the said boys started inflicting knife blows on me and my son upon which I told them that Do not attack, take everything which is there, but despite that the said boys inflicted several knife blows on my son and tied me with a rope. I also sustained an injuries on my forehead and thumb of

my right hand and the said boys removed two gold bangles, gold chain, a pair of gold earrings and a wrist watch mark Recco from my person. The said boys took the bunch of keys from the pillow, opened the almirah and box lying outside the room and took out valuable items such as tape recorder, woolen clothes, jacket etc. They stuffed said goods in four-five plastic bags and reached the terrace through the staircase and exit from their house. Before leaving the house the said boys had bolted the door of our bedroom from outside. On seeing that my son is critically injured and bleeding profusely I somehow untied my rope, pushed the cooler kept on the window near the door of the said room, came out of the room through the window and opened the lock of the main door. I went in the street and screamed for help upon which my neighbors Suraj Prakash and Dharam Pal and security guard Ram Bahadur came there. Dharam Pal informed the police upon which the police came to my house and removed me and my son to Hindu Rao Hospital. Despite the efforts of the doctors and my prayers to God my son could not be saved. Jasbir has been declared dead by the doctors. I can identify the boys who had attacked us. The said boys had intruded into my house, attacked us with knives and committed robbery. An action be taken against them."

(Translated)

6. Thereafter Inspector Rohtash Singh Tanwar PW-30, made an endorsement Ex.PW-30/B on the statement Ex.PW- 7/A of Joginder Kaur, and at around 04.15 A.M. on 26.04.1992 handed over the same to Const. Rakesh PW-21, for registration of an FIR. Const. Rakesh took the endorsement Ex.PW-30/B to the police station where HC Budh Ram registered the FIR No.148/1992, Ex.PW-30/C.

7. After the registration of the FIR Ex.PW-30/C, Inspector Rohtash Singh Tanwar proceeded to the house of the deceased. In the meantime, crime team also reached the house of the deceased. Inspector S.K.Jha, Finger Print Expert, lifted five chance prints from an almirah kept in the room intruded by the dacoits and on

a wooden slab fixed on the side of the said almirah. Inspector Rohtash Singh found the hook of a pant on the terrace of the said house and a rope on the staircase leading to the said terrace. Inspector Rohtash Singh seized the said rope and hook vide memo Ex.PW-5/A. Thereafter Inspector Rohtash Singh found a piece of a rope identical to the rope found in the house of the deceased and the hook fastener of a pant in the staircase and terrace respectively of house bearing Municipal No.178, Gali No.1, Shalimar Bagh village (herein after referred to as the "**House No.178**"), which house was adjoining the house, adjoining the house of the deceased. Insp.Rohtash Singh seized the said piece of rope and hook fastener of the pant vide memo Ex.PW-5/B. Inspector Rohtash Singh prepared the rough site plan Ex.PW-30/J of the place of occurrence.

8. On 26.04.1992 the body of the deceased was sent to the mortuary where Dr.L.T.Ramani PW-28, conducted the post-mortem of the deceased and prepared the post- mortem report Ex.PW-28/A. The post-mortem report Ex.PW- 28/A of the deceased records that fifteen external ante- mortem injuries were found on the person of the deceased; that eight out of fifteen injuries found on the person of the deceased were individually sufficient to cause death in the ordinary course of nature and that the death of the deceased was caused due to shock and hemorrhage consequent to injuries to thoracic and abdominal viscera of the deceased.

9. After the conducting the post-mortem, the doctor handed over the clothes and blood sample of the deceased on a gauze to Const. Rakesh, who handed over the same to Inspector Rohtash Singh, who seized the same vide memo Ex.PW-21/A.

10. Since the circumstance of the piece of rope found in house No.178 being identical to the rope found in house of the deceased and the hook fastener of a pant was found in roof of house No.178 while the hook of a pant was found in the house of the deceased, were highly suggestive of the fact that house No.178 was used by the dacoits to enter and exit into/from the house of the deceased, the suspicion fell upon the occupants of house No.178. Inquiries were statedly made from Rohtash Singh PW-8, the owner of house No.178 and his statement under Section 161 Cr.P.C. was recorded by the police wherein he stated that appellants

Prakash and Mahinder were residing in his house as tenants and that appellants Bijender, Surender and Shiv Kumar and Pooran used to visit the said accused.

11. In view of the afore-noted statement of Rohtash Singh PW-8 and the fact that appellants Prakash and Mahinder were not found present in house No.178, the police set out to apprehend them and through them hoping to reach out to the other accused.

12. On 02.05.1992 SI Chabbi Lal PW-27, accompanied by other police officers statedly apprehended appellant Prakash. On being interrogated by Inspector Rohtash Singh PW-30, in the presence of SI Chabbi Lal and public person Suraj Prakash PW-11, appellant Parkash statedly made a disclosure statement Ex.PW-11/A wherein he admitted his guilt and stated that he can get recovered the weapons used by him and the other appellants in committing the offence(s). Pursuant thereto, appellant Parkash statedly led the afore-noted persons to house No.178 and got recovered three daggers, three knives, one iron pipe and one iron rod from a room in the said house and the same were seized by Inspector Rohtash vide memo Ex.PW-11/B.

13. On 04.05.1992 an application was filed by Inspector Rohtash before the court of Metropolitan Magistrate for conduct of Test Identification Parade of appellant Prakash.

Sh.K.S. Mohi PW-29, Metropolitan Magistrate conducted the TIP of appellant Prakash and prepared record Ex.PW-29/C in said regards. The records Ex.PW-29/C notes that appellant Prakash refused to participate in the TIP proceedings on the ground that he was already shown to the witnesses.

14. On 04.05.1992 Const.Azad PW-22, statedly apprehended appellants Surender and Bijender and accused Pooran. The personal search of appellant Bijender was statedly conducted and a wrist watch worn by him was seized. On being interrogated by Inspector Rohtash Singh PW-30, in the presence of public person Brij Lal PW-9, appellants Surender and Bijender statedly made disclosure statements wherein they admitted their guilt and stated that they can get recovered the articles looted by them and the other appellants from the house of

the deceased. Pursuant thereto, appellants Bijender and Surinder statedly led the afore-noted persons to their respective houses in village Alipur and got recovered a wrist watch, four silver coins and a T-shirt from there. The said four silver coins and T-shirt were seized vide memos Ex.PW-9/B and Ex.PW-9/A respectively.

15. On 04.05.1992 an application was filed by Inspector Rohtash before the court of Metropolitan Magistrate for conduct of Test Identification Parade of appellants Surinder and Bijender and accused Pooran. Sh.R.S.Mahala PW-25, Metropolitan Magistrate conducted the TIP of appellants Surinder, Bijender and Pooran and prepared record Ex.PW- 25/D in said regards. The records Ex.PW-25/D notes that appellants Surinder and Bijender and accused Pooran refused to participate in the TIP proceedings on the ground that they were already shown to the witnesses.

16. On 22.05.1992, SI Baldhar Singh PW-24, accompanied by Const.Joginder PW-23, statedly apprehended appellant Shiv Kumar. On being interrogated by SI Baldhar Singh PW- 24, in the presence of Const. Jogender PW-23, appellant Shiv Kumar statedly made a disclosure statement Ex.PW-24/A wherein he admitted his guilt and stated that he can get recovered the articles looted by him and the other appellants from the house of the deceased. Pursuant thereto, appellant Shiv Kumar statedly led the afore-noted police officers to the shop of one Mohd. Azaz PW-20, who produced one bag at the instance of appellant Shiv Kumar. On opening the said bag, a pant was found therein and three silver coins were found in the right pocket of the said pant and the same were seized vide memo Ex.PW-23/A. A public person named Suresh Bhardwaj PW-10, was present in the shop of Mohd. Azaz at that time.

17. On 23.05.1992 an application was filed by Inspector Baldhar Singh before the court of Metropolitan Magistrate for conduct of Test Identification Parade of appellant Shiv Kumar. Sh.R.S.Mahala PW-25, Metropolitan Magistrate conducted the TIP of accused Shiv Kumar and prepared record Ex.PW-25/E in said regards. The records Ex.PW-25/E notes that appellant Shiv Kumar refused to participate in the TIP proceedings on the ground that he was already shown to the witnesses.

18. On 25.05.1992 an application was filed by Inspector Baldhar Singh before the court of Metropolitan Magistrate for conduct of Test Identification Parade of the

afore-noted articles recovered at the instance of appellants Surinder, Bijender and Shiv Kumar. Be it noted here that articles put up for identification included two wrist watches. Sh. R.S. Mahala PW-25, Metropolitan Magistrate conducted the TIP of the said articles and prepared record Ex.PW-25/C in said regards. The records Ex.PW-25/C notes that the witnesses Joginder Kaur PW-7 and Hardyal Singh PW-6 correctly identified that said articles as the articles stolen by the robbers from their house.

19. On 28.05.1992 SI Baldhar Singh PW-24, accompanied by Const. Joginder stately apprehended appellant Mahinder. On being interrogated by SI Baldhar Singh PW-24, in the presence of Const. Jogender, appellant Mahinder stately made a disclosure statement Ex.PW-24/B wherein he admitted his guilt and stated that he can get recovered the articles looted by him and the other appellants from the house of the deceased. Pursuant thereto, appellant Mahinder stately led the afore-noted police officers to the shop of one Shiv Kumar PW-19, who produced one wrist watch at the instance of accused Mahinder and the same was seized vide memo Ex.PW-19/A.

20. On 29.05.1992 an application was filed by Inspector Baldhar Singh before the court of Metropolitan Magistrate for conduct of Test Identification Proceedings of appellant Mahinder. Sh. R.S.Mahala PW-25, Metropolitan Magistrate conducted the TIP of appellant Mahinder and prepared record Ex.PW-25/F in said regards. The records Ex.PW-25/F notes that appellant Mahinder refused to participate in the TIP proceedings on the ground that he was already shown to the witnesses.

21. The afore-noted materials seized by the police during the investigation were sent to the Central Forensic Science Laboratory for serological examination. Vide CFSL report Ex.PW-30/N-1 to Ex.PW-30/N-4 it was opined that the blood group of the deceased was O; that blood of group O was detected on the daggers and iron rod recovered at the instance of appellant Prakash; that blood was detected on the one of the knives recovered at the instance of appellant Prakash, group whereof could not be determined; that the ropes seized from the house of the deceased and house No.178 are similar to each other in respect of their color, number of piles, diameter and their general physical characteristics and that hook fastener

seized from house No.178 can be fastened onto the hook seized from the house of the deceased.

22. Armed with the afore-noted materials, a charge sheet was filed by the police against the appellants and co-accused Pooran.

23. Needless to state, the appellants were sent for trial. Charges were framed against them for having committed offences punishable under Sections 394, 396 and 398 IPC read with Section 34 IPC.

24. At the trial, the prosecution examined 30 witnesses. We need not note the testimony of the various police officers who took part in the investigation for they have deposed facts regarding the respective role played by them during investigation which have already been succinctly stated by us in the preceding paragraphs and in respect whereof it was urged that the dates of arrest as shown were wrong. The recoveries were planted. It was not explained how come the watch statedly got recovered by Mahinder after his arrest on 28.5.1992 could be the subject matter of a TIP conducted on 25.5.1992, in which two wrist watches were put up for Test Identification Proceedings and case laid by the prosecution was that one of them was the one which was produced by appellant Mahinder. Needless to state, the police officers deposed facts in harmony with the dates and events which they claimed occurred during investigation resulting in the recoveries.

25. Pooran Chand PW-2, deposed that he runs a tea shop near the house of the deceased. On 22.04.1992 appellant Prakash bought two cups of tea and one packet of biscuits from him. At about 06.30 P.M. one boy came to him and bought two cups of tea from him; that his son Chandan collected utensils from that boy and that he cannot identify the said boy. Chandan PW-15, the son of Pooran Chand, deposed that on 25.04.1992 he had gone to house No.178 where two-three boys were living as tenants to collect the utensils; that the said boys were not found in the said house on the next day and that he cannot identify the said boys.

Be it noted here that a suggestion was given to the witness in his cross-examination on behalf of appellant Prakash that appellant Prakash had vacated the house of Rohtash on 20th or 21st April 1992.

26. Manjit Singh PW-5 and Hardyal Singh PW-6, brother-in-law and father of the deceased respectively, deposed that a robbery had taken in the house of the deceased on the intervening night of 25th and 26th April 1992. Be it noted here that the articles recovered at the instance of appellants were not shown to Hardyal Singh in his examination-in-chief and thus there is no dock identification of the recovered property.

27. Joginder Kaur PW-7, mother of the deceased, deposed in harmony with her statement Ex.PW-7/A, the only variation being that she deposed in Court that the robbers switched on the light of the room in which she and the deceased were sleeping at the time of the occurrence. She identified the appellants as the persons who had committed the robbery in her house on the intervening night of 25th and 26th April 1992 and caused the death of the deceased during the course of the commission of the robbery. Additionally, she deposed that three-four days after the incident the police had brought appellants Bijender, Mahinder and Surinder and accused Pooran to her house; that one day later the police brought appellant Prakash to her house and that few days later the police brought other two boys to her house. Be it noted here that the articles recovered at the instance of the appellants were not shown to the witness in her examination-in-chief.

28. Rohtas Singh PW-8, owner of house No.178, deposed that appellants Prakash and a person named Mahinder were living in his house as tenants however the witness did not correctly identify appellant Mahinder. Appellant Bijender and two-three other boys whom he cannot identify used to visit appellant Prakash and person named Mahinder at his house. On 26.04.1992 the police had brought appellants Prakash, Mahinder and four-five other boys to his house. On being cross-examined by the prosecution the witness deposed that appellants Surinder, Bijender and Pooran used to visit appellant Prakash. On being cross-examined about the tenancy of appellant Prakash in his house the witness stated that The accused remained in my house for about one month and then he vacated. He had

vacated my house about 7/10 days before the police brought him to my house.

29. Brij Lal PW-9, deposed that appellant Surinder had recovered a T-shirt from his house in his presence. He however turned hostile with respect to the recovery of four silver coins at the instance of appellant Bijender. Suresh Bhardwaj PW-10, turned hostile with respect to the recovery of three silver coins at the instance of appellant Shiv Kumar. Mohd Ajaj PW-20, turned hostile with respect to the recovery of three silver coins at the instance of appellant Shiv Kumar. Suraj Prakash PW-11, deposed that on 03.05.1992 the police had recovered three daggers, three knives and two iron rods from house No.178. On being cross-examined by the prosecutor the witness deposed that the said articles were recovered at the instance of appellant Prakash. Shiv Kumar PW-19, deposed that in the year 1992 appellant Mahinder had given a wrist watch to him.

30. In their statements under Section 313 Cr.P.C. the appellants denied everything and pleaded false implication.

31. In defence, appellant Surender examined his father Daya Nand as DW-1. He deposed that on 02.05.1992 at about 05.15 A.M. the police had picked up his son Surender from their house; he made a complaint Ex.DW-1/A to the Commissioner of Police in said regard and posted the said complaint on the evening of 02.05.1992 itself. He produced the certificate Ex.DW-1/B issued by the postal authorities regarding posting of the said complaint on 02.05.1992.

32. The other appellants chose to not to lead any evidence in support of their defence.

33. As already noted herein above, the appellants were held to be guilty of the all the charges framed against them. With respect to appellant Prakash, it was held by the learned Trial Judge that the factum of identification of appellant Prakash by Joginder Kaur PW-7, as one of the boys who had committed robbery in her house coupled with the facts that appellant Prakash was a tenant in the house No.178, which house was used by the robbers to flee from the house of the deceased and that appellant Prakash disappeared from the house No.178 on the very next day of occurrence proves the complicity of appellant Prakash in the crime(s) in question.

With respect to appellants Mahinder, Surinder, Bijender and Shiv Kumar it was held by the learned Trial Judge that the factum of identification of appellants Mahinder, Surinder, Bijender and Shiv Kumar by Joginder Kaur PW-7, as the boys who had committed robbery in her house coupled with the fact that the property stolen from the house of the deceased were recovered at the instance of the said appellants proves the complicity of the said appellants in the crime(s) in question. With respect to accused Pooran it was held by the learned Trial Judge that it is not safe to convict accused Pooran in the present case for the reason that except the identification of accused Pooran by Joginder Kaur PW-7, as one of the boys who had committed robbery in her house there is no other evidence to link accused Pooran with the crime(s) in question.

34. From the afore-noted conspectus of facts, it is apparent that the prosecution has relied upon following circumstances to bring home the guilt of the appellants: -

I Identification of the appellants by Joginder Kaur as the persons who had committed robbery in her house on the intervening night of 25th and 26th April 1992 and committed the murder of the deceased during the course of commission of robbery.

II Appellant Prakash was residing as a tenant in house No.178, which house was used by the robbers to enter and exit into/from the house of the deceased and he disappeared from said house on the next day of the occurrence as established from the cumulative reading of the testimony of Rohtash Singh PW-8, Puran Chand PW-2 and Chandan PW-15.

III Recovery of blood stained daggers and knives at the instance of appellant Prakash and blood found on the said daggers was of the same group as that of the deceased.

IV Recovery of articles stolen from the house of the deceased at the instance of appellant Surinder, Bijender, Mahinder and Shiv Kumar.

V Appellant Surinder and Bijender used to visit appellant Prakash at house No.178.

35. Let us proceed to deal with the first circumstance appearing against the appellants.

36. Joginder Kaur PW-7, is an injured witness. The presence of an injured witness at the time and place of occurrence cannot be doubted unless there are material contradictions in his deposition. Nothing has been shown to us by the learned counsel for the appellants which could cast a doubt on the deposition of Joginder Kaur PW-7, that she was present in the house of the deceased at the time when the robbers committed robbery in the said house.

37. As already noted herein above, Joginder Kaur PW-7, has identified the appellants as the persons who had committed robbery in her house. Now, the crucial question which arises for consideration is that whether Joginder Kaur has correctly identified the appellants.

38. The facts, which establish the identity of an accused, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made by him in the Court. The evidence of identification of an accused for the first time in the Court is from its very nature inherently of a weak character. The purpose of prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. Absence of test identification is not necessarily fatal in all cases. Failure to hold test identification is fatal in cases where the witness is a total stranger or the witness had just a fleeting glimpse of the accused or the witness had no particular reason to remember the accused. On other hand failure to hold test identification is not fatal where the accused was known to the witness or the identity of the accused was imprinted in the mind of the witness.

39. In the instant case, the incident in question occurred at around 01.00 A.M. on 26.04.1992. The appellants were complete strangers to Joginder Kaur PW-7. Joginder Kaur did not mention anything about the physical features of the robbers in her statement Ex.PW-7/A. Joginder Kaur and the deceased were sleeping at the time when the robbers intruded in their house. Joginder Kaur testified in court that the appellants switched on the lights of the room in which she and the deceased were sleeping at the time of the occurrence, which statement was conspicuously

absent in her statement Ex.PW-7/A. It could possibly be argued that Joginder Kaur was grief-stricken and traumatized over the death of the deceased at the time of the recording of the statement Ex.PW-7/A and thus forgot to state the factum of switching on of lights of the room by the appellants in the statement Ex.PW-7/A. A close reading of the statement Ex.PW-7/A of Joginder Kaur shows that Joginder Kaur had given a vivid description of the incident in the said statement, so much so that she has stated that the lights of a room situated in the middle portion of her house was switched on at the time when she and the deceased went to sleep in another room in her house on the day of the occurrence. It does not appeal to reason that Joginder Kaur remembered to state an inconsequential fact that the lights of a room situated in the middle portion of her house was switched on at the time when she and the deceased went to sleep in another room in her house on the day of the occurrence but forget to state that an all important fact that the appellants had switched on the lights of the room in which she and the deceased were sleeping at the time of the occurrence. The omission of Joginder Kaur to state the fact that the appellants had switched on the lights of the room in which she and the deceased were sleeping at the time of the occurrence in her statement Ex.PW-7/A casts considerable doubt on her testimony that the appellants had switched on the lights of the room in which she and the deceased were sleeping at the time of the occurrence. In that view of the matter, we have to proceed on the basis that the incident in question occurred in darkness.

40. In view of the facts that the appellants were complete strangers to Joginder Kaur and that the incident occurred in darkness, it was incumbent upon the police to conduct the test identification proceedings of the appellants. Whereas the prosecution has claimed that police sought to conduct the test identification of the appellants but the appellants refused to participate in the same on unjustifiable grounds the appellants claimed that they were completely justified in refusing to participate in test identification proceedings as they were shown to the witness before the conduct of test identification proceedings.

41. A close look at the evidence on record brings out that there are three pieces of evidence which lend credence to the claim of the appellants that they were shown to the witness i.e. Joginder Kaur before the conduct of test identification

proceedings. The first piece of evidence is the certificate Ex.DW-1/B issued by the postal authorities regarding posting of the complaint Ex.DW-1/A on 02.05.1992, which complaint was made by the father of appellant Surender to the Police Commissioner to the effect that his son Surender was picked up by the police from his house on the morning of 02.05.1992. The certificate Ex.DW- 1/B totally negates the claim of the prosecution that appellant Surender was arrested by the police on 04.05.1992 for surely the father of appellant Surender could not have foreseen that his son Surender would be arrested by the police on 04.05.1992. The fact which emerges from the certificate Ex.DW-1/B is that appellant Surender came into the custody of the police on 02.05.1992 but his date of arrest by the police has been shown as 04.05.1992. The other two pieces of evidence are the deposition of Joginder Kaur PW-7 that the police had brought appellants Surinder, Bijender and Mahinder to her house three-four days after the incident; that one day later the police brought appellant Prakash to her house and that three-four days thereafter the police brought remaining accused i.e. appellant Shiv Kumar to her house and the deposition of her neighbor Rohtash Singh PW-8, that the police had brought appellants Mahinder and Prakash to his house on 26.04.1992. The incident had occurred on the intervening night of 25th and 26th April 1992, meaning thereby, that the police had brought appellant Surinder, Bijender and Mahinder in the house of Joginder Kaur between 28th April 30th April 1992, appellant Prakash between 29th April 1st May 1992 and appellant Shiv Kumar between 2nd May 5th May 1992. The aforesaid dates of visits of the appellants to the house of Joginder Kaur and Rohtash Singh are prior to the dates on which the police sought to conduct their test identification proceedings. Not only that, the aforesaid dates are also prior to the dates on which the appellants are shown as arrested by the police, implying thereby that the appellants came into the custody of the police before the dates on which they are shown as arrested by the police. The afore- said three pieces of evidences show contrivance on the part of the police to implicate the appellants in the present case and strongly probablize the possibility that the appellants were shown to Joginder before the conduct of test identification proceedings. As a necessary corollary to the aforesaid, it has to be held that the test identification proceedings sought to be conducted by the police were improper and thus the appellants were justified in refusing to participate in

the same.

42. In view of the facts that the appellants were complete strangers to Joginder Kaur, Joginder Kaur had little opportunity to see the faces of the robbers as the incident had occurred in darkness, Joginder Kaur had not mentioned anything about the physical features of robbers in her statement Ex.PW-7/A and the test identification proceedings sought to be conducted by the police were improper, no value can be attached to the identification of the appellants by Joginder Kaur in the court.

43. The claim of Rohtash Singh PW-8, that appellant Prakash used to reside as a tenant in his house i.e. house No.178 stands admitted by appellant Prakash inasmuch as a suggestion was given to Chandan PW-15 in his cross- examination on behalf of appellant Prakash that he vacated the house of Rohtash Singh on 20th or 21st April 1992. The matter does not end here for the reason the claim of appellant Prakash that he vacated house No.178 on 20th or 21st April 1992 i.e. before the date of the incident stands corroborated by the deposition of Rohtash Singh that appellant Prakash vacated his house seven-ten days prior to the date on which the police had brought him to his house. Rohtash Singh had deposed that the police had brought appellant Prakash to his house on 26.04.1992, meaning thereby, that appellant Prakash vacated his house between 17th April 20th April 1992. When appellant Prakash had vacated house No.178 prior to the date of the incident he could not have gained access to the said house on the date of the incident. The testimonies of Puran Chand PW-2 and Chandan PW-15, are of no aid to the prosecution in establishing the fact that appellant Prakash was residing as a tenant in house No.178 on the date of the incident. As already noted herein above, Puran Chand PW-2, has deposed that on 22.04.1992 appellant Prakash had bought two cups of tea and one packet of biscuits from his shop and that on 25.04.1992 at about 06.30 07.00 P.M. some boy had bought three cups of tea from his shop and his son Chandan had collected utensils from that boy. The testimony of Puran Chand merely brings out appellant Prakash had bought two cups of tea and one packet of biscuits from a shop situated in the neighborhood of house No.178 few days before the date of the incident. Nothing turns thereon for merely because appellant Prakash had bought two cups of tea and one packet of

biscuits from a shop situated in the neighborhood of house No.178 few days before the date of the incident does not imply that he was residing as tenant in house No.178 on the date of the incident. Chandan PW-15, had deposed that on 25.04.1992 at about 08.15 P.M. he had gone to house No.178 where some boys were living as tenants to collect some utensils; that said boys were not present in the said house on the next day and that he cannot identify the said boys. The testimony of Chandan merely brings out that some boys who were residing as tenants in house No.178 were present in said house on 25.04.1992 and that they were not found present in the said house on the next day. There is nothing to suggest that appellant Prakash was the one of the boys who was found present in house No.178 by Chandan on 25.04.1992, particularly when owner of the said house Rohtash Singh deposed that appellant Prakash had vacated his house between 17th April 20 April 1992.

44. In any case, even it is taken that appellant Prakash was a tenant in house No.178 and that said house was used by the robbers to enter and exit into/from the house of the deceased the same is not proof of the guilt of appellant Prakash in the absence of any other evidence connecting appellant Prakash with the crime(s) with which he is alleged. Appellant Prakash was not the sole occupant of house No.178 inasmuch as there is evidence to show that besides appellant Prakash at least one more person i.e. Rohtash Singh was occupying the said house. Any of the occupants of house No.178 could have been the persons who had committed robbery in the house of the deceased and caused the death of the deceased during the course of the commission of the said robbery.

45. This takes us to the circumstances pertaining to the recoveries made against the instance of the appellants.

46. It is settled law that mere recovery of an object at the instance of an accused is a relevant fact only when it is established by other evidence that the object recovered is connected with the accused and the offence with which he is charged. To put it pithily, the connection between the object recovered, the accused and the offence with which the accused is charged with must always be established by evidence alinude. In the instant case, witnesses; Joginder Kaur

PW-7 and Hardyal Singh PW-6, had identified the articles allegedly recovered at the instance of appellant Surinder, Mahinder, Bijender and Shiv Kumar as the articles which were stolen by the robbers from their house during the test identification of the said articles but said articles were not shown to the said witnesses in their examination- in-chief. Test identification parade belongs to the stage of investigation. They do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with the assurance that their progress with the investigation into an offence is proceeding on the right lines. The identification made by a witness during a test identification parade can only be used as a corroboration of the statement of said witness in court. In the absence of statement made by a witness in the Court regarding the identification of a person or thing, the identification of the said person or thing by the witness in the test identification proceedings is of no consequence. That being the case, the position which emerges is that there is no evidence to establish that the articles recovered at the instance of appellants Surinder, Mahinder, Bijender and Shiv Kumar were stolen by the robbers from the house of the deceased. In that view of the matter, nothing much turns on the fact that some articles were recovered at the instance of appellants Surinder, Mahinder, Bijender and Shiv Kumar.

47. Be that as it may, the recoveries allegedly made at the instance of the appellants are not free from doubt. We have already highlighted in the foregoing paras that the evidence on record is suggestive of the contrivance on the part of the police to falsely implicate the appellants in the present case. There is one circumstance which casts considerable doubt on the so-called recoveries made at the instance of the appellants. As already noted herein above, the test identification parade of the articles recovered at the instance of appellants Surinder, Bijender and Shiv Kumar were conducted on 25.05.1992 and that the articles which were put up for identification included two wrist watches. As per the prosecution, one wrist watch each was recovered from appellant Bijender and Mahinder and that the recovery of the wrist watch at the instance of appellant Mahinder was made on 28.05.1992. It is a mystery to us that how come wrist watch recovered at the instance of appellant Mahinder was put up for identification prior to the recovery of the said watch. It is more than apparent that the police had

planted wrist watch on appellant Mahinder. Similarly, the recovery of blood-stained daggers and knives at the instance of appellant Prakash is suspect. As per the prosecution, the daggers and knives were recovered at the instance of appellant Prakash from three-four polythene bags lying in a room in house No.178 on 02.05.1992. The police had learnt about the fact that house No.178 was used by the robbers to enter and exit into/from the house of the deceased on 26.04.1992. Surely the police would have thoroughly searched the house No.178. Had the daggers and knives allegedly recovered at the instance of appellant Prakash lying in house No.178 the same would have been found by the police.

48. Nothing turns on the fact that appellants Surinder and Bijender used to visit accused Prakash at house No.178 even it is assumed that appellant Prakash was one of the persons who had committed robbery in the house of the deceased and murdered the deceased during the course of commission of robbery. Mere meeting of a person with a person involved in a crime without there being any evidence that such meeting was in connection with the commission of the crime in question is not indicative of the guilt of the person. We hasten to add that we find hardly any worthwhile evidence against accused Prakash.

49. Except for the circumstances repelled by in the foregoing paras, no other circumstance has been relied upon by the prosecution to bring home the guilt of the appellants. We thus hold that the prosecution has not been successful in establishing the guilt of the appellants. The evidence led against them is most uninspiring in quality and character.

50. Before bringing the curtains down, it is most significant to note that five chance prints were lifted by the police from/around the almirah kept in the room in the intruded by the robbers. It was categorically stated by Joginder Kaur in her statement Ex.PW-7/A that the said almirah was opened by the robbers. Yet for some strange reason the police chose not to obtain the finger prints of the appellants. A piece of evidence which could have turned out to be vital in establishing the guilt of the appellants was not collected during the investigation due to the callousness of the police. This serious lapse committed by the police shows the shoddy manner in which police conducts the investigation(s). This court

expects that in future the police shall be more vigilant while conducting investigation(s) and would ensure that no person would go scot free on account of its lapses.

51. In view of the above discussion the instant appeals are allowed. The appellants are acquitted of the charges framed against them. The sentences imposed upon them are quashed. Since the appellants are on bail the bail bonds and surety bonds furnished by the appellants are discharged.

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