Wasim Vs. State

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Court : Delhi

Decided On : May-09-2013

Judge : Siddharth Mridul

Appellant : Wasim

Respondent : State

Judgement :
IN THE HIGH COURT OF DELHI AT NEW DELHI Judgment reserved on:

26. 04.2013 Judgment pronounced on:

09. 05.2013 CRIMINAL APPEAL No.661/2010 WASIM Through: ..... Appellant Mr. Deepak Vohra, Advocate (DHCLSC) versus STATE Through: ..... Respondent Mr. Mukesh Gupta, APP CRIMINAL APPEAL No.1046/2010 NAGENDER @ KALIA Through: ..... Appellant Ms. Anita Abraham, Advocate, (DHCLSC) versus STATE Through: ..... Respondent Mr. Mukesh Gupta, APP CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL JUDGMENT SIDDHARTH MRIDUL, J.

1. These two appeals are directed against the judgment dated 15.03.2010 passed by the Additional Session Judge, Rohini, in Session Case No:

150. 07 arising out of FIR No. 707/07 (Ex.PW-2/A) registered under Sections 394/397/34 of the Indian Penal Code, 1860 (IPC). Vide the impugned judgment Appellant Wasim (hereinafter referred to as A-1) has been convicted under Sections 394/397/34 IPC and Section 27 of the Arms Act, 1959. By an order of

sentence dated 15.03.2010, for offences under Section 394/397 IPC, A-1 has been sentenced to undergo rigorous imprisonment for life and fine of `5000/-. In default of payment of fine, A-1 has to undergo 4 months simple imprisonment. For offence under Section 27 of the Arms Act, 1959, A-1 has been sentenced to rigorous imprisonment for three years and fine of `2000/- has been imposed, in default of payment of which he has to further undergo simple imprisonment for 2 months. The sentences are directed to run concurrently. Appellant Nagender (hereinafter referred to as A-2) has been convicted under Section 394 read with Section 34 IPC. By sentence order dated 15.03.2010, A-2 has been sentenced to undergo Rigorous imprisonment for 7 years and fine of `5000/- has been imposed. In default of payment of fine, A-2 is sentenced to undergo Simple Imprisonment for 4 months.

2. The prosecution case, in brief, is as under:(i) On 17.09.2007 at about 8:47 p.m., DD No. 56/B (Ex.PW-3/A) was registered on an information received through intercom mentioning that some boys were snatching money and inflicting injury with knife at the Shamshan Ghat near House No. 229 BG SGT Transport Nagar. The said boys were apprehended. SI Pawan Kumar (not examined) was handed over the DD Entry for investigation. The rukka, Ex.PW-2/A was registered on 17.09.2007 vide DD No.2A on the statement of Bahadur Singh (PW-2). In his statement, Ex.PW-2/A, Bahadur Singh has stated that he was working as a truck driver. He further stated that he loaded the truck with goods at Punjab in truck No. RJ-13G5525 and unloaded the same at Bahal Garh. On 16.09.2007, Bahadur Singh came to S.G. Transport Nagar and parked the truck in front of the New Transport Companys office to take back goods to Punjab. Bahadur Singh further stated that on 17.09.2007 at about 8:00 p.m., he was proceeding towards his truck parked near the side of the old cremation ground when suddenly three boys reached there and surrounded him. One boy immediately took out a knife from his possession and pointed the same on his stomach whereas the other boy caught hold of his neck from behind. The third boy took out his wallet containing a sum of `1950/- cash, the slip of license renewal, visiting cards, one pocket diary and some other papers from the rear pocket of the pants after twisting his hand. Bahadur Singh further stated that when the second boy intended to take out his mobile phone from the pocket of his shirt, he somehow rescued the same from his

clutches and gave him a push. At the same time, the boy who was holding the knife gave a blow on his person and when he tried to save himself, a knife blow was given on the right hip. Thereafter, the said boy again gave a knife blow but Bahadur Singh in order to protect himself caught hold of the knife as a result of which he sustained injury on the finger of the right hand. On raising alarm, public gathered there and caught hold of the boy who was fleeing from the spot after inflicting knife blow on Bahadur Singh. The said boy was given a beating by the public. At that time, Constable Shambhu (PW4) took into custody the boy who was trying to flee from there while brandishing the knife. In the meantime, PCR Van reached at the spot and it was learnt that the boy who was apprehended by Constable Shambhu was Wasim (A-1). Wasim disclosed the name of his associates as Kalia and Chand residents of Bhagwanpura Jhuggis. Bahadur Singh further stated that he could identify the said boys on confrontation. (ii) The rukka, Ex.PW-2/A was prepared and dispatched on 17.09.2002 at about 11:50 p.m. On the basis of rukka, FIR No. 707/2007, Ex.PW-1/A, was registered on 18.09.2007 against the appellants under Sections 394/397/34 IPC. The knife was seized from the possession of A-1 by the Investigating Officer SI Pawan Kumar (not examined) vide seizure memo Ex.PW-2/C. A-1 was arrested from the spot vide arrest memo Ex.PW- 2/F and A-2 was arrested from Bhagwanpura Jhuggi on 18.09.2007 at about 4:00 a.m. vide arrest memo Ex.PW-2/H.

3. The prosecution, in order to establish its case, examined 5 witnesses. Bahadur Singh who is the complainant and an injured eye witness was produced by the prosecution as PW-2. PW-2 in his examination-in-chief deposed in the following manner:On 17.07.2004, I was working as driver on truck not RJ13G-5225. I loaded my truck from Muktsar and delivered the goods at Bahalgarh. From Bahalgarh, I reached at Sanjay Gandhi Transport Nagar, Delhi for loading other goods. I parked my truck near old cremation ground at Sanjay Gandhi Transport Nagar. At about 7.00/7.15 p.m. after visiting at new Supreme Transport Company at Sanjay Gandhi Transport Nagar I was going towards the place where I had parked my truck and when I was going towards my truck, three persons came from outside, one person was holding a knife in his hand. I can identify the person who was holding an open knife in his hand. Witness has pointed out towards accused Wasim today present in the Court is the same person who was holding the knife

and came from my opposite side alongwith two other persons. One person caught hold of my neck and third person caught hold of my hand and accused Wasim pointed out knife towards me. Out of them one person removed my purse from my pocket containing Rs.1950/-, slip of my licence renewal, some visiting cards and some other papers. Third person instigated his companion to attack on me and when Wasim tried to attack on me I caught hold the blade of knife from my right hand and I received injuries on my fingers. Accused Wasim again attacked on me with the said knife and I took a turn but he attached on me with knife on my right thigh. The third person tried to snatch my mobile phone from my pocket but I hold the mobile phone. I attached on accused Wasim with my leg and after that accused Wasim today present in the Court along with his companion started running from spot. I can identify companions of accused Wasim. The witness has pointed out towards accused Nagender today present in the Court and states that he is the same person who removed the purse from the pocket of my pant. The third person who tried to snatch my mobile phone is not present in Court today. I raised alarm. On hearing my alarm, the other drivers and public persons chased the accused persons. Accused Wasim today present in the Court was apprehended near the spot and at that time, he was having open knife in his hand.. In cross-examination, PW-2 has admitted that his helper was present in the truck and there was darkness at the spot. He stated A-1 had an open knife in his hand. The robbery incident lasted for 4-5 minutes. PW-2 along with A-1 was taken to the Hospital and he remained in the hospital for 20 minutes. Thereafter, he was taken to the police post and then back to the crime spot. He stated that accused Nagender was arrested by the police when they came back to spot after treatment. No money was recovered from accused Nagender and Wasim. PW-2 denied the suggestion that some other assailants attacked him and not the appellants.

4. I find that the testimony of PW-2 inspires confidence. PW-2 in his testimony before court has made an analogous statement as was contemporaneously recorded by the police officials in Ex.PW-2/A. In both his statements, PW-2 has identically deposed about the manner in which the incident took place.PW-2 had himself suffered injuries while trying to confront the attackers. The MLC Ex.PW-6/A clearly mentions that PW-2 had suffered two injuries i.e., one over the right ring finger and the other over right hip. It is not suggested that PW-2 bore any ill-

will or animosity towards the appellants. There is no reason or material ground to disbelieve the testimony of PW-2. Therefore PW-2 is a reliable, trustworthy and truthful witness. The testimony of PW-2 establishes beyond doubt that the both A-1 and A-2 were involved in the robbery incident and with a common intention to rob PW-2, attacked him at night on 17.09.2007. A-1 was apprehended from the spot and knife was seized from his hand. This fact further corroborates and leaves no manner of doubt that A-1 was involved in the alleged incident.

5. The learned Counsel for A-1 has challenged the impugned judgment on two counts. Firstly, it has been contended that the IO i.e., SI Pawan Kumar has not been examined/produced by the prosecution which is a serious infirmity and lapse on part of the prosecution. Secondly, it is urged that Malkhana moharir with whom the knife Ex.P-1 was deposited has also not been produced or examined by the prosecution. Hence, the recovery of knife Ex.P-1 from A-1 has not been established beyond doubt. In this regard, the learned Counsel for A-1 has placed reliance on State of Rajasthan vs. Gurmail Singh, (2005) 3 SCC 5.and Des Raj @ Dass vs. State, 2000 Cri.L.J.

2083 (Del).

6. We shall first deal with the aspect of non-examination of the Investigating Officer. SI Pawan Kumar was entrusted with investigation of the instant case. The learned APP has drawn my attention to the order dated 07.09.2009 wherein the Trial Court has recorded that SI Pawan Kumar is reported to have left the services. The learned APP cites this as the reason for non-examination of the Investigating Officer. The learned APP has also drawn my attention to the testimony of PW-4 HC Shambhu Singh who was part of the investigation at all times. PW-4 has deposed that on 17.09.2007 he was on patrolling duty in the area in front of BG Block, Sanjay Gandhi Transport Nagar, near Shamshan Ghat. At about 8:30 p.m., PW-4 came to know that some persons had snatched money by inflicting injury with knife. When he reached at the spot, he found one person namely Bahadur Singh (PW-2) lying in an injured condition and accused Wasim was fleeing from spot with a knife in his hand. He apprehended appellant Wasim with the knife on the spot itself. PW-4 identified accused Wasim in court. Nothing significant

emerges from his cross-examination which raises a doubt or creates suspicion about the testimony of PW-4. PW-4s testimony corroborates the testimony of PW-2 Bahadur Singh on the aspect that A-1 while fleeing was apprehended at the spot itself. It is contended by the Counsel for A-1 that it was the IO who recorded the statement of PW-2 Bahadur Singh, seized the knife and conducted the entire investigation. Therefore, non-production of the IO casts a doubt on the entire prosecution version. The said contention cannot be accepted and the same is rejected. In Ram Dev vs. State of UP, 1995 Supp (1) SCC 54.the Supreme Court while dealing with the aspect of non-examination of the IO held:It is always desirable for the prosecution to examine the investigating officer..However, non-examination of the investigating officer does not in any way create any dent in the prosecution case much less affect the credibility of the otherwise trustworthy testimony of the eyewitnesses. (underlining added) In Behari Prasad vs. State of Bihar, (1996) 2 SCC 31.the Supreme Court has held that for non-examination of the investigating officer the prosecution case need not fail. The Court has held that it would not be correct to contend that if the investigating officer is not examined the entire case would fall to the ground as the accused were deprived of the opportunity to effectively cross-examine the witnesses and bring out contradictions. It was held that the case of prejudice likely to be suffered must depend upon the facts of each case and no universal straitjacket formula should be laid down that non-examination of investigating officer per se vitiates the criminal trial. In Ambika Prasad vs. State (Delhi Admn.), (2000) 2 SCC 64.it was held that the criminal trial is meant for doing justice not just to the accused but also to the victim and the society so that law and order is maintained. It was further held that it was unfortunate that the investigating officer had not stepped into the witness box without any justifiable ground however this conduct of the investigating officer and other hostile witnesses could not be a ground for discarding evidence of PWs 5 and 7 whose presence on the spot was established beyond any reasonable doubt. It was held that nonexamination of the investigating officer could not be a ground for disbelieving eyewitnesses. In Bahadur Naik vs. State of Bihar, (2000) 9 SCC 15.it was held that non-examination of an investigating officer was of no consequence when it could not be shown as to what prejudice had been caused to the appellant by such non-examination. In view of

the law laid by the Supreme Court, it is settled that nonexamination of IO cannot be a ground to disregard the testimony of an eyewitness if found to be cogent and reliable. In the instant case, as noted above, the testimony of PW-2 Bahadur Singh is accepted as reliable, credible and trustworthy. He has in clear terms expressed that both A-1 and A-2 were the persons who robbed him and A-1 inflicted injuries on him by using a knife. PW-4 HC Shambhu Singh has deposed about the manner in which the entire investigation was carried out which has not been demolished in crossexamination. Therefore, non-examination of the IO does not cast a doubt on the testimony of PW-2 Bahadur Singh and PW-4 HC Shambhu Singh.

7. As regards non-examination of Malkhana Moharir [MHC(M)] from whose custody knife Ex.P-1 was produced, suffice it is to note that PW-4 has categorically deposed that knife which was seized by him from A-1 was handed over to the IO who prepared the sketch of the knife. Thereafter, the knife was kept in a sealed pulanda and the same was taken into possession vide memo Ex.PW-2/C. In cross-examination, PW-4 has stated that on 18.09.2007, he handed over the sealed pulanda to MHC(M). He further stated he had not made an entry in the Malkhana register in his own handwriting. However, he denied the suggestion that no seal pulanda was given to him for depositing. In these circumstances, it emerges that PW-4 had handed over the sealed pulanda to MHC(M). It may be true that MHC(M) has not deposed regarding the safe custody of the knife but this does not in any way nullify or negate the testimony of injured eye witness PW-2 Bahadur Singh. The decisions which are relied upon by the Counsel for A-1 in this behalf do not help him in any way. In Gurmail Singh (supra), the Supreme Court was dealing with the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) wherein it is mandatory to comply with procedural requirements as laid down in the Act. In Des Raj (supra), it was alleged that the accused were found in possession of prohibited arms. The Trial Court convicted the accused under Section 402 IPC and Section 25 of the Arms Act. In said case there was delay of 12 days in sending the sealed parcel consisting of seized weapon by Moharir to the CFSL and no CFSL form was filled up. In these circumstances, nonexamination of Malkhana Moharir was found to be lapse on the part of the prosecution. In the case at hand, there is no such delay and PW-4 has firmly deposed about depositing the sealed parcel with Malkhana Moharir.

8. It is further submitted by the counsel for A-1 that the prosecution has not been able to prove beyond doubt that the injuries as recorded in MLC, Ex.PW- 6/A of PW-2 Bahadur Singh were caused by the knife Ex.P-1, which was seized at the spot, as there is no medical opinion on record regarding the weapon of offence. Therefore, there is a doubt whether a deadly weapon was used at all in committing the offence of robbery. In this premise, it is contended that conviction of A-1 under Section 397 IPC cannot be sustained and at the most he could have been convicted under Section 394 IPC. The Learned APP has opposed the said contention. He has submitted that from the language of Section 397 IPC it is patent that mere use of deadly weapon is sufficient to attract a charge/conviction under Section 397 IPC and it is not necessary for the prosecution to establish that injury inflicted on the injured witness were caused by weapon of offence recovered from the accused. Section 397 IPC provides that if, at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years. In Ashfaq vs. State (Govt. of NCT of Delhi), (2004) 3 SCC 116.the Supreme Court while interpreting the word uses employed in Section 397 IPC has held as under:- 7. So far as the contention urged as to the applicability of Section 397 IPC and the alleged lack of proof of the necessary ingredients therefor is concerned, it proceeds, in our view, upon a misconception that unless the deadly weapon has been actually used to inflict any injury in the commission of the offence as such, the essential ingredient to attract the said provision could not be held to have been proved and substantiated. We are of the view that the said claim on behalf of the appellants proceeds upon too narrow a construction of the provision and meaning of the word uses found in Section 397 IPC. As a matter of fact, this Court had occasion to deal with the question in the decision reported in Phool Kumar v. Delhi Admn. [(1975) 1 SCC 79.:

1975. SCC (Cri) 336 : AIR 197.SC 905.and it was observed as follows: (SCC p. 800, para

6) 6. Section 398 uses the expression armed with any deadly weapon and the minimum punishment provided therein is also seven years if at the time of

attempting to commit robbery the offender is armed with any deadly weapon. This has created an anomaly. It is unreasonable to think that if the offender who merely attempted to commit robbery but did not succeed in committing it attracts the minimum punishment of seven years under Section 398 if he is merely armed with any deadly weapon, while an offender so armed will not incur the liability of the minimum punishment under Section 397 if he succeeded in committing the robbery. But then, what was the purport behind the use of the different words by the legislature in the two sections viz. uses in Section 397 and is armed in Section 398. In our judgment the anomaly is resolved if the two terms are given the identical meaning. There seems to be a reasonable explanation for the use of the two different expressions in the sections. When the offence of robbery is committed by an offender being armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in his mind, the offender must be deemed to have used that deadly weapon in the commission of the robbery. On the other hand, if an offender was armed with a deadly weapon at the time of attempting to commit a robbery, then the weapon was not put to any fruitful use because it would have been of use only when the offender succeeded in committing the robbery.

8. Thus, what is essential to satisfy the word uses for the purposes of Section 397 IPC is the robbery being committed by an offender who was armed with a deadly weapon which was within the vision of the victim so as to be capable of creating a terror in the mind of the victim and not that it should be further shown to have been actually used for cutting, stabbing, shooting, as the case may be. (Underlining added) Thus, from the ratio in Ashfaq (supra), it is clear that in order to sustain conviction under Section 397 IPC it is not essential that the deadly weapon is actually put to use and that the prosecution must in all circumstances establish that the injuries received by the injured witness was caused by the weapon of offence. In the instant case, MLC Ex.PW-6/A of PW-2 clearly demonstrates that injuries were sustained by PW-2 as was stated by him in his statement recorded by the police officials immediately after the incident. PW-2 has further stated that A-1 inflicted the said injuries with knife. The knife Ex.P-1 was identified by him correctly in court. There is nothing in the cross-examination of PW-2 to suggest that no knife was used by the appellants. It is also not in dispute that A-1 along

with knife was arrested from the spot itself. The knife was seized from his possession immediately after the incident vide seizure memo Ex.PW-2/C. These facts leave no doubt that A-1 used a knife in commission of robbery and accordingly, A-1 has been rightly convicted under Sections 394/397 IPC and Section 27 of the Arms Act.

9. The Counsel appearing for A-2 has urged that A-2 has been wrongly convicted under Section 394/34 IPC as barring the testimony PW-2 there is no evidence on record to suggest that he was involved in the alleged robbery. No looted money was recovered from the A-2 during his personal search as demonstrated by his personal search memo Ex.PW-2/I. The Learned Counsel further contended that A-2 was not apprehended from the spot and therefore, it was essential that a test identification parade (for short TIP) with respect to him be conducted by the police. By not conducting a TIP serious prejudice has been caused to A-2 and identification of A-2 by PW-2 Bahadur Singh in Court cannot be accepted without conducting a TIP. It is further submitted that as per the testimony of PW-2, A-2 was arrested at about 12:00 am whereas the arrest memo mentions the time of arrest to be 4:00 am. In this behalf, the Learned Counsel has places reliance on Ajit Singh vs. State of Haryana, (1996) 3 SCC 335.

10. The learned Additional Public Prosecutor has urged that recovery of looted money at the instance or from the possession of the accused is not sine qua non for sustaining conviction. Ld. APP has contended that the PW2 Bahadur Singh has in clear and categorical terms deposed that A-2 along with A-1 has attacked the former with a knife and robbed him of his purse/money. Further, identification in court is substantive evidence and establishing the identity of the accused through a TIP is only corroborative evidence.

11. We do not find any force in the contentions advanced by the Counsel for the A-2. It is settled law that recovery of a physical object/money is not an obligatory requirement for convicting a person guilty of crime. In the instant case, there is direct evidence in form of the ocular testimony of PW-2 Bahadur Singh stating that A-2 was involved in the commission of robbery and hence non-recovery of looted money from the A-2 is of no consequence. As per PW-2, three persons were

involved in the alleged robbery, and it is quite possible that A-2 while fleeing from the spot gave the snatched money to the third person who has not been prosecuted.

12. On the aspect of TIP, in Malkhan Singh vs. State of M.P., (2003) 5 SCC 746.a three judge bench of the Supreme Court enunciated the law in the following manner:7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the 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 establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. 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. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. 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. This 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. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See Kanta Prashad v. Delhi Admn. [AIR 195.SC 35.:

1958. Cri LJ 698., Vaikuntam Chandrappa v. State of A.P. [AIR 196.SC 134.:

1960. Cri LJ 1681., Budhsen v. State of U.P. [(1970) 2 SCC 12.:

1970. SCC (Cri) 343 : AIR 197.SC 1321.and Rameshwar Singh v. State of J&K [(1971) 2 SCC 71.:

1971. SCC (Cri) 638] .) 8. In Jadunath Singh v. State of U.P. [(1970) 3 SCC 51.:

1971. SCC (Cri) 124] the submission that absence of test identification parade in all cases is fatal, was repelled by this Court after exhaustive consideration of the authorities on the subject. That was a case where the witnesses had seen the accused over a period of time. The High Court had found that the witnesses were independent witnesses having no affinity with the deceased and entertained no animosity towards the appellant. They had claimed to have known the appellants for the last 6-7 years as they had been frequently visiting the town of Bewar ..The Court concluded: (SCC pp. 523-24, para

15) 15. It seems to us that it has been clearly laid down by this Court in Parkash Chand Sogani v. State of Rajasthan [Crl. A. No. 92 of 1956 decided on 15-1-1957 (SC)] that the absence of test identification in all cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the accused previously, the prosecution would run the risk of losing its case.

9. In Harbajan Singh v. State of J&K [(1975) 4 SCC 48.:

1975. SCC (Cri) 545] 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.

10. It is no doubt true that much evidentiary value cannot be attached to the identification of the accused in court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or who had no particular reason to remember the person concerned, if the identification is made for the first time in court. xxxx xxxxx xxxx 16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides

corroboration to the identification of the witness in court, if required. However, 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 instant case the courts below have concurrently found the evidence of the prosecutrix to be reliable and, therefore, there was no need for the corroboration of her evidence in court as she was found to be implicitly reliable. We find no error in the reasoning of the courts below. From the facts of the case it is quite apparent that the prosecutrix did not even know the appellants and did not make any effort to falsely implicate them by naming them at any stage (underlining added) From the aforesaid observations, it is clear that non-conducting of TIP is not fatal in circumstances where identity of the culprit can be established on the basis of a credible testimony of an eye witness or on the basis of other cogent material/evidence on record. The identification of accused by a witness in the court is a substantial piece of evidence whereas identification through TIP is held necessary for corroborative purposes only. Recently, in Shyamal Ghosh vs. State of W.B., (2012) 7 SCC 646.the Supreme Court elucidated the purport of conducting a TIP:- 79. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime.

80. It is equally correct that Cr PC does not oblige the investigating agency to necessarily hold the test identification parade. Failure to hold the test identification parade while in police custody, does not by itself render the evidence of identification in court inadmissible or unacceptable. There have been numerous cases where the accused is identified by the witnesses in the court for the first time. One of the views taken is that identification in court for the first time alone may not form the basis of conviction, but this is not an absolute rule. The purpose of the test identification parade is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for

corroboration of the sworn testimony of the witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence is however subjected to exceptions. Reference can be made to Munshi Singh Gautam v. State of M.P. [(2005) 9 SCC 63.:

2005. SCC (Cri) 1269] and Sheo Shankar Singh v. State of Jharkhand [(2011) 3 SCC 65.: (2011) 2 SCC (Cri) 25] .

81. Identification parade is a tool of investigation and is used primarily to strengthen the case of the prosecution on the one hand and to make doubly sure that persons named as the accused in the case are actually the culprits. The identification parade primarily belongs to the stage of investigation by the police. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court. Thus, it is only a relevant consideration which may be examined by the court in view of other attendant circumstances and corroborative evidence with reference to the facts of a given case.

13. In the present case, both PW-4 HC Shambhu Singh and PW-2 Bahadur Singh have deposed that A-2 was not arrested from the spot and was arrested subsequently on the testimony of A-1 from the Bhagwanpura Jhuggis. It is submitted that there is an apparent contradiction in the testimony of PW-2 Bahadur Singh and PW-4 HC Shambhu Singh regarding the arrest of A-2. PW-4 in his testimony has stated that A-2 was not apprehended from the spot. After the arrest of A-1, PW-4 along with A-1, SI Pawan Thakur, the investigating officer and PW-2 Bahadur Singh went in to jhuggis of Bhaganwanpura in search of A-2 and Chandu. At the instance of examination, PW-4 has stated that the jhuggis were located at a distance of half a kilometer from the spot and A-2 was present in the jhuggi of one Bihari. All writing work was done near the jhuggi of Bihari. It is pointed out that PW-2 Bahadur Singh in his cross-examination has stated that after reaching the spot from the police post, he remained inside his truck and the police officials went along with A-1 for arresting A-2. After some time, police officials came back with A-2 and no money was recovered from either A-1 or A-2.

14. The contention of A-2 that TIP was not conducted has to be rejected in the present case. The reason for saying so is the statements made by PW-2 Bahadur Singh and PW-4 HC Shambhu Singh and the manner in which the A-2 was arrested. The name of A-2 appeared in the disclosure statement (Ex.PW-2/D) made by A-1 during interrogation. The said disclosure statement is not relevant against A-2. However, the said disclosure statement gave clues to the police officials and A-2 was arrested from the nearby Bhagwanpura Jhuggis. It may be true that there is a minor discrepancy on the fact whether PW-2 had accompanied the police party or not when they went looking for the other accused. This discrepancy is of a minor nature which doesnot shake the core prosecution case. It is also noticeable that there is nothing in the cross-examination of PW-2 to dispute the identification of A-2 by PW-2 Bahadur Singh. PW-2 right from the beginning i.e., the recording of rukka Ex PW-2/A has taken a clear stand that he had a good look at the assailants as he was the injured victim who was robbed of his articles on the fateful day. His deposition in court is to the same effect. It is not suggested that PW-2 entertained a prior enmity against A-2 and would falsely implicate him in the said robbery. PW-2 was in fact an injured eye witness and it is unlikely that he would let the actual assailants go scot-free and implicate an innocent person. In this regard, the observations of the Supreme Court in Abdul Sayeed v. State of M.P., (2010) 10 SCC 259.with respect to the testimony of an injured witness can be cited with profit:Injured Witness:

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. Convincing evidence is required to discredit an injured witness.

29. While deciding this issue, a similar view was taken in Jarnail Singh v. State of Punjab [(2009) 9 SCC 71.: (2010) 1 SCC (Cri) 107] , where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and

relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29) 28. Darshan Singh (PW

4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In Shivalingappa Kallayanappa v. State of Karnataka [1994 Supp (3) SCC 235.1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In State of U.P. v. Kishan Chand [(2004) 7 SCC 62.:

2004. SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy crossexamination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishan v. State of Haryana [(2006) 12 SCC 45.: (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW

4) has rightly been relied upon by the courts below.

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein. (underlining added) It is also noticeable that A-2 was arrested within reasonable time after the incident took place. The

complainant Bahadur Singh (PW-2), at the time of arrest, was present at the spot and as per the statement of PW-4, A-2 was arrested only after identification by PW-2. It is not the case of the prosecution that A-2 was arrested after a considerable delay and therefore, it was necessary to test the veracity of PW-2 by holding a TIP.

15. In view of the above discussion, the present appeals are dismissed. Conviction and sentence of both appellants Wasim and Nagender @ Kalia are upheld and maintained. SIDDHARTH MRIDUL (JUDGE) MAY 09.2013 dn