

(1994) 03 RAJ CK 0053
In the Rajasthan High Court
Case No : Criminal Appeal No. 306 of 1993

Ganpat Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 18-03-1994

Acts Referred:

Arms Act, 1959 — Section 25, 4
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 102, 302, 307, 324, 34

Citation : (1994) CriLJ 1565 : (1994) 1 WLN 521

Hon'ble Judges : V.G. Palshikar, J; B.R. Arora, J

Bench : Division Bench

Advocate : Doongar Singh, for the Appellant; V.R. Mehta, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Arora, J.—This appeal is directed against the judgment dated 16-8-93, passed by the Additional Sessions Judge No. 1, Udaipur, by which the learned Additional Sessions Judge convicted and sentenced the accused-appellants for the offences under Sections 102/34 and 307/34, I.P.C.

2. Accused-appellant Ganpat Singh, Nakul Singh and Tejraj Singh were tried by the learned Additional Sessions Judge No. 1, Udaipur, for the offences Under Sections 302 302/34 307 and 307/34, I.P.C. Accused-appellant Ganpat Singh and Nakul Singh were, also, tried for the offence u/s 4/25 of the Indian Arms Act.

3. The prosecution case, as unfolded as the First Information Report Ex. P.25, registered at Police Station, Hiran Magri, Udaipur, at 7.30 p.m. on 15-12-90, on the statement Ex. P.I made by P.W. 1 Girdhar Gopal, who was lying on Bed No. 9 in the Hospital by the Station House Officer, Police Station, Hiran Magri, Udaipur, contains the fact that the complainant-injured Girdhar Gopal and his brother Satya Prakash are running a betel shop in a wooden cabin installed in Sector No. 4 of the Hiran Magri locality. On the relevant day he was sitting in his cabin at

about 7.00 p.m. and his brother Satya Prakash was standing near the cabin. The three accused came to the shop from the side of the temple. They demanded Rajnigandha Pan Masala, Tulsi Tobacco and Gutkha, which were given to them by him. One person out of the three thereafter asked Satya Prakash- the elder brother of the informant Girdhar Gopal - that he was doing Dadagiri in Sewashram area and asked him whether he was the Dada of that area; whereupon Satya Prakash replied that he had come to Udaipur only three months before and previously he was residing in Nimbaheda and he has not done any wrong with anybody. In the meanwhile, one of the accused persons, who was wearing Blezzer having a monogram thereon, gave two-three slaps to Satya Prakash. The other two accused persons, also, started beating Satya Prakash. The informant asked them why they were giving beating to his brother, whereupon the person, who was wearing the blezzer, caught-hold of Girdhar Gopal and pulled him out of the cabin. The other two persons caught-hold of his brother Satya Prakash and the person, who was wearing blezzer (accused Nakul Singh) inflicted injury with a knife in the abdomen of Satya Prakash and the other two accused, also, continued catching-hold his brother. After receiving the injuries, Satya Prakash fell down. The informant raised alarm to save them and at that time, the person, who was wearing the blezzer, inflicted injury with the knife on his shoulder and broke the gas-lamp lying in the cabin. In the meanwhile, a three-wheeler (tempo), having the shape of a tonga, came there and all the three persons ran away in that three-wheeler towards the side of Satellite Hospital, Udaipur. After registration of the First Information Report, the police started investigation. P.W. 21 Bhanwar Singh, Station House Officer, Police Station, Hiran Magri, Udaipur, went to the place of the occurrence, prepared the Panchnama-Nash Ex. P.10, site plan and site inspection note Ex.P.11, recovered the blood-smeared soil, control-soil and the shoes of the deceased vide Ex.P.12, the blood-smeared clothes of Girdhar Gopal vide Ex. P. 13 requested the Medical Jurist to conduct the autopsy on the deadbody of Satya Prakash, handed over the deadbody of Satya Prakash to his elder brother Pradeep Bhatnagar vide Ex. P.15, made further investigation, recovered two iron rods of tempo which were smeared with the blood vide Ex. P. 16, recovered the agreement Ex. P. 17 from one Anwar Hussain the owner of the tempo, got the injury report of the injuries of Girdhar Gopal Ex. P.21, the post-mortem report Ex. P.22, recorded the statement of some witnesses and conducted the investigation up to 4-2-91, when the investigation was transferred to the C.I.D. The investigation was thereafter entrusted to Shri Bhagwati Prasad the Additional Superintendent on 25-2-91, who completed the investigation and presented the challan. The prosecution examined twenty-four witnesses and exhibited thirty-four documents. The nature of the evidence, produced by the prosecution, consists of the statements of five eye-witnesses viz., P.W. 1 Girdhar Gopal -- the injured witness--, P.W. 3 Ajeet Singh, P.W. 4 Mannu Sindhi, P.W. 5 Gautam Lal and P.W. 6 Narain Singh Except P.W. 1 Girdhar Gopal, the remaining four witnesses are the shop-keepers running shops in the adjoining area where the incident took place, but these witnesses have not supported the prosecution case and have turned

hostile. Therefore, the prosecution case rests mainly on the testimony of only one eye-witnesses, viz., P.W. 1 Girdhar Gopal, who, also, received injuries during the incident and at whose instance the F.I.R. was registered. This evidence of the eye-witness P.W. 1 Girdhar Gopal is sought to be corroborated by the statement of P.W. 7 Vishal, the brother-in-law of the deceased and P.W. 12 Rajendra Prasad Sharma, who came at the scene of the incident just after the incident and took Girdhar Gopal and Satya Prakash to the Satellite Hospital where the First Aid was provided to Girdhar Gopal and both the injured were thereafter referred to the General Hospital, Udaipur, where Satya Prakash succumbed to the injuries while P.W. 1 Girdhar Gopal was admitted in the hospital and remained there as an indoor-patient for about a week. P.W. 8 Manoj, also, came at the scene of the occurrence when Girdhar Gopal was raising the alarm but this witness has, also, not supported the prosecution case and has turned hostile. P.W. 9 Pradeep Bhatnagar is the brother of the injured-informant as well as the deceased, who was informed that Girdhar Gopal and Satya Prakash received injuries and they have been admitted in the hospital and he went to the hospital and found Girdhar Gopal in an injured condition while Satya Prakash had succumbed to the injuries. After the postmortem examination, the deadbody of Satya Prakash was handed over to this witness vide Ex. P.15. PW. 10 Mohan Lal is the driver of the three-wheeler (tempo), P.W. 2 Dharnidhar was the passenger in the tempo, which came at the place of the occurrence and according to the prosecution case the accused fled away by boarding that tempo. P.W. 11 Anwar Hussain is the owner of this tempo. P.W. 12 Rajendra Prasad, P.W. 13 Mahipal, P.W. 14 Nagendra, P.W. 15 Kedar Lai, P.W. 18 Bhagwat Singh, P.W. 19 Chhagan Lal, P.W. 20 Hem Raj and P.W. 21 Bhanwar Singh are the Motbir witnesses about the recoveries as well as the other memos prepared by the police. Their evidence is not of much importance because the recoveries have not been believed by the learned Additional Sessions Judge as the clothes recovered at the instance of the accused vide recovery memos Ex. P. 18, Ex. P. 19 and Ex. P.20 or the knife recovered from accused-appellant Ganpat Singh were neither found smeared with human blood nor were they got identified from these witnesses. P.W. 16 is Dr. G. N. Dad, who examined the injuries found on the person of P.W. 1 Girdhar Gopal and, also, conducted the post-mortem on the deadbody of deceased Satya Prakash. P.W. 11 Shri Girish Kumar Pandey is the Munsiff and Judicial Magistrate, Udaipur (North), Udaipur, who conducted the test identification parade of accused Tejraj Singh, Ganpat Singh and Nakul Singh on 10-4-91 at about 3.00 p.m. in the Central Jail, Udaipur, and prepared the identification memos Ex. P.2, Ex. P.3 and Ex. P.4, respectively, P.W. 1 Girdhar Gopal correctly identified all the three accused while P.W. 5 Gautam Lal Patwa, P.W. 2 Dharnidhar and P.W. 10 Mohan Lal did not identify these accused. He has, also, stated that he took all the necessary precautions at the time of conducting the identification parade and mixed the under-trials of the same physique and health as that of the accused-appellants. P.W. 22 Basant Singh is the Literate Constable of Police, who took the samples for F.S.L. Examination to the State Forensic Science Laboratory, Jaipur. The prosecution has, also, placed reliance over thirty-four documents. The

accused were, also, examined u/s 313, Cr.P.C. but they did not examine any witness in support of their defence. The learned Additional Sessions Judge, after trial, acquitted all the accused-appellants of the offence under Sections 307 and 307/34, I.P.C, and Section 4/25 of the Indian Arms Act, but convicted them for the offences u/s 324/34, I.P.C, for inflicting injuries on the person of Girdhar Gopal. The learned Additional Sessions Judge, also, convicted the accused-appellants for the offence u/s 302/34, I.P.C, for causing the murder of Satya Prakash and sentenced each of them to undergo imprisonment for life and a fine of Rs. 1000/- each and in default of payment of fine further to undergo two months rigorous imprisonment for the offence u/s 302/34, I.P.C, and a fine of Rs. 500/- and in default of payment of fine further to undergo one month's rigorous imprisonment for the offence u/s 324/34, I.P.C, and both the sentences were directed to run concurrently. Aggrieved with the judgment dated 16-8-93, passed by the learned Additional Sessions Judge No. 1, Udaipur, the accused-appellants have preferred the present appeal.

4. It is contended by the learned counsel for the appellant that the learned lower Court committed an error in convicting the appellants on the basis of the solitary evidence of PW 1 Girdhar Gopal, which does not find corroboration from any other evidence. The other witnesses have not supported the prosecution case and so far as the evidence of PW 1 Girdhar Gopal is concerned, he was not earlier known to the appellants and the test-identification parade was held after a lapse of 3¹/₂ months and as the test-identification parade took place after an inordinate delay of 3¹/₂ months, there was no possibility of PW 1 Girdhar Gopal to identify the appellants and it is only on the basis of mere suspicion that he has named the appellants as the perpetrators of the crime. It has further been contended by the learned counsel for the appellants that the accused surrendered on 27-3-1991 and on the same day they were taken to the police custody but the test-identification parade was held on 10-4-1991, i.e., after fourteen days of their arrest and there is no convincing explanation coming from the side of the prosecution for this inordinate delay which has occurred in holding the test identification parade and during this period of fourteen days, the appellants were shown to the witnesses before the identification parade was arranged and as the appellants were shown to the prosecution witnesses before the identification parade was conducted, therefore, no importance can be attached to this test identification parade as it was held after a long delay well as the appellants were shown to the witnesses. It has, also, been contended by the learned counsel for the appellants that no precautions were taken by the learned Magistrate while conducting the test identification parade to mix the under trials of similar health and physique. In these circumstances the identification parade does not provide any strength to the prosecution evidence to sustain the conviction and the appellants, therefore, deserve to be acquitted. In support of its contention, the learned counsel for the appellants has placed reliance over: Budhsen and Another Vs. State of U.P., , Pritam Singh and Another Vs. The State of Rajasthan, Delhi Administration Vs. Bal Krishan and Others,

Yashwant v. State of Maharashtra AIR 1993 SC 337 : 1972 Cri LJ 1254 , Bhim Singh Rup Singh Vs. State of Maharashtra, , Bali Ahir and Others Vs. State of Bihar, and Manzoor Vs. State of Uttar Pradesh, . It is, also, contended by the learned counsel for the appellants that the fatal assault given to deceased Satya Prakash was a sudden, unanticipated and an individual act of an unascertained assailant and, therefore, all the appellants cannot be held guilty for sharing the common intention with the person who gave the knife blow on the abdomen of the deceased and, therefore, all, the three appellants deserve to be acquitted. In support of its case, the learned counsel for the appellants has placed reliance over: Mitter Sen and Others Vs. The State of U.P., . It has, also, been contended by the (earned counsel for the appellants that PW 1 Girdhar Gopal has stated that he was informed about the names of the accused-appellants as Nakul Singh, Ganpat Singh and Tejraj Singh, by Manu Sindhi and Ajeet Singh, but both these witnesses have not supported the prosecution case and were unable to identify the accused-appellants and, therefore, the testimony of PW 1 Girdhar Gopal cannot be relied upon and is of no help to the prosecution. In support of this contention, the learned counsel for the appellants has placed reliance over: Manney Singh v. State of Rajasthan (D.B. Criminal Appeal No. 241 of 1980 - decided on 3-10-1985). Lastly, it is contended by the learned counsel for the appellants that PW 1 Girdhar Gopal has stated that after committing the crimes, all the three accused fled away in the three-wheeler (Tempo) while PW 2 Dharnidhar, PW 10 Mohan Lal (the tempo driver) and PW 11 Anwar Hussain the owner of the tempo) have stated that only two persons boarded the tempo from the place of the incident. PW 10 Mohan Lal has specifically stated that two persons entered in the tempo on the knife point from the place of the occurrence and left the tempo near the Satellite Hospital. The contention of the learned counsel for the appellants is that according to these witnesses, only two persons boarded the tempo and in the absence of pre-acquaintance, which was the third accused is not known and as such all the appellants deserve to be acquitted. The learned Public Prosecutor, on the other hand, has supported the judgment passed by the learned Additional Sessions Judge.

5. We have considered the submissions made by the learned counsel for the parties and have gone through the record of the case.

6. The case of the prosecution mainly rests upon the statement of PW 1 Girdhar Gopal - an eye witness of the occurrence and who has, also, received the injuries during the aforesaid incident. He has stated that on 15-12-1990, at about 6.45 p.m., he was sitting in his cabin situated in Sector No. 4 of Hiran Magri area in the city of Udaipur. The three accused-appellants came from the side of the temple and demanded Rajnigandha, Tulsi and simple Gutkha. He gave the same to the accused. Thereafter they asked Satya Prakash that he was doing Dadagiri in Sewashram area, upon which Satya Prakash replied that he was residing in Nimbaheda and had shifted to Udaipur only three months before and has done nothing wrong with any person, upon which the tall-person warned him not to speak and gave a slap and the other two persons caught-hold of Satya Prakash

and inflicted injuries to him by legs and fists; the taller man took-out the knife from the pocket and inflicted injuries with the knife on the chest and abdomen of Satya Prakash. The witness asked them why they were inflicting injuries to his brother, whereupon they pulled him out of the cabin and, also, inflicted injuries to him and his brother. He ran away about four-five paces from the shop and cried for help to save them. The man, who was wearing the blezzet, inflicted injury to him on the left shoulder. Thereafter the accused broke the gas-lamp and went away by riding in a tempo. He saw all these three persons going towards the side of Satellite Hospital. He identified all these three persons in the Court and while pointing towards Nakul Singh, stated that he is the person who inflicted injuries by knife to his brother and he was wearing the blezzet of blue colour having mono-gram thereon. He, also, identified the other two accused, viz., Ganpat Singh and Tejraj Singh by pointing them out. He has, also, stated that when the accused came, they first enquired about Daulat Singh, upon which he replied that he had gone to his house after closing the shop at 6.00 p.m. Thereafter Vishal and Rajendra Sharma came there and first took him to the hospital and came back to take Satya Prakash to the hospital. When Vishal reached at the place of the occurrence to take Satya Prakash to the Hospital, at that time Manu Sindhi and one Sardarji were pulling-up Satya Prakash for taking him to the hospital. Thereupon all these persons brought Satya Prakash to the Satellite Hospital. The First Aid was provided to him in the Satellite Hospital by the doctor but the doctor advised to take Satya Prakash to the General Hospital, Udaipur. They reached in the Emergency Ward of the General Hospital where he became unconscious and when he gained the senses, by that time Satya Prakash succumbed to the injuries. He has, also, stated that when the accused, after inflicting the injuries, started running, one of the accused told, "Munna, let us go". He is, however, not in a position to state why this incident took place. In the cross-examination this witness has stated that Manu Singh and Ajeet Singh disclosed the names of Nakul Singh - the main assailant - to him and he came to know about his name while he was in the hospital and prior to that he was not knowing Nakul Singh or any of the accused. Ajeet Singh, also, told him that Tejraj Singh and Ganpat Singh were the two persons who caught-hold of deceased Satya Prakash. He has, also, stated in the cross-examination that he went to the jail to identify these accused persons and told the Magistrate that Nakul Singh was the person who inflicted injuries by a knife to his brother and accused Tejraj Singh and Ganpat Singh were the persons who caught-hold of Satya Prakash. He has, also, admitted that after discharging from the hospital, he went to the Police Station once and also, to the C.I.D. Officer. The C.I.D. personnel called him one or two days" before the date of test identification parade. He has, however, stated that when he was called by the C.I.D. personnel, by that time the accused were not arrested but he is not in position to state when he was called, by police and whether by that time the accused were arrested or not. He has, also, stated that he correctly identified all the three accused in the test identification parade conducted by the Magistrate in the Central Jail, Udaipur, and told the names of these accused to the Magistrate and

prior to the" test identification parade, he disclosed the Magistrate that he came to identify the three accused. He has denied the suggestion that all the three accused were standing side-by-side in a line and stated that they were standing separately at a distance in the line and he identified all these three persons correctly. He has also, admitted that prior to this incident he was not knowing these three accused persons. He has, also, denied the suggestion that the accused persons were shown to him before the test identification parade was held. He has, however, stated that at the time of the incident he had seen these accused persons and disclosed their identifies in his statement as well as in the First Information Report and correctly identified them. He has, also, stated that the three accused were having moustaches and they were, also, having the moustaches at the time of test identification parade, but this was not stated to the police. These accused were, also, wearing the same clothes which they were wearing at the time of the incident. A lengthy cross-examination was conducted from this witness by the defence counsel but nothing material could be elicited from the statement of this witness which could have shaken the trustworthiness of this witness. The presence of this witness at the scene of the incident cannot be disputed as he was the owner of the cabin (shop) and he, also, received the injuries at the hands of these three accused in the same incident which makes the presence of this witness at the scene of the occurrence proved beyond any reasonable manner of doubt. Learned counsel for the appellant has not been able to pointed out any major discrepancy in the statement of this witness. The minor discrepancies, point out by the learned counsel for the appellant, are of trival nature and on such trival matters, which are not touching the core of the case, the testimony of this witness cannot be discarded. The statement of this witness remains unshaken and can be safely relied upon. This evidence of PW 1 Girdhar Gopal finds full support from the statements of PW 7 Vishal and PW 12 Rajendra Prasad Sharma, who came at the scene of the occurrence immediately after the incident and who first took PW I Girdhar Gopal to the Satelliate Hospital and thereafter took Satya Prakash to this hospital and from there they were taken to the General Hospital. The evidence of this witness further finds support from the statement of PW 9 Pradeep Bhatnagar, PW 36 Dr. G.L. Dad, PW 21 Bhanwar Singh, S.H.O., and PW 24 Bhagwati Prasad. The Contention of the learned counsel for the appellants that PW 1 Girdhar Gopal is not a reliable witness, is, therefore, devoid of any force and deserves to be ignored.

7. The next contention, raised by the learned counsel for the appellants is that the test identification parade held by PW 17 Shri Girish Kumar, the Munsif and Judicial Magistrate, Udaipur (North), Udaipur, does not inspire confidence as the accused were not previously acquainted with PW 1 Girdhar Gopal and the incident finish in a few minutes and, therefore, it was not possible for PW 1 Girdhar Gopal to have identified the assailants in such a short span of time and to remember their faces and identity and to correctly identify them after a lapse of more than 2 1/2 months of the date of the occurrence and the identification, also, suffers on account of the fact that the accused-appellants were shown to

the witnesses prior to the date of conducting the test identification parade. The accused were arrested on 27-3-1991 and the test identification parade was held on 10-4-1991, i.e., after a lapse of about fourteen days of their arrest. This delay has not been properly explained by the prosecution and the appellants, in the meantime, were shown to the witnesses which is clear from the statement of PW 3 Ajeet Singh, P W 2 Dharnidhar, PW 5 Gautam Lal and PW 10 Mohan Lai. These witnesses have, also admitted that the accused were shown to them as well as to Girdhar Gopal before the identification parade was conducted and the Magistrate has, also, stated that the accused had made a complaint to him that they were shown to the witnesses before the test identification parade and, therefore, no importance can be attached to this test identification parade and it does not provide any basis to the prosecution for sustaining the conviction of the appellants. It is true that PW 2 Dharnidhar, PW 5 Gautam and PW 10 Mohan Lal have admitted in their statements recorded before the Court that these accused were shown to them prior to the test identification parade. They have, also, stated that the accused were, also, shown to Girdhar Gopal. Though these witnesses had seen the accused-appellants but despite that they could not identify the accused in the test identification parade. PW 2 Dharnidhar and PW 5 Gautam have turned hostile and they have not supported the prosecution case.

Even otherwise, when these accused were shown to these witnesses then they could have easily identified the accused. The conduct of not identifying the accused in spite of the fact of their being allegedly shown to these witnesses raises a suspicion on the veracity of the statements of these witnesses and reveals that they are not stating truly and correctly and are supporting the accused and, therefore, no reliance can be placed on the testimony of these witnesses. No question has been put to the investigating Officer PW 24 Bhagwati Prasad in the cross-examination by the learned counsel for the accused that the accused were shown to these witnesses prior to the test identification parade. The only question put to PW24 Bhagwati Prasad in the cross-examination is that the accused were taken to the Court with open faces, to which this witness has denied and he has specifically stated that only once, i.e., on 5-4-91 the accused were taken to the court and that too with muffled-faces and between 6-4-1991 to 10-4-1991, the accused were not taken to the Court. PW 1 Girdhar Gopal has specifically stated in his statement before the Court that the accused were not shown to him prior to the test identification parade and When he went to identify these accused in the jail, they were not standing by side to side and he correctly identified these three accused during the identification parade conducted by the Magistrate. After perusal of all the evidence on record, we are of the opinion that the accused were not shown to PW 1 Girdhar Gopal before the test identification parade was conducted and he correctly identified these accused during the test identification parade conducted by the Magistrate.

8. The next contention, raised by the learned counsel for the appellant is that as the prosecution case mainly rests upon the identification of the accused-appellants by PW 1 Girdhar Gopal in the test identification parade and as the

witness was not previously acquainted with the appellants, therefore, the delay of fourteen days in conducting the test identification parade after the arrest of the accused, in absence of any convincing explanation with regard to the fact as to why such a delay occurred, suggests that no importance can be attached to such type of identification and the appellants, therefore, deserve to be acquitted. It has been held by the Apex Court as well as by this Court in a catena of decisions including the decisions, on which reliance has been placed by the learned counsel of the appellants, that as the identity, particularly of a previously unknown person, is of deceptive character which may lead to miscarriage of justice sometime and it is a safe rule of prudence to generally look for corroboration and if the identification is not held of these unknown accused for considerably a long time after their arrest without any reasonable explanation for such a delay, the identification cannot be said to be proper. There is no dispute with the proposition of law propounded in these judgments, on which reliance has been placed, and therefore, it is not necessary to individually deal with the judgments on which reliance has been placed by the learned counsel for the appellants. It is desirable to hold the test identification at the earlier opportunity in order to minimize the chances of memory of identification to be faded-out due to long lapse of time in holding the identification parade after the arrest of the accused but no absolute proposition of law can be laid down that after the lapse of long period the witnesses cannot be able to identify the accused whom they had seen at the time of the incident. The identification and retention of the memory depend upon the time of the occurrence, the state of the light available at that time and the place of the incident, the opportunities to the witnesses to see the assailants and the time taken by the accused in committing the crime. The incident, in the present case, took place at about 6.45 p.m., the witness, viz., PW 1 Girdhar Gopal has his shop there and the light emitted by the gas-lamp was available at his shop, sometime was taken by the accused in inflicting the injuries to the witness as well as to his deceased brother and looking to the state of mind of the witness and the opportunity to see these accused etc., it cannot be said that he could not have seen the accused and remember their faces for such a long time when the identification was held, particularly when these very accused inflicted injuries to this witness, also. No possible mistake in the identification of the accused appears to have been made by this witness. The incident took place on 15-12-1990, the accused surrendered on 27-3-1991 and the identification parade was held on 10-4-1991. Though a delay of fourteen days took place in holding the identification parade after the date of the arrest of the accused but no question was put to the Investigating Officer or to the learned Magistrate to explain why this delay occurred in holding the test identification parade. If such question would have been put to these witnesses to explain the delay then the delay might have been explained by them and in absence of any such question put to these witnesses, the delay in holding the test identification parade cannot be said to be, in any way, fatal to the prosecution case. A similar case came up for consideration before the Hon'ble Supreme Court in: *Bharat Singh Vs. State of U.P.*, where the appellants were arrested on 3-5-1964, and the identification

parade was held on 7-8-1964. This delay of about three months in holding the identification was made a ground of attack before the Supreme Court but no question was put. to the Investigating Officer or the Magistrate regarding the cause of delay in holding the identification parade. It was, therefore, held by the Supreme Court that it is true that the burden of establishing the guilt is on the prosecution but that theory cannot be carried so far as to hold that the prosecution must lead evidence to rebut all possible defences. If the identification was held in a regular manner and there was an undue delay in holding the test identification, the Magistrate, who held the parade and the Police Officer who conducted the investigation, should have been cross-examined in that behalf. As the Investigating Officer was not cross-examined on that point, therefore, the delay in holding the identification was not found fatal. In the present case, also, no question was put to the Investigating Officer to show why and how the delay occurred in conducting the test identification parade after the arrest of the accused-appellants. The delay in holding the identification parade alone, therefore, is not fatal to the prosecution case if the identification parade held by the Magistrate was held in a right manner and inspires confidence and the evidence establishes the correct identification of the accused. The evidence of the test identification parade, where the accused are not previously known, calls for careful scrutiny in order to re-assure that the suspects were the real culprits. The object of the identification is to find out whether the suspects are the real culprits and are the perpetrators of the crime. The learned Magistrate, while conducting the identification proceedings, is expected to take all the possible precautions to eliminate any suspicion of unfairness and he must be vigilant and cautious and to see that the justice should be done to the accused at the time of identification parade. We have carefully gone-through the statement of PW 1? Mr. Girish Kumar Pandey - the learned Munsif and Judicial Magistrate, Udaipur (North), Udaipur, who has specifically stated that at the time of identification he mixed a sufficient number of under trials having the similar health and physique as that of the accused-appellants and PW 1 Girdhar Gopal correctly identified all these three accused persons. The test identification held by PW 17 Mr. Girish Kumar, therefore, does not suffer from any infirmity and provides corroboration to statement made by PW 1 Girdhar Gopal in the court.

9. The next contention, raised by the learned counsel for the appellants is that the three appellants did not share the common intention to commit the murder of Satya Prakash and as the assailant was uncertain, therefore, all the three appellants deserve to be acquitted. Alternatively, it is submitted by the learned counsel for the appellants that so far as accused Tejraj Singh and Ganpat Singh are concerned, at least they did not share the common intention to commit the murder of Satya Prakash and, therefore, they cannot be held guilty with the said of Section 34, I.P.C. The question, which requires consideration in the present case, therefore, is: whether the murder of Satya Prakash was committed in furtherance of the common intention of all the three accused-appellants? All the three accused-appellants came collectively at the place of the occurrence; one of

them asked Satya Prakash whether he was the Dada of Sewashram area and after that accused Tejraj Singh and Ganpat Singh caught-hold of Satya Prakash while accused Nakul Singh inflicted injuries with a knife on the chest and abdomen of Satya Prakash and Satya Prakash succumbed to those injuries. The facts and circumstances of the case, thus, clearly reveal that all the three accused-appellants shared the common intention of committing the murder of Satya Prakash and in furtherance of that common intention, two-the accused-appellants, viz., Tejraj Singh and Ganpat Singh, caught hold of Satya Prakash and the third, viz., Nakul Singh, inflicted injuries with a knife on the chest and abdomen of Satya Prakash. The common intention has therefore, been properly established by the prosecution against the accused-appellants. As the common intention has been established from the facts and circumstances of the case, therefore, the judgments, on which reliance has been placed by the learned counsel for the appellants, are of no avail to the appellants as they are not applicable to the facts and circumstances of the instant case.

10. The next contention, raised by the learned counsel for the appellants is that PW 1 Girdhar Gopal came to know regarding the names of the accused-appellants from PW3 Ajeet Singh and PW4 Mannu Sindhi and as these witnesses have not identified the accused, therefore, the testimony of PW 1 Girdhar Gopal is, also, of no help to the prosecution. In support of its contention, the learned counsel for the appellants has placed reliance over a judgment of this Court rendered in: Banney Singh's case (supra) in which no test identification was conducted and for the first time the identification was made in the Court and in the absence of the test identification parade it was held by the Division Bench of this Court that there was no occasion for the witness Kesa Ram to pickup those whom he could have identified and even at the time of trial he could not identify all the accused and no efforts were made as to who were those whom he could not identify. The Court, therefore, held that if the person, through whom the other witnesses claims to have known about the names of the miscreants, fails to identify the assailant, and does not say who out of the seven were the person who committed the crime, the testimony of such a witness renders no help to the prosecution. But in the present case, PW 1 Girdhar Gopal had seen the occurrence by his naked eyes, he, also, received injuries in the incident and saw these accused-appellants at the time of the incident when the incident took place and he identified the accused in the test identification parade as well as in the Court. It is not the case of the prosecution that the identity of these accused were disclosed to the witnesses by Ajeet Singh and Mannu Sindhi, but only the names of the accused which were disclosed by these witnesses to PW 1 Girdhar Gopal, when he himself had seen the accused-appellants inflicting injuries to Satya Prakash, and he himself also received the injuries in the incident and has correctly identified the accused-appellants then the giving of the names of the accused-appellants by these two witnesses and later on their declining to have stated so, do not affect the prosecution case in any way. The case, on which reliance has been placed by the learned counsel for the appellants, is, therefore,

of no help to the accused-appellants.

11. The last contention, raised by the learned counsel for the appellants is that PW 1 Girdhar Gopal has stated that all the three accused went away by boarding the tempo while PW 10 Mohan Lal and PW2 Dharnidhar have stated that only two persons boarded the tempo, which clearly shows that the assailants were only the two and not three, as has been stated by the prosecution. We have considered this aspect of the case, also. PW 1 Girdhar Gopal has stated that three accused came at the place of the incident, two out of them caught-hold of his brother Satya Prakash and the third inflicted injury with a knife to his brother and all the three accused ran away by boarding a tempb. This witness has been the three accused running towards the tempo and boarding the same. If the third accused had not actually boarded the tempo and went on the other side, which could not be noticed by PW 1 Girdhar Gopal and he was under an mistaken impression that the third accused, also, must have boarded the tempo, then that will not demolish the prosecution case in any way when the witness has specifically stated the participation of all the three accused-appellants in the crime and the witness himself had received the injuries in the same incident. These minor discrepancies, which are of trivial nature and are not touching the core of the case, cannot form the basis of discarding the testimony of this witness and throwing the prosecution case as a whole. From the evidence, produced by the prosecution, we are of the opinion that the accused-appellants were the persons who committed the murder of Satya Prakash and caused injuries on the person of PW 1 Girdhar Gopal. We are, also, of the view that the prosecution has been able to prove the case against the accused-appellants beyond a reasonable manner of doubt.

12. In the result, we do not find any merit in this appeal and the same is hereby dismissed.