

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. Appeal No. 337 of 2024****Reserved on: 25.02.2026****Date of Decision: 20.03.2026**

Swaran Singh & another**...Appellant****Versus****State of H.P.****...Respondent**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No*****For the Appellants : Mr Divya Raj Singh, Advocate.****For the Respondent/State : Mr Lokender Kutlehria, Advocate.**

Rakesh Kainthla, Judge

The present appeal is directed against the judgment of conviction dated 26.06.2024, and order of sentence dated 28.06.2024, passed by learned Additional Sessions Judge, Dehra, District Kangra (learned Trial Court) vide which the appellants (accused before learned Trial Court) were convicted of the commission of an offence punishable under Section 333 read with Section 34 of the Indian Penal Code (IPC) and sentenced to undergo simple imprisonment for four years, pay a fine of ₹5,000/- each and in default of payment of fine, to undergo

1 Whether reporters of Local Papers may be allowed to see the judgment? Yes.

further simple imprisonment for eight months each for the commission of the aforesaid offence. The appellants (accused before the learned Trial Court) were also convicted of the commission of an offence punishable under Section 353 read with Section 34 of the Indian Penal Code (IPC) and were sentenced to undergo simple imprisonment for two years. It was ordered that both the substantive sentences of imprisonment shall run concurrently. (*Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.*)

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Sections 353, 332, 333, and 504 read with Section 34 of the IPC. It was asserted that informant Ajay Kumar (PW1) was posted as a Driver in HRTC, Dehra for the last eight years. He was driving the bus from Chintpurni via Kadhoa on 04.10.2019. The bus was stopped at Kadhoa Bazar at 9:15 AM to allow the passengers to board it. Two people came on a motorcycle bearing registration number HP-36C-1509 to the spot from Dhaliara and stopped the motorcycle in front of the bus. They

started abusing the informant. The shopkeepers and Pradhan of Gram Panchayat Kadhoa reached the spot. The motorcyclists opened the window of the bus and dragged the informant out of the bus. They gave beatings to the informant, who sustained injuries on his face, and his tooth was broken. His uniform was also torn in the incident. The names of the motorcyclists were found to be Swaran Singh and Sohrat. The matter was reported to the police. An entry No. 10 (Ext.P1/PW11) dated 04.10.2009 was recorded. HC Surender Kumar (PW11) and Constable Pushpender went to the spot to verify the correctness of the information. HC Surender Kumar (PW11) recorded the informant's statement (Ext.P1/PW1) and sent it to the Police Station, where FIR (Ext.P1/PW7) was registered. The informant produced a Khakhi shirt (Ext.MO-2) whose two buttons were detached in the scuffle. HC Surender Kumar (PW11) put the shirt in a cloth parcel and sealed the parcel with five impressions of seal 'S'. He obtained the sample of seal (Ext.P3/PW1) on a separate piece of cloth and seized the parcel vide memo (Ext.P2/PW1). He also seized the bus bearing registration No. HP-36B-1406 vide memo (Ext.P4/PW1), and handed over the bus on Sapurdari to ASI Joginder Singh (PW10). He seized the motorcycle bearing registration No. HP-36C-1509

vide memo (Ext.P1/PW2). He prepared the site plan (Ext.P2/PW11). He filed an application (Ext.P1/PW6) for the medical examination of the injured. Dr Kumar Gaurav (PW6) examined the informant and found the swelling with blackish discolouration under the left eye, and one tooth loose. He referred the injured to a dental surgeon for expert opinion. Dr Sajan Sharma (PW8) examined the informant and found mobility of the left upper central incisor and eroded enamel of the central incisor. He advised an X-ray of the tooth. On examination of the X-ray film (Ext.P1/PW8), he found the tip of the central incisor and its root fractured in the 1/3rd region. The nature of the injury was grievous, which could have been caused within 1-2 days of the examination. He issued the opinion (Ext. P2/PW8). Dr Kumar Gaurav (PW6) issued the final opinion stating that the injury was grievous and could have been caused by a fist blow. He issued the MLC (Ext.P2/PW6). HC Surender Kumar (PW11) filed an application (Ext.P1/PW5) and seized the route permit (Ext.P2/PW5), the informant's appointment order (Ext.P3/PW5), abstract of duty register (Ext.P4/PW5), Informant's character certificate (Ext.P5/PW5), duty roster (Ext.P6/PW5) and the informant's driving license (Ext.P7/PW5) from Regional Manager, HRTC, Dehra. He recorded

the statements of witnesses as per their version. After the completion of the investigation, the challan was prepared and was presented before the learned Additional Chief Judicial Magistrate, Dehra, who committed it to the learned Sessions Judge Kangra at Dharamshala for trial.

3. Learned Sessions Judge Kangra at Dharamshala assigned the matter to learned Additional Sessions Judge, Dehra (learned Trial Court). Learned Trial Court charged the accused with the commission of offences punishable under Sections 332, 333, 353 and 504 read with Section 34 of IPC to which they pleaded not guilty and claimed to be tried.

4. The prosecution examined eleven witnesses to prove its case. Informant Ajay Kumar (PW1) narrated the incident. Ashok Kumar (PW2), Ajay Dhiman (PW3), and Kaptan Singh (PW4) are the eyewitnesses. Kushal Kumar (PW5) produced the documents of the bus. Dr Kumar Gaurav (PW6) medically examined the informant. SI Gurdev Singh (PW7) signed the FIR. Dr Sajan Sharma (PW8), Dental Surgeon, examined the injured. Inspector Ashwani Kumar (PW9) prepared the challan. ASI Joginder Singh (PW10) was posted as MHC with whom the case property was deposited. HC Surinder Kumar (PW11) investigated the matter.

5. The accused, in their statements recorded under Section 313 of Cr.P.C., denied the prosecution's case in its entirety. They did not produce any evidence in their defence.

6. Learned Trial Court held that the testimonies of the witnesses corroborated each other. The recovery of the torn shirt supported the prosecution's case. The informant, Ashok Kumar and Ajay Dhiman had identified the accused in the Court. Minor discrepancies in the statements of the witnesses were not sufficient to doubt the prosecution's case because the discrepancies would come with time due to the failure of memory. The prosecution had succeeded in proving its case beyond a reasonable doubt; hence, the learned Trial Court convicted and sentenced the accused as aforesaid.

7. Being aggrieved by the judgment and order passed by the learned Trial Court, the accused have filed the present appeal asserting that the learned Trial Court erred in appreciating the material on record. The accused were beaten by the local people. Material contradictions affecting the prosecution's case were ignored by the learned Trial Court. The opinion of the Dental Surgeon creates a doubt regarding the prosecution's case. Hence,

it was prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

8. I have heard Mr Divya Raj Singh, learned counsel for the appellants/accused and Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State.

9. Mr Divya Raj Singh, learned counsel for the appellants/accused, submitted that the learned Trial Court erred in appreciating the material on record. The statements of the witnesses contradicted each other. The identification of the accused was not proper. Their names were not mentioned in the FIR. A Test Identification Parade should have been conducted to corroborate the testimonies of the witnesses in the Court. The identification in the Court for the first time, without a previous Test Identification Parade, is suspect. Learned Trial Court failed to appreciate this aspect; hence, he prayed that the present appeal be allowed and the judgment and order passed by the learned Trial Court be set aside.

10. Mr Lokender Kutlehria, learned Additional Advocate General for the respondent/State, submitted that the prosecution witnesses consistently deposed about the prosecution case. Their

testimonies corroborated each other. Recovery of the torn shirt and the report of the MLC also corroborated the prosecution's case. Learned Trial Court had rightly held the accused guilty. There is no infirmity in the judgment and order passed by the learned Trial Court. Hence, he prayed that the present appeal be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. The informant's statement (Ext.P1/PW1) mentions that villagers and the Pradhan of Gram Panchayat Kadhoa told him that the names of motorcyclists were Swaran Singh and Sohrat. Therefore, as per the statement, the informant was not aware of the names of the accused, and he was told about the names by others. Informant Ajay Kumar (PW1) admitted in his cross-examination that the accused persons were not known to him before the incident. He admitted that he had seen the accused persons in the Court for the first time, and no Test Identification Parade of the accused was conducted. Learned Trial Court held that the identification of the accused by the informant in the Court for the first time was proper. This finding cannot be sustained. Professor Rupert Cross has stated in his celebrated treatise, *Cross*

on Evidence, Fifth Edition, Butterworths, that identification of the accused for the first time in the dock is highly suspect. He observed:

"It might be thought that in criminal cases there could not be better identification of an accused than that of a witness who goes into the box and swears that the man in the dock is the one he saw coming out of a house at a particular time, or the man who assaulted him. Nevertheless, such evidence is suspect where there has been no previous identification of the accused by the witness, and this is because its weight is reduced by the reflection that, if there is any degree of resemblance between the man in the dock and the person previously seen by him. The witness may very well think to himself that the police must have got hold of the right person, particularly if he has already described the latter to them, with the result that he will be inclined to swear positively to a fact of which he is by no means certain.

People have mistakenly identified friends and relations well known to them with sufficient frequency to make them question the propriety of convicting an accused person on nothing more than the visual identification of a single witness who may only have had a fleeting glance of him in poor light."

13. It has been stated in *Halsbury's Laws of England 4th Edition Volume 2* that the identification of the accused for the first time in the Court is improper and the witness should be asked to identify the accused in a prior test identification parade. It has been observed in para 363:

"A witness shouldn't be asked to identify the defendant for the first time in the dock at his trial; and as a general practice, it is preferable that he should have been placed

previously in a parade with other persons, so that potential witnesses may be asked to pick him up.”

14. It was laid down by the Hon’ble Supreme Court in *P. Sasikumar v. State of T.N.*, (2024) 8 SCC 600: (2024) 3 SCC (Cri) 791: 2024 SCC OnLine SC 1652 that when the accused were not known to the witnesses on the date of the incident, their identification in the dock is not acceptable. It was observed at page 605:

“17. The admitted position in this case is that the test identification parade (hereinafter referred to as “TIP”) was not conducted. All the prosecution witnesses who identified the accused in the Court, such as PW 1 and PW 5, were not known to the present appellant, i.e. Accused 2. They had not seen the present appellant before the said incident. He was a stranger to both of them. More importantly, both of them have seen the appellant/Accused 2 on the date of the crime while he was wearing a “green-coloured monkey cap”!

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21. It is well settled that TIP is only a part of the police investigation. The identification in TIP of an accused is not a substantive piece of evidence. The substantive piece of evidence, or what can be called evidence, is only dock identification, that is, identification made by a witness in court during the trial. This identification has been made in court by PW 1 and PW 5. The High Court rightly dismisses the identification made by PW 1 for the reason that the appellant i.e. Accused 2 was a stranger to PW 1 and PW 1 had seen the appellant for the first time when he was wearing a monkey cap, and in the absence of TIP to admit the identification by PW 1 made for the first time in the court was not proper.

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23. We are afraid the High Court has gone completely wrong in believing the testimony of PW 5 as to the identification of

the appellant. In cases where the accused is a stranger to a witness, and there has been no TIP, the trial court should be very cautious while accepting the dock identification by such a witness (see: *Kunjumon v. State of Kerala*, (2012) 13 SCC 750: (2012) 4 SCC (Cri) 406]).

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27. In the facts of the present case, the identification of the accused before the court ought to have been corroborated by the previous TIP, which has not been done. The emphasis of TIP in a given case is of vital importance, as has been shown by this Court in the recent two cases of *Jayanv. State of Kerala*, (2021) 20 SCC 38 and *Amrik Singh v. State of Punjab*, (2022) 9 SCC 402: (2023) 2 SCC (Cri) 404.

28. In *Jayan v. State of Kerala*, (2021) 20 SCC 38, this Court disbelieved the dock identification of the accused therein by a witness, and while doing so, this Court discussed the aspect of TIP in the following words: (*Jayan v. State of Kerala*, (2021) 20 SCC 38, SCC p. 44, para 18)

“18. It is well settled that the TI parade is a part of the investigation, and it is not substantive evidence. The question of holding a TI parade arises when the accused is not known to the witness beforehand. The identification by a witness of the accused in the Court who has, for the first time, seen the accused in the incident of the offence is a weak piece of evidence, especially when there is a large time gap between the date of the incident and the date of recording of his evidence. In such a case, the TI parade may make the identification of the accused by the witness before the Court trustworthy.”

15. In the present case, the accused were not known to the informant, and their identification in the Court for the first time,

in the absence of the Test Identification Parade, could not have been used for recording the conviction.

16. Ashok Kumar, Pradhan of Gram Panchayat Kadhoa (PW2), stated in his cross-examination that he was informed by Chowkidar Satish Kumar about the incident, and no brawl had taken place in his presence. He further clarified that the motorcycle was already parked beside the road at the time of his arrival in front of the bus. Therefore, his testimony that Swaran Singh and Sohrat came from Dhaliara on the motorcycle and misbehaved with the driver of the bus has become doubtful. If a motorcycle was already parked at the time of his arrival, he could not have seen the accused coming from Dhaliara and beating the informant. This is further made doubtful by the statement in the cross-examination that no brawl had taken place in his presence. The part of the statement of this witness that no brawl had taken place in his presence was not clarified by the prosecution by re-examination and has to be accepted as correct. In similar circumstances, when a witness had supported the case of the defence, but was not re-examined by the prosecution to clarify his testimony, it was held in *Ramsewak v. State of M.P.*, (2004) 11 SCC

259: 2004 SCC OnLine SC 477 that the benefit of the discrepancy would go to the defence. It was observed at page 265:

“14.... Even assuming that there is some doubt as to the interpretation of this part of his evidence since the same is not clarified by the prosecution by way of re-examination, the benefit of doubt should go to the defence which has, in specific terms, taken a stand that the FIR came into being only after the dead body was recovered....”

17. It was held in *Javed Masood v. State of Rajasthan*, (2010) 3 SCC 538: (2010) 2 SCC (Cri) 1176: 2010 SCC OnLine SC 347 that the defence can take advantage of any statement made in the cross-examination. It was observed at page 543:

“20. In the present case, the prosecution never declared PWs 6, 18, 29 and 30 “hostile”. Their evidence did not support the prosecution. Instead, it supported the defence. There is nothing in law that precludes the defence from relying on their evidence.

21. This Court in *Mukhtiar Ahmed Ansari v. State (NCT of Delhi)* [(2005) 5 SCC 258: 2005 SCC (Cri) 1037] observed: (SCC pp. 270-71, paras 30-31)

“30. A similar question came up for consideration before this Court in *Raja Ram v. State of Rajasthan* [(2005) 5 SCC 272: 2005 SCC (Cri) 1050]. In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The doctor was not declared ‘hostile’. The High Court, however, convicted the accused. This Court held that it was open to the defence to rely on the evidence of the doctor, and it was binding on the prosecution.

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police, in which the police had gone to the Bahai Temple and apprehended the accused. When Goel did not support that case, the accused could rely on that evidence.”

The proposition of law stated in the said judgment is equally applicable to the facts in hand.”

18. Thus, in the absence of the re-examination, the testimony of Ashok Kumar (PW2) that he had witnessed the incident or had told the victim about the names of the accused would become doubtful. Otherwise, when two versions are appearing on record, the version in favour of the accused has to be preferred to the version in favour of the prosecution.

19. Ajay Dhiman (PW3) stated in his cross-examination that no brawl had taken place in his presence. He volunteered to say that when he arrived at the spot, both parties had held each other, and he had pacified the matter. He stated that the motorcycle was parked in front of the bus on the driver's side when he reached the spot. The statement made by him that the motorcycle was parked in front of the bus shows that he had not witnessed the genesis of the incident. His statement that no brawl had taken place in his presence makes his testimony in the

examination-in-chief doubtful that the accused had given beatings to the informant.

20. Ajay Dhiman (PW3) stated in his cross-examination that he had not disclosed the names of the accused persons. This part of his statement also makes the identity of the accused suspect.

21. Kaptan Singh (PW4) was the conductor on the bus. He had identified the accused for the first time in the Court. He has not claimed that the accused were known to him. Therefore, the Test Identification Parade of the accused was essential to fix the identity of the accused.

22. Therefore, the learned Trial Court erred in holding that the Test Identification Parade of the accused was not necessary and their identification for the first time in the Court could be relied upon.

23. The informant, Ajay Kumar (PW1), stated that the accused tore the shirt of his uniform from the pocket. The buttons of the shirt were also detached in the incident. He admitted in the cross-examination that the pocket of his shirt was not torn. This

admission makes his testimony doubtful that the accused had torn the pocket of his shirt.

24. Kaptan Singh (PW4) stated in his cross-examination that he could not say how many buttons of the shirt were detached. The seizure memo of the shirt (Ext.P2/PW1) shows that 2 buttons (3 and 4) were detached during the incident. As per the prosecution, the accused had caught the victim/informant from the neck, and it is not explained as to how the pocket of the shirt or the buttons (3 and 4) of the shirt were broken. Catching hold of the neck of a person would have resulted in damage to the buttons 1 and 2 or 2 and 3, and not 3 and 4. Therefore, the recovery of the shirt does not corroborate the prosecution's case.

25. Dr Sajan Sharma (PW8) examined the informant. He found that the left upper central incisor was mobile, and the enamel of the central incisor was eroded. He stated that the nature of the injury was grievous and could have been caused in 1-2 days. However, he had examined the patient on 04.10.2019, the date of the incident. Thus, the opinion of the Dental Surgeon does not support the prosecution's version that the injury was caused on the date of the examination and the learned Trial Court erred in

holding that the medical evidence corroborated the prosecution's version.

26. The informant stated that he did not know the accused before the date of the incident. No reason has been assigned as to why the accused should have picked up the quarrel with the informant. The prosecution is not required to prove the motive in the case of direct evidence, but the absence of motive will assume significance because of the infirmities noticed above.

27. Therefore, the learned Trial Court erred in holding that the prosecution had succeeded in proving its case beyond a reasonable doubt, and the judgment and order passed by the learned Trial Court cannot be sustained.

28. In view of the above, the present appeal is allowed, and the judgment of conviction dated 26.06.2024 and order of conviction dated 28.06.2024 passed by the learned Trial Court are ordered to be set aside. The appellants/accused are acquitted of the commission of offences punishable under Sections 353 and 333 of the IPC Act. The fine amount, if deposited be refunded to them after the expiry of the period of limitation for filing an appeal, if

no appeal is filed, and in case of appeal, it be dealt with as per the judgment of the Hon'ble Supreme Court.

29. In view of the provisions of Section 437-A of the Code of Criminal Procedure (Section 481 of Bhartiya Nagarik Suraksha Sanhita, 2023) the appellants/accused are directed to furnish bail bonds in the sum of ₹25,000/- each with one surety each in the like amount to the satisfaction of the learned Trial Court within four weeks, which shall be effective for six months with stipulation that in the event of Special Leave Petition being filed against this judgment, or on grant of the leave, the appellants/accused on receipt of notice thereof, shall appear before the Hon'ble Supreme Court.

30. A copy of this judgment, along with the record of the learned Trial Court, be sent back forthwith. Pending applications, if any, also stand disposed of.

(Rakesh Kainthla)
Judge

20th March, 2026
(Nikita)