



Cr. Appeal No. 283 of 2010

Reserved on: 01.01.2026

Decided on: 09 .01.2026

Sanjiv Kumar & anotherAppellants.
Versus
State of H.P.Respondent.

Coram

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

¹ *Whether approved for reporting?*

For the appellants: Mr. N.K. Thakur, Senior Advocate,
with Mr. Divya Raj Singh, Advocate.

For the respondent: Mr. Manoj Chauhan and Mr.
Amandeep Sharma, Additional
Advocates General, with Mr. Ankush
Thakur and Mr. Balvinder Singh Ballu,
Deputy Advocates General.

Sushil Kukreja, Judge

The instant appeal has been preferred by the appellants/accused persons/convicts (hereinafter referred to as “the accused persons”) against judgment, dated 26.07.2010, passed by learned Sessions Judge, Una, District Una, H.P., in Sessions Case No. 6 of 2009, whereby the accused persons were convicted under Sections 323, 307 and 452 read with Section 34 of the Indian Penal Code (for short “IPC”).

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



2. The facts giving rise to the present appeal, as per the prosecution story, can be summarized as under:

2(a). On 26.12.2007, around 10:00 p.m., Shri Malwa Ram (complainant) alongwith his son Naveen, wife Smt. Salinder Kaur and daughter Ms. Meena were watching TV in their house in Rakkar Colony, Una. Around 10:15 p.m., the complainant directed his son to close outer gate of their courtyard and when he was going out, accused-Sanjiv Kumar @ Binta, who was hiding in the courtyard, attacked him with iron rod and inflicted multiple blows on the head of Naveen. When Naveen cried for help and had fallen down unconscious, Salinder Kaur rushed to the courtyard and she was attacked by co-accused Rakesh Kumar @ Kala. Accused Rakesh was armed with metal grip and iron rod. He inflicted blows with grip on the face and he had also inflicted injuries with iron rod on the head of Salinder Kaur, consequently, she also fell down and cried for help and turned unconscious. The complainant wanted to rush out, but he was also attacked with iron rod by accused Sanjiv. However, he caught hold of accused Sanjiv and in the interregnum another accused Rakesh entered the premises and inflicted multiple blows to Salinder Kaur and the complainant also turned



unconscious. Thereafter, Meena raised alarm to attract the attention of the neighbours and Shri Ashok came to the spot and he overpowered one of the assailants, but said assailant was having metal grip and he caused injuries to him also and ultimately the accused persons managed to escape. The injured persons were taken to District Hospital by Shri Ashok and Dr. Indu Bhardwaj attended the injured persons. Police was informed and police personnel visited the hospital and medico legal certificate of the injured persons were procured. Statement of the complainant (one of the injured persons) was recorded by the police and other injured persons were found unfit for recording their statements. Thereafter, a case was registered against the accused persons under the apt Sections of IPC. As per the opinion of the doctor, who had medically examined the injured persons, the injured persons had suffered serious injuries and had been referred for expert medical aid to PGI, Chandigarh. The injured persons remained admitted in PGI, Chandigarh, till 27.12.2007 and police examined Naveen and Salinder Kaur in PGI, Chandigarh. Police collected relevant scientific evidence during the course of investigation and also effected relevant recoveries. Both the



accused persons were arrested on 02.01.2008. After completion of the investigation, police presented the charge-sheet before the learned Trial Court against the accused persons for commission of the offences punishable under Sections 323, 307 and 452 read with Section 34 of the IPC.

3. The prosecution, in order to prove its case, examined seventeen witnesses. Statements of the accused persons under Section 313 Cr.P.C. were recorded, wherein, they claimed innocence and denied the prosecution case. In defence, the accused persons examined two witnesses.

4. The learned Trial Court, vide impugned judgment dated 26.07.2010 convicted the accused persons under Section 307 IPC and sentenced them to undergo rigorous imprisonment for two years and to pay fine of Rs.2000/- each and under Section 452 IPC they were sentenced to undergo rigorous imprisonment for six months and to pay fine of Rs.1000/- each. The accused persons were also convicted under Section 323, IPC and sentenced to undergo simple imprisonment for six months, hence, the instant appeal has been preferred by the appellants/convicts.

5. The learned Senior Advocate for the



appellants/convicts contended that the learned Trial Court had gravely erred in passing the impugned judgment, as the same is based on hypothetical reasoning, surmises and conjectures. He further contended that the learned Trial Court had misread and misconstrued the oral evidence, which ultimately resulted into miscarriage of justice, thus the impugned judgment of conviction is liable to be set-aside. Lastly, he submitted that the impugned judgment passed by the learned Trial Court be quashed and set-aside by allowing the instant appeal and the accused persons be convicted.

6. Conversely, the learned Additional Advocate General contended that the impugned judgment passed by the learned Trial Court is the result of proper appreciation of the material on record and the same was passed after appreciating the evidence and law in its right and true perspective. He further contended that there was more than ample material against the accused persons, which clearly prove the involvement of the accused persons in the commission of the alleged offences, thus the instant appeal, which sans merits, be dismissed.

7. I have heard the learned Senior Counsel General for



the appellants/accused persons, learned Additional Advocate General for the respondent/State and carefully examined the entire records.

8. The prosecution, in order to prove its case, examined seventeen witnesses. However, the case of the prosecution mainly rests on the testimonies of PW-1 Shri Malawa Ram (complainant), PW-2 Shri Naveen (injured), who was son of the complainant, PW-3 Smt. Salinder Kaur (another injured), who was wife of the complainant, PW-4 Dr. Indu Bhardwaj, PW-5 Dr. Sonia and PW-8 Shri Ashok, who rescued the injured persons from the accused persons.

9. Dr. Indu Bhardwaj (PW-4), the then Medical Officer, District Hospital, Una, deposed that PW-2 Naveen was brought before her by his friends and thereafter she telephonically informed the police. Subsequently, PW-2 and PW-3 were also brought before her. She found PWs 2 and 3 unfit to give statements and PW-1 was found fit to give statement. She has further deposed that she had medically examined PWs 1 to 3. There was alleged history of scuffle with someone. PW-1 was fully conscious, co-operative and well oriented to time and place. He had one



lacerated wound on scalp 2 cm x 3 cm x muscle deep actively bleeding. The nature of the injuries suffered by PW-1 was simple in nature within probable duration of 15 minutes of medical examination. As per her statement, the kind of weapon used was blunt. On medical examination of PW-2, the patient was found conscious, co-operative and well oriented to time and place. There was one lacerated wound on his scalp with dimensions of 10 cm x 5 cm bone deep and the bone appeared to be fractured. PW-2 had also sustained injury over right middle finger at distal inter phalangeal joint chopped off completely and the wound was lacerated with zigzagged margins and actively bleeding. She has also deposed that as per the report of PGI, Chandigarh, there was fracture depressed right parietal region with contusions of brain and there was amputation of right middle finger at distal phalangeal joint. As per this witness, the injuries sustained by PW-2 were grievous in nature and had been caused with blunt weapon within probable duration of 15 minutes prior to his medical examination, around 10 p.m.. PW-4 also examined PW-3 and found her conscious co-operative, well oriented but drowsy and noticed following injuries on her person:



1. Lacerated wound scalp 5 x 5 cms. Margins zigzagged. Bone deep.

But appeared to be fractured? Opinion advised after x-rays. Actively bleeding.

2. Lacerated wound on cheek right side 3x3 cms muscle deep. Margines zigzagged. Actively bleeding.

3. Lacerated wound on left cheek 2x2 cms muscle deep.

Margines zigzagged. Actively bleeding.

4. Lacerated wound on right temple of outer canthus of right eye. 3x2 cms muscle deep. Margins zigzagged. Actively bleeding.

10. As per report of PGI, PW-3 had undisplaced fracture of zygomatic bone, thus injury No. 2 was grievous in nature and remaining injuries were simple. All the injuries were caused with blunt weapon within 15 minutes approximate prior to the medical examination. She issued MLRs, Ext. PW-4/G, PW-4/H and PW-4/J qua PWs 1, 2 and 3, respectively.

11. Dr. Sonia, the then Senior Resident, Department of Plastic Surgery, PGI, Chandigarh, who appeared in the witness-box as PW-5, deposed that PWs 2 and 3 with injuries on head and face stood admitted in PGI and she carried out their treatment.



She further deposed that PW-3 suffered multiple lacerations on the face and the nature of the injury was simple caused with blunt weapon. She also deposed that she treated PW-3 and PW-3 was discharged on 27.12.2007 from their department and to this effect discharge certificate is Ex. PW-5/A. This witness further deposed that PW-2 was admitted in her ward on 27.12.2007 and he has suffered depressed fracture right parietal bone with under lying contusions with avulsions of nail plate with laceration of pulp of right middle finger which was sutured. The nature of injury of scalp was grievous.

12. Shri Malawa Ram, complainant, appeared in the witness-box as PW-1 and deposed that on 26.12.2007, around 10 p.m., he was in his house and watching TV alongwith his family members. He directed his son Naveen (PW-2) to step out and close the outer gate of the house. His son had only covered 4-5 steps and started crying for life. On hearing such cries, his wife (PW-3) immediately stepped out and he was also trying to get out of the house. When he was near the door of the room a person had appeared in front of him and he struck a blow of iron rod on his forehead/head. He further deposed that his daughter was inside



the house and the intruder had also attacked her. She tried to save herself and in the process a blow had struck probably against her right hand. At this stage, he caught hold of the intruder from back side and made him fall on the bed. When he was above the intruder, other person stepped into his room and administered 5/7 blows of iron rod at his back side of the head, then he turned unconscious. As per this witness, his daughter was stated to have been rushed out of the house and had raised alarm. The neighbours had rushed towards our house and took all of them to the District Hospital, Una. He reported the matter to the police, vide his statement, Ex. PW-1/A. He was referred to PGI, Chandigarh, and his son and daughter were unconscious and they were also referred for expert medical aid to PGI.

13. PW-2 Naveen Kumar, son of the complainant, deposed that accused Sanjeev Kumar @ Binta was son of his uncle Dalipa and accused Rakesh Kumar was also related to them. On 26.12.2007 he was in his house and alongwith with his father, mother and sister watching TV. Around 10 p.m. his father asked him to step out and close the outer gate and when he stepped out and had only covered 4-5 steps, accused Sanjeev, who was armed



with iron rod, noticed him and started inflicting injuries with that iron rod on his head. He raised alarm and shouted for his life and his mother (PW-3) rushed out of the house. He further deposed that he fell down unconscious and only regained consciousness on subsequent day in PGI, Chandigarh. As per this witness, on 27.12.2007, at PGI, Chandigarh, he had informed the police that accused No. 1 Sanjeev @ Binta had caused injuries to him with iron rod and he fell unconscious. He had produced his blood stained clothes before the police on 30.12.2007, which were taken into possession, vide memo, Ex. PW-2/A.

14. Smt. Salinder Kaur, who was wife of the complainant, appeared in the witness-box as PW-3 and deposed that accused No.1 Sanjeev @ Binta was son of elder brother of her husband. On 26.12.2007 she alongwith her husband, son and daughter were watching TV. Around 10 p.m., Naveen (PW-2) was asked to step out to close the outer gate and he had just covered only 5-7 steps and started crying and shouted for life. She immediately stepped rushed out of her house and found accused No.1 Sanjeev Kumar causing injuries to PW-2 with iron rod. PW-2 had fallen down and had turned unconscious. Accused No.1 retraced his steps and



stepped out of the gate, but accused No.2 Rakesh @ Kala entered her courtyard through the gate. He was armed with a metal grip and he inflicted multiple bruises with grip on her face and head. Accused No. 2 was also armed with an iron rod and he inflicted injuries with iron rod on her head, as a result of which she fell down and became unconscious. She regained consciousness on the subsequent day, when she was admitted in PGI, Chandigarh. She produced her blood smeared clothes before the police, which were taken into possession by the police, vide recovery memo, Ex. PW-3/A.

15. Another important witness in the prosecution case is PW-8, Shri Ashok Kumar, who allegedly rescued the complainant party from the accused persons. PW-8 deposed that the complainant had constructed his house in Rakkar Colony and there was a public street 7 meters in width in between his and the house of PW-1. He further deposed that he heard Ms. Meena Kumar (daughter of the complainant) crying for help and had also noticed the complainant running for life. He also deposed that two boys, who were armed with rods, were causing injuries to Malawa Ram (complainant). As per this witness, he switched on the light and



noticed the assailants running out of the compound of the house of the complainant. When he reached there, the complainant and Ms. Meena Kumari were in tears and there was third assailant. He tried to catch him, but he jumped and fell on the nearby heap of *bajri* (gravel). He also jumped and caught hold of that assailant, who was in possession of a metal grip and had caused injury to him on the right side of his nose below his right eye and the third assailant managed to escape. Subsequently, he took out his vehicle and brought PWs1 to 3 to the district hospital.

16. It is not in dispute that the complainant party and the accused are related to each other. Accused Sanjeev is the real nephew of complainant Malawa Ram. In his statement under Section 154, Cr.PC, complainant Malawa Ram, had not named the accused, however, he stated that some unknown person had entered his house and he was beaten/attacked with iron rod. Since accused Sanjeev was the real nephew of the complainant, had he entered in his house, he(complainant) would have definitely named him in his statement recorded under Section 154, Cr.PC. By not naming accused Sanjeev, in his statement, it casts a serious doubt about the veracity of the prosecution case. As per



prosecution case, accused Sanjeev was named by PW-2 Naveen Kumar, who also claims to have been beaten by the accused persons, yet he had not named the accused till 30.12.2007, whereas, the incident was of 26.12.2007..

17. It is a settled law that if an accused is not named in the FIR, his identification by the witnesses in the court should not be relied upon but to this general rule, there may be exceptions. In the judgment rendered by the Hon'ble Supreme Court in the case of ***Dana Yadav @ Dahu & Ors. Vs. State of Bihar reported in AIR 2002 SC 3325***, the Hon'ble Apex Court has elaborated upon the importance of test identification parade in a great detail. The Hon'ble Court observed that in case of failure to hold Test Identification Parade, identification of the accused before court, though is not inadmissible but it should not, ordinarily, form the basis of conviction unless corroborated by previous identification in test identification parade or any other evidence. Relevant portion of the aforesaid judgment reads as under:

"38. In view of the law analysed above, we conclude thus:

(a) If an accused is well known to the prosecution witnesses from before, no test identification parade is called for and it would be meaningless and sheer waste of public time to hold the same.



(b) In cases where according to the prosecution the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court while dealing with such a prayer, should consider without holding a mini inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise. Unjustified grant or refusal of such a prayer would not necessarily enure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test Identification parade held, the same ipso facto can not be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if, however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.

(c) Evidence of identification of an accused in court by a witness is substantive evidence whereas that of identification in test identification parade is, though a primary evidence but not substantive one, and the same can be used only to corroborate identification of accused by a witness in court.

(d) Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable despatch for the purpose of enabling the witnesses to identify either the properties which are subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and



the persons whom it suspects to have committed the offence were the real culprits.

(e) Failure to hold test identification parade does not make the evidence of identification in court inadmissible rather the same is very much admissible in law, but ordinarily identification of an accused by a witness for the first time in court should not form basis of conviction, the same being from its very nature inherently of a weak character unless it is corroborated by his previous identification in the test identification parade or any other evidence. The previous identification in the test identification parade is a check valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law.

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.

(g) Ordinarily, if an accused is not named in the first Information report, his identification by witnesses in court, should not be relied upon, especially when they did not disclose name of the accused before the police, but to this general rule there may be exceptions as enumerated above."

18. I have considered the facts and evidence of present case in the light of aforesaid adjudication made by the Hon'ble Supreme Court. In this case, when no specific allegation was leveled against both the accused in the FIR, then obviously it was the duty of the prosecution to prove its case beyond reasonable doubt by leading evidence of identification before the court that the aforesaid accused gave beatings to the complainant party. PW-7 Manoj Kumar, in his cross-examination, deposed that some unknown assailants had attacked the complainant-party and he



had not tried to find-out the assailants. The accused persons also led evidence in their defence. DW-1 Surinder Sharma, Special Correspondent, Punjab Kesari, had also reported that some unknown assailants had attacked the complainant-party. DW-2 Laxman Dass deposed that on 26.12.2007, Meena Devi, daughter of the complainant, telephonically informed him that some unknown assailants had attacked her parents and brother. Though, the prosecution had cited Smt. Meena Devi as a witness, however, for the reasons best known to it, she was not examined and for want of her statement, an adverse inference has to be drawn against the prosecution.

19. A bare perusal of the statement of the witnesses i.e. PW-1 to PW-3, PW-7 and PW-8 so examined by the prosecution is clearly indicative of the fact that both the accused were stranger to the said witnesses. PW-7 Manoj Kumar, who is also the nephew of the complainant, in his cross-examination, admitted that at no stage they had come to know as to who had caused injuries to the complainant party and they did not try to find-out as to who were the assailants. Another important witness i.e. PW-8, Ashok Kumar, who allegedly rescued the complainant party from the accused



persons deposed that when he reached the spot, the complainant and Ms. Meena Kumari were in tears and there was third assailant whom he tried to catch, but he jumped and fell on the nearby heap of bajri (gravel). He further deposed that he (PW-8) also jumped and caught hold of that assailant, who was in possession of a metal grip and had caused injury to him on the right side of his nose below his right eye but the third assailant managed to escape. However for the reasons best known to the prosecution, only two persons have been arraigned as accused and the third assailant has not been arraigned as accused which also casts a serious doubt upon the prosecution case.

20. In his statement, Investigating Officer Kushal Chand, who appeared in the witness-box as PW-14, deposed that he had recovered hair of the head of the assailants. However, for the reasons best known to the investigating agency, such hair had not been examined to determine the identity of the assailants, hence, the case of the prosecution becomes doubtful. Thus, in these circumstances test identification parade was necessary in order to ascertain the identity of the accused persons.

21. Admittedly, neither any identification parade was got



conducted by the Investigating Officer nor any reliable evidence was produced before the court as to who had identified the accused. Therefore, by not conducting the test identification parade, there is a serious lapse in the investigation. Failure to establish the identity of the accused goes to the root of the matter as such the possibility of mistaken identity cannot be ruled out.

22. Besides this, there are major contradictions in the statements of the prosecution witnesses PW-1 deposed that one person, who was in front of him, gave a blow of iron- rod on his fore-head, while he had over powered one of his assailants, other gave 5/7 blows of iron-rod on the back side of his head. However, his MLC Ex.PW-4/G does not find mention of such injuries on the back of head. PW-2 Naveen was found conscious at the time of his medical examination by the doctor at 10.00 PM after the alleged incident, but in his statement before the Court, he stated that he became unconscious after the injuries and regained consciousness in the PGI. In his statement before the court, this witness did not mention about the injury on his finger, which was allegedly caused by the assailants. PW-3 Smt. Sulinder Kaur wife of complainant Malawa Ram, introduced a new story of causing injuries to her with



metal-grip. PW-1 and PW-2 did not depose so, rather PW-1 stated that his daughter was also beaten and she suffered injuries. She was neither examined medically nor was cited as witness.

23. The medical evidence also does not support the prosecution story. It has come in the medical evidence on record that all the injured persons were conscious at the time of medical examination on 26.12.2007, which fact is clear from MLCs Ext. PW4/G and Ext.PW4/H. Dr. Indu Bhardwaj, who appeared in the witness-box as PW-4, categorically deposed that she had examined complainant Malawa Ram and he was fully conscious and well oriented to time and place. She further deposed that at the time of medical examination of PW-2 Naveen Kumar, he was also conscious, cooperative and well oriented to time and place. She had examined PWs 1 to 3 at 10.30 PM and as per certificate, they were not found fit for the statement. Since the medical officer had found PWs 1 to 3 conscious, cooperative and well oriented to time and place, hence, the certificate to that effect that PW-2 and PW-3 had not been fit for making statement appears to be false and cannot be relied upon. Although PW-4, Dr. Indu Bhardwaj deposed that all the injuries had been caused with blunt weapon,



however, in her cross-examination, she admitted that the police did not show the weapon of offence to her at any stage. Neither PW-4, Dr. Indu Bhardwaj nor PW-5 Dr. Sonia, Senior Resident deposed that injuries sustained by the complainant party were dangerous to life.

24. Consequently, in view of the detailed discussion made hereinabove, this Court is of the firm opinion that the prosecution has failed to prove its case against both the accused beyond reasonable doubt. Accordingly, the judgment of conviction dated 26.07.2010, passed by the learned Trial Court is not sustainable as such the same is liable to be set aside. The instant appeal is allowed and the judgment of conviction and order of sentence, dated 26.07.2010, passed by the learned Trial Court are quashed and set-aside and the accused persons are acquitted of the charges framed against them. Their bail bonds are discharged.

25. In view of the provisions of Section 481 of *Bharatiya Nagarik Suraksha Sanhita*, 2023, the appellants are directed to furnish personal bonds in the sum of Rs. 50,000/- each with one surety each in the like amount before the Id. trial Court within a period of four weeks, which shall be effective for a



period of six months, with stipulation that in the event of Special Leave Petition being filed against this judgment or on grant of leave, the appellants aforesaid, on receipt of notice thereof, shall appear before the Supreme Court.

Pending application(s), if any, shall also stand disposed of.

(Sushil Kukreja)
Judge

January 09, 2026
(virender)