IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1695 of 2017

Arising Out of PS. Case No.-60 Year-2004 Thana- BACHHWARA District- Begusarai

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Chandan Chaudhry S/o- Nathuni Chaudhry @ Natho Chaudhry Resident of Village- Rahimpur- Chaudhary Tola, P.S.- Muffasil, District- Khagaria.

... ... Appellant

Versus

The State Of Bihar

... ... Respondent

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Appearance :
For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Anjani Parashar, Adv.
Mr. Dhananjay Kr. Tiwary, Adv.
For the Respondent/s : Mr. S.A.Ahmad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT
Date : 16-10-2019

Appellant Chandan Chaudhary has been found guilty for an offence punishable under section 307/34 I.P.C. and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for six months, additionally, under section 326/34 I.P.C. and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to Rs.2,000/- and in default thereof, to undergo S.I. for six months, additionally, under section 447/34 I.P.C. and sentenced to undergo S.I. for one month, under section 341/34 I.P.C. and sentenced to undergo S.I. for one month with a further direction to run the sentences concurrently, with a further direction that the period having undergone during course of trial will be set off in

accordance with section 428 Cr.P.C. vide the judgment of conviction dated 18.5.2017 and order of sentence dated 19.5.2014 passed by the Fast Track Court No.I, Begusarai in S.Tr.No. 277/2006.

Nilkamal Ray (P.W.4) while was admitted at Kalpana Nursing Home, Begusarai gave his Fard Beyan on 3.8.2004 at about 3.40 P.M. inscribing therein that on 2.8.2004 at 9.45 P.M. while he was reading in his room, his wife was taking meal and during course thereof was screening T.V. as well in Dinning Hall, his parents were also screening T.V. in the T.V. room, all on a sudden two persons intruded through balcony having back side of his house. He identified them in the electric light to be Bambam Rai, S/o late Mirtunjay Kumar Rai co-villager and other, his cousin brother (Mamera Bhai), Chandan Kumar Chaudhary, son of Ramashrai Choudhary of village Rahimpur Tola, Panchkhuti, P.S. Mufassil, District Khagaria. Seeing both of them coming inside, his wife as well as his mother raised alarm. Without wasting time, Chandan Chaudhary took out dagger and then gave blow over the waist (right side), left hand, stomach left side of his wife and then proceeded towards his mother whom he repeatedly gave 3-4 dagger blow. He rushed shouting in order to save his mother whereupon, Bambam Rai gave blow with pistol having loud

sound. He tried to snatch pistol from him and during course thereof, Chandan Chaudhary gave dagger blow over his wrist (left side), stomach. During midst thereof, Bambam Rai shot at his father causing injury over the back of his head. The motive for the occurrence has been shown as persisting animosity in between father-in-law of the sister of the accused Bambam Rai, namely, Shyam Sunder Rai with them.

Bachwara P.S.Case No. 60/2004 was registered thereupon followed with an investigation as well as submission of the charge sheet against Bambam Kumar Rai (Juvenile), Shyam Sunder Singh (since acquitted) and Chandan Chaudhary, facilitating the trial meeting with ultimate result, subject matter of the instant appeal.

Defence case as is evident from the mode of cross-examination as well as statement recorded under section 313 Cr.P.C. is that of complete denial of the occurrence. It has also been pleaded that they have been implicated in this case in the background of persisting animosity. However, nothing has been adduced in defence.

In order to substantiate its case, prosecution has examined altogether five P.Ws., who are Babli Ray P.W.1, Sushila Ray P.W.2, Dhnanjay Kumar Ray P.W.3, Neel Kamal Ray P.W.4

and Dr. Ashok Kumar Sharma P.W.5 as well as also exhibited Ext.1 the signature of the informant and Exts. 2 series the injury report. As stated above, nothing has been adduced in defence.

While assailing the judgment impugned, it has been submitted at the end of learned counsel for the appellant that the same has been passed mechanically without properly appreciating the facts and circumstances of the case. The first and foremost argument is that on account of non-examination of the I.O. the right of the appellant has been prejudiced more particularly in the background of material exaggeration in the evidence of respective P.Ws and further, being inconsistent amongst themselves would have properly been appreciated corresponding to objective finding relating to the P.O. Had there been examination of the I.O. the falsity of the evidences of the PWs could have been exposed leading to unreliability. That being so, on the sole ground alone, the judgment of conviction is fit to be annulled.

Then, it has been submitted that on proper consideration of the evidence of the P.Ws., it is crystal clear that the occurrence as alleged had never been taken place in a manner so suggested. The prosecution party faced different kind of activity, but being on inimical term, roped the appellant and others. Presence of appellant alongwith others inside the house as alleged by the

prosecution, in a manner as projected could not have been materialized as the witnesses themselves deposed that the main door having at the backside of the house was closed. Latch was properly affixed. Then in that circumstance, unless and until the door would have been broken entrance was not possible, which is not the case of the prosecution. So, there was no route available to come inside the house. Hence, presence of the appellant as suggested, appears to be umbrageous.

It has also been submitted that from the record it transpires that whosoever been examined are the inmates of the house being father, mother, son and the daughter-in-law, and further, they all have sustained injuries. Then in that event there would not have possibility in getting themselves admitted at the hospital without having indulgence of others and, as is evident those persons have not been examined during course of investigation nor, they have been cited as a witness in the charge sheet nor, the prosecution took proper legal step to bring them as a witness during trial. That means to say, had there been examination of the I.O. then in that circumstance, the appellant would have been in a position to cross-examine on that very score and further, would have in a position to expose mala fide, ulterior motive of the prosecution in grabbing the appellant and other with

the present allegation. So, in sum and substance it has been submitted that due to non-examination of the I.O. the interest of the appellant has been severely prejudiced.

Now coming to the individual status of the appellant, it has been argued that the identity of the appellant has been shown by the informant to be the cousin (Mamera brother of Bambam). But, after going through evidence of other P.Ws., it is crystal clear that they have got no opportunity for having proper identification of the appellant and in the aforesaid background, the appellant is entitled for benefit of doubt. In its continuity, it has further been submitted that the prosecution, even during course of trial, has gone to such extent that at one occasion, the wife of the informant has stated that he is not the same person, who was present at an earlier occasion in dock and, this was only to prejudice mind of the court as well as in order to wrap incompetency in proper identification. That being so, the judgment impugned is fit to be set aside.

On the other hand, learned Addl. P.P. has submitted that from the evidence of the doctor, it is manifest with regard to sustenance of the injury over the person of the respective injured. It is further evident that all the four injured witnesses had

substantiated the case whereupon, the finding so recorded by the learned lower court did not require interference.

In order to explain absence of the independent witness, it has been submitted that the occurrence is inside the house. There happens to be specific disclosure that at the time of occurrence, the injured were screening T.V. and so, the sound coming out from the T.V. virtually restrained the neighbours to perceive commission of an occurrence as, the sound of the respective victims got merged and, getting benefit thereof, accused persons had safe departure. It has further been submitted that due to non-examination of the I.O. no prejudice has been caused to the appellant, rather it is the prosecution which interest is found at stake because of the fact that the relevant objective finding relating to the place of occurrence gone unattended. It has thus been submitted that the finding recorded by learned lower court is fit to be confirmed.

P.W.1 is Babli Ray, wife of the informant, one of the injured. She during her examination-in-chief has stated that on 2.8.2004 at about 9.30 P.M. she was taking meal, her father-in-law Dhananjay Kumar Ray, mother-in-law Shushila Ray,her husband Neelkamal Ray, her both children and servant were there. Chandan came through back room and gave chhura blow from behind over her waist. Thereafter, he moved towards the T.V. room leaving

chhura remained with her body. She shouted, whereupon her husband came out from another room and rushed towards the T.V. room in order to save his father. During course thereof, her husband was assaulted by the knife, as a result of which, he fell down in the kitchen itself. She rushed towards her personal room to save her children where, her servant extracted knife from her body. During midst thereof, his father-in-law was shot at over his head while her mother-in-law was given chhura blow over her stomach. At that very moment, as she was near about her children so, she could not be able to see the assailant. Then she came out from her room to see till then, Chandan had given another knife blow as a result of which, she fell down, became unconscious. All of them have been lifted to Kalpana Nursing Home and from there, considering critical condition, her father-in-law and mother-in-law were shifted to Patna. The motive for the occurrence has been shown as prevailing animosity amongst her father-in-law as well as Shyam Sunder Singh. The aforesaid Shyam Sunder Singh had threatened at earlier occasions twice or thrice. Claimed identification of both accused. Identified.

During cross-examination at Para- 3 there happens to be contradiction but, on account of non-examination of the I.O., the same has not been confronted, apart from the fact that para-3 of

her cross-examination is confined exclusively relating to co-accused Shyam Sunder Singh (since acquitted).

On behalf of the appellant Chandan Chaudhary, at para-4 she has stated that her statement was recorded by the police after arrival at her house from Kalpana Nursing Home about a month after the occurrence. At that very time all were present. Daroga Jee one by one interrogated and then recorded. Then there happens to be contradiction, but the same has got no relevance in the background of non-examination of the I.O. Then she has disclosed that all the family members were present at the house. As she became unconscious on account thereof, she is unable to disclose who came subsequently. Then there happens to be cross-examination relating to her admission at Kalpana Nursing Home. Then at para-6 there happens to be cross-examination relating to family status. During course thereof, she has disclosed that her father-in-law happens to be three brother, Bhuneshwar Ray, Janardan and Dhananjay Ray (her father-in-law). Mritunjay Ray is the father of Bambam. The mother's name of Bambam is Kadambini. Her Maike happens to be at village Rahimpur. She does not know with regard to brother and nephew of Kadambini. She has got no information with regard to dispute with Bambam. Bambam and his mother were on visiting terms. Chandan

Chaudhary is (Mamera) cousin brother of Bambam. She does not know father's name of Chandan Chaudhary to be Ramashray Chaudhary. Then she said that she had heard about father's name of Chandan Chaudhary, to be Ramashray Chaudhary. Then she has stated at para-7 that Mritunjay (father of Bambam) is the son of Bhuneshwar Ray. He is dead. At para-10 she had shown boundary of her house, North- house of Raj Kumar Mahto, South- house of Arbind Babu, East- Road, West- field. In para-11 she has stated that her building is double storyed. At the ground floor there happens to be Exchange Office of BSNL. Guard resides at the office. There happens to be four rooms at the upper floor, out of which, three are bed room. They usually close entrance gate at about 10 P.M. The entrance is through the Southern side of the house. In para-12 she has stated that she was not knowing Chandan since before the occurrence. None had introduced her Chandan after the occurrence. She is seeing Chandan second time in court . Before today she had seen Chandan alongwith Shyma Sunder in the dock. Then she denied the suggestion that the person, who is standing in the dock, is not the same Chandan, Mamera brother of Bambam whom she has wrongly identified. Then has been suggested, the person, who is in dock, is Chandan Chaudhary @ Samkas Chauhary, son of Ram Narain Chaudhary,

resident of village Rahimpur Chaudhary Tola, P.S. Muffasil, District Khagaria. Then she admitted that the Mamera brother of Bambam is Chandan Chaudhary, son of Ramashray Chaudhary, of village Rahimpur, Tola Panchkhuti, P.S. Muffasil, District Khagaria. Then again said after seeing Chandan Chaudhary in dock that he is not the same person, who was standing in the dock alongwith Shyam Sunder on previous date. She is seeing for the first time in court the person claiming to be Chandan Chaudhary. During course of occurrence, it was different Chandan Chaudhary. Hence, denied the suggestion that out of village politics they have implicated Chandan Chaudhary.

P.W.2 is mother of the informant, mother-in-law of P.W.1. She has stated that on 2.8.2004 at about 9.30 P.M. she was screening the T.V. alongwith her husband. At that very time, she alongwith her husband, her daughter-in-law, son, servant and minor grand-sons were residing over the first floor of the house. Two persons intruded inside her house out of whom, Bambam was armed with pistol while another was armed with knife. The person, who was carrying knife had given a blow over her daughter-in-law. Thereafter, he gave blow over her stomach as well as chest. Her son came for rescue who was also assaulted with knife. Bambam shot at her husband. She later on came to know her assailant as

Chandan Chaudhary, son of Nathuni Chaudhary of village Rahimpur, Mamera brother of Bambam. It has further been disclosed that has her husband had protested over frequent visit of Shyam Sunder at the place of Kadambari (mother of Bambam). So, she apprehended that the occurrence was committed at his instance. She has further stated that Daroga Jee of Bachchwara P.S. lifted all the injured to Kalpana Nursing Home wherefrom she alongwith her husband was sent to Patna while, her son and daughter-in-law remained at Kalpana Nursing Home, Begusarai where they were treated. It has further been disclosed that the police had recorded her statement at Patna, 3-4 days after the occurrence over which, she had put her signature. She identified the accused Shyam Sunder Singh, who was only present in dock. It has further been disclosed that Kadambari happens to be daughter-in-law of her husband. Her husband died in the year 1994.

Para-5 of her cross-examination, it is related to Shyam Sunder (since acquitted). At para-6 there happens to be cross-examination over the family status. She has further stated that the partition took place amongst the brothers of her husband in the year 1993 in presence of her father-in-law Ram Gulam Ray. Her husband's brother Bhuneshwari Ray died in the year 2009 while his son Mritunjay Ray had predeceased him (3rd April, 1994).

Mritunjay Ray has two daughters and a son, wife Kadambani Ray. Mritunjay was married at Rahimpur with the daughter of Sachchidanand Chaudhary, namely, Kadambani. He was Lecturer. In para-7 she has stated that save and except three Mamu of Bambam, she does not know about the other villagers. She has further stated that she has got no animosity with Bambam as well as his Mamera brother. Her son Neelkamal Ray has wrongly stated before the police that Mamera brother of Bambam, namely, Chandan Kumar Chaudhary of village Rahimpur, Tola Pachkhuti, District Khagaria was involved in the occurrence. Then she stated that at the time of recording of the statement of Neelkamal Ray, she was not present as, at that very time she was admitted at the clinic of Dr. Hai. She was admitted on 3.8.2004 at about 7.30-8 P.M.. Then she stated that so many persons of her Mohalla came whom she disclosed about the occurrence but, she is unable to divulge their names. Her father was also present on the date of occurrence. She had not informed the police. Who informed, she does not know. Sanjay Ray, Daroga was on visiting term since before. After arrival of Mohalla people her father had opened the door. There is only one door through which there happens to be passage of ingress-outgress. Then she stated that they were lifted by the Mohalla people over the Jeep belonging to O.C. She had

disclosed before the O.C. regarding the occurrence. She alongwith her husband, son, daughter-in-law, all were conscious. At that very time Daroga Jee had not recorded statement of her son. Only her statement was recorded. She had not put her signature over the statement, but later on she had signed after returning from Patna, approximately after 15 days. Her statement was recorded at I.C.U., Patna but she is unable to disclose the date of statement. In her statement she had disclosed the name of Chandan Kumar Chaudhary, son of Nathuni Chaudhary. She had put her signature after going through the statement. None of both statement which she had given before the Daroga Sanjay Singh as well as at the clinic of Dr. Hai is present before her. Then she denied the suggestion that the statement whatever been given by her at Dr. Hai clinic did not disclose complicity regarding Chandan Chaudhary, son of Nathuni Chaudhary. In para-8 she has stated that the accused Chandan Chaudhary is not son of own Mama of Bambam rather, he happens to be villager. He is not on visiting term. So many people of Bachhwara have disclosed regarding complicity of Chandan Chaudhary. Surendra Ray is one of them. She has stated that so many girls of Rahimpur are present at Bachhwara who have disclosed with regard to complicity of Chandan Chaudhary and on the basis thereof, she has named

Chandan. She has further stated that at the time of occurrence Surendra Ray was present at her house. He had come at her house at about 10 P.M. At that very time, she was at her house. Surendra had disclosed the name after 3-4 days. Then she again corrected, she returned on 13-14th August from Patna then, he had disclosed to her father, who is now dead. In para-9 she has stated that while she was admitted at hospital Chandan was apprehended. In para-10 there happens to be tomography of her house. Then she disclosed that the accused persons came at 9.30 P.M. Just two minutes thereafter she heard shout of her daughter-in-law whereupon, she alongwith her husband put query and ran towards same. Her daughter-in-law was injured. She was over Chauki till then. There were repeated knife blow from behind. As soon as she came, she was also assaulted twice with knife. Just after receiving knife blow, she fell down but was conscious. In para-11 she has stated that she was at forefront. As soon as she reached near Chaukhat, the accused had assaulted her from in front. Just after receiving injury, she fell down. She was taken to Kalpana Nursing Home. 10-15 minutes thereafter, the police arrived at the place of occurrence. At that very time all were conscious. The O.C. Sanjay Singh did not interfere at that very moment, rather during course of taking them to hospital he interrogated. First of all she was

interrogated. She is not remembering whether her statement was recorded, her signature was taken, then has stated that Dr. Ashok Sharma happens to be her son-in-law.

P.W.3 has stated that on the alleged date and time of occurrence, he was screening T.V. alongwith his wife. All on a sudden they heard sound of shout of their daughter-in-law Babli Kumari whereupon, he alongwith his wife Sushila Devi (P.W.2) rushed and as soon as reached near door, Chandan Chaudhary and Bambam came running. Chandan was armed with knife while Bambam was armed with pistol. Chandan gave knife blow on the stomach of his wife while Bambam shot at causing injury over his head, right side. He fell down. He saw Neelkamal Ray coming in rescue but was assaulted by Chandan with knife, as a result of which his son also became unconscious. Her daughter-in-law had shouted after having been assaulted with knife. Chandan Chaudhary had pierced the knife in the stomach of his wife. After some time, he became unconscious. They were lifted to Kalpana Nursing Home and from there, he alongwith his wife was taken to Patna. Neelkamal and his wife were treated at Begusarai itself. He was treated at the clinic of Dr. A.K.Agrawal while his wife was treated at the clinic of Dr. Hai. Then has stated that Shyam Sunder Singh happens to be the father-in-law of Bambam Ray. He began

to visit at his house frequently whereupon, it became a hot cafe discussion in the village. That so, he forbade Shyam Sunder Singh and in the aforesaid background, this occurrence was committed. He identified the accused. Para-3 happens to be cross-examination relating to Shyam Sunder (since acquitted). In para-4 he has stated that he has got no relationship at village Rahimpur and so, he had not visited the village Rahimpur. That being so, neither Chandan Chaudhary had visited to his place nor he had visited at his place. Then has stated that while they were screening T.V., they heard outcry of their daughter-in-law. The voice came from the western side of the room in which they were sitting whereupon, he alongwith his wife rushed and had seen their daughter-in-law in an injured condition. Then has stated that the accused (Chandan), who is present in dock, has assaulted by giving knife blow. He is unable to say how many times he had given blow. In para-5 he has stated that his wife fell down at the Eastern side of the room. He had tried to apprehend the accused while his wife was being struck down and during midst thereof, he was shot at by Pranav Kumar Ray. He sustained injury over head. Just after sustaining injury he sat down as, he perceived dizzynell and then he became unconscious. He regained sense at Patna. How many days thereafter he regained sense he is unable to say. At that very time,

other injured were not alongwith him rather, his sister was present. In para-6 he has stated that he had instituted case against Pranav Kumar @ Bamabm and his Mamera brother Chandan Chaudhary. Then has stated that his statement was not recorded at Patna. Then has stated that he has registered case against Chandan Chaudhary, son of Ramashray Chaudhary but in order to save him got Chandan Chaudhary, son of Ram Narain Chaudhary implicated in this case.

P.W.4 is the informant. He during his examination-in-chief has stated that on 2.8.2004 at about 9.45 P.M. he was in his room. His parents (father and mother) and his older son were in a T.V.room and were screening the T.V. His wife Babli was also screening T.V. during course of taking meal. Two persons intruded inside the house through Balcony. They firstly assaulted his wife with knife over her back, stomach whereupon, his wife shouted. He came out from his room. Till then, he saw one person having pistol in his hand and was going towards his father whereupon, he tried to snatch the pistol but, during midst thereof, the other assailant gave knife blow whom he had identified to be Chandan Kumar Chaudhary. The person who was carrying pistol was Bambam Kumar, who shot at his father causing injury over his head. He was assaulted twice. His mother was also assaulted.

Shown the scat mark of wound before the court. His wife, then thereafter in order to save his son took effort whereupon, she was again given chhura blow by Chandan Chaudhary. Thereafter, both the accused persons fled away. They were taken to Kalpana Nursing Home where they were treated but, as the condition of his mother deteriorated, so she was referred to the clinic of Dr. A. Hai, Patna. His statement was recorded by Bachhwara Police over which he had put his signature as well as his father also put his signature. Exhibited the same. Then has disclosed that Bambam happens to be cousin nephew. After death of Bambam's father, his father became his guardian but after the marriage father-in-law of Bambam did not like and in the aforesaid background, at his provocation, occurrence had been committed by the accused persons.

During cross-examination he has stated that the P.O. land is his ancestral land but the house has been constructed by his father. Bambam has been allotted with the old house. Another brother of his father got house lying near Mission. His father has been allotted same land near station. All the lands have equal area. Then has stated that at the time of occurrence, respective injured were in respective rooms adjacent to each other. First of all, he heard the outcry of his wife while he was in his room. She shouted

‘Mar Diya’. When he came out he saw his wife over Chauki. He has further stated that his mother was admitted to hospital at Patna on 3.8.2004. The statement of the mother was recorded by the Patna Police. He is unable to say whether his mother had named Chandan Kumar Chaudhary or not. Then there happens to be contradiction with regard to motive but as the I.O. has not been examined so, the aforesaid statement has got no legal entity. Then there happens to be contradiction relating to his further statement over the manner of occurrence. Then has stated that at the ground floor of the house there happens to be the Exchange Office. It has also been disclosed that the Security Guard of BSNL always remains there but on the alleged date there was no security. Then there happens to be cross-examination relating to Nanihal, family of maternal grand father of Bambam Chaudhary. He has further stated that he had gone to Nanihal of Bambam thrice or even more than that. He is unable to disclose the name of others with the family members of Nana of Bambam. He is unable to disclose the name of mother of Chandan. Then has stated that during course of recording of Fard Beyan he had named the accused with his parentage. At that very time he was conscious. At that very time, he had disclosed regarding the location of the body aimed at by the accused father- head, right side, mother over stomach, three

injuries over her stomach, two injuries over stomach, one at back side over his wife and two injuries including one on left hand, one back over him. He has also stated that there was blood stained over apparel of his maternal grand father, namely, Ramdeo Ray. They have shown blood stained cloth to Daroga Jee but unable to disclose whether any document was prepared or not. Then has stated that he had not gone to the place of Chandan. Before the occurrence there was good relationship in between the father of Bambam as well as his father. Chandan Chaudhary has got some sort of connectivity with Bambam as well as Shyam Sunder Chaudhary. Again said that Chandan Chaudhary has got no concern with them. He is not knowing whether Chandan Chaudhary is an accused in any other case or not. His father remained at Patna from 4.8.2010 to 10-11.11.2010. He is not knowing whether statement of his father was recorded at Patna or not. At the time of occurrence Manoj Pandit was serving as his servant. His elder son Tushar Kumar was aged about four years at the time of occurrence. Then has said that the police had arrived. They have not informed the police. Then has denied the suggestion that his father had developed illicit relationship with the mother of Bambam, namely, Kadambani over which there was resentment in the surrounding. The he stated that he was not knowing father's

name of Chandan Chaudhary. As disclosed by others he mentioned the name of father of Chandan Chaudhary. Surendra Kumar Ray had disclosed the name of the father of Chandan.

P.W.5 is the doctor, who had examined Babali Devi on 2.8.2004 and found the following injuries:

> "(i) Incised wound 1"x1/2"x communicating to abdominal cavity on left side of abdomen.
> (ii) Incised would 2"x1/2" on right side of back.
> All the injuries caused within six hours. Nature of injury grievous, caused by sharp cutting weapon. Stomach was pierced by sharp cutting weapon which was repaired.

On the same day at 10.40 P.M. he examined Neel Kamal Rai (informant) and found only one injury:

> Incised would 6"x2"x2" on left side of back of chest. Nature of would- grievous caused by sharp cutting weapon, Age within 6 hours.

On the same day at 10.30 P.M. he examined Dhananjay Kumar Ray (P.W.3) and found the following injuries:

> (1) Entry would 1/2" in diameter on right side of head with fraction of skull bone.
> (2) Exit would 1"x1/2" right side of skull back of right ear.
> (3) Incised would 1/2"x1/2"x right side of chest.
> Nature- grievous injury no.1 caused by firearm. Injury no.(3) caused by sharp cutting weapon.

On the same day at 11.45 P.M. he examined Sushila Devi and found the following injuries:

(1) Incised would 2 1/2"x 1" on left side of abdomen communicating to abdominal cavity.
(2) Incised would 2"x1/2" on left side of chest.

Nature grievous, caused by sharp cutting weapon. The injuries was serious."

During cross-examination he has stated that fire arm injury might have been caused from the distance of 4-7 feet. Then has said that he is unable to say the exact condition of the respective injured during course of inflicting knife blow.

From the record, it is evident that the I.O. has not been examined. It is not the sound principle of law that there should be examination of I.O. in order to prove its case at the end of the prosecution. However, the court has to see, whether the prosecution has succeeded in substantiating its case even in absence of I.O. But, if it is found that prosecution version is found suffering from knickering then, in that circumstances examination of I.O. is found necessary. And, in that circumstances the non-examination of I.O. will be considered a severe lacuna in the prosecution case coupled with other ancillary grounds so stated at the end of defence. In **Mano Dutt & Anr. vs. State of U.P,** reported in 2012(2) PLJR 163 (SC) it has been held:

"17. As per the medical report, the injuries on the body of Ram Dutt were found to be 'simple in nature'. On the other hand, we have a complete version of the prosecution, duly supported by witnesses, out of which PW-1 and PW-2 are eye-witnesses to the occurrence. The bone of contention between the parties was the statement of the deceased, that he was filling the earth over some land, which he claimed to be his land; according to the accused, the earth-filling was carried out in front of the door of Ram Dutt. According to both the parties, the villagers came to the spot. Out of the two versions, the one put forward by the prosecution and the other in the defence of the accused, the version of the prosecution, as has been disclosed by the eye-witnesses, is trustworthy, reliable and entirely plausible in the facts and circumstances of the case. The mere fact that the Investigating Officer has not been produced, or that there is no specific explanation on record as to how Ram Dutt suffered these injuries, would not vitiate the trial or the case of the prosecution in its entirety. These claims of the accused would have been relevant considerations, provided the accused had been able to establish the other facts alleged by them. It is not always mandatory for the prosecution to examine the Investigating Officer, provided it can establish its case beyond reasonable doubt even in his absence. The present case certainly falls in the latter class. Where the accused lead no defence, they cannot take benefit of the fact that the prosecution did not examine any independent

witnesses. The accused would be deemed to have been aware of the consequences in law when they gave a statement admitting the occurrence but attributing aggression and default to the deceased and his family members."

In **Tej Parkash vs. State of Haryana**, reported in (1996)7 SCC 322 it has been held:

"18. In support of his contention that serious prejudice was caused to the appellant by non-examination of Phool Singh who had been cited by the prosecution as one of the witness, Mr Ganesh relied upon Stephen Seveviratne v. King, AIR 1936 PC 289, Habeeb Mohd. v. State of Hyderabad, AIR 1954 SC 21, and State of U.P. v. Jaggo, (1971)2 SCC 42. The aforesaid decisions can be of little assistance to the appellant in the present case. What was held by the Privy Council and this Court was that witnesses who were essential to the unfolding of the narrative on which the prosecution is based must be called by the prosecution whether the effect of their testimony is for or against the case for the prosecution and that failure to examine such a witness might affect a fair trial. It was also observed that all the witnesses of the prosecution need not b called. In the present case, the witnesses who were essential to the unfolding of the narrative had been examined. One of the facts which had to be established was that the body of the deceased was found in the well and the same was taken out by two labourers, namely, Giarsi Lal P.W.6 and Phool Singh.

The Fact that this body was recovered from the well was proved by Giarsi Lal P.W.6, among other witnesses, and Phool Singh who had apparently been cited as a witness for the same purpose was not examined. His non-examination cannot be regarded as causing any prejudice to the appellant. Our attention was also drawn to the decision of the Allahabad High Court in the case of Sahabjan v. State of UP, 1990 CriLJ 980, where it was observed that the mere allegation that some witnesses were not prepared to support the prosecution case and had been won over by the accused would not be sufficient and that opportunity should be given to the court to assess their evidence and to come to such a conclusion. In that case the witnesses given up had been named as being the eye witness to the incidence and it is in that context the Court made the aforesaid observation. Non-examination of a witness who had been cited by the prosecution would of course result in an adverse inference being drawn in view of Illustration (g) of Section 114 of the Evidence Act and may in some cases even caused prejudice to the defence, but in the present case, Phool Singh who merely recovered the body from the well along with Giarsi Lal P.W.6 was not such an important witness whose non-examination could be said to have caused any prejudice to the appellant."

In **Avtar Singh vs. State of Haryana**, reported in (2012)9 SCC 432 it has been held:

> "19. The law on this aspect can be succinctly stated to the effect that in order to prove the guilt of the accused, the prosecution should make earnest effort to place the material evidence both oral and documentary which satisfactorily and truthfully demonstrate and fully support the case of the prosecution. Where there were several persons stated to have witnessed the incident and the prosecution examined those witnesses who were able to depose the nature of offence committed more accurately leaving no room for doubt about the involvement with specific overt act and also were able to withstand the cross-examination by maintaining the sequence and the part played as originally stated, it will be wholly irrelevant and unnecessary to multiply the number of witnesses to repeat the same version."

For bring home the charge it is the quality that matters and not the quantity as has been decided by the Apex Court in **Harbeer Singh vs. Sheespal & ors**., reported in 2017(1) PLJR 129(SC) as well as Section 134 of the Evidence Act also takes care of. So, the evidence of single P.W. if inspires confidence will be suffice to accept the version.

So far as the status of the injured witness is concerned, that has got priority and presence of the injury is indicative of the fact that the witness has sustained injury in a manner as deposed by him and his presence is further found affirmed at the place of

occurrence and so, unless resolutely filliped, his version is to be accepted as has been observed by the Apex Court in **Mukesh & Anr. vs. State for NCT of Delhi & ors.**, reported in 2017(3) PLJR 248 (SC).

> "79. The injuries found on the person of PW-1 and the fact that PW-1 was injured in the same occurrence lends assurance to his testimony that he was present at the time of the occurrence along with the prosecutrix. The evidence of an injured witness is entitled to a greater weight and the testimony of such a witness is considered to be beyond reproach and reliable. Firm, congent and convincing ground is required to discard the evidence of an injured witness. It is to be kept in mind that the evidentiary value of an injured witness carries great weight. In **Mano Dutt and Another vs. State of Uttar Prades**h, (2012)4 SCC 79, it was held as under:
>
> > "31. We may merely refer to Abdul Sayeed vs. State of M.P., (2010)10 SCC 259, where this Court held as under:
> >
> > "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'. [Vide Ramlagan Singh vs. State of Bihar, (1973(3)SCC881, Malkhan Singh vs. State of U.P., (1975(3) SCC 311, Machhi Singh vs. State of Pubjab, (1983)3 SCC 470, Appabhai vs. State of Gujarat, 1988 (Supp.) SCC 241, Bonkya vs. State of Maharashtra, (1995)6 SCC 447, Bhag Singh vs. State of Punjab, (1997)7 SCC 712, Mohar vs. State of U.P., (2002) 7 SCC 606, Dinesh Kumar vs. State of Rajasthan, (2008)8 SCC 270, Vishnu vs. State of Rajasthan, (2009)10 SCC 477, Annareddy Sambasiva Reddy vs. State of A.P., (2009)12 SCC 546 and Balraje vs. State of Maharashtra, (2010)6 SCC 673]

29. While deciding this issue, a similar view was taken in Jamail Singh vs. State of Punjab, (2009)9 SCC 719, 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:

'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 vs. State of Karnataka, 1994 Supp.(3) SCC 235, 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. vs. Kishan Chand, (2004)7 SCC 629, 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 testomony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide Krishna vs. State of Haryana, (2006)2 SCC 459). 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 summarized 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 this 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."
>
> To the similar effect is the judgment of this Court in Balraje (supra)."

After all, it is the duty of the court to appreciate, to scrutinize, to analyze evidence in a manner like separating grain from the chaff, that means to say separating truth from the falsehood as has been observed by the Apex Court in **Mahavir Singh v. State of M.P.**, reported in 2017(1) PLJR 177(SC).

> "24. It is the duty of the Apex Court to separate chaff from the husk and to dredge the truth from the pandemonium of Statements. It is but natural for human beings to state variant statements due to time gap but if such statements go to defeat the core of the prosecution then such contradictions are material and the Court has to be mindful of such statements [see: Tahsildhar Singh vs. State of U.P., AIR 1959 SC 1012; :Puddu Raja vs. State, (2012)11 SCC 196; State of U.P. vs. Naresh, (2011)9 SCC 698]. The case in hand is a fit case, wherein there are material exaggerations and contradictions, which inevitably raises doubt which is reasonable in normal circumstances and keeping in view the substratum of the prosecution case, we cannot infer beyond reasonable doubt that the appellant caused the death of the deceased."

As stated above, the defence could not be able to challenge the said testimony of P.W.5 doctor with regard to nature of injury having over the person of the respective injured though, the report regarding subsequent treatment is not on the record. It is further evident that the P.O. has been properly substantiated. The trend of the prosecution evidence as is evident, initially Chandan Kumar Chaudhary was made an accused claiming to be son of Ramashray Chaudhary but after investigation the proper identification of the accused Chandan Kumar Chaudhary, son of Nathuni Chaudhary has been made, which, as is evident not been challenged on the score of dock identification. It is further evident that although, during course of cross-examination, there happens to be some sort outcoming visible in the evidence of P.W.2 but she also identified the appellant in dock. Although, the presence of Chandan Chaudhary in the dock has been put under the mark of interrogation at the end of P.W.1, but again not been objected. From the evidence of P.W.1, P.W.2, P.W.3 and P.W.4 it is crystal clear that the appellant has not claimed, challenged his identification as one of the accused, irrespective of his status. That means to say right from the initial stage there happens to be no challenge at the end of the appellant, nor his status to be an

accused irrespective of some sort of confusion over the parentage name. More over, his identification is found consistent in the dock.

Now coming on the score of identification, it is evident that some sort of discrepancy is there, whose name and parentage of appellant has been exposed, right from the initial version, and on that very aspect, attention of concerned witness has also been drawn up.

But, one consistent approach of the witnesses has completely been overlooked at the end of learned counsel for the appellant, which is identification before court and on that score, respective witness has not been tested. How far, identification before court is to be seen.

In **Mahabir v. State of Delhi**, reported in (2008)16 SCC 481, it has been held:

> "11. We shall deal with the appeal filed by the accused Mahabir. From the evidence of PW4 it is clear that after the incident accused Mahabir and Mahesh were shown to P.W.4 at the time of their arrest. In fact, police brought many persons for identification of culprits and identified Mahabir and Mahesh to P.W.4. She admitted that these two persons were brought to the hospital. Subsequently, she had identified them in court. So far as recovery of VCR is concerned, which was treated as a ground for holding Mahabir and Jalvir guilty, she accepted that it was not told to her

about recovery of VCR. She was told by the police that VCR had been recovered after the police persons had brought Mahabir and Mahesh. Interestingly, she also accepted that Mahabir and Mahesh were brought to the hospital where she was asked to identify them."

In **Sheo Shankar Singh v. State of Jharkhand**, reported in (2011) 3 SCC 654, it has been held:

"46. It is fairly well settled that identification of the accused in the court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the witness in the court who claims to identify the accused persons otherwise unknown to him. Test identification parades, therefore, remain in the realm of investigation.

47. The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the court. As to what should be the weight attached to such an identification is a matter which the court will determine in the peculiar facts and circumstances of each case. In appropriate cases the court may accept the evidence of identification in the court even without insisting on corroboration.

48. The decisions of this Court on the subject are legion. It is, therefore, unnecessary to refer to all such decisions. We remain content with a reference to the following observations made by this Court in *Malkhansingh* v. *State of M.P.* [(2003) 5 SCC 746 : 2003 SCC (Cri) 1247] : (SCC pp. 751-52, para 7)

> "*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 1958 SC 350 : 1958 Cri LJ 698] , *Vaikuntam Chandrappa* v. *State of A.P.* [AIR 1960 SC 1340 : 1960 Cri LJ 1681] , *Budhsen* v. *State of U.P.* [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] and *Rameshwar Singh* v. *State of J&K* [(1971) 2 SCC 715 : 1971 SCC (Cri) 638] .)"

49. We may also refer to the decision of this Court in *Pramod Mandal* v. *State of Bihar* [(2004) 13 SCC 150 : 2005 SCC (Cri) 75] where this Court observed: (SCC p. 158, para 20)

> "*20*. It is neither possible nor prudent to lay down any invariable rule as to the period within which a test identification parade must be held, or the number of witnesses who must correctly identify the accused, to sustain his conviction. These matters must be left to the courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the test identification parade must be held, it would only benefit the professional criminals in

> whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They, therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be unknown to the victim and the case depends solely on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness? Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the matter in the light of the evidence on record before pronouncing upon the acceptability or rejection of such identification."
>
> 50. The decision of this Court in *Malkhansingh case* [(2003) 5 SCC 746 : 2003 SCC (Cri) 1247] and *Aqeel Ahmad* v. *State of U.P.* [(2008) 16 SCC 372 : (2010) 4 SCC (Cri) 11] adopt a similar line of reasoning."

In **State of Rajasthan vs. Daud Khan**, reported in (2016) 2 SCC 607, it has been held:

> "**44.** That apart, it was recently held in *Ashok Debbarma* v. *State of Tripura* [*Ashok Debbarma* v. *State of Tripura*, (2014) 4 SCC 747 : (2014) 2 SCC (Cri) 417] that while the evidence of identification of an accused at a trial is admissible as a substantive piece of evidence, it would depend on the facts of a given case whether or not such a

piece of evidence could be relied upon as the sole basis for conviction of an accused. It was held that if the witnesses are trustworthy and reliable, the mere fact that no TIP was conducted would not, by itself, be a reason for discarding the evidence of those witnesses. In arriving at this conclusion, this Court relied upon a series of decisions. [*Kanta Prashad* v. *Delhi Admn.*, AIR 1958 SC 350 : 1958 Cri LJ 698; *Harbajan Singh* v. *State of J&K*, (1975) 4 SCC 480 : 1975 SCC (Cri) 545; *Jadunath Singh* v. *State of U.P.*, (1970) 3 SCC 518 : 1971 SCC (Cri) 124; *George* v. *State of Kerala*, (1998) 4 SCC 605 : 1998 SCC (Cri) 1232; *Dana Yadav* v. *State of Bihar*, (2002) 7 SCC 295 : 2002 SCC (Cri) 1698] Earlier, a similar view was expressed in *Manu Sharma* v. *State (NCT of Delhi)* [*Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385, paras 255, 258] .

In **Mukesh & Anr. v. State (NCT Delhi) & ors.**, reported in (2017) 6 SCC 1, it has been held:

"144. In *Malkhansingh* v. *State of M.P.* [*Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746 : 2003 SCC (Cri) 1247] , it has been held thus: (SCC pp. 751-52, para 7)

"*7.* … 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. …"

And again: (SCC p. 755, para 16)

> "*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. …"143. In *Santokh Singh* v. *Izhar Hussain* [*Santokh Singh* v. *Izhar Hussain*, (1973) 2 SCC 406 : 1973 SCC (Cri) 828] , it has been observed that the identification can only be used as corroborative of the statement in court.

145. In this context, reference to a passage from *Visveswaran* v. *State* [*Visveswaran* v. *State*, (2003) 6 SCC 73 : 2003 SCC (Cri) 1270] would be apt. It is as follows: (SCC p. 78, para 11)

"*11*. … The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. …"

146. In *Manu Sharma* v. *State (NCT of Delhi)* [*Manu Sharma* v. *State (NCT of Delhi)*, (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] , the Court, after referring to *Munshi*

Singh Gautam v. *State of M.P.* [*Munshi Singh Gautam* v. *State of M.P.*, (2005) 9 SCC 631 : 2005 SCC (Cri) 1269] , *Harbajan Singh* v. *State of J&K* [*Harbajan Singh* v. *State of J&K*, (1975) 4 SCC 480 : 1975 SCC (Cri) 545] and *Malkhansingh* [*Malkhansingh* v. *State of M.P.*, (2003) 5 SCC 746 : 2003 SCC (Cri) 1247] , came to hold that the proposition of law is quite clear that even if there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.

147. In the case at hand, the informant, apart from identifying the accused who had made themselves available in the TIP, has also identified all of them in court. On a careful scrutiny of the evidence on record, we are of the convinced opinion that it deserves acceptance. Therefore, we hold that TIP is not dented."

In **Prakash vs. State of Karnataka**, reported in (2014) 12 SCC 133, it has been held:

"15. An identification parade is not mandatory [*Ravi Kapur* v. *State of Rajasthan*, (2012) 9 SCC 284 : (2012) 4 SCC (Civ) 660 : (2012) 3 SCC (Cri) 1107] nor can it be claimed by the suspect as a matter of right. [*R. Shaji* v. *State of Kerala*, (2013) 14 SCC 266 : (2014) 4 SCC (Cri) 185] The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. [*Rameshwar Singh* v. *State of J&K*, (1971) 2 SCC 715 : 1971 SCC (Cri) 638] If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable [*Mulla* v.

State of U.P., (2010) 3 SCC 508 : (2010) 2 SCC (Cri) 1150; *Kishore Chand* v. *State of H.P.*, (1991) 1 SCC 286 : 1991 SCC (Cri) 172] unless the suspect has been seen by the witness or victim for some length of time. [*State of U.P.* v. *Boota Singh*, (1979) 1 SCC 31 : 1979 SCC (Cri) 115] In *Malkhansingh* v. *State of M.P.* [(2003) 5 SCC 746 : 2003 SCC (Cri) 1247] it was held: (SCC pp. 751-52, para 7)

> "*7.* … 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."

16. However, if the suspect is known to the witness or victim [*Jadunath Singh* v. *State of U.P.*, (1970) 3 SCC 518 : 1971 SCC (Cri) 124] or they have been shown a photograph of the suspect or the suspect has been exposed to the public by the media [*R. Shaji* v. *State of Kerala*, (2013) 14 SCC 266 : (2014) 4 SCC (Cri) 185] no identification evidence is necessary. Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution. In *Visveswaran* v. *State* [(2003) 6 SCC 73 : 2003 SCC (Cri) 1270] it was held: (SCC p. 78, para 11)

> "*11*. … The identification of the accused either in a test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence."

In **Suraj Pal vs. State of Haryana**, reported in (1995)2 SCC 64, it has been held:

> "**14.** ---------- It may be pointed out that the holding of identification parades has been in vogue since long in the past with a view to determine whether an unknown person accused of an offence is really the culprit or not, to be identified as such by those who claimed to be the eyewitnesses of the occurrence so that they would be able to identify the culprit if produced before them by recalling the impressions of his features left on their mind. That being so, in the very nature of things, the identification parade in such cases serves a dual purpose. It enables the investigating agency to ascertain the correctness or otherwise of the claim of those witnesses who claimed to have seen the offender of the crime as well as their capacity to identify him and on the other hand it saves the suspect from the sudden risk of being identified in the dock by such witnesses during the course of the trial. This practice of test identification as a mode of identifying an unknown person charged of an offence is an age-old method and it has worked well for the past several decades as a satisfactory mode and a well-founded method of criminal jurisprudence. It may also be

> noted that the substantive evidence of identifying witness is his evidence made in the court but in cases where the accused person is not known to the witnesses from before who claimed to have seen the incident, in that event identification of the accused at the earliest possible opportunity after the occurrence by such witnesses is of vital importance with a view to avoid the chance of his memory fading away by the time he is examined in the court after some lapse of time."

In **Dana Yadav @ Dahu & ors. vs. State of Bihar**, reported in (2002)7 SCC 295, it has been held:

> "38. (*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 the 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."

In **Hari Kishan v. Sukhbir Singh & ors.**, reported in AIR 1988 SC 2127, it has been observed:

The question of intention to kill or knowledge of the death in terms of Section 307 I.P.C. is a question of fact and not one of law. It would all depend on the facts of the given case. It is

not at all governed by the nature of injury. What is material to attract the provisions of Section 307 I.P.C. is guilty intention or knowledge with which all was done irrespective of its result. The intention and knowledge are matters of interference from the totality of the circumstances and cannot be measured merely from the result.

Presence of the appellant alongwith Bambam inside the house having duly armed in the night and then giving indiscriminate blow over the person of the respective injured side by side also giving firearm injury over the person of P.W.3 by his associate, speaks a lot with regard to intention of the accused in predetermined manner and that being so, the judgment of conviction and order of sentence recorded by the learned lower court did not attract interference. Consequent thereupon, this appeal sans merit and is accordingly, dismissed. The appellant is in custody which he will remain till saturation of period of sentence.

(Aditya Kumar Trivedi, J)

Surendra/-

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