
State of Rajasthan Vs Daud Khan

Criminal Appeal Nos. 126 and 351 of 2010

Court: Supreme Court of India

Date of Decision: Nov. 4, 2015

Acts Referred:

Arms Act, 1959 - Section 25, 3#Criminal Procedure Code, 1973 (CrPC) - Section 156, 156(1), 157#Penal Code, 1860 (IPC) - Section 109, 302, 304, 34

Citation: (2015) 11 AD (SC) 629 : (2016) 1 ALD(Cri) 241 : (2015) 91 ALLCC 943 : (2015) 4 CCR 217 : (2016) 121 CLT 382 : (2016) CriLJ 165 : (2015) 4 Crimes 546 : (2016) 1 JCC 282 : (2016) 1 JLJR 44 : (2015) 4 MLJ(Cri) 502 : (2015) 3 NCC 772 : (2016) 1 PLJR 25

Hon'ble Judges: Madan B. Lokur and S.A. Bobde, JJ.

Bench: Division Bench

Advocate: Sushil Kumar, Sr. Advocate, S.S. Shamsheery, AAG, Amit Sharma, Yishu Prayash, Ruchi Kohli, Preeti Bhardwaj, Aditya Kumar, Surya Kamal Mishra, Mushtaq Ahmad and Namita Choudhary, Advocates, for the Appellant

Final Decision: Dismissed

Judgement

Madan B. Lokur, J

These appeals are directed against the judgment and order dated 11th November, 2008 passed by the High Court of

Judicature for Rajasthan at Jodhpur. Criminal Appeal No. 126 of 2010 has been filed by the State of Rajasthan challenging the refusal of the High

Court to uphold the conviction of Daud Khan for an offence punishable Under Section 302 of the Indian Penal Code (for short the Indian Penal

Code). Criminal Appeal No. 351 of 2010 is filed by Daud Khan challenging his conviction for an offence punishable under the first part of Section

304 of the Indian Penal Code.

2. The broad facts leading to the decision of the High Court are that on 19th June, 2004 at about 9.30 p.m. Nand Singh had gone to Bathra

Telecom & Restaurant at Nimbahera, District Pratapgarh in Rajasthan. He was accompanied by his friends Nitin Sindhi (accused No. 3) and

Narendra Kumawat. While they were seated in the restaurant, Javed Beg (accused No. 2) and Daud Khan (accused No. 1) came there on a

motor cycle. It appears that Javed Beg and Daud Khan had some grudge against Nand Singh concerning the result of a cricket match between

India and Pakistan.

3. According to the prosecution, Javed Beg brandished a knife and told Nand Singh that today his end had come. Thereupon Daud Khan fired

upon Nand Singh with a loaded pistol on the right side of his chest and then both of them escaped on their motor cycle. They were chased by

Narendra Kumawat and Nitin Sindhi but they were not successful in apprehending the assailants.

4. Thereafter, Narendra Kumawat and Nitin Sindhi took Nand Singh to a nearby hospital on their motorcycle but Nand Singh was declared

brought dead. Thereupon, Narendra Kumawat went to Nand Singh's residence and informed his brother PW-1 Gajendra Singh about the

incident. Gajendra Singh also visited the hospital and then lodged FIR No. 374/04 on 19th June, 2004 with the Nimbahera Police Station at about

10.30 p.m. Daud Khan and Javed Beg were named as the two accused persons.

5. On 21st June, 2004 Daud Khan was arrested. Thereafter, Javed Beg was arrested on 15th July, 2004. The gun used by Daud Khan to shoot

Nand Singh was recovered at his instance from Javed Khan's possession. Nitin Sindhi was arrested on 28th July, 2007.

6. A charge-sheet was filed against all three persons and it was alleged that Daud Khan was guilty of offence punishable Under Section 302 of the

Indian Penal Code and Section 3 read with Section 25 of the Arms Act while the others were guilty of an offence punishable Under Section 302 of

the Indian Penal Code read with Section 34 thereof and Section 109 read with Section 302 thereof.

7. The case was tried by the Additional District & Sessions (Fast Track) Camp Nimbahera, District Pratapgarh as Sessions Case No. 103 of

2005. In his judgment and order, the Trial Judge convicted Daud Khan of an offence punishable Under Section 302 of the Indian Penal Code and

Section 3 read with Section 25 of the Arms Act. Javed Beg was convicted of an offence punishable Under Section 3 read with Section 25 of the

Arms Act but was found not guilty of an offence Under Section 302 read with Section 34 of the Indian Penal Code. Nitin Sindhi was found not

guilty of any offence. The accused persons were appropriately sentenced.

8. Feeling aggrieved by the decision of the Trial Court, appeals were filed in the High Court by Daud Khan and Javed Beg challenging their

conviction and by the State challenging the partial acquittal of Javed Beg and complete acquittal of Nitin Sindhi. By its judgment and order dated

11th November, 2008 the High Court came to the conclusion that Daud Khan was not guilty of an offence punishable Under Section 302 of the

Indian Penal Code but was guilty of an offence punishable under the first part of Section 304 of the Indian Penal Code. His conviction Under

Section 3 read with Section 25 of the Arms Act was maintained. As far as the conviction of Javed Beg under the Arms Act is concerned, it was

upheld by the High Court, but the sentence was reduced. The High Court also dismissed the appeal filed by the State against the acquittal of Javed

Beg of the offence punishable Under Section 302 of the Indian Penal Code and the complete acquittal of Nitin Sindhi.

9. Feeling aggrieved, the present appeals have been filed, as mentioned above, by Daud Khan and the State.

Decision of the Trial Court

10. Before the Trial Court, quite a few contentions were urged. It was contended that the First Information Report (FIR) is suspicious inasmuch as

in the newspapers the next day, it was reported that unknown persons (strangers) had committed the murder of Nand Singh in an STD booth. The

police had arrived at the spot and taken the injured (Nand Singh) to the hospital. It was argued that a report in this regard was lodged, but

thereafter removed from the record and suppressed. That apart, it was argued that the FIR was lodged after a delay of one and half hours and

reliance was placed on Thulia Kali Vs. The State of Tamil Nadu, In addition to this, it was argued that there was considerable unexplained delay in

informing the Magistrate of the lodging of the FIR. The delay was to the extent of one day and 13 (thirteen) hours (a total of about 36/37 hours).

There was enough time, therefore, to manipulate the facts so as to involve the accused.

11. It was also contended that the mere recovery of a pistol (from Javed) was not enough to hold Daud Khan guilty. In any event, the opinion of

the Forensic Science Laboratory (FSL) was not definite that the bullet taken out from the body of Nand Singh was fired from the recovered pistol.

Additionally, it was argued that according to the witnesses, the shot had been fired from a close distance but the post mortem report did not

indicate any blackening of the skin which would have happened had the shot been fired from a close range. It was sought to be suggested that the

eye witnesses were perhaps not present when the incident occurred and a story was made up to involve Daud Khan.

12. The defence contended that the incident did not occur at the place where it is said to have occurred. In support of this contention, it was

argued that the body of Nand Singh was found 70 (seventy) feet away, across the road and near the tyre repair shop, a long distance from where

he was allegedly sitting in Bathra Telecom. No blood was found where the shooting took place, but blood was found only near the tyre repair

shop. This was most unlikely particularly when Nand Singh had been shot near a vital part of his body on the chest. Therefore, not only was the

presence of witnesses suspicious but the place of occurrence was also doubtful.

13. The Trial Court did not place any reliance on the newspaper reports since there was nothing to show that a report had been filed with the

concerned police station that unknown persons had committed the crime. The Trial Court also found that the time taken for lodging the FIR (about

one and a half hours) was explained under the circumstances, since Nand Singh had been taken to the hospital and his brother Gajendra Singh

(PW-1) had to be informed of the incident. The delay was found to be not unreasonable. However, the Trial Court did not deal with the delay in

informing the Magistrate of the lodging of the FIR.

14. The Trial Court accepted the recovery of the pistol, as well as unused cartridges, from Javed at the instance of Daud Khan. The Trial Court

also took the view that the FSL report clearly stated that a bullet had been fired from the pistol and it was not stated that the bullet taken out from

the body of Nand Singh could not have been fired from the recovered pistol. The Trial Court also held that Nand Singh's skin was not blackened

since he was wearing a vest and a shirt. Therefore, fully believing the version of the eye witnesses, it was held that Daud Khan shot Nand Singh at

the place of occurrence and there were several witnesses present at that time. On this basis, the Trial Court convicted Daud Khan of an offence

punishable Under Section 302 of the Indian Penal Code.

Decision of the High Court

15. Before the High Court, somewhat more elaborate contentions were urged on behalf of Daud Khan. The primary contentions urged (and they

were repeated before us) were that the FSL report falsifies the version of the eye witnesses. It was urged that according to the witnesses, the gun

shot was fired from a distance of about 4 (four) feet. Despite this, there was no blackening of Nand Singh's skin. The High Court rejected this

contention on the ground that the witnesses had stated that "the shot was fired from nearby" and that "None of the eye witnesses has stated that it

was fired from a distance of less than 4 ft." There might be some variation in the distance but that could not be fatal to the case of the prosecution.

That apart, merely because there was no blackening of the skin does not lead to the inevitable conclusion that the shot was fired from a distance.

16. It was submitted that the gun was recovered from Javed and not from Daud Khan. The High Court was of the view that while this may be so,

it did not rule out the possibility of Daud Khan handing over the weapon to Javed. This submission was not pressed before us and we need not

spend any further time on this except to note that the Trial Court found that the recovery was at the instance of Daud Khan.

17. It was argued that the news report that appeared the next day was obtained from the Superintendent of Police and that was to the effect that

some unknown persons were involved in the shooting. The High Court rejected this submission and held that news reports could not be treated as

evidence. This submission was faintly adverted to before us as well, but is hardly decisive one way or the other.

18. It was urged that earth stained with the blood of Nand Singh was recovered about 70 (seventy) feet away from the place of incident. This was

an indication that the shooting did not take place at Bathra Telecom but elsewhere. It was urged that the High Court was in error in disbelieving

DW-1 Chhotu Khan who stated that someone from a truck near his tyre shop had shot Nand Singh. The High Court was of the opinion that the

reason why the blood stains were found elsewhere was because Nand Singh had run away after being shot and had fallen down about 70

(seventy) feet away. It is for this reason also that the High Court disbelieved DW-1 Chhotu Khan whose version of the events was held to be an

afterthought.

19. Finally, it was urged that there was an unexplained delay in the Magistrate receiving the FIR (after about 37 hours). The High Court noted this

submission but unfortunately (like the Trial Court) did not deal with it.

20. On an overall conspectus of the facts of the case, the view canvassed on behalf of Daud Khan was that the witnesses to the shooting could not

be believed. The High Court rejected this view.

21. The High Court, however, felt that a case of murder punishable Under Section 302 of the Indian Penal Code was not made out since Daud

Khan had fired only one bullet and did not take undue advantage of the situation and therefore only a case of intention to cause bodily harm that

was likely to cause death was made out, punishable under the first part of Section 304 of the Indian Penal Code. Accordingly, Daud Khan was

convicted of that offence and sentenced to 7 (seven) years rigorous imprisonment with fine.

22. Feeling aggrieved, Daud Khan is before us in appeal.

Delay in lodging the FIR: submissions and discussion

23. It was submitted that the FIR lodged by PW-1 Gajendra Singh was ante-dated. Actually the FIR was lodged on 20th June 2004 but was

ante-dated to 19th June 2004. It was submitted that this is apparent from the overwriting on the FIR. The insinuation was that it was first decided

to "fix" the accused and thereafter the FIR was lodged to that effect. We see no substance in this contention. We have seen the FIR in original and

find nothing to suggest any semblance of any overwriting. We may also note that no such submission was made before the Trial Court or the High

Court.

24. It was also argued that there was a delay in lodging the FIR. Reference was made to Lalita Kumari Vs. Govt. of U.P. and Others,

(Constitution Bench). We find no substance in this contention as well. The incident is stated to have occurred at about 9.30 pm. The FIR was

lodged at about 10.30 pm. There is hardly any "delay" in lodging of the FIR. It must be added, however, that this argument was premised on the

assumption that the FIR was lodged on 20th June 2004 and not on 19th June 2004, a contention we have already rejected.

Section 157 of the Code of Criminal Procedure: submissions and discussion

25. It was then submitted that there was an unexplained delay in receipt of the FIR by the Magistrate-a delay of about 36/37 hours since the copy

of the FIR was received by him on 21st June 2004 at about 11.00 am. According to learned Counsel for Daud Khan this was in violation of

Section 157 of the Code of Criminal Procedure, 1973 (for short "the Code of Criminal Procedure) which requires a copy of the FIR (called a

special report or an express report) to be sent forthwith to the concerned Magistrate.¹

26. The interpretation of Section 157 of the Code of Criminal Procedure is no longer res integra. A detailed discussion on the subject is to be

found in *Brahm Swaroop and Another Vs. State of U.P.*, which considered a large number of cases on the subject. The purpose of the "forthwith

communication of a copy of the FIR to the Magistrate is to check the possibility of its manipulation. Therefore, a delay in transmitting the special

report to the Magistrate is linked to the lodging of the FIR. If there is no delay in lodging an FIR, then any delay in communicating the special

report to the Magistrate would really be of little consequence, since manipulation of the FIR would then get ruled out. Nevertheless, the

prosecution should explain the delay in transmitting the special report to the Magistrate. However, if no question is put to the investigating officer

concerning the delay, the prosecution is under no obligation to give an explanation. There is no universal rule that whenever there is some delay in

sending the FIR to the Magistrate, the prosecution version becomes unreliable. In other words, the facts and circumstances of a case are important

for a decision in this regard.

27. The delay in sending the special report was also the subject of discussion in a recent decision being *Sheo Shankar Singh Vs. State of U.P.*,

wherein it was held that before such a contention is countenanced, the accused must show prejudice having been caused by the delayed dispatch

of the FIR to the Magistrate. It was held, relying upon several earlier decisions as follows:

30. One other submission made on behalf of the Appellants was that in the absence of any proof of forwarding the FIR copy to the jurisdiction

Magistrate, violation of Section 157 Code of Criminal Procedure has crept in and thereby, the very registration of the FIR becomes doubtful. The

said submission will have to be rejected, inasmuch as the FIR placed before the Court discloses that the same was reported at 4.00 p.m. on 13-6-

1979 and was forwarded on the very next day viz. 14-6-1979. Further, a perusal of the impugned judgments of the High Court as well as of the

trial court discloses that no case of any prejudice was shown nor even raised on behalf of the Appellants based on alleged violation of Section 157

Code of Criminal Procedure. Time and again, this Court has held that unless serious prejudice was demonstrated to have been suffered as against

the accused, mere delay in sending the FIR to the Magistrate by itself will not have any deteriorating (sic) effect on the case of the prosecution.

Therefore, the said submission made on behalf of the Appellants cannot be sustained.

31. In this context, we would like to refer to a recent decision of this Court in *Sandeep Vs. State of U.P.*, wherein the said position has been

explained as under in paras 62-63: (SCC p. 132)

62. It was also feebly contended on behalf of the Appellants that the express report was not forwarded to the Magistrate as stipulated Under

Section 157 Code of Criminal Procedure instantaneously. According to the learned Counsel FIR which was initially registered on 17-11-2004

was given a number on 19-11-2004 as FIR No. 116 of 2004 and it was altered on 20-11-2004 and was forwarded only on 25-11-2004 to the

Magistrate. As far as the said contention is concerned, we only wish to refer to the reported decision of this Court in Pala Singh and Another Vs.

State of Punjab, wherein this Court has clearly held that (SCC p. 645, para 8) where the FIR was actually recorded without delay and the

investigation started on the basis of that FIR and there is no other infirmity brought to the notice of the court then, however improper or

objectionable the delay in receipt of the report by the Magistrate concerned be, in the absence of any prejudice to the accused it cannot by itself

justify the conclusion that the investigation was tainted and the prosecution insupportable.

63. Applying the above ratio in Pala Singh to the case on hand, while pointing out the delay in the forwarding of the FIR to the Magistrate, no

prejudice was said to have been caused to the Appellants by virtue of the said delay. As far as the commencement of the investigation is

concerned, our earlier detailed discussion discloses that there was no dearth in that aspect. In such circumstances we do not find any infirmity in the

case of the prosecution on that score. In fact the above decision was subsequently followed in Sarwan Singh and Others Vs. State of Punjab, Anil

Rai Vs. State of Bihar, and Aqeel Ahmad Vs. State of U.P., .

28. It is no doubt true that one of the external checks against ante-dating or ante-timing an FIR is the time of its dispatch to the Magistrate or its

receipt by the Magistrate. The dispatch of a copy of the FIR ""forthwith"" ensures that there is no manipulation or interpolation in the FIR.² If the

prosecution is asked to give an explanation for the delay in the dispatch of a copy of the FIR, it ought to do so.³ However, if the court is convinced

of the prosecution version's truthfulness and trustworthiness of the witnesses, the absence of an explanation may not be regarded as detrimental to

the prosecution case. It would depend on the facts and circumstances of the case.⁴

29. In so far as the present case is concerned, there was no delay in lodging the FIR. Hence the question of its manipulation does not arise.

Additionally, the officer in charge of the police station, PW-21 Surender Singh was not asked any question about the delay in sending the special

report to the Magistrate. An explanation was, however, sought from the investigating officer PW-25 Rajinder Parik who tersely responded by

saying that it was not his duty to send the special report to the court (or the Magistrate). In the absence of any question having been asked of the

officer who could have given an answer, namely, the officer in charge of the police station, no adverse inference can be drawn against the

prosecution in this regard, nor can it be held that the delay in receipt of the special report by the Magistrate is fatal to the case of the prosecution.

This is apart from the consistent evidence of the eye witnesses, which we shall advert to a little later.

Ballistics report: submissions and discussion

30. It was vehemently contended that the report of the FSL (Exhibit P-37) did not conclusively say that the bullet recovered from the body of

Nand Singh was fired from the pistol recovered from Javed at the instance of Daud Khan. The FSL report reads as follows:

1. One.32 country made revolver (W/1) from packet "E" in (is) a serviceable firearm. However, it has the tendency to misfire the ammunition.

2. The examination of the barrel residue indicates that submitted one.32 country made revolver (W/1) had been fired. However, the definite time of

its last fire could not be ascertained.

3. Based on the stereo and microscopic examination, it is the opinion that it has not been possible to link definitely one 7.65 mm cartridge case

(C/1) from packet "E" and one.32 copper jacket bullet (B/1) from packet "D" with submitted one.32 revolver (W/1) from packet "E" due to lack

of sufficient evidence.

31. A perusal of the FSL report suggests that it is not conclusive one way or the other whether the bullet extracted from the body of Nand Singh

had or had not been fired from the pistol recovered from Javed at the instance of Daud Khan. In view of this, learned Counsel placed reliance on

Mohinder Singh Vs. The State, . The facts of that case were quite unique. The deceased-Dalip Singh was said to have suffered two injuries, one

inflicted on his chest with a gun used by Appellant-Mohinder Singh and the other near his ear while he was lying sideways, inflicted by Gurnam

Singh with a rifle from a distance of about 4-5 feet. According to the definite case of the prosecution, Appellant-Mohinder Singh had fired from a

gun, but this was not accepted by this Court which felt that the injury attributed to Appellant-Mohinder Singh was caused by a rifle. In other

words, there was a mismatch between the weapon and the bullet. In this context, this Court observed as follows:

In a case where death is due to injuries or wounds caused by a lethal weapon, it has always been considered to be the duty of the prosecution to

prove by expert evidence that it was likely or at least possible for the injuries to have been caused with the weapon with which and in the manner in

which they are alleged to have been caused. It is elementary that where the prosecution has a definite or positive case, it must prove the whole of

that case. In the present case, it is doubtful whether the injuries which are attributed to the Appellant [Mohinder Singh] were caused by a gun or by

a rifle. Indeed, it seems more likely that they were caused by a rifle than by a gun, and yet the case for the prosecution is that the Appellant was

armed with a gun, and, in his examination, it was definitely put to him that he was armed with the gun P-16. It is only by the evidence of a duly

qualified expert that it could have ascertained whether the injuries attributed to the Appellant were caused by a gun or by a rifle and such evidence

alone could settle the controversy as to whether they could possibly have been caused by a fire-arm being used at such a close range as is

suggested in the evidence.

32. And, what was the opinion of the expert in that case? This Court noted that the opinion of the Director, C.I.D. Laboratory, Philaur could be

summed up in the following words:

The gun had signs of having been fired but he [the expert] could not say when it was fired last. The cartridge cases P-10 and P-15 could have

been fired through the gun P-16, but he could not say whether they were actually fired from that particular gun or a similar gun or guns. He did not

make any experiment by firing any cartridge from the gun P-16, nor did he compare the markings on the empty cartridges P-10 and P-15.

33. On this basis, it was observed that according to the prosecution, two shots were fired at the deceased-Dalip Singh and ""one of the crucial

points which the prosecution had to prove was that these shots were fired by two persons and not by one man, and both the shots were fired in

such manner and from such distance as is alleged by the eye witnesses. There is, in our opinion, a gap in the prosecution evidence on a most

fundamental point and the error which has been committed by the courts below is to ignore the gap....."" In view of this gap in the prosecution

evidence, this Court gave the benefit of doubt to the Appellant-Mohinder Singh. Additionally, this Court did not believe the three eye witnesses

since two of them were chance witnesses and ""not altogether independent persons"" while the third was a partisan witness and his testimony was

otherwise improbable since he claimed to have witnessed the shooting after he had himself been shot at the back of the neck.

34. In so far as the present appeal is concerned, the facts of the case are quite different. Although the FSL report was inconclusive in the sense that

it could not be stated whether the extracted bullet could be "definitely" linked to the recovered weapon, but there was no doubt that the extracted

bullet was capable of being fired from the recovered gun. In other words (and this is important) there was no mismatch between the bullet and the

gun. Mohinder Singh, therefore, does not come to the aid of Daud Khan. However, learned Counsel sought to cash in on the absence of

definitiveness by relying on Abdul Sayeed Vs. State of Madhya Pradesh, but that decision is also of no relevance. In that case, there was a conflict

between the medical evidence and the ocular evidence, while in this case there is no such conflict. There is no doubt both from the medical and the

ocular evidence that Daud Khan had shot with a gun. The forensic evidence shows that the bullet extracted from the body of Nand Singh was

capable of being fired from the recovered gun. Whether Nand Singh was shot by use of the recovered gun or some other gun was not questioned

and none of the witnesses was asked any substantive question about the gun recovered from Javed at the instance of Daud Khan or whether it was

the same gun (or a different one) used by Daud Khan.

Blackening of the skin: submissions and discussion

35. It was contended that since Nand Singh was shot from a close distance, there would have some blackening of his skin, but the post mortem

report did not show any such blackening. It was contended, on this basis, that Nand Singh was actually shot elsewhere (where he collapsed) and

not at the place suggested by the prosecution.

36. PW-11 Narendra Kumawat who had accompanied Nand Singh and was with him when the incident occurred stated that Daud Khan had

fired from a distance of about two feet. Similarly, PW-19 Suraj Mal stated that the bullet was fired from a distance of two feet, while PW-7

Mahabir Singh stated that the bullet was fired from a distance of one foot. PW-23 Narender Singh stated that the bullet was fired from a distance

of "four fingers and the bullet was not fired touching the pistol to the chest." Finally, PW-24 Rishi Raj Shekhawat stated that ""Fire was not made

after touching the chest of Nand Singh, rather it was fired from the distance of one or two feet."" Therefore, each of the eye witnesses stated that

the shot was fired by Daud Khan at Nand Singh from very close quarters and in any event from a distance of two feet or less. The High Court

found, incorrectly, that the witnesses had testified that the shooting had occurred from nearby but no distance was mentioned by any witness.

37. Be that as it may, at this stage, reference may be made to Modi's Medical Jurisprudence and Toxicology⁵ wherein it is noted, with reference

to blackening of the skin in a gunshot wound, as follows:

If a firearm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches round the wound of

entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt grains of gunpowder or

smokeless propellant powder. The adjacent hairs are singed, and the clothes covering the part are burnt by the flame. If the powder is smokeless,

there may be a grayish or white deposit on the skin around the wound. If the area is photographed by infrared light, a smoke halo round the wound

may be clearly noticed. Blackening is found, if a firearm like a shotgun is discharged from a distance of not more than three feet and a revolver or a

pistol discharged within about two feet....

38. Under the circumstances, in all likelihood if Nand Singh was in fact shot at from a close range of about two feet or less, there would have been

some blackening of his skin. The Trial Court acknowledged this but was of the opinion that since Nand Singh was wearing a vest and a shirt

(Exhibit P-6) his skin was perhaps prevented from being blackened by the gunshot wound. That may be so, but there is no evidence, one way or

the other, that the vest and shirt of Nand Singh were blackened or not, nor was any question asked of any witness in this regard. Therefore, we

have no reason to dispute the conclusion of the Trial Court.

Blood trail: submissions and discussion

39. Learned Counsel for Daud Khan referred to an odd circumstance, which is that Nand Singh managed to cover on foot a distance of about 70

(seventy) feet after being shot in the chest. Throughout this distance, there was no blood trail, nor was any blood spilt at the place of occurrence. In

Meharaj Singh (L/Nk.) Vs. State of U.P., the absence of blood at the place of occurrence or any blood trail from the place of occurrence to the

place where the corpse was found led this Court (among other things) to doubt the prosecution story.

40. However, the evidence on record in this case does not leave any doubt in this regard. PW-14 Dr. Tej Singh Dangi (one of the members of the

Board that conducted the post mortem) stated that he could not give any opinion about blood being spilt under such circumstances and that it is not

necessary that blood would fall outside if any part of the body is injured. On the other hand, PW-15 Dr. K. Asif (another member of the Board

that conducted the post mortem) was of the view that blood might have fallen at the place of occurrence, ""but the blood in small quantity comes out

from [the] wound which is caused by the entry of the bullet and the blood in large quantity comes out from the exit injury of the bullet."" It is,

therefore, not surprising that there was no spillage of Nand Singh's blood at the place of the incident.

41. It has come on record that Nand Singh was a young and healthy person. While it may seem odd that he could have run a distance of about 70

(seventy) feet with a bullet in his chest, it might not be improbable. The best persons to have been asked to explain this would have been the

medical experts, but no question was put to them in this regard. Under the circumstances, it is difficult to rule out the possibility of Nand Singh

having traversed the distance before collapsing across the road.

Dock identification: submissions and discussion

42. It was contended by Daud Khan that the three chance witnesses, PW-7 Mahabir Singh, PW-23 Narender Singh and PW-24 Rishi Raj

Shekhawat were all from out of town. As such, they could not have identified Daud Khan or Javed. It was further contended that no test

identification parade (for short TIP) was conducted and reliance could not have been placed only on their dock identification.

43. No such argument was raised by Daud Khan either in the Trial Court or in the High Court and we see no reason to permit such an argument

being raised at this stage.

44. That apart, it was recently held in Ashok Debbarma @ Achak Debbarma Vs. State of Tripura, 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.⁶ Earlier, a similar view was expressed in *Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)*, ,

paragraphs 255 to 258.

45. In any event, there were two other witnesses to the shooting, namely, PW-11 Narender Kumawat and PW-19 Suraj Mal who were local

residents and knew Nand Singh and Daud Khan and could easily identify them.

46. Five witnesses have testified to the events that took place at Bathra Telecom on the night of 19th June 2004. We see no reason to disbelieve

any of them, particularly since they have all given a consistent statement of the events. There are some minor discrepancies, which are bound to be

there, such as the distance between the gun and Nand Singh but these do not take away from the substance of the case of the prosecution nor do

they impinge on the credibility of the witnesses.

Conclusion

47. If the facts of the case are looked at individually and randomly, they might create a doubt. However, if they are considered collectively, there is

no room for doubt. The facts collectively are: (i) Nand Singh was shot with a gun. (ii) The bullet extracted from the body of Nand Singh could have

been fired from that gun, or to put it negatively, it cannot be said that the extracted bullet could not have been fired from the recovered gun.

Nobody questioned this. (iii) The gun-shot was fired from a close distance, but there was no blackening of Nand Singh's skin possibly due to his

apparel. Nobody questioned this. (iv) Nand Singh's death was not immediate and he could have traversed a distance of about 70 (seventy) feet

despite being shot. Nobody questioned this. (v) The medical experts testified that spillage of blood from the entry wound is not inevitable and so it

is possible that Nand Singh's blood was not found between the place of the incident and the place where he collapsed. The blood was, however,

found where Nand Singh collapsed. (vi) There were five eye witnesses to the incident of shooting and they gave consistent statements and

identified Daud Khan as the person who shot Nand Singh. None of these findings and conclusions are perverse. On the contrary, they have been

accepted by the Trial Court and the High Court. We see no reason to take a different view.

48. On a consideration of the entire material before us, we have no hesitation in upholding the view taken by the High Court with regard to the

offence committed by Daud Khan and his conviction for that offence. We see no substance in the appeal filed by the State and find no reason to

reverse the conclusions arrived at by the High Court with regard to the offence committed by Daud Khan.

49. Both the appeals are dismissed.

1157. Procedure for investigation.--(1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the

commission of an offence which he is empowered Under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate

empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers

not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to

investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:

Provided that--

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the

officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot,

(b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate

the case:

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in

the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social

worker of the locality.

(2) In each of the cases mentioned in Clauses (a) and (b) of the proviso to Sub-section (1), the officer in charge of the police station shall state in

his report his reasons for not fully complying with the requirements of that Sub-section, and, in the case mentioned in Clause (b) of the said

proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that

he will not investigate the case or cause it to be investigated.

2Sudershan v. State of Maharashtra (2014) 12 SCC 312

3 Meharaj Singh (L/Nk.) Vs. State of U.P.,

4 Rattiram and Others Vs. State of M.P. Through Inspector of Police,

522nd edition page 354

6 Kanta Prashad Vs. Delhi Administration, , Harbajan Singh Vs. State of Jammu and Kashmir, , Jadunath Singh and Another Vs. The State of

U.P., , George and Others Vs. State of Kerala and Another, and Dana Yadav @ Dahu and Others Vs. State of Bihar,