



2026:DHC:4233-DB



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 20.04.2026
Pronounced on: 14.05.2026

+ **CRL.A. 341/2003**
+ **CRL.A. 347/2003**
+ **CRL.A. 396/2003**
+ **CRL.A. 508/2003**

NASIR AHMADAppellant
Through: Ms.Divya Pulani, Mr.Vishal Choudhary, Mr.Pradeep Kumar, Mr.Rajvardhan Singh and Mr.Lakshay Magan, Advs.

JAGJIT SINGHAppellant
Through: Mr.N. Hariharan, Sr. Adv. with Mr.R. K. Thakur, Mr.Rishabh Kumar Thakur, Ms.Shambhavi Thakur, Ms.Aditi and Ms.Anjali Agarwal, Advs.

MOHAMMAD NADIR KHANAppellant
Through: Ms.Vrinda Grover, Ms.Devika Tulsiani and Mr.Soutik Banerjee, Advs.

SURESHAppellant
Through: Mr.Manoj Kumar Khanna, Mr.Aryan Kumar, Ms.Alpna and Ms.Nasrin Fatma, Advs.

versus

STATE OF DELHIRespondent
Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav, Adv. with Insp. Lalit Kumar, PS Hauz Khas



CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T

NAVIN CHAWLA, J.

1. These appeals have been preferred by the appellants assailing the judgment dated 01.05.2003 passed by the learned Additional Sessions Judge, New Delhi (hereinafter referred to as 'Trial Court') in S.C. No. 205/1997 (arising out of FIR No. 569/96 registered at Police Station Hauz Khas, New Delhi), *vide* which the appellants were convicted for offences punishable under Section 148 and Sections 302, 307 and 149 of the Indian Penal Code, 1860 ('IPC').

2. The appellants further challenge the Order dated 05.05.2003 passed by the learned Trial Court, whereby they were sentenced to undergo:

- a. imprisonment for life with fine of Rs.500/- each, with simple imprisonment for three months in default, for offences under Sections 302 and 149 of the IPC.
 - b. rigorous imprisonment for three years with fine of Rs. 1,000/- each, with simple imprisonment for three months in default, for offences under Sections 307 and 149 of the IPC.
- It was further directed that any period during which the convicts remained in custody during the inquiry,



investigation and trial would be set off against the sentences awarded under Sections 307 and 149 of the IPC.

CASE OF THE PROSECUTION

3. Briefly stated, it is the case of the prosecution that:
 - a. The deceased-Inder Singh along with his three friends- PW-1/*Vikram*, PW-2/*Gianender*, and PW-11/*Jeet Ram@Jeetu* had gone to Uphaar Cinema to watch a night show on 13.08.1996.
 - b. They entered the cinema hall and occupied seats in the balcony. After the show began, three boys picked a fight with the deceased and his friends. Torchman PW-6/*Dayanand* removed these three boys out of the hall.
 - c. Once the show ended, the deceased along with his three friends went to the basement of the cinema hall to collect their motorcycles. The three boys who had picked a quarrel with the deceased and his friends also reached there along with their associates. They were armed with iron rods and wooden sticks. They started beating the deceased with fists and kick blows and with iron rods and wooden sticks, whereafter they fled.
 - d. PW-1/*Vikram* and PW-2/*Gianender* removed the deceased to the hospital. On the basis of the statement of PW-1/*Vikram*, an FIR under Sections 147,148,149,307,308 and 323 of the IPC was registered against unknown persons.



Raka (who has been acquitted by the learned Trial Court *vide* its impugned judgment dated 01.05.2003), Jagjit Singh (appellant in CrI.A. 347/2003) and Narender @ Kittu (who has unfortunately died later), surrendered before the learned Metropolitan Magistrate.

- j. On 23.05.1997, accused Harender Kumar @ Pandit (who has been acquitted by the learned Trial Court *vide* its impugned judgment dated 01.05.2003) also surrendered before the said Court.
- k. During the course of investigation it transpired that it was accused Devinder, Jagjit Singh and Nand Kishore @ Nandu who had quarrelled with the deceased and his friends in the balcony of the Uphaar Cinema, whereafter accused Devinder had gone to village Lado Sarai to bring the other accused persons in a bus to the scene of the crime, that is, the basement of the cinema hall.
- l. After the show ended and when the deceased along with his friends came to the basement of the Cinema Hall, all the accused persons allegedly attacked them with angle iron rods and wooden dandas.
- m. Accused Devinder and Rakesh @ Raka had sustained injuries on their head and hands in the fight with the deceased and his friends and got treatment from Partap Goswami Clinic, Lado Sarai on the night of 14.08.1996



- n. The prosecution claimed that accused Jagjit Singh and Nand Kishore @ Nandu were identified by PW-1/Vikram and PW-2/Gianender during the course of their Test Identification Parade (TIP), while accused Narender @ Kittu, Suresh Kumar @ Chuchu, Jagbir Singh @ Dhilla, Mohd. Nadir Khan and Nasir Ahmed refused to participate in the TIP.

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT

4. After the completion of investigation, the police filed a challan against twelve accused persons namely, Suresh Kumar @ Chuchu, Jagbir Singh, Mohd. Nadir Khan, Nasir Ahmed, Nand Kishore @ Nandu, Jagjit Singh, Narender @ Kittu, Ajay @ Pappu, Rakesh @ Raka, Dhirender @ Munna, Devinder, and Harender Kumar @Pandit, for offences under Sections 147,148,149,307,308,302 and 323 of the IPC read with Section 34 of the IPC.

5. Accused persons Ajay @ Pappu and Dhirender @ Munna were discharged by the learned Trial Court *vide* its order dated 05.12.1997 for lack of connecting evidence inasmuch as neither were they identified by the witnesses in the TIP nor was there any other evidence connecting them to the offence.

6. Charges were framed against the remaining ten accused persons. The same are reproduced hereinbelow:

“On 14.8.96 at about 12.10 am at the basement of Uphaar Cinema you all constituted an unlawful assembly to commit an offence and you all were also armed with deadly weapons and committed rioting there in



prosecution of the common object of the said assembly and thereby committed an offence punishable u/s 147/148/149 IPC and within the cognisance of this court.

Secondly on the said date time and place you all in furtherance in their common intention and in prosecution of the common object of the abovesaid unlawful assembly committed murder of Inder Singh with hocky, iron rods etc and thereby committed an offence punishable u/s 3-2 r/w section 34 and 149 IPC and within the cognisance of this court.

Thirdly on the abovesaid date time and place you all caused hurt to Vikeram and Gyanander with hockies and iron rods with such intention or knowledge and under such circumstances that if by that act you had all caused death of Vikeram and Gyanander you would have been guilty of murder and thereby committed an offence punishable u/s 307 IPC read with Section 34 IPC and with the cognisance of this court.”

7. They pleaded not guilty and claimed trial.
8. In order to prove its case, the prosecution examined twenty one witnesses including the purported eye-witnesses/victims PW-1/Vikram, PW-2/Gianender and PW-11/Jeet Ram @ Jeetu, the torchman, police officials, and other formal witnesses.
9. Thereafter, the statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C.’). They all denied the incriminating evidence against them and claimed false implication. They also examined 2 defence witnesses, including accused-Suresh Kumar @Chuchu, himself, as well as, DW-2/Raj Pal, who was the neighbour of accused-Suresh Kumar @Chuchu.



IMPUGNED ORDERS OF CONVICTION AND ON SENTENCE

10. The learned Trial Court, in the impugned order of conviction, while holding seven accused persons, namely, Suresh Kumar @ Chuchu, Jagbir Singh @ Dhillia, Mohd. Nadir Khan, Nasir Ahmed, Narender @ Kittu, Jagjit Singh and Nand Kishore @ Nandu guilty of the charges, acquitted three accused persons namely, Devinder, Rakesh @ Raka and Harender Kumar @ Pandit.

11. In coming to the said conclusion, the learned Trial Court primarily relied on the testimonies of PW-1/Vikram, PW-2/Gianender and PW-11/Jeet Ram@Jeetu as also the TIP which was carried out before the learned Metropolitan Magistrate (M.M.). The learned Trial Court categorised the accused persons in the following categories:

*“Accused have been categorised by me in three categories viz.
(1) who have been correctly identified in the TIP proceedings conducted by ld M.M.;
(2) accused persons who had refused to join the TIP and
(3) accused persons who could not be identified in the judicial TIP.”*

12. Inasmuch as the first category is concerned, it was opined that accused persons Jagjit Singh and Nand Kishore @ Nandu fell in the same. They had been identified by PW-1/Vikram during the course of the TIP as also in Court. Hence, it was held to be proved beyond reasonable doubt that they had participated in the incident.

13. As regards the second category of accused persons, Narender @ Kittu, Suresh Kumar @ Chuchu, Jagbir Singh @ Dhillia, Mohd. Nadir



16. During the pendency of the appeals, the appeals of Narender @ Kittu and Nand Kishore @ Nandu stood abated *vide* order dated 20.11.2025. Similarly, the appeal filed by accused Jagbir Singh @ Dhillal also stood abated *vide* order dated 01.04.2014. Hence, before us are the appeals filed by Nasir Ahmed, Jagjit Singh, Mohd. Nadir Khan and Suresh Kumar @ Chuchu.

SUBMISSIONS MADE BY THE LEARNED SENIOR COUNSEL FOR THE APPELLANT (JAGJIT SINGH)

17. Mr. Hariharan, the learned senior counsel for the Appellant-Jagjit Singh, submits that the alleged incident in question can be divided in two parts; the first being the quarrel in the cinema hall; and the second being the fight in the basement of cinema hall, once the movie ended.

18. He submits that as far as the first part of the incident is concerned, it is the case of the prosecution that the torchman in the cinema, that is, PW-6/*Dayanand* intervened and removed the three accused persons from the hall. PW-6/*Dayanand* in his testimony completely contradicts the said fact and states that no quarrel had taken place inside the cinema hall on the day of the incident. Hence, the sole public witness of the first part of the incident has not supported the case of the prosecution.

19. As far as the second part of the incident is concerned, the learned senior counsel submits that the same is alleged to have taken place in the basement parking area of the cinema hall after the movie



ended, where a large number of people who watched the show would have gone to collect their vehicles. This, he submits, is corroborated by the testimonies of PW-1/*Vikram*, PW-2/*Gianender* and PW-11/*Jeet Ram @ Jeetu*. In such circumstances, clear attribution of roles becomes crucial which is lacking in the present case. He submits that despite the presence of multiple public witnesses, both, inside the cinema hall as well as in the basement, barring PW-6/*Dayanand*, no other public witness has been brought forth by the prosecution.

20. Placing reliance on the testimony of PW-9/*Ct. Virpal Singh*, he highlights that it is the case of the prosecution that the police reached the spot after the incident at around 12:10am. He submits that thereafter queries were made and eventually the statement of PW-1/*Vikram* was recorded. He submits that pertinently, PW-1/*Vikram* did not give any description of the assailants at the time of first report. He submits that it is also the prosecution's case that PW-1/*Vikram* had accompanied the police to the spot and assisted in the recovery of one phatta which had allegedly been used by the accused persons during the course of incident. He submits that this fact, however, is contradicted by the own testimony of PW-1/*Vikram* who has stated that no recovery was made at his instance.

21. He further submits that the genesis of the prosecution's case is a mystery as it is to be based on 'secret information' that the accused persons were identified. He submits that there is not even a DD entry to this effect. He places reliance on the judgment dated 07.02.2024 of the Supreme Court in Special Leave to Appeal (Crl.) No.6652/2014,



titled *Surender Singh v. The State of Haryana*, to submit that in cases involving the receipt of secret tip-offs, it is important to examine the informants.

22. He further challenges the TIP, contending that the Appellant-Jagjit Singh was shown to the witnesses in police custody at a prior point of time. To this effect, he places reliance on the testimonies of PW-1/Vikram, PW-2/Gianender and PW-11/Jeet Ram@Jeetu. He submits that hence, the same cannot be admitted under Section 9 of the Indian Evidence Act, 1872 (IEA). He submits that the statement of PW-1/Vikram and PW-2/Gianender to this effect has been wrongly discarded by the learned Trial Court on basis of a vague statement of PW-11/Jeet Ram @ Jeetu.

23. He contends that the present case is one where the prosecution has failed to establish any motive, has led no cogent evidence as to why the Appellant-Jagjit Singh was arrested or how he was part of the unlawful assembly. He further states that the Appellant-Jagjit Singh was shown to the witnesses prior to TIP, thereby vitiating its evidentiary value, and that the alleged weapon recovery at the instance of the witness is also of no consequence.

SUBMISSIONS MADE BY THE LEARNED COUNSELS FOR THE APPELLANT – NASIR AHMED AND SURESH KUMAR @ CHUCHU

24. The learned counsels for the Appellants- Nasir Ahmed and Suresh Kumar @ Chuchu adopt the submissions made by the learned senior counsel for Appellant-Jagjit Singh.



25. They further submit that inasmuch as these appellants are concerned, they were also shown to the witnesses at the police station prior to the TIP. They contend that owing to the same they refused to participate in the TIP and were placed in the second category of accused persons by the learned Trial Court. They submit that it is not the case of the prosecution that the witnesses were shown some other suspects whom they did not identify but identified the appellants.

26. They submit that the testimonies of the alleged eye-witnesses are riddled with contradictions.

27. They contend that there was a delay of around 8-9 months in the arrest of the appellants and no recovery has been made on the basis of their disclosure statements.

28. They contend that hence, there is no connection of appellants with the incident in question and they deserve to be acquitted.

SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR THE APPELLANT-MOHD. NADIR KHAN

29. Ms. Vrinda Grover, the learned counsel for Appellant- Mohd. Nadir Khan adopts the submissions made by the learned senior counsel for the Appellant-Jagjit Singh.

30. She further submits that the prosecution's case rests on a perfunctory investigation, wherein even basic circumstances, such as, the movie playing in the cinema hall on the date of the incident, the concerned movie tickets and the relevant parking slips, have not been brought to light.



31. She submits that the alleged common objective of committing murder is inherently improbable. Placing reliance on the judgments of the Supreme Court in *Hawa Singh & Ors. v. State of Haryana*, (1993) Supp (2) SCC 527 and *Naresh v. State of Haryana*, (2023) 10 SCC 134, she submits that if motive is not proved, then the prosecution fails to prove the common object.

32. She submits that there is no explanation as to why the deceased was targeted. All the three eye-witnesses, that is, PW-1/*Vikram*, PW-2/*Gianender* and PW-11/*Jeet Ram@Jeetu* have deposed that when the unlawful assembly was giving beatings, no one intervened and the accused persons left on their own. Had a common object of the unlawful assembly been to kill the four persons to avenge the dispute in the balcony, it belies logic why the unlawful assembly would leave the spot without inflicting more injuries on PW-1/*Vikram*, PW-2/*Gianender* and PW-11/*Jeet Ram@Jeetu*.

33. She submits that in fact, as per the MLC's of PW-1/*Vikram* (EX.PW-20/C) and of PW-2/*Gianender* (EX.PW-21/D), they sustained only simple injuries, whereas PW-11/*Jeet Ram@Jeetu* was not even required to be medically examined.

34. She further highlights that none of the witnesses have mentioned that the Appellant-Mohd. Nadir Khan inflicted any injury upon them, nor has any witness stated that he specifically was carrying any weapon. She submits that the disclosure statement of the Appellant-Mohd. Nadir Khan is inadmissible and cannot be resorted



to as evidence of common intention. She submits that no new discovery of fact or material has resulted from the same.

35. She submits that the accused persons central to the prosecution's story have been acquitted by the learned Trial Court. As per the case of the prosecution, it was accused Devinder, Nand Kishore @ Nandu and Jagjit Singh who initially quarrelled with the deceased in the balcony of Uphaar Cinema, and it was Devinder who went to Lado Sarai to bring his associates and form the unlawful assembly. However, Devinder has been acquitted by the learned Trial Court on account of his not being identified in the TIP proceedings. Further, it was the case of the prosecution that accused Harender Kumar @ Pandit had driven the bus which brought members of the unlawful assembly to the spot. He again has been acquitted. She submits that without these two persons, the entire story of the prosecution collapses as in such a circumstance, the alleged unlawful assembly itself could not have come into being. She submits that when the grain and chaff are inextricably interlinked and cannot be separated, the benefit of doubt must extend to all accused. Reliance in this regard, is placed on the judgments of the Supreme Court in *Mohd. Iqbal M. Shaikh & Ors. v. State of Maharashtra*, (1998) 4 SCC 494 and *Zainul v. The State of Bihar*, 2025 INSC 1192.

36. She submits that there is no evidentiary basis of arrest of the Appellant-Mohd. Nadir Khan. It is solely based on the disclosure statement made by the appellant-Suresh Kumar @ Chuchu who was arrested on the basis of alleged secret information more than seven



months after the date of the incident. There is no official record or DD entry regarding this alleged secret information. She places reliance on the judgments of the Supreme Court in *Manoj Kumar Soni v. State of MP*, 2023 SCC OnLine SC 984 and *Nagamma @ Nagarathna & Ors. v. The State of Karnataka*, 2025 INSC 1135 to buttress her submission.

37. She further states that the identification of the Appellant-Mohd. Nadir Khan is highly improbable inasmuch as all three eye-witnesses in their testimony regarding the quarrel that took place inside the cinema hall, state that the theatre lights were not turned on during the same. They further state that they were attacked in the basement at midnight. She highlights that the site plan of the basement (Ex.PW-16/B) does not mark any source of light.

38. With regard to the incident itself, she submits that the nature of beating described by PW-1/*Vikram* and PW-2/*Gianender*, further solidify her case. PW-1/*Vikram* states that he was hit on head by one person after which he sat on the floor looking at the ground. PW-2/*Gianender* also states that he covered his head with his hands after being hit. They testified that they could not identify who gave the beatings. Furthermore, all three eye-witnesses have identified different people as being part of the first quarrel, which further deals a fatal blow to the case of the prosecution. She highlights that as none of the witnesses in their Section 161 Cr.P.C. statements gave any description or identifying features of the assailants, their identification of the



Appellant-Mohd. Nadir Khan in Court is, therefore, unworthy of any credence.

39. She submits that the Appellant-Mohd. Nadir Khan was shown to the witnesses prior to the TIP which is why he refused to participate in the same. She submits that the dock identification of the Appellant by PW-1/*Vikram* is not reliable as the learned Trial Court cannot cherry pick which part of PW-1/*Vikram*'s testimony qua the appellant is believable. Reliance is placed on the judgments of the Supreme Court in *Shaikh Umar Ahmed Shaikh and Anr. v. State of Maharashtra*, (1998) 5 SCC 103, *Gireesan Nair & Ors. v. State of Kerala*, (2023) 1 SCC 180, *Kamal v. State (NCT of Delhi)*, 2023 SCC OnLine SC 933, *Kattavellai @ Devakar v. State of Tamil Nadu*, 2025 SCC OnLine SC 1439 and *Raj Kumar @ Bheema v. State of NCT of Delhi*, 2025 INSC 1322.

40. She submits that the learned Trial Court has arbitrarily disbelieved the testimonies of PW-1/*Vikram* and PW-2/*Gianender* in so far as they testified to having seen the Appellant-Mohd. Nadir Khan prior to the TIP, while believing the testimony of PW-11/*Jeet Ram@Jeetu* to conclude that the Appellant-Mohd. Nadir Khan was not shown to the witnesses prior to the TIP. This conclusion was founded on PW-11/*Jeet Ram@Jeetu*'s statement that he was called to the police station 15 days after the incident, that is, much before any of the accused were arrested. She contends that such reliance is misplaced, particularly when PW-11/*Jeet Ram@Jeetu*'s testimony is at variance with that of the other two ocular witnesses. His criminal



record is also questionable; he was not present for the TIP; and he neither accompanied the deceased to the hospital nor sustained any injury, but instead disappeared into the crowd immediately after the incident took place. She places reliance on the judgments of the Supreme Court in *Arvind Kumar & Ors. v. State of Rajasthan*, (2022) 16 SCC 732, *Balaram v. State of MP*, 2023 SCC OnLine SC 1468 and *Mehatar v. State of Maharashtra*, 2025 SCC OnLine SC 319, to submit that, as a rule of caution, the Court must reject evidence of a wholly unreliable witness.

41. She submits that the formula adopted by the learned Trial Court in categorising the accused persons in three groups, and solely on the result of the TIP, handing out conviction and acquittals, is alien to the settled principles of criminal jurisprudence.

42. She submits that the allegation that the accused persons were armed with weapons such as swords, as testified by PW-11/*Jeet Ram@ Jeetu*, also does not stand corroborated. The alleged recovery from the spot is limited to three wooden phattas and one iron angle. Additionally, these objects have also not been linked to the crime. She highlights that the presence of such items in a basement is not unusual. The blood found on the objects was not sent for DNA profiling in order to confirm whether it belonged to the deceased. The FSL reports (EX.PX and EX.PY) are inconclusive insofar as they only test for blood type, and that the mere detection of group 'A' blood type, does not lead to the irresistible conclusion that the blood



53. The Supreme Court in *Zainul* (supra) explained the rule of prudence to be followed in convicting members of an unlawful assembly, and further opined that in cases where the prosecution's case against the accused persons is so inextricably mixed up that it is not possible to sever one from the other, the benefit of doubt must extend to all accused persons. We quote from the said judgment as under:

“45. Albeit the essentials of Section 149 of the IPC are oft-repeated and firmly established, they are reiterated herein for the sake of convenience:

- i. There must be an assembly of five or more persons;*
- ii. An offence must be committed by any member of that unlawful assembly;*
- iii. The offence committed must be in order to attain the common object of that assembly, or*
- iv. The members of the assembly must have the knowledge that the particular offence is likely to be committed in order to attain the common object.*

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52. ...

a. Innocent Bystander v. Member of an Unlawful Assembly

53. Once the two broad essentials of Section 149 are fulfilled, i.e., (1) an offence is committed by any member of an unlawful assembly in prosecution of the common object, or (2) if the members of the assembly knew that the said offence is likely to be committed in prosecution of the said common object, every person who at the at the time of



commission of the offence was a member of the assembly is to be held guilty of that offence.

54. At the same time, mere presence at the scene does not ipso facto render a person a member of the unlawful assembly, unless it is established that such an accused also shared its common object. A mere bystander, to whom no specific role is attributed, would not fall within the ambit of Section 149 of the IPC. The prosecution has to establish, through reasonably direct or indirect circumstances, that the accused persons shared a common object of the unlawful assembly. The test to determine whether a person is a passive onlooker or an innocent bystander is the same as that applied to ascertain the existence of a common object. The existence of a common object is to be inferred from the circumstances of each case, such as:

- a. the time and place at which the assembly was formed;*
- b. the conduct and behaviour of its members at or near the scene of the offence;*
- c. the collective conduct of the assembly, as distinct from that of individual members;*
- d. the motive underlying the crime;*
- e. the manner in which the occurrence unfolded;*
- f. the nature of the weapons carried and used;*
- g. the nature, extent, and number of the injuries inflicted, and other relevant considerations.*

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61. The law on the point can be summarized to the effect that where there are general allegations against a large number of persons, the court must remain very careful before convicting all of them on vague or general



evidence. Therefore, the courts ought to look for some cogent and credible material that lends assurance. It is safe to convict only those whose presence is not only consistently established from the stage of FIR, but also to whom overt acts are attributed which are in furtherance of the common object of the unlawful assembly.

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78. It needs to be emphasized that injuries on the eyewitnesses, at the best, may ensure their presence at the scene of occurrence but that is not enough. Before a criminal court even accepts the testimony of an injured eyewitness, it has to be satisfied that he is a truthful witness and had no reason to falsely implicate the accused persons. We have extensively explained or rather discussed the various infirmities in the oral evidence of all the eyewitness. These eyewitnesses in their police statements recorded under Section 161 of the Cr.P.C. have gone to the extent of implicating even those persons who were ultimately not arrayed as an accused in the chargesheet including those who ultimately came to be acquitted by the trial court.

79. In cases like the one in hand, the courts must make an attempt to separate grain from the chaff, the truth from falsehood, yet this could only be possible when the truth is separate from the falsehood.

80. In the aforesaid context, we may refer to the decision of this Court in Balaka Singh & Ors. v. State of Punjab, reported in (1975) 4 SCC 511. In paragraph 8, this Court observed thus:-

“8. The suggestion of the appellants is that they were falsely implicated because the prosecution could not succeed in convicting Balaka Singh for the murder of Gurnam Singh in the previous murder case. It was to wreak



fresh vengeance on the accused that they had been falsely implicated in the present case. It is true that there are as many as eight witnesses who are alleged to have seen the occurrence and they have given a parrot-like version of the entire case regarding the assault on the deceased by the various accused persons. All these witnesses have with one voice and with complete unanimity implicated even the four accused persons, acquitted by the High Court, equally with the appellants making absolutely no distinction between one and the other. A perusal of the evidence of the prosecution witnesses would show that the prosecution case against the appellants and the four accused is so inextricably mixed up that it is not possible to sever one from the other. It is true that, as laid down by this Court in Zwinglee Ariel v. State of M.P. [(1952) 2 SCC 560 : AIR 1954 SC 15 : 1954 Cri LJ 230] and other cases which have followed that case, the Court must make an attempt to separate grain from the chaff, the truth from the falsehood, yet this could only be possible when the truth is separable from the falsehood. Where the grain cannot be separated from the chaff because the grain and the chaff are so inextricably mixed up that in the process of separation the Court would have to reconstruct an absolutely new case for the prosecution by divorcing the essential details presented by the prosecution completely from the context and the background against which they are made, then this principle will not apply.[...]

(emphasis supplied)

54. Applying the aforementioned principles to the facts of the present case, we find that in so far as the first part of the incident is concerned, the torchman, that is, PW-6/Dayanand, who was also the



sole public witness, has turned hostile and denied the occurrence of any quarrel inside the cinema hall. This denial is significant as the first part of the incident forms the basis of the prosecution's theory on motive.

55. Furthermore, we find that PW-2/*Gianender* in his testimony states that a policeman assisted the torchman in escorting the miscreants out of the hall. Interestingly, no such officer has been examined as a witness.

56. Additionally, while it is the case of the prosecution that it was accused Devinder, Jagjit Singh and Nand Kishore @ Nandu who had the initial quarrel with the deceased and his friends, this fact is not corroborated by the testimonies of the eye-witnesses. While PW-1/*Vikram* identifies accused Devinder and Jagjit Singh, PW-2/*Gianender* identifies accused Mohd. Nadir Khan, Nasir Ahmed and Rakesh @ Raka, and PW-11/*Jeet Ram @ Jeetu*, on the other hand, identifies accused Jagbir Singh, Nand Kishore @ Nandu and Nasir Ahmed, as the persons who had fought with them in the balcony of the cinema hall. This, itself casts a doubt on the identification of the persons who had fought with the deceased and the witnesses in the cinema hall over the seats, thereby creating a doubt on the very inception of the incident.

57. Furthermore, the deceased and his friends had admittedly gone to watch a night show in Uphaar Cinema and it is undisputed that when the quarrel took place, the hall was dark. This is admitted by the PW-11/*Jeet Ram @ Jeetu*. The identification of the accused by them is



therefore, doubtful, especially when taken in conjunction with their admission that they had not described the accused in their statements given to the police.

58. Coming to the second part of the incident, we would, at the outset, note that as per the prosecution, it was accused Devinder, who, after the quarrel, went to Lado Sarai to bring his associates. It was accused Harender who then drove a bus and brought members of the unlawful assembly to the spot. However, these accused persons have been acquitted by the learned Trial Court. This is almost fatal to the case of the prosecution and the benefit of doubt must be extended to all accused. Even though the case of the prosecution is based on the testimony of the alleged injured and the eye-witnesses, the circumstances must be proved beyond reasonable doubt. The chain of such circumstances must not be broken and should be consistent with the case of the prosecution, leading to no other inference but the guilt of the accused. In the present case, the chain is broken when the alleged key participants are let off by the learned Trial Court and the judgment is accepted by the prosecution.

59. This is coupled with the fact that despite the presence of multiple public witnesses, including the parking attendant and a guard, in the parking, as testified by the PW-1/*Vikram*, PW-2/*Gianender* and PW-11/*Jeet Ram @Jeetu*, none of them have been examined. Though it is not necessary for the prosecution to multiply witnesses, however, at least the parking attendant and the guard present in the parking



when the assault took place were material witnesses and their non-examination casts a shadow of doubt on the case of the prosecution.

60. We now turn our attention to arrest of the accused persons. The incident is of 13-14th August 1996. It was a blind case, with no clue of the assailants. It is the case of the prosecution that on 24.04.1997, more than seven months after the date of the incident, PW-13/K.P. *Malik*, who is posted at ICPP Pushp Vihar, P.S. Malviya Nagar, received secret information regarding the involvement of appellant Suresh Kumar @ Chuchu in the incident. Curiously, the incident and the FIR is of Police Station Haus Khas. There is no explanation why he did not pass on this information to P.S. Haus Khas or involve any police official from the said Police Station in making the arrest. On what basis he even suspected that the accused are involved in the incident in question and who was this secret informant, has remained a mystery.

61. In *Surender Singh* (supra), the Supreme Court held that the non-examination of the secret informant may cast a doubt on the case of the prosecution. We quote from the judgment as below:

“4. We find considerable force in the submissions made by the learned counsel appearing for the appellant. The police party made the search upon receiving a secret information tip. It is inexplicable as to why the said persons have not been examined.”

62. The most important, and one may dare say, the only basis on which the learned Trial Court has proceeded to convict the appellants herein, is the TIP. As noted hereinabove, the learned Trial Court



divided the accused into three parts; (i) those who were correctly identified in the TIP proceedings conducted by the learned M.M.; (ii) those who refused to join the TIP; and (iii) those who could not be identified in the TIP. The learned Trial Court has gone on to convict the accused falling in the first two categories, while acquitting the accused falling in the third category. Therefore, we say that TIP gains the most important significance in the case.

63. As far as the law concerning TIP is concerned, it is no longer *res integra* that the accused persons must not be shown to the witnesses prior to the TIP being conducted. In *Gireesan Nair* (supra), the Supreme Court opined that in cases where the accused is shown at a prior point of time, not only is the TIP inadmissible, so is the identification of the accused persons in Court by the witness. It was held as under:

“31. In cases where the witnesses have had ample opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept “baparda” to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh v. State of U.P. [Lal Singh v. State of U.P., (2003) 12 SCC 554 : 2004 SCC (Cri) Supp 489] and Suryamoorthi v. Govindaswamy [Suryamoorthi v. Govindaswamy, (1989) 3 SCC 24 : 1989 SCC (Cri) 472]).



32. If identification in the TIP has taken place after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (Sk. Umar Ahmed Shaikh v. State of Maharashtra [Sk. Umar Ahmed Shaikh v. State of Maharashtra, (1998) 5 SCC 103 : 1998 SCC (Cri) 1276]). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (Chunthuram v. State of Chhattisgarh [Chunthuram v. State of Chhattisgarh, (2020) 10 SCC 733 : (2021) 1 SCC (Cri) 9] and Ramkishan Mithanlal Sharma v. State of Bombay [Ramkishan Mithanlal Sharma v. State of Bombay, (1955) 1 SCR 903 : AIR 1955 SC 104]).”

64. In *Shaikh Umar* (supra), the Supreme Court held as under:

“8. The Designated Court after having rejected the evidence of identification parade on the ground that the suspects were possibly shown to the witnesses, relied upon the evidence of identification of the accused in the Court by the two witnesses and on that evidence recorded conviction against the appellants. No doubt, the evidence of identification parade is not a substantive evidence, but its utility is for purposes of corroboration. In other words, it is utilised for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them. The real and substantive evidence of the identity of the accused comes when witnesses give statement in the court, identifying the accused. It is true that in the present case, PW 2 and PW 11 identified the two accused who are the appellants before us in the Court. But, the question arises: what value could be attached to the evidence of identity of accused by the



witnesses in the Court when the accused were possibly shown to the witnesses before the identification parade in the police station. The Designated Court has already recorded a finding that there was strong possibility that the suspects were shown to the witnesses. Under such circumstances, when the accused were already shown to the witnesses, their identification in the Court by the witnesses was meaningless. The statement of witnesses in the Court identifying the accused in the Court lost all its value and could not be made the basis for recording conviction against the accused. The reliance of evidence of identification of the accused in the Court by PW 2 and PW 11 by the Designated Court, was an erroneous way of dealing with the evidence of identification of the accused in the Court by the two eyewitnesses and had caused failure of justice. Since conviction of the appellants have been recorded by the Designated Court on wholly unreliable evidence, the same deserves to be set aside. We accordingly set aside the judgment and order dated 14-10-1997 passed by the Additional Judge, Designated Court for Greater Bombay in TSC No. 21 of 1994, convicting the appellants. The appellants are acquitted of charges. The appeal is allowed. The appellants are entitled to be released forthwith. We order accordingly.”

65. In **Kattavellai** (supra), the Supreme Court held as under:

“38. ... Before proceeding to the merits of this circumstance, let us appreciate the law on this point.

38.1 No provision of law casts an obligation upon the investigating authorities to conduct a test identification parade. If it is conducted, the provision that governs is Section 162, Cr. P.C. [See: *Munshi Singh Gautam v. State of*



*M.P.; Malkhansingh v. State of
M.P.; Visveswaran v. State; and Ashok
Debbarma v. State of Tripura.]*

38.2 The onus to show that the T.I.P. has been conducted in accordance with law lies on the prosecution, and only after this burden stands prima facie discharged, does the question of considering objections in this regard arise. [See: Umesh Chandra v. State of Uttarakhand.]

38.3 It is not a substantive piece of evidence. Its only purpose is for the investigating authorities to analyse the correctness, or lack thereof, of the direction in which they are steering the investigation. [See: Hari Nath v. State of U.P.; and Iqbal v. State of U.P.]

38.4 If the prosecution does not establish, by examination of witnesses to the T.I.P., and the Magistrate entrusted therewith, it cannot be said that it was conducted per law. [See: Umesh Chandra (supra).]

38.5 There is no hard and fast rule about delay in conducting T.I.P. being fatal to the case of the prosecution. In certain cases, relatively small delay has been considered fatal yet in others, a delay of as much as 40 days is not fatal. [See: Raja v. State.]

38.6 The prosecution must establish that prior to the test identification parade being conducted, the witness had no opportunity to see the accused. In other words, the accused must be kept 'baparda'. [See: Gireesan Nair v. State of Kerala; and Budhsen v. State of U.P..]

38.7 If the above has not been ensured, the evidence of the T.I.P. becomes inadmissible. It has also been held that if, prior to the T.I.P. the witness has the opportunity to see even the photograph of the accused person, such process becomes inconsequential. [See: Maya



as the year 1970, by Suryamoorthy v. Govindaswamy in 1989, Suresh Chandra Bahri v. State of Bihar in 1995, Mulla v. State of U.P in 2010, i.e., well before the judgment of the learned Trial Court was pronounced, that if the said witness had the opportunity to see the accused, in any form, after the incident the subject matter of testimony, but prior to the identification proceedings, it would render the same to be ineffective. Then, in our view, the courts below committed an error of elephantine proportions in considering these proceedings as forming one of the chains of circumstances against the Appellant-convict.”

66. In **Raj Kumar** (supra), the Supreme Court held that adverse inference against accused persons for non-participation in TIP cannot support the theory of identification, when the authenticity of the proceedings themselves is under serious doubt. We quote from the judgment as under:

“65. In this view of the matter, the prosecution version that efforts made to subject the accused to TIP failed on account of their refusal, stands refuted. While the refusal of the appellant to participate in the TIP may, prima facie, invite an adverse inference, mere such inference cannot support the theory of identification when the very authenticity of the TIP is under a serious cloud of doubt. When it stands established from the record that the TIP attempted by the prosecution was fundamentally flawed, and a doubt is created that the identifying witness herself may not even have been present to participate therein, the very foundation of the identification proceedings falls flat to the ground.”



67. Applying the aforementioned principles to the facts of the present appeals, we find that the accused persons, namely Suresh Kumar @ Chuchu, Jagbir Singh @Dhilla, Mohd. Nadir Khan and Nasir Ahmed were shown to PW-1/*Vikram* and PW-2/*Gianender* at the Police Post immediately on their arrest. Resultantly, the subsequent refusal of Appellants- Nasir Ahmed, Mohd. Nadir Khan, and Suresh Kumar @ Chuchu, to participate in the TIP, cannot be accorded evidentiary value. Further, the dock identification of the accused persons by the eye-witnesses also becomes inadmissible.

68. We find merit in the submission made by the learned counsel for the Appellant-Mohd. Nadir Khan, that the mere statement of PW-11/*Jeet Ram @ Jeetu* that he was called to the police station 15 days after the incident, is not enough to disbelieve that the appellants were not shown to the witnesses prior to the TIP. The statements of PW-1/*Vikram* and PW-2/*Gianender* are categorical on the appellants being shown to them at the Police Post on their arrest. In our view, therefore, the learned Trial Court has committed a grave error in convicting these appellants only on the basis of their refusal to take part in the TIP and on their identification by these witnesses in Court.

69. However, as far as the appellant-Jagjit Singh is concerned, the above may not hold true inasmuch as he had surrendered in Court later on 20.05.1997, therefore, was not the one who had been shown to the witnesses at the Police Post. He had also participated in the TIP, wherein he was identified by PW-1/*Vikram*. At the same time, in our opinion, such identification would not be sufficient to convict the



appellant-Jagjit Singh. In this regard, as we have noted hereinabove, PW-2/*Gianender* had not identified appellant-Jagjit Singh in the TIP, though it is the case of the prosecution that he was one of the three with whom the initial fight in the hall had taken place. There is also an inconsistency and contradiction between the case set up by the prosecution and one deposed by PW-1/*Vikram*, PW-2/*Gianender* and PW-11/*Jeet Ram @ Jeetu*, on who amongst the accused were present when the initial fight took place. While, it is the case of the prosecution that the initial quarrel over seats took place between the deceased and PW-1/*Vikram* and PW-2/*Gianender*, on one side, and Devinder, Jagjit Singh and Nand Kishore @ Nandu, on the other, PW-2/*Gianender* states that the initial fight was between their group and Mohd. Nadir Khan, Nasir Ahmed and Rakesh @ Raka from the accused. PW-11/*Jeet Ram @ Jeetu* states that the initial fight took place between their group and accused Jagbir Singh, Nand Kishore @ Nandu and Nasir Ahmed.

70. PW-1/*Vikram* also stated that appellant Jagjit Singh had given injuries with a thick wooden phatta, however, in his cross-examination, he admits that he had not told this to the police.

71. PW-1/*Vikram* had also identified Devinder in his deposition as the person with whom the initial fight had taken place, however, the learned Trial Court has found this to be insufficient to convict Devinder, only because Devinder had not been identified in the TIP. Therefore, the conviction of the appellant-Jagjit Singh is only because of his identification by PW-1/*Vikram* in the TIP. The TIP of other



accused has not been found by us to be meeting the evidentiary yardstick, inasmuch as it is evident on record that they were shown to the witnesses at the time of their arrest, making their TIP and later identification in Court as without any substance. This is coupled with the fact that none of the witnesses in their Section 161 Cr.P.C. statements gave any description or identifying features of the assailants.

72. In such a scenario, in our opinion, merely on the identification of the appellant-Jagjit Singh in the TIP, that too, by only one of the witnesses, does not meet the test of proof beyond reasonable doubt.

73. In *Iqbal & Anr. v. State of Uttar Pradesh*, (2015) 6 SCC 623, the Supreme Court warned that the TIP identification is not substantive evidence and conviction cannot be based solely on the identification of the accused by the witnesses in the TIP. The prosecution has to adduce substantive evidence by establishing incriminating evidence connecting the accused with the crime.

74. Basis the above, we find that the prosecution had been unable to prove its case against the appellants beyond reasonable doubt. The appellants are entitled to be accorded the benefit of doubt. The learned Trial Court has erred in convicting the appellants.

75. The impugned orders dated 01.05.2003 and 05.05.2003 are, therefore, set aside. The appellants are acquitted of the Charges against them. Their personal bonds and surety are also discharged.

76. The appeals are allowed in the above terms.



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77. A copy of this judgment be communicated to the concerned Jail Superintendent as also to the learned Trial Court for necessary compliance and information.

NAVIN CHAWLA, J

RAVINDER DUDEJA, J

MAY 14, 2026/ik