

Neutral Citation No. - 2025:AHC:161815 Court No. 74

Reserved on 19.8.2025

Delivered on 12.9.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 341 of 1983

Madan

...Appellant

v/s

State of U.P.

...Respondent

JUDGMENT

HON'BLE SANJAY KUMAR PACHORI, J.

1. The present Criminal Appeal under Section 374 Code of Criminal Procedure, 1973 (hereinafter referred as "Cr.P.C.") has been filed against the judgment and order dated 03.02.1983 passed by IV Additional Sessions Judge, Bulandshahr in Session Trial No. 144 of 1982, whereby the trial court convicted the appellant under Section 395 I.P.C and sentenced him for 7 years rigorous imprisonment.

2. Brief facts of the case giving rise to the present appeal is that PW-1 Mahendra Pal Sharma lodged an F.I.R. dated 29.4.1981 against 12-13 assailants alleging that when the first informant was sleeping in the courtyard in front of his house at about 12'O clock (midnight), 6-7 assailants arrived and caught hold him and compelled to open the door of the house and, thereafter, they entered into the house and started looting the property. Two assailants of them had surrounded Tejvir Singh, over the roof of house, while he was asleep. On hue and cry, many other villagers had reached at the place of incident and, thereafter, the unknown assailants fled away after taking some valuable articles along-with one licensee gun. The incident was seen by the villagers as well as the first informant in the light of lantern.

3. S.I. Balbir Singh, (PW-4) started investigation and recorded the statement of the first informant and one Shobha Ram, who furnished him the

list of looted property. He also recorded the statement of Prempal, Pratap Singh and others and inspected the spot and prepared the site-plan. He also taken kerosene lantern and prepared a recovery memo and placed the same in the supurdgi of the first informant. He also prepared a recovery of electric torches of Tejvir Singh, Babu Singh and Babu Lal, which were also placed in their respective supurdgi. He also collected specimen from the heap of Ash through a recovery memo. Thereafter, investigation was proceeded by S.I. Gopi Chand Pachauri (PW-7), who arrested the present appellant Madan on 21.05.1981 along-with a country made pistol and two live cartridges. The present appellant was made “baparda” and behind him into the bars at Police Station at 03:45 A.M. vide entry in the G.D. No. 16. The appellant was taken out for interrogation at 05:30 A.M. wherein he confessed his participation in the commission of present offence and other crimes. The other accused Jaivir @ Nepal had surrendered himself in the court concerned on 13.07.1981.

4. The present appellant and other co-accused Jaivir @ Nepal, were put up as suspects for test identification on 11.09.1981, which was conducted by PW-5 Sri Shyam Lal Sharma (Special Executive Magistrate), in which they identified. The present appellant was identified by Mahendra Singh and accused Jaivir @ Nepal was identified by Sobha Ram.

5. The investigation of the aforesaid case was finally completed by S.I. Ram Pratap Singh, who submitted the charge-sheet against the appellant and other accused Jaivir @ Nepal.

6. Learned trial court framed the charges against the appellant and other co-accused Jaivir @ Nepal, under Section 395 of I.P.C., to which they pleaded not guilty.

7. To substantiate the aforesaid charges against the appellant and other co-accused Jaivir @ Nepal, the prosecution examined as many as 7 witnesses namely; PW-1 Mahendra Pal, (first informant), PW-2 Shobha Ram (brother of the first informant), PW-3 Constable Yogesh

Kumar, PW-4 S.I. Balbir Singh, who has commenced the investigation, PW-5 Sri Shyam Lal Sharma (Special Executive Magistrate), who conducted the test identification, PW-6 H.C. Nepal Singh, the scribe of the F.I.R. and the various G.D. entries and PW-7 S.I. Gopi Chand Pachauri, (IInd Investigating Officer), who arrested the present appellant Madan and completed the part of investigation.

8. After completing the examination of prosecution witnesses, the statement of the appellant and other co-accused Jaivir @ Nepal, under Section 313 of Cr.P.C. had been recorded wherein they denied their participation in the crime. The other co-accused Jaivir @ Nepal claimed that he had been implicated due to enmity with the local police and before the test identification he had seen by alleged witness at the time of judicial remand. Whereas, the present appellant claimed that he was arrested by the Police from his house on 20.05.1981 and was used third degree at the Police Station by the Police. He further stated that he has been shown to the witnesses in the village and his face was not covered by a chit during the test identification and further stated that witness Mahendra Pal and Shobha Ram had also visited his village in connection with a marriage. However, the present appellant and other co-accused persons had not produced any evidence in their defence.

9. Before the trial court, learned counsel for the appellant and other co-accused person argued that there is only a single identification by Mahendra Pal (PW-1) against him, which is wholly insufficient for proving the charges. The present appellant was taken out by the lockup for interrogation, the possibility of his having been shown to the witnesses cannot be ruled out. There is a gap of about 3 months and 3 weeks between his arrest and the test identification, during this period, the witnesses had enough opportunity to see him at the time of his production in the Court, which was produced for remand. It was further argued that the name of Shobha Ram (PW-2) was not mentioned in the F.I.R. as eye witness of the incident and as such his presence at the place of incident at the time of alleged commission of

dacoity was not proved. It is further argued that the torches were not produced and proved before the trial court

10. Learned trial Court after analysing the prosecution evidence, acquitted the co-accused Jaivir @ Nepal, having not been found guilty for the offence, after observing that PW-3 Shobha Ram was not present at the place of incident, whereas the present appellant has been convicted and sentenced after observing that the prosecution has successfully proved the charges and held that the evidence of the first informant Mahendra Pal had not suffered any infirmity with regard to participation of accused whereas substantive evidence of identification of present appellant Madan in the court was corroborated by the evidence.

11. Learned counsel for the appellant argued before this Court that the test identification parade has been conducted after about 3 months and 3 weeks of the arrest of the appellant and the case is solely depends upon the evidence of PW-1 Mahendra Pal and PW-5 Sri Shyam Lal Sharma (Special Executive Magistrate), which is wholly unreliable and untrustworthy. He further argued that kerosene, lantern, torches have not been produced before the Court to prove the source of light by which the first informant identified the present appellant in the Test Identification.

12. It is further submitted that on the basis of same evidence as well as testimony of PW-2 Shobha Ram (brother of the PW-1), co-accused Jaivir @ Nepal has been acquitted from the charges. He further submitted that there is no other evidence produced by the prosecution to prove the charges against the appellant. Therefore, the prosecution has miserably failed to prove the charges against the appellant beyond reasonable doubt and the present appeal is liable to be allowed and the present appellant is liable to be acquitted with all charges.

13. Learned A.G.A. vehemently refuted the arguments of the appellant and argued that the prosecution has successfully proved the charges. It is further submitted that after analysing the statement of

Mahendra Pal, who identified the present appellant in commission of offence, the prosecution successfully proved the charges against the appellant. The present appeal has no merit and is liable to be dismissed.

14. Heard, Sri Rahul Gaur, learned counsel for the appellant and Smt. Ladli Pandey, learned A.G.A. for the State at length and perused the material on record.

15. Before considering the respective submissions of the parties, it is apposite to re-visit the position of law with regard to manner of conduct of identification of the accused, who were not named in the F.I.R. The Supreme Court after considering the several judgment and observed in **Gireesan Nair and others Vs. State of Kerala (2023) 1 SCC 180**, the relevant paragraphs of the said judgement is reproduced herein below:

29. TIPs belong to the stage of investigation by the police. It assures that investigation is proceeding in the right direction. It is a rule of prudence which is required to be followed in cases where the accused is not known to the witness or the complainant (Matru v. State of U.P; Mulla v. State of U.P.; and C. Muniappan v. State of T.N.). The evidence of a TIP is admissible under Section 9 of the Evidence Act. However, it is not a substantive piece of evidence. Instead, it is used to corroborate the evidence given by witnesses before a court of law at the time of trial. Therefore, TIPs, even if held, cannot be considered in all the cases as trustworthy evidence on which the conviction of an accused can be sustained (State of H.P. v. Lekh Raj and C. Muniappan v. State of T.N.).

30. It is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that a TIP is held without avoidable and unreasonable delay after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses before the test identification parade. This is a very common plea of the accused, and therefore, the prosecution has to be cautious to ensure that there is no scope for making such an

allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution. But reasons should be given as to why there was a delay (Mulla v. State of U.P. and Suresh Chandra Bahri v. State of Bihar).

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. and Suryamoorthi v. Govindaswamy).*

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 (S.K. Umair Ahmed Shaikh v. State of Maharashtra). 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 and Ramkishan Mithanlal Sharma v. State of Bombay).*

33. *It is significant to maintain a healthy ratio between suspects and nonsuspects during a TIP. If rules to that effect are provided in Prison Manuals or if an appropriate authority has issued guidelines regarding the ratio to be maintained, then such rules/guidelines shall be followed. The officer conducting the TIP is under a compelling obligation to mandatorily maintain the prescribed ratio. While conducting a TIP, it is a sinequanon that the non-suspects should be of the same agegroup and should also have similar physical features (size, weight, color, beard, scars, marks, bodily injuries etc.) to that of the suspects. The officer concerned overseeing the TIP should also record such physical features before commencing the TIP proceeding. This gives credibility to the TIP and ensures that the TIP is not just an empty formality (Rajesh Govind Jagesha v. State of Maharashtra and Ravi v. State).*

34. *It is for the prosecution to prove that a TIP was conducted in a*

fair manner and that all necessary measures and precautions were taken before conducting the TIP. Thus, the burden is not on the defence. Instead, it is on the prosecution (Rajesh Govind Jagesha v. State of Maharashtra).

44. This Court in Budhsen v. State of U.P., had directed that sufficient precautions have to be taken to ensure that the witnesses who are to participate in the TIP do not have an opportunity to see the accused before the TIP is conducted. In Lal Singh v. State of U.P., this Court had held that a trial would be adversely affected when the witnesses have had ample opportunity to see the accused before the identification parade is held. It was held that the prosecution should take precautions and establish before the court that right from the day of his arrest, the accused was kept “baparda” to rule out the possibility of his face being seen while in police custody. Later, in Lalli v. State of Rajasthan and Maya Kaur Baldevsingh Sardar v. State of Maharashtra, this Court has categorically held that where the accused has been shown to the witnesses or even his photograph has been shown by the investigating officer prior to a TIP, holding an identification parade in such facts and circumstances remains inconsequential.

16. After having gone through the entire evidence of prosecution following facts emerged:

- (i) As per prosecution case, PW-1 Mahendra Pal, (first informant) and PW-2 Shobha Ram (brother of the first informant), identified the present appellant and other co-accused Jaivir @ Nepal in test identification parade, which was conducted after about 3 months and 3 weeks of the arrest of the appellant.
- (ii) The other co-accused Jaivir @ Nepal, has been acquitted by the trial court after observing that the testimony of PW-2 Shobha Ram, is unreliable, wherein he deposed that at the time of incident he was present at his fields.
- (iii) The present appellant and PW-1 Mahendra Pal are well known to each other prior to the incident because the relatives of the first informant are residing in the village of the appellant and the first

informant visited the village of the appellant prior to the incident.

(iv) There is no other evidence to prove the charges against the appellant except the statement of PW-1 Mahendra Pal.

17. In view of the facts and circumstances of the case, the possibility to see the appellant prior to the incident as well as before conducting the test identification is not ruled out. It is settled position of law that test identification parade is not a substantive piece of evidence and as such evidence is used to corroborate the evidence given by the witnesses before the trial court. There is no other corroborative evidence in this regard.

18. On the basis of the facts and circumstances discussed above, and keeping in mind, the position of law and an inference can easily be drawn that the prosecution has not proved its case beyond reasonable doubt. The contrary view taken by the trial court is against the weight of evidence.

19. For all the reasons recorded and discussed above, I am of the considered view that the prosecution has failed to prove the charges for the offence punishable under Section 395 of I.P.C. against the appellant beyond reasonable doubt as the evidence on record does not bring home the guilt of the appellant beyond the pale of doubt, the appellant is entitled to the benefit of doubt. Consequently, the appellant is entitled to be acquitted of the charges for which he was tried.

20. The criminal appeal is **allowed**. The impugned judgment and order of conviction as well as sentence recorded by the trial court is set aside. The appellant Madan is acquitted of the charges under Section 395 of I.P.C. The appellant Madan is on bail, therefore, his personal bonds and sureties are, hereby, discharged. The appellant will fulfil the requirement of Section 437-A, Cr.P.C. to the satisfaction of the trial court at the earliest.

21. The trial court record be returned forthwith with a certified copy of this judgment for compliance. The office is further directed to enter

the judgment in compliance register maintained for the purpose of the Court.

Order Date :- 12.9.2025

Ishan

(Sanjay Kumar Pachori,J.)