

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 468 of 1993

WITH

Criminal Appeal (DB) No. 469 of 1993

=====

(AGAINST THE JUDGMENT OF CONVICTION, DATED 26TH AUGUST, 1993, AND ORDER OF SENTENCE, DATED 27TH AUGUST, 1993, PASSED BY SHRI SHYAMA PRASAD SINGH, 1ST ADDITIONAL SESSIONS JUDGE, BANKA, IN SESSIONS TRIAL NO. 738 OF 1989, CORRESPONDING TO G.R. NO.580 OF 1989.)

=====

Bindeshwari Paswan, son of late Kishun Paswan, resident of Village- Naroun, Police Station- Shambhuganj, District- Banka.

.... **Appellant [In Cr. Appeal (DB) No. 468 of 1993]**

WITH

1. Ashok Singh @ Mandal, son of Sri Yugal Mandal,
2. Anandi Mandal, son of Sri Daroga Mandal,
3. Masudan Mandal @ Musudi, son of Sri Siro Mandan,
4. Chano Mandal, son of Sri Dhiro Mandal,
All resident of Village- Nawada, P.S. Tarapur, District- Munger.
5. Binwa Mandal @ Bino, son of late Tarni Mandal, resident of village- Nuroon, P.S. Shambhuganj, District- Banka.

.... **Appellants [In Cr. Appeal (DB) No.469 of 1993]**

Versus

The State of Bihar Respondent (**In both the appeals**)

=====

Appearance :

(In CR. APP (DB) No. 468 of 1993)

For the Appellant/s : None

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

Ms. Soni Srivastava, Advocate, appearing as *Amicus Curiae*

Mr. Anshuman Singh, Advocate, appearing as *Amicus Curiae*

(In CR. APP (DB) No. 469 of 1993)

For the Appellant/s : Diwakar Prasad Karn, Advocate.

For the Respondent/s : Mr. S.N. Prasad, A.P.P.

Mr. Ravindra Kumar, Advocate, appearing as *Amicus Curiae*

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 24-06-2015

Under the judgment, 26.08.1993, passed, in Sessions Trial No. 738 of 1989, by learned 1st Additional Sessions Judge, Banka, the appellants, Bindeshwari Paswan, Ashok Singh @ Mandal, Anandi Mandal, Masudan Mandal @ Musudi, Chano Mandal and Binwa Mandal @ Bino, stand convicted under Section 396 of the Indian Penal Code. Following their conviction, the appellants have been sentenced to suffer imprisonment for life.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be described thus:

(i) On 04.05.1989, at about 7.30 PM, when the informant, Shivanand Singh (PW 8), was present at the courtyard of his house, 30-32 dacoits came to his house. While 10-15 dacoits entered into the house, rest of them surrounded the house from all directions. One of the dacoits, who had so entered, enquired from the informant (PW 8) as to where his gun was. As the informant was replying by saying that the gun was lying in the room located on the western part of the house, informant's cousin, Awadh Narayan Singh, who was sleeping on a cot, woke up and, on noticing the dacoits, started running by raising *hulla*. One of the dacoits fired at Awadh Narayan Singh, who, on being shot by the bullet, fell down and died.

(ii) On hearing the sound of firing, the



inmates of the house of the informant's neighbour, Ram Bilash Singh, telephoned the police and, on arrival of the police, as the police party rushed to the house of the informant by raising *hulla*, the dacoits, who had so entered into the house of the informant, resorted to firing, which injured Pramod, Ashok and Srinivas Singh. In the meanwhile, Duleshwari Devi, wife of Awadh Narayan Singh, and one Umesh Paswan came to the house of the informant, the dacoits fired at them too and injured them.

(iii) Because of the firing, which was so resorted to, informant's wife, Neelam Devi, also sustained pellet injuries and died. Having collected all the valuable articles from the informant's house, the dacoits fled away.

(iv) At the place of occurrence itself, informant's statement was recorded as his *fardbeyan* and treating the said *fardbeyan* as the First Information Report, Shambhooganj Police Station Case No. 56 of 1989, under Sections 396 of the Indian Penal Code, was registered, on 05.05.1989, against unknown persons.

(v) During investigation, inquests were held over the dead bodies of Awadh Narayan Singh and Neelam Devi. The said dead bodies were also subjected to *post mortem* examinations.

(vi) During investigation, Test Identification

Parades were also held and, on completion of investigation, a *charge sheet* was laid, under Sections 396 and 412 of the Indian Penal Code, against accused, Ashok Kumar Mandal @ Ashok Mandal, Masudan Mandal, Bindeshwar Paswan, Binwa Mandal @ Bino, Chhote Lal Sah, Anandi Mandal, Bhagwan Poddar and Chano Mandal.

3. At the trial, a charge, under Section 396 of the Indian Penal Code, was framed against accused Bino Mandal @ Koiri, Masudan Mandal, Ashok Mandal, Anandi Mandal, Bindeshwari Paswan, Bhagwan Poddar, Chotelal Sah and Chano Mandal along with about 25 others. A charge, under Section 412 of the Indian Penal Code, was also framed, against accused Chhotelal Sah, Bhagwan Poddar, Anandi Mandal, Ashok Kumar Singh @ Ashok Mandal, and Chando Mandal. All the accused pleaded not guilty to their respective charges.

4. In support of their case, prosecution examined altogether 14 (fourteen) witnesses. The learned trial Court has also examined one witness as CW 1. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused denied that they had committed the offences, which were alleged to have been committed by them, their case being that of denial. No evidence was adduced by the defence.



5. Having found accused, Bindeshwari Paswan, Ashok Singh @ Mandal, Anandi Mandal, Masudan Mandal @ Musudan Mandal @ Masudi, Chano Mandal and Binwa Mandal @ Bino, guilty of the offence under Section 396 of the Indian Penal Code, learned trial Court convicted all of them accordingly and passed sentence against them as mentioned above; but having not found accused Bhagwan Poddar and accused Chhotelal Sah guilty of the charge framed against them under Section 396 of the Indian Penal Code, the learned trial Court acquitted them accordingly. All the accused aforementioned, have, however, been acquitted of the charge framed against them under Section 412 of the Indian Penal Code.

6. Aggrieved by their conviction and the sentence passed against them, accused persons, namely, Bindeshwari Paswan, Ashok Singh @ Mandal, Anandi Mandal, Masudan Mandal @ Musudan Mandal @ Masudi, Chano Mandal and Binwa Mandal @ Bino, as convicted persons, have preferred these two appeals.

7. While Criminal Appeal (DB) No. 468 of 1993 has been preferred by accused-appellant, Bindeshwari Paswan, Criminal Appeal (DB) No. 469 of 1993 has been preferred by accused-appellants, Ashok Singh @ Mandal, Anandi Mandal, Masudan Mandal @ Musudi, Chano Mandal and

Binwa Mandal @ Bino.

8. As both these appeals have arisen out of the judgment of conviction, dated 26.08.1993, and order of sentence, dated 27.08.1993, passed, in Sessions Trial No. 738 of 1989, by learned 1st Additional Sessions Judge, Banka, we propose to dispose of both these appeals by this common judgment and order.

9. We have heard Ms. Soni Srivastava and Mr. Ansuman Singh, learned Counsel, appearing as *Amicus Curiae* and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State in Criminal Appeal (DB) No.468 of 1993. We have also heard Mr. Diwakar Prasad Karn, learned Counsel, appearing on behalf of the appellant, and Mr. Ravindra Kumar, learned Counsel, appearing as *Amicus Curiae* in Criminal Appeal (DB) No. 469 of 1993. We have also heard Mr. S.N. Prasad, learned Additional Public Prosecutor, appearing on behalf of the State in Criminal Appeal (DB) No.469 of 1993.

10. During the course of investigation, Test Identification Parades were held on three different dates, namely, 03.06.1989, 09.08.1989 and 28.08.1989. In the Test Identification Parades, which were so held, accused Bhagwan Poddar and Chhotelal Sah were identified.

11. While considering the present appeal, it

may be noted that though according to the First Information Report, Neelam Devi and Awadh Narayan Singh died, because of pellet injuries fired at them, the *post mortem* examinations, conducted on their dead bodies, reveal that it was because of bomb explosion that the said two persons, namely, Neelam Devi and Awadh Narayan Singh, had died inasmuch as the doctor (PW 2), who had, admittedly, on 05.05.1989, at about 02:05 PM, at Sadar Hospital, Banka, conducted *post mortem* examination on the dead body of Neelam Devi, has deposed that on conducting *post mortem*, he found following injuries:

"Ante-mortem injuries:

(i) A circular hole from left hypochondrium 1½" in diameter with ragged margin and laceration, piercing the heart and lungs, and muscles of the chest was rupturing inter coastal vessels and pulmonary vein indicating the entrance of fire-arm (gun shot) was available;

(ii) The point of exit 6th and 7th inter coastal space in the back 2" in diameter, circular and with ragged margins."

12. In the opinion of the doctor (PW 2), cause of death was shock and hemorrhage, which resulted from the above injuries sustained by the said deceased, the injury having been caused by fire-arm.

13. On the same day, i.e., on 05.05.1989,

at about 2.35 PM, PW 2 had also performed *post mortem* examination on the dead body of Awadh Narayan Singh and he found following injuries:

"Ante-mortem injuries:

(i) Penetrating wound 2½" X 1½" in right lumbar region with protrusion of intestine with omentum. The intestines inside the abdomen ruptured with ruptures of descending aorta 1½" in length.

(ii) The peritonal cavity had 600 ml. of liquefied blood with some blood clots present.

(iii) The skin around the wound was charred 1¾" in diameter.

(iv) Some debris of the bomb was collected from abdominal cavity and preserved."

14. In the opinion of the doctor (PW 2), death was caused due to shock and hemorrhage resulting from the fire-arm injuries sustained by the said deceased.

15. Neither the findings of the doctor nor his opinion, with regard to the cause of deaths of the said two deceased and/or his opinion with regard to the nature of weapon, which might have been used, to cause death of the said two deceased, were disputed either by the prosecution or by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 2).



16. Before proceeding further, it is necessary to point that none of the articles, which the dacoits had allegedly taken away, was recovered from the possession of any accused-appellants. No wonder, therefore, that all the accused stands acquitted of the charge framed against them under Section 412 of the Indian Penal Code. The basis of their conviction is their identification in the Test Identification Parades followed by their identification in the Court.

17. The question, therefore, is: How far, in the present case, the identification of the accused-appellants, at the trial, by the witnesses, namely, PWs. 4, 6, 7, 9 and 11, could have been safely relied upon?

18. While the identification of an accused at his trial is substantive evidence, the proceedings of the Test Identification Parade is merely a step at the stage of investigation of a case and stands on no better footing than the previous statement of a witness recorded under Section 161 of the Code of Criminal Procedure.

19. If an accused is known to the witnesses and is identified by name and face by the witnesses, there is no requirement of having a Test Identification Parade at the time of investigation. If, however, it appears at the time of investigation that the offenders were not known to the witnesses involved in the occurrence and that the statements



of the witnesses reveal that they will be able to identify the offenders if the witnesses see the offenders, then, in a case of such a nature, it is ideal that the Investigating Officer produces such suspects, in a Test Identification Parade, before the witnesses concerned to establish that the investigation was proceeding in an appropriate direction as regards the identity of the persons involved as offenders.

20. It is fairly settled law that the primary object of holding Test Identification Parade is to enable the witnesses to identify persons involved in the commission of offence(s) if the offenders were not personally known to the witnesses. This serves to satisfy the investigating officer of the *bona fide* of the witnesses and help the investigating officer to collect further evidence in order to corroborate the testimony of the witness or witnesses concerned. The whole object behind holding a Test Identification Parade is really to find out whether or not the suspect is the real offender. Where the witnesses themselves state, during investigation, that the accused persons were unknown to them and they would identify them, if confronted with, it is necessary for the investigating agency to put up the suspect for identification by the witnesses in order to avoid the possibility of an innocent person being booked in and, at the same time, to strengthen the prosecution's case that the person, named by the witnesses, is

the offender.

21. In Kanta Prashad Vs. Delhi Administration (AIR 1958 SC 350), the Supreme Court has made it clear that failure to hold a Test Identification Parade does not make the evidence of identification, at the trial, inadmissible. However, the weight to be attached to such identification would be for the court of fact to decide and that it is prudent to hold Test Identification Parade with respect to witnesses, who did not know the accused before the occurrence. The relevant observations, made in **Kanta Prashad** (supra), reads as follows:

"It would no doubt have been prudent to hold a test identification parade with respect to witnesses who did not know the accused before the occurrence, but failure to hold such a parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification would be a matter for the Courts of fact and it is not for this Court to reassess the evidence unless exceptional grounds were established necessitating such a course."

22. Having taken into account the decisions in **Kanta Prashad** (supra), **Harbhajan Singh Vs. State of Jammu and Kashmir (AIR 1975 SC 1814), Jadunath Singh Vs. State of U.P. (AIR 1971 SC 363)** and some other

authorities, the Supreme Court held, in **George and Others. Vs. State of Kerala and Another (AIR 1998 SC 1376)**, as follows:

"It cannot be denied however that though not fatal, absence of the corroborative evidence of prior identification in a T.I. parade makes the substantive evidence of identification in Court after a long lapse of time a weak piece of evidence and no reliance can be placed upon it unless sufficiently and satisfactorily corroborated by the evidence."

23. From what have been observed, in **George** (supra), it is clear that though absence of Test Identification Parade does not make the evidence of identification, at the trial, inadmissible, the Court has the duty to ascertain as to how far the evidence of identification of the accused, at the trial, can be safely relied upon if the same was not proceeded by the identification of the accused at a Test Identification Parade.

24. What follows from the above discussion is during the stage of investigation of a crime, the investigating agency is required to hold identification parade for the purposes of enabling the witness to identify the person alleged to have committed the offence, particularly, when such person was not previously known to the witness or the informant. The absence of test identification may not be fatal if the accused is



known or sufficiently described in the complaint leaving no doubt in the mind of the Court regarding his involvement. Identification parade may also not be necessary in a case, where the accused persons are arrested at the spot. The evidence of identification of an accused person, for the first time, at the trial, is, from its very nature, inherently of a weak character. The Supreme Court, in **Budhsen Vs. State of U. P.**, reported in **(1970) 2 SCC 128**, held that the evidence of identification of an accused, at the trial, in order to carry conviction, should, ordinarily, clarify as to how and under what circumstances, the complainant or the witness came to pick out the particular accused person and the details of the part, which the accused allegedly played in the crime, in question, with reasonable particularity. In such cases, test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused, who are strangers to them. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony, it can safely rely without such or other corroboration. Though identification of an accused at a Test Identification Parade is not substantive evidence, yet identification of an accused at a Test Identification Parade is used for corroboration and in order to enable the Court to



believe that the person, brought before the Court, was the real person involved in the commission of the crime. The identification parade, even if held, cannot, in all cases, be considered as safe, sole and trustworthy evidence on which the conviction of the accused could be sustained. It is a rule of prudence, which is required to be followed in the cases, where the accused is not known to the witness or the complainant. (See **State of H.E. Vs. Lekh Raj and Another**, reported in **(2000) 1 SCC 247**).

25. In the case of **Malkhan Singh and others Vs. State of M.P.**, reported in **(2003) 5 SCC 746**, the Supreme Court has clarified that the Test Identification Parade is not substantive piece of evidence and to hold the Test Identification Parade is not even the rule of law, but a rule of prudence so that the identification of the accused inside the Court room, at the trial, can be safely relied upon. In **Malkhan Singh** (supra), the Court, while observing that identification of an accused in a Court, should, as a rule of prudence, be preceded by a Test Identification Parade, has, in no uncertain words, clarified that this rule of prudence is, however, subject to exceptions, when, for example, the Court is impressed by a particular witness on whose testimony it can, without such Test Identification Parade or other corroboration, safely rely.

26. The Supreme Court has also clarified, in



Malkhan Singh (supra), that the identification parades belong to the stage of investigation and there is no provision in the Code of Criminal Procedure, which obliges the investigating agency to hold, or confers a right upon the accused to claim, a test identification parade; the Test Identification Parades do not, points out the Supreme Court, in **Malkhan Singh** (supra), constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure and, hence, failure to hold a test identification parade would not make inadmissible the evidence of identification in court, though the weight to be attached to such identification should be a matter for the courts of fact to determine.

27. Asserted the Supreme Court, in **Malkhan Singh** (supra), that in appropriate cases, the Court may accept the evidence of identification even without insisting on corroboration. (See **Kanta Prasad Vs. Delhi Administration, AIR 1958 SC 350 (1958 Cri L.J. 698); Vaikuntam Chandrappa & Ors. Vs. State of Andhra Pradesh, (AIR 1980 SC 1340 1960 Cri L.J. 1681); Budhsen & Am Vs. State of U. P., AIR 1970 SC 1321 : 1970 Cri L.J. 1149, and Rameshwar Singh Vs. State of jammu and Kashmir, (1971) 2 SCC 715 (AIR 1972 SC 102:1972 Cri L.J. 15).** (See also **Dana Yadav @ Dahu &**

Ors. Vs. State of Bihar, (AIR 2002 SC 3325), Umesh Kamat Vs. State of Bihar, reported in (2005) 9 SCC 200, and Malkhan Singh Vs. State of U.P., reported in (2003) 5 SCC 746).

28. What emerges from the above discussion is that the identification of an accused inside the Court-room, at a trial, is an admissible piece of evidence and because such identification of an accused is admissible in evidence, such evidence of identification is a substantive piece of evidence. It is, therefore, permissible to rely on such piece of evidence as a rule of law; but the rule of prudence demands that in the absence of a Test Identification Parade having been held properly and in accordance with law, the conviction of an accused must not be based entirely on his being identified, at the trial, by a witness, who did not know the accused. There is, however, no legal impediment in convicting an accused on the basis of his identification at the trial provided that the court has good reasons to believe the evidence of identification at the trial, particularly, when there is other corroborative evidence on record, direct or circumstantial.

29. The Supreme Court, in **Dana Yadav @ Dahu & Ors. Vs. State of Bihar, (AIR 2002 SC 3325)**, examined the law, with regard to the identification of accused, and held, at paragraph 38, thus:

"38. In view of the law analysed

above, we conclude thus:-

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

(b) **In cases where according to the prosecution, the accused is known to the prosecution witnesses from before, but the said fact is denied by him and he challenges his identity by the prosecution witnesses by filing a petition for holding test identification parade, a court, while dealing with such a prayer should consider without holding a mini inquiry as to whether the denial is bona fide or a mere pretence and/or made with an ulterior motive to delay the investigation. In case court comes to the conclusion that the denial is bona fide, it may accede to the prayer, but if, however, it is of the view that the same is a mere pretence and/or made with an ulterior motive to delay the investigation, question for grant of such a prayer would not arise.** Unjustified grant or refusal of such a prayer would not necessarily ensure to the benefit of either party nor the same would be detrimental to their interest. In case prayer is granted and test identification parade is held in which a witness fails to identify the accused, his so-called claim that the accused was known to him from before and the



evidence of identification in court should not be accepted. But in case either prayer is not granted or granted but no test identification parade held, the same ipso facto can not be a ground for throwing out evidence of identification of an accused in court when evidence of the witness, on the question of identity of the accused from before, is found to be credible. The main thrust should be on answer to the question as to whether evidence of a witness in court to the identity of the accused from before is trustworthy or not. In case the answer is in the affirmative, **the fact that prayer for holding test identification parade was rejected or although granted, but no such parade was held, would not in any manner affect the evidence adduced in court in relation to identity of the accused. But if however, such an evidence is not free from doubt, the same may be a relevant material while appreciating the evidence of identification adduced in court.**

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

(d) **Identification parades are held during the course of investigation**



ordinarily at the instance of investigating agencies and should be held with reasonable despatch for the purpose of enabling the witnesses to identify either the properties which are subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.

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

(f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by

previous identification in the test identification parade or any other evidence, can form the basis of conviction.

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

(Emphasis is added)

30. In the case of **Nibaran Bora Vs. State of Assam**, reported in **MANU/GH/0131/2006: 2006 (Supp.) 1 GLT 110**, taking into consideration the relevant decisions of the Supreme Court, one of us (I. A. Ansari, J.), at paragraph 18, held thus:

"18. What emerges from the above discussion is that the identification of an accused inside the Court-room, at a trial, is an admissible piece of evidence and because such identification of an accused is admissible in evidence, such evidence of identification is a substantive piece of evidence. It is, therefore, permissible to rely on such piece of evidence as a rule of law; but the rule of prudence demands that in the absence of a TIP having been held properly and in accordance with law, the conviction of an accused must not be based entirely on his

being Identified, at the trial, by a witness, who did not know the accused. There is, however, no legal impediment in convicting an accused on the basis of his identification at the trial provided that the court has good reasons to believe the evidence of identification at the trial, particularly, when there is other corroboration evidence on record, direct or circumstantial.

31. To put it a little differently, while the evidence of identification of an accused, at a trial, is admissible and substantive piece of evidence, it will depend on the facts of a given case as to whether or not such a piece of evidence can be relied upon as the sole basis of conviction of an accused. The rule of prudence may urge a court, in a given case, that the court should look for some corroborative piece of evidence.

32. Necessarily, therefore, it is the duty of the Court to closely examine the evidence on record as regards identification of the accused at the trial and ascertain if the identification of the accused-appellants by PWs. 4, 6, 7, 8, 9 and 11 could have been safely relied upon.

33. With regard to the above, it may be noted that PW 4 (Umesh Paswan) identified four of the accused-appellants, namely, Bino Mandal, Ashok Kumar Mandal, Anandi Mandal, Masudi Mandal and Bindeshwari Paswan.

34. During his cross-examination, PW 4, in

response to the question put by the defence if he had seen the dacoits on any previous occasion, replied by saying that the police officer had taken him to the village. Moreover, PW 4 has deposed that apart from him, PWs. 6, 8 and 11 were also shown the dacoits by the police before the said witnesses had participated in the Test Identification Parade.

35. Though the learned trial Court has disbelieved the evidence of PW 4, what needs to be pointed out is that merely because of the fact that PW 4 has deposed that the accused had been shown to him and also to some other witnesses by the police, his evidence could not have been rejected as unbelievable. It needs to be borne in mind that the number of witnesses is not material. What is material is the quality of a witness's evidence.

36. Merely because of the fact that a piece of evidence is repeated by a large number of witnesses, such evidence may not be necessarily believed in or relied upon and, on the other hand, the evidence, which has been given by lesser number of witnesses, may not be necessarily rejected.

37. We do not find that the learned trial Court undertook any exercise to determine as to why PW 4 shall not be believed. If PW 4 had turned hostile to the prosecution, the prosecution was not without a remedy inasmuch as it could have not only re-examined PW 4, but also

could have elicited from the Investigating Officer if any of the accused had been shown to any of the witnesses before he or she participated in the Test Identification Parade. No such step was taken by the prosecution to contradict PW 4.

38. Thus, the evidence given by PW 4 remained, otherwise, unimpeached by the prosecution. Brushing aside, therefore, completely the evidence of PW 4, learned trial Court could not have relied upon the evidence of the remaining witnesses, namely, PWs.6, 7, 8, 9 and 11 on the ground that they had supported the case of the prosecution.

39. Coupled with the above, it has been rightly pointed out that the Test Identification Parades, in the present case, were held on 03.06.1989, 09.08.1989 and 28.08.1989. That is to say, the first Test Identification Parade was held after almost one month of the occurrence.

40. In the light of the contents of the First Information Report and the evidence adduced by the prosecution, dacoits remained at the house of the informant barely for 15-20 minutes. There was, admittedly, no electricity and merely earthen lamp was lying lit in the house of the informant and the dacoits had allegedly used torch and, thus, the witnesses had the occasion to see only fleeting glance of the dacoits, who had participated, and unless the solemnity of the Test Identification Parade could have been held to have



been well maintained, it was too unsafe and hazardous to place implicit reliance on the evidence of PWs. 6, 7, 8, 9 and 11 merely because they corroborated each other, though their evidence stood contradicted by the evidence of PW 4; more so, when we notice that it has not been elicited from PWs 6, 7, 8, 9 and 11 as to what role the individual accused, who had been identified by them, had played in the commission of the dacoity so as to ascertain if this description of the roles played by various accused have been consistent or not in order to rule out possibility of accusation having been made on suspicion or by error of judgment or for ulterior motive.

41. Moreover, the evidence adduced by the prosecution, had two versions before the learned trial Court. One version indicated that the suspects had been shown by the police to the witnesses, who had participated in the Test Identification Parade, and the other version was that none of the witnesses had been shown any of the suspects by the police. When two views were possible to be taken on the basis of the evidence adduced, it was the view, which favoured the case of the defence, that needed to be adopted.

42. Situated thus, we are clearly of the view that in the light of the evidence on record, it was too unsafe to rely completely on the identification of the accused-appellant at the trial, especially, when there was no other corroborative

evidence indicating the involvement of the accused-appellants.

43. At any rate, therefore, in the light of the evidence on record and the law relevant thereto, the accused-appellants deserved to be accorded, at least, benefit of doubt.

44. In the result and for the forgoing reasons, we allow these two appeals. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

45. Since all the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall accordingly stand discharged.

46. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Vikash Jain, J.)

A.F.R./Mkr./-

U	✓	T	✓
---	---	---	---