

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on : 05/04/2018****Judgment delivered on : 30/04/2018****CRA No. 574 of 2016**

1. Silbanus Tirki S/o Benjamin Tirki Aged About 36 Years

2. Anod Tigga S/o Daniyal Tigga, Aged About 25 Years

Both are R/o Village Bhalmanda, Police Chouki Lodam, Police Station And District Jashpur, Chhattisgarh

3. Mikhael Tigga @ Ashok @ Tiger S/o Late Benzamin Tigga Aged About 32 Years R/o Village Jarada, Police Station Jari, District Gumla (Jharkhand)

4. Anup Ajay Tirki S/o Arsen Tirki Aged About 25 Years R/o Village Judwine, Police Station Chainpur, District Gumla (Jharkhand)

---- Appellants**Versus**

- State Of Chhattisgarh Through Police Station Jashpur, District Jashpur, Chhattisgarh.

---- Respondent

For Appellants	:	Shri SC Verma, Advocate.
For Respondent/State	:	Shri Avinash K. Mishra, Panel Lawyer.

CRA No. 1079 of 2016

- Vimal Kujur S/o Bhimsent Kujur Aged About 25 Years R/o Village Ekamba Bartoli Thana Dumri Distt. Gumla Jharkhand.

---- Appellant**Versus**

- State Of Chhattisgarh Through Officer-In-Charge, Police Station - Jashpur Distt. Jashpur Chhattisgarh.

---- Respondent

For Appellant	:	Shri B.P. Rao, Advocate.
For Respondent/State	:	Shri Avinash Mishra, Panel Lawyer.

CRA No. 541 of 2016

- Aditya Minj S/o Bersen Minj Aged About 28 Years R/o Village Bhalmanda, Police Chowki Lodam, P.S. Jashpur, District Jashpur, Chhattisgarh.

---- Appellant

Versus

- State Of Chhattisgarh Through S.H.O. Police Station Jashpur, District Jashpur, Chhattisgarh.

---- Respondent

For Appellant	:	Smt. Meena Shastri, Advocate.
For Respondent/State	:	Shri Avinash Mishra, Panel Lawyer.
For applicant (PW-2)	:	Shri J.K. Saxena, Advocate.

Hon'ble Shri Justice Pritinker Diwaker

Hon'ble Shri Justice Sanjay Agrawal

C A V JUDGMENT

Per Pritinker Diwaker, J

1. As the above three appeals arise out of a common judgment of conviction and order of sentence dated 30.3.2016 passed by the First Additional Sessions Judge, Jashpur in Sessions Trial No.81/2015, they are being disposed of by this common judgment.

2. By the said judgment, all the appellants herein have been convicted under Section 364A/34 of IPC and sentenced to undergo imprisonment for life, pay a fine of Rs.1.30 lacs each with default

stipulation. Appellants Silbanus Tirki, Mikhael Tigga & Anup Ajay Tirki have also been convicted under Sections 25 & 27 of the Arms Act and sentenced to undergo RI for five years, to pay a fine of Rs.5000/- and RI for seven years, to pay a fine of Rs.7000/- with default stipulations respectively.

3. Briefly stated, case of the prosecution is that on 14.5.2015 in between 7.30 & 8 pm, some of the accused persons entered the house of PW-1 Smt. Puna Jharna Bhakala and PW-2 Subhash Kumar Bakhla, who at that point of time was on the terrace. On being asked by some of the accused persons to accompany them for some discussion, PW-2 came down and then they took PW-2 with them towards airstrip and thereafter to the State of Jharkhand. Further case of the prosecution is that after taking PW-2 along with them, they contacted PW-1 on her cell phone through the cell phone of PW-2 and demanded Rs.20 lacs as ransom in lieu of release of PW-2. In the next morning i.e. 15.5.2015, the accused persons repeated their demand of ransom and enquired from PW-1 about arrangement of the demanded sum. On the same day, a written report Ex.P/1 was lodged by PW-1 at Police Station – Jashpur narrating therein the entire incident of abduction of her husband and the subsequent demand of ransom by the accused persons. Based on this written report, Dehati Nalishi Ex.P/2 was registered on 15.5.2015 at 7 pm.

It is further case of the prosecution that when PW-1 expressed her inability to give Rs.20 lacs, the accused persons agreed for Rs.15 lacs and then PW-1 withdrew Rs.13.95 lacs from her account in State Bank of India on 15.5.2015 and went to the indicated place i.e. Badi

Bangla, P.S. Jali, Distt. Gumla (Jharkhand) with money. After she gave Rs.11.05 lacs to some of the accused persons, PW-2 was released by them from detention. In the meanwhile, the police party reached the spot, encircled the area and recovered PW-2 vide Ex.P/4.

During investigation, on the basis of location of cell phone used while communicating, accused No.3 Aditya Minj was apprehended and on 19.5.2015 his memorandum (Ex.P/20) was recorded which led to seizure of Rs.1 lac (in the denomination of 500) vide Ex.P/21 and also seizure of a cell phone of black-yellow colour having two SIMs vide Ex.P/34. After arrest of the other accused persons, their memorandums were also recorded. Memorandum of accused No.1 Silbanus (Ex.P/22) led to seizure of Rs.30,000/-, one country made pistol, cartridge, gunpowder, scooty and its key vide Ex.P/23. On the memorandum of accused No.2 Anod Tigga (Ex.P/24), cash of Rs.79,000/- (in the denomination of 500) and his clothes were seized vide Ex.P/25. Pursuant to memorandum of accused No.5 Mikhael Tigga (Ex.P/28), the motorcycle used in commission of crime and country made pistol were seized vide Ex.P/29. Likewise, memorandum (Ex.P/30) of accused No.7 Anup Ajay Tirki led to recovery of one country made pistol vide Ex.P/31 and memorandum (Ex.P/32) of accused No.6 Vimal Kumar led to recovery of one new motorcycle (Honda Dream Yuga) vide Ex.P/33.

On 13.8.2015 Test Identification of accused No.5 Mikhael Tigga, No.6 Vimal Kujur, No.7 Ajay Tirkey and juvenile accused Manoj Minj was conducted wherein PW-2 is said to have correctly identified all the

four accused persons by putting his hand on their head. After completion of investigation, charge sheet was filed against seven accused persons before the jurisdictional Magistrate whereas one juvenile accused was tried by the Juvenile Justice Board. After filing of charge sheet, the trial Judge framed charges under Section 364A alternatively 364A/34 of IPC against all the accused persons and Sections 25 & 27 of the Arms Act in respect of accused Nos.1, 5 & 7.

4. In order to prove the complicity of the accused persons in the crime in question, the prosecution has examined 21 witnesses. Statements of the accused under Section 313 Cr.P.C. were also recorded in which they denied their guilt and pleaded innocence and false implication in the case.

5. After hearing counsel for the parties and considering the material on record, the Court below has convicted and sentenced the accused/appellants as mentioned above. Hence these appeals.

6. Counsel for the accused/appellants submit as under:

(i) that the accused/appellants have been falsely implicated in this crime.

(ii) that TIP dated 13.8.2015 (Ex.P/6) has absolutely no evidentiary value because PW-2 has admitted the fact that the accused persons were shown to him prior to conducting TIP in the police station on 12.8.2015.

(iii) that proper description of the accused persons in the TIP has not been given.

(iv) that from Ex.P/6 it is apparent that only accused No.5 Mikhael Tigga is said to have been identified by PW-2 by putting his hand on his head and the TIP conducted in respect of other accused persons is not in accordance with law.

(v) that except accused No.2 Anod Tigga, all the accused/appellants have been convicted mainly on the basis of dock identification, however, even dock identification is not only delayed one but PW-2 has also not specifically stated about identification of the accused persons.

(vi) when there was enough time with the prosecution for conducting TIP in respect of other accused persons, it ought to have conducted the same and non-conduction of TIP itself makes the prosecution case doubtful.

(vii) that cash amount recovered from the possession of the accused persons belonged to them and normally such meager amount is kept by the persons in their houses and unless there are some identifying marks on the currency notes described by PW-1, it cannot be said to be the amount of ransom.

(viii) that witnesses to the memorandum and seizure have not supported the prosecution case.

(ix) that in respect of cell phone allegedly seized from accused No.3 Aditya Minja, it has been argued that receipt of the said cell phone has not been filed with the Challan and therefore, it cannot be said that the said cell phone was of accused No.3.

(x) that certain seizure have been effected even prior to recording memorandum of the accused persons.

(xi) though one motorcycle has been seized from accused No.6 Vimal Kujur but no related document has been filed or proved by the prosecution.

(xii) that recovery of articles including cash amount have also been made from the family members of the accused persons and all the formalities have been completed in the police station which creates doubt about the recovery and the same is inadmissible.

(xiii) that in respect of accused No.3, it has been argued that in his statement u/s 313 of CrPC no specific question has been put to this accused as to from where he could get the cash amount of Rs.1 lac allegedly seized from him.

(xiv) in respect of accused No.3, it has been further argued that his memorandum Ex.P/20 has been recorded on 19.5.2015 at 1.30 pm whereas the yellow cell phone allegedly belonging to him has been seized on 19.5.2015 at 12 noon and therefore, such seizure loses its significance.

(xv) that memorandum of accused No.3 Aditya has been recorded prior to his arrest and likewise, recovery has also been made in similar manner and therefore, they are of no consequence.

(xvi) that accused No.3 Aditya Minj has been roped in this offence mainly on the basis of call details whereas no such call details has been proved by the prosecution which could prove his involvement in the crime in question.

Reliance has been placed on the decisions of the Supreme Court in the matters of ***Mohan Lal and another Vs. Ajit Singh and***

another, (1978) 3 SCC 279; Surendra Singh Rautela Vs. State of Bihar (Now State of Jharkhand), (2002) 1 SCC 266; Bhagwan Singh and others Vs. State of M.P., (2003) 3 SCC 21; Mousam Singha Roy and others Vs. State of W.B., (2003) 12 SCC 377; Wakkar and another Vs. State of U.P., (2011) 3 SCC 306; Ravi Vs. State, (2007) 15 SCC 372; Surendra Mishra Vs. State of Jharkhand, (2011) 11 SCC 495; and Iqbal and another Vs. State of UP, (2015) 6 SCC 623.

7. On the other hand, State counsel supporting the judgment impugned has submitted as under:

- (i) that dock identification of the accused persons is good enough to uphold their conviction.
- (ii) that TIP is merely a corroboratory piece of evidence whereas dock identification is a substantive evidence. TIP is conducted only to channelize the investigation and to refresh the memory of the victim.
- (iii) that call details Ex.P/11 confirm the location of the accused persons and the victim PW-2 i.e. District-Gumla (Jharkhand).
- (iv) in respect of not putting any identifying mark on the amount of ransom, it has been argued that when PW-1 came to know about kidnapping of her husband, she got terrified and somehow wanted him back safely, she had very short time for arranging huge amount of ransom and in these circumstances, it would not be logical to expect from her to put any identifying mark on the currency notes.
- (v) referring to arrest memos of the accused persons, it has been argued that some of the accused persons were unemployed and some

were labourers and therefore, recovery of huge amount from their possession, that too in the denomination of 500, coupled with their non-explanation as to the source of any income, also points towards their guilt.

(vi) that PW-14 Jyotiprakash Khalkho, witness to the memorandum and seizure, has also supported the prosecution case on material particulars.

(vii) so far as recovery of yellow cell phone from accused No.3 is concerned, the same was not made pursuant to his memorandum but was made under Section 165 of CrPC during search. The memorandum Ex.P/20 was not in relation to cell phone but was in relation to seizure of Rs.1 lac and pursuant to his memorandum, Rs. 1 lac has been seized, for which no explanation has been offered by him and therefore, no fault can be attributed to the prosecution for seizure of yellow cell phone.

(viii) that the accused persons were taken into custody on 19.5.2015 and thereafter formal arrest was made. There is no fault in recording the memorandum of accused No.3 Aditya Minj and likewise in effecting seizure.

Reliance has been placed on the judgments of the Apex Court in the matters of ***State of Andhra Pradesh Vs. K. Venkata Reddy and others, (1976) 3 SCC 454*** and ***Heera and another Vs. State of Rajasthan, (2007) 10 SCC 175***.

8. Learned counsel appearing for applicant-Subhash Bakhla (PW-2) by filing application (IA No.1/18 in CRA No.541/16) submits that the

seized articles i.e. total cash of Rs.2.79 lacs as well as the cell phones belong to PW-2 and therefore, the same may be returned to him.

9. Heard the counsel for the parties and perused the material available on record.

10. PW-1 Smt. Puna Jharna Bhakhla, complainant and wife of victim PW-2 Subhash Bakhla, has stated that on 14.5.2015 in between 7.30 and 8 pm her husband was on the terrace and she was in the drawing room, at that time two unknown persons entered her house and upon hearing the bark of the dog, her husband came down and had a talk with those persons and thereafter, all the three left the house. She initially thought that her husband might have gone to some nearby place, however, when he did not return for quite some time, she made a call on his cell phone but could not get any reply. At about 11.15 in the night she received a call on her cell phone from the cell phone of her husband and then her husband informed that he was kept at some unknown place with *Bhailog*. She further states that the phone of her husband was taken by one of the accused who demanded Rs.20 lacs as ransom by 12 noon. In the next morning at about 5.52 am she again received a call from her husband's cell phone and she was asked by one of the accused to make arrangement of the ransom. At 10.30 am again she received a ransom call from one of the accused and when she expressed her inability to make arrangement of such a huge amount, he agreed for Rs.15 lacs ransom and the time was given till 5 pm on that day. At about 2 pm she went to bank and at 2.30 she again received a call from another SIM of the cell phone of her husband to make arrangement of the ransom immediately. In the evening when

she again received a call she informed the caller that she has arranged Rs.11.05 lacs and then the caller told her to come at least with the said amount. Immediately thereafter she again received a call by one of the accused who informed her about the location i.e. Badi Bangala, P.S. Jari, Distt. Gumla (Jharkhand). Thereafter she along with her brother-in-law (*Jeth*) and driver went towards the indicated place on four wheeler and at 7 pm they reached there. There also she received a call from the cell phone of her husband and was instructed about the location and after reaching the place as indicated she handed over Rs.11.05 lacs to a person. Soon thereafter her husband was released from captivity. She has clarified that along with her, her brother-in-law and one police man were also sitting in the vehicle. In para-7 she has clarified that on the previous date she also made a written complaint Ex.P/1 to the police with the help of one journalist.

11. PW-2 Subhash Kumar Bakhla, victim and husband of PW-1, has stated that on 14.5.2015 when he was on his terrace talking to his relatives on cell phone, after hearing the barks of his dog he came down and met a person sitting in his drawing room who asked him to come out to have some important talk and when he came out from his house, he saw other persons who surrounded him. Some of them were carrying country made pistol with them and disclosed their identity as members of Jungle Party. They forced him to sit on a two wheeler and in one vehicle four persons sat, he was asked to sit in between whereas other persons were on other motorcycle. He states that while he was going on two wheeler he received a call from his wife at about 8-8.15 pm but he was asked by the kidnappers to switch off his mobile

as he had been kidnapped. He was taken to a lonely place of Village-Asro of Jharkhand. After dropping him in the jungle, one person left the said place whereas others were with him. At about 11.15 pm the accused persons brought some food which was refused by him and then identifying accused No.5 Mikhael, he states that this person had taken his cell phone by saying that he would like to talk to PW-1. He states that accused No.5 made a call on the cell phone of his wife and told her that they have kidnapped him and demanded Rs.20 lacs ransom. He has further stated that after about 1 ½ hour he was taken inside the jungle and early in the next morning his wife was contacted through his cell phone and he was again offered certain edibles which he refused and then identifying accused No.3 Aditya Minj in the Court he states that it is he who had offered him food. He further states that accused No.5 Mikhael also offered him food and water. During day time as battery of his cell phone had discharged, SIM of his other cell phone was taken out, inserted into one yellow coloured mobile and then again contact was made with his wife and she was asked as to how much amount she had arranged. He states that he could not hear the full conversation between the accused and his wife as while talking to his wife, the caller used to keep some distance from him. He states that at about 5 pm he was again brought back to Sattar turning and accused Mikhael, Ajay and Vimal moved about 200 meters ahead of him to take the ransom whereas accused Aditya and Anond remained with him. Apart from these accused persons, one juvenile accused was also there who is not present in the Court but was carrying a country made pistol. He has further clarified that it is accused Silbanus who

was also carrying country made pistol with him when he was first lifted on two wheeler. He states that the accused persons also used to exchange their arms with one another. At about 7 pm his wife came there in a four wheeler along with his brother Dr. Dular Bakhla for handing over the ransom. After leaving the said place, they met the police team and recovery panchanama Ex.P/4 was prepared. He states that on 16.5.2015 Superintendent of Police, Jashpur again called him and took him to all those places where he was taken by the accused persons and kept by them. After arrest of four accused persons on 11.8.2015, on the next day i.e. 12.8.2015 he was called by police of Police Chowki-Lodam for identifying the accused where he identified four accused persons. On 13.8.2015 SDM conducted TIP and there he identified four accused persons from amongst 18-20 persons of similar stature so mixed by the police. In the TIP he had identified Mikhael, Ajay, Vimal and Manoj by putting his hand on their head. In his lengthy cross-examination, various questions were put to this witness, however, but for minor contradictions he remained firm and reiterated as to the manner in which he was kidnapped.

12. In respect of TIP in para-19 this witness has again admitted the fact that prior to conducting TIP on 13.8.2015, on 12.8.2015 he had seen accused Mikhael, Vimal, Ajay and Manoj in the police station. When he was asked as to why at the time of lodging report he did not disclose to the police in his statement under Section 161 of CrPC about the names of accused persons, he clarified that by that time he was not aware of their names and knew them only by face and therefore, could not disclose their names.

13. PW-3 Dr. CD Bhaklha is the elder brother of PW-2 who accompanied PW-1 to jungle for handing over ransom to the accused persons, and he and PW-1 got PW-2 released. PW-4 Jeevanlata Bakhla has also partially supported the prosecution case and described as to the manner in which PW-2 was abducted by the accused persons and then how PW-1 was contacted on her cell phone for ransom. PW-5 Nasiruddin, Police Constable, assisted in the investigation. PW-6 Ghanshyam Manhare had verified the seized arms i.e. country made pistol and cartridge and gave his report Ex.P/8. PW-7 Dinesh Kumar Baghel, Patwari, prepared the spot map Ex.P/10. PW-8 Sanjay Kumar Kurre, Police Constable, has proved call details Ex.P/11. From the call details it is apparent that Cell No.9329409340 belongs to and possessed by Subhash Kumar Bakhla (PW-2), calls were made from it on 9826106156 which is of PW-1 Smt. Puna Bhakla and at the relevant time, Cell No.9329409340 was in possession of the kidnappers at Chainpur. PW-10 Smt. Alka Tigga saw two persons taking victim PW-2 on motorcycle. PW-11 Paikas Minj has proved seizure of two mobiles Ex.P/5. PW-12 Ajay Singh Thakur has proved sanction for prosecution of accused persons namely Mikhael Tigga & Anup Ajay Tirki under the Arms Act. PW-13 LR Kuldeep, ASI, registered the FIR (Ex.P/16). PW-14 Jyoti Prakash Khalkho is a witness to memorandum and seizure vide Exs.P/20, P/22 to P/38 as also to arrest memos of the accused persons vide Exs. P/39 to P/42. PW-15 Kamlesh Kumar Miri, Naib Tehsildar, who conducted TIP Ex.P/6 has duly supported the prosecution case. PW-16 Dr. Ashutosh Tirki had medically examined PW-2 after being released from captivity and found

his physically and mentally healthy vide Ex.P/19. PW-17 Sudarshan Bakhla has stated that in his presence the police had interrogated the accused persons. In para-6 he has specifically stated that one yellow-black cell phone was handed over by accused No.3 Aditya Minj to the police vide seizure Ex.P/34. He is also a witness to seizure memo Exs.P/25, P/23, P/27, P/29, P/33, P/31, P/35 and arrest memos Exs.P/36 to P/42. PW-18 KP Chouhan, investigating officer, has duly supported the prosecution case. PW-19 Gourishankar Dubey did part of investigation. PW-20 Komal Kerketta is employee of the bank who has proved withdrawal of Rs.13,95,000/- by PW-1 from her account on 15.5.2015 vide Ex.P/50. PW-21 Amar Tigga is the armourer who examined the seized weapon and gave report Exs.P/51 & P/52.

14. Close scrutiny of the evidence makes it clear that on 14.5.2015 in between 7.30 & 8 pm, some of the accused persons entered the house of PW-1 Smt. Puna Jharna Bhakala and PW-2 Subhash Kumar Bakhla and on the pretext of having some important discussion with PW-2, took him along with them on motorcycle towards jungle and thereafter to the State of Jharkhand. Record goes to show that in the same night, the accused persons demanded Rs.20 lacs as ransom from PW-1 by making her call through the cell phone of PW-2 and repeated their demand next day also and ultimately, when PW-1 expressed her inability to give them such a huge amount, they agreed for Rs.15 lacs, however, PW-1 after withdrawing money from her bank account, could give them only Rs.11.05 lacs. In the meanwhile, on 15.5.2015 itself, a written report Ex.P/1 was lodged by PW-1 at Police Station – Jashpur narrating therein the entire incident of abduction of

her husband and the subsequent demand of ransom by the accused persons.

15. So far as TIP is concerned, true it is that before conducting TIP on 13.8.2015 (Ex.P/6), the accused persons were seen by PW-2 in the police station on 12.8.2015 and being so, TIP loses its significance. However, it is equally true that PW-2 has duly identified the accused persons in the Court.

16. In the matter of ***Sidhartha Vashisht Vs. State (NCT of Delhi)*** reported in **(2010) 6 SCC 1**, while dealing with the issue of identification of accused the Supreme Court observed as under:

“256. The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:

[Munshi Singh Gautam vs. State of M.P.](#) (2005) 9 SCC 631, at page 643:

"16. As was observed by this Court in [Matru vs. State of U.P.](#) 1971 2 SCC 75 identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in Court. ([See Santokh Singh vs. Izhar Hussain](#) 1973 2 SCC 406.) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in [the Code](#) and the [Evidence Act](#). It is desirable that a test identification parade should be conducted as soon as after

the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to 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.

17. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of [Section 9](#) of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under [Section 9](#) of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is, accordingly, considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exception, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code which obliges the investigation agency to hold or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by [Section 162](#) of the Code. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. ([See Kanta Prashad vs. Delhi Administration](#) AIR 1958 SC 350, [Vaikuntam Chandrappa vs. State of A.P.](#) AIR 1960 SC 1340, [Budhsen Vs State of U.P.](#) (1970) 2 SCC 128 and [Rameshwar Singh vs. State of J&K](#) (1971) 2 SCC 715)

19. [In Harbhajan Singh vs. State of J&K](#) (1975) 4 SCC 480, though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16.12.1971 their rifles smelt of fresh gunpowder

and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held: (SCC p. 481, para 4).

"4. In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the investigation officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in [Jadunath Singh vs. State of U.P.](#) 17 absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villages only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant."

Malkhansing vs. State of M.P., (2003) 5 SCC 746 at 752

"7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of [Section 9](#) of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under [Section 9](#) of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in [the Code](#) of Criminal Procedure which obliges the investigation agency to hold, or confers a right upon the accused to claim a test identification parade. They

do not constitute substantive evidence and these parades are essentially governed by [Section 162](#) of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration."

17. Thus, it is a settled principle of law that evidence given by the witness in the Court is substantive testimony while the identification made by him at the TIP is confirmatory of that fact. Even if we exclude the TIP conducted by the police from our zone of consideration for being vitiated on account of PW-2 having seen them before in the police station, he has duly identified the accused persons in the Court and attributed specific role to each of them in a vivid manner. Defence could not elicit anything from this witness to make his evidence doubtful or shaky. This being the position, we have no hesitation in holding that dock identification of the accused persons by PW-2 is worth reliance and is free from the suspicion of falsity.

As regards non-conduction of TIP in respect of all the accused by the prosecution, it is not necessary for the prosecution to conduct TIP in respect of all the accused in each case. It is conducted just to ensure that the investigation is proceeded on the right line and such identification can only be used as corroborative of the statement in Court of the witness. In the case in hand, PW-2 has duly identified all the accused/appellants in the Court as perpetrator of the crime as he having remained with the abductors for more than 20 hours had ample opportunity to identify the features and faces of the accused persons because it is not the case of the prosecution or the defence that the

abductors had covered their faces when PW-2 remained in their custody.

18. What further lends support to the prosecution case is the seizure of ransom and firearms from the possession of the accused persons, as detailed above. According to the accused/appellants themselves, some of them are unemployed and some are engaged in labour work whereas on the memorandum of accused No.1 Silbanus seizure of Rs.30,000/-, one country made pistol, cartridge, gunpowder & scooty was made, on the memorandum of accused No.2 Anod Tigga, cash of Rs.79,000/- (in the denomination of 500) was seized; on the memorandum of accused No.5 Mikhael Tigga, one motorcycle said to have been used in commission of crime and country made pistol were seized, and likewise, memorandum of accused No.7 Anup Ajay Tirki led to recovery of one country made pistol and memorandum of accused No.6 Vimal Kumar led to recovery of one new motorcycle (Honda Dream Yuga). However, the accused/appellants have failed to explain as to how they came in possession of such a huge amount and other articles, in particular firearms. The witnesses to memorandum and seizure, though not fully supported the prosecution case but have partially supported the same and admitted their signatures on the documents. Moreover, the argument of counsel for the appellants that the seized amount belong to the appellants, appears to be an afterthought and does not appeal to reason because had it been so, they or their legal representatives would have filed an application for getting the said amount on supurdnama at the appropriate stage, however, no such application was ever filed by them. The amount so

seized is in the denomination of 500 and as per PW-1 she had also given ransom in the said denomination. This fact further strengthens the prosecution case against the appellants that the amount seized from them was of ransom given to them by PW-1 for release of PW-2.

19. As regards memorandum and seizure, on 19.5.2015 memorandum of accused No.3 Aditya Minj (Ex.P/20) was recorded which led to seizure of Rs.1 lac (in the denomination of 500) vide Ex.P/21 and also seizure of a cell phone of black-yellow colour having two SIMs vide Ex.P/34; memorandum of accused No.1 Silbanus (Ex.P/22) led to seizure of Rs.30,000/-, one country made pistol, cartridge, gunpowder, scooty and its key vide Ex.P/23; on the memorandum of accused No.2 Anod Tigga (Ex.P/24), cash of Rs.79,000/- (in the denomination of 500) and his clothes were seized vide Ex.P/25; pursuant to memorandum of accused No.5 Mikhael Tigga (Ex.P/28), the motorcycle used in commission of crime and country made pistol were seized vide Ex.P/29 and likewise, memorandum (Ex.P/30) of accused No.7 Anup Ajay Tirki led to recovery of one country made pistol vide Ex.P/31 and memorandum (Ex.P/32) of accused No.6 Vimal Kumar led to recovery of one new motorcycle (Honda Dream Yuga) vide Ex.P/33. Witness to the memorandum and seizure i.e. PW-14 Jyoti Prakash Khalkho in his examination-in-chief has initially supported the prosecution case in respect of memorandum of accused No.5 Mikhael Tigga and accused No.7 Anup Tirky and seizure made in pursuance thereof and after being declared partially hostile, has also stated about admission of accused No.6 Vimal Kujur regarding taking of Rs.2 lacs out of the

ransom amount and purchasing a motorcycle from the said amount. He has also admitted the fact that accused Mikhael, Anup and Vimal had confessed their involvement in kidnapping of PW-2 before the police.

Another witness to memorandum and seizure i.e. PW-17 Sudarshan Bakhala has though not fully supported the prosecution case but has admitted his signatures on the documents and after being declared hostile, when he was cross-examined by the prosecution, he has supported the prosecution case on material particulars.

20. Even otherwise, the police personnel (PW-18 KP Chouhan and PW-19 Gourishankar Dubey) who conducted memorandum and seizure proceedings have duly supported the prosecution case. It cannot be stated as a rule of law that a police officer can or cannot be a reliable in a criminal case which will always depend upon facts of a given case. If testimony of such a witness is reliable, trustworthy, cogent and duly corroborated by other witnesses or admissible evidence, then statement of such witness cannot be discarded only on ground that he is a police officer and may have some interest in success of the case. Only when his interest in success of case is motivated by overzealousness to an extent of his involving innocent people, then, no credibility can be attached to his statement. Presumption that a person acts honestly applies as much in favour of a police officer as in respect of other persons and it is not proper to distrust and suspect him without there being good grounds therefor.

21. Ordinarily, the public at large show their disinclination to come forward to become witnesses. If the testimony of the police officer is

found to be reliable and trust worthy, the Court can definitely act upon the same. If, in the course of scrutinizing the evidence, the court finds the evidence of the police officer as unreliable and untrustworthy, the court may disbelieve him but it should not do so solely on the presumption that a witness from the department of police should be viewed with distrust. This is also based on the principle that quality of the evidence weighs over the quantity of evidence. [AIR 2013 Supreme Court 3344 between [Pramod Kumar v. State \(GNCT\) of Delhi](#).].

22. In the present case, though the independent witnesses have not fully supported the prosecution case but the other witnesses, though police personnel, have unequivocally stated about manner in which the memorandum of the accused persons were recorded and seizure of certain incriminating articles was made in pursuance thereof. The defence has utterly failed to elicit anything from them which could suggest that they had any interest or enmity with the accused/appellants for their false implication; their evidence appear to be trustworthy and supported by the documentary evidence on record and in these circumstances, there is no reason to suspect the credibility of these witnesses merely on the ground of they being the police personnel.

23. So far as argument in respect of accused No.3 Aditya Minj that yellow cell phone was seized prior to recording of his memorandum (Ex.P/20), is concerned, we find substance in the argument of counsel for the State that the said cell phone was not recovered pursuant to his

memorandum but was seized under Section 165 of CrPC during search. From perusal of Ex.P/20 it is evident that the same was not in relation to cell phone but was in respect of taking of Rs.1 lac from the ransom, which was subsequently seized at his instance and for which no explanation could be offered by him. Further, we find no substance in the argument by counsel for appellant Aditya Minj that his memorandum was recorded prior to his arrest because accused persons were taken into custody on 19.5.2015 itself and their formal arrest was made thereafter.

24. As regards the call details, PW-8 Sanjay Kumar Kurre, Police Constable, has proved call details Ex.P/11. From the call details it is apparent that Cell No.9329409340 belongs to and possessed by Subhash Kumar Bakhla (PW-2), calls were made from it on 9826106156 which is of PW-1 Smt. Puna Bhakla and at the relevant time, Cell No.9329409340 was in possession of the kidnappers at Chainpur. The evidence of this witness remains intact in cross-examination. Thus, the call details, which have been duly proved by PW-8, while lending support to the statements of PW-1 and PW-2, establishes involvement of the accused/appellants in commission of the crime.

25. So far as non-mentioning of any identifying mark on the ransom currency is concerned, from the evidence it is seen that PW-2 was kidnapped at about 8 pm, PW-1 came to know about the same at 11.15 pm when she was contacted by one of the accused through cell phone of her husband and demand of Rs.20 lacs was made in lieu of release of PW-2 and the accused persons had threatened her of killing her

husband if their demand was not fulfilled. PW-1 had limited time for arrangement of such a huge amount, she was under extreme mental pressure, as such may not be aware of the fact that she would be required to identify that amount subsequently; at that time she was only concerned with the safe return of her husband, and therefore, in the given facts and circumstances of the case, it cannot reasonably be expected from her to put any identifying mark on the currency notes and non-mentioning of such marks would not weaken the prosecution case in any manner. This apart, the currency notes seized from the accused persons are in the same denomination as has been narrated by PW-1 and further, as observed in the preceding paragraphs, the accused persons have utterly failed to offer any explanation in respect of the amount seized from their possession.

26. As regards offence under Sections 25 & 27 of the Arms Act, memorandum of accused No.1 Silbanus (Ex.P/22) led to seizure of Rs.30,000/-, one country made pistol, cartridge, gunpowder, scooty and its key vide Ex.P/23; pursuant to memorandum of accused No.5 Mikhael Tigga (Ex.P/28), the motorcycle used in commission of crime and country made pistol were seized vide Ex.P/29 and likewise, memorandum (Ex.P/30) of accused No.7 Anup Ajay Tirki led to recovery of one country made pistol vide Ex.P/31. As discussed above, memorandum and seizure have already been proved by the prosecution. PW-6 Ghanshyam Manhare and PW-21 Amar Tigga, Armourers, examined the seized firearms and found some of them functional and some nonfunctional vide Ex.P/8, P/51 & P/52. However, PW-21 has clarified further that mere showing of such firearms can

reasonably cause fear in the mind of the victim because the victim was not aware of its functionality and as such, the accused can execute the intended criminal activity with ease on the point of such firearms. In the present case also, as it reflects from the evidence of the victim PW-2, he was under the impression that the firearms carried by the accused persons were functional and can cause fatal injury to him. Thus, from the oral as well as documentary evidence on record, conviction of appellants Silbanus Tirki, Mikhael Tigga & Anup Ajay Tirki under Sections 25 & 27 of the Arms Act appears to be based on proper appreciation of the material available on record.

27. On the basis of aforesaid discussions, we are of the opinion that the prosecution has been successful in proving guilt of the accused/appellants based on the evidence adduced by it and as such, the findings recorded by the trial Court convicting and sentencing them under Section 365A/34 of IPC as also convicting and sentencing appellants Silbanus Tirki, Mikhael Tigga & Anup Ajay Tirki under Sections 25 & 27 of the Arms Act as well, are the outcome of proper appreciation of the evidence on record, warranting no interference by this Court. The judgments cited by learned counsel for the appellants are of no help to them because the facts of the present case are quite different from the facts of the cases in which these judgments were delivered by the Apex Court.

28. Resultantly, all the three appeals being without any substance fail and are, accordingly, dismissed. As all the accused/appellants are reported to be already in jail, no further order regarding their arrest/surrender etc. is required to be passed.

Since these appeals have been dismissed by maintaining conviction and sentence of the appellants, the seized amount of Rs.2.79 lacs as well as the seized cell phones belonging to PW-2, be given to Subhash Bakhla (PW-2) on his furnishing adequate security in lieu of the same to the satisfaction of the trial Court. The security so furnished shall be subject to the decision of the Hon'ble Supreme Court in appeal, if any, preferred against this judgment. The application (IA No.1/18 filed in CRA No.541/16) stands allowed to the above extent.

Sd/
(Pritinker Diwaker)
Judge

Sd/
(Sanjay Agrawal)
Judge