

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

1. **CRA-S-1472-SB-2003**
Reserved on:15.11.2022
Date of Decision : 30. 11. 2022

Naresh Kumar ...Appellant
Vs.
The State of Haryana ...Respondent

2. **CRA-S-1561-SB-2003**
Ramesh Kumar @ Raj ...Appellant
Vs.
The State of Haryana ...Respondent

3. **CRA-S-1569-SB-2003**
Pawan Kumar ...Appellant
Vs.
The State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Salil Bali, Advocate for
the appellant(s) in CRA-S-1472-SB-2003 and
CRA-S-1569-SB-2003.

Mr. Anurag Arora and Mr. Vishal Sharda, Advocate
for the appellant(s) in CRA-S-1561-SB-2003.

Ms. Sheenu Sura, DAG, Haryana.

N.S.SHEKHAWAT, J

This judgment shall dispose of three appeals, i.e.,
CRA-S-1472-SB-2003 titled as 'Naresh Kumar Vs. The State of
Haryana', CRA-S-1561-SB-2003 'Ramesh Kumar @ Raj Vs. The
State of Haryana' and CRA-S-1569-SB-2003 'Pawan Kumar Vs. The
State of Haryana, as the same arise out of a common impugned
judgment of conviction and order of sentence dated 29.07.2003,

passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court No.-II, Faridabad, whereby, the appellants in the aforementioned appeals had been convicted under Sections 395 and 397 IPC and sentenced to undergo rigorous imprisonment for a period of five years each and also to pay a fine of Rs.2000/- each alongwith a default stipulation under Section 395 IPC. They were further sentenced to undergo imprisonment for a period of seven years each under Section 397 IPC. Both the sentences were ordered to run concurrently.

Initially, the FIR in this case, i.e., FIR No. 1319 dated 07.10.1997 under Sections 392, 394, 411 and 397 IPC was registered against the three appellants, namely, Pawan Kumar, Naresh Kumar and Ramesh Kumar @ Raj (appellants in present three appeals) and two more accused persons Amarjit and Vijay Kumar @ Vicky. Further, in the impugned judgment, accused persons, namely, Vijay Kumar @ Vicky and Amarjit were ordered to be acquitted whereas the three appellants, namely, Ramesh Kumar, Pawan Kumar and Naresh Kumar were ordered to be convicted and sentenced as indicated above. The FIR Ex.PA/2 was got registered by Smt. Varsha Vadhavan wife of Rajeshwar Kumar against the three unknown persons under Sections 392 and 394 IPC by alleging that she was resident of House No. 267, Sector 29, Faridabad and used to reside with her children at home. Her husband was serving in A.E.P.C., in Delhi. He used to go to his office early in the morning and used to

return back in the evening. On that day, she had gone to Punjab National Bank for opening an account after leaving her two children, namely, Pranav, aged about 13 years and Yashodhara aged about 06 years at home. She came back home as she could not open the account on that day. After returning home, she was watching television alongwith her children. At about 2/2.15 p.m., three persons entered the house on finding the door open and they came from the drawing room. They were aged about 20/25 years, medium height wearing pants and shirts and one person was carrying the meat cutter (knife) and two more persons who were also wearing pants and shirts, and were also carrying 'DAAV' (knife used for cutting trees). On coming there, they caught hold of her elder son and asked as to whether the house belong to Bhardwaj. On this, her son replied that the house did not belong to Bhardwaj. She wanted to run away from another door but both the accused stopped her and started saying that they had come to take cash and she should give it to them and they would leave after that. They threatened her that in case she raised the noise, they would do something. They wanted to pull the chain worn by her, however, she gave the chain on her own without any resistance. During this occurrence, the person, who entered through the drawing room, gave blow with meat cutter knife at the hands of her son and chopped off thumb of left hand of her son. She and her children were tied and were found in a room. She also suffered injury on her right hand. She stated that she would check the goods at home

and would disclose as to what was looted. She asked them as to why they were doing the same. On that, they replied that they had to help someone. They had tied the hands of all of them and took away the goods from the almirah and the bed. She later disclosed that the accused had taken away one gold set with ear rings, termala, kanthi (ornaments), ring and few other ornaments of gold and silver. After the accused had gone away, she had taken her son firstly to Escorts Hospital and after that to the Apollo hospital. Her husband was informed by her neighbours and he also reached at the spot. The police initially recorded the statement of the complainant as Ex.PA and made endorsement on the same and the FIR Ex.PA/2 was registered.

The FIR was initially registered against three unknown persons and later on, she stated that a fourth person was also probably standing outside. During the course of investigation, the police joined certain persons in the investigation, but they were not found involved in the matter. On 10.09.1998 accused Vijay Kumar @ Vicky, Naresh and Pawan Kumar were arrested in a case FIR No. 189 dated 09.09.1998 under Sections 392, 394, 120-B and 34 IPC Police Station City Dabwali and they suffered a disclosure statement in the presence of ASI Jai Ram of Police Station Dabwali that they had also looted the house of the complainant and after obtaining their production warrants, the present five accused Amarjit, Vijay Kumar @ Vicky, Naresh Kumar, Pawan Kumar and Ramesh

Kumar were arrested on 03.11.1988. In the present case also, they confessed that they had committed the dacoity in the instant case and confessed their crime.

The charge under Sections 395 and 397 IPC was ordered to be framed against the five accused on 04.11.20220, to which, they pleaded not guilty and claimed trial.

To prove the charge, the prosecution examined 12 witnesses.

PW1 Varsha Vadhawan was the complainant in the instant case and she narrated the entire version as mentioned by her in the FIR Ex.PA/2. However, she pointed out that Naresh Kumar, accused had come with meat cutter (DAAV) and it was Ramesh Kumar @ Raj, accused, who came through the drawing room and was also having a meat cutter. Pawan Kumar accused was also with Ramesh Kumar @ Raj, accused. Pawan Kumar had cut the left thumb of the injured. Amarjit accused present in the Court was not known to her and it could be possible that Amarjit accused was outside her house. She admitted that she did not remember as to whether she had told the police regarding the two accused, who were standing in the lobby of the house. She admitted that she had shown the entire house to the police. She had mentioned identification of the accused to the police, when the police got recorded her statement Ex.PA. She further stated that she never visited the police station at any point of time. She had even though got the identification of the

accused got recorded to the police but she did not record the height of the accused. She had just mentioned the colour, dress and face etc., of the accused. She had seen the articles, which were brought by her husband at the time of the recovery from the accused. She did not remember as to which were the articles. She admitted that she had seen the accused after their arrest. She saw the accused in police station, but could not tell in which police station she had seen them. The faces of the accused were open and they were not muffled face. Similarly, PW2 Master Parnav, who also supported the case of the prosecution. The said witness was duly confronted with his earlier statement made by him, however, in cross-examination, he admitted that after the date of occurrence, the accused were not shown to him except on the day, i.e., 06.09.2001. He could not explain as to whether silver or gold ornaments were taken from there. He admitted that only three persons named in the FIR and fourth came after the occurrence and as such it was not recorded in the statement. PW3 Rajeshwar Kumar was recalled for cross-examination and stated that four bangles, two rings, one tagri of silver and one pair of pajab (ornament), Rs. 6000/- were recovered from the possession of the accused Ramesh Kumar @ Raj. The prosecution examined PW4 ASI Jai Ram, who was posted as I.O., of the case in FIR No. 189 under Sections 392, 397 and 120 IPC where accused Naresh Kumar, Amarjit and Pawan Kumar @ Vicky were arrested and they suffered their disclosure statements before police of Police Station

Dabwali. The said accused also confessed before the police of Police Station Dabwali that they had committed the offence in the present case as well. The said witness admitted in his cross-examination that he tried to join independent witnesses, but no witness joined at the time of the entire proceedings. The prosecution further examined PW5 Dharambir who was posted as head constable in Police Station City Dabwali on 16.09.1998. He is witness to the disclosure statements suffered by Amarjit and Pawan Kumar. At this stage, PW3 Rajeshwar Kumar was again recalled for producing the case property and he produced the bangles, tagri, pajab (ornaments) and two rings and a chain before the Court. He, however, admitted that the bangles, which are worn by his wife are different from the ones, which are produced in the Court. He further admitted that he had not disclosed the shape of the bangles and not even the weight. He also did not even disclose the make of the golden chain, which has been shown. The articles were given in the police station and these articles were again taken by him to the police station. He did not remember whether the articles were there in a sealed condition or not. The prosecution examined PW6 ASI Ram Lubhaya, who had recorded the FIR in the instant case. The prosecution further examined Ashok Kumar draftsman from the office of the Superintendent of Police, Faridabad, who had prepared the scaled site plan with its correct marginal notes. The prosecution further examined PW8 SI Rajbir Singh, who received the disclosure statements of Amarjit, Vijay

Kumar @ Vicky, Naresh Kumar and Pawan Kumar on 12.09.1998. Thereafter, he obtained the production warrants from the Court and formally arrested the accused in this matter on 03.11.1998. He again interrogated the accused and the accused also suffered disclosure statements in his presence. He had admitted that the accused had identified the place of occurrence. However, the recovery was only made from Ramesh Kumar accused on 06.11.1998 vide recovery memo Ex.PB and four bangles of gold, chain of gold, ear rings, two golden rings, a silver tagti (ornament) were recovered from accused Ramesh Kumar @ Raju and all looted property was recovered only from Ramesh Kumar @ Raju. He admitted that he never held any identification parade of the accused and he recovered all the looted property from Sirsa. He further admitted that he tried to join the independent witnesses for the purpose of recovery but nobody came forward to join the proceedings. Still further, the prosecution examined PW9 Juthar Singh, retired SI, who had prepared the rough site plan Ex.PT and also took the 'chhura' (knife) in possession vide recovery memo and also produced the said weapon in the Court. However, in the cross-examination, he admitted that he had not seen the weapon in the Court and also admitted that at the time when the weapon was taken into possession, he had not seen it. He also admitted that the said 'chhura' (knife) is available in the market very easily. The prosecution further cross-examined PW10 ASI Babu Ram, who was a witness to the disclosure statements suffered by

Ramesh Kumar @ Raju, Naresh Kumar, Pawan Kumar, Vijay Kumar @ Vicky and Amarjit. They all identified the place of occurrence. Ramesh Kumar @ Raju accused led the police party and got recovered the jewelry from his house. The said witness also submitted in the cross-examination that he had met the accused for the first time in the Court. He did not remember whether they were all muffled face or not. When he saw them for the first time they were not with muffled face. Still further, the prosecution examined PW11 Jagdish Chander, who was a witness to the disclosure statement suffered by Amarjit and Pawan Kumar at Police Station Dabwali. Still further, PW12 Dr. R.K. Seth, Appollo Hospital, New Delhi, who had treated Master Parnav Vadhavan aged about 13 years.

After the closure of evidence, the entire case/evidence was put to the accused in their statements under Section 313 Cr.P.C. The police/accused replied that they were innocent and they had been falsely implicated in the instant case. Even, the accused opted not to lead any evidence in their defence.

The learned counsel for the appellants vehemently argued that the appellants have been falsely implicated in the instant case. The accused were not named in the FIR by the complainant and the FIR was initially registered against the unknown persons and later on five persons were implicated by assigning them roles separately. Still further, it was initially shown that the dacoity was committed by four persons only, but later on the police presented the

challan against five persons and out of them two have been acquitted by the learned trial Court. Thus, the conviction of remaining three accused Pawan Kumar, Naresh Kumar and Ramesh Kumar @ Raj for the offences under Sections 395/397 IPC is bad in the eyes of law and cannot be sustained as the basic ingredients of sections 395/397 IPC are not fulfilled. The minimum number of persons required for conviction under these sections are five or more accused and consequently no case is made out against the present appellants. Still further, in the FIR, the identity of the accused was not mentioned. There was no description as to height, weight, physical features of the accused in the FIR and ultimately no test identification parade was held by the police before the complainant as well as her son Parnav Vadhavan. The complainant and her son Parnav Vadhavan had identified the accused after a period of about 04 years and identification in the Court for the first time is of no value. Still further, no description of jewelry as to make, shape, size and structure of the jewelry was given by the complainant to the police. Even PW3 Rajeshwar Kumar admitted that the jewelry which was released to him on *superdari* was different from the one presented by him in the Court and no independent witnesses were joined by ASI Babu Ram at the time of recovery of the jewelry from Ramesh Kumar @ Raj. Still further, there was no evidence on record except the disclosure statements of the accused in different FIRs. Further, the statements of Inspector Rajbir Singh and ASI Babu Ram as to the

mode of recovery are contradictory. SI Rajbir Singh PW 8 stated that Rajeshwar, Babu Ram and he went in private vehicle for the purpose of recovery whereas PW10 ASI Babu Ram stated that three of them went by bus for which they did not purchase the tickets. Thus, the case of the prosecution is liable to be disbelieved by this Court and the police are liable to be acquitted.

The statements made by the learned counsel for the appellants are vehemently opposed by the learned State counsel and submitted that the prosecution had led sufficient evidence to prove the offence against the appellants. Still further, the three appellants, who have been convicted had committed the offence alongwith the remaining two accused, who have been acquitted and even if they have been acquitted, still the appellants could be convicted under Sections 395/397 IPC. Even, the recovery had already been effected from Ramesh Kumar @ Raj accused and the minor contradictions in the statements of various prosecution witnesses were liable to be ignored by this Court. Learned State counsel further submitted that even the three appellants have been duly identified by the witnesses in the Court and were liable to be convicted by this Court.

I have heard learned counsel for the parties and with their able assistance, I have perused the record carefully.

Learned counsel for the appellants vehemently argued that the prosecution has not been able to prove its case beyond the shadow of reasonable doubt as the entire case is based on either

interested witnesses or the official witnesses and there was no independent corroboration of the evidence. Learned counsel further submitted that the learned trial Court has erroneously convicted the three appellants under Sections 395/397 IPC as there are less than five persons, which is against the essential ingredients of Section 391 IPC. Section 391 of IPC has been reproduced as below:-

391. *Dacoity.*—*When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit “dacoity”.*

Section 395 of IPC provides for punishment for dacoity, whereas **Section 397 of IPC** provides for robbery or dacoity, with attempt to cause death or grievous hurt.

The learned State counsel has opposed the submissions made by the learned counsel for the appellants and submitted that the appellants have been convicted by mentioning that they were part of the persons, who committed dacoity. However, this Court finds substance in the arguments raised by the learned counsel for the appellants. It is well settled that for recording conviction of an offence of dacoity, there must be five or more persons. In absence of such findings, an accused cannot be convicted for the offence of

dacoity. In a given case, it may happen that there may be five or more persons and the factum of five or more persons is either in dispute or is clearly established, but the Court may not be able to record a finding as to the identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such a case, conviction of less than five persons or even two can stand but in absence of such findings, less than five persons cannot be convicted of an offence of dacoity. In the instant case, no such findings have been recorded that these appellants had joined hands with several others to commit the dacoity and two accused were simply acquitted by the Court. Even the FIR was initially registered against the three unknown persons and the involvement of fourth person is doubtful. Consequently, the conviction of the three appellants under sections 395/397 IPC is obviously erroneous. The Hon'ble Supreme Court in the matter of **Raj Kumar @ Raju Vs. State of Uttaranchal (2008) 11 Supreme Court Cases 709** (2008)

11 Supreme Court Cases 709 as follows:-

“16. Chapter XVII (Sections 378 to 462) deals with offences against property. Sections 378 to 382 relate to theft. Sections 383 to 389 concern offences of extortion. Sections 390 to 402 deal with robbery and dacoity. Section 391 defines dacoity and it reads thus :

“391. Dacoity----When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

17. Whereas Section 395 provides punishment for dacoity, Section 396 prescribes penalty for an offence of dacoity with murder. The said section reads thus :

“396. Dacoity with murder.----If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine”.

18. In Ram Lakhan v. State of Uttar Pradesh, this Court held that conviction for an offence of dacoity of less than five persons is not sustainable. In that case, the appellant was convicted for an offence punishable under Section 395 Indian Penal Code and sentenced to seven years rigorous imprisonment. FIR was registered against nine persons. The trial Court, however, acquitted five persons and convicted four. On appeal, the High Court acquitted three persons out of four and conviction of one of the accused, appellant before this Court, was upheld. This Court, while allowing the appeal and acquitting the accused, held

that before an offence under Section 395 can be made out there must be an assembly of five or more persons. On the findings of the courts below, it was manifest that only one person was left, who could not be convicted for an offence under Section 395.

19. In Saktu v. State of U.P., the case of the prosecution was that 15-16 persons entered the house of one Jwala Prasad and looted the property. First Information Report was lodged by the informant-Jwala Prasad. All the accused were charged for offences punishable under Sections 395, 397 and 412, Indian Penal Code. The trial Court acquitted one of the accused. In appeal, the High Court of Allahabad acquitted some other accused but convicted three accused (Nos. 1, 6 & 7).

20. It was contended before this Court that as the High Court found that only three persons had participated in the occurrence, there was an error in convicting them for dacoity, since the offence of dacoity could not be committed by less than five persons. This Court, however, negatived the contention observing as under: (Saktu case, SCC p. 204, para 6)

"6....The charge in the instant case is that apart from the named seven or eight persons, there were five or six others who had taken part in the commission of the dacoity. The circumstance therefore that all except the three accused, have been acquitted by the High Court will not militate against the conviction of those three for dacoity. It is important that it was at no time disputed that more than thirteen or fourteen persons had taken part in the robbery. The High Court

acquitted a large number of the accused because their identity could not be established. The High Court, however, did not find that the group which committed robbery in the house of Jwala Prasad consisted of less than five persons".

(emphasis supplied)

21. It is thus clear that for recording conviction of an offence of robbery, there must be five or more persons. In absence of such finding, an accused cannot be convicted for an offence of dacoity. In a given case, however, it may happen that there may be five or more persons and the factum of five or more persons is either not disputed or is clearly established, but the Court may not be able to record a finding as to identity of all the persons said to have committed dacoity and may not be able to convict them and order their acquittal observing that their identity is not established. In such case, conviction of less than five persons - or even one-can stand. But in absence of such finding, less than five persons cannot be convicted for an offence of dacoity".

In the instant case, as observed earlier, there were six accused. Out of those six accused, two were acquitted by the trial Court without recording a finding that though offence of dacoity was committed by six persons, identity of two accused could not be established. They were simply acquitted by the Court. In our opinion, therefore, as per settled law, four persons could not be convicted for an offence of dacoity, being less than five which is an essential ingredient for commission of

dacoity. Moreover, all of them were acquitted for an offence of criminal conspiracy punishable under Section 120B, Indian Penal Code as also for receiving stolen property in the commission of dacoity punishable under Section 412 Indian Penal Code. The conviction of the appellant herein for an offence punishable under Section 396 Indian Penal Code, therefore, cannot stand and must be set aside.

Learned counsel for the appellants further submitted that the FIR in the instant case was initially got registered by complainant Varsha Vadhavan on 07.10.1997 against four unknown persons. However, it has been stated that the police of Police Station City Dabwali had arrested four accused/appellants, namely, Naresh Kumar, Amarjit, Pawan Kumar and Vijay Kumar @ Vicky on 09.09.1998 in FIR No. 189 dated 09.09.1998 under Sections 392, 394, 120-B and 34 IPC Police Station City Dabwali. The said four accused had suffered their disclosure statements in the said case at Police Station City Dabwali and the same was forwarded to Police Station, Central, Faridabad, where the present case was registered. The disclosure statements were received by PW8 Inspector Rajbir Singh, the Investigating Officer of the case on 12.09.1998 and after obtaining the production warrants from the Court, the accused were formally arrested on 03.11.1998 after a long delay. Ramesh Kumar @ Raj is stated to have arrested on 06.11.1998. Except the disclosure statements, suffered by the accused at Police Station City Dabwali

after a gap of more than one year, there is no other evidence to connect the appellants with the present crime.

Apart from that, admittedly, the FIR was got registered against four unknown persons and no test identification parade was held. Thus, there was no evidence to prove the identity of the accused in the instant case. The said submissions have been opposed by the learned State counsel, who submitted that the three accused/appellants have been duly identified by PW1 Varsha Vadhavan and PW2 Master Parnav who duly identified the accused in the Court, while appearing as PWs. Thus, the identity of the accused stood established and they were liable to be convicted by this Court. This Court has considered the above submissions made by the learned counsel for the parties and found that the plea raised by the learned counsel for the appellants is liable to be accepted by this Court. The occurrence had taken place on 07.10.1997. The FIR was initially registered against four persons and even their physical description was not mentioned in the said FIR. In such a situation, when the accused were arrested in November 1998, it was mandatory for the prosecution to hold test identification parade. Even, PW1 Varsha Vadhavan, complainant admitted in her cross-examination that she had seen the accused after their arrest and she saw the accused in police station. The faces of the accused were open and their faces were not muffled. Similarly, PW2 Master Parnav admitted that after the date of occurrence, he had seen the accused only in the

Court for the first time on 06.09.2001, i.e., after four years of occurrence. Consequently, the two witnesses PW1 and PW2 Master Parnav had identified the accused for the first time in the Court after a gap of four years and such identification is meaningless in the eyes of law. Even PW8 Inspector Rajbir Singh, who was the Investigating Officer of the case admitted that he never held any test identification parade of the accused. Consequently, identification of the accused for the first time after four years of the occurrence in the Court by witnesses is meaningless.

It has been held by the Hon'ble Supreme Court in the matter of Noorahammad and others Vs. State of Karnataka (2016) 3 Supreme Court Cases 325 as follows:-

This Court in the case of Dana Yadav v. State of Bihar has elaborated upon the importance of test identification parade in great details. The relevant para Nos. 6, 7 and 8 read thus: (SCC pp. 302-04).

"6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of an accused for the first time in court by a witness should not be relied upon, 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 purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence. We are fortified in our view by a catena of decisions of this Court in the cases of Kanta Prashad v. Delhi Admn., Vaikuntam Chandrappa, Budhsen, Kanan v. State of Kerala, Mohanlal Gangaram Gehani v. State of Maharashtra, Bollavaram Pedda Narsi Reddy, State of Maharashtra v. Sukhdev Singh, Jaspal Singh v. State of Punjab, Raju v. State of Maharashtra, Ronny, George v. State of Kerala, Rajesh Govind Jagesha, State of H.P. v. Lekh Raj and Ramanbhai Naranbhai Patel v. State of Gujarat.

7. Apart from the ordinary rule laid down in the aforesaid decisions, certain exceptions to the same have been carved out where identification of an accused for the first time in court without there being any corroboration whatsoever can form the sole basis for his conviction. In the case of Budhsen it was observed: (SCC p. 132, para 7)

"7....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."

8. In the case of State of Maharashtra v. Sukhdev Singh it was laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. In the case of Ronny it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held. In that case, the accused concerned had a talk with the identifying witnesses for about 7/8 minutes. In these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In the case of Rajesh Govind Jagesha it was laid down that the absence of test identification parade may not be fatal if the accused is sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on

the spot immediately after the occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for conviction without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this Court. In the case of State of H.P. v. Lekh Raj it was observed (at SCC p. 253, para 3) that:-

"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".

Learned counsel for the appellants further submitted that the occurrence had taken place on 07.10.1997 whereas the alleged recoveries were made after the arrest of the accused on 03.11.1998/06.11.1998. Even the recovery was made only from Ramesh Kumar @ Raj accused and the recovery was doubtful. The said submission has been opposed by the learned State counsel by submitting that recovered ornaments had been duly identified by Rajeshwar Kumar and the prosecution was liable to be believed by the Court. Again this Court finds no substance in the arguments made by the learned State counsel. Even in the FIR, no details as to the make, type, size or structure of the jewelry was given to the police. Still further, it is an admitted fact by PW3 Rajeswar Kumar

that the jewelry that is released to him on *superdari* was different from the one presented by him in the Court. Even, the recovery was made in the presence of PW10 ASI Babu Ram, who also admitted that no independent witness was joined at the time of recovery of the ornaments from Ramesh Kumar @ Raju. Still further, as per the case of the prosecution, the jewelry was handed over to Ramesh Kumar @ Raju for selling the same and it is highly improbable that the jewelry was retained by the alleged dacoits even after a period of more than one year. Still further, in the entire recovery process, no independent witness was joined and the evidence of the prosecution in this regard is liable to be rejected by this Court.

Still further, in the instant case, there is no other independent evidence on record except the disclosure statements suffered by the accused in a different FIR. Even, the statements of PW 8 Inspector Rajbir and PW10 ASI Babu Ram as to the mode of recovery are contradictory. PW8 Inspector Rajbir Singh states that Rajeswar Kumar, Babu Ram and he went in a private vehicle for the purpose of recovery whereas PW10 ASI Babu Ram stated that three of them went by bus, for which, they did not purchase the tickets.

In view of above observations made above, it is clear that the prosecution has not been successful in proving the case against the accused beyond the shadow of reasonable doubt and the findings recorded by the learned trial Court are erroneous and are contradictory as to the evidence on record and are unsustainable.

Consequently, the impugned judgment of conviction and order of sentence dated 29.07.2003, passed by the learned Additional Sessions Judge (Adhoc), Fast Track Court No.-II, Faridabad, are set-aside and the appellants are ordered to be acquitted of the charge. The appellants are ordered to be released from custody, if not required in any other case.

All pending applications, if any, are disposed off, accordingly.

The case property, if any, may be dealt with as per the rules after expiry of period of limitation for filing the appeal.

Records of the Court below be sent back.

30.11, 2022
amit rana

(N.S.SHEKHAWAT)
JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No