Madhya Pradesh High Court
Narayan vs State Of M.P. on 9 May, 2022
Author: Rajeev Kumar Shrivastava

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High Court of Madhya Pradesh
Bench at Gwalior
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DB:- Hon'ble Shri Justice G.SAhluwalia &
Hon'ble Shri Justice Rajeev Kumar Shrivastava

CRA 828 of 2011
Kalyan alias Kallu, son of Jagdish Gurjar Vs. State of MP

CRA 885 of 2011
Narayan, Son of Chhadami Kushwah vs. State of MP

CRA 898 of 2011
Pancham Singh, Son of Channi Jatav & Others Vs. State of MP

CRA 100 of 2012
Narayan, Son of Bhambar Singh Mirdha vs. State of MP

&
CRA 666 of 2012
Udal Singh, Son of Patiram Kushwah vs. State of MP

Shri Shailendra Singh Sengar with Shri Vijay Sundaram,
counsel for the appellant in CRA No.828 of 2011.
Shri Ashok Kumar Jain, counsel for appellants in CRA Nos.885
of 2011, 898 of 2011 and 666/2012.
Shri Dharmendra Rishiswar with Shri Vijay Sundaram, Counsel
for appellant in CRA 100 of 2012.
Shri C.P. Singh, learned Counsel for State in all criminal appeals.

Reserved on : 27-04-2022
Whether approved for reporting : Yes/.....

JUDGMENT

(Delivered on 09/05/2022) Per Rajeev Kumar Shrivastava, J:-

This judgment shall also govern disposal of CRA 885 of 2011 [Narayan, Son of Chhadami Kushwah vs. State of MP], CRA 898 of 2011[Pancham Singh, Son of Channi Jatav & Others Vs. State of MP], CRA 100 of 2012 [Son of Bhambar Singh Mirdha vs. State of MP] & CRA 666 of 2012 [Udal Singh, Son of Patiram Kushwah vs. State of MP] preferred under Section 374 of CrPC.

(2) Vide Judgment dated 08/08/2011 passed by Special Judge (MPDVPK Act,1981) Gwalior (MP) in Special Sessions Trial No. 70 of 2004, appellants accused Pancham Singh, Kalyan alias Kallu Gurjar,

Narayan Kushwah, Narayan Singh Mirdha, Punjab Singh Gurjar have been convicted under Section 364-A IPC and sentenced to undergo Life Imprisonment and under Section 365 IPC, sentenced to undergo Five Years Rigorous Imprisonment with fine of Rs.300/- each, with default stipulation whereas appellants Gariba alias Hanumant Singh Jatav and Tunda alias Rajesh Jatav have been convicted under Section 364-A r/w 120-B IPC and sentenced to undergo Life Imprisonment and under Section 365 r/w Section 120-B IPC r/w Section 13 of MPDVPK Act and sentenced to undergo Five Years RI with fine of Rs.300/-, with default stipulation. Both sentences have been directed to run concurrently.

(3) As appellant accused Udal Singh Kushwah had been absconded during trial, therefore, a separate judgment dated 28/06/2012 has been passed in the same Special Sessions Trial No.70 of 2004 by Special Judge (MPDVPK Act, 1981) Gwalior by which appellant accused Udal Singh has been convicted under Section 364-A IPC and sentenced to undergo Life Imprisonment and under Section 365 IPC r/w Section 13 of MPDVPK Act, sentenced to undergo Five Years rigorous imprisonment with fine of Rs.300/- with default stipulation. Both sentences have been directed to run concurrently.

(4) Since the factual matrix in all criminal appeals is same, therefore, for the sake of convenience, all criminal appeals are heard simultaneously.

(5) According to prosecution case, complainant Laxman Singh (PW3) lodged a report at Police Station Bijoli on 16-02-2004 to the effect that his tube-well in the agricultural field situated at the turn of Village Berja. His nephew Gopal (since abductee) had gone to sleep at the tube-well after having dinner in the night at around 10:00 O'clock and on the next day, Gopal did not return home till 10:00 O'clock in the morning. Thereafter, Ramveer brought food at the tube-well where Gopal was not found available. Then, Ramveer informed in the house that Gopal was not found present at tube-well. Afterwards, Gopal was searched at the place of Haridwari [who is brother-in-law of Gopal] but he was not found. The people of village also arrived there. Gopal was searched again at the tube-well and a key was found lying outside the gate and a lathi was also lying nearby and one of the shoes of Gopal was also found lying and the mustard crops in the field was found here and there. In this regard, a missing report vide Crime No.4/2004 was got registered and investigation was started. During investigation, it was found that said Gopal was abducted for a ransom and causing death. On that basis, Crime No.42/2004 under Section 364-A of IPC was got registered against five-six miscreants at PS Bijoli. Prakash [the brother of Gopal] and relative Jagat Singh went to Mau and Kheriya to search Gopal out and in Village Kheriya, Karan Singh told that Gopal has been kidnapped by Pancham Jatav, Narayan Kachhi, Udal Singh Kachhi, Narayan Singh Mirdha, Kalyan Singh Gurjar and Sumer Kachhi (died during pendency of trial). Thereafter, on reaching Village Kheriya, they met Udal Kachhi who demanded Rs.5 lac for the purpose of release of abductee Gopal. Thereafter, Jagat Singh and Prakash along with accused Udal Kachhi went to the forest of Lokanpur where abductors- miscreants were seen. Abductee Gopal was recovered from captivity of abductor-miscreant Pancham Singh & other miscreants on 12-03-2004 from the forest of Lokanpur by Police Station Dirolipar, District Datia in respect which, a recovery memo Ex.P1 was prepared. Abductee Gopal was handed over to his brother Prakash on Supurdignma vide Ex.P2. Accused Pancham Jatav, Narayan Singh and co-accused Lalkunwar Bai were arrested from forest. On the basis of

memorandum of Narayan Kachhi, a 12 bore single barrel gun was seized vide seizure memo Ex.P9 and a single barrel gun with 15 cartridges out of which two empty cartridges and fourteen live cartridges were recovered from the possession of accused Pancham Singh vide seizure memo Ex.P10. Statement of abductee Gopal (PW1) was reordered wherein he stated that he was kidnapped by miscreants Pancham Jatav, Narayan Kachhi, Narayan Mirdha, Udal Kachhi, Kalyan alias Kallu, Sumer Kachhi and Gariba alias Hanumant Singh who had demanded Rs.5 for the purpose of his release. Accused Kalyan alias Kallu was arrested on 05-04-2004 vide arrest memo Ex.P12, Udal Kushwah was arrested on 06-04-2004 vide arrest memo Ex.P13, Gariba alias Hanumant Singh was arrested on 10- 04-2004 vide arrest memo Ex.P14, Sumer Kachhi was arrested on 19-03-2004 vide arrest Ex.P15, Tunda alias Rajesh was arrested on 28-04-2004 vide arrest memo Ex.P16, Narayan Singh Mirdha was arrested on 19-06-2004 vide arrest memo Ex.P17 and Punjab Singh was arrested on 27-06-2004 vide arrest memo Ex.P18. After completion of investigation and other formalities, a charge sheet was filed before the Court concerned.

(6) Charges of Sections 364-A, 365 IPC r/w Section 13 of MPDVPK Act against Pancham, Narayan Mirdha, Narayan Singh Kushwah. Kalyan alias Kallu, Punjab Singh, Udal Singh and charges of Section 364-A, in the alternate 120-B of IPC r/w Section 364-A of IPC and Section 365, in alternative Section 120- B r/w Section 365, as also read with Section 13 of MPDVPK Act, 1981 against accused persons Lalkunwar Bai, Gariba alias Hanumant Singh and Tunda alias Rajesh were read over and explained.

(7) Accused persons abjured their guilt and claimed to be trial. Statements of accused were recorded u/S 313 of CrPC. In their plea, accused persons pleaded themselves to be innocent and implicated on account of animosity. Accused Narayan Kushwah stated that it was his licensed gun and the police personnel has taken it from the house and on demand of police, he had given the same to the police. Accused Pancham Singh stated that he was informed by police and the witnesses were relatives of dacoit Govind Singh Kushwah and there was a doubt that he got encountered by dacoit of Govind Singh Kushwah and on account of that, a false statement are being made against him and his family members. It has been stated by accused Narayan Mirdha that he has been falsely implicated on account of election enmity. On the date of incident, he had done to attend the marriage ceremony of his nephew. In support of defence, Rustam Singh, Amar Singh and Lakhpat were examined as DW1, DW2 and DW3 respectively.

(8) Prosecution in order to support of it case, has examined as many as seven witnesses, i.e. abductee Gopal Singh (PW1), Khacheru (PW2), Laxman (PW3), Prakash (PW4), Hari Singh (PW5), Bheekaram (PW6) and Pradeep Ranouria (PW7) (9) It is contended on behalf of appellants that the prosecution has shown about demand of Rs.5 lac as ransom amount respect of release of abductee Gopal but such evidence is not available on record. In para 1 of his examination-in-chief abductee stated that Rs.2 lac to accused Narayan Mirdha whereas in para 5 and 8 of his evidence abductee stated that he did not say about giving Rs.2 lac as ransom amount to the police and deposed first for the time being in force before the Court which is under suspicious and the prosecution has failed to prove in respect of any kind of demand of ransom or providing amount of ransom.There are contradictions and omissions in the Court statement and police statement of the abductee recorded u/S 161 CrPC. It is further contended that although abductee Gopal in his police diary statement

admitted that prior to the incident he had known the accused but the trial Court has erred in convicting the accused on the basis of identification made in the Court. No threaten was given to the family members of complainant to cause death or hurt to abductee or caused an apprehension to cause death or hurt of abductee, therefore, no case under Section 364-A of IPC is made out against the accused. The test identification of accused by the abductee was not properly conducted by the prosecution. The accused have been falsely implicated due to the previous enmity on election. No evidence of independent witnesses was produced by the prosecution in order to prove its case beyond reasonable doubt. It is also contended that on the one hand, abductee in his examination-in-chief deposed that he had known very-well the accused and on the other hand, the abductee in his cross-examination admitted that he had known accused because of their talking each other's name, therefore, his evidence is not reliable. It is further contended that there was a previous election dispute between abductee Gopal and accused by which accused Narayan Mirdha has been falsely implicated and the abductee has deposed that at the time of incident accused Narayan Singh Mirdha was not present. The learned Trial Court has not considered these aspects while passing the impugned judgment. On these grounds, the same deserves to be set aside. (10) On the other hand, learned Counsel for the State supported the impugned judgment and submitted that there being no infirmity in the impugned judgment of conviction and sentence and the findings arrived at by Trial Court do not require any inference by this Court. Hence, prayed for dismissal of appeals.

(11) Heard learned counsel for the parties and perused record of the trial Court.

(12) Abductee Gopal Singh (PW1) in his evidence deposed that on the date of incident at around 09:00-10:00 in the night when he was unlocking the room near his tube-well, at that time, eight miscreants came there out of which, two miscreants caught hold of him and thereafter, committed assaults him by means of "lathi" and butt of gun. He recognized one of the miscreants whose name is Narayan Mirdha and who was having a 315 bore mouser gun. This witness further deposed that he had tried to fled away from the clutches of the miscreants but could not succeed and in the mustard field near Jatrawi Village, the miscreants tied him. Food was brought at there from house of Kalyan. Thereafter, it became evening and miscreants moved ahead. Afterwards, they kept moving whole night and reached at forest of Lokanpur in the next day morning. This witness further deposed that he was thrown in the bushes by locking him with chain and he had identified the miscreants there out of them, one Pancham Singh was present and who was having a gun and Narayan Kachhi was having a single barrel 12 bore gun. There were other miscreants, namely, Kalyan, Udal Kachhi, Sumer Kachhi and Punjab Gurjar. Tunda and Gariba brought food at Lokanpur and he was kept for a month in their captivity of miscreants and he was beaten by them and the miscreants had demanded Rs.5 lac as a ransom from his family members. The family members contracted to police and had paid Rs.2 lac as ransom to Narayan Mirdha to get him free. When Tunda and Gariba were coming for providing food and they informed to the miscreants that police has arrived. It would have been around 9:00-10:00 night, some of them fled away by taking their clothes. The abductee also deposed that the police also caught of him and he was well- acquainted with all miscreants who had beaten him severely. The witness has stated this fact while weeping before police and police had recovered him from captivity of miscreants vide recovery memo Ex.P1. This witness in para 2 of his examination-in-chief before the Court deposed that he was well-acquainted with all the accused person who had abducted him and also recognized accused Lalkunwar who was not present in the

Court on that day. This witness in para 5 of his evidence deposed that all the miscreants had covered their faces with towel to conceal their identity. In para 14 the abductee deposed that those miscreants who abducted him at that time had covered their faces with towel and only their eyes were visible. The abductee further deposed that at that time, he identified Narayan Singh, one of miscreants. This witness denied that when food was eaten in the mustard field of Jatrawi village, then accused persons were covered their faces. Food was brought from house Kalyan prepared by his mother. This witness deposed that he did not recognize Kalyan by face earlier. This witness in para 18 of his deposition stated that he has already come eight- ten times in the Court but he does not know the date as he is an illiterate. Similarly, father of abductee PW2 Khacheru has supported the prosecution version.

(13) Laxman (PW3) who is the uncle of abductee in para 5 of his deposition stated that he does not recognize Kalyan Singh of Jatrawi village by name & face. He had identified the miscreants in the Court about their names. Prior to it, he did not know to accused.

(14) Prakash (PW4) who is the brother of abductee in para 1 of his deposition stated that he and Haridwari had given Rs.2 lac to Narayan Mirdha for release of his brother Gopal and thereafter, abductee was set free. This witness in para 5 of his deposition stated that Narayan Mirdha met him in Village Mau who asked him to give Rs.5 lac so that the whereabouts of abductee could be known.

(15) Pradeep Ranouria (PW7) in his evidence deposed that on 05-03-2004, he was posted as SHO at Police Station Bijoli and on 16-02-2004 an information regarding missing of the abductee was given by Laxman Singh on the basis of which, the Head Constable Brijbihari had recorded a missing report and the matter was investigated and the statements of witnesses were recorded. On giving enquiry report, on 05-03-2004 FIR at Crime No.42/2004 was lodged vide Ex.P11 by him on the basis of which, whole matter was investigated.This witness further deposed that on 06-03-2004 spot map Ex.P3 was prepared. This witness further deposed that statements of witnesses Prakash, Laxman and Khacheru were recorded and on 12-03-2004 as well as statements of abductee Gopal, Bheekaram and Jagat Singh were recorded. Seizure memo was prepared vide Ex.P1. On the said date, abductee Gopal was handed over to his brother Prakash on Supurdignma vide Ex.P2 & accused Lalkunwar Bai, Pancham Singh, Narayan Kushwah were arrested vide arrest memo Ex.P4 to Ex.P6. On the basis of memorandum of Pancham Singh, Ex.P7 and Ex.P8, a 12 bore gun was seized vide seizure memo Ex.P9 and on the same day i.e. 14-04-2004, from the possession of Pancham Jatav, one 12 bore single barrel gun including two empty and 12 live cartridges was seized vide seizure memo Ex. P10. On 05-04-2004 accused Kalyan alias Kallu was arrested vide arrest memo Ex.P12, on 06-04-2004 accused Udal Singh Kushwah was arrested vide arrest memo Ex.P13, on 10-04-2004 accused Gariba alias Hanumant was arrested vide arrest memo Ex.P14, on 19-03-2004 accused Sumer Kachhi was arrested vide arrest memo Ex.P15, on 28-04-2004, accused Tunda alias Rajesh Jatav was arrested vide arrest memo Ex.P16, on 09-06-2004 accused Narayan Singh was arrested vide arrest memo Ex.P17, on 27-06-2004 accused Punjab Singh was arrested vide arrest memo Ex.P18 and on 18-06-2004 accused Narayan Mirdha was arrested and on the basis of his memorandum, a 315 bore gun kept in his house was seized vide Ex.P19. On the basis of memorandum of Narayan Mirdha, search was made vide Ex.P20. This witness in para 2 admitted that initially missing report No. 04/2004 dated 16-02-2004 was lodged against unknown persons

and admitted that from the possession of accused Kallu, no incriminating article was seized. In para 3 of his evidence, this witness denied that accused Kallu was in the jail at the time of incident and on the say of complainant, he was arrested and in para 5 of his cross-examination, this witness further denied that accused Lalkunwar Bai was falsely arrested at police station after calling her from house. This witness denied that he has falsely implicated all the accused persons.

(16) Witnesses Hari Singh (PW5) and Bheekaram (PW6) both in their evidence deposed that in their presence arrest memo Ex.P4 to Ex.P6 as well as seizure memo Ex.P7 to Ex.P10 were prepared. Both witnesses have proved the same. In the presence of Hari Singh (PW5), Police had handed over abductee to his brother Prakash on Supurdignama vide Ex.P2 and Hari Singh has proved the same.

(17) On behalf of accused although DW1 Rustam Singh, DW2 Amar Singh and DW3 Lakhpat were examined but there were some contradictions & omissions in their defence evidence that's why their evidence has been disbelieved by the trial Court as they had tried to save the accused.

(18) It is contended on behalf of appellants that in absence of TIP of abductee by police, dock identification of accused should not be believed. In support of contention, judgments of Hon'ble Apex Court in the case of Sonu Kumar vs. State of Himachal Pradesh, reported in AIR 2009 SC 810 and also the judgment of this Court in the case of Mohar Singh and Others vs. State of MP, reported in ILR (2011) MP 1355 have been relied upon. (19) Regarding Identification Parade, the Hon'ble Apex Court in the matter of Sheo Shankar Singh Vs. State of Jharkhand (2011) 3 SCC 654 has held as under:-

> "46.It is fairly well settled that identification of the accused in the Court by the witness constitutes the substantive evidence in a case although any such identification for the first time at the trial may more often than not appear to be evidence of a weak character. That being so a test identification parade is conducted with a view to strengthening the trustworthiness of the evidence. Such a TIP then provides corroboration to the witness in the court who claims to identify the accused persons otherwise unknown to him. Test identification parades, therefore, remain in the realm of investigation.
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> 47. The Code of Criminal Procedure does not oblige the investigating agency to necessarily hold a test identification parade nor is there any provision under which the accused may claim a right to the holding of a test identification parade. The failure of the investigating agency to hold a test identification parade does not, in that view, have the effect of weakening the evidence of identification in the court. As to what should be the weight attached to such an identification is a matter which the court will determine in the peculiar facts and circumstances of each case. In appropriate cases the court may accept the evidence of identification in the court even without insisting on corroboration.
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> 48. The decisions of this Court on the subject are legion. It is, therefore, unnecessary to refer to all such decisions. We remain content with a reference to the following

observations made by this Court in Malkhansingh v. State of M.P. [(2003) 5 SCC 746]: (SCC pp. 751-52, para 7) "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 investigating 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. (See Kanta Prashad v. Delhi Admn. [AIR 1958 SC 350], Vaikuntam Chandrappa v. State of A.P. [AIR 1960 SC 1340], Budhsen v. State of U.P. [(1970) 2 SCC 128] and Rameshwar Singh v. State of J&K [(1971) 2 SCC 715].)"

49. We may also refer to the decision of this Court in Pramod Mandal v. State of Bihar [(2004) 13 SCC 150] where this Court observed: (SCC p. 158, para 20) "20. It is neither possible nor prudent to lay down any invariable rule as to the period within which a test identification parade must be held, or the number of witnesses who must correctly identify the accused, to sustain his conviction. These matters must be left to the courts of fact to decide in the facts and circumstances of each case. If a rule is laid down prescribing a period within which the test identification parade must be held, it would only benefit the professional criminals in whose cases the arrests are delayed as the police have no clear clue about their identity, they being persons unknown to the victims. They, therefore, have only to avoid their arrest for the prescribed period to avoid conviction. Similarly, there may be offences which by their very nature may be witnessed by a single witness, such as rape. The offender may be unknown to the victim and the case depends solely on the identification by the victim, who is otherwise found to be truthful and reliable. What justification can be pleaded to contend that such cases must necessarily result in acquittal because of there being only one identifying witness? Prudence therefore demands that these matters must be left to the wisdom of the courts of fact which must consider all aspects of the

> matter in the light of the evidence on record before pronouncing upon the acceptability or rejection of such identification."
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> 50. The decision of this Court in Malkhansingh case [(2003) 5 SCC 746]: and Aqeel Ahmad v. State of U.P. [(2008) 16 SCC 372] adopt a similar line of reasoning.

(20) Further, the Hon'ble Apex Court in the case of Prakash Vs. State of Karnataka (2014) 12 SCC 133 has held as under :

> "15. An identification parade is not mandatory nor can it be claimed by the suspect as a matter of right..The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable unless the suspect has been seen by the witness or victim for some length of time. In Malkhansingh v. State of M.P. (2003) 5 SCC 746 it was held: (SCC pp. 751- 52, para 7) "7. ... 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. 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."

(21) Regarding Dock Identification, the Hon'ble Apex Court in the matter of State of Rajasthan Vs. Daud Khan (2016)2 SCC 607 has held as under :-

> Dock identification: Submissions and discussion:
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> 42. It was contended by Daud Khan that the three chance witnesses, PW 7 Mahabir Singh, PW 23 Narender Singh and PW 24 Rishi Raj Shekhawat were all from out of town. As such, they could not have identified Daud Khan or Javed. It was further contended that no test identification parade (for short "TIP") was conducted and reliance could not have been placed only on their dock identification.
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> 43. No such argument was raised by Daud Khan either in the trial court or in the High Court and we see no reason to permit such an argument being raised at this stage.
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> 44. That apart, it was recently held in Ashok Debbarma v. State of Tripura that while the evidence of identification of an accused at a trial is admissible as a substantive piece of evidence, it would depend on the facts of a given case whether or not such a piece of evidence could be relied upon as the sole basis for conviction of an accused.

> It was held that if the witnesses are trustworthy and reliable, the mere fact that no TIP was conducted would not, by itself, be a reason for discarding the evidence of those witnesses. In arriving at this conclusion, this Court relied upon a series of decisions. Earlier, a similar view was expressed in Manu Sharma v. State (NCT of Delhi).
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> 45. In any event, there were two other witnesses to the shooting, namely, PW 11 Narendra Kumawat and PW 19 Suraj Mal who were local residents and knew Nand Singh and Daud Khan and could easily identify them.
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> 46. Five witnesses have testified to the events that took place at Bathra Telecom on the night of 19-6-

2004. We see no reason to disbelieve any of them, particularly since they have all given a consistent statement of the events. There are some minor discrepancies, which are bound to be there, such as the distance between the gun and Nand Singh but these do not take away from the substance of the case of the prosecution nor do they impinge on the credibility of the witnesses.'' (22) Further, the Hon'ble Apex Court in the matter of Mukesh & another Vs. State (NCT of Delhi) & Others, (2017) 6 SCC 1, has held as under:-

> "143. In Santokh Singh v. Izhar Hussain, it has been observed that the identification can only be used as corroborative of the statement in court.
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> 144. In Malkhansingh v. State of M.P., it has been held thus:
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> "7. ... 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. 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. ..."
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> And again:
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> "16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. ..."
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> 145. In this context, reference to a passage from Visveswaran v. State represented by S.D.M. would be apt. It is as follows:

"11. ...The identification of the accused either in test identification parade or in Court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence. ..."

146. In Manu Sharma v. State (NCT of Delhi), the Court, after referring to Munshi Singh Gautam v. State of M.P., Harbhajan Singh v. State of J&K and Malkhansingh (supra), came to hold that the proposition of law is quite clear that even if there is no previous TIP, the court may appreciate the dock identification as being above board and more than conclusive.

147. In the case at hand, the informant, apart from identifying the accused who had made themselves available in the TIP, has also identified all of them in Court. On a careful scrutiny of the evidence on record, we are of the convinced opinion that it deserves acceptance. Therefore, we hold that TIP is not dented."

(23) The Hon'ble Apex Court in the matter of Prakash Vs. State of Karnataka (2014) 12 SCC 133, has held as under :-

"15. An identification parade is not mandatory nor can it be claimed by the suspect as a matter of right. The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable unless the suspect has been seen by the witness or victim for some length of time. In Malkhansingh v. State of M.P. (2003) 5 SCC 746 it was held: (SCC pp. 751-52, para

7) "7. ... 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. 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."

16. However, if the suspect is known to the witness or victim or they have been shown a photograph of the suspect or the suspect has been exposed to the public by the media (2013) 14 SCC 266 no identification evidence is necessary. Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution. In Visveswaran v. State (2003) 6 SCC 73 it was held: (SCC p. 78, para 11)
"

11. ... The identification of the accused either in a test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence."

(24) The Hon'ble Apex Court in the matter of State of Rajasthan Vs. Daud Khan (2016) 2 SCC 607 has held as under :-

"44. That apart, it was recently held in Ashok Debbarma v. State of Tripura (2014) 4 SCC 747 that while the evidence of identification of an accused at a trial is admissible as a substantive piece of evidence, it would depend on the facts of a given case whether or not such a piece of evidence could be relied upon as the sole basis for conviction of an accused. It was held that if the witnesses are trustworthy and reliable, the mere fact that no TIP was conducted would not, by itself, be a reason for discarding the evidence of those witnesses. In arriving at this conclusion, this Court relied upon a series of decisions. AIR 1958 SC 350 Earlier, a similar view was expressed in Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1." (25) The Hon'ble Apex Court in the case of Suraj Pal Vs. State of Haryana (1995) 2 SCC 64 has held as under:-

"14.....It may be pointed out that the holding of identification parades has been in vogue since long in the past with a view to determine whether an unknown person accused of an offence is really the culprit or not, to be identified as such by those who claimed to be the eyewitnesses of the occurrence so that they would be able to identify the culprit if produced before them by recalling the impressions of his features left on their mind. That being so, in the very nature of things, the identification parade in such cases serves a dual purpose. It enables the investigating agency to ascertain the correctness or otherwise of the claim of those witnesses who claimed to have seen the offender of the crime as well as their capacity to identify him and on the other hand it saves the suspect from the sudden risk of being identified in the dock by such witnesses during the course of the trial. This practice of test identification as a mode of identifying an unknown person charged of an offence is an age- old method and it has worked well for the past several decades as a satisfactory mode and a well- founded method of criminal jurisprudence. It may also be noted that the substantive evidence of identifying witness is his evidence made in the court but in cases where the accused person is not known to the witnesses from before who claimed to have seen the incident, in that event identification of the accused at the earliest possible opportunity after the occurrence by such witnesses is of vital importance with a view to avoid the chance of his memory fading away by the time he is examined in the court after some lapse of time."

(26) The Hon'ble Apex Court in the case of Dara Singh Vs. Republic of India (2011) 2 SCC 490, it has been held as under :

"40. It is relevant to note that the incident took place in the midnight of 22-1-1999/23-1-1999. Prior to that, a number of investigating officers had visited the village of occurrence. Statements of most of the witnesses were recorded by PW 55, an officer of CBI. In the statements recorded by various IOs, particularly the local police and State CID, these eyewitnesses except few claim to have 18 Criminal Appeal No.935/2012 Sambhar Singh Vs. State of M.P. identified any of the miscreants involved in the incident. As rightly observed by the High Court, for a long number of days, many of these eyewitnesses never came forward before the IOs and the police personnel visiting the village from time to time claiming that they had seen the occurrence. In these circumstances, no importance need to be attached on the testimony of these eyewitnesses about their identification of the appellants other than Dara Singh (A-1) and Mahendra Hembram (A-3) before the trial court for the first time without corroboration by previous TIP held by the Magistrate in accordance with the procedure established.

41. It is a well-settled principle that in the absence of any independent corroboration like TIP held by the Judicial Magistrate, the evidence of eyewitnesses as to the identification of the appellant- accused for the first time before the trial court generally cannot be accepted. As explained in Manu Sharma v. State (NCT of Delhi) (2010) 6 SCC 1, that if the case is supported by other materials, identification of the accused in the dock for the first time would be permissible subject to confirmation by other corroborative evidence, which are lacking in the case on hand except for A- 1 and A-3. 42. In the same manner, showing photographs of the miscreants and identification for the first time in the trial court without being corroborated by TIP held before a Magistrate or without any other material may not be helpful to the prosecution case. To put it clearly, the evidence of witness given in the court as to 43. It is true that absence of TIP may not be fatal to the prosecution. In the case on hand, A-1 and A-3 were identified and also corroborated by the evidence of slogans given in his name and each one of the witnesses asserted the said aspect insofar as they are concerned. We have also adverted to the fact that none of these witnesses named the offenders in their statements except few recorded by IOs in the course of investigation. Though an explanation was offered that out of fear they did not name the offenders, the fact remains, on the 19 Criminal Appeal No.935/2012 Sambhar Singh Vs. State of M.P. next day of the incident, the Executive Magistrate and top-level police officers were camping in the village for quite some time. Inasmuch as evidence of the identification of the accused during trial for the first time is inherently weak in character, as a safe rule of prudence, generally it is desirable to 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 TIP. Though some of them were identified by the photographs except A-1 and A-3, no other corroborative material was shown by the prosecution.

44. Now let us discuss the evidentiary value of photo identification and identifying the accused in the dock for the first time.

45. The learned Additional Solicitor General, in support of the prosecution case about the photo identification parade and dock identification, heavily relied on the decision of this Court in Manu Sharma (2010) 6 SCC 1. It was argued in that case that PW2, Shyan Munshi had left for Kolkata and thereafter, photo identification was got done when SI Sharad Kumar, PW 78 went to Kolkata to get the identification done by picking up from the photographs wherein he identified the accused Manu Sharma though he refused to sign the same. However, in the court, PW 2 Shyan Munshi refused to recognise him. In any case, the factum of photo identification by PW 2 as witnessed by the officer concerned is a relevant and an admissible piece of evidence.

46. In SCC para 254, this Court held: (Manu Sharma case (2010) 6 SCC 1, SCC p. 96).

"254....Even a TIP before a Magistrate is otherwise hit by Section 162 of the Code.

Therefore to say that a photo identification is hit by Section 162 is wrong. It is not a substantive piece of evidence. It is only by virtue of Section 9 of the Evidence Act that the same i.e. the act of identification becomes admissible in court. The logic behind TIP, which will include photo identification lies in the fact that it is only an aid to investigation, where an accused is not known to the witnesses, the IO conducts a TIP to ensure that he has got the right person as an accused. The practice is not borne out of procedure, but out of prudence. At best it can be brought under Section 8 of the Evidence Act, as evidence of conduct of a witness in photo identifying the accused in the presence of an IO or the Magistrate, during the course of an investigation."

47. It was further held: (Manu Sharma case (2010) 6 SCC 1, SCC pp. 98-99, para 256) ... " 256.....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 investigating 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.'*" It was further held that: (Manu Sharma case 21 Criminal Appeal No.935/2012 (2010) 6 SCC 1, SCC p. 99, para 259) "259.... The photo identification and TIP are only aides in the investigation and do not form substantive evidence. The substantive evidence is the evidence in the court on oath."

48. In Umar Abdul Sakoor Sorathia v. Narcotic Control Bureau (2000) 1 SCC 138 the following conclusion is relevant: (SCC p. 143, para 12) "12. In the present case prosecution does not say that they would rest with the identification made by Mr Mkhatshwa when the photograph was shown to him. Prosecution has to examine him as a witness in the court and he has to identify the accused in the court. Then alone it would become substantive evidence. But that does not mean that at this stage the court is disabled from considering the prospect of such a witness correctly identifying the appellant during trial. In so considering the court can take into account the fact that during investigation the photograph of the appellant was shown to the witness and he identified that person as the one whom he saw at the relevant time."

49. In Dana Yadav v. State of Bihar (2002) 7 SCC 295, SCC para 38, the following conclusion is relevant: (SCC p. 316) "(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 the 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 valve to the evidence of identification in court of an accused by a witness and the same is a rule of prudence and not law."

50. It is clear that identification of accused persons by a witness in the dock for the first time though permissible but cannot be given credence without further corroborative evidence. Though some of the witnesses identified some of the accused in the dock as mentioned above without corroborative evidence the dock identification alone cannot be treated as substantial evidence, though it is permissible."

(27) In the light of law laid down by Hon'ble Apex Court in the aforementioned cases, it is clear that Dock Identification of accused in the Court is a substantive piece of evidence because the basic purpose of conducting TIP by police is to ascertain that whether police are proceeding in correct direction or not. In the present case at hand, non-holding of TIP by police cannot be said to be fatal to the prosecution case for the simple reason that once abductee in his police statement has named the miscreants, then it is not necessary for police to hold TIP. Merely because abductee has failed to

> identify the accused in the Dock by itself would not mean that non-holding of TIP by police after arrest of accused is fatal to the prosecution version. Under these circumstances, this Court is of considered view that the prosecution has rightly established its case beyond reasonable doubt that Gopal was abducted by all the accused persons in a secret and intention manner and ransom amount was demanded from the family members of the abductee.

(28) The next contention of counsel for the appellants that due to previous enmity over election, the appellants have been falsely implicated is concerned, it is well-established principle of law that animosity or enmity is a double-edged weapon. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, even otherwise their testimony inspires confidence. Similarly, being relatives, it would be their endeavour to see that real culprits are punished and normally, they would not implicate wrong persons in the crime so as to allow the real culprits to escape unpunished. It is, therefore, not a safe rule to reject prosecution evidence merely on the ground that complainant party and accused party were on inimical terms. In such a situation, it only puts the Court with solemn duty to make a deeper probe and scrutinize evidence with more than ordinary care which precaution has already been taken by trial Court while analyzing and accepting the evidence. (29) So far as the question of demand of ransom and payment of ransom is concerned, ransom amount of Rs.2 lac was given by family members of the abductee to one of miscreants Narayan Mirdha. It is undisputed fact that accused had received the said ransom amount who is one of members of abductors miscreants, therefore, accused persons cannot exonerated from the charges levelled aforesaid by non-receipt of any ransom amount. In the case at hand, prosecution witnesses have also specifically deposed that the said ransom amount was handed over to one of miscreants, namely, Narayan Mirdha. The evidence of abductee is fully corroborated the version of other prosecution witnesses. (30) Next contention of the counsel for appellants that when Prakash, brother of abductee along with one of relatives Jagat Singh went to Village Mau & Kheriya to search out the abductee in the village Kheriya, one Karan Singh told them that Gopal has been kidnapped by miscreants but the prosecution has not examined the said Karan. The aforesaid contention of the counsel has no force as the Hon'ble Apex Court in catena of decisions has already held that in order to prove its case beyond reasonable doubt the evidence produced by prosecution has to be qualitative and may not be quantitative. It is the duty of the Court to convict the accused if it is satisfied that testimony of a single witness is entirely reliable. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove or disprove a fact. It is settled principle of law that "evidence must be weighed and not counted". The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than multiplicity or plurality of witnesses. It is the quality and not quantity, which determines adequacy of evidence as has been provided by Indian Evidence Act. In the case at hand,if prosecution has not examined the said Karan, the accused could have examined this witness in their defence [See:-Vadivelu Thevar & Anr. v. State of Madras; AIR 1957 SC 614; Kunju @ Balachandran v. State of Tamil Nadu, AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal AIR 2010 SC 3638;Mahesh & Anr. v. State of Madhya Pradesh (2011) 9 SCC 626 Prithipal Singh & Ors. v. State

of Punjab & Anr., (2012) 1 SCC 10; and Kishan Chand v. State of Haryana JT 2013(1) SC 222].

(31) In the light of forgoing discussion as well as on scrutinizing the prosecution evidence, especially the evidence of abductee, it is evident that prosecution has rightly established its case beyond reasonable doubt and held the appellants guilty of commission of offences aforesaid. Therefore, no interference is called for. All the criminal appeals lack merit and are hereby dismissed.

(32) As a sequel, the judgment dated 08/08/2011 passed by Special Judge (MPDVPK Act,1981) Gwalior (MP) in Special Sessions Trial No.70/2004 as well as judgment dated 28/06/2012 passed in the same Special Sessions Trial by Special Judge (MPDVPK Act, 1981) Gwalior are hereby affirmed. (33) Since appellant Kalyan alilas Kallu (in Criminal Appeal No.828 of 2011) is on bail, therefore, his bail bonds and surety bonds are cancelled and he be directed to surrender before the trial Court concerned to serve out the remaining jail sentence.

Since accused Narayan, son of Chhadami Kushwah (in Criminal Appeal No.885 of 2011) is in jail but released on parole, therefore, he be directed to surrender before the trial Court concerned to serve out the remaining jail sentence.

Since except appellant Punjab Singh Gurjar, appellants accused Pancham Singh, Gariba alias Hanumant Singh and Tunda alias Rajesh (Criminal Appeal No.898 of 2011) are on bail, therefore, their bail bonds and surety bonds are cancelled and they be directed to surrender before the trial Court concerned to serve out the remaining jail sentence and appellant Punjab Singh Gurjar shall remain in jail to serve out the remaining jail sentence awarded by trial Court.

Since appellant Narayan son of Bhambar Singh Mirdha (in Criminal Appeal No.100 of 2012) is in jail, therefore, he shall remain in jail to serve out the remaining jail sentence awarded by trial Court.

Since appellant Udal Singh (in Criminal Appeal No. 666 of 2012) is in jail, therefore, he shall remain in jail to serve out the remaining jail sentence awarded by trial Court. (34) Let a copy of this judgment be sent to the concerning jail authorities forthwith and also a copy of this judgment along with record be sent to the concerning Trial Court for necessary information and follow-up action.

(G. S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

MKB

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