HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

DB : Justice Vivek Agarwal
&
Justice G.S. Ahluwalia

Criminal Appeal No. 408/2008

Baiju @ Vijay
Vs.
State of Madhya Pradesh

Shri Vinay Kumar, counsel for the appellant appointed from Legal Aid.
Shri Ankit Saxena, Public Prosecutor for the respondent/State.

Date of hearing : 23.02.2019
Date of judgment : 28.02.2019
Whether approved for reporting : Yes/No

J U D G M E N T
(Passed on 28/02/2019)

Per Justice G.S. Ahluwalia

This criminal appeal under Section 374 of Cr.P.C. has been filed against the judgment and sentence dated 15.02.2008 passed by Special Judge (MPDVPK Act), Shivpuri in Special Sessions Trial No.60/2004 thereby convicting the appellant under Section 365/34 of IPC and sentencing him for rigorous imprisonment of seven years and a fine of Rs.1,000/- with default imprisonment and under Section 364-A/34 of IPC and sentencing him for life imprisonment and a fine of Rs.5,000/- with default imprisonment. Both the sentences have

been directed to run concurrently.

(2) Before adverting to the facts of the case, it is necessary to refer to certain important facts. Earlier the charge-sheet was filed against the appellant and the other co-accused persons namely Dayaram Gadariya, Rambabu Gadariya, Prakash Gadariya, Sobran Gadariya for offence under Sections 364-A, 365/34 of IPC and Section 11/13 of MPDVPK Act by showing him to be absconding. Accordingly, the warrants of arrest were issued. Later on, a report was submitted that the co-accused Sobran Singh has died on 06.01.2006. On 26.06.2006 the warrant of arrest issued against the appellant was received back with an information that the dead body of the present appellant has been received. The said report was submitted along with the postmortem report and the identification memo of the appellant and, accordingly, by order dated 26.06.2006, the Trial Court after relying upon the report of the police, held that the appellant has expired and accordingly his name was deleted from the charge-sheet. Thereafter, another report was submitted by the police to the effect that the co-accused Dayaram and Rambabu have also died. The report submitted by the police in respect of Dayaram and Rambabu was also accepted and the names of Dayaram and Rambabu were deleted from the charge-sheet. Subsequently, it was informed that in fact, the present appellant had not expired and he was lodged in Shivpuri jail and accordingly, on 01.11.2007 a supplementary charge-sheet was filed against the appellant for offence under Section 365, 364-A/34 of

IPC and under Section 11/13 of MPDVPK Act. It is submitted by the counsel for the State that earlier the dead body of one dacoit was found in the forest area in a highly decomposed condition and because of one "*mala"* found on the dead body of said dacoit, it was identified that the dead body is of appellant. Although initially, it was mentioned by the police in the postmortem requisition form itself that for establishing the identification of the deceased, it is necessary to conduct the DNA report, but because of subsequent identification of the body, no DNA was conducted and on the basis of "*mala",* which was found on the dead body, one Jagram identified that it is the body of the present appellant. Under these circumstances, initially the police had filed the report that the appellant has expired. However, later on, it was found that in fact, the appellant is still alive and lodged in Shivpuri jail in connection with some other case, therefore, on 05.10.2017 permission was sought to formally arrest the appellant and accordingly, the supplementary charge-sheet was filed.

(3) The necessary facts for the disposal of the present appeal in short are that on 07.03.2003 at about 01:00 in the night, when the abductees Badam Singh, Kalyan Singh, Veer Singh and Jaswant Singh were irrigating their field, then they were abducted by four miscreants along with Prakash and Gokul. As Prakash and Gokul were belonging to Dhobi caste, therefore, they were released by the dacoits, but abductee Badam Singh, Kalayan Singh, Veer Singh and Jaswant Singh were taken to the forest area, where they were kept in

captivity for a period of one month and they were released after taking the ransom amount. The police after investigating the matter filed the charge-sheet against the appellant and other co-accused persons for offence under Sections 364-A, 365/34 of IPC read with Section 11/13 of MPDVPK Act. Initially, the charge-sheet was filed under Section 299 of Cr.P.C. and later on, it was found that the appellant was in Shivpuri Jail in connection with some other offence, therefore, a supplementary charge-sheet was filed as the appellant was earlier declared as dead.

(4) The Trial Court by order dated 01.11.2007 framed the charges under Section 364-A/34 of IPC read with Section 11/13 of MPDVPK Act and Section 365/34 read with Section 11/13 of MPDVPK Act.

(5) The appellant abjured his guilt and pleaded not guilty.

(6) The prosecution in order to prove its case examined Prakash (PW-1), Gokul (PW-2), Badam Singh (PW-3), Jaswant Singh (PW-4), Veer Singh (PW-5), Kalyan Singh (PW-6), Ramprasad (PW-7), Gyaneshwar Sharma (PW-8), Kailash Babu Arya (PW-9) and Vinod Kumar Sharma (PW-10).

(7) The appellant did not examine any witness in his defence.

(8) The Trial Court by judgment and sentence dated 15.02.2008 passed in Special Sessions Trial No.60/2004 convicted the appellant for offence under Section 365/34 of IPC read with

Section 11/13 of MPDVPK Act (2 counts) and 364-A/34 of IPC read with Section 11/13 of MPDVPK Act (4 counts) and sentenced him to undergo the rigorous imprisonment of seven years and a fine of Rs.1,000/- with default imprisonment (on 2 counts for offence under Section 365/34 of IPC) and awarded life imprisonment and a fine of Rs.5,000/- with default imprisonment (on 4 counts for offence under Section 364-A/34 of IPC) and no separate sentence was awarded for offence under Section 11/13 of MPDVPK Act.

(9) Challenging the judgment and sentence passed by the Court below, it is submitted by the counsel for the appellant that the Trial Court has not appreciated the evidence available on record in its proper perspective and prosecution has failed to prove the guilt of the appellant beyond reasonable doubt.

(10) *Per contra*, it is submitted by the counsel for the State that all the four abductees have supported the prosecution case and the identification of the appellant by them has been established beyond reasonable doubt.

(11) Heard the learned counsel for the parties.

(12) It is the contention of the counsel for the appellant that no Test Identification Parade of the appellant was conducted and, therefore, the identification of the appellant in the dock by the witnesses cannot be relied upon.

(13) Considered the submissions made by the counsel for the appellant.

(14) As already pointed out, earlier the police under the impression that the appellant has expired, had submitted a report that the dead body of the appellant has been recovered, which has been duly identified and, therefore, the report was submitted before the Trial Court to the effect that the appellant has expired. Relying on the report submitted by the prosecution, the Court had also declared the appellant as dead and, accordingly, his name was deleted from the charge-sheet. Later on, it was found that in fact, the appellant is still alive and he is lodged in Shivpuri jail in connection with some other case, and accordingly, after taking permission from the Court to formally arrest the appellant, he was arrested and the supplementary charge-sheet was filed. Under these circumstances, if the police has not conducted the Test Identification Parade, then it is held that it will not adversely affect the prosecution case. Furthermore, the Supreme Court in the case of **Sheo Shankar Singh Vs. State of Jharkhand** reported in **(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.

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."

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.

(15) The Supreme Court in the case of **State of Rajasthan Vs. Daud Khan** reported in **(2016) 2 SCC 607** has held as under :-

Dock identification:Submissions and discussion

"**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.

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.

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)*.

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.

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.

(16) The Supreme Court in the case of **Mukesh and another Vs. State (NCT of Delhi) and others** reported in **(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:
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> > "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. …"
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> 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.
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> 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."

(17) The Supreme Court in the case of **Prakash Vs. State of Karnataka** reported in **(2014) 12 SCC 133**, has held as under :-

> **"15.** An identification parade is not mandatory (2012) 9 SCC 284 nor can it be claimed by the suspect as a matter of right. (2013) 14 SCC 266 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. (1971) 2 SCC 715 If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable (2010) 3 SCC 508 unless the suspect has been seen by the witness or victim for some length of time. (1979) 1 SCC 31 In *Malkhansingh* v. *State of M.P. (2003) 5 SCC 746* it was held: (SCC pp. 751-52, para 7)
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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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> **16.** However, if the suspect is known to the witness or victim (1970) 3 SCC 518 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)
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> "*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."

(18) The Supreme Court in the case of **Suraj Pal Vs. State of Haryana** reported in **(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."

(19) The Supreme Court in the case of **Dara Singh Vs. Republic of India** reported in **(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 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.
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> **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 the identification may be accepted only if he identified the same persons in a previously held TIP in the jail.

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 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 PW 2, 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 (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."

(20) Thus, it is clear that even where the Test Identification Parade has not been conducted by the police, the dock identification of an accused cannot be discarded / disbelieved merely on the ground that it was not preceded by the Test Identification Parade by the police. The Test Identification Parade during investigation is a stage meant for the Investigating Agency to ensure that the investigation is moving in a right direction. The substantive evidence is the dock identification.

(21) Under these circumstances, this Court is of the

considered opinion that merely because the Test Identification Parade was not conducted by the police during investigation under the peculiar facts and circumstances of the case, it cannot be said that the dock identification of the appellant by the witnesses in the Court is unreliable.

(22) Badam Singh (PW-3), who has supported the prosecution case with regard to his abduction was partially declared hostile. In paragraph 3 of his cross-examination by the Public Prosecutor, it was admitted by this witness that name of one of the miscreants was Baiju, however, he could not identify the appellant in the Court by stating that as his eye-vision has become weak, therefore, he is unable to identify the appellant. Thus, it is held that Badam Singh (PW-3) could not identify the appellant in the dock. Jaswant Singh (PW-4) has stated that on the date of incident, it was about 11:00 in the night, five armed miscreants came to his hut along with other abductees namely Badam Singh, Veer Singh, Kalyan, Gokul and Prakash and he was abducted. When this witness inquired about the identity of the miscreants, then they informed that they are Dayaram and Rambabu Gadariya. The appellant was having mark three guns, whereas the other accused persons were also having guns. The miscreants took the abductees to the forest area, whereas Prakash and Gokul were released. However, this witness was released after one month after taking ransom of rupees one lac. The appellant was identified by this witness in the dock. The recovery panchanamas Ex. P-4 was signed

by this witness. He has specifically stated that he was abducted for ransom and he was released after taking amount of ransom. A short cross-examination was done. In the cross-examination, it was stated that as the present appellant was one of the miscreants, therefore, he has identified him. He has denied that the present appellant has not abducted him along with Rambabu. He further denied that at the instance of the police, this witness has falsely implicated the appellant. He further denied that he was not abducted for ransom. No further question was put to this witness. Accordingly, it is held that Jaswant Singh has identified the appellant in the dock. Veer Singh (PW-5) has also narrated the same incident in his evidence. He has further submitted that he was released by the miscreants after 32-33 days and an amount of rupees fifty thousand was paid by his family members by way of ransom to the dacoits. The present appellant was one of the miscreants. The recovery memo is Ex. P-4. The present appellant was identified by this witness in the dock. A short cross-examination was done. He admitted that at the time of abduction, the appellant was having beard and on the date of recording his evidence, he was not having beard. However, he specifically denied that the appellant was not amongst the miscreants. He further denied that since the appellant is standing all alone, therefore, he has identified him. He further denied that the appellant had not demanded any ransom. He further denied that the witness is making a false allegation at the instance of the police. No further question was put to

this witness in the cross-examination. Similarly, Kalyan Singh (PW-6) has identified the appellant as one of the miscreants, who had abducted them. He has further stated that his family members had given an amount of rupees one lac fifty thousand by way of ransom. He further stated that at the time of abduction, the appellant was having long hairs. In cross-examination, this witness has denied that the appellant was shown to this witness in the police station. He further denied that he has identified the appellant at the instance of the police. He specifically stated that as he remained in the company in the dacoits for a period of one month, therefore, he has identified him. He further denied that the appellant was not amongst the miscreants. He further denied that as the appellant is standing all alone, therefore, he has identified him. He further denied that no ransom amount was given. No further question was put to this witness. Ramprasad (PW-7) has stated that his brother Kalyan Singh had gone to fetch water from a well and he did not return back. At about 04:00 in the morning, he was told by Prakash and Gokul that his brother has been abducted by the dacoits. He was further informed that Jaswant Singh, Veer Singh and Badam Singh were also abducted. An information was given to the police by this witness. This witness has further stated that he had paid rupees one lac twenty five thousand to Rambabu by way of ransom and only thereafter, his brother Kalyan Singh was released. When he went to give the amount of ransom, then he had met with all the five dacoits and the present

appellant was one of them. He has further stated that his brother was given to him by the police by custody memo Ex. P-3. Gyaneshwar Sharma (PW-8) working on the post of constable had proved the counter FIR of crime N. 22/2003 as Ex. P-5 and its photocopy is Ex. P-5c. The counter of the FIR was sent to the concerned Court by entry No. 223 in the inward and outward register which is Ex. P-6 and photocopy of the same is Ex. P-6c. The acknowledgment is Ex. P-7 and its photocopy is P-7c. Kailash Babu Arya (PW-9) is the Investigating Officer. Prakash (PW-1) has stated that he and Gokul, Badam, Veer Singh, Kalyan Singh and Jaswant were abducted by miscreants and later on, he and Gokul (PW-2) were released by the miscreants. However, this witness has turned hostile on the question of identity of the miscreants. Similarly, Gokul (PW-2) has also supported the case of the prosecution so far as it relates to the abduction of Badam Singh, Jaswant Singh, Veer Singh and Kalyan. However, he has also turned hostile and did not support the prosecution case on the question of identity.

(23) Thus, it is clear that the prosecution has succeeded in establishing beyond reasonable doubt that Badam Singh (PW-3), Jaswant Singh (PW-4), Veer Singh (PW-5) and Kalyan Singh (PW-6) were abducted by the miscreants. Badam Singh (PW-3) could not identify the appellant in dock. However, Jaswant Singh (PW-4), Veer Singh (PW-5) and Kalyan Singh (PW-6) have specifically identified the appellant in the dock. Ramprasad (PW-7), who had paid the

ransom amount, has also identified the appellant in the dock. The abductees have also specifically stated that Baiju @ Vijay was one of the dacoits.

(24) In absence of any serious challenge to the evidence of the witnesses, this Court is of the considered opinion that the prosecution has succeeded in establishing beyond reasonable doubt that the appellant along with other dacoits had abducted Prakash (PW-1), Gokul (PW-2), Badam Singh (PW-3), Jaswant Singh (PW-4), Veer Singh (PW-5) and Kalyan Singh (PW-6). Prakash (PW-1) and Gokul (PW-2) were released by the dacoits immediately. However, Badam Singh (PW-3), Jaswant Singh (PW-4), Veer Singh (PW-5) and Kalyan Singh (PW-6) were kept as hostages for a period of one month and they were released only after ransom amount was paid by the family members of these abductees.

(25) Accordingly, it is held that the appellant is guilty of committing offence under Section 365/34 read with Section 11/13 of MPDVPK Act and under Section 364-A/34 of IPC read with Section 11/13 of MPDVPK Act.

(26) So far as the question of sentence is concerned, the appellant was one of the member of the dacoits. Cash reward was also declared on the appellant. The Trial Court has awarded rigorous imprisonment of seven years for offence under Section 365/34 of IPC and life imprisonment for offence under Section 364-A/34 of IPC. The minimum sentence for offence under Section 364-A of IPC is

imprisonment for life. Therefore, the sentence awarded by the Trial Court does not call for any interference. Hence, the judgment and sentenced dated 15.02.2008 passed by the Special Judge (MPDVPK Act), Shivpuri in Special Sessions Trial No.60/2004 is hereby affirmed.

(27) The appellant is in jail. He shall undergo the jail sentence.

(28) The appeal fails and is, accordingly, dismissed.

(Vivek Agarwal)
Judge

(G.S. Ahluwalia)
Judge

Abhi