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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRA No. 767 of 2003

1 - Raju @ Rajendra Pare, S/o Gendlal, aged about 32 years, R/o Khorkona, P.S. Rajagamar, Dist- Korba (CG)

2- Kuman Singh, S/o Beeram Singh, aged about 35 years, R/o Simkeda, P.S. Kartala, Dist- Korba

--- appellants(s)

versus

1 - State Of Chhattisgarh through P.S. Kartala, Dist- Bilaspur (CG)

--- Respondent(s)

For appellant No. 1 : Mr. Gaurav Singhal, Advocate

For appellant No. 2 : Mr. Shyamta Prasad Sannat, Advocate

For Respondent(s) : Ms. Supriya Upasane, Govt. Advocate

CRA No. 858 of 2003

1 - Purushottam Gupta, S/o Chhotelal Gupta, Aged about 32 years, R/o Laxman Van Talab, Korba, (CG)

---appellant(s)

Versus

1 - State Of Chhattisgarh Through District Magistrate, Bilaspur (CG)

--- Respondent(s)

For appellant(s) : Mr. Gaurav Singhal, Advocate
 For Respondent(s) : Ms. Supriya Upasane, Govt. Advocate

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

19/02/2026

1. Both these appeals are arising out of the common sessions trial and common judgment, therefore, these appeals are being heard and decided together.
2. The CrA No. 767/2003 has been filed by two appellant, Raju @ Rajendra Pare and Kuman Singh, whereas CrA No. 858/2003 has been filed by Purshottam Gupta.
3. Both these appeals have been filed by the appellants under Section 374 (2) of the Code of Criminal Procedure, 1973, against the impugned judgment of conviction and sentence dated 11.07.2003 passed by learned First Additional Sessions Judge, Bilaspur in Session Case No. 287/1994, whereby the appellants in both the cases have been convicted and sentenced in the following manner:-

S. No.	Conviction	Sentence
1	Under Section 395 of IPC	R.I. for 7 years each
2	Under Section 395/397 of IPC	R.I. for 7 years each
3	Under Section 363 of IPC	R.I. for 3 years each
4	Under Section 323 of IPC	R.I. for 6 months each all the sentences are to run concurrently

4. The brief facts of the case are that on 11.04.1994 at about 7 pm, eight

accused persons entered into the house of complainant Ram Chandra Agrawal (PW/7), caused injuries to his son Rajesh (PW/17) by fire arm, confined them in their house and also caused injury to his servant Santosh and looted ornaments and cash amount. They demanded Rs. 2 Lakhs and when the complainant refused, the accused persons abducted the minor daughter of the complainant and asked him to come near Talab along with Rs. 50000/- and then only they will left his daughter. When the complainant and his family members raised alarm and shouted, the other persons of the village came there and they opened the door. The complainant along with the villagers tried to search the accused persons in the village. On the same day i.e. on 11.04.1994 at about 22.00 hours, the complainant lodged Dehatinalishi to the Police which is (Ex-P/25) against 08 unknown persons. In the Dehatinalishi, the complainant disclosed the physic of the accused persons and the manner in which dacoity was committee in the house of the complainant and injury was caused to Rajesh. Based on Dehatinalishi (Ex-P/25), FIR (Ex-P/30) was registered for the offence under Sections 395, 397, 363 of IPC and Section 25 and 27 of Arms Act. The injured Rajesh was sent for his medical examination and treatment to 100 bedded hospital, Korba, where he was medically examined by Dr. A.N. Kavar (PW/14) who gave his report (Ex-P/32). While medically examination of the injured Rajesh, the doctor has noticed multiple scattered superficial injuries over a diameter of about 10 cms over the thoracic region of the back (ranging from 2 mm in diameter to 3mm in diameter) clotted blood present. No staining and tattooing of skin, and opined that the above injuries are caused by gun shot and simple in nature, duration within six hours and injuries is

caused by fire arm weapon shot from a distance of about 6 meter or more. However, final opinion can be obtained from ballistic weapon expert.

5. One Rathram has also been injured and he too have been sent to CHC Rampur for medical examination where Dr. A. N. Kavar (PW/14) have been examined him and gave his report (Ex-P/31). While examination, the doctor has notice abrasion mark on middle of clavicle bone which was simple in nature. Baniyan and full shirt of the injured Rajesh Kumar has been seized vide seizure memo (Ex-P/27). One fired cartridge and one live cartridge have been seized from the spot vide seizure memo (Ex-P/28). Spot map (Ex-P/29) was prepared by the Patwari and (Ex-P/36) was prepared by the Police. During the investigation, the accused persons Raju @ Rajendra Kumar Pare, Rajendra Yadav, Kuman Singh, Bhola @ Sheikh and Rajaram and Mohan@ Purshottam have taken into custody on 12.05.1994 and 17.05.1994 respectively and their memorandum statement (Ex-P/5 to P/10) were recorded. Based on their memorandum statement, from the accused Raju @ Rajendra Pare, one country made pistol, five cartridges, 2 live cartridges of 38 bore, cash of Rs. 1570/- and one wrist watch have been seized vide seizure memo (Ex-P/11). From the accused Rajaram, one iron rod has been seized vide seizure memo (Ex-P/12). From the accused Bhola, one dummy revolver and cash of Rs. 500/- have been seized vide seizure memo (Ex-P/30), from the accused Kuman, one HMT wrist watch and one steel knife has been seized vide seizure memo (Ex-P/14). From the accused Purushottam one sword, cash of Rs. 650/-, two HMT wrist watch have been seized vide seizure memo (Ex-P/15). From the accuse Puna Ram, cash of

Rs. 750/- and one silver ornament set was seized vide seizure memo (Ex-P/17). The country made pistol was sent for its examination report to reserve police centre, Bilaspur from where, report (Ex-P/24) was received and it was opined that fire could be made by the seized country made pistol and it can be used for firing of 38 bore and 32 bore both. Two cartridges was of 38 bores and the same were the live cartridges. The fired cartridge is of 315 bore and fire was made from that cartridge. The accused persons Raju @ Rajendra Pare and Rajendra Kumar and Rajaram were put to test identification parade which was conducted by the Executive Magistrate, A. K. Sharma (PW/2) and the complainant Ram Chandra Agrawal (PW/7) have duly identified the accused persons and test identification parade memo (Ex-P/2) was prepared. The accused persons Purshottam @ Mohan, Kuman Singh, Bhola @ Shekh were also put to the test identification parade before the Executive Magistrate on 18.05.1994 and the complainant has also identified the accused persons and test identification parade memo (Ex-P/3) was prepared. Further the accused Bhola was also put to test identification parade on 11.06.1994 which was conducted by the Executive Magistrate and he was also identified by the complainant and the test identification memo (Ex-P/4) was prepared. The wrist watch seized from the accused Raju was also put for identification which was conducted by the Executive Magistrate and the complainant has identified his wrist watch and the memo (Ex-P/1) was prepared. Statement of the witnesses under Section 161 of Cr.P.C. have been recorded, necessary sanction for prosecution was obtained from the District Magistrate which is (Ex-P/34 and P/35). After completion of usual investigation, charge-sheet was filed against 09

accused persons, out of which, 06 were shown to be arrested and 03 were shown to be absconded.

6. Charge sheet was filed against 06 arrested accused persons, in which one Rajaram was absconding. The Charge-sheet was filed before the learned Judicial Magistrate First Class, Korba. The case was committed to the Court of Sessions Judge, Bilaspur from where the same has been transferred to the learned trial Court for its trial.
7. The learned trial Court has framed charge against the accused persons for the offence under Sections 395, 395 read with Section 397, 363, 323 of IPC and Section 25 (1) and 27 of Arms Act. The accused persons denied the charge and claimed trial.
8. In order to prove the charge against the accused persons, the prosecution has examined as many as 20 witnesses. Statement of the accused persons under Section 313 of the Cr.P.C. have also been recorded in which they denied the circumstances appears against them, pleaded innocence and have submitted that they are innocent and have been falsely implicated in the offence.
9. After appreciation of oral as well as documentary evidence led by the prosecution, the learned trial Court has acquitted two accused persons Bholu @ Sheikh Alam and Chotu @ Pardeshi @ Konda and has convicted 03 accused persons Raju @ Rajendra Pare, Purshottam, Kuman Singh and sentenced them as mentioned in the earlier part of this judgment. Hence this appeal.
10. Learned counsel for the respective appellants would submit that the prosecution has failed to prove its case beyond reasonable doubt. There are material omission and contradictions in the evidence of prosecution witnesses which cannot be made basis to convict the

appellants for the offence in question. The case of the prosecution is based on circumstantial evidence and the chain of circumstantial evidence is not complete. There are various contradictions in the test identification parade conducted by the Executive Magistrate with respect to the accused persons and the irregularity committed during the test identification parade, makes it inadmissible in evidence. There is no sufficient evidence that the accused persons committed offence or caused injury to Rajesh during the alleged incident of dacoity. He would further submit that except the test identification parade, there is no substantial evidence which connected them with the offence in question. The memorandum and recovery has also not been proved by the prosecution by leading cogent evidence and the witnesses have not duly supported the prosecution case. No any ornaments have been recovered from the present appellants and the identification of the wrist watch seized from Raju @ Rajendra Pare is also doubtful as he himself has stated that it was the common wrist watch which is easily available in the market. Therefore, in absence of any cogent and convincing evidence, accused persons cannot be convicted. Therefore, the appeals may be allowed and they may be acquitted. In support of their submission they would rely upon the judgment of **Chandrau @ Chandrasekaran Vs. State represented by Dy. Superintendent of Police CB CID and others**, reported in **(2019) 15 SCC 666**.

11. On the other hand, learned counsel for the State opposes and have submitted that but for minor omission or contradictions the evidence of

prosecution witnesses are sufficient to hold guilty of the accused persons. The identification of the accused persons is established by the witnesses that has been corroborated by the evidence of PW-2, Executive Magistrate who conducted the test identification parade. Even the accused persons have been identified before the Court and there are evidence of dock identification. The allegation that on the date of incident, the present appellants along with the other absconding accused persons have entered into the house of the complainant, committed dacoity, kidnapped the minor daughter of the complainant (PW-15) and demanded ransom, further there are evidence that certain recoveries of weapon of offence have been made from the accused persons. Though the complainant have stated in his evidence that the wrist watch which was put to identification is easily available in the market but in view of the evidence of the Executive Magistrate PW-2, the identification of the wrist watch allegedly seized from the accused Raju have been proved. There is no reason of false implication of the accused persons as the accused persons are the resident of different places. After adverting the entire evidence available on record, the learned trial Court convicted the accused persons/ appellants in which there is no infirmity or perversity. The evidence with respect to identification of the accused persons, identification of the wrist watch and causing injuries to Rajesh and Rathram, while committing the dacoity, has been proved and there are overwhelming evidence available on record. Therefore, the appeal filed by the present appellants have no merit and the same is liable to be dismissed.

12. I have heard learned counsel for the parties and perused the record of

the trial Court.

13. (PW/7) Ram Chandra Agrawal, is the person in whose house the incident of dacoity was committed. He stated in his evidence that on the date of incident, the persons who came to his house for committing dacoity made a gun shot fire upon his son Rajesh. They were six in number, out of which one has made gun shot fire. He identified the persons who came to his house on the date of incident who are also present in the Court. When an objections was raised by the prosecution with respect to identification of the accused persons, the recording of the evidence of PW/7 was suspended on 12.08.1999 and it was resumed on 06/09/1999. The witness has stated in his evidence that he could not identify the accused and he made gesture in the Court towards the accused whose name is Bholanath. The remaining four accused persons who were committed offence with him, though, he could not identify them by their names. When the Court asked the names of the four accused persons, they disclosed their names as Kuman Singh, Chhotu @ Pardeshi, Purshottam and Raju @ Rajendra Pare. He further stated that on the date of incident, 2-3 accused persons were out side of the house and 5-6 accused persons were entered inside the house. The accused persons made gun shot fire upon his son by which his son Rajesh received gun shot injury on his back, thereafter, one of the accused persons put the gone on his chest and asked for keys of almirah, then he disclosed about the keys and by opening the locker of the almirah, they looted Rs. 15000/- cash, silver ornaments and silver coins. They also looted his wrist watch. Thereafter, they kidnapped his minor daughter and demanded Rs. 50,000/- as ransom. They took her towards field and threatened that if

he will not give them the amount, they will kill her. At that time, when the villagers gathered there, they left his minor daughter and fled away. They informed the Police by telephone and then the Police proceeding were started. His son were taken to hospital at Korba. The test identification parade was conducted at Kartala school and he identified the accused persons except the accused Bholanath. He also identified the silver ornaments which was conducted by the Nayab Tahsildar. In cross-examination, he stated that he saw the accused persons at the time of incident. The time of incident was the evening time and he was about to close his shop and there was no customer in the shop. He also stated that he identified the country made gun at the time of identification of the articles. He further stated that he sold his paddy at Katghora and the cash amount which was looted by the dacoits, was of the said amount of paddy. He admitted in Para 33 of his cross-examination that he identified the accused persons on the same day. They were 15 in numbers, out of which he identified 5 accused persons. He reaffirmed that he identified Chhotu @ Pardeshi. Though, he stated that he could not identify the color of their cloths but he explained that the time of incident, it was the evening time.

14. PW/17, Rajesh Agrawal is the injured witness. He stated in his evidence that he identified the four accused persons Chhotu, Raju @ Rajendra, Kuman Singh and Purshottam, but did not identify the accused Bholanath. On 11.04.1994, he was at his shop at about 7 pm. At that time, 4-5 persons entered into his shop and when he proceeded towards his kitchen, they made gun shot fire from back side. His elder brother Santosh was also captured by the accused persons. The accused Kuman and Purshottam entered into their

kitchen side and covered his mother Shakuntala and sister Monika. The accused Raju Pare asked for keys of the locker. They got open the locker of the almirah and put the ornaments and cash in a carry bag. The Accused Raju and Kuman demanded Rs. 2 lakhs from his father or else they will kidnapped his minor daughter. When his father refuse to give them Rs. 2 lakhs, they demanded Rs. 50,000/- and thereafter, they kidnapped his minor sister Monika. When they shouted for help, the persons of the vicinity open the door and when they were proceeded towards Talab, they found their sister on the way. Since, he received gun shot injury on his back, he was taken to hospital at Korba. The accused persons were identified at Kartala and he and his father identified them. In cross-examination, he stated that he did not know as to who has made fire upon him. Since the incident about 6-7 years back. he could not remember properly. He denied the suggestion given by the defence that he could not identify the accused persons at the time of dacoity. In further cross-examination, he stated that gun shot fire was made upon him from the distance of about the 6 feet. He also denied that before test identification parade, the physic of the accused persons were informed to him. Out of 8-10 persons, he identified 04 accused persons who was Chhotu, Purshottam, Raju and Kuman and the relevant documents of test identification parade was prepared. He also denied that he could not identify the accused Purshottam. When he was proceeded towards kitchen, he could not reach there but the accused persons reached ahead to the kitchen.

15. PW/1 Shakuntala is the wife of complainant Ram Chandra who was also present on the spot. She stated in her evidence that on the date of incident, at about 7-7.15 pm, she was in her house along with her

family members and cooking food. She heard a noise like crackers and at that time, her son Rajesh called her and when she came out from kitchen, she saw that her son received gun shot injury on his back and blood was coming out from the injuries. The second son Santosh was captured by the dacoits and they laid her down on the the ground. One of them threatened them that if they raised any alarm, they will kill them. By pointing towards accused Purshottam, she stated that he was standing near the gate. Her son Santosh was captured by accused Rajaram and the accused Sheikh Aslam @ Bhola caught hold her hand and asked about the articles in the house. She too have identified the accused persons before the Court. She also stated that the accused persons were having iron rod, pistol, knife. They took them to the room where the almirah and locker was kept. They threatened them and took out the cash of the almirah and locker and looted the ornaments and cash amount. They also looted her ornaments which she wore at the time of incident and wrist watch also. Thereafter, they fled away from her house. They kidnapped their minor daughter with them and demanded ransom of Rs. 2 lakhs and when they shown their inability to give them Rs. 2 lakhs, they threatened that if they will not give Rs. 2 lakhs, they will kill her daughter. They bolted the door from outside and when they started shouting, the persons of the vicinity opened the door and then they disclosed them about the incident. When the accused persons kidnapped her minor daughter, 2-4 villagers tried to save her but they were also assaulted by the accused persons. Ratthu is one of the person, who was being assaulted by the accused persons. She also identified the accused persons and articles which were looted from her

house. In cross-examination, she stated that on the next date of incident, her statement was recorded by the Police. She participated the test identification parade of the accused persons. She could identified the accused persons by their face. She denied in her cross-examination that she has not seen the incident. In further cross-examination, she stated that she identified the accused persons by their faces.

16. PW/2, Arun Kumar Sharma, who is the Nayab Tahsildar, conducted the test identification parade of the accused persons. He stated in his evidence that on 13.05.1994, he conducted test identification parade of the accused Raju @ Rajendra Kumar, Rajendra and Rajaram at High School campus, Kartala. The witness Ram Chandra have identified the accused Raju, Rajendar and Rajaram. The witness Artidas also identified the accused Raju, Rajendra Kumar and Rajaram. He further stated that on 18.05.1994, he further conducted the test identification parade of the accused Purshottam, Kuman Singh and Bhola at Primary School, Purani Basti, Korba. These accused persons have been duly identified by the complainant Ram Chandra and witness Artidas. He prepared the test identification memo (Ex-P/2) and (Ex-P/3). He further stated that on 11.06.1994, he further conducted the test identification parade of accused Punaram which was conducted at Panchayat Office, Nonbirra, he too have duly identified by complainant Ram Chandra and Artidas and test identification parade memo (Ex-P/4) was prepared (Ex-P/4). It is also stated by him that he also conducted the identification of wrist watch on 13.05.1994 and the complainant Ram Chandra has duly identified his wrist watch and the memo (Ex-P/1) was prepared. In cross-

examination, he admitted that in the document (Ex-P/1), the color and number of wrist watch has not been mentioned but in the identification memo. He stated that at the time of test identification parade, no Police persons were present. He explained that the accused persons were in handcuffed and the other persons who were mixed with the accused persons were not handcuffed, but they were standing behind a wall having 4 feet of height and the handcuff of the accused persons were not visible from the other side where the witnesses and the complainant were standing and identified the accused persons. This witness has duly proved the process of test identification parade which he conducted. He further stated that he conducted test identification parade on the request of Police authority. But for minor omission or contradictions, the test identification parade could not be shaken by the defence in the cross-examination of this witness.

17. In the matter of “**Prakash Vs. State of Karnataka**”, reported in 2014 (12) SCC 133, in para 15 and 16, the Hon’ble Supreme Court has held that:-

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. it was held: (SCC pp. 751-52, para 7)

"7.... The identification parades belong to the stage of investigation, a 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 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* 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."

18. In the matter of **"State of Rajasthan Vs. Daud Khan"** reported in 2016 (2) SCC 607, in Para 42 to 46, the Hon'ble Supreme Court has held that:-

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.

19. Further in the matter of **“Mukesh & Another Vs. State (NCT of Delhi) & Others”** reported in 2017 (6) SCC 1, in para 143 to 147, the Hon’ble Supreme Court has held that:-

143. In Santokh Singh v. Izhar Hussaints, it has been observed that the identification can only be used as corroborative of the statement in court.

144. In Malkhansingh v. State of M.P., it has been held thus: (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....."

And again: (SCC p. 755, para 16)

"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...."

145. In this context, reference to a passage from Visveswaran v. State would be apt. It is as follows: (SCC p. 78. para 11)

"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)⁶⁸, the Court, after referring to Munshi Singh Gautam v. State of M.P.⁶⁹, Harbajan Singh v. State of J&K⁷⁰ and Malkhansingh⁶⁶, 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.

20. In the matter of “**Suraj Pal Vs. State of Haryana**” and other connected matters reported in 1995 (2) SCC 64, in para 14, the Hon’ble Supreme Court has held that:-

14. Before dealing with the various contentions advanced by the learned counsel for the appellants as referred to above, we shall first state the object, purpose and importance of the test identification parade. 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.

21. In the matter of “**Rabindra Kumar Pal @ Dara Singh Vs. Republic of India**” reported in 2011 (2) SCC 490, in para 40 to 50, the Hon’ble Supreme Court has held that:-

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.*

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), 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*. 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, 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 10 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 care, 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 a 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 case¹, 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 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 Mkhathshwa 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 g 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, 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.

22. PW/8, Santosh Kumar who is the son of the complainant Ram Chandra, who too was captured by the accused persons on the date of incident. He stated in his evidence that on 11.04.1994 at about 7 pm when he and his family members are in the house, 7-8 dacoits entered into his house and one of them made gun shot fire upon his brother Rajesh by which he received injury on his back. When Rajesh shouted, one of them caught hold him and another one have caught him hold. The person who caught him hold, is accused Kuman Singh. Kuman Singh was having iron rod with him and threatened them that if he tried to protest, he will assault him by rod. The dacoits get the locker open by his brother Rajesh and after committing loot of the ornaments and cash, they fled away. The accused Kuman Singh has also looted his wrist watch and they kidnapped his minor daughter Monika and demanded of Rs. 50,000/-. They took her with him and closed the door from outside. When they started shouting for help, the persons of the vicinity gathered there and they opened the door. When they were started searching his minor daughter, they met with the Police persons and informed about the incident. His brother Rajesh was taken to hospital for his treatment. Nothing has been asked by the

accused persons from this witness except one line suggestion that there was no test identification parade before making his evidence in the Court.

23. PW/9 Artidas is one of the witness who identified the accused persons. He stated in his evidence that he identified the accused Raju @ Rajendra. He explained that at the time when he was sitting near his house, the accused Raju @ Rajendra came to him and asked about the way of Rampur and for this reason, he identified the accused Raju @ Rajendra Pare. After some time, he came to know about the incident and after about a month, he identified the accused Raju in test identification parade conducted by the Tahsildar. He declared hostile on the point of identification of the accused Rajendra and Rajaram. He also denied the identification of Purshottam, Kuman Singh and Bhola. In cross-examination, he remained firm of identification of Raju in test identification parade. Nothing could be elicited in his cross-examination so that the identification of the Raju could be disbelieve.
24. PW/14 Dr. A. N. Kanwar medically examined the injured Ratthuram and Rajesh. He stated in his evidence that while examining the injured Ratthuram, he found one abrasion on left clavicle region which was simple in nature and caused by hard and blunt object. His MLC report is (Ex-P/31). The injured Rajesh Agrawal was being medically examined by Dr. C.M. Tiwari who was posted at Govt. Hospital, Korba and at the time of recording of his deposition, he was transferred from there. On the body of Rajesh one old healed injury was found on his chin, the gun shot injury was found on the back side of chest and dried blood was present. He opined that the injuries were gun shot injury and it was simple in nature. The fire was made about the distance of 6

meter and opined for ballistic expert report and the report is (Ex-P/32).

No question has been put in his cross-examination by defence.

25. PW/19, Dr. C.M Tiwari treated the injured Rajesh at Govt. Hospital, Korba. He too has found gun shot injury on his back and found the injuries who were simple in nature and caused by fired arm. He too have referred for ballistic expert report and his report is (Ex-P/32)
26. The another important witness is Monika (PW/15) who was kidnapped by the accused persons. She stated in her evidence that on 11.04.1994 at about 7 pm, she along with her parents and brothers were in house. At that time, 7-8 persons entered into her house, made gun shot fire upon his brother Rajesh. They kept her and her family members at a place together and asked the keys of locker. They looted ornaments and cash from the locker and demanded Rs. 2 lakh from her father. When her father shown his inability of give Rs. 2 lakh, they kidnapped her by demanding ransom. They asked her parents that they will leave their daughter near the pond. When the accused persons dragging her, the villagers were shouted and then the accused persons left her outside of the vicinity. In cross-examination, she could not identify the accused persons as she was unaware of them. She identified the accused persons in the Court and stated that she was not the part of the test identification parade. She remained firm in the incident of dacoity committed in her house and kidnapping by the accused persons. Nothing could be brought in her cross-examination that she was not kidnapped by the accused persons.
27. So far as, the seizure of wrist watch and identification of wrist watch is concerned, from the accused Raju @ Rajendra Pare, one citizen wrist watch has been seized and from the accused Kuman Singh, one HMT

wrist watch has been seized. From the accused Purshottam @ Mohan, two HMT wrist watches have been seized. The citizen wrist watch was identified by the complainant Ram Chandra Agrawal (PW/7) and proved the identification memo (Ex-P/1). Though, he stated in his evidence that the same wrist watch can also be easily available in the open market but he stated that he could identify his own wrist watch. When he identified his wrist watch, he identified the accused persons who committed the offence in his house and the identification of the wrist watch by the complainant Ram Chandra could not be rebutted in his evidence. It duly connected the accused Raju with the offence in question.

28. From the evidence produced by the prosecution, it has duly been proved that on 11.04.1994, the accused persons committed the offence of dacoity along with the other co-accused persons who were still absconding, kidnapped the minor daughter of the complainant and demanded ransom and further caused injury to the son of the complainant namely Rajesh (PW/17) of the offence under Section 395, 395/397, 363 and 323 of IPC is found proved by the learned trial Court in which this Court is also in concurrence with the finding recorded by the learned trial Court convicting the appellants for the offence in question.
29. In the present case, ample evidence against the accused persons are available that on 11.04.1994 at about 7pm, when the complainant and his family members were in house, the accused persons committed dacoity in his house and caused injuries to the son of the complainant Rajesh by gun shot fire. The present appellants were duly identified by the complainant and his wrist watch has been seized from the accused

Raju @ Rajendra Pare. The test identification parade conducted by the Executive Magistrate is found reliable in which they duly identified the present appellants. The injury found on the body of Rajesh has also been proved by the doctor who medically examined him as PW/14 and PW/19. There may be some minor omission or contradictions in the evidence of prosecution witnesses, in view of the fact that the incident is of the year 1994 and the evidence of the witnesses were recorded after a long lapse of time. The complainant has been examined after about 5 years i.e. in the year 1999 and the injured Rajesh has been examined in the year 2001. The discrepancies in the evidence of the witnesses are trivial and does not affect the credibility of the prosecution's case.

30. After having gone through the entire evidence available on record and the judgment of the learned trial Court, I do not find any perversity or infirmity in the conviction and sentence awarded to the appellants for the alleged offences. Accordingly, both the appeals filed by the respective appellants are dismissed.
31. The appellants are reported to be on bail and warrant of arrest has been issued by this Court against the appellant Raju @ Rajendra Pare and Purshottam. The appellants shall be taken into custody to serve their remaining sentence as awarded by the learned trial Court.
32. Record of the trial Court be sent back along with a copy of this Judgment.

Sd/-
(Ravindra Kumar Agrawal)
Judge