

(1991) 04 MP CK 0013

Madhya Pradesh High Court**Case No:** Criminal Appeal No. 137 of 1987

Karamjit Singh Yashwant Singh

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: April 2, 1991**Acts Referred:**

- Evidence Act, 1872 - Section 27
- Penal Code, 1860 (IPC) - Section 352, 392, 397

Citation: (1991) 2 MPJR 355 : (1992) 37 MPLJ 287 : (1992) MPLJ 287**Hon'ble Judges:** P.N.S. Chouhan, J**Bench:** Single Bench**Advocate:** Rajendra Singh and R.K. Shukla, Y.K. Munshi, for the Appellant; Vinod Mehta, Government Advocate, for the Respondent**Final Decision:** Dismissed

Judgement

P.N.S. Chouhan, J.

This judgment will dispose of Criminal Appeal No. 492 of 1987 (Pritampuri v. State of M. P.) as well.

Business in Dena Bank, Itarsi was dull with only two customers viz. Pagniya and Barelal in the Bank premises in the afternoon of 28th of November 1985. The Branch Manager, had gone out. Chandra Kumar Parekh (PW1), the accountant Phool Singh Thakur (PW2), the cashier and the other bank employees were busy doing whatever work they had. At 2.10 p.m. two young men entered the bank with black goggles on and towel like clothes on their heads. They enquired about the Manager and on being told by Shri Parekh that the manager was expected back by 4.00 p.m., they left the bank. Shortly thereafter the twin reappeared, disconnected the telephone line, terrorised the bank employees as also the customers with pistol and knife, herded them in the strong room, stationery room and the toilet at gun point, looted currency notes worth Rs. 75,184.00 from the cash cabin and made good their

escape.

The strong room was not firmly closed by the miscreants from outside and therefore the door opened. Shri Thakur and others, who were detained there, came out and rescued their colleagues from the other two rooms. On being informed from nearby telephone Shri A. K. Pandey (PW11), Town Inspector reached the bank and obtained the FIR (Ex.P.1) from Shri Parekh. Bank officers counted the cash and thereafter intimated to Shri Pandey the exact amount looted vide Ex.P.2A.

Sheer good-luck for the Bank. On information from an informer, Shri Siyaram Arya (PW6), the vigilant Station House Officer of G.R.P., Saharanpur in Uttar Pradesh arrested appellant Pritampuri on 30-11-1985 with cash amounting to Rs. 67,465.00 from Saharanpur railway platform. Two of the currency note bundles recovered and seized vide Ex.P.8 by Shri Arya from Pritampuri's possession still had the chit slips of Itarsi breach of Dena Bank intact bearing the signatures of cashier Shri Thakur. Itarsi police was informed of the arrest of Pritampuri telephonically and Shri Pandey reached Saharanpur the next day. He prepared another seizure memo Ex.P.9 to take charge of the currency notes and after obtaining magisterial permission brought Pritampuri to Itarsi. His memorandum Ex.P.14 led to the recovery of one country made pistol (Art. E) seized vide Ex.P.15. The other appellant Karanjeet Singh was arrested vide memo. Ex.P.21 on 30-12-1985 when he had surrendered before the court.

Shri Parekh and Phool Singh Thakur correctly identified Pritampuri in a test identification on 7-12-1985 vide memorandum Ex.P.4. Other witnesses who identified correctly have turned hostile. Test identification of Karanjeet Singh was held on 31-12-1985 i.e. the day following his arrest. Shri Sameer (PW9) Naib Tahsildar and Executive Magistrate conducted the proceedings and although all the six witnesses correctly, identified him vide memo Ex.P.5 all but P.Ws.1 and 2 have either turned hostile or not examined. The learned trial Judge found the evidence of P.Ws.1 and 2 reliable and convicted both the appellants under Sections 392-397, Indian Penal Code and sentenced each one of them to 9 year, R.I. and a fine of Rs. 5,000/- which is under challenge in these appeals.

The learned counsel for appellant Karanjeet Singh has argued that there being no recovery of any incriminating article from the possession of this appellant, the only evidence against him is that of identification. Out of the two witnesses viz. PWs 1 and 2, who have identified him PW 1 Shri C. K. Parekh has emphatically stated in paras 8, 9 and 10 of his statement that he identified both the appellants on one day only about 10 days after the incident and since appellant Karanjeet Singh was arrested almost after a month from the date of robbery, the evidence of this witness on identification of this appellant is of no avail. The remaining evidence of Shri Phool Singh Thakur (PW 2) has been assailed on the grounds that since the robbers were veiled with goggles and cloth round their head PWs.1 and 2 did not have opportunity to identify them and after arrest this appellant was remanded in police custody

where he was shown to the witnesses prior to test identification. Since P.Ws. 1 and 2 had not given the description of the robbers before the test identification in view of [Wakil Singh and Others Vs. State of Bihar](#), the result of the test identification is rendered unworthy of credence. The number of persons mixed being only 4 was too inadequate to make the result of proceedings acceptable. Relying on *State of V.P. v. Munni Dhimar* AIR 1954 V.P. 42, it was argued that no presumption u/s 114, Evidence Act arises as to the requisite precautions having been taken in conducting the test identification proceedings and the prosecution must prove by positive and reliable evidence that all such proceedings were duly taken by the Magistrate or person conducting the, proceeding. It may be mentioned that the law on this point has taken a swing towards realism with [Bharat Singh Vs. State of U.P.](#), wherein the Supreme Court has held that unless the infirmities relied on by the defence are put to the witness who conducted the parade or to the I.O. as the case may be, the evidence on test-identification is not liable to be discarded on their basis. In this case, Shri Sameer who conducted the parade was not questioned on the inadequate number of persons mixed and therefore* this infirmity cannot be used to assail the proceedings.

Shri Sameer refuted the suggestion in cross-examination that this appellant had complained him that he was shown to the witnesses by the police which was not written in the memorandum Ex.P.5. Shri Sameer appears to be a wholly reliable witness. He admitted to have written the note after the proceedings on the reverse side of Ex.P.5 regarding precautions taken by him. Had any such objection been raised, he could have mentioned it in this memorandum.

The investigating officer Shri Pandey denied that he showed the appellants to the witnesses before the test-identification. He could not recall if any such complaint was made against him which he was called upon to explain. There appears to be no reason to doubt his veracity in this behalf. It was then argued that since the amount was already recovered there was no purpose of asking for remand of appellant Karanjeet Singh to police custody except to show him to the witness. Firstly, all the amount had not been recovered and secondly, the arms used during the crime had to be recovered. Then, the question as to what was the purpose of asking such remand could have been replied by the I.O. but no question was put to him in this behalf in cross-examination. It cannot be lost sight of that remand of an accused to police custody is not a matter of routine and the magistrate concerned has to take special care that orders in this behalf are passed only on good ground. As such, it must be held that remand of this appellant to police custody is not a circumstance from which it may be inferred that he was shown to the witnesses prior to his test identification.

Shri Pandey has not stated that appellant Karanjeet Singh after his arrest was kept duly veiled when he was taken to the police station from the court and was sent for test identification. On this basis, it was argued that the trial court should have

inferred that the precaution of keeping the appellant "BAPARDA" was not taken which probalised his having been seen by the witnesses rendering the test identification worthless. Shri Pandey was not asked in cross-examination that he had failed to take such precaution and therefore, in view of the ratio of Bharat Singh's case (supra), this criticism has no force. The case of [Wakil Singh and Others Vs. State of Bihar](#), relied on by this appellant is distinguishable. In that case, the dacoity was committed during night. The witnesses identified the dacoits in test identification had not given any description of the miscreants in their case diary statements. Only one witness was able to identify the accused and this was a reasonable ground for non-acceptance of the evidence as possibility of mistake in identification could not be excluded. In the present case, the offence took place during broad day light and the appellants have been identified by two witnesses and the description of the miscreants is there in the F.I.R. lodged by PW 1, in these words :o-

os tks ;god Fks mudh mez djhc 25 o"kZ dh gksxh rFkk os yEcs dn ds 6 QqV ds yEcs Fks dkyk p"ek yxk;s Fks lQsn cq"K"KVZ rFkk iSaV LikSVZ "kwt igus FksA ,d ds flj esa lQsn diM+k ca/kk Fkk rFkk nwljs us flj esa ekewyh gYds jax dk diM+k cka/ks gqvk FkKA nks fiLrkSy Fks ftuesa ls ,d fiLrkSy NksVh Fkh rFkk ,d eksVh uky dh cM+h fiLrkSy dkys jax dh FkhA

This description clearly belies that the witnesses had no-opportunity to identify the miscreants. Shri Parekh did identify this appellant in the test identification as- he has proved his signature on Ex.P.5. His statement that both the appellants were identified by him in one test parade is therefore a clear misconception resulting from the treachery of his memory. As such, his evidence on identification of this appellant is not wholly washed away as contended by the learned Counsel. It can be used against him. Even assuming for argument's sake that the same is not so usable, the fact remains that in the test-identification, this appellant was correctly identified by both PWs 1 and 2 and therefore there can be no justification for discarding the evidence of Shri Phool Singh Thakur PW 2 who in para 32 of his statement has asserted that he is unable to forget the faces of the miscreants because of the extraordinary nature of the incident with which they are connected. Simply because there is no evidence to the effect that the appellants were kept "BAPARDA" when they were produced in the court for obtaining police remand, it cannot be inferred that the witnesses must have seen them and on this account the evidence of test identification is not liable to be rejected.

The evidence of P. Ws.1 and 2 clearly shows that the miscreants had covered their heads with "Gamchha" like cloth and were wearing dark goggles. However, they are emphatic that the faces of the miscreants were clearly visible and therefore they could identify them. Since the robbers were not veiled, their rather unusual outfit notwithstanding, which evoked the remark "Kya Behrupiya Vesh Bana Rakha hai" by Shri Sharma, one of the bank employees (paras 13 and 15 of evidence of PW 1) their

faces must have been clearly visible as stated by these witnesses which enabled them to identify the miscreants. As stated by Shri Parekh he had seen the miscreants not once but twice within a short span of time, first when they came to enquire about the manager and then when they reappeared to execute their sinister design. Thus, the argument that these witnesses did not have the opportunity to identify the robbers due to their heads being covered and dark goggles does not appear to be acceptable. The conviction of appellant Karanjeet Singh, therefore, does not seem to suffer from any infirmity. "

Appellant Pritampuri was nabbed with the major part of the booty more than 1000 kms. away from the scene of occurrence at Saharanpur railway station by a vigilant police officer. He is shown to be a student. Instead of tendering any explanation for his arrest with such a huge amount at Saharanpur platform, he has denied his arrest and recovery of Bank notes from his possession. In these circumstances, his mere arrest at Saharanpur railway station with bundles of currency notes two of which had the chits of Itarsi Bank intact appears sufficient to connect this appellant with the crime. In addition, he has been identified by PWs 1 and 2 who correctly identified him in the test-identification. The grounds on which test identification of appellant Karanjeet Singh were assailed, have been repeated to criticise the test-identification of appellant Pritampuri as well. Therefore since the test identification of the former has been held valid, for the very same reasons, the criticism of test-identification of the latter is also liable to be repelled.

Thus, the finding that the bank robbery was committed by these appellants appears justified. Their conviction, was, therefore well merited and warrants no interference.

The sentence was criticised as harsh and it was stressed that the imprisonment of five years that the appellants have already suffered, should be considered sufficient to satisfy the conscience of law. The society is facing an increasing wave of such crimes in recent years and therefore, considering the nature of the crime and circumstances in which it was committed, the sentence awarded cannot be said to be harsh.

In result, both the appeals fail and are hereby dismissed.