Amit Singh Bhikamsingh Thakur Vs State of Maharashtra

Court: Supreme Court of India

Date of Decision: Jan. 5, 2007

Acts Referred: Arms Act, 1959 â€" Section 25(1B), 27, 3, 5
Criminal Procedure Code, 1973 (CrPC) â€" Section 162
Evidence Act, 1872 â€" Section 24, 25, 26, 27, 9
Penal Code, 1860 (IPC) â€" Section 120B, 341, 379, 396, 506

Citation: (2007) 1 ACR 543 : AIR 2007 SC 676 : (2007) 1 ALD(Cri) 181 : (2007) 3 CALLT 23 : (2007) CriLJ 1168 : (2007) 1 JT 390 : (2007) 2 RLW 884 : (2007) 1 SCALE 62 : (2007) 2 SCC 310 : (2007) 1 SCR 191

Hon'ble Judges: Lokeshwar Singh Panta, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: Shekhar Prit Jha, Bipin Kr. Jha and A.K. Tiwari, for the Appellant; V.L. Raghupathy, for the Respondent

Final Decision: Dismissed

Judgement

Arijit Pasayat, J.
Leave granted.

2. The Appellant calls in question legality of the judgment rendered by a Division Bench of the Bombay High Court, Aurangabad Bench. By the

impugned Judgment, the High Court dismissed four appeals which arose out of a common decision against them. All the four accused before the

High Court were tried by learned Additional Sessions Judge, Ahmednagar. Learned Trial Judge had held all the four accused persons to be guilty

of offences punishable under Sections 396, 506, 341, 379 read with Section 120B of the Indian Penal Code, 1860 (in short ""IPC"") and sentenced

each of them to suffer life imprisonment and to pay a fine of Rs. 3000 with default stipulation in respect of conviction relatable to Section 396 IPC

read with Section 120-B IPC. Learned Trial Judge was of the view that offence relatable to Sections 506 and 341 IPC is covered by the main

offence and no separate sentence was required to be passed. So far as offence relatable to Section 379 read with Section 120-B IPC is

concerned, each of the accused persons was sentenced to suffer two years" rigorous imprisonment and a fine of Rs. 1000 with default stipulation.

Accused 4 i.e. the present Appellant alone was found guilty of offence punishable u/s 5 read with Section 27 of the Arms Act, 1959 (in short ""the

Arms Act"") and was further sentenced to undergo 5 years" rigorous imprisonment and to pay a fine of Rs. 3000 with default stipulation. It was also

recorded that offence u/s 3 read with Section 25(1-B) of the Arms Act is covered u/s 5 read with Section 27 of the said Act and therefore, no

separate sentence was passed.

3. Challenge to the judgment before the High Court in the four appeals did not yield any relief.

4. The accusations filtering out unnecessary details which led to the trial of the four accused persons are essentially as follows:

The incident in question took place on 1-5-1999 at about 8.15 p.m. The complainant Abhijit Dhone (PW1) is an eyewitness to the same and

therefore, criminal law was set into motion by the complaint lodged by said Abhijit at Topkhana Police Station, Ahmednagar, on the same day at

about 9 p.m. The complainant Abhijit was working with the victim Santoshkumar Kirjichand Bakliwal (hereinafter described as ""the deceased"") in

his shop of gold and silver situated at Ganj Bazaar, Ahmednagar, since about 15 to 20 days prior to the incident. His working hours started around

9 a.m. He along with his master Santoshkumar used to come to the shop and used to have break in the afternoon. The shop used to be closed at

about 8 p.m. and the two used to return home sometimes by rickshaw and sometimes on feet. It was the routine of Santoshkumar to bring home

the daily earnings in a chocolate coloured cloth bag at the end of every day.

5. On 1-5-1999 at the end of the day at about 8 p.m. Santoshkumar collected the daily earnings in the chocolate-coloured bag. The master and

the complainant closed the shop and started for home on feet. At about 8.15 p.m. they were walking in front of hospital of Dr. Deshpande, which

is near the residence of the master. A vehicle overtook them and halted by going little ahead. The pillion rider jumped from the vehicle, approached

the complainant and his master and demanded the money bag. The master gripped the bag with more firmness. The offender again angrily

demanded the bag in threatening language. The threat was followed by the offender drawing out a pistol, which was kept underneath his shirt and

near his stomach. He aimed the pistol at the master. Even upon the complainant trying to see the registration number of the vehicle, he was

threatened by the offender and a bullet was fired at the master at his chest from a close distance. The assailant immediately jumped on the M-80

motorcycle and the motorcycle fled away in the direction of Kothla bus-stand.

6. In spite of bullet injury to the chest, the deceased ran towards residence, but dashed against the window and fell down. His relative Sanju came

out from the house and took him to the hospital of Dr. Deshpande. As Dr. Deshpande was not available in the hospital, he was shifted to civil

hospital. At this juncture, the complainant waited at the residence of the master.

7. In the complaint, the complainant stated that he is not able to give the registration number of motorcycle, but the person who fired at his master

was slim of about 5 ft. height, who had combed his hair to his right side and had no grown beard or moustache. He was wearing white shirt and

black pant and he was of mild black complexion. The driver of the M-80 motorcycle was also of mild black complexion and had worn chocolate-

coloured shirt and black pant. The complainant has specifically recorded that if these two persons are shown to him he would be in a position to

identify them.

8. The complaint was investigated and charge-sheet filed in the Court of Judicial Magistrate, Ahmednagar, was registered as RTC No. 242 of

1999 and on committal by order dated 21-8-1999, it was registered as Sessions Case No. 150 of 1999.

9. There is another story in relation to the vehicle used in the commission of above referred offence, which comes out through evidence of Sk.

Lalan (PW6). He is owner of Bajaj M-80 motorcycle Registration No. MH-16/G-5308. According to Sk. Lalan that was stolen on 1-5-1999

sometime between 10 a.m. to 5.30 p.m. from the location where it was parked. A complaint was registered by Sk. Lalan. According to said

complaint, on 1-5-1999 at about 10 a.m., he came to his shop in Ganj Bazaar area on said Bajaj M-80 motorcycle and he parked it in front of

residence of Vijay Verma. He removed the plug cap of the same. He worked in the shop up to 5.30 p.m. and thereafter came to the location

where motorcycle was parked for the purpose of going to residence. The vehicle was missing and enquiries to people in the vicinity yielded no

results. Being convinced that vehicle was stolen, he reported the matter to Kotwali Police Station on 2-5-1999 at 2.45 hrs, which was registered

as Crime No. 118 of 1999 u/s 379 IPC.

10. Investigation of this complaint by Sk. Lalan culminated into filing of charge-sheet in the Court of CJM, Ahmednagar, on 28-6-1999. The same

was registered as RTC No. 194 of 1999. This case was also committed to the Court of Session on 7-2-2000, whereafter it was registered as

Sessions Case No. 18 of 2000 and ultimately it was amalgamated with Sessions Case No. 150 of 1999. The two sessions cases were so tried

after amalgamation only after amending the charge. This was because theft of the vehicle was taken as part and parcel of the conspiracy, since the

vehicle was used ultimately for committing the main offence i.e. threatening the deceased to deliver the cash bag and shooting at him as he did not

do so.

11. The Trial Court mainly relied on the evidence of P Ws 1 and 10 and PW3. PW10, Mangala Chintamani is the wife of Accused 1 i.e. Balu

Ranganath Chintamani. It is to be noted that the High Court directed acquittal of A-2 (Vitthal Ramayya Madur) and A-3 (Intakhab Alam Abdul

Salam Sain) but dismissed the appeal so far as Accused 1 and 4 are concerned. The present appeal has been filed by only A-4 (Amitsingh

Bhikamsingh Thakur).

12. Primary stand of learned Counsel for the Appellant is that the so-called confession has no evidentiary value, it was extracted under duress. The

discovery was made from an open space and therefore the confession cannot be of any consequence. Also identification of the accused through a

test identification parade has no legal value.

13. As was observed by this Court in Matru v. State of U.P. (1971 (2) SCC 75) identification tests do not constitute substantive evidence. They

are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is

proceeding on the right lines. The identification can only be used as corroborative of the statement in Court. (see: Santokh Singh v. Izhar Hussain

(1973 (2) SCC 406) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses.

The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them

from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object

of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to

enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the

nature of tests and significantly, therefore, there is no provision for it in the Code of Criminal Procedure, 1973 (in short ""the Code"") and the

Evidence Act, 1872 (in short ""the Evidence Act""). It is desirable that a test identification parade should be conducted as soon as after the arrest of

the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade.

This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such

allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

14. ""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 u/s 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 Administration (AIR 1958 SC 350) Vaikuntam

Chandrappa and others v. State of Andhra Pradesh (AIR 1960 SC 1340), ; Budhsen and another v. State of U.P. (AIR 1970 SC 1321) and

Rameshwar Singh v. State of Jammu and Kashmir (AIR 1972 SC 102) .

15. In Jadunath Singh and another v. The State of Uttar Pradesh (1970) 3 SCC 518) the submission that absence of test identification parade in all

cases is fatal, was repelled by this Court after exhaustive consideration of the authorities on the subject. That was a case where the witnesses had

seen the accused over a period of time. The High Court had found that the witnesses were independent witnesses having no affinity with the

deceased and entertained no animosity towards the Appellant. They had claimed to have known the Appellants for the last 6-7 years as they had

been frequently visiting the town of Bewar. This Court noticed (at SCC pp. 522-23, para 11) the observations in an earlier unreported decision of

this Court in Parkash Chand Sogani v. State of Rajasthan, Cri. a. No. 92 of 1956 decided on 15.1.1957, wherein it was observed:

It is also the defence case that Shiv Lal did not know the Appellant. But on a reading of the evidence of PW7 it seems to us clear that Shiv Lal

knew the Appellant by sight. Though he made a mistake about his name by referring to him as Kailash Chandra, it was within the knowledge of

Shiv Lal that the Appellant was a brother of Manak Chand and he identified him as such. These circumstances are quite enough to show that the

absence of the identification parade would not vitiate the evidence. A person, who is well known by sight as the brother of Manak Chand, even

before the commission of the occurrence, need not be put before an identification parade in order to be marked out. We do not think that there is

any justification for the contention that the absence of the identification parade or a mistake made as to his name, would be necessarily fatal to the

prosecution case in the circumstances.

The Court concluded: >Jadunath Singh & Anr Vs The State of U.P. AIR 1971 SC 363 15. It seems to us that it has been clearly laid down by this

Court in Parkash Chand Sogani v. State of Rajasthan Cri. A. No. 92 of 1956 decided on 15.1.1957 that the absence of test identification in all

cases is not fatal and if the accused person is well known by sight it would be waste of time to put him up for identification. Of course if the

prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that

the witnesses did not know the accused previously, the prosecution would run the risk of losing its case." 9. In Harbhajan Singh v. State of Jammu

and Kashmir (1975) 4 SCC 480), though a test identification parade was not held, this Court upheld the conviction on the basis of the

identification in Court corroborated by other circumstantial evidence. In that case it was found that the Appellant and one Gurmukh Singh were

absent at the time of roll-call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty

cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from

the rifle of the Appellant. Noticing these circumstances this Court held: (SCC p. 481, para 4) "4. In view of this corroborative evidence we find no

substance in the argument urged on behalf of the Appellant that the investigating officer ought to have held an identification parade and that the

failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows

that his story cannot be true. As observed by this Court in Jadunath Singh v. State of U.P. (AIR 1971 SC 363) absence of test identification is not

necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not

previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains

an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have

referred to above lend enough assurance to the implication of the Appellant." 10. It is no doubt true that much evidentiary value cannot be attached

to the identification of the accused in Court where identifying witness is a total stranger who had just a fleeting glimpse of the person identified or

who had no particular reason to remember the person concerned, if the identification is made for the first time in Court.

16. In Ram Nath Mahto v. State of Bihar (1996) 8 SCC 630) this Court upheld the conviction of the Appellant even when the witness while

deposing in Court did not identify the accused out of fear, though he had identified him in the test identification parade. This Court noticed the

observations of the Trial Judge who had recorded his remarks about the demeanour that the witness perhaps was afraid of the accused as he was

trembling at the stare, of Ram Nath, the accused. This Court also relied upon the evidence of the Magistrate, PW7 who had conducted the test

identification parade in which the witness had identified the Appellant. This Court found, that in the circumstances if the Courts below had

convicted the Appellant, there was no reason to interfere.

17. In Suresh Chandra Bahri v. State of Bihar (1995 Supp (1) SCC 80) this Court held that it is well settled that substantive evidence of the

witness is his evidence in the Court but when the accused person is not previously known to the witness concerned then identification of the

accused by the witness soon after his arrest is of great importance because it furnishes an assurance that the investigation is proceeding on right

lines in addition to furnishing corroboration of the evidence to be given by the witness later in Court at the trial. From this point of view it is a matter

of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such

identification is held without avoidable and unreasonable delay after the arrest of the accused. It is in adopting this course alone that justice and fair

play can be assured both to the accused as well as to the prosecution. Thereafter this Court observed: (SCC p. 126, para 78) "But the position

may be different when the accused or a culprit who stands trial had been seen not once but for quite a number of times at different point of time

and places which fact may do away with the necessity of TI parade.

18. In State of Uttar Pradesh v. Boota Singh and others (1979 (1) SCC 31) this Court observed that the evidence of identification becomes

stronger if the witness has an opportunity of seeing the accused not for a few minutes but for some length of time, in broad daylight, when he would

be able to note the features of the accused more carefully than on seeing the accused in a dark night for a few minutes.

19. In Ramanbhai Naranbhai Patel and others v. State of Gujarat (2000 (1) SCC 358) after considering the earlier decisions this Court observed:

(SCC p.369, para 20) "20. It becomes at once clear that the aforesaid observations were made in the light of the peculiar facts and circumstances

wherein the police is said to have given the names of the accused to the witnesses. Under these circumstances, identification of such a named

accused only in the Court when the accused was not known earlier to the witness had to be treated as valueless. The said decision, in turn, relied

upon an earlier decision of this Court in V.C. Shukla v. State (AIR 1980 SC 1382) wherein also Fazal Ali, J., speaking for a three-Judge Bench

made similar observations in this regard. In that case the evidence of the witness in the Court and his identifying the accused only in the Court

without previous identification parade was found to be a valueless exercise. The observations made therein were confined to the nature of the

evidence deposed to by the said eyewitnesses. It, therefore, cannot be held, as tried to be submitted by learned Counsel for the Appellants, that in

the absence of a test identification parade, the evidence of an eyewitness identifying the accused would become inadmissible or totally useless;

whether the evidence deserves any credence or not would always depend on the facts and circumstances of each case. It is, of course, true as

submitted by learned Counsel for the Appellants that the later decisions of this Court in Rajesh Govind Jagesha v. State of Maharashtra (AIR 2000

SC 160) and State of H.P. v. Lekh Raj (AIR 1999 SC 3916) had not considered the aforesaid three-Judge Bench decisions of this Court.

However, in our view, the ratio of the aforesaid later decisions of this Court cannot be said to be running counter to what is decided by the earlier

three-Judge Bench Judgments on the facts and circumstances examined by the Court while rendering these decisions. But even assuming as

submitted by learned Counsel for the Appellants that the evidence of these two injured witnesses i.e. Bhogilal Ranchhodbhai and Karsanbhai

Vallabhbhai identifying the accused in the Court may be treated to be of no assistance to the prosecution, the fact remains that these eyewitnesses

were seriously injured and they could have easily seen the faces of the persons assaulting them and their appearance and identity would well remain

imprinted in their minds especially a when they were assaulted in broad daylight. They could not be said to be interested in roping in innocent

persons by shielding the real accused who had assaulted them." These aspects were highlighted in Malkhansingh and Others v. State of M.P.

(2003 (5) SCC 746) .

20. So far as the discovery u/s 27 of the Evidence Act is concerned it appears to be from open space. In that context the observations of this

Court in Anter Singh v. State of Rajasthan (2004 (10) SCC 657) need to be noted.

21. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kotayya v. King Emperor (1946) 74 IA 65 :

AIR 1947 PC 67 : 48 Cri LJ 533 in the following words, which have become locus classics: (IA p. 77) ""[I]t is fallacious to treat the ''fact

discovered'' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and

the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history,

of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that ''I will

produce a knife concealed in the roof of my house'' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to

the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the

commission of the offence, the fact discovered is very relevant. But if to the statement the words be added with which I stabbed A'', these words

are inadmissible since they, do not relate to the discovery of the knife in the house of the informant.

22. The aforesaid position was again highlighted in Prabhu v. State of Uttar Pradesh (AIR 1963 SC 1113)

11. Although the interpretation and scope of Section 27 has been the subject of several authoritative pronouncements, its application to concrete

cases [in the background events proved therein] is not always free from difficulty. It will therefore be worthwhile at the outset, to have a short and

swift glance at section 27 and be reminded of its requirements. The section says:

27. Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the

custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby

discovered, may be proved.'' 12. The expression ''provided that'' together with the phrase ''whether it amounts to a confession or not'' show that

the section is in the nature of an exception to the preceding provisions particularly Sections 25 and 26. It is not necessary in this case to consider if

this section qualifies, to any extent, Section 24, also. It will be seen that the first condition necessary - for bringing this section into operation is the

discovery of a fact, albeit a - relevant fact, in consequence of the information received from a person accused of an offence. The second is that the

discovery of such fact must deposed to. The third is that at the time of the receipt of the information the accused must be in police custody. The last

but the most important condition is that only ''so much of the information'' as relates distinctly to the fact thereby discovered is admissible. The rest

of the information has to be excluded. The word "distinctly" means "directly", indubitably", "strictly", "unmistakably". The word has been advisedly

used to limit and define the scope of the provable information. The phrase "distinctly relates to the fact thereby discovered" is the linchpin of the

provision. This phrase refers to that part of the information supplied by the accused which is the direct and immediate cause of the discovery. The

reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in

consequence of information given by the accused, it affords some guarantee of truth of that part, and that part only, of the information which was

the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be

indirectly or remotely related to the fact discovered.(see: Mohammed Inayuttillah v. The State of Maharashtra (AIR 1976 SC 483).

(emphasis in original)

23. At one time it was held that the expression ""fact discovered"" in the section is restricted to a physical or material fact which can be perceived by

the senses, and that it does not include a mental fact, now it is fairly settled that the expression ""fact discovered"" includes not only the physical

object produced, but also the place from which it is produced and the knowledge of the accused as to this, as noted in Pulukuri Kotayya case,

(1946)74 IA 65: AIR 1947 PC 67: 48 Cri LJ 533 and in Udai Bhan v. State of Uttar Pradesh (AIR 1962 SC 1116).

24. The various requirements of the section can be summed up as follows:

(1) The fact of which evidence is sought to be given must be relevant to the issue. It must be borne in mind that the provision has nothing to do with

question of relevancy. The relevancy of the fact discovered must be established according to the prescriptions relating to relevancy of other

evidence connecting it with the crime in order to make the fact discovered admissible.

(2) The fact must have been discovered.

(3) The discovery must have been in consequence of some information received from the accused and not by the accused''s own act.

(4) The person giving the information must be accused of any offence.

(5) He must be in the custody of a police officer.

(6) The discovery of a fact in consequence of information received from an accused in custody must be deposed to.

(7) Thereupon only that portion of the information which relates distinctly or strictly to the fact discovered can be proved. The rest is inadmissible.

25. As observed in Pulukuri Kotayya case, (1946)74 IA 65: AIR 1947 PC 67: 48 Cri LJ 533 it can seldom happen that information leading to the

discovery of a fact forms the foundation of the prosecution case. It is one link in the chain of proof and the other links must be forged in manner

allowed by law. To similar effect was the view expressed in K. Chinnaswamy Reddy v. State of Andhra Pradesh and Another (1962 SC 1788) .

26. When the evidence of PW 1 and the identifications made at the test identification parade and discovery in terms of Section 27 are considered,

conclusions of the Trial Court, so far as affirmed by the High Court, do not suffer from any infirmity. At this juncture it is to be noted that learned

Counsel for the Appellant has submitted that PW1 was related to the deceased and therefore his evidence should be rejected. The plea is clearly

without substance. Relationship would not result in the mechanical rejection of the testimony of the witnesses. Settled norms of appreciation of

evidence require that the evidence of such witnesses is to be assessed with caution. In the instant case the Trial Court has analysed the evidence

with care and caution and the High Court has also done so.

27. Above being the position the plea relating to alleged interestedness of the witnesses has also no substance. Looked at from any angle the

appeal is sans merit, deserves dismissal which we direct.

Appeal dismissed.