HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

PRESENT:

HON'BLE MR. JUSTICE G.S. AHLUWALIA

Criminal Appeal No. 500 OF 2004

Bharat Sigh & Anr.

-Vs-

State of M.P.

None for the appellants.

Shri Girdhari Singh Chauhan, Public Prosecutor for the respondent/State.

J U D G M E N T
(23/03/2017)

This Criminal Appeal has been filed under Section 374 of Cr.P.C. against the judgment and sentence dated 31-7-2004 passed by Special Judge, Shivpuri, in Special S.T. No. 59/2003 by which they have been convicted under Section 365 of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act and have been sentenced to undergo the rigorous imprisonment of 5 years and a fine of Rs. 500 with default imprisonment.

Before proceeding with the facts of the case and considering the appeal on merits, it would be appropriate to refer to the fact about the attempt on the part of the appellants to avoid the hearing of the appeal.

The appellants were granted bail by this Court by order dated 3-1-2005. Thereafter, the case was listed for final hearing on 26-2-2013, and at the request of the Counsel for the appellants, the hearing of the case was adjourned. None appeared on 7-3-2013, therefore, S.P.C. was issued to the appellants. Thereafter, the case was adjourned on 26-3-2013.

The hearing of the case was adjourned on 26-4-2013 as again neither the appellants nor their Counsel appeared before the Court. On 17-4-2015, again the Counsel for the appellants sought time to argue the matter and accordingly, the hearing of the case was deferred. On 1-9-2016, time was sought to argue the case. None appears today to argue the matter. The appeal is of the year 2004 and is listed under the category "High Court Expedited Cases." The name of the Counsel for the appellants was flashed on the display board continuously, but none appears. Thus, under these circumstances, it is clear that the appellants are avoiding the hearing of the case.

The Supreme Court in the case of **Surya Baksh Singh Vs. State of U.P.** reported in **(2014) 14 SCC 222** has held as under:

> **"24.** It seems to us that it is necessary for the appellate court which is confronted with the absence of the convict as well as his counsel, to immediately proceed against the persons who stood surety at the time when the convict was granted bail, as this may lead to his discovery and production in court. If even this exercise fails to locate and bring forth the convict, the appellate court is empowered to dismiss the appeal. We fully and respectfully concur with the recent elucidation of the law, profound yet perspicuous, in *K.S. Panduranga* v. *State of Karnataka (2013) 3 SCC 721.* After a comprehensive analysis of previous decisions our learned Brother had distilled the legal position into six propositions: (SCC p. 734, para 19)
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> "*19.1.* that the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;
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> *19.2.* that the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;
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> *19.3.* that the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;
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> *19.4.* that it can dispose of the appeal after perusing the record and judgment of the trial court.

> *19.5.* that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and
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> *19.6.* that if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."
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> **25.** The enunciation of the inherent powers of the High Court in exercise of its criminal jurisdiction already articulated by this Court on several occasions motivates us to press Section 482 into operation. We reiterate that there is an alarming and sinister increase in instances where convicts have filed appeals apparently with a view to circumvent and escape undergoing the sentences awarded against them. The routine is to file an appeal, apply and get enlarged on bail or get exempted from surrender, and thereafter wilfully to become untraceable or unresponsive. It is the bounden duty cast upon the Judge not merely to ensure that an innocent person is not punished but equally not to become a mute spectator to the spectacle of the convict circumventing his conviction. (See *Stirland* v. *Director of Public Prosecutions 1944 AC 315*, quoted with approval by Arijit Pasayat, J. in *State of Punjab* v. *Karnail Singh (2003) 11 SCC 271*.) If the court is derelict in doing its duty, the social fabric will be rent asunder and anarchy will rule everywhere. It is, therefore, imperative to put an end to such practice by the expeditious disposal of appeals. The inherent powers of the High Court, poignantly preserved in Section 482 CrPC, can also be pressed into service but with care, caution and circumspection."

The present appeal is pending since 2004 and more than 12 years have passed but the appeal could not be heard due to non-cooperation of the appellants. The Supreme Court in the case of **Hussain Vs. Union of India** by its order dated 9.3.2017 passed in **Cr.A. No. 509 of 2017** has held as under:

> "27. To sum up:
> (i) The High Courts may issue directions to subordinate courts that –
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> (a) Bail applications be disposed of normally within one week;
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> (b) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;
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> (c) Efforts be made to dispose of all cases which are five years old by the end of the year;
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> (d) As a supplement to Section 436A, but consistent with the spirit thereof, if an undertrial has completed period of custody in excess of the sentence **likely to be awarded** if conviction is recorded such undertrial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;
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> (e) The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.
>
> (emphasis added)
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> (ii) The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;
> (iii) The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;
> (iv) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;
> (v) The High Courts may take such stringent measures as may be found necessary in the light of judgment of this Court in ***Ex. Captain Harish Uppal*** *(supra)*."

Therefore, this Court is left with no other option but to decide the case after thoroughly going through the record and after hearing the Counsel for the State.

The necessary facts for the disposal of the present appeal in short are that on the information of Kailash Narayan, a Dehati Nalishi, Ex. P.9, was recorded on 13-2-2003 at about 15.15 to the effect that he, Prakash Narayan Jatav and Pankaj Kumar Bhargava are posted as Teachers in Primary School and were teaching the students as per the daily routine. At about 2:30 P.M., when all the teachers were teaching the students in the class rooms, at that time, 4 armed persons came to the school. One was having Country made pistol whereas the remaining three were having guns. The miscreant having country made pistol caught hold the collar of the shirt of Pankaj Kumar Bhargava and instructed him to go along with them and have taken him to the forest. The miscreants were calling one person as Dau Kamal Singh. One miscreant was aged about 40-45 years whereas the remaining three were young. He can identify the miscreants. On this information, the F.I.R. was lodged. The police recorded the statements of the witnesses and after completing the investigation, filed the charge sheet against the appellants, and co-accused Nanhe Singh, Makhan Singh. Charge sheet against Kamal Singh was filed under Section 299 of Cr.P.C. as he could not be arrested. During the pendency of the trial, it was submitted by the prosecution that the absconding accused Kamal Singh has died in a police encounter and accordingly by order dated 16-8-2004, the Trial Court declared the co-accused Kamal Singh dead.

The Trial Court by order dated 10-6-2003 framed charges under Sections 364A of I.P.C. and under Section 11/13 of M.P.D.V.P.K. Act, 1981.

The appellants abjured their guilt and pleaded not guilty.

As no appeal has been filed against the acquittal of co-accused Nanhe and Makhan, therefore, the facts of the case shall be considered only to find out that whether the

prosecution has succeeded in establishing the guilt of the appellants or not.

The prosecution in order to prove its case, examined Prakash Narayan Jatav (P.W.1), Raj Bahadur Singh (P.W.2), Ramjilal (P.W. 3), Ramjilal (P.W.4) (it appears that Ramjilal has been examined twice as P.W.3 and P.W.4), Kailash Narayan (P.W.5), Lakhan Singh (P.W.6), P.L. Prajapati (P.W.7), Parmu Sen (P.W.8), O.P. Yadav (P.W.9), Nanhe Singh Adiwasi (P.W.10), Pankaj Bhargava (P.W.11), and Salikram Gautam (P.W.12). The appellants did not examine any witness in their defence.

Prakash Narayan Jatav (P.W.1) has not supported the prosecution case and was declared hostile. He was cross examined by the Public Prosecutor, however, nothing could be elicited from his cross examination, which may support the prosecution.

Rajbahadur Singh (P.W. 2) is a constable in police department. He has stated that Bharat Singh had made a confessional statement which is Ex. P.2 and an amount of Rs. 10,000 was seized from the possession of Bharat Singh vide Seizure memo Ex. P.3.

Ramjilal was examined twice as P.W. 3 and P.W. 4. This witness has stated that he had recorded the F.I.R. on the production of a Dehati Nalishi on 13-2-2003. The F.I.R. in crime no. 17/2003 is Ex. P.4. The copy of the Counter F.I.R. is Ex. P.5 and its photocopy is Ex. P.5C. The copy of the F.I.R. was sent to the concerned Magistrate and the relevant entry in the register is at Serial No. 401 which is Ex. P.6 and its photocopy is Ex. P.6C. The Dak book is Ex. P.7 and its photo copy is Ex. P.7C.

Kailash Narayan (P.W. 5) has stated that on 13-2-2003, it was about 2:15 P.M., when one unidentified person came to the school and took Pankaj Kumar with him. 3-4 unknown

miscreants were also there. Thereafter he became hopeless and was feeling thirsty. The police had come to the school and spot map Ex. P.8 was prepared. He had lodged the report Ex. P.9, however, this witness clearly stated that he do not know the accused persons and he cannot identify the miscreants even if they come in front of him. This witness was also declared hostile and he was confronted with his report Ex. P.9 in which he had stated that he would identify the miscreants but he denied this fact and could not explain that how that was mentioned in the Dehati Nalishi Ex. P.9.

Lakhan Singh (P.W. 6) has not supported the prosecution case and was declared hostile. He was cross examined by the Public Prosecutor, however, nothing could be elicited from his cross examination, which may support the prosecution.

P.L. Prajapati (P.W. 7) has stated that he had investigated the matter and had prepared the spot map Ex. P.8 and had recorded the statements of Prakash Narayan, Kailash Narayan Bhargava.

Parmu Sen (P.W. 8) is the seizure witness of seizure of Rs. 10,000/- from Bharat Singh. This witness has not supported the prosecution case and was declared hostile. He was cross examined by the Public Prosecutor, however, nothing could be elicited from his cross examination, which may support the prosecution.

O.P. Yadav (P.W. 9) has stated that on 10-4-2003 he had arrested Bharat Singh vide arrest memo Ex. P.11. A confessional statement was made by Bharat Singh on 2-5-2013 which is Ex. P.2 and an amount of Rs. 10,000 was seized from the possession of Bharat Singh vide seizure memo Ex.P.3. Co-accused Nanhe and Makhan were arrested vide arrest memo Ex. P.12. In Cross-examination, this witness admitted that in the night of 13-3-2003, the abductee contacted the police station on phone and on 14-3-2003, the

abductee Pankaj Bhargava came to Police Station on his own and his statements were recorded. He further admitted that the appellants Nanhe Singh and Malkhan were arrested in some other case therefore, they were formally arrested on 10-4-2003. Similarly, this witness further admitted that the co-accused Bharat Singh was also in detention in connection with some other case and was formally arrested on 10-4-2003.

Nanhe Singh Adiwasi (P.W.10) has not supported the prosecution case and was declared hostile. He was cross examined by the Public Prosecutor, however, nothing could be elicited from his evidence which may support the prosecution case.

Pankaj Bhargava (P.W. 11) is the abductee. He has stated that on 13-2-2003 he was teaching in the school and at about 2:15 in the afternoon, some miscreants who were the members of Gang of Kamal Singh came there. Their names were Makhan Singh, Nanhe Singh, Bade Vira and Chhote Vira and Kamal Singh and they took him to forest. On the way, the miscreants had also looted one Boring Machine. He was kept in the forest for about a month. Accused Bade Vira is Bharat, whereas Makhan Singh is known as Sultan, Chhote Vira is Chaitu and Nanhe Singh is Valli Khangar. One Malkhan Singh Lodhi was also abducted who too was kept with him. This witness identified only Bharat Singh and Sultan Singh in the dock and could not identify the remaining accused persons. In cross examination this witness has specifically stated that he do not know that how he got free from the custody of the accused persons. If any money had been given, then the same must have been given by his family members. He further denied that he has wrongly identified Bharat Singh in the Court. He further admitted that in more case, he had given his statements. He further admitted that earlier he was not knowing the name of Sultan but he was knowing his name as

Makhan.

Salikram Gautam (P.W. 12) has stated that on 9-3-2003, he had formally arrested Sultan in the jail premises of Gwalior vide arrest memo Ex. P.14.

Thus, from the plain reading of the evidence which has come on record, it is clear that except Pankaj Bhargava (P.W. 11) all the witnesses have not supported the prosecution case and they have turned hostile.

So far as Pankaj Bhargav (P.W. 11) is concerned, he has identified the appellants in the Court. The Trial Court has also held that there is nothing on record that any ransom was demanded by the appellants for releasing the complainant.

It is not out of place to mention here that no Test Identification Parade was conducted by the police during Trial. The only evidence which is available against the appellants is their identification by Pankaj Bhargav (P.W.11) in the Court.

The centripetal question for determination is that whether the identification of the appellants for the first time in the Court by the complainant is reliable or not?

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."

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

> **44.** That apart, it was recently held in *Ashok Debbarma* v. *State of Tripura (2014) 4 SCC 747* that while the evidence of identification of an accused at a trial is admissible as a substantive piece of evidence, it would depend on the facts of a

> given case whether or not such a piece of evidence could be relied upon as the sole basis for conviction of an accused. It was held that if the witnesses are trustworthy and reliable, the mere fact that no TIP was conducted would not, by itself, be a reason for discarding the evidence of those witnesses. In arriving at this conclusion, this Court relied upon a series of decisions. AIR 1958 SC 350 Earlier, a similar view was expressed in *Manu Sharma* v. *State (NCT of Delhi) (2010) 6 SCC 1*.

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."

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."

Thus, it is clear that in order to rely upon the dock identification of accused, it is not necessary that the Test Identification Parade should have been conducted by the Police during investigation and in fact the dock identification is the substantive piece of evidence and if the evidence of a witness is found reliable, then the identification of the accused in the dock can be relied upon.

If the evidence of Pankaj Bhargava (P.W.11) is considered in the light of the law laid down by the Supreme Court on the question of admissibility and reliability of the identification of the accused for the first time in the Court, this Court is of the view that the evidence of Pankaj Bhargava (P.W. 11) is not reliable.

Pankaj Bhargava (P.W. 11) has stated that on 13-2-2003 he was abducted and he was kept by the appellants in the jungle for a period of about a month. During his stay with the appellants, one Makhan Singh Lodhi was also abducted and he too stayed with him for a period of 15 days. However, this witness has not stated that on what date and at what place, he was released by the appellants. He also could not say that whether any ransom was paid by his family members of not? He has also not stated that during the period of his custody, any demand of ransom was made by any of the accused/appellants. This witness has also not stated that after his release, he informed the police station in the night of 13-3-2003 about his release. This witness has also not stated that on the next day i.e., 14-3-2003, he went to the police station and his statement was recorded. Even Malkhan Singh Lodhi, another abductee has not been examined. Except saying that he was kept in the Forest, this witness Pankaj Bhargava (P.W. 11) has not clarified that whether during this period of one

month, he was kept at one place only or they were changing their places of residence. He has also not stated that whether the food was being supplied by any other person or the food was being prepared by the accused persons and whether the accused had even received any grocery etc. or not? Except by saying that he was kept in the Forest for a period of one month, nothing else has been stated by this witness. Thus, from the plain reading of the evidence of Pankaj Bhargava (P.W. 11), this Court is of the considered view that this is not a reliable witness and therefore identification of the accused/appellants for the first time in the dock cannot be treated as a sufficient circumstance to convict the appellants. Even the prosecution has not clarified that as to why no Test Identification Parade was got conducted during investigation. There is another important aspect of the matter. According to the evidence which has come on record, the abductee Pankaj Bhargava (P.W. 11) informed the police about his release in the night of 13-3-2003 and his case diary statement was recorded on 14-3-2003. All other witnesses have turned hostile. Thus, it is clear that according to the evidence which has come on record, the police came to know about the names of the accused persons for the first time on 14-3-2003, but from the record it is clear that the appellant Sultan Singh was already arrested by the police on 9-3-2003. There is nothing on record to show that what was the basis for the arrest of appellant Sultan on 9-3-2003, specifically when the case diary statement of the abductee Pankaj Bhargava (P.W. 11) was recorded on 14-3-2003.

Thus, in the light of the observations made in the previous paragraphs, it is clear that except the solitary circumstance of identification of the appellants in the dock by the abductee Pankaj Bhargava (P.W.11), there is no other evidence available on record to hold the appellants guilty for

offence under Section 365 of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act. Accordingly, the appellants are acquitted of all the charges leveled against them.

The judgment and sentence passed by the Court below is set aside.

The appellants are on bail. Their bail bonds and surety bonds stands discharged.

The appeal succeeds and is hereby **allowed.**

(G.S. AHLUWALIA)
Judge

(alok)