**IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR**

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

&

HON'BLE SHRI JUSTICE RAJEEV KUMAR SHRIVASTAVA

ON THE 22nd OF JUNE, 2022

CRIMINAL APPEAL NO. 17 of 2012

Between:-

1. **RAMRATAN S/O. SHRI PEJRAM KUSHWAH, AGED ABOUT 60 YEARS, R/O. VILLAGE DHANKULA, POLICE STATION – AMBAH, DISTRICT MORENA (MADHYA PRADESH).**
2. **KUNJILAL S/O. SOBHARAM, AGED ABOUT 42 YEARS, R/O. VILLAGE RAMPUR GANESH RAM KA PURA, DISTRICT MORENA (MADHYA PRADESH).**
3. **RAMDAS S/O. SOBHARAM, AGED ABOUT 29 YEARS, R/O. VILLAGE RAMPUR GANESH RAM KA PURA, DISTRICT MORENA (MADHYA PRADESH).**

…….APPELLANTS

(BY SHRI SUSHIL GOSWAMI – ADVOCATE)

AND

THE STATE OF MADHYA PRADESH, THROUGH : POLICE STATION GOHAD, DISTRICT

BHIND (MADHYA PRADESH).

……..RESPONDENT

(BY SHRI A.K. NIRANKARI – PUBLIC PROSECUTOR)

Reserved on : 16th of June, 2022
Delivered on : 22nd of June, 2022

This appeal coming on for final hearing this day, ***Hon'ble Shri Justice G.S. Ahluwalia,*** *passed the following:*

JUDGMENT

1. This Criminal Appeal under Section 374 of Cr.P.C. has been filed against the Judgment and Sentence dated 2-12-2011 passed by Special Judge (MPDVPK Act), Bhind in Special Sessions Trial No.23/2007 by which the Appellants have been convicted and sentenced for the following offences :

Convicted under Section	Sentence
396 of IPC read with 11/13 of MPDVPK Act (All the Appellants)	Life Imprisonment and fine of Rs. 10,000/- in default 6 months R.I.
25(1-B)(a) of Arms Act (Appellant No.2)	7 years R.I. and fine of Rs. 1,000/- in default 1 month R.I.
27 of Arms Act read with Section 11/13 of MPDVPK Act (Appellant No.2)	7 years R.I. and fine of Rs.1,000/- in default 1 month R.I.

All the sentences awarded to Appellant no. 2 shall run concurrently.

2. The necessary facts for disposal of the present appeal in short are that on 20-11-2006 at about 3 A.M., 5 persons committed decoity in the house of Dataram and took away Gold and Silver ornaments, cash as well

as Mobile Phone. They also caused injuries to Dataram, Mangal, Radha and Munni devi. When Munni devi tried to stop them, then a gunshot injury was caused to her. One miscreant was caught hold by Dataram and accordingly, he was assaulted on his head by a *dharia.* Thereafter, all the miscreants went out of the house. While they were fleeing away, they were chased by Hotam. The miscreants also took away gold ornaments. One miscreant shot Hotam on his chest. An FIR was lodged with a specific allegation that the complainant can identify the miscreants.

3. On the basis of FIR, police registered crime No.213/2006 against the unknown persons for offence under Sections 395, 397 of IPC and under Section 11/13 of MPDVPK Act. Plain and Blood stained floor, one fired cartridge, one bullet and iron rod was seized from the spot.

4. Hotam Singh succumbed to his injuries. The Accused persons were arrested. One country made pistol was seized from the possession of Appellant No.2/Kunjilal, whereas one Mangalsutra was seized from the possession of Appellant No.3/Ramdas. The Accused persons were put for Test Identification. All the Appellants were identified by the witnesses. The Mangalsutra and *gamchha* were also got identified. The police after completing the investigation, filed the charge sheet for offence under Sections 395, 396 and 397 of IPC. Since, other accused persons could not be arrested, therefore, investigation was kept pending against other accused persons.

5. The Trial Court by order dated 9-4-2007 framed charges under Section 396 of IPC read with Section 11/13 of MPDVPK Act, Section 395/397 of IPC read with Section 11/13 of MPDVPK Act against all the Appellants and also framed charge under Sections 25(1-B)(a) of Arms

Act read with Section 11/13 of MPDVPK Act, and under Section 27 of Arms Act read with Section 11/13 of MPDVPK Act.

6. The Appellants abjured their guilt and pleaded not guilty.

7. The prosecution in order to prove its case, examined Dataram (P.W.1), Gopal Singh (P.W.2), Munni (P.W.3), Radha (P.W.4), Mangal (P.W.5), Ramhet Kushwaha (P.W.6), Dhaniram (P.W.7), Manoj Jain (P.W.8), J.P. Parashar (P.W.9), R.S. Rathore (P.W.10), M. Tirki (P.W.11), J.P. Gupta (P.W. 12), Ashok Kumar Bhardwaj (P.W. 13), Harikanth Kushwaha (P.W. 14), Ravindra Kumar (P.W. 15), R.P. Sharma (P.W. 16) and Dr. J.S. Soni (P.W. 17).

8. The Appellants did not examine any witness in their defence.

9. The Trial Court, by the impugned judgment, convicted and sentenced the Appellants for the above mentioned offences.

10. Challenging the judgment and sentence awarded by the Trial Court, it is submitted by the Counsel for the Appellants that the case is based on circumstantial evidence. The evidence of identification of accused and articles is not trustworthy. Even the prosecution has failed to prove that Mangalsutra, Country made pistol and *gamchha* were seized from Appellant no.3 Ramdas and Appellant No. 2 Kunjilal, respectively. The chain of circumstances is not complete.

11. *Per contra*, the Counsel for the State has supported the findings recorded by the Trial Court. It is also submitted that the FSL report also corroborates the direct evidence.

12. Heard the learned Counsel for the Parties.

13. Before adverting to the facts of the case, this Court would like to consider as to whether the death of Hotam Singh was homicidal in nature

or not?

14. Dr. J.S. Soni (P.W.17) had conducted post-mortem of the dead body of Hotam Singh and found following injuries :

Dead body of a short built made aged about 32 years wearing *Baniyan* and underwear. *Baniyan* stained with blood and having damage corresponding to body injury.

Eyes closed, cornea hazy, mouth closed, fist semi open feet planter flexed, rigormortis present all over the body. Hypostasis present on back and faint.

Ante-mortem injuries present over the body

i. Gun shot entry wound present 1 cm right and above the right nipple margin 2cm x 1cm obliquely transverse infero laterally having abrasion all around more on supero lateral margin for 0.5 cm (illegible). It extends in thoracic cavity after slight inferiory and posteriory after damaging 3rd intercostal space right lung and heart, left lung through and through and a bullet (soft nose) recovered from 6th intercostal space below skin.

Internal Examination

3rd rib right side damaged rest healthy, surrounding area echhymosed

Both lungs lacerated through and through in the course of bullet cavity containing blood

Injury is fresh sufficient to cause death in ordinary course of nature, caused by fire arm – Direction right to left, anterio posteriory and slight superio inferiory.

One Soft nose bullet recovered from the body- sealed and handed over to P.C. Concerned.

Death was caused due to shock and hemorrhage as a result of thoracic injury. Injury has been caused by fire arm from distant shot.

Death is Homicidal in nature.

Duration of death is within 6 hours to 24 hours since P.M. Examination.

The Post-mortem report is Ex. P.21.

15. This witness was cross-examined. In cross-examination, he stated that since both the lungs of deceased were damaged, therefore, the deceased must have died instantaneously. There was no possibility of survival for more than 10 minutes.

16. Thus, it is clear that the deceased Hotam Singh died a homicidal death.

17. The next question for consideration is that whether the Appellants are the author of injuries or not?

18. Mangal (P.W.5), Radha (P.W.4), Kallu @ Dataram (P.W.1) and Munni Devi (P.W.3) are injured witnesses.

19. Dr. J.P. Gupta (P.W.12) found following injuries on Mangal son of Dataram :

Punctured wound 1 cm x 1 cm x 1cm deep right side of lower jaw. It was caused by sharp pointed object. He had advised x-ray. Duration of injury was less than 6 hours.
The M.L.C. is Ex. P.10.

20. Dr. J.P. Gupta (P.W. 12) found following injuries on Radha (P.W.4):

i. Abrasion 5 cm x 1 cm over left side of neck upper part. Clotting of blood seen

ii. Red contusion 5 cm x 1 cm over left side of scapular region.

The M.L.C. is Ex. P.11

21. Dr. J. P. Gupta (P.W. 12) found following injuries on Kallu @ Dataram (P.W.1) :

i. Incised wound 10 cm x ½ cm x bone deep over right parietal region of skull bleeding present;

ii. Incised wound 8 cm x ½ cm x bone deep over left parietal region of skull bleeding present.

The M.L.C. is Ex. P.12.

22. Dr. J. P. Gupta (P.W. 12) found following injuries on Munni Devi (P.W. 3) :

i. Rounded wound 1 cm in diameter, margins of wound inverted and anterior aspect of left hand 8 cm above the wrist. On passing probe, it goes upwards and posteriory, charring and tattooing present. Bleeding present in wound of entrance.

ii. Irregular wound 2 cm x 1 cm over dorsal-medial aspect of left hand 9 cm above the wrist. Bleeding present. Wound of exist.

iii. Incised wound 8 cm x 1 cm x ½ cm deep over upper 1/3rd of anterior aspect of right thigh. Bleeding present.

iv. Incised wound 5 cm x 1 cm x ½ cm over upper 1/3d part of anterior aspect of left thigh. Bleeding present.

The M.L.C. report is Ex. P.13.

23. Thus, it is clear that the presence of Dataram (P.W.1), Munni Devi (P.W.3), Mangali (P.W.5) and Radha (P.W.4)at the place of occurrence cannot be doubted.

24. The prosecution story is based on circumstantial evidence of Identification of accused/Appellants, recovery of Mangalsutra from Appellant Ramdas and recovery of country made pistol and *Gamchha* from Kunjilal as well as the F.S.L. Report.

25. Before considering the evidence led by prosecution, this Court thinks it apposite to consider the law governing the field of circumstantial evidence.

26. The Supreme Court in the case of **Sharad Birdhichand Sarda v. State of Maharashtra,** reported in **(1984) 4 SCC 116** has held as under :

153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an

accused can be said to be fully established:

(*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(*3*) the circumstances should be of a conclusive nature and tendency,

(*4*) they should exclude every possible hypothesis except the one to be proved, and

(*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

27. The Supreme Court in the case of **Pudhu Raja v. State,**reported in **(2012) 11 SCC 196** has held as under :

15. In a case of circumstantial evidence, the prosecution must establish each instance of incriminating circumstance by way of reliable and clinching evidence, and the circumstances so proved, must form a complete chain of events, on the basis of which, no conclusion other than one of guilt of the accused can be reached. Undoubtedly, suspicion, however grave it may be, can never be treated as a substitute for proof. While dealing with a case of circumstantial evidence, the court must take utmost precaution whilst finding an accused guilty solely

on the basis of the circumstances proved before it.

28. **T**he Supreme Court in the case of **Ram Singh v. Sonia,** reported in **(2007) 3 SCC 1** has held as under :

> **39.** The principle for basing a conviction on the basis of circumstantial evidence has been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the court has to be watchful and avoid the danger of allowing the suspicion to make the place of legal proof, for sometimes unconsciously it may happen to be a short step between moral certainty and legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions.

29. The Supreme Court in the case of **Inspector of Police v. John David** reported in **(2011) 5 SCC 509** has held as under **:**

> ***Case on circumstantial evidence***
>
> **33.** The principle for basing a conviction on the edifice of circumstantial evidence has also been indicated in a number of decisions of this Court and the law is well settled that each and every incriminating circumstance must be clearly established

by reliable and clinching evidence and the circumstances so proved must form a chain of events from which the only irresistible conclusion that could be drawn is the guilt of the accused and that no other hypothesis against the guilt is possible.

34. This Court has clearly sounded a note of caution that in a case depending largely upon circumstantial evidence, there is always a danger that conjecture or suspicion may take the place of legal proof. The court must satisfy itself that various circumstances in the chain of events have been established clearly and such completed chain of events must be such as to rule out a reasonable likelihood of the innocence of the accused. It has also been indicated that when the important link goes, the chain of circumstances gets snapped and the other circumstances cannot in any manner, establish the guilt of the accused beyond all reasonable doubts. It has been held that the court has to be watchful and avoid the danger of allowing the suspicion to take the place of legal proof. It has been indicated by this Court that there is a long mental distance between "may be true" and "must be true" and the same divides conjectures from sure conclusions.

35. This Court in *State of U.P.* v. *Ram Balak* had dealt with the whole law relating to circumstantial evidence in the following terms: (SCC pp. 555-57, para 11)

"*11*. '*9*. It has been consistently laid down by this Court that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. (See *Hukam Singh* v. *State of Rajasthan*, *Eradu* v. *State of Hyderabad*, *Earabhadrappa* v. *State of Karnataka*, *State of U.P.* v. *Sukhbasi*, *Balwinder Singh* v. *State of Punjab* and *Ashok Kumar Chatterjee* v. *State of M.P.*) The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In *Bhagat Ram* v. *State of Punjab* it was laid down that where the case depends upon the conclusion drawn from

circumstances the cumulative effect of the circumstances must be such as to negative the innocence of the accused and [bring home the offences] beyond any reasonable doubt.

10. We may also make a reference to a decision of this Court in *C. Chenga Reddy* v. *State of A.P.* wherein it has been observed thus: (SCC pp. 206-07, para 21)

"*21*. In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence."

11. In *Padala Veera Reddy* v. *State of A.P.* it was laid down that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests: (SCC pp. 710-11, para 10)

"(*1*) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;

(*2*) those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused;

(*3*) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and

(*4*) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

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16. A reference may be made to a later decision in *Sharad Birdhichand Sarda* v. *State of Maharashtra*. Therein, while dealing with circumstantial evidence, it has been held that the onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial

evidence, must be fully established. They are: (SCC p. 185, para 153)

(*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned "must" or "should" and not "may be" established;

(*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;

(*3*) the circumstances should be of a conclusive nature and tendency;

(*4*) they should exclude every possible hypothesis except the one to be proved; and

(*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.'

These aspects were highlighted in *State of Rajasthan* v. *Raja Ram*, at SCC pp. 187-90, paras 9-16 and *State of Haryana* v. *Jagbir Singh*."

Recovery of Mangalsutra from the Appellant Ramdas

30. The memorandum of the Appellant Ramdas was recorded on 28-11-2006, Ex. P.7. Gopal Singh (P.W.2) has stated that he was taken by the police to *Ganeshram Ka Pura* and he had seen Mangalsutra in the hand of the Appellant Ramdas which was seized vide seizure memo Ex. P.5. However, he stated that no information was given by the Appellant Ramdas, although he admitted his signatures on memorandum Ex. P.7. In cross-examination, he stated that he was standing outside the house. He further stated that the wife of Ramdas had eloped with someone. He denied as to whether any Panchayat was convened or not.

31. Ramhet Kushwaha (P.W.6) has stated that one Mangalsutra with Pendant on which the name Radha was engraved was seized from the

possession of the Appellant Ramdas vide seizure memo, Ex. P.5 and his memorandum is Ex. P.6 (It appears that Exhibits have been wrongly mentioned as seizure memo is Ex. P.4 and memorandum is Ex. P.4). This witness was cross-examined. In cross-examination, he stated that Dataram (P.W.1) is his cousin brother whereas deceased Hotam Singh is his real younger brother. The accused persons were arrested on 28th. The seizure memo was prepared in the police station. He further stated that after the arrest of accused persons, neither Dataram nor his family members had come to the police station. He had gone inside the house of Ramdas. Box was opened by Ramdas. Mangalsutra was seized in Vidisha. About 50 families are residing in the village from where the Mangalsutra was seized. No independent witness was called as a witness. Lalla is the brother-in-law of deceased Hotam. It was denied that Lalla had eloped with the wife of Kunjilal and had kept in his house. He also denied that brother-in-law of Hotam had also eloped with wife of Ramdas. He denied that Panchayat was convened. It is true that Kunjilal and Ramdas are real brothers.

32. Although Ramhet Kushwaha (P.W.6) was cross-examined in detail and an attempt was made to prove that the brother-in-law of deceased Hotam Singh had eloped with the wife of Ramdas, but that suggestion by itself would not demolish the evidence regarding recovery of Mangalsutra. It is true that Gopal (P.W.2) and Ramhet Kushwaha (P.W.6) are closely related to the deceased, but relationship of witness with the deceased, by itself is not sufficient to discard the evidence. Nothing could be brought on record to suggest that these witnesses are interested witnesses. Thus, it is held that Mangalsutra was seized from the

possession of Ramdas.

Identification of Mangalsutra

33. Radha (P.W.4) has identified the Mangalsutra in Test Identification Parade, Ex. P. 8.

34. Radha (P.W.4) has stated that She was sleeping on the ground floor of the house. Her husband Mangal was also sleeping with her. Her parents-in-law were sleeping on the first floor of the house. Five persons came inside the room. One of them pulled her husband. He also snatched her ear rings and Mangalsutra. Her husband was also beaten. She was saved by her father-in-law Dataram. Her mother-in-law also tried to save her. The miscreants fired gunshot which hit on the hand of her mother-in-law and the same bullet hit her husband also. Thereafter, the miscreants went away. Hotam had also sustained gunshot injury and thereafter, the miscreants ran away. She had identified her Mangalsutra. The Test Identification Parade was conducted by Tahsildar. Identification memo is Ex. P.8. This witness was cross-examined. In cross-examination, She admitted that when the accused persons were arrested, the police personnel had brought Mangalsutra to her house and Mangalsutra was shown to her by the police which was identified by her. She had informed that the Mangalsutra belongs to her. Three months thereafter, the Test Identification Parade was conducted. In Test Identification Parade, one Mangalsutra was kept on the table, which was identified by her. She had read her name on the Mangalsutra. Her husband had also identified the Mangalsutra.

35. However, her husband Mangal (P.W.5) has stated regarding identification of *gamchha* and not Mangalsutra. Thus, it is clear that

only Radha (P.W.4) is the witness who had identified the Mangalsutra.

36. From the plain reading of the evidence of Radha (P.W.4), it is clear that after the miscreants were arrested, the Mangalsutra was shown by the police to this witness and three months thereafter, the Test Identification Parade was conducted. Further, this witness has stated that at the time of identification, only one Mangalsutra was kept on the table. Although in the Test Identification Memo, Ex. P.8, it is mentioned that three more Mangalsutras of similar in design were mixed, but for the reasons best known to the prosecution, neither Devendra Kumar Rishishwar who had conducted Test Identification of Articles was examined nor his name was included in the Trial Programme, although he was cited as a witness in the charge sheet. Thus, except the evidence of Radha (P.W.4), there is no evidence with regard to identification of Mangalsutra and Radha (P.W.4) has stated that one Mangalsutra was kept on the table,which was identified by her. Thus, it is clear that the prosecution has failed to prove that more Mangalsutras of similar design were ever mixed for the purposes of identification. The Supreme Court in the case of **Ashish Batham Vs. State of M.P.** reported in **(2002) 7 SCC 317** has held as under :

> **13.** The identification test said to have been conducted by the Tahsildar (PW 8) and the so-called identification of the same by PW 2 and his wife of the chain said to have been worn by the deceased Nidhi does not carry the case of the prosecution any further. It is stated that the said chain placed for identification had iron wire in place of hook and it was not said to have been mixed with similar chains having such iron wire in place of hook. The criticism that, nothing much could be relied upon the so-called identification cannot be lightly brushed aside.....

Effect of showing Mangalsutra by Police to the witness before holding of Test Identification of Article.

37. It is clear from the evidence of Radha (P.W.4), the Mangalsutra was shown to her by the police and three months thereafter, She had identified the Mangalsutra in the Test Identification Parade conducted by Tahsildar. Now the only question is that what is the effect of showing Mangalsutra, before holding of Test Identification Parade.

38. Identification of Article is a Relevant Fact, under Section 9 of Evidence Act. No specific procedure has been laid down for holding Test Identification Parade. Identification of Article by the Police cannot be said to be illegal, but the effect of identification by Police would be that the statement of the witness would be hit by Section 162 of Cr.P.C. and the Identification done by the police cannot be used as a corroborative piece of evidence. Identification proceedings conducted by any other person/officer will not be hit by Section 162 of Cr.P.C. Therefore, the presence of any police officer during the identification proceedings is unwarranted. Thus, the identification by the police does not have any evidentiary value. However, the act of police of showing the seized article to the witness much prior to holding of Test Identification Parade would make the identification proceedings untrustworthy, because the very purpose of holding Test Identification Parade during investigation is to find out as to whether the investigation is going on in right direction or not. Test Identification Parade conducted during investigation is not a substantive evidence, but at the most, it would be a corroborative piece of evidence. The Substantive evidence is the identification of article in the Court. The Supreme Court in the case of **Rajesh Vs. State of**

Haryana reported in **(2021) 1 SCC 118** has held as under :

> **43.1.** The purpose of conducting a TIP is that persons who claim to have seen the offender at the time of the occurrence identify them from amongst the other individuals without tutoring or aid from any source. An identification parade, in other words, tests the memory of the witnesses, in order for the prosecution to determine whether any or all of them can be cited as eyewitness to the crime.
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> **43.2.** There is no specific provision either in CrPC or the Evidence Act, 1872 ("the Evidence Act") which lends statutory authority to an identification parade. Identification parades belong to the stage of the investigation of crime and there is no provision which compels the investigating agency to hold or confers a right on the accused to claim a TIP.
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> **43.3.** Identification parades are governed in that context by the provision of Section 162 CrPC.
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> **43.4.** A TIP should ordinarily be conducted soon after the arrest of the accused, so as to preclude a possibility of the accused being shown to the witnesses before it is held.
>
> **43.5.** The identification of the accused in court constitutes substantive evidence.
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> **43.6.** Facts which establish the identity of the accused person are treated to be relevant under Section 9 of the Evidence Act.
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> **43.7.** A TIP may lend corroboration to the identification of the witness in court, if so required.
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> **43.8.** As a rule of prudence, the court would, generally speaking, look for corroboration of the witness' identification of the accused in court, in the form of earlier identification proceedings. The rule of prudence is subject to the exception when the court considers it safe to rely upon the evidence of a particular witness without such, or other corroboration.
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> **43.9.** Since a TIP does not constitute substantive evidence, the failure to hold it does not ipso facto make the evidence of identification inadmissible.
>
> **43.10.** The weight that is attached to such identification is a matter to be determined by the court in the circumstances of that particular case.

43.11. Identification of the accused in a TIP or in court is not essential in every case where guilt is established on the basis of circumstances which lend assurance to the nature and the quality of the evidence.

43.12. The court of fact may, in the context and circumstances of each case, determine whether an adverse inference should be drawn against the accused for refusing to participate in a TIP. However, the court would look for corroborating material of a substantial nature before it enters a finding in regard to the guilt of the accused.

44. These principles have evolved over a period of time and emanate from the following decisions:

1. *Matru* v. *State of U.P.*
2. *Santokh Singh* v. *Izhar Hussain*
3. *Malkhansingh* v. *State of M.P.*
4. *Visveswaran* v. *State*
5. *Munshi Singh Gautam* v. *State of M.P.*
6. *Manu Sharma* v. *State (NCT of Delhi)*
7. *Ashwani Kumar* v. *State of Punjab*
8. *Mukesh* v. *State (NCT of Delhi)*

39. The Supreme Court in the case of **Dana Yadav Vs. State of Bihar** reported in **(2002) 7 SCC 295** has held as under :

> 5.....Section 9 of the Evidence Act deals with relevancy of facts necessary to explain or introduce relevant facts. It says, inter alia, facts which establish the identity of any thing or person whose identity is relevant, insofar as they are necessary for the purpose, are relevant. So the evidence of identification is a relevant piece of evidence under Section 9 of the Evidence Act where the evidence consists of identification of the accused at his trial. The identification of an accused by a witness in court is substantive evidence whereas evidence of identification in test identification parade is though primary evidence but not substantive one and the same can be used only to corroborate identification of the accused by a witness in court. This Court has dealt with this question on several occasions. In the case of *Vaikuntam Chandrappa* v. *State of A.P.* which is a three-Judge Bench decision of this Court,

> Wanchoo, J., with whom A.K. Sarkar and K. Subba Rao, JJ. agreed, speaking for the Court, observed that the substantive evidence of a witness is his statement in court but the purpose of test identification is to test that evidence and the safe rule is that the sworn testimony of witnesses in court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding or any other evidence. The law laid down in the aforesaid decision has been reiterated in the cases of *Budhsen* v. *State of U.P.*, *Sk. Hasib* v. *State of Bihar*, *Bollavaram Pedda Narsi Reddy* v. *State of A.P.*, *Ronny* v. *State of Maharashtra* and *Rajesh Govind Jagesha* v. *State of Maharashtra*. It is well settled that identification parades are held ordinarily at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the persons who are alleged to have been involved in the offence. Such tests or parades, in ordinary course, belong to the investigation stage and they serve to provide the investigating authorities with material to assure themselves if the investigation is proceeding on right lines. In other words, it is through these identification parades that the investigating agency is required to ascertain whether the persons whom they suspect to have committed the offence were the real culprits. Reference in this connection may be made to the decisions of this Court in the cases of *Budhsen*, *Sk. Hasib*, *Rameshwar Singh* v. *State of J&K* and *Ravindra* v. *State of Maharashtra*.

40. Thus, the identification of Mangalsutra by Radha (P.W.4) during investigation cannot be used even for corroboration purposes.

Effect of not getting the Mangalsutra identified in the Court.

41. A very important lacuna was left by the prosecution. The Mangalsutra was never produced before the Court and it was not got identified from the witness. As already pointed out, the identification of article and accused in the Court is a substantive evidence and the Test Identification conducted by the Police during investigation is merely a

corroborative piece of evidence. In the present case, there is no substantive evidence with regard to identification of Mangalsutra by Radha (P.W.4).

42. Thus, the prosecution has failed to prove the identification of Mangalsutra seized from the possession of Ramdas. Therefore, the recovery of Mangalsutra from Ramdas also loses its efficacy.

Recovery of Country Made Pistol from Appellant Kunjilal

Recovery of Country Made Pistol

43. Gopal Singh (P.W.2) has stated that the Country made pistol was in the hand of the Appellant Kunjilal which was seized vide seizure memo Ex. P.4. However, he denied that any memorandum of Kunjilal, Ex. P. 6 was recorded by Police. He stated that no information was given by the Appellant Ramdas, although he admitted his signatures on memorandum Ex. P.7. In cross-examination, he stated that he was standing outside the house. He further stated that the wife of Ramdas had eloped with someone. He denied as to whether any Panchayat was convened or not.

44. Ramhet Kushwaha (P.W.6) is another witness of seizure of Country made Pistol from the possession of Appellant Kunjilal.

45. Ramhet Kushwaha (P.W.6) has stated that one *Adhiya* was seized from the possession of Kunjilal vide seizure memo Ex. P. 4. This witness was cross-examined. In cross-examination, he stated that Dataram (P.W.1) is his cousin brother whereas deceased Hotam Singh is his real younger brother. The accused persons were arrested on 28th. The seizure memo was prepared in the police station. He further stated that after the arrest of accused persons, neither Dataram nor his family members had come to the police station. He had gone inside the house of Ramdas. He

stated that .12 bore country made pistol was seized. No independent witness was called as a witness. Lalla is the brother-in-law of deceased Hotam. It was denied that Lalla had eloped with the wife of Kunjilal and had kept in his house. He also denied that brother-in-law of Hotam had also eloped with wife of Ramdas. He denied that Panchayat was convened. It is true that Kunjilal and Ramdas are real brothers.

46. Ashok Kumar Bhardwaj (P.W.13) who is the investigating officer has also proved the seizure of Country Made Pistol. The memorandum of Kunjilal under Section 27 of Evidence Act is Ex. P.6 and the Country made pistol was seized vide seizure memo Ex. P. 4.

47. Thus, it is clear that one Country Made Pistol was seized from the possession of Kunjilal.

Seizure of fired cartridge and bullet from the spot

48. On 20-11-2006, the police had seized one fired cartridge, bullet, iron rod as well as plain and blood stained floor from the spot. Ramhet Kushwaha (P.W.6) has stated that plain and blood stained floor, one fired cartridge were seized from the spot vide seizure memo Ex.P. 9. R.S. Rathore (P.W.10) who had done partial investigation, has also proved the seizure of fired cartridge, one bullet, one iron rod as well as plain and blood stained floor from the spot on 20-11-2006. No question was put either to Ramhet Kushwaha (P.W.6) or to R.S. Rathore (P.W. 10) regarding seizure of fired cartridge as well as bullet from the spot. Thus, it is held that one fired cartridge and bullet was seized from the spot vide seizure memo Ex. P.9.

F.S.L. Report

49. The appellants were examined under Section 313 of Cr.P.C. on 28-

11-2011. No question was put to them with regard to F.S.L. From the order-sheets of the Trial Court, it is clear that on 30-11-2011, it was mentioned by the Trial Court, that the F.S.L. report is already available on record and accordingly it was marked as Ex. C-1 and C-2 and further questions were put to the Appellant Kunjilal in this regard under Section 313 of Cr.P.C.

50. As per the F.S.L. report, Ex. C-1, the seized country made pistol was marked as Article A1, whereas fired cartridge was marked as Article EC1, one live Cartridge was marked as LR1, fired bullet was marked as Article EB1 and EB2. The fired cartridge, Article EC1 was found to have been fired from the seized country made pistol, Article A1. Fired bullet was found to be stained with blood. Regular rifling marks were not found but barrel marks were present. However, they were not sufficient for comparison, but it was found that the fired bullet was almost matching with fired cartridge. Thus, it is clear that the fired cartridge which was seized from spot was fired from the country made pistol which was seized from the possession of Appellant Kunjilal and the fired bullet which was also seized from the spot was almost matching with the fired cartridge. Thus, it is clear that the gunshots were fired from the country made pistol which was seized from the possession of Appellant Kunjilal.

Identification of Appellants

51. In the FIR, the miscreants were not named. Only three accused out of total 5 miscreants could be arrested by the Police.

52. Dataram (P.W.1) is one of the injured witness. It is well established principle of law that an injured witness enjoys a special status because the injuries sustained by him/them, are the guarantee of his/their presence

on the spot. The Supreme Court in the case of **Baleshwar Mahto v. State of Bihar,** reported in **(2017) 3 SCC 152** has held as under :

> **12.** Here, PW 7 is also an injured witness. When the eyewitness is also an injured person, due credence to his version needs to be accorded. On this aspect, we may refer to the following observations in *Abdul Sayeed* v. *State of M.P.* : (SCC pp. 271-72, paras 28-30)
>
> "*28.* The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh* v. *State of Bihar*, *Malkhan Singh* v. *State of U.P.*, *Machhi Singh* v. *State of Punjab*, *Appabhai* v. *State of Gujarat*, *Bonkya* v. *State of Maharashtra*, *Bhag Singh*, *Mohar* v. *State of U.P.* (SCC p. 606*b-c*), *Dinesh Kumar* v. *State of Rajasthan*, *Vishnu* v. *State of Rajasthan*, *Annareddy Sambasiva Reddy* v. *State of A.P.* and *Balraje* v. *State of Maharashtra*.]
>
> *29.* While deciding this issue, a similar view was taken in *Jarnail Singh* v. *State of Punjab*, where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under : (SCC pp. 726-27, paras 28-29)
>
> '*28.* Darshan Singh (PW 4) was an injured witness. He had been examined by the doctor. His testimony could not be brushed aside lightly. He had given full details of the incident as he was present at the time when the assailants reached the tubewell. In *Shivalingappa Kallayanappa* v. *State of Karnataka* this Court has held that the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the

> reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.
>
> *29.* In *State of U.P.* v. *Kishan Chand* a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan* v. *State of Haryana*). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.'
>
> *30.* The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein."

53. Dataram (P.W.1) has stated that the incident took place on 19-11-2006. At the time of incident, he was sleeping in his room. His son and daughter-in-law were sleeping on the ground floor of the house along with their 3 months old child. At about 3 A.M. in the night, he heard the hue and cry raised by his wife Munni Devi that Mangal and Radha are being assaulted. One person who was being called as Rajkumar fired a gunshot, however, he raised his hand and threw him on the ground. The same person caused gunshot injury to his wife which landed on her hand and the bullet after passing through and through, hit on jaw of his son

Mangal. Ramdas gave a farsa blow on his head and the old person who was standing gave a farsa or Dharia blow. The name of that person is not known. One person was standing at the door and was armed with a fire arm. Kunjilal pointed a gun towards him, therefore, he gave a fist blow on his nose and removed his cloth from his face. Thereafter, the appellant ran outside the house and hide himself in a pit. When the miscreants started running away from the spot, his cousin brother Hotam Singh also came on the spot. Kunjilal shot him which landed on his chest. He fell down after sustaining gunshot injury. This witness also threw one more person on the ground accordingly, he was assaulted by fists and blows. The miscreants thereafter ran away. The Mangalsutra of his daughter-in-law, chain of his son and mobile were taken away. The FIR was lodged by him, Ex. P.1. The spot map, Ex. P.2 was prepared. This witness was sent for medical treatment to Gohad Hospital from where he was referred to Gwalior. He went to Jail for identification of accused. All the three accused persons were identified. The identification memo is Ex. P. 3 and bears his signatures. This witness was cross-examined and in cross-examination, an attempt was made to establish that, prior to holding of Test Identification Parade, the accused persons were shown to this witness, but he firmly took a stand that the accused persons were never shown to him by the police.

54. Munni Devi (P.W.3) has also re-iterated the same incident as well as Test Identification Memo, Ex. P.3. However, in cross-examination, She stated that after the accused persons were arrested, they were shown by the police to this witness. She further stated that when the accused persons were brought, her husband had also come back.

55. A similar attempt was made by the Counsel for the Appellants by giving a suggestion to Ramhet Kushwaha (P.W.6) who specifically stated that after the accused persons were arrested, neither he nor Dataram (P.W.1) went to police station to see the accused persons.

56. It is submitted by the Counsel for the Appellants, that since, Munni Devi (P.W.3) has admitted that the accused persons were shown to her prior to holding of Test Identification Parade, therefore, her evidence with regard to identification of accused loses its effect, although She has identified them in the dock.

57. Considered the submissions made by the Counsel for the Appellants.

58. The Supreme Court in the case of **C. Muniappan v. State of T.N.,** reported in **(2010) 9 SCC 567** has held as under :

> **40.** But the position would be entirely different when the accused or the culprit who stands trial has been seen a number of times by the witness, as it may do away with the necessity of identification parade. Where the accused has been arrested in presence of the witness or the accused has been shown to the witness or even his photograph has been shown by the investigating officer prior to test identification parade, holding an identification parade in such facts and circumstances remains inconsequential. (Vide *Sk. Umar Ahmed Shaikh* v. *State of Maharashtra*, *Lalli* v. *State of Rajasthan*, *Dastagir Sab* v. *State of Karnataka*, *Maya Kaur Baldevsingh Sardar* v. *State of Maharashtra* and *Aslam* v. *State of Rajasthan*.)
>
> **41.** In *Yuvaraj Ambar Mohite* v. *State of Maharashtra* this Court placed reliance upon its earlier judgment in *D. Gopalakrishnan* v. *Sadanand Naik*, and held that if the photograph of the accused has been shown to the witness before the test identification parade, the identification itself loses its purpose. If the suspect is available for identification or for video identification, the photograph should never be shown to the witness.

* * * *

44. In *Kartar Singh* v. *State of Punjab*, a Constitution Bench of this Court has suo motu examined the validity of Section 22 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 and held that: (SCC p. 711, para 361)

> "*361*. If the evidence regarding the identification on the basis of a photograph is to be held to have the same value as the evidence of a test identification parade, we feel that gross injustice to the detriment of the persons suspected may result."

This Court, thus, struck down the provisions of Section 22 of the said Act.

45. The said judgment was considered by this Court in *Umar Abdul Sakoor Sorathia* v. *Narcotic Control Bureau*, and the Court observed that in the said case, the evidence of a witness regarding identification of a proclaimed offender involved in a terrorist case was in issue. The courts below had taken a view that evidence by showing photographs must have the same value as evidence of a test identification parade. The Court distinguished the aforesaid case on facts. The Court further held that the court must bear in mind that in a case where the accused is not a proclaimed offender and the person who had taken the photographs was making deposition before the court was being examined by the prosecution as a witness, and he identified the accused in the court, that may be treated as a substantive evidence. However, courts should be conscious of the fact that during investigation, the photograph of the accused was shown to the witness and he identified that person as the one whom he saw at the relevant time.

46. Thus, it is evident from the above, that the test identification parade is a part of the investigation and is very useful in a case where the accused are not known beforehand to the witnesses. It is used only to corroborate the evidence recorded in the court. Therefore, it is not substantive evidence. The actual evidence is what is given by the witnesses in the court. The test identification parade provides for an assurance that the investigation is proceeding in the right direction and it enables the witnesses to satisfy themselves that the accused whom they suspect is really one who was seen by them at the

> time of commission of offence. The accused should not be shown to any of the witnesses after arrest, and before holding the test identification parade, he is required to be kept "baparda".

59. In view of the specific admission made by Munni Devi (P.W.3) that the accused persons were shown to her prior to holding of Test Identification Parade, her evidence regarding identification loses its effect.

60. However, the Appellants could not point out any evidence to show that Dataram (P.W.1) was also shown the Appellants prior to holding of Test Identification Parade. An attempt was made by the Counsel for the Appellants to dislodge his evidence, by referring to the admission made by Munni Devi (P.W.3) that when police had brought the accused persons, Dataram had also returned back, but deliberately, the Appellants did not give any suggestion to her that even Dataram (P.W.1) had seen the Appellants. Furthermore, Dataram (P.W.1) has firmly withstand the suggestions given by the defence that the Appellants were already shown to him prior to holding of Test Identification Parade. Dataram (P.W.1) has identified the Appellants in the dock, by alleging specifically that Ramdas had given a Farsa blow on his head, whereas Kunjilal had fired gunshot and old person who was standing had given Farsa/Dharia blow. This witness also clarified in his cross-examination, that he came to know about the names of the accused only after they were lodged in jail. He specifically stated that he was never told by Parashar that who have been arrested. He was also not informed that from where they have been arrested. He denied that the Appellants were already known to him. He also denied that the police had brought the Appellants to his house and

were shown to him. He also denied that on different Court dates, he had seen the Appellants. He stated that light was there at the time of incident. Only the faces were visible at the time of Test Identification Parade and the remaining body was covered.

61. At this stage, the Counsel for the Appellant, submitted that in the Test Identification Parade Memo, the words "rightly identified" have not been mentioned in front of the names of Ramdas and Kunjilal but have been mentioned in front of the names of other persons. There is no endorsement regarding identification in front of the name of Ramratan.

62. Considered the submissions made by the Counsel for the Appellants.

63. Michael Tirki (P.W.11) who had conducted the Test Identification Parade, has stated that the witnesses had identified the Appellants. If the Test Identification Parade Memo, Ex. P.3 is seen, then it is clear that it was prepared on blank paper. Therefore, there is always a possibility that certain endorsements made in different columns may not be strictly in front of the name of the accused. The name of Kunjilal is at serial no.2 in the Memo,Ex. P.3, and the endorsement "rightly identified" is just above and is not in proper alignment. Same is the position with regard to Ramdas. The endorsement "rightly identified" is also just above his name and is not in proper alignment. As already pointed out, the Memo, Ex. P.3 was prepared on a blank paper, therefore, the possibility of non-alignment of endorsement in line with the names of the accused cannot be ruled out. Further more, "tick" mark has also been put in front of the names of Kunjilal, Ramdas and Ramratan. Michael Tirki (P.W.11) has specifically stated that the witnesses had identified the Appellants. It is

true that the endorsement "rightly identified" has not been mentioned in front of the name of Ramratan, but as already pointed out "tick" mark has also been put in front of the name of Ramratan. Further, Ramratan was specifically identified by Dataram (P.W.1) in the dock. It was specifically alleged that old person had given a farsa/dharia blow to him. Dataram (P.W.1) had suffered two incised wounds i.e., one on right parietal region of skull and another was on left parietal region of skull. Bleeding was present from both wounds. Ramdas is alleged to have caused injury by Farsa, whereas old person had caused injury by Farsa/dharia. Both Farsa or Dharia are sharp edged weapons. Thus, the ocular evidence is supported by medical evidence. Further, Ramratan was aged about 60 years on the date of his arrest, whereas Appellant Kunjilal was aged about 42 years and Ramdas was aged about 29 years. Thus, the identification of Ramratan by Dataram (P.W.1) in the dock by pointing out as an old person clearly establishes that Ramratan was duly identified by Dataram (P.W.1) in dock. The Appellants were also identified by Dataram (P.W.1) in Test Identification Parade conducted by the Naib-Tahsildar Michael Tirki (P.W.11) as per Test Identification Parade Memo, Ex. P. 3.

64. Thus, the identification of Ramratan, Kunjilal and Ramdas is duly established by the prosecution.

65. The importance of Test Identification has been considered by the Supreme Court in the case of **Noorahammad v. State of Karnataka,** reported in **(2016) 3 SCC 325** and has been held as under :

> **25.** This Court in *Dana Yadav* v. *State of Bihar* has elaborated upon the importance of test identification parade in great details. The relevant paras 6, 7 and 8 read thus: (SCC pp. 302-

04)

"*6. It is also well settled that failure to hold test identification parade, which should be held with reasonable dispatch, does not make the evidence of identification in court inadmissible, rather the same is very much admissible in law. Question is, what is its probative value? Ordinarily, identification of* [illegible]335*an accused for the first time in court by a witness should not be relied upon, 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 purpose of test identification parade is to test the observation, grasp, memory, capacity to recapitulate what a witness has seen earlier, strength or trustworthiness of the evidence of identification of an accused and to ascertain if it can be used as reliable corroborative evidence of the witness identifying the accused at his trial in court. If a witness identifies the accused in court for the first time, the probative value of such uncorroborated evidence becomes minimal so much so that it becomes, as a rule of prudence and not law, unsafe to rely on such a piece of evidence*. We are fortified in our view by a catena of decisions of this Court in *Kanta Prashad* v. *Delhi Admn.*, *Vaikuntam Chandrappa*, *Budhsen*, *Kanan* v. *State of Kerala*, *Mohanlal Gangaram Gehani* v. *State of Maharashtra*, *Bollavaram Pedda Narsi Reddy*, *State of Maharashtra* v. *Sukhdev Singh*, *Jaspal Singh* v. *State of Punjab*, *Raju* v. *State of Maharashtra*, *Ronny*, *George* v. *State of Kerala*, *Rajesh Govind Jagesha*, *State of H.P.* v. *Lekh Raj* and *Ramanbhai Naranbhai Patel* v. *State of Gujarat.*

7. Apart from the ordinary rule laid down in the aforesaid decisions, certain exceptions to the same have been carved out where identification of an accused for the first time in court without there being any corroboration whatsoever can form the sole basis for his conviction. In *Budhsen* it was observed: (SCC p. 132, para 7)

'*7*. … There may, however, be exceptions to this general rule, when for example, the court is impressed by a

particular witness, on whose testimony it can safely rely, without such or other corroboration.'

8. In *State of Maharashtra* v. *Sukhdev Singh* it was laid down that if a witness had any particular reason to remember about the identity of an accused, in that event, the case can be brought under the exception and upon solitary evidence of identification of an accused in court for the first time, conviction can be based. In *Ronny* it has been laid down that where the witness had a chance to interact with the accused or that in a case where the witness had an opportunity to notice the distinctive features of the accused which lends assurance to his testimony in court, the evidence of identification in court for the first time by such a witness cannot be thrown away merely because no test identification parade was held. In that case, the accused concerned had a talk with the identifying witnesses for about 7/8 minutes. In these circumstances, the conviction of the accused, on the basis of sworn testimony of witnesses identifying for the first time in court without the same being corroborated either by previous identification in the test identification parade or any other evidence, was upheld by this Court. In *Rajesh Govind Jagesha* it was laid down that the absence of test identification parade may not be fatal if the accused is sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement or is arrested on the spot immediately after the occurrence and in either eventuality, the evidence of witnesses identifying the accused for the first time in court can form the basis for conviction without the same being corroborated by any other evidence and, accordingly, conviction of the accused was upheld by this Court. In *State of H.P.* v. *Lekh Raj* it was observed (at SCC p. 253, para 3) that:

'*test identification is 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. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness on whose testimony it*

> *can safely rely without such or other corroboration*.'
>
> In that case, laying down the aforesaid law, acquittal of one of the accused by the High Court was converted into conviction by this Court on the basis of identification by a witness for the first time in court without the same being corroborated by any other evidence. In *Ramanbhai Naranbhai Patel* it was observed: (SCC p. 369, para 20)
>
> '*20*. … It, therefore, cannot be held, as tried to be submitted by the 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.'
>
> The Court further observed: (SCC p. 369, para 20)
>
> '*20*. … 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 when they were assaulted in broad daylight.'
>
> In these circumstances, conviction of the accused was upheld on the basis of solitary evidence of identification by a witness for the first time in court."
>
> (emphasis supplied)

66. Thus, it is clear that conviction of an accused can be upheld on the basis of solitary evidence of identification by a witness. In the present case, the country made pistol seized from the possession of Kunjilal was also found to have been used in the offence.

67. Thus, the prosecution has succeeded in establishing the identification of the Appellants in the offence.

Source of Light on the place of incident

68. It is submitted by the Counsel for the Appellants, that the prosecution has failed to establish beyond reasonable doubt that there

was any source of light at the place of incident.

69. Considered the submissions made by the Counsel for the Appellants.

70. In the spot map, the source of light is specifically mentioned. Further, Dataram (P.W.1) has also stated that light was ON.

71. The incident has taken place inside and outside the house of the witnesses. Four witnesses were assaulted. Thus, it is clear that the witnesses had every occasion to see the assailants from a very close range. Further more, the eyes of villagers are conditioned to see even in poor light as held by the Supreme Court in the case of **Ramesh Vs. State** reported in **(2010) 15 SCC 49** has held as under ;

> **15.** As stated earlier, the appellant and these two witnesses (PWs 3 and 4) are neighbours and, therefore, knew the appellant well and their claim of identification cannot be rejected only on the ground that they have identified him in the evening, when there was less light. It has to be borne in mind that the capacity of the witnesses living in rural areas cannot be compared with that of urban people who are acclimatised to fluorescent light. Visible (*sic* visual) capacity of the witnesses coming from the village is conditioned and their evidence cannot be discarded on the ground that there was meagre light in the evening. There is nothing on record to show that these two witnesses are in any way interested and inimical to the appellant. Their evidence clearly shows that the deceased was last seen with the appellant and the High Court did not err in relying on their evidence.

72. Further, due sanction for prosecution of Appellant no.2 Kunjilal under Arms Act was also given.

73. Therefore, the conviction of all the Appellants for offence under Section 396 of IPC read with Section 11/13 of MPDVPK Act is **upheld.** Similarly, the conviction of the Appellant No. 2 Kunjilal for offences

under Sections 25(1-B)(a) of Arms Act and under Sections 27 of Arms Act read with Section 11/13 of MPDVPK Act is also **upheld.**

74. So far as the question of sentence is concerned, under the facts and circumstances of the case, the sentence awarded by the Trial Court, does not call for any interference. It is once again clarified, that the sentences awarded to the Appellant no.2 shall run concurrently as directed by the Trial Court.

75. *Ex consequenti*, the Judgment and Sentence dated 2-12-2011 passed by Special Judge (MPDVPK Act), Bhind in Special Sessions Trial No. 23/2007 is hereby **affirmed.**

76. The Appellant No.1 is on bail. His bail bonds are hereby cancelled. He is directed to immediately surrender before the Trial Court for undergoing the remaining jail sentence.

77. The Appellants No.2 and 3 are in jail. They shall undergo the remaining Jail Sentence.

78. Let a copy of this judgment be immediately provided to the Appellants, free of cost.

79. The record of the Trial Court be sent back along with copy of this judgment, for necessary information and compliance.

80. The Appeal fails and is hereby **Dismissed.**

(G.S. AHLUWALIA)
JUDGE

(RAJEEV KUMAR SHRIVASTAVA)
JUDGE