HIGH COURT OF MADHYA PRADESH
GWALIOR BENCH

DIVISION BENCH

G.S. AHLUWALIA
&
RAJEEV KUMAR SHRIVASTAVA J.J.

Cr.A. No. 192 of 2010

Ramcharan & Ors.

Vs.

State of M.P.

&

Cr.A. No. 353 of 2014

State of M.P.

Vs.

Ramcharan & Ors.

Shri Ashok Jain Counsel for the Appellants in Cr.A. No.192 of 2010 and Shri Awdhesh Parashar, Counsel for the respondents in Cr.A.No. 353 of 2014
Shri C.P. Singh, Counsel for the State

Date of Hearing : 05-10-2021

Date of Judgment : 21-10-2021

Approved for Reporting : Yes

Judgment

21- Oct. -2021

Per G.S. Ahluwalia J.

By this common judgment, Cr.A. No.192 of 2010 filed by

appellants and Cr.A. No.353 of 2014 filed by the State shall be disposed of.

2. Both the Criminal Appeals have been filed against the judgment and sentence dated 11-1-2010 passed by Special Judge (MPDVPK Act) Shivpuri in Special Sessions Trial No.60/2009 by which the appellants have been convicted and sentenced for the following offences :

Name of Appellant	**Conviction**	**Sentence**
Vijay (Appellant No.3)	Under Section 364-A of IPC read with Section 11/13 of MPDVPK Act	Life Imprisonment and fine of Rs. 1000/- in default 3 months R.I.
	Under Section 323 of IPC	3 months R.I. and fine of Rs.500 in default 15 days R.I.
	Under Section 25(1-B)(a) of Arms Act read with Section 11/13 of MPDVPK Act	3 years R.I. and fine of Rs.1000/- in default 3 months R.I.
Names of Appellants	**Conviction**	**Sentence**
Ramcharan (Appellant No.1)	Under Section 25(1-B)(a) of Arms Act read with Section 11/13 of MPDVPK Act	3 years R.I. and fine of Rs.1000/- in default 3 months R.I.
Siddhar (Appellant No.2)	Under Section 25(1-B)(a) of Arms Act read with Section 11/13 of MPDVPK Act	3 years R.I. and fine of Rs.1000/- in default 3 months R.I.
Kamarlal @ Bhindua (Appellant No.4)	Under Section 25(1-B)(a) of Arms Act read with Section 11/13 of MPDVPK Act	3 years R.I. and fine of Rs.1000/- in default 3 months R.I.

3. It is not out of place to mention here that apart from appellants, Suresh was also tried but he has been acquitted in toto and accordingly, the State has filed Criminal Appeal No.353/2014 against the acquittal of the following persons :

Name of Person	Acquittal under Section
Ramcharan (Appellant No.1)	Under Section 364-A of I.P.C. read with Section 11/13 of MPDVPK Act and under Section 323 of IPC
Siddhar (Appellant No.2)	Under Section 364-A of I.P.C. read with Section 11/13 of MPDVPK Act and under Section 323 of IPC
Kamarlal @ Bhindua (Appellant No.4)	Under Section 364-A of I.P.C. read with Section 11/13 of MPDVPK Act and under Section 323 of IPC
Suresh son of Shanker resident of village Sesaipura, Distt. Sheopur	Under Section 364-A of I.P.C. read with Section 11/13 of MPDVPK Act, under Section 323 of IPC and under Section 25(1-B(b) of Arms Act.

4. The prosecution story in short is that on 25-3-2009, Mahesh, Narayan, Patiram and Durga Prasad were going on bullock cart to take wheat husk. At 10:30, they reached in the forest area of *Sankare ke Chak.* At that time, 4 miscreants surrounded them and started assaulting them by lathi and handles of gun. On query, Durgaprasad introduced himself as a labourer, whereas Mahesh, Narayan and Patiram disclosed their correct names and addresses. Accordingly, the miscreants caught hold of Mahesh, Narayan and Patiram and forced them to sit near *Sankare ki River.* Durga Prasad was released

with an instruction, that an amount of Rs. 60,000/- be paid for release of Mahesh, Narayan and Patiram. A threat was also extended that in case, if police is informed then the hostages shall be killed. Three miscreants were having guns whereas one was having sword. When Durga Prasad was going back, then he met with K.C. Chauhan, S.H.O., to whom the entire incident was narrated. On his information, Dehati Nalishi was recorded and accordingly, F.I.R. was lodged.

5. Thereafter, S.H.O. went to the spot and prepared spot map. In the meanwhile, Mangilal, Ram Singh contacted miscreants along with money. They met with miscreants in the forest and an amount of Rs.52,000/- was given and accordingly, the hostages Mahesh, Narayan and Patiram were released. When they were coming back, they met with S.H.O. *Chharch* and accordingly, recovery memo was prepared. They were sent for medical examination. The statements of witnesses were recorded. On 14-5-2009, when K.C. Chauhan was on patrolling, he arrested the appellants in the forest area itself. Gun was seized from Ramcharan, Siddhar, Vijay and Kamarlal whereas Farsa was seized from Suresh. The sanction for prosecution under Arms Act was obtained. The police after concluding the investigation, filed the charge sheet for offence under Sections 364A, 323, 506-B of I.P.C., under Section 11/13 of MPDVPK Act and under Sections 25, 27 of Arms Act.

6. The Trial Court by order dated 24-8-2009, framed charges

under Section 364-A of IPC read with Section 11/13 of MPDVPK Act, 323 of I.P.C. and under Section 25(1-B)(a) of Arms Act against the appellants Ramcharan, Siddhar, Vijay and Kamarlal. Whereas on the same day, charge under Sections 364-A of IPC read with Section 11/13 of MPDVPK Act, 323 of I.P.C. and under Section 25(1-B)(b) of Arms Act was framed against Suresh.

7. The appellants and Suresh abjured their guilt and pleaded not guilty.

8. The prosecution, in order to prove its case, examined Babulal (P.W.1), Durga (P.W.2), Mangilal (P.W.3), Ram Singh (P.W.4), Narayan (P.W.5), Patiram (P.W.6), Mahesh Kumar Dhakad (P.W.7), Ramswaroop (P.W.8), K.C. Chauhan (P.W.9), Dr. R.K. Sharma (P.W.10), R.V. Sindosakar (P.W.11), Jageshwar Singh (P.W.12) and Harnam (P.W. 13).

9. The appellants and Suresh did not examine any witness in their defence.

10. The Trial Court by impugned judgment and sentence, convicted and sentenced the appellants for the offences mentioned above. However, the Trial Court acquitted the appellant Ramcharan, Siddhar and Kamarlal for offence under Sections 364-A of I.P.C. read with Section 11/13 of MPDVPK Act and under Section 323 of I.P.C. whereas acquitted Suresh for offence under Sections 364-A of I.P.C. read with Section 11/13 of MPDVPK Act, under Section 323 of I.P.C.

and under Section 25(1-B)(b) of Arms Act.

11. Challenging the conviction and sentence recorded by the Trial Court, it is submitted by the Counsel for the appellants, that the prosecution has failed to prove the guilt of the appellants beyond reasonable doubt. There is nothing on record to show that from whom, the amount of Rs.52,000/- was collected. When the police party was already in the forest area, then it is impossible that Mangilal and Ram Singh could have handed over the amount of Ransom to the appellants.

12. In reply, the Counsel for the State has not only supported the findings given by the Trial Court, by which the appellants have been convicted but also challenged the findings recorded by the Trial Court by which the appellants Ramcharan, Siddhar and Kamarlal have been acquitted for offence under Sections 364-A of I.P.C. read with Section 11/13 of MPDVPK Act and under Section 323 of I.P.C. and also challenged the acquittal of Suresh of all the charges.

13. The Counsel for respondents in Cr.A. No.353/2014 has supported the findings of acquittal recorded by the Trial Court.

14. Heard the learned Counsel for the parties.

15. Since, by the impugned judgment, three appellants have been acquitted for some of the charges and one person has been acquitted of all the charges and Vijay has been convicted for all the charges, therefore, for the sake of convenience, this Court shall consider the

case of Each and Every person separately.

16. Durga Prasad (P.W.2) is the person, who was allegedly released by the miscreants with a direction to pay Rs.60,000/- for the release of 3 abductees.

17. Mangilal (P.W.3) and Ram Singh (P.W. 4) are the witnesses, who have allegedly made arrangement of amount of Ransom and paid it to the miscreants.

18. Narayan (P.W.5), Patiram (P.W.6) and Mahesh Kumar Dhakad (P.W.7) are the three abductees.

19. Ramswaroop (P.W.8) is a seizure witness.

20. K.C. Chauhan (P.W. 9) is the investigating officer.

21. Dr. R.K. Sharma (P.W. 10) had medically examined the abductees.

22. R.V. Sindolkar (P.W.11) is Tahsildar who had conducted Test Identification Parade.

23. Jageshwar Singh (P.W. 12) is armorer who had examined the guns and Harnam Singh (P.W. 13) is the clerk working in the office of District Magistrate, Shivpuri, who has proved the sanction for prosecution under Section 25 of Arms Act.

Appellant No.1 Ramcharan, Appellant No. 2 Siddhar and Appellant No. 4 Kamarlal @ Bhindua

24. Since the allegations and evidence as well as findings by the Trial Court against Ramcharan, Siddhar and Kamarlal are same

therefore, their case is being considered together.

25. It is not out of place to mention here that these three appellants have been convicted for offence under Section 25(1-B)(a) of Arms Act. Therefore, first of all, we shall consider as to whether the conviction of the above mentioned three appellants for offence under Section 25(1-B)(a) of Arms Act can be affirmed or not?

26. Ramswaroop (P.W. 8) is a seizure witness. He has stated that five persons were arrested vide arrest memo Ex. P.10 to 14, which contains his signatures. However, the police had not interrogated them in his presence. The memorandum, Ex. P. 15 to 19 bears his signatures. Guns were seized from four miscreants and Farsa was seized from one miscreant vide seizure memo Ex. P. 20 to 24. As this witness had stated that the miscreants were not interrogated by the police, therefore, for the limited purposes, he was declared hostile by the Public Prosecutor. In cross-examination by Public Prosecutor, this witness denied that Ramcharan, Siddhar, Vijay and Kamarlal had disclosed about gun and Suresh had disclosed about Farsa. In cross-examination by the defence, this witness stated that all the documents were got signed by the police in forest itself. He claimed that he had gone to forest to see his ox. He further stated that the miscreants were already detained by the police. However, he denied that he had signed the documents on the instructions of the police. He further stated that he had signed the documents without reading the same as

the police had informed him that they have apprehended dacoits and therefore, his signatures are required. His signatures were obtained at 11 A.M. on 14th and also claimed that he is not a literate person.

27. K.C. Chauhan (P.W. 9) has stated that on 14-5-2009, he had arrested Ramcharan, Siddhar, Vijay, Kamarlal and Suresh. They were having guns with them. They were arrested vide arrest memo Ex. P. 10 to P. 14. The Memorandum of Ramcharan is Ex. P. 15 and seizure memo of gun is Ex. P. 20. Similarly the Memorandum of Siddhar is Ex. P. 16 and seizure memo of gun is Ex. P. 21. The Memorandum of Vijay is Ex. P. 17 and seizure memo of gun is Ex. P. 22. The Memorandum of Suresh is Ex. P. 18 and seizure memo of Farsa is Ex. P. 24. The memorandum of Kamarlal is Ex. P. 19 and seizure memo of gun is Ex. P. 23. Article A is gun seized from Kamarlal, Article B is gun seized from Ramcharan, Article C is gun seized from Siddhar and Article D is gun seized from Vijay and Article E is Farsa seized from Suresh.

28. In cross-examination, this witness has admitted that the guns which were seized were filled with gun powder. He stated that at the time of seizure, they were loaded with gun powder and from security point of view, the gun powder was removed, however, could not explain that where the said gun powder and pellets were kept. He further admitted that the gun powder and pellets have not been produced in the Court. He denied that the guns were not sealed on

the spot. However, admitted that the seizure memo does not bear the specimen of seal. He further admitted that the guns have been produced in the Court in an open condition and are not sealed. He gave an explanation that he had sent the guns in a sealed condition, but could not explain as to how the guns are received in the Court in an open condition. He further admitted that the blade of the Farsa is broken at some places. He further admitted that he has not produced the departure and arrival rojnamchasanha of 14-5-2009. He further stated that since, he had instructed the miscreants to surrender, therefore, they did not fire.

29. When the State Counsel was directed to explain as to how the guns were received in the Court in open condition, then it was replied by Shri C.P. Singh that since, the guns were sent to armorer as well as to the District Magistrate, Shivpuri for grant of sanction, therefore, it is clear that the seal put by the investigating officer was broken.

30. Considered the submissions made by the Counsel for the State.

31. Jageshwar Singh (P. W. 12) is Arms Moharir. He has stated that although the guns were received in sealed condition, but they were sent back in open condition as he was not having seal. However, Harnam Singh (P.W. 13), who was working as clerk in the office of District Magistrate, Shivpuri has stated that the guns were received in sealed condition. The guns were sent to the office of District Magistrate, Shivpuri after they were received back from the office of

Arms Moharir because, Jageshwar Singh (P.W. 12) had tested the guns on 17-6-2009 whereas guns were sent to the office of District Magistrate, Shivpuri on 24-6-2009. When Jageshwar Singh (P.W. 12) had specifically stated that he had not sealed the guns as he was not having seal, then who sealed the guns? Nothing has been explained in this regard. Further, Harnam Singh (P.W. 13) has stated that after granting sanction for prosecution, the guns were re-sealed, but the guns were received in the Court in open condition. If the guns were sent back by the office of District Magistrate, Shivpuri in sealed condition, then who opened the guns, as the guns were received in the Court in open condition. Since, the burden to explain the above mentioned lapse is on the prosecution, and having failed to prove the same, this Court is of the considered opinion, that the seizure of guns from the possession of Ramcharan (Appellant No.1), Siddhar (Appellant No.2) and Kamarlal (Appellant No.4) has not been proved beyond reasonable doubt. Furthermore, the prosecution has failed to explain that where the gun powder and pellets were kept after removing the same from the guns.

32. As the prosecution has failed to prove the seizure of guns from Ramcharan (Appellant No.1), Siddhar (Appellant No.2) and Kamarlal @ Bhindua (Appellant No. 4), therefore, their conviction under Section 25(1-B)(a) of Arms Act is **set aside.**

Appellant Vijay Kumar (Appellant No. 3)

33. Appellant No. 3 Vijay Kumar has been convicted under Section 364-A of IPC read with Section 11/13 of MPDVPK Act, under Section 323 of I.P.C. and under Section 25(1-B)(a) of Arms Act.

Conviction under Section 25(1-B)(a) of Arms Act

34. So far as the conviction of Appellant No. 3 Vijay Kumar for offence under Section 25(1-B)(a) of Arms Act is concerned, it is suffice to mention that for the reasons mentioned in para 31 and 32 of this judgment, his conviction under Section 25(1-B)(a) of Arms Act is **set aside** and he is **acquitted** of the said charge.

Conviction under Section 364-A of I.P.C. read with Section 11/13 of MPDVPK Act

35. Durga Prasad (P.W.2), Mangilal (P.W.3) and Ram Singh (P.W. 4) have identified the appellant Vijay Kumar in Dock. These three witnesses had also identified Vijay Kumar in T.I.P, Ex. P.8. Further, Mangilal (P.W. 3) and Ram Singh (P.W. 4) have also identified the Appellant No.3 Vijay in the Dock. Mangilal (P.W. 3) has specifically pointed out towards Vijay by alleging that he was the person, to whom ransom amount was given. The only question for consideration is that whether the evidence led by the prosecution against Vijay is reliable or not?

36. The appellant Vijay was identified in T.I.P. as well as also in the Dock.

37. The next question for consideration is that whether the

prosecution has succeeded in establishing the guilt of Vijay or not?

38. Dehati Nalishi, Ex. P.1 was lodged by Durga (P.W. 2) at 13:00 on 25-3-2009 in a forest area falling between *Chak* and *Parsadi*. Thus, it is clear that Durga (P.W. 2) did not go to Police Station. Therefore, the above mentioned aspect shall be kept in mind, while appreciating the evidence.

39. Durga (P.W. 2) has stated in his evidence that on 25th, he along with Mahesh, Narayan and Patiram were going on three different bullock carts. When his bullock cart reached near village *Chak*, they were surrounded by four miscreants who started assaulting them by handles of guns. When the miscreants asked for the identity of the witnesses, then this witness falsely said that he is a labourer, therefore, he was released with a direction to bring money, whereas Mahesh, Narayan and Patiram were detained. When this witness was released, he went to Police Station to lodge F.I.R. Thereafter, Mangi and Ramsingh went along with money. Later on, all the three abductees were released. He lodged the report in police station. The report is Ex. P.1. The police went to the spot and prepared spot map Ex. P.7. He was medically examined. He further claimed that he can identify the miscreants and claimed that all the appellants are the same persons, who had captured him and his companions.

40. In cross-examination, this witness claimed that he reached Pohari Police Station at 12 P.M. The Pohari Police Station is about 2-

3 Furlong away from the place where they were taken in captivity. The report was lodged by Daroga (S.H.O.). After lodging the report, he came back to village. Thereafter, the police came and took him to the spot. He denied that the report was lodged while he was on his way. He further stated that when he was released by the miscreants, then he went back to his village and informed Mangi (P.W.3) and Ram Singh (P.W.4) to give money and accordingly, they went with money and this witness went to police station. He submitted that his police statement was recorded after 2-3 days. He further admitted that there is a forest around the place known as *Sakare.* He had not seen the miscreants prior to the abduction. He was not knowing the names of the miscreants at the time of abduction. He denied that he was not beaten by miscreants. He further claimed that he had informed his family members by mobile while he was on his way. He was having mobile with him, but since, the said mobile was of Mahesh, therefore, could not disclose the number of mobile. He further stated that he had given information to the family members of Mahesh by Mobile of Mahesh. He again stated that he had left the mobile with Mahesh.

41. If the evidence of Durga (P.W. 2) is considered in the light of Dehati Nalishi, Ex. P.1, it is clear that it was lodged at 13:00. Further there is no mention in Dehati Nalishi, Ex. P.1 that he has already informed the family members of abductees.

42. According to K.C. Chauhan (P.W. 09), he went on patrolling after receiving an information from S.D.O.(P) that some miscreants are moving in forest of Parasari (The information given by S.D.O.(P) is not on record. When he reached the forest area, then he met with Durga (P.W.2) who informed that miscreants have abducted Narayan, Patiram and Mahesh and he has been released by the miscreants. Accordingly, Dehati Nalishi, Ex. P.1 was written.

43. Thus, there is a material discrepancy on the issue that at what place Dehati Nalishi, Ex. P.1 was lodged. Dehati Nalishi is written when an information is received by the police at a place, other than police station, and thereafter, the Dehati Nalishi is registered as F.I.R. by sending the same to the police station. In the present case also, the Dehati Nalishi, Ex. P.1 was sent to Police Station, and accordingly F.I.R., Ex. P.2 was written by Babulal (P.W.1). Since, the Dehati Nalishi, Ex. P.1 was written at 13:00 in the forest area, therefore, it is clear that Durga (P.W.2) never went to Police Station to lodge the F.I.R.

44. Furthermore, there is a discrepancy regarding information of abduction given by Durga (P.W.2). Initially, the evidence of Durga (P.W. 2) was that after he was released by the miscreants, he went to police station, but later on he took a somersault and claimed that after his release, he went to village and informed the family members of the abductees. Thereafter, again he changed his version by claiming

that while he was on his way, he had informed the family members of the abductees from the mobile of Mahesh. Thus, it is clear that since, Durga (P.W.2) was having the mobile of Mahesh and Mahesh was in captivity, therefore, it is clear that Mahesh was not having any mobile during his captivity. However, Durga (P.W. 2) again tried to explain that he had left the mobile with Mahesh.

45. According to Durga (P.W.2), he had informed the family members of abductees from the mobile of Mahesh while he was on his way, then there is no question of leaving mobile with Mahesh. It is not the case of the prosecution, that Durga (P.W.2) had informed the family members of abductees from the mobile of Mahesh, prior to his release. Mangilal (P.W. 3) has stated that Durga (P.W.2) informed the villagers on phone that the miscreants have captured the witnesses and have demanded Rs.60,000/-. Ram Singh (P.W. 4) has stated that Durga (P.W.2) had informed him on phone, that miscreants have captured three persons and they are demanding Rs.60,000/-. Thus, if the evidence of Durga (P.W. 2) is considered in the light of evidence of Mangilal (P.W.3) and Ram Singh (P.W. 4), then it is clear that Durga (P.W. 2) never went to village after his release. Therefore, the evidence of Durga (P.W. 2) that after his release he went to village has remained uncorroborated and hence, it is rejected.

46. Further, whether Durga (P.W. 2) was having any mobile with him or not?

47. As already pointed out, it is the case of Durga (P.W. 2) that on his way, he had also informed the family members of the abductees from the mobile of Mahesh. However, this witness could not state the mobile number of Mahesh. The contention of Durga (P.W. 2) that he had left the mobile with Mahesh, cannot be accepted for the reason that if he had informed the family members of abductees while he was on his way, then there was no occasion for going back and leaving the mobile with Mahesh. Even the police has not collected the mobile details of Mahesh and his family members.

48. Further, even Mahesh Kumar Dhakad (P.W. 7) has not stated that Durga (P.W.2) had ever given any information to his family members from his mobile. He has also not stated that he had given his mobile to Durga (P.W.2).

49. Therefore, the evidence of Durga (P.W. 2) that he had informed the family members of the abductees is suspicious.

Whether any ransom amount was paid to the miscreants by Mangilal (P.W. 3) and Ram Singh (P.W. 4) or not?

50. Mangilal (P.W. 3) has stated that Durga (P.W. 2) had informed the villagers on phone that three persons have been captured by miscreants. Accordingly, Ram Singh (P.W. 4) who is the brother of Mahesh, made arrangement of Rs.60,000/-. However, thereafter clarified that Rs.52,000/- were arranged. Since, nobody was ready to go along with Ram Singh, therefore, he accompanied Ram Singh. He

further stated that they went to *Sanker* Forest where they met with one miscreant, who took them to the forest area, where they met with 4-5 miscreants. The three abductees were lying in tied condition. An amount of Rs.52,000/- was given. Mangilal (P.W. 3) and Ram Singh (P.W. 4) were asked to leave, and a promise was made that the three abductees shall be released later on and accordingly, they came back. Later on, the three abductees also reached their houses. He further claimed that money was given to Vijay.

51. In cross-examination, this witness admitted that he does not have any mobile, but claimed that brother of Ram Singh has a mobile. He further admitted that neither he had any talk nor the talk between Durga (P.W.2) and Ram Singh (P.W. 5) took place in his presence. He further stated that he does not know that where Durga had gone after his release. He could not clarify the denomination of Rs.52,000/-. He further claimed that the miscreant who had met them, took them to a place which was about 2 km.s inside the forest. He further admitted that after payment of ransom, they were waiting for the abductees. He also said that if the abductees had returned by the same road which goes to their village, then they would have certainly met them. He could not clarify that by which road, the abductees had returned. He further stated that when the information was received, he was in his house. He did not go to the house of Ram Singh. In fact Ram Singh had come to his house. Ram Singh did not ask for any

monetary help. This witness also did not count the money. He further stated that when he met with a person on their way, then on his query, Ram Singh had disclosed his identity. He admitted that he is a labourer and sometimes he is also employed by Ram Singh.

52. Ram Singh (P.W. 4) has stated that he was informed by Durga (P.W. 2) on phone that three persons have been captured and they are demanding Rs.60,000/-. Thereafter, he arranged for money and could arrange Rs.52-53 thousand only. Then he went to forest along with Mangilal (P.W. 3) to give money to the miscreants. On his way to forest, he made a phone call and accordingly, miscreants directed him to come to *Bandarwadi*. Thereafter, he went there. One miscreant took them 2 km.s inside the forest and he found that his brother and two more persons were lying in a tied condition. 5 miscreants were sitting. Thereafter, he gave money and requested for release of abductees. The miscreants told him that the abductees would be released after 1-2 hours. Thereafter, this witness and Mangilal started walking towards their house. Later on, the abductees were also released. This witness also identified the appellants in the Dock.

53. In cross-examination, this witness stated that Durga (P.W. 2) had called him at about 11 A.M. However, he could not specify that from whose mobile, Durga (P.W.2) had called him. On a specific question, this witness denied that the phone call was made from the mobile of Mahesh. He further claimed that he had made a phone call

on the mobile of Mahesh to know the location, and at that time, he was told by the miscreants that they are in *Bandarwadi.* He further clarified that he did not have talk with Mahesh. This witness further claimed that he had disclosed to the police, that they had met with a miscreant, who took them 2 km inside the forest, however, could not explain as to why this fact is not mentioned in his police statement. *(Although the Counsel for the defence had confronted this witness regarding above mentioned omission in his police statement, but unfortunately, the police statement of Ram Singh was not exhibited as D document. However, in the light of Section 145 of Evidence Act, this Court has gone through the police statement of Ram Singh. In his police statement, Ram Singh had not disclosed that they had met with a miscreant who took them 2 km inside the forest)*. Since, the requirement of Section 145 of Evidence Act was fulfilled by drawing the attention of this witness towards his police statement, therefore, it is held that there is an improvement in the evidence of Ram Singh (P.W. 4) that when they were going to forest, they met with a miscreant who took them 2 km inside the forest. He further admitted that he had arranged for the money but could not name the persons from whom he had collected the money. However, on his own, he stated that an amount of Rs.20,000/- was given by the son of Patiram. (It is not out of place to mention here that son of Patiram has not been examined and Patriram (P.W. 6) has not stated that any money was

given by his son). He further admitted that he does not remember the mobile number of Mahesh. He also admitted that he does not remember the mobile number of Durga. He further admitted that he does not have mobile number of Mahesh. He further admitted that nobody had talk to him on mobile about the incident. However, in further cross-examination by Counsel for other accused, this witness clarified that it is incorrect to say that he does not know the mobile number of Mahesh. He on his own clarified that the mobile number of Mahesh was written.

54. Narayan (P.W.5) is one of the abductee. He has stated that they were going on three bullock carts. They were abducted. They were beaten and a demand of Rs.60,000/- was made. Durga went back to village and all the three abductees were tied and were made to sit near *Sankre Ki River*. 2-3 hours thereafter, Ram Singh and Mangilal came with money. Ram Singh and Mangilal were asked to leave. The abductees were released at 4 P.M. This witness also identified the appellants in the Dock.

55. In cross-examination, this witness has stated that they were kept at a place, which was 1-2 Km.s away from the place from where they were abducted. Ram Singh (P.W.4) and Mangilal (P.W.3) had come with money to the same place, where they were kept.

56. Patiram (P.W.6) has stated that the moment they reached near river in *Chakki Ki Dang*, they were surrounded by the miscreants and

they were beaten also. Thereafter, Mangi was released. Thereafter Mangi and Ramswaroop came there with money and it was paid to the miscreants. Since, there was some mistake regarding names of witnesses, therefore, this witness was declared hostile and he admitted that in fact Durga was released by miscreants and Ram Singh had come with Mangilal to give money

57. In cross-examination, this witness stated that he had returned by the same road, from where he was abducted. While they were returning back, he did not meet with Mangilal and Ram Singh. He further stated that he did not have mobile and claimed that Mahesh was having mobile. He further stated that he had not seen the miscreants prior to abduction. He could not disclose the name of place from where he was taken by the miscreants. He further claimed that they were taken to another place after the release of Durga. The miscreants were changing the location after every 1 hour. He admitted that no money transaction had taken place in his presence. He also admitted that he could not hear the conversation between miscreants and Mangilal and Ram Singh. He further admitted that he had not seen Mangilal and Ram Singh coming.

58. Mahesh Kumar Dhakad (P.W. 7) has stated that when their bullock carts reached near *Sankre*, they were surrounded by miscreants. They started beating them. They enquired about the identity of the abductees. Durga disclosed that he is a labourer

whereas Patiram, Narayan and this witness disclosed their correct identity, therefore, Durga was released with a direction to bring Rs.60,000/- and three abductees were tied. Thereafter Durga went home. His brother Ram Singh called him on his mobile and then miscreants told that they will meet him in *Bandarwadi* forest. Thereafter, Mangilal and Ram Singh came and paid Rs.52,000/- to the miscreants. Thereafter, Mangilal and Ram Singh were asked to leave with a promise that abductees would be released by the evening. One hour thereafter, the abductees were also released. The appellants were also identified in dock.

59. In cross-examination, this witness said that they had left the village at about 7:30 A.M. No body else was having mobile. After release, Durga never came back to him. Durga also did not inform him that he has informed his family members by mobile. The information about their abduction had reached the village at about 11:30 A.M. He further stated that Mangilal and Ram Singh had come to the miscreants at about 4-4:30 P.M. He further stated that he had received the mobile call of Ram Singh at about 4 P.M.

60. Thus, if the evidence of Durga (P.W.2), Mangilal (P.W.3), Ram Singh (P.W. 4), Narayan (P.W.5), Patiram (P.W.6) and Mahesh Kumar Dhakad (P.W. 7) are considered, then it would be clear that there are following major contradictions in their evidence.

Who informed Ram Singh (P.W. 7) about abduction and demand of

ransom?

61. Durga (P.W.2) has stated that after his release, he went to village, but neither Mangilal (P.W. 3) nor Ram Singh (P.W. 4) have stated that Durga (P.W. 2) had ever come to village to inform about the abduction.

62. Durga (P.W. 2) has also stated that while he was on his way, he had informed the family members of the abductees from the mobile phone of Mahesh. But Mahesh (P.W. 7) has not stated that Durga (P.W. 2) had ever informed his family members about their abduction from his mobile phone.

63. Durga (P.W.2) has further stated that he had left the mobile phone with Mahesh (P.W.7), but Mahesh (P.W. 7) has specifically stated that Durga (P.W.2) did not come back to him, after he was released by the miscreants.

64. Thus, the prosecution has failed to prove that Durga (P.W. 2) had ever informed Ram Singh (P.W. 7) about abduction.

How Mangilal (P.W.3) and Ram Singh (P.W.4) reached to miscreants.

65. Mangilal (P.W.3) and Ram Singh (P.W. 4) have claimed that when they were going to give money, then they met with a miscreant, who took them 2 km inside the forest, where the miscreants were present and the abductees were kept.

66. Ram Singh (P.W. 4) was confronted with the above mentioned omission in his police statement. It is true that the police statement

of Ram Singh (P.W. 4) was not exhibited as D document, but by confronting this witness regarding the vital omission in his police statement, this Court is of the considered opinion, that the requirement of Section 145 of Evidence Act was fulfilled. Although there is an omission in the police statement of Mangilal (P.W.3) also, but since, the attention of the said witness was not drawn towards the said omission, therefore, this Court cannot hold that the evidence of Mangilal (P.W.3) "that they met with a miscreant who took them 2 km inside the jungle" is a contradiction. However, when this Court has already come to a conclusion that there is an omission in the Police Statement of Ram Singh (P.W. 4) regarding meeting a miscreant and thus the evidence of Ram Singh (P.W. 4) is not reliable on the said aspect, then the evidence of Mangilal (P.W.3) on this aspect also becomes doubtful.

67. The another source of information for reaching to the place where abductees were kept is, that Ram Singh (P.W. 4) had taken the location by calling on the mobile phone of Mahesh. The said evidence cannot be accepted, because according to the witnesses, they were merely informed that the miscreants and abductees are in *Bandarwadi Forest.* The exact location was not disclosed to them. In absence of any information regarding exact location, it was difficult for Mangilal (P.W. 3) and Ram Singh (P.W. 4) to directly go to the miscreants and therefore, they tried to develop the story by alleging

that they were escorted by one miscreant, which has already been disbelieved by the Court. Thus, it is held that the prosecution has failed to prove that Mangilal (P.W. 3) and Ram Singh (P.W.4) had reached to miscreants.

Whether any amount of ransom was paid to the miscreants?

68. This Court has already come to a conclusion that the prosecution has failed to prove that Durga (P.W.2) had given any information to Ram Singh (P.W.4). Further, Ram Singh (P.W.4) has stated that he had made arrangement of money. But could not disclose the names of persons, from whom he had collected money. Although Ram Singh (P.W. 4) has stated that son of Patiram (P.W. 6) had contributed Rs.20,000/-, but neither Patiram (P.W. 6) has stated that his son had given Rs.20,000/- nor the prosecution has examined son of Patiram.

69. Further, there is a discrepancy regarding amount paid to the miscreants. Mangilal (P.W. 3) has stated that Rs.52,000/- were paid whereas Ram Singh (P.W. 4) has stated that Rs.53,000/- were paid. Further, even Ram Singh (P.W. 4) was not in a position to give details of the denomination of currency notes. Thus, it is held that the allegation that ransom amount was paid to the miscreants is doubtful and suspicious.

When Mangilal (P.W. 3) and Ram Singh (P.W.4) reached to the miscreants.

70. Narayan (P.W. 5) has stated that they were released at 4 P.M., whereas Mahesh Kumar Dhakad (P.W. 7) has stated that he received the mobile call from Ram Singh (P.W. 4) at 4 P.M., and Mangilal (P.W. 3) and Ram Singh (P.W. 4) reached at about 4:30 P.M. Further, Mahesh Kumar Dhakad (P.W. 7) has stated that they were released after one hour of payment of ransom amount. Thus, it is clear that according to Mahesh Kumar Dhakad (P.W.7), they were released some time after 5:30 P.M., whereas Narayan (P.W.5) says that they were released at 4:00 P.M. K.C. Chauhan (P.W.9) has stated that after the Dehati Nalishi, Ex. P.1 was lodged, he was searching for the miscreants in the forest area and during that search, he met with the abductees and accordingly, recovery memo Ex. P. 9 was prepared. The recovery memo was prepared at 17:00. Further, it is the case of the prosecution, that when the abductees were returning back, then they met with the police party. Patiram (P.W. 6) has stated in his evidence, that when they were returning back, they found their bullock carts in the forest of *Parasari.* However, it is not the evidence of K.C. Chauhan (P.W.9) that the abductees were found coming back on their bullock carts, or after their recovery, they went in search of their bullock carts. Thus, it is clear that there is material discrepancy as to when the abductees were released.

Whether Police was patrolling in the forest area and why they could not meet Ram Singh and Mangilal

71. According to K.C. Chauhan (P.W. 9) on 25-3-2009, he was posted as S.H.O., Police Station Chharch. He received an information from S.D.O.(P) that there is some movement of miscreants in the forest area. Therefore, he left for patrolling along with police party. During patrolling, he met with Durgaprasad (P.W.2) who informed that three persons have been abducted, and he has been released to give information in the village and ransom has also been demanded. Accordingly Dehati Nalishi, Ex. P.1 was recorded. Thereafter, Constable Abdul Hafeez was sent for registration of F.I.R. and during this time, he was continuously patrolling in the forest area. However, he could not get any information. Thereafter, Abdul Hafeez also returned back. Then he went to the spot and prepared spot map, Ex. P.7. He continued to search for miscreants and during patrolling he met with abductees and accordingly, recovery memo Ex. P.9 was prepared.

72. It is really surprising that on one hand, the police party was continuously patrolling in the forest area, and spot map, Ex. P.9 was prepared at 16:05, but still they could not trace out Mangilal (P.W.3) or Ram Singh (P.W.4). Therefore, the evidence of the prosecution witnesses is also doubtful and suspicious on this issue also.

When copy of F.I.R. was sent to Special Judge

73. Babulal (P.W. 1) has stated that at about 14:40, Abul Hafeez came along with copy of Dehati Nalishi, Ex. P.1 and accordingly,

F.I.R.,Ex. P.2 was lodged and a copy of the same was sent to Special Judge. The F.I.R., Ex. P.2 was recorded at 14:40 on 25-3-2009 but as per the acknowledgment of receipt of copy of counter F.I.R., Ex. P. 5C, it is clear that the copy of F.I.R. was sent to Special Judge on 26-3-2009, which was received at 3:10 P.M. Thus, it is clear that there is a delay of more than 24 hours in sending a copy of FIR to the Special Judge.

74. The Supreme Court in the case of **Rabindra Mahto Vs. State of Jharkhand** reported in **(2006) 10 SCC 432** has held as under :

> **19.** There cannot be any manner of doubt that Section 157 of the Criminal Procedure Code requires sending of an FIR to the Magistrate forthwith which reaches promptly and without undue delay. The reason is obvious to avoid any possibility of improvement in the prosecution story and also to enable the Magistrate to have a watch on the progress of the investigation. At the same time, this lacuna on the part of the prosecution would not be the sole basis for throwing out the entire prosecution case being fabricated if the prosecution had produced the reliable evidence to prove the guilt of the accused persons. The provisions of Section 157 CrPC are for the purpose of having a fair trial without there being any chance of fabrication or introduction of the fact at the subsequent stage of investigation. The cases cited by the learned counsel for the appellants do not lay down any law that simply because there is a delay in lodging the FIR or sending it to the Magistrate forthwith, the entire case of the prosecution has to be discarded. The decisions rendered by this Court and relied upon by the learned counsel for the appellant would only show that this will be a material circumstance which will be taken into consideration while appreciating the evidence on record.

The Supreme Court in the case of **Suresh Chaudhary v. State of Bihar,** reported in **(2003) 4 SCC 128** has held as under :

> 9.....This conduct of the IO also creates some doubt in our minds as to the time of the incident in question. That apart,

> the express message which PW 13 sent to the Jurisdictional Magistrate reached the said Magistrate at his place only on 12-10-1992 nearly 1 ½ days after the said complaint was registered and we find no explanation from PW 13 as to this inordinate delay which only adds to the doubtful circumstances surrounding the prosecution case.....

The Supreme Court in the case of **Arjun Marik Vs. State of Bihar,** reported in **1994 Supp (2) SCC 372** has held as under :

> **24.** The matter does not stop here. There is yet another serious infirmity which further deepens the suspicion and casts cloud on the credibility of the entire prosecution story and which has also been lost sight of by the trial court as well as the High Court and it is with regard to the sending of occurrence report (FIR) to the Magistrate concerned on 22-7-1985 i.e. on the 3rd day of the occurrence. Section 157 of the Code of Criminal Procedure mandates that if, from information received or otherwise, an officer in charge of police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to the Magistrate empowered to take cognizance of such offence upon a police report. Section 157, CrPC thus in other words directs the sending of the report forthwith i.e. without any delay and immediately. Further, Section 159 CrPC envisages that on receiving such report, the Magistrate may direct an investigation or, if he thinks fit, to proceed at once or depute any other Magistrate subordinate to him to proceed to hold a preliminary inquiry into the case in the manner provided in the Code of Criminal Procedure. The forwarding of the occurrence report is indispensable and absolute and it has to be forwarded with earliest despatch which intention is implicit with the use of the word “forthwith” occurring in Section 157, which means promptly and without any undue delay. The purpose and object is so obvious which is spelt out from the combined reading of Sections 157 and 159 CrPC. It has the dual purpose, firstly to avoid the possibility of improvement in the prosecution story and introduction of any distorted version by deliberations and consultation and secondly to enable the Magistrate concerned to have a watch on the progress of the investigation.

75. Although mere delay in sending the copy of FIR to the

concerning Court by itself, may not be fatal to the prosecution case, but if the facts of the case are considered in the light of the delay of 24 hours in sending the copy of F.I.R. to the Court of Special Judge, then it is held that the delay of 24 hours in sending the copy of FIR gives a deep dent to the prosecution story.

Identification of Vijay in TIP as well as in Court

76. According to the prosecution case, the appellant Vijay was identified by Narayan (P.W. 5), Patiram (P.W. 6) and Mahesh Kumar Dhakad (P.W.7) in TIP, Ex. P.8 as well as in the Court. Whereas Vijay was also identified by Durga (P.W. 2), Mangilal (P.W. 3) and Ram Singh (P.W.4) in the dock.

77. The Supreme Court in the case of **Manu Sharma Vs. State (NCT of Delhi)** reported in **(2010) 6 SCC 1** has held as under :

> **256.** The law as it stands today is set out in the following decisions of this Court which are reproduced as hereinunder:
>
> *Munshi Singh Gautam* v. *State of M.P.*: (SCC pp. 642-45, paras 16-17 & 19)
>
> "*16*. As was observed by this Court in *Matru* v. *State of U.P.* identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. (See *Santokh Singh* v. *Izhar Hussain*.) The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to

check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eyewitnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such an allegation. If, however, circumstances are beyond control and there is some delay, it cannot be said to be fatal to the prosecution.

17. 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 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. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration. (See *Kanta Prashad* v. *Delhi Admn.*, *Vaikuntam Chandrappa* v. *State of A.P.*, *Budhsen* v. *State of U.P.* and *Rameshwar Singh* v. *State of J&K*.)

* * *

19. In *Harbajan Singh* v. *State of J&K*, though a test identification parade was not held, this Court upheld the conviction on the basis of the identification in court corroborated by other circumstantial evidence. In that case it was found that the appellant and one Gurmukh Singh were absent at the time of roll call and when they were arrested on the night of 16-12-1971 their rifles smelt of fresh gunpowder and that the empty cartridge case which was found at the scene of offence bore distinctive markings showing that the bullet which killed the deceased was fired from the rifle of the appellant. Noticing these circumstances this Court held: (SCC p. 481, para 4)

'*4*. In view of this corroborative evidence we find no substance in the argument urged on behalf of the appellant that the investigating officer ought to have held an identification parade and that the failure of Munshi Ram to mention the names of the two accused to the neighbours who came to the scene immediately after the occurrence shows that his story cannot be true. As observed by this Court in *Jadunath Singh* v. *State of U.P.* absence of test identification is not necessarily fatal. The fact that Munshi Ram did not disclose the names of the two accused to the villagers only shows that the accused were not previously known to him and the story that the accused referred to each other by their respective names during the course of the incident contains an element of exaggeration. The case does not rest on the evidence of Munshi Ram alone and the corroborative circumstances to which we have referred to above lend enough assurance to the implication of the appellant.' "

Malkhansingh v. *State of M.P.*: (SCC pp. 751-52, para 7)

"*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."

78. Thus, it is clear that Dock Identification is a substantive piece of evidence. The Supreme Court in the case of **Hemudan Nanbha Gadvi Vs. State of Gujarat** reported in **(2019) 17 SCC 523** has held as under :

> **7.** The appellant was apprehended on suspicion along with another. The TIP was held without delay on 22-2-2004. Ext. P-38, the TIP report bears the thumb impression of PW 2

who was accompanied by her mother. The TIP report has been duly proved by PW 11. The appellant was identified by PW 2. There appears no substantive challenge to the TIP identification in the dock, generally speaking, is to be given primacy over identification in TIP, as the latter is considered to be corroborative evidence. But it cannot be generalised as a universal rule, that identification in TIP cannot be looked into, in case of failure in dock identification. Much will depend on the facts of a case. If other corroborative evidence is available, identification in TIP will assume relevance and will have to be considered cumulatively.

8. In *Prakash* v. *State of Karnataka*, it was observed as follows : (SCC p. 144, para 16)

> "*16*. … Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution. In *Visveswaran* v. *State* it was held : (SCC p. 78, para 11)
>
> '*11*. … The identification of the accused either in a test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence.' "

The Supreme Court in the case of **Prakash Vs. State of Karnataka** reported in **(2014) 12 SCC 133** has held as under :

14. Two types of pre-trial identification evidence are possible and they have been succinctly expressed in *Marcoulx* v. *R.* by the Supreme Court of Canada in the following words:

> "An important pre-trial step in many criminal prosecutions is the identification of the accused by the alleged victim. Apart from identification with the aid of a photograph or photographs, the identification procedure adopted by the police officers will normally be one of two types: (*i*) the show up—of a single suspect; (*ii*) the line-up presentation of the suspect as part of a group."

14.1. With reference to the first type of identification evidence, the Court quotes Prof. Glanville Williams from an eminently readable and instructive article in which he says:

> "… if the suspect objects [to an identification parade] the police will merely have him "identified" by

showing him to the witness and asking the witness whether he is the man. Since this is obviously far more dangerous to the accused than taking part in a parade, the choice of a parade is almost always accepted."

14.2. With reference to the second type of identification evidence, Prof. Glanville Williams says:

"Since identification in the dock is patently unsatisfactory, the police have developed the practice of holding identification parades before the trial as a means of fortifying a positive identification…. The main purpose of such a parade from the point of view of the police is to provide them with fairly strong evidence of identity on which to proceed with their investigations and to base an eventual prosecution. The advantage of identification parades from the point of view of the trial is that, by giving the witness a number of persons from amongst whom to choose, the prosecution seems to dispose once and for all the question whether the defendant in the dock is in fact the man seen and referred to by the witness."

14.3. A similar view was expressed by the Canadian Supreme Court in *Mezzo* v. *R.*

15. An identification parade is not mandatory nor can it be claimed by the suspect as a matter of right. The purpose of pre-trial identification evidence is to assure the investigating agency that the investigation is going on in the right direction and to provide corroboration of the evidence to be given by the witness or victim later in court at the trial. If the suspect is a complete stranger to the witness or victim, then an identification parade is desirable unless the suspect has been seen by the witness or victim for some length of time. In *Malkhansingh* v. *State of M.P.* it was held: (SCC pp. 751-52, para 7)

"*7.* … The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact."

> **16.** However, if the suspect is known to the witness or victim or they have been shown a photograph of the suspect or the suspect has been exposed to the public by the media no identification evidence is necessary. Even so, the failure of a victim or a witness to identify a suspect is not always fatal to the case of the prosecution. In *Visveswaran* v. *State* it was held: (SCC p. 78, para 11)
>
> "*11*. … The identification of the accused either in a test identification parade or in court is not a sine qua non in every case if from the circumstances the guilt is otherwise established. Many a time, crimes are committed under the cover of darkness when none is able to identify the accused. The commission of a crime can be proved also by circumstantial evidence."

79. Identification of an accused is a relevant fact under Section 9 of Evidence Act and the Court can direct the accused to submit himself for identification under Section 54-A of Cr.P.C. Identification of an accused in the Court, establishes the identity of an accused, but to seek conviction, the prosecution has to prove other allegations either by leading Direct Evidence or Circumstantial Evidence. Mere identification of a person, would not establish his guilt.

80. This Court has already held that the allegations that Durgaprasad (P.W.2) was released by the miscreants as he had disclosed his wrong identity and thereafter, Durga Prasad (P.W.2) informed Ram Singh (P.W. 4) about abduction and demand of ransom amount are suspicious and doubtful. The allegation that ransom amount was arranged by Ram Singh (P.W. 4) by collecting the same from the villagers including son of Patiram (P.W. 6) has also been found to be doubtful and suspicious. The fact of handing over of ransom amount to the miscreants has also been found to be doubtful

and suspicious. When the abductees were released and when Mangilal (P.W. 3) and Ram Singh (P.W. 4) handed over the ransom amount to the miscreants has also been found to be doubtful and suspicious. Further, how Mangilal (P.W.3) and Ram Singh (P.W.4) reached to the miscreants is also not proved beyond reasonable doubt. It has also been found that when the police was already patrolling in the forest area, then non-meeting of Mangilal (P.W. 3) and Ram Singh (P.W.4) with the police party in the forest area also raises doubt and suspicion on the prosecution story. Furthermore, how, when and where, Dehati Nalishi was lodged is also under doubt. Durga (P.W.2) has stated that he went to Pohari Police Station and lodged the report, but no F.I.R. was lodged in Pohari Police Station. The investigation was done by S.H.O., Police Station *Chharch.* K.C. Chauhan (P.W.9) has claimed that he was already on patrolling in the forest area, when he met with Durga (P.W. 2) who lodged the Dehati Nalishi. Thus, the fact of lodging Dehati Nalishi, Ex. P.1 has also not been proved by the prosecution beyond reasonable doubt. Furthermore, there is a delay of 24 hours in sending the copy of F.I.R. to Special Judge, which also gives deep dent to the prosecution story. Under these circumstances, when the prosecution has failed to prove that Narayan (P.W. 5), Patiram (P.W.6) and Mahesh Kumar Dhakad (P.W.7) were ever abducted and ransom amount was demanded and was also payed, then mere identification in TIP or in Dock would not lead to inference, that

the appellant Vijay has committed offence under Section 364-A of I.P.C read with Section 11/13 of MPDVPK Act. It is well established principle of law that suspicion howsoever strong may be, cannot take place of proof. Thus, under the facts and circumstances of the case, it is held that the prosecution has miserably failed to prove the guilt of the appellant Vijay for offence under Section 364-A of IPC read with Section 11/13 of MPDVPK Act.

Whether Durga Prasad (P.W.2), Narayan (P.W.5), Patiram (P.W. 6) and Mahesh Kumar Dhakad (P.W. 7) were beaten by Vijay

81. Dr. R.K. Sharma (P.W.10) had examined Mahesh Kumar Dhakad on 25-3-2009 at 11:20 P.M. in the night and found the following injuries on his body :

(i) Contusion 3 x 4 on left side of back of chest

(ii) Contusion 3 x 3 on right side of back of chest

(iii) Contusion 3 x 1 right shoulder joint back part

(iv) Contusion 1 x 2 left arm

The M.L.C. is Ex. P. 27.

82. Durga Prasad (P.W.2) was also examined on the same day and following injuries were found :

(i) Swelling 2 x 3 left shoulder joint
(ii) Swelling 2 x 2 back of chest

The M.L.C. report is Ex. P.28

83. Narayan (P.W. 5) and Patiram (P.W. 6) were not medically examined.

84. In cross-examination, Dr. R.K.Sharma (P.W.10) has admitted that in case if a person fall from a bullock cart, then he can sustain the injuries which were sustained by Mahesh and Durga Prasad.

85. It is also not out of place to mention here that Narayan (P.W.5) and Patiram (P.W. 6) had also claimed that they too were beaten by the miscreants, but they did not undergo any medical examination. Thus, it is clear that they did not receive any injury. Therefore, their evidence that they too were beaten was not supported by medical evidence.

86. When this Court has already come to a conclusion that the prosecution has failed to prove that the witnesses, i.e., Narayan (P.W. 5), Patiram (P.W. 6) and Mahesh Kumar Dhakad (P.W. 7) were abducted, then it is held that the prosecution has failed to prove that Durga Prasad (P.W.2) and Mahesh Kumar Dhakad (P.W.7) were beaten by Vijay. If the miscreants were to beat the abductees, then there was no reason for them to spare Narayan (P.W. 5) and Patiram (P.W.6). Thus, it appears that the injuries found on the body of Durga Prasad (P.W. 2) and Mahesh Kumar Dhakad (P.W.7) were either self inflicted injuries, or they might have sustained on account of fall from bullock cart. Thus, the prosecution has failed to prove the guilt of appellant Vijay for offence under Section 323 of I.P.C.

87. Accordingly, the appellant Vijay is **acquitted** of charges under Sections 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act,

under Section 323 of I.P.C. and under Section 25(1-B)(a) of Arms Act.

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88. The Trial Court by the impugned Judgment had acquitted the appellants Ramcharan, Siddhar and Kamarlal for offence under Sections 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act and under Section 323 of I.P.C. and had acquitted Suresh for offence under Sections 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act, 323 of I.P.C. and under Section 25(1-B)(b) of I.P.C.

89. The dock identification of the aforesaid persons was disbelieved by the Trial Court on the ground that they were not identified by the witnesses in T.I.P. Although, Dock Identification is the Substantive Evidence, but the value of Dock Identification has to be considered along with surrounding circumstances. This Court, while considering the appeal of Vijay, has already come to a conclusion that the prosecution has failed to prove that Narayan (P.W. 5), Patiram (P.W.6) and Mahesh Kumar Dhakad (P.W. 7) were abducted. The prosecution has also failed to prove that any ransom amount was paid. The prosecution has also failed to prove that Durga Prasad (P.W.2), Narayan (P.W. 5), Patiram (P.W.6) and Mahesh Kumar Dhakad (P.W. 7) were ever beaten.

90. Furthermore, it is well established principle of law that when two views are possible and the Trial Court has taken the view

favoring the accused, then the same should not be disturbed only on the ground that another view was possible. The Supreme Court in the case of **Abdul Mannan v. State of Assam,** reported in **(2010) 3 SCC 381** has held as under :

> **15.** It is well settled that in a case where the trial court has recorded acquittal, the appellate court should be slow in interfering with the judgment of acquittal. On evaluation of the evidence, if two views are possible, the appellate court should not substitute its own view and discard the judgment of the trial court.

The Supreme Court in the case of **Sunil Kumar Sambhudayal Gupta (Dr.) v. State of Maharashtra,** reported in **(2010) 13 SCC 657** has held as under :

> **38.** It is a well-established principle of law, consistently reiterated and followed by this Court that while dealing with a judgment of acquittal, an appellate court must consider the entire evidence on record, so as to arrive at a finding as to whether the views of the trial court were perverse or otherwise unsustainable. Even though the appellate court is entitled to consider, whether in arriving at a finding of fact, the trial court had placed the burden of proof incorrectly or failed to take into consideration any admissible evidence and/or had taken into consideration evidence brought on record contrary to law; the appellate court should not ordinarily set aside a judgment of acquittal in a case where two views are possible, though the view of the appellate court may be the more probable one. The trial court which has the benefit of watching the demeanour of the witnesses is the best judge of the credibility of the witnesses.
>
> **39.** Every accused is presumed to be innocent unless his guilt is proved. The presumption of innocence is a human right. Subject to the statutory exceptions, the said principle forms the basis of criminal jurisprudence in India. The nature of the offence, its seriousness and gravity has to be taken into consideration. The appellate court should bear in mind the presumption of innocence of the accused, and further, that the trial court's acquittal bolsters the

> presumption of his innocence. Interference with the decision of the trial court in a casual or cavalier manner where the other view is possible should be avoided, unless there are good reasons for such interference.
>
> **40.** In exceptional cases where there are compelling circumstances, and the judgment under appeal is found to be perverse, the appellate court can interfere with the order of acquittal. The findings of fact recorded by a court can be held to be perverse if the findings have been arrived at by ignoring or excluding relevant material or by taking into consideration irrelevant/inadmissible material. A finding may also be said to be perverse if it is "against the weight of evidence", or if the finding so outrageously defies logic as to suffer from the vice of irrationality. (See *Balak Ram* v. *State of U.P.*, *Shailendra Pratap* v. *State of U.P.*, *Budh Singh* v. *State of U.P.*, *S. Rama Krishna* v. *S. Rami Reddy*, *Arulvelu* v. *State*, *Ram Singh* v. *State of H.P.*and *Babu* v. *State of Kerala*.)

91. The Counsel for the State could not point out any perversity which may require reversal of judgment of acquittal.

92. Accordingly, the acquittal of Ramcharan, Siddhar and Kamarlal @ Bhindua for offence under Section 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act and under Section 323 of I.P.C. and acquittal of Suresh for offence under Section 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act , under Section 323 of I.P.C. and under Section 25(1-B)(b) of Arms Act is hereby **affirmed.**

93. *Ex Consequenti***,** the judgment and sentence dated 11-1-2010 passed by Special Judge (M.P.D.V.P.K. Act), Shivpuri in Special Sessions Trial No.60/09 is hereby **affirmed** so far as it relates to acquittal of Ramcharan, Siddhar and Kamarlal @ Bhindua for offence under Sections 364-A of I.P.C. read with Section 11/13 of

M.P.D.V.P.K. Act and under Section 323 of I.P.C. as well as also **affirmed** so far as it relates to acquittal of Suresh for offence under Sections under Section 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act, under Section 323 of I.P.C. and under Section 25(1-B)(b) of Arms Act. However, the impugned judgment and sentence is **set aside** so far as it relates to conviction of Vijay under Sections 364-A of I.P.C. read with Section 11/13 of M.P.D.V.P.K. Act, 323 of I.P.C. and under Section 25(1-B)(a) of Arms Act. It is also **set aside** so far as it relates to conviction of Ramcharan, Siddhar and Kamarlal @ Bhindua for offence under Section 25(1-B)(a) of Arms Act.

94. The appellant Vijay is in jail. He be released immediately, if not required, in any other case.

95. The appellants Ramcharan, Siddhar and Kamarlal @ Bhindua are on bail. Their bail bonds are discharged. They are no more required in the present case.

96. The respondent Suresh was already acquitted but had furnished bail in the State Appeal. Accordingly, his bail bonds are discharged. He is no more required in the present case.

97. The **Cr.A. No.192 of 2010** filed by Ramcharan, Siddhar, Vijay and Kamarlal @ Bhindua is **Allowed** in toto, whereas **Cr.A. No.353/2014** filed by State against acquittal is hereby **Dismissed.**

98. A copy of this judgment be provided immediately to the

appellants, free of cost.

99. The Registry of this Court is directed to immediately send the record of the Trial Court back along with the copy of this Judgment for necessary information and compliance.

100. No order as to cost.

(G.S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge