SUPREME COURT OF INDIA

Subhash Krishnan

Vs.

State of Goa

Crl.A.No.1224 of 2012

(Swatanter Kumar and Fakkir Mohamed Ibrahim Kalifulla,JJ.)

17.08.2012

JUDGMENT

Fakkir Mohamed Ibrahim Kalifulla,J.

1. Leave granted in SLP (Crl) 3966 of 2010.

2. These appeals have been preferred by the second accused. Though, in all eight persons were accused of the alleged offences, records reveal that accused Nos. 7 and 8 were absconding even at the time of filing of the charge sheet and hence as many as six accused persons were charge-sheeted for the offences under Section 120B read with Section 302, IPC, Sections 342, 364, 504 read with Section 34, IPC for the alleged abduction, wrongful confinement and killing the deceased Shanu Komarpant on 10.10.2003. Accused No.5 and A-6 were acquitted by the trial Court giving benefit of doubt while A-1 to A-4 were acquitted of charges under Section 342, 504 and 364 read with Section 34 IPC. The accused Nos.1 to 4 were, however, convicted for offences under Sections 120B, 302 read with Section 34, IPC and were imposed with the sentence of life imprisonment apart from a fine of Rs.5,000/-each, in default to undergo further three months rigorous imprisonment. Accused Nos.1 to 4 preferred individual appeals being Criminal Appeal Nos.7/2007, 12/2007 and 13/2007. The appeal preferred by the second accused was Criminal Appeal No.13/2007. The State preferred Appeal No.6 of 2008 against the acquittal of charges under Sections 342, 504 and 364 read with Section 34 IPC and the total acquittal of A-5 and A-6. All appeals were tried together and by a common judgment impugned in these appeals, the High Court dismissed the appeal filed by the accused and the State appeal being Criminal Appeal No.6/2008 was partly allowed, where under, the accused Nos.1 to 4 were also convicted for offences under Sections 342 and 364 read with Section 34, IPC. The High Court held that the conviction of the said accused would, therefore, be for all the offences including offences under Sections 342, 364 read with Section 34, IPC. At the outset, it has to be mentioned that as against the common judgment of the High Court, appeal was stated to have been preferred by A-3.

However, it was dismissed at the stage of preliminary hearing. The review preferred by A-3 in Review Petition (Crl) No.115 of 2011 was also dismissed on 09.03.2011.

3. According to the case of the prosecution, on 10.10.2003, the accused 1 to 6 went to the garage of Shanu Komarpant (hereinafter called 'the deceased') in a white colour Maruti van and enquired about his whereabouts. The friend of the deceased by name Alex Viegas who was present at that time in the auto garage noticed the belligerent behavior of the accused persons, and informed about the same to his cousin, the complainant-Avelino Viegas (PW-2) and proceeded to the house of the deceased, that there they met the deceased and informed him about the anxious enquiries made by the accused about his whereabouts. It is stated that the deceased himself wanted to straightaway go and meet the first accused with a view to arrive at some settlement relating to an issue relating to a love affair and in that view the deceased along with PW-2 and Alex Viegas went to the place of occurrence in two motor cycles one driven by PW-2 along with the deceased and the other hired by Alex Viegas and that after reaching the place of occurrence when the deceased asked A-1 as to for what purpose he was searching for him, the accused persons stated to have assaulted the deceased with knife, sword and bamboo stick (danda) and gave kick blows by hand in the middle of the road viewed by persons standing nearby. It is further stated that PW-2 was held by A-1 from extending any help to the deceased and save him from the assault by the other accused while Alex Viegas stated to have been directed by PW-2 to fetch other people for saving the deceased from the severe onslaught meted out to him. The said assault stated to have taken place at 4.30 p.m. on 10.10.2003 on the road at Galjibagh in the vicinity of Saint Anthony High School within the limits of Canacona police station of South Goa District.

4. After the severe assault on the deceased, it is stated that A-2 brought a white colour Maruti van to the spot in which the deceased was stated to have been placed in the dicky and the van proceeded towards Talpona side. Based on telephonic information about the above incident recorded by PW-35 and at his instance, the crime was stated to have been registered which was subsequently registered based on the complaint of PW- 2 for offences under Sections 302,342,504,364 and 120B, IPC read with 34 IPC in Crime No. 32/2003. Based on the information received, the registration number of the Maruti van in which the deceased was carried, the police stated to have alerted the check post and that the Maruti van was intercepted at Assolna around 5.45 pm to 6 pm on the same day when accused A-1 was found driving the vehicle with the other accused persons in the van in which the knife, sword, bamboo stick (danda) and a right foot chappal with blood stains were recovered. Shailesh Gadekar (A-4) had an injury on his forehead who was sent to Primary Health Centre, Bali along with A-5 and A-6 and that from there he was shifted to Hospicio Hospital of Margao. All of them were subsequently arrested by the police.

5. At the instance of A-1, the body of the deceased was discovered in the morning of 11.10.2003 which was found hanging to the branch of a cashew tree in an isolated place alongside the road at village Onshi. The blood stained clothes of the deceased and his left foot chappal with blood stains were stated to have been recovered along with his belongings, as well as, the nylon rope with which the body was found hanging. After holding the inquest on the body of the victim the body was stated to have been sent for postmortem. PW-9 was the postmortem doctor who noted the injuries on the deceased numbering 36. PW-15 examined A-4 for the injuries sustained by him and issued the certificate about the nature of the injuries found on him.

6. The prosecution examined 35 witnesses. The FSL report relating to the blood stains found on the various articles seized revealed the blood group of the deceased as 'A'.

7. When the accused were questioned under Section 313 Cr.P.C. A-4 stated that 4 to 5 persons and two other motor cyclists assaulted him with a sword when he was waiting at a bus stop at Canacona at 4.30 p.m. on 10.10.2003, that pursuant to the said assault he fell unconscious on the spot and thereafter regained consciousness only at the hospital at Margao. A-3, A-5 and A-6 stated that they went to see A-4 in the hospital on the evening of 10.10.2003 where they were stated to have been taken into custody by the police. A-1 and A-2 made total denial of the offence in their questioning under Section 313, Cr.P.C. As stated earlier, the trial Court acquitted A-5 and 6 and convicted A-1 to A-4 for offences under Sections 302 and 120B read with Section 34, IPC and acquitted them for the offences under Sections 342, 504 and 364 read with Section 34 IPC.

8. Assailing the judgment of the High Court as well as of the trial Court, Mr. Jaspal Singh, learned senior counsel made elaborate submissions. The sum and substance of the submissions of the learned senior counsel were as under:-

> "a) Exhibit 96, complaint of PW-2 was not proved;
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> b) PW-2 having not offered himself for cross examination, his evidence in chief was of no value and the High Court rightly ignored the evidence of PW-2.
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> c) Though there was a specific overt act alleged against the appellant with the aid of talwar Exhibit 12, the medical evidence to the effect that there was no cut injury on the body of the deceased go to show that the appellant had nothing to do with the killing of the deceased.
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> d) The name of the appellant was not mentioned in Exhibit 96.

e) The appellant was a total stranger. The appellant's case should have, therefore, been equated to that of A-5 and A-6 and he should have been acquitted on that basis.

f) The test identification parade was not held immediately after the occurrence apart from the fact that the procedure in holding the test identification parade was not duly followed. The identification of the appellant by PWs-14 and 33 should not have, therefore, been relied upon.

g) According to PW-35, the Investigating Officer, the place from where the eye witnesses stated to have seen the occurrence, namely, Marina store was admittedly 70 metres away from the place of occurrence and, therefore, the eye witnesses could not have seen the participation of the accused, in particular the appellant, in the crime.

h) There was total repugnancy in the ocular vis-a-vis the medical evidence as regards the use of the weapon, having regard to the nature of injuries found on the body of the deceased. Even according to the eye witnesses, the occurrence took place only for 4-5 minutes and from a distance of 70 metres, the eye witnesses could not have noted the persons with any certainty in order to identify them with regard to specific part played by them.

i) In the test identification parade, identical persons were not kept and that a wrong procedure was followed in the holding of test identification parade.

j) There were improvements in the statements of the eye witnesses as compared to the statement found in Section 161 Cr.P.C.

k) PW-23 referred to the bleeding injuries on A-2 in definite terms, whereas according to PW-9 as well as PW-15, no injury was found on A-2 and the only accused on whom knife injury was found was A-4. Therefore, the presence of the appellant and his involvement in the crime was not made out. Learned counsel relied upon the reported decisions of this Court in *Mohanlal Gangaram Gehani v. State of Maharashtra*[1]*Manzoorv.StateofUttar Pradesh*[2]*Raju Rajendra v.State of Maharashtra*[3]*Kanan Ors.v.State Of Kerala*[4]*in support of his submission as regards the infirmities in holding the Test Identification Parade (TIP). Learned counsel also relied upon the decisions reported in Ganga Prasad v. State of U.P*[5]*Balaka Singh Ors. v. The State of Punjab*[6]*State of Uttar Pradesh v. Abdul Karim Ors*[7]*and Animireddy Venkata Ramana Ors. v. Public Prosecutor, High Court of Andhra Pradesh*[8].

9. As against the above submissions, learned counsel appearing for the State submitted as under:-

"a) That the test identification parade was held in accordance with law;

b) That PWs-14 and 33 who participated in the test identification parade stated that they had never seen A- 2 or his photograph immediately before the holding of the TIP.

c) When the appellant raised objection at the time of holding of TIP and wanted to change his shirt, PW-30 who held the TIP allowed the appellant to change his shirt and thereby whatever objection he had was also duly set right.

d) The appellant and other accused never cross examined the witnesses about any shortcoming in the holding of the TIP and, therefore, they cannot now be heard to complain about the procedure followed in the holding of TIP.

e) PW-14 who was one of the witnesses, who identified the appellant in the TIP also made it clear that she had earlier seen him in her village though she did not know his name.

f) As far as the distance factor was concerned, learned counsel submitted that PW-35 clarified that the witnesses viewed the occurrence from the entrance of Marina stores and, therefore, they had a clear view of what was taking place when the assailants were assaulting the deceased.

g) Apart from the identification of the appellant by PWs-14 and 33 in the test identification parade, the other witnesses, namely, PWs-16, 23, 26, 27 and 34 identified the appellant in the Court and thereby corroborated the version of Pws-14 and 33.

h) The evidence of PW-21, the owner of Maruti van who made a categorical statement that it was the appellant who took his Maruti van which was later on found to have been used in the crime for which he applied for the return of the vehicle.

i) The evidence of PW-25 who was a worker in the garage also proved the presence of the appellant in the Maruti van earlier in the day when the accused persons went to the garage of the deceased enquiring about the whereabouts of the deceased.

j) The subsequent interception of the said Maruti van by the police PWs-13 and 18 and the presence of the appellant along with other accused and their subsequent arrest support the case of the prosecution.

k) The evidence of post mortem doctor PW-9 about the nature of injuries, namely, injury Nos. 2 to 36 except injury Nos. 21, 22, 23, 32, 33, 34 which according to PW-9 could have been caused by Exhibit 12 from its blunt side and that the said injuries collectively could have caused the death of the deceased.

l) The evidence of PW-16 as well as other witnesses, namely, PWs-14, 33, 23 and 27 in having made specific reference to the red colour shirt worn by the appellant while indulging in the crime was never disputed.

m) The said witnesses specifically attributed the over act played by the appellant. The medical evidence, therefore, was in tune with the ocular evidence.

n) The evidence of PWs-14, 33, 16 and 23 in having specifically referred to the removal of the deceased in the Maruti van and the subsequent recovery of the body of the deceased at the instance of A-1 on the next day when the body was found hanging on a Cashew tree in village Onshi established the offence of abduction and the killing of the deceased as per Sections 342, 362, 364 read with 34, IPC.

o) The FSL report confirmed the presence of blood group „A' belonging to the deceased in the red shirt worn by the appellant while the blood group of the appellant was „O+'.

p) The version of PW-35 was truthful when he stated about the telephonic message was received by him about the ongoing assault on a person at Galjibagh in the vicinity of Saint Anthony High School and the subsequent complaint Exhibit 96 received by him on the basis of which he commenced the investigation which resulted in the filing of the final report against the accused. Learned counsel appearing for the State relied upon the decision of this Court reported in *Sayed Darain Ahsan alias Darain v. State of West Bengal Anr*[9]*Dana Yadav alias Dahu Ors. v. State of Bihar*[10]*Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi)*[12]*Pramod Mandal v. State of Bihar*[12]*Pravin v. State of Madhya Pradesh*[13]*Ashok Kumar v. State (Delhi Administration)*[14]*Satish NarayanSawant v.State ofGoa*[15]in support of his submissions."

10. Having heard learned counsel for the appellant as well as learned counsel for the State and having perused the judgment impugned as well as that of the trial Court and the other material papers, at the outset we wish to deal with the submission regarding the registration of the FIR and the alleged shortcomings. According to learned counsel, the author of the complaint-Exhibit 96 having abstained from offering himself for cross examination the said document ceased to have any effect. Learned

senior counsel would, therefore, contend that once Exhibit 96 and the evidence of PW-2 goes out of picture and since he was not named in the FIR, there was no possibility of implicating the appellant to the offence alleged against him. According to him if Exhibit 96, the complaint cease to exist what remained was the prior telephonic information received by PW-35, based on which the appellant could not have been convicted.

11. When we examine the said submission, it is true that PW-2, the author of the complaint did not offer himself for cross examination. The High Court in paragraph 37 made extensive reference to the circumstances namely, the non¬availability of PW-2 who was in abroad at the relevant point of time, when his cross examination was fixed and that no fault can be found with the prosecution since in spite of its best efforts, the witness could not be produced. The High Court also noted that the trial Court, therefore, had no option than to ignore his evidence. The High Court then rightly pointed out that the whole purpose of the complaint was to ignite the investigation, that PW-35, the investigating officer after receipt of the complaint Exhibit 96 set the law in motion, sent the record of the complaint to Canacona Magistrate on the morning of 11.10.2003 itself apart from the commencement of the investigation based on the telephonic message regarding the ongoing assault at Galjibagh without reference to either the victim or the accused involved in the assault. We fully agree with the approach of the trial Court as confirmed by the High Court in proceeding with the case of the prosecution, ignoring the evidence of PW-2 while at the same time the factum of the nature of offence alleged in the complaint Exhibit -96 as proceeded with by the prosecution deserved to be considered in accordance with law.

12. As rightly pointed out by the Courts below, apart from PW-2 who was the author of the complaint and also eye witness, there were nine other witnesses in the case who fully supported the case of the prosecution. Those witnesses were cross examined in detail on behalf of the accused. In the above stated background when the law was set in motion by PW-35, the Investigating Officer who initially received a telephonic message regarding the occurrence allegedly from the local MLA about a serious crime taking place at Galjibagh in which somebody was being assaulted, PW-35 stated to have sent his staff who brought PW-2 to the police station through whom Exhibit 96 came to be received and crime No.32/2003 was subsequently registered for offences under Section 302, 342, 504, 364, 120B read with Section 34, IPC. Closely followed by the said act it is in evidence that police in the District was alerted which resulted in PW-13 and 18 apprehending the accused along with the Maruti van bearing registration No.GA 02J-7230 along with the weapons used. Therefore, taking the totality of the above facts, it will be futile on the part of the appellant to contend that PW-2 did not offer himself for cross examination and, therefore, the whole genesis of the case should be thrown out of board. In the said background, the submission of the learned counsel

about the non-reference of the name of the appellant in Exhibit 96 pales into insignificance especially, when the complicity of the appellant in the commission of the crime was otherwise fully established by the prosecution. Therefore, the claim that the case of the appellant should be equated to that of A-5 and A-6 does not merit any consideration. Consequently, the submission of the learned counsel based on the failure of PW-2 in offering himself for cross examination and non¬mentioning of the name of the appellant in Exhibit 96 also stands rejected.

13. In this respect the reliance placed upon by the learned counsel for the State on the decision of this Court reported in *Satish Narayan Sawant v. State of Goa*[16]can be usefully referred to. In paragraph 22 to 27, this Court while dealing with such a situation has noted that the Court will not become helpless. Inasmuch as any crime alleged is against the society, it is the bounden duty of the Court to find out the truthfulness or otherwise of the prosecution case allegedly based on initial information received and the steps taken in furtherance of its investigation for acceptance or otherwise of such information in order to determine the further course of action to be taken to unearth the details of the crime, the persons involved in the crime and ultimately ensure that the guilt are brought to book. In that respect in our view, there is every responsibility in the police as a law enforcing machinery and as savior of the society from the unlawful elements indulging in crimes, take necessary steps based on the information collected by it in the first instance and set the law in motion and proceed with its action as prescribed under the provisions of law. When the case of the prosecution is brought to Court by placing all the materials, it is for the Court to examine the action taken by the investigating machinery in the anvil of the law in force and on being satisfied with the correctness of the procedure followed can proceed to find the proof of guilt and pass its judgment. In other words, the Courts should examine and find out whether the story of the prosecution as projected before the Court trying the offence merits acceptance.

14. This Court has noted with approval the earliest case reported in *State of Uttar Pradesh v. Bhagwant Kishore Joshi*[17]wherein while explaining what is investigation which is not defined in the Code of criminal Procedure, the Court placed reliance upon an earlier decision of this Court reported in *H.N. Rishbud Anr. v. State of Delhi*[18]in which it was held that the investigation consisted of five steps, namely, proceeding to the spot, ascertainment of facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence relating to the commission of the offence which may consist of examination of various persons including the accused reducing them into writing, proceed with the search of places or seizure of things considered necessary for the investigation to be produced at the time of trial and formation of the opinion as to whether on the material collected there is a

case to place the accused before a Magistrate for trial and, thereafter, taking necessary steps for the said purpose by filing the charge sheet under Section 173.

15. In that case, according to PW-1 the investigation officer received information about the death of a person through PSI of another police station without any details as to how the incident happened and as to the cause of the incident and with that cryptic information regarding the death of a person who was residing within the jurisdiction of the investigating officer in an incident alleged to have taken place on the date and time informed to him without making any entry in the general diary or get any FIR lodged, the IO stated to have gone to the place of occurrence and noted certain blood marks with his torch light where even the complaining party was not present. Thereafter by bringing the persons present at the place of occurrence to the police station and after collecting necessary information, the FIR was recorded.

16. Keeping the principles laid down in *H.N. Rishbud Anr. v. State of Delhi*[19] as noted by this Court in the later decision in State of Uttar Pradesh v. Bhagwant Kishore Joshi- AIR 1964 SC 221 and further referred to in the recent decision in *Satish Narayan Sawant v. State of Goa*[20]we hold that the procedure followed by PW-35 in having commenced the investigation based on Exhibit 96 along with site inspection, the prior information received by him through phone about the alleged occurrence and every further steps taken by him in having recorded the statements of the other eye witnesses, the initiation taken by him for apprehending the vehicle in which the accused alleged to have travelled, recovery of weapons from the vehicle, arrest of the accused including the appellant, the recovery of the dead body at the instance of A-1 from the village Onshi, the step taken for getting the dead body examined through PW-9, the ascertainment of the injuries sustained by the accused themselves, gathering of the FSL reports on the materials seized from the accused as well as the deceased, considered in a sequence, disclose that the case of the prosecution as projected based on Exhibit 96 even in the absence of the cross examination of PW-2 in the peculiar facts and circumstances of this case was perfectly in order and we do not find any good ground to reject the case of the prosecution based on the present submission of the learned counsel for the appellant.

17. With this, when we come to the alleged participation of A-2, in the offence, there are overwhelming evidence to implicate him to the death of the deceased by sharing the common intention along with the other accused who were convicted of the various offences as set out in the earlier part of this judgment. In the first instance, there was a clear cut evidence of PW-21 owner of the Maruti van whose evidence was not controverted in any manner relating to the fact that it was the appellant who took the Maruti van from him which was identified by PW-21 which was used for the crime. PW-25, the mechanic who was working in the

garage of the deceased made a specific reference to the presence of the appellant in the van when the accused persons visited the garage of the deceased to enquire about his whereabouts. PW 14, 33, 16, 23 and 27 made specific reference to the overt act played by the appellant in the assault on the deceased with a big knife (talwar). Talwar is a long knife with sharp edge on the one side and blunt edge on the other. PW-9, the post mortem doctor stated that the injury Nos. 2 to 20, 24 to 31, 35 and 36 were caused by hard and blunt weapon. Of the above injuries, injuries Nos.2 to 12 were on the face itself. Injuries Nos. 13 to 20 were on the arms and shoulder. Injuries Nos. 24 to 31 were on the leg and in the buttocks. Injury Nos. 35 and 36 were on the back side of the body. To a specific query put to him, the doctor opined that except injury Nos. 21, 22, 23, 32, 33 and 34, other injuries of 2 to 36 found on the body of the deceased could have been caused by Exhibit 12 which is the sword and knife (Exhibit-13) while injury Nos. 21, 22, 23, 32, 33 and 34 on the deceased could have been caused by Exhibit 14, the danda. Therefore, the extensive part played by the appellant in the crime using the talwar Exhibit 12 was conclusively made out and the submission of the learned counsel on this aspect is grossly futile.

18. The appellant was identified by at least two of the witnesses PW- 14 and 33 in the TIP held on 03.11.2003 at the behest of PW-30 the Special Judicial Magistrate. Though it was contended that the appellants raised an objection to the effect that they were already shown by the police officials to the said witnesses, in order to rule out any hazard on that score, the accused himself suggested that he be permitted to change his shirt which PW-30 allowed and, thereafter, he subjected himself to the TIP in which he was identified by PWs-14 and 33 without any hesitation. As pointed out by learned counsel for the State with regard to the holding of the TIP nothing was elicited in the cross examination in order to hold that the whole of the TIP was not conducted in the manner it was to be held and that the identification of the appellant was not proved in the manner known to law. PW-14 also stated in her evidence that she had seen the appellant in the village earlier though she did not know his name. Therefore, when such identification of the appellant was proved to the satisfaction of the Court, there was nothing more to be proved about the manner in which it was held or to find any flaw in the holding of the TIP. At the risk of repetition it will have to be stated that the witnesses were not questioned as to the manner in which they were asked to identify the appellant in the TIP or the alleged defect in the holding of the said parade when the witnesses were examined before the Court. Therefore, it is too late in the day for the appellant to contend that the identification parade was not carried out in the manner known to law. Coupled with the above, the evidence of other eye witnesses, namely, PWs-16, 23, 26, 27 and 34 in having identified him in the Court by making specific reference to the red colour shirt worn by him at the time of the occurrence fully corroborated the version of PWs-14 and 33. It will be appropriate to refer to the decisions of this Court reported in *Simon Ors. v. State of*

Karnataka[21]*Dana Yadav alias Dahu Ors. v. State of Bihar*[22]*and Daya Singh v. State of Haryana*[23].The following passages in the above referred to decisions can usefully be referred as under:

> "Simon Ors. v. State of Karnataka (supra) "14 mereidentificationof an accused person at the trial for the firsttime is from its very nature inherently of a weak character. The purpose of a prior test identification is to test and strengthen the trustworthiness of that evidence. Courts generally look for corroboration of the sole testimony of the witnesses in court so as to fix 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. It has also to be borne in mind that the aspect of identification parade belongs 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. Mere failure to hold a test identification parade would not make inadmissible the evidence of identification in court. What weight is to be attached to such identification is a matter for the courts of fact to examine. In appropriate cases, it may accept the evidence of identification even without insisting on corroboration"
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> Dana Yadav alias Dahu Ors. v. State of Bihar (supra)
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> "38. (a) xxx
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> (b) xxx
>
> (c) xxx
>
> (d) xxx
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> (e) xxx
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> (f) In exceptional circumstances only, as discussed above, evidence of identification for the first time in court, without the same being corroborated by previous identification in the test identification parade or any other evidence, can form the basis of conviction.
>
> (g) xxx"
>
> Daya Singh v. State of Haryana (supra)

> "12 For this purpose, it is to be borne in mind that purpose of test Identification is to have corroboration to the evidence of the eyewitnesses in the form of earlier identification and that substantive evidence of a witness is the evidence in the Court. If that evidence is found to be reliable then absence of corroboration by test identification would not be in any way material. Further, where reasons for gaining an enduring impress of the identity on the mind and memory of the witnesses are brought on record, it is no use to magnify the theoretical possibilities and arrive at conclusion - what in present day social environment infested by terrorism is really unimportant. In such cases, not holding of identification parade is not fatal to the prosecution"

19. With this, when we examine the reliance placed on the decision reported in Mohanlal Gangaram Gehani v. State of Maharashtra (supra) wherein it was held that without knowing the accused beforehand the identity made by a witness, the absence of any TIP would be valueless and unreliable, the said decision does not apply to the facts of this case. In the decision reported as Mohanlal Gangaram Gehani v. State of Maharashtra (supra), it was only held that where at the earliest opportunity the eye witness failed to mention any identifying feature of the accused persons, the identification of the accused by one of the witnesses nearly two months later in TIP cannot be accepted. In the case on hand while the occurrence took place on 10.10.2003 the TIP was held on 03.11.2003, therefore, it cannot be held that there was a long gap in between in order to state that the witnesses could not have identified the accused appellant. On the other hand, PW- 14 stated that she had already seen the appellant in the village though she did not know his name.

20. In the decision reported as Raju alias Rajendra v. State of Maharashtra (supra) it was held that a TIP parade after about 1 ½ years after the incident was not reliable. We do not find any support from the said decision to the facts of this case. Equally we do not find any scope to apply the decision reported as Kanan Ors. v. State of Kerala (supra) where no TIP was held in respect of the witness who did not know the accused earlier. Therefore, the submission based on the alleged defect in the TIP does not merit any consideration.

21. According to the learned senior counsel, the version of the eye witnesses is not reliable inasmuch as none of the witnesses had anything to say about the severe injury suffered by A-4 on his forehead. PW-9 post mortem doctor has referred to the injuries sustained by A-4. Before that on 10.10.2003 itself at 7 p.m. he was examined by PW-15 doctor who noted the injuries and opined that it was caused by a sharp weapon less than six hours before examination. There was a visible fracture of skull and it was grievous in nature. A-4 was referred to the Hospicio Hospital Margao. Exhibit 12 was shown to PW-15 who opined that there was every possibility of the injury being caused by the said weapon. She stated that though A-4 complained that he was assaulted by fist blows all over his body she did not

notice any injury or marks on his body. Learned counsel would contend that when such specific injuries on A-4 to A-6 were spoken to by PW15 and PW-9 none of the eye witnesses referred to that in their evidence and thereby they were suppressing the truth. Learned counsel therefore, contended that their whole version cannot be believed.

22. In this respect, it will be worthwhile to refer to the approach of the High Court where it has taken pains to analyze the crime threadbare and found that there was no evidence led as regards the alleged assault on him by sword, that not even a suggestion was put to any of the prosecution witnesses to state that there was assault by anyone and the trial Court, therefore, noted that there was every possibility of A-4 having sustained the injures with Exhibit 12 which was very widely used by the appellant on the deceased in which occurrence A-4 also fully participated. Such an approach of the trial Court in the peculiar facts and circumstances of the case cannot be held to be wholly improbable.

23. Accused No.4 except making a statement in 313 questioning that he was assaulted by 4 to 5 person along with two other motor cyclists with a sword when he was waiting at Canacona bus stop at 4.30 p.m. on 10.10.2003, there was no supporting material placed before the Court in the form of legally acceptable evidence and further in the absence of any cross examination on that aspect to any of the witnesses examined in support of the prosecution, there is no scope to consider the said submission of the learned counsel to grant any relief to the appellant. Learned counsel relied upon *Thaman Kumar v. State of Union Territory of Chandigarh*[24]*andKhambam Raja Reddy and Anr. v. Public Prosecutor, High Court Andhra Pradesh*[25].We do not find any support from the said decisions to the case before us. Therefore, the submission of the learned counsel that the prosecution failed to explain the grievous injury found on A-4 or other accused does not in any way support the case of the appellant and the said submission, therefore, stands rejected.

24. It was then contended that none of the ingredients of Section 364, IPC were made out for the High Court to find the appellant guilty of the said offence along with A-1, A-3 and A-4. In this context, it is sufficient to refer to what has been stated by the High Court. In paragraph 87, the High Court has observed on this aspect which reads as under:

> "87. The learned trial Court, however, erred in acquitting the accused No.1- Valeriano Barretto, the accused No.2-Subhash Krishnan, the accused No.3- sanjay Gadekar, the accused No.4- Shailesh Gadekar under Sections 342, 364 read with Section 34 of IPC, 1860. The view taken by the learned trial Court for acquitting the said accused persons proceeded from the fact that the victim Shanu fell unconscious and thereafter, he was put in a dicky of the Maruti van. This fact, the learned trial Court reasoned, did not further materialize into his prevention from proceeding in any direction and or his

abduction in order to murder him or to put him in danger of being murdered. Essentially both the offences i.e. wrongful confinement and abduction are the offences which are committed as a result of curtailment of personal liberty. The offence of wrongful confinement as defined under Section 340 of the Code occurs when individual is wrongfully restrained in such a manner as to prevent him/her from proceeding beyond certain circumscribing limits. The offence of abduction under Section 362 of the Code involves use of force or deceit to compel or induce any person to go from any place. Evidence clearly shows that the victim Shanu by use of criminal force i.e. the assault was made to loose his consciousness. Even if the victim would have wished to proceed in any one direction, he would not have been in position to do so for the reason of his unconsciousness. Certainly, Shanu never wished to go with his assailants in the Maruti Van, but was compelled by the said accused persons to go from the place of incident to the place where he ultimately met his death. Deceit involves tricking away of individual from reality. Unconsciousness paralyzed the mental faculties of the victim and freezed his perception as regards the place. Virtually, the victim was, thereafter, tricked away from the reality while in unconscious state and made to go from one place to another. Thus, the learned trial Court grossly misinterpreted the facts and recorded manifestly illegal finding."

25. As rightly pointed out by the High Court under Section 362, IPC when by force or deceit if any person is compelled or induced to go from any place and such an abduction takes place in order to ultimately eliminate him, the offence would be made out under Section 364, IPC. As rightly pointed out by the High Court, examining the conduct of the appellant along with the other accused in wrongfully restraining the deceased by inflicting severe injuries on the body of the deceased i.e. by causing as many as 36 injuries in which process the person lost his conscious where after he was shifted to a different place, where it ultimately came to light that the person was killed by hanging, every description of the offence under Sections 342 and 364 with the aid of Section 34, IPC was clearly made out. Therefore, we do not find any fault in the said conclusion of the High Court in having reversed the judgment of the trial Court for convicting the appellant for the offence under the said Sections.

26. The submission of learned counsel for the appellant about the impossibility of the eyewitnesses in having noted the participation of the appellant and the other accused in the crime was on the basis that according to PW-35 the distance between the place of occurrence and the point from which the eye witnesses stated to have seen the occurrence was more than 70 metres. In the first place, when the occurrence had taken place at 4.30 in the evening there would be no difficulty for anyone to have a clear view of what was happening before them. Even in the vicinity of 70 metres when about 8 persons were assaulting the deceased with sword, knife and danda on the road, in full public gaze, it would have definitely caught the

eye of everyone standing thereat. The presence of the eye witnesses at the place of occurrence was not in dispute. The witnesses made it clear that they were seeing the occurrence from the shop called Marina stores. It is not as if they were not looking at the occurrence. According to the witnesses, as well as, the prosecution, the eye witnesses were viewing the occurrence from the entrance of Marina stores. Therefore, the version of the eye witnesses that they were able to see the specific part played by different accused and, in particular, the appellant who was using a talwar in the absence of any malafide attributed to the witnesses, their version cannot be rejected. We, therefore, do not find any substance in the said submission of the learned counsel. As regards the time factor, it cannot be held that since the incident happened within 4-5 minutes, it was not possible for the witnesses to have noted the participation of the accused in the crime. It is relevant to note that according to PW-9, as many as 36 injuries were found in the body of the deceased which were caused by the blunt side of the talwar, knife as well as danda. In inflicting so many injuries, the time taken would have been sufficient enough for the witnesses to have made an observation as to the role played by the accused in the crime. Therefore, on that score as well there is no scope for doubting the version of witnesses as regards the participation of the appellant in the crime. It is true that PW-23 in his evidence stated that he saw the appellant having suffered bleeding injury which was not proved. It was also true that it was A-4 who suffered the bleeding injuries on his forehead which was caused with the aid of a knife. We have already concurred with the conclusion of the Courts below about the possibility of A-4 having suffered the injury with the aid of Exhibit -12 (talwar) which was widely used by the appellant and inasmuch as A-4 was also actively involved in the crime. Since the appellant used Exhibit 12 extensively, there was every possibility of A-4 having suffered the injury. In the light of the overwhelming evidence of the other eye witnesses, the medical evidence and the forensic reports, the wrong statement of PW-23 cannot be said to have caused any serious dent in the case of the prosecution. Therefore, on that score, we do not find any scope to interfere with the judgment impugned.

27. Having regard to our above conclusions, we do not find any merit in these appeals. The judgment impugned in these appeals does not call for any interference. The appeals fail and the same are dismissed accordingly.

Judgment Referred

[1]*1982 1 SCC 0700*
[2]*1982 2 SCC 072*
[3]*1998 1 SCC 0169*
[4]*1979 3 SCC 0319*
[5]*1987 2 SCC 0232*

[6]*1975 4 SCC 0511*
[7]*2007 13 SCC 0569*
[8]*2008 5 SCC 0368*
[9]*2012 4 SCC 0352*
[10]*2002 7 SCC 0295*
[11]*2010 6 SCC 0001*
[12]*2004 13 SCC 0150*
[13]*2008 16 SCC 0166*
[14]*1995 Suppl.3SCC*
[15]*2009 17 SCC 0724*
[16]*2009 17 SCC 0724*
[17]*AIR 1964 SC 0221*
[18]*AIR 1955 SC 0196*
[19]*AIR 1955 SC 0196*
[20]*2009 17 SCC 0724*
[21]*2004 2 SCC0694*
[22]*2002 7 SCC 0295*
[23]*AIR 2001 SC 1188*
[24]*2003 6SCC 380 para 0016*
[25]*2006 (11) SCC 239 para 17*