

PRAVIN

v.

STATE OF MADHYA PRADESH  
(Criminal Appeal No. 546 of 2008)

MARCH 25, 2008

[S.B. SINHA AND V.S. SIRPURKAR, JJ.]

*Penal Code, 1860 – s.395 r/w ss.397 and 450:*

*Dacoity – Bank dacoity in broad day-light by using fire-arms – Conviction of Appellant by Courts below – Justification of – Held: Justified – Witnesses were bank employees who were with the dacoits for substantial time – Dacoits had not covered their faces – Identification in peculiar facts of the case by PW1 and other witnesses acceptable inspite of the so-called defects shown by defence in holding investigation – Presumption u/s.114 of the Evidence Act, in view of recovery of huge sum and stolen property from possession of Appellant – Also, corroborating evidence of recovery of other materials like bag of PW-6 – Besides, no explanation for seizure of unlicensed gun and bullets – Arms Act, 1959 – ss.25(1-B)(a) and 27 – Evidence Act, 1872 – s.114.*

Two persons, alleged to be involved in committing dacoity in a bank in broad day-light, were convicted by the Trial Court under s.395 r/w ss.397 and 450, IPC and also under ss.25(1-B)(a) and 27 of the Arms Act, 1959. The conviction was upheld by the High Court. While one convicted accused came up before this Court by way of the present appeal, the other convicted accused has not challenged his conviction.

The contention of Appellant is that the identification parade in respect of the accused was a farce as photographs of both the accused persons were already shown to the witnesses; that if the identification itself

A failed, then there was hardly any evidence left against the accused and that the discoveries of the so-called stolen property was also farcical and insignificant.

B As against this, the prosecution pointed out that the witnesses were bank officers who were with the dacoits for substantial time and, therefore, had the opportunity to watch the accused persons closely and as such identification of the accused persons in Court at the instance of the eye-witnesses was no less significant; that  
C the discoveries made included the bag of PW-6 along with the documents therein which established an unassailable nexus of the accused with the crime and that even the  
D vehicles used for committing the crime were seized and identified by the witnesses. It was further contended that since both the Courts below had concurrently found the accused guilty on the basis of appreciation of evidence and since no significant error was pointed out, this Court should not interfere in its jurisdiction under Article 136 of the Constitution.

E Dismissing the appeal, the Court

F HELD:1.1.The evidence of PW-1, Branch Manager of the Bank, was the most important as he had graphically described as to how the dacoity took place and how he was taken out by the two accused persons. This witness  
G had further stated that it was almost within 10 minutes after the dacoits left the bank that the police reached there. There is no significant cross-examination of this witness at all as regards the evidence and more particularly his identification of the accused in the Court. He had very specifically identified the Appellant. Very significantly no question has been put to this witness. It was not suggested if the accused had covered their faces. There  
H is no challenge also to the story that the dacoits had pointed revolver at him. In the absence of any substantial cross-examination, the Trial Court and the High Court were

not in error in accepting the evidence of this witness particularly about his identification. The witness had full opportunity in broad day-light to be with the accused and the incident itself was so significant that it would undoubtedly make a dent on his memory. He was after-all an educated bank officer holding a responsible position of a Branch Manager. Since his evidence about knowing the accused-appellant was not at all challenged, the courts below were right in accepting the evidence. [Para 12] [378-C, D, E, F, G; 379-A]

1.2. It is true that in his substantive evidence, PW1 did not speak about his identifying the Appellant in the identification parade but there is a clear cut evidence of the Magistrate who conducted the Parade confirming such identification. There is practically no cross-examination of this witness. [Para 22] [385-E, F]

1.3. The recovery of Rs.40,000/- from the possession of Appellant was accepted by both the Trial and the Appellate Court. The recovery of the bank slips as also of the gun which was brandished against PW1 is also no less significant. There is no explanation given by the Appellant as to how a huge sum of Rs.40,000/- and the Bank slips and the other bank documents could be recovered from him. [Para 22] [385-F, G]

2. PW-4 corroborated the evidence of PW-1 and there is nothing contradictory in his evidence. He is also a bank employee working in the same branch. He also supported the version that the dacoits snatched the bag from a lady customer as also the bag of PW-6, another bank employee. This witness was called in the jail for identification and he claimed that he had correctly identified the accused persons who were present in the court. This witness had also reiterated, in his cross-examination, about the language which was being spoken by the dacoits. He specifically denied that the accused persons, who were present in the Court, were shown to him earlier. He

A specifically stated about the identification parade where  
cashier Chauhan, C.S. Batham, PW1 and other persons  
were called. [Para 13] [379-A, B, C, F]

3. PW-5, also a bank employee, graphically described  
the whole dacoity. He also claimed that he had correctly  
B identified the appellant and the other accused. He also  
reiterated in his cross-examination that he was not shown  
any photographs of the accused nor was any accused  
shown to him in the Police Station. As regards the  
C identification parade he was specifically cross-examined  
and he refuted all the suggestions. Very significantly this  
witness was suggested that there was no identification  
parade held at all in the jail. Even if the test identification  
parade is ignored, there is nothing suggested to him in  
D his cross-examination to challenge his identification in the  
Court. Though identification for the first time in the Court  
is inconsequential, however, in this case all these  
witnesses were the bank employees who had undergone  
a traumatic experience of a broad day-light dacoity. They  
E were with the dacoits for substantial time. The dacoits had  
also not covered their faces. It may be that some  
photographs may have been shown regarding some  
F arrested persons but that by itself does not affect the  
evidence of PW5, particularly when it is not put to him  
specifically that he had seen the photographs of the  
appellant and his identification was on the basis of those  
G photographs. The Trial Court as well as the High Court  
have rightly relied on this witness, more particularly  
because he has stoutly denied the suggestions regarding  
the accused persons being shown to him earlier when  
they were in the custody. [Para 14] [379-G; 380-A, B, G;  
381-A, B, C, D, E]

4.1. Though it was argued that there was delay in  
holding the identification parade, but in the peculiar facts  
and circumstances of this case, this delay was not of any  
significance, since the other accused persons were still  
H at large and, therefore, the Test Identification Parade could

not have been conducted in respect of only some of the accused. Again the question of delay was never raised by way of cross-examination and no explanation was called for from the investigating officer. [Para 23] [386-A, B]

4.2. As regards the defence theory of planting after the arrest of dacoits, one wonders as to how and wherefrom the police would bring a huge sum of Rs.40,000/- for being planted. It is for this reason, that this Court has chosen to accept the evidence of PW-1, PW-4 and PW-5. [Para 25] [387-F, G]

*Pramod Mandal v. State of Bihar* [(2004) 13 SCC 150]; *Bharat Singh v. State of U.P.* [(1973) 3 SCC 896] and *State of Rajasthan v. Sukhpal Singh & Ors.* [(1983) 1 SCC – relied on.

5. Also, since the stolen property was recovered from the possession of the Appellant, this Court would be justified in using the presumption raised by Section 114 of the Evidence Act. [Para 26] [387-G; 388-A]

*Ronny v. State of Maharashtra* [(1998) 3 SCC 625]- relied on.

6. Besides, there is also supporting and corroborating evidence of the recovery of the other materials like the bag of PW-6 which was recovered during the investigation. This discovery of the bag is also extremely significant because there was no reason for this bag which contained the private documents of PW6 to be recovered from the accused. That also lends credence to the fairness of the investigation by the police. [Para 27] [388-A, B, C]

7.1. The identification in the peculiar facts of this case by PW1 and other witnesses would be acceptable inspite of the so-called defects shown by the Defence in holding the identification. Considering the overall circumstances in the peculiar facts and circumstances of this case, the

A appellant is guilty of committing the offence of dacoity.  
[Para 27] [388-C, D, E]

B 7.2. There is also no explanation about the seized  
gun and bullets. The gun was unlicensed and it was used  
in contravention of Section 5 of the Arms Act. The  
conviction of Appellant under Sections 25 and 27 of the  
Arms Act was correctly recorded by the Courts below.  
[Para 28] [388-E, F]

C CRIMINAL APPELLATE JURISDICTION : Criminal  
Appeal No. 546 of 2008.

From the final Judgment and Order dated 1.12.2006 of  
the High Court of Madhya Pradesh, Bench at Indore in CrI. A.  
No. 113/2006.

D Madhurima Tatia and Indra Makwana for the Appellant.

Govind Goel, C.D. Singh and Ram Naresh Yadav for the  
Respondent.

The Judgment of the Court was delivered by

E **V.S. SIRPURKAR, J.** 1. Leave granted.

F 2. Appellant herein one Praveen, son of Ramchander  
Sharma was convicted by the Additional Sessions Judge for  
committing the offences under Section 395 read with Sections  
397 and 450 of the Indian Penal Code (for short "IPC"). Besides  
these offences, he was also found guilty for committing offence  
under Sections 25(1-B)(a) and Section 27 of the Arms Act. Along  
with the present appellant one other accused Harish was also  
convicted and sentenced for committing the same offences.  
Both of them filed separate appeals before the High Court.  
G However, both the appeals were dismissed by a common  
judgment passed by the High Court. While Pravin, the present  
appellant (original Accused No.1) has come up before us by  
way of the present appeal, the other accused has not chosen to  
challenge his conviction. We, therefore, are left with the case of  
H Accused No.1 alone. A few facts would be necessary.

3. A broad day-light dacoity took place on 8.9.2003 on Dena Bank situated at Bapat Chauraha, Indore. According to the complaint lodged by Ashok Kumar Dubey (PW-1), Branch Manager, Dena Bank, at about 12.20 in the noon, two unknown persons had entered in his cabin and one of them took out revolver from his shirt and pointed towards him, pushed him out of the cabin and took him to the hall. The other associates of the said persons, who were present there, asked the other members of the staff and about 30-40 customers to stand in the hall with their hands raised upwards by pointing pistol towards them. One of the associates stood at the gate of the bank with pistol while other associates covered the other persons in the hall. The fifth associate, who appeared to be their leader, had come inside the bank and asked for the keys of the strong room. He took one Mahender Chauhan towards safe by pointing pistol at him while the other persons were asked to sit on the floor of the hall. After about 10-15 minutes, two accused persons had come out with the bags filled with notes from the safe. They had snatched one bag from Sh.S.M. Dholey, staff member of the bank and stuffed it with the bundles of notes from cash counter. The accused then directed all the persons present there to move to the gallery of toilet and shut them in a room. They threatened that if anyone used phone, then they would shoot such person. Before that they had collected the mobile phones of all the customers which they threw outside the bank. The mobile phones of two of the customers were, however, not found. The accused persons put lock on the gate of the bank and ran away. One customer, namely, Ashish Goyal broke the window panes towards the road and attracted the attention of the people. He only had given information to the Police Control Room on Telephone No.100. The total amount looted was about Rs.13,95,720/-.

4. After committing the dacoity, the accused persons ran away towards Meghdoot Garden in a Commander Jeep of grey or light blue colour and one Hero Honda Motorcycle. The black bag of Shri S.M. Dholey, which was taken away by the dacoits

A

B

C

D

E

F

G

H

A. was also described to be made of parachute cloth containing three bank cheques of Rs.10,000/- each of Tehsildar Nazul, photocopy of valuation report of Plot of Siddhipuram, auction forms of Tehsildar Nazul, statement of 2003 of Navlakha Branch Bank, driving licence of Shri Dholey and 10-11 ball pens. There were number of persons who saw this incident, namely, Surendra Kumar, Mahendra Chauhan, Ajay Tandon, S.M. Dholey, Deepak, M.L. Manharey, Sangeeta Silawat of bank staff and Ashish Goyal, Prahlad Gotwal, Ujjwal, Rahul, Sushil Verma, Hargovind Singh, etc., who were the visitors to the bank. All of them claimed that they would be able to identify the dacoits. The descriptions of the accused persons were also given. The person who had entered the cabin of the Branch Manager and pushed him was about 25-30 years, height about 5 feet 6 inches. He had wheatish colour complexion and had unshaven face with small mustaches with Z-black hairs. He was wearing ordinary black goggles, cream colour pant and shirt. The second accused who was also of the same average height, aged about 25 years, but was a clean shaved person. The description of the other dacoits were also given. The person who appeared to be the leader of the accused persons was about 26 years old. His description was also given. It was claimed that most of the looted bundles of the notes were bearing seal of S.S.C. and slips of Dena Bank. It was claimed that the accused persons could be identified on being seen.

F 5. The report given by Ashok Kumar Dubey was recorded by SHO Baldevsingh Thakur (PW-52). The offence was registered under Sections 395 and 397 IPC and the investigation started. Observation Memorandum was drawn. During the investigation, the Branch Manager Shri Ashok Kumar Dubey (PW-1) produced the details of the looted notes, they were, 13 notes of Rs.1,000/- denomination, 264 notes of Rs.500/- denomination, 5108 notes of Rs.100/- denomination, 3045 notes or Rs.50/- denomination, 1347 notes of Rs.20/- denomination and 56083 notes of Rs.10/- denomination. The statements of witnesses were recorded.

6. The present accused came to be arrested on 26.9.2003, i.e., barely within 18 days of the incident. Accused Harish was arrested on 8.10.2003. On the basis of the discovery statement made by accused Praveen, the registration documents of the Motorcycle, copy of the Dainik Bhaskar Newspaper which had published the news regarding the dacoity, one letter regarding the sale of Jeep No.MP-09-N-5946 by Atul Parmar to Praveen Sharma and another letter regarding sale of jeep and 18 other items were seized. Similarly as per Seizure Memo (Exhibit P-18) one country made Katta of .12 bore, 4 cartridges, 40 bundles of Rs.10/- denomination notes, totaling Rs.40,000/- which were bearing the slips of Dena Bank and seal of S.A.C were also seized. One Slaty Colour Mahendra Jeep without number was also seized from the accused. Similarly 280 slips of Dena Bank and other banks used on bundles of notes, 38 torn slips of S.M.S, 144 full slips of S.M.S., 159 plastic paper for tying bundles, 58 rubber rings, 160 thin rope of jute, 34 ordinary jute rope, 2 number plate of jeep MP-09-N-5945 and one broken lock were also recovered from the accused. The Motorcycle of Hero Honda make bearing registration No.MP-04-AN-7916 was also seized. One black Rexene bag containing driving licence of Shri S.M. Dholey in a polythene bag, report of bank loan of Navlakha Dena Bank of Shri Dholey were recovered from accused Harish Kumar Singh.

7. A Test Identification Parade was held in respect of both the accused persons wherein they were got identified by Prosecution Witnesses, they being Daman Singh (PW-5), Surendra Kumar (PW-4), Mahendra Chauhan (PW-10) and Ashok Kumar Dubey (PW-1). According to the prosecution Darshan Singh (PW-5) identified both the accused persons correctly. Ashok Kumar Dubey (PW-1) also had identified both the accused persons correctly. Mahendra Chauhan (PW-10) and Surendra Kumar (PW-4) had identified accused Harish correctly but they had not identified accused Praveen correctly. The identification proceedings about bag were also conducted and the bag was got test identified. Ultimately, on the basis of the

A investigation, the charge-sheet came to be filed for committing  
offences under Sections 395, 297, 450 IPC and Sections 25  
and 27 of Arms Act. The charge-sheet also recorded that the  
other accused persons, namely, Anand, son of Mohanlal,  
B Shashikant and two other accused persons were absconding  
and the investigation was continuing against them. One  
Shashikant, son of Dadnath was also involved, however, during  
the investigation it came to be reported that he had died in a  
police encounter. Charges were framed against the accused  
persons. They denied their involvement in the commission of  
C crime and claimed false implication. Defence of Harish was  
that on the day of incident he was present in the Block Head  
Office of Faizabad and on that day he had purchased a truck  
for which documents have been prepared and that the police  
had falsely implicated him. He also pointed out that the police  
D had shown his photographs to the witnesses in the Test  
Identification Parade. The defence of accused Praveen was  
that since the police could not apprehend the actual accused  
persons, he was being falsely implicated in the case.

E 8. As many as about 55 witnesses came to be examined,  
including the eye-witnesses and the bank staff witnesses. The  
Sessions Judge convicted the two accused persons. On the  
appeal having failed before the High Court, the present appellant  
is before us by way of this appeal.

F 9. Learned counsel appearing on behalf of the appellant  
very vehemently contended before us that the identification  
parade in respect of this accused was a farce as the  
photographs of both the accused persons, namely, Praveen and  
Harish were already shown to the witnesses which was clear  
from the evidence before the court. It was further urged that if  
G the identification itself failed, then there would hardly be any  
evidence left against the accused. It is also urged that the  
discoveries of the so-called stolen property was also farcical  
and insignificant. Learned counsel also urged that the  
Investigating Agency somehow wanted to do the face saving  
H on account of their failure to catch the real culprits inspite of the

fact that the dacoity had taken place in broad day-light. A  
Ultimately, even the convictions under Sections 25 and 27 of  
the Arms Act came to be assailed on the ground that such  
conviction could not have been ordered in law. Lastly, by way of  
an alternative contention, learned counsel pointed out that the  
sentence was too harsh as compared to the offence committed. B

10. As against this, the learned counsel appearing on  
behalf of the prosecution supported the judgments of the courts  
below and pointed out that both the courts below had, on the  
basis of the evidence led before them, come to the conclusion C  
that this appellant was identified. It was pointed out that the  
witnesses were the bank officers and they were with the dacoits  
for substantial time. The witnesses, therefore, had the  
opportunity to watch the accused persons closely and as such  
the identification of these accused persons in the court, at the D  
instance of the eye-witnesses, was also no less significant. It is  
then pointed out that the discoveries made included the bag of  
witness Shri S.M. Dholey (PW-6) along with the documents  
therein and as such it was clear that the said discovery  
established an unassailable nexus of the accused with the crime. E  
It was further pointed out that even the vehicles which were used  
for committing the crime were seized and identified by the  
witnesses. Lastly it was contended that since both the courts  
below had concurrently found the accused guilty on the basis of  
appreciation of evidence and since no significant error was  
pointed out, this Court should not interfere in its jurisdiction under F  
Article 136 of the Constitution.

11. It cannot be disputed that the bank was looted in the  
broad day-light by the persons who were or could be termed to  
be dare-devils. When we see the evidence of Ashok Kumar  
Dubey (PW-1), Branch Manager of the Dena Bank along with G  
the evidence of Surendra Kumar (PW-4), Daman Singh (PW-  
5), S.M. Dholey (PW-6) and Mahendra Chauhan (PW-10), all of  
whom were the bank employees as also Deepak Kumar Kharte  
(PW7) and Santosh (PW-11) who were the bank customers as  
also Ajay Kumar Tandon (PW-21), Ashish Goyal (PW-22), H

A Deepak Sompurkar (PW-23), Suresh (P-W-24), Nathulal (PW-25), Sangeeta Silavat (PW-27), Govind Singh Dodiya (PW-29), Shefali (PW-30), Prahlad Kumar Gothwal (PW-44), the common thing in their evidence is that on that day about 5 persons entered the bank and committed dacoity. They were armed with  
B weapons and collected all the persons in the hall, handed out threats and calmly collected keys from the bank staff and took away currency notes from the bank chest. The High Court has recorded a finding that nothing significant has come out in respect of this aspect of the dacoity.

C 12. The evidence of Ashok Kumar Dubey (PW-1) would be the most important as he had graphically described as to how the dacoity took place and how he was taken out by the two persons. The Trial as well as the Appellate Courts have rightly relied upon this witness and accepted his evidence. This  
D witness had further stated that it was almost within 10 minutes after the dacoits left the bank that the police reached there. Learned counsel had commented that this witness, though had taken part in the identification parade, did not in his substantive evidence, refer to that fact and, therefore, his identification, in  
E the court, for the first time, remained without any corroboration. There is no significant cross-examination of this witness at all as regards the evidence and more particularly his identification of the accused in the court. He had very specifically identified the appellant herein. Very significantly no question has been  
F put to this witness. It is not suggested as if the accused had covered their faces. There is no challenge also to the story that the dacoits had pointed revolver at him. In the absence of any substantial cross-examination, we do not think that the Trial Court and the High Court were in error in accepting the evidence of this witness particularly about his identification. The witness had  
G full opportunity in broad day-light to be with the accused and the incident itself was so significant that it would undoubtedly make a dent on his memory. He was after-all an educated bank officer holding a responsible position of a Branch Manager. Since his evidence about knowing the accused-appellant was not at all  
H

challenged, the courts below were right in accepting the evidence. A

13. Surendra Kumar (PW-4), has corroborated the evidence of Ashok Kumar Dubey (PW-1) and there is nothing contradictory in his evidence. Surendra Kumar is also a bank employee working in the same branch. He has also supported the version that the dacoits having snatched the bag from a lady customer as also the bag of S.M. Dholey (PW-6). This witness was called in the jail for identification and he claimed that he had correctly identified the accused persons who were present in the court. This witness had also reiterated, in his cross-examination, about the language which was being spoken by the dacoits. He specifically denied that the accused persons, who were present in the court, were shown to him earlier. His following statement was taken as an exception by the Defence counsel: B  
C  
D

“Similar photographs were shown to other persons which were shown to me.”

From this the learned counsel presumed that the photographs of the appellant were shown to this witness. We do not think such an inference can be drawn from the above mentioned sentence. This witness, in the very next paragraph, had, however, clarified that those persons whom he had identified were not the persons who were apprehended by the police. He has specifically stated about the identification parade where cashier Chauhan, C.S. Batham, Shri Ashok Dubey and other persons were called. He, however, under the stress of cross-examination admitted that the accused persons were shown to him in the police station. Since this witness had not identified the appellant Pravin, though the High Court relied on him, we do not attach any importance to the evidence of this witness. E  
F  
G

14. Daman Singh (PW-5) who was also the bank employee, graphically described the whole dacoity. He also claimed that he had correctly identified the appellant and the H

A other accused Harish. Some insignificant omissions have been brought out in his evidence which do not damage the evidentiary value of his evidence at all. He also reiterated in his cross-examination that he was not shown any photographs of the accused nor was any accused shown to him in the Police Station.

B As regards the identification parade he was specifically cross-examined and he refuted all the suggestions. Learned counsel, however, relied on one sentence to the effect that:

C “Yeh Sahi hai ki jeep mein un vyaktiyo ke photo dikhaye gaye the, jo pakde gaye the aur unki pehchan karni thi”

“The English Translation of the above sentence is: It is correct that in the jeep photographs of those persons were shown who were apprehended and their identification was to be conducted.”

D From this the learned counsel suggested that this witness was shown the photographs and, therefore, his evidence would be of no consequence. We cannot read this sentence in isolation. Prior to this the witness had stated in the following fashion:

E “In the way in jeep policemen told us that we will have to identify the persons those who were involved in the commission of occurrence amongst the apprehended persons. Policemen had taken the complete file of the case along with him to the prison. I had not seen that file.

F Therefore, I cannot tell as to whether it was containing the details of the apprehended persons or not.”

G When we see the earlier part of the evidence, it is clear that this so-called admission has been inadvertently given. This is apart from the fact that there is nothing to suggest that he was shown the photographs of the accused appellant. We, therefore, ignore this so-called admission as has been done by Trial and Appellate Courts. He has specifically pointed out about his identification in the jail. Very significantly this witness was suggested that there was no identification parade held at all in the jail. Even if we ignore the test identification parade, there is

H

nothing suggested to him in his cross-examination to challenge his identification in the court. We are quite alive to the fact that identification, for the first time in the court, is inconsequential. However, we cannot forget the fact that in this case all these witnesses were the bank employees who had undergone a traumatic experience of a broad day-light dacoity. They were with the dacoits for substantial time. The dacoits had also not covered their faces. When we see the admission closely regarding the photographs, there is nothing to suggest that the photographs of Pravin (the present appellant) was shown to this witness. We, therefore, have to ignore the so-called admission. He also does not state as to how many photographs were shown to him and whether he had identified those accused persons whose photographs were shown to him. It may be that some photographs may have been shown regarding some arrested persons but that by itself does not affect his evidence particularly when it is not put to him specifically that he had seen the photographs of this appellant and his identification was on the basis of those photographs. The Trial Court as well as the High Court have relied on this witness and we do not find anything wrong, more particularly because he has stoutly denied the suggestions regarding the accused persons being shown to him earlier when they were in the custody.

15. The other witness on whose evidence the reliance has been placed by the Trial Court as well as the High Court is Shri S.M. Dholey (PW-6) and Mahendra Chauhan (PW-10). Shri Dholey (PW-6) reiterated about the dacoity and claimed that a pistol was brandished on him by one of the accused persons. He thereafter gave a graphic description as to what transpired. He then asserted that when the dacoits fell short of the bags to carry the looted booty, they took his bag also. He described his bag to be black coloured bag made of parachute cloth in which his driving licence, one pyramid card, statement about Dena Bank Navlakha and documents regarding the attachment from the Nazul Tehsildar Shri Rajnish Srivastava's court. It also had the insurance policy of his vehicle, one and a half dozens of

A peris, etc. His evidence was of no consequence as he has specifically stated that the present appellant was not amongst the five dacoits. However, one of them resembled accused Harish. In his cross-examination by the prosecution this witness, however, identified his bag. He also admitted that he had identified his bag when it was put for test identification. He also reiterated that he was using that bag for the last 7 to 8 years. We would return to this evidence a little later.

C 16. Last of the identifying witness is Mahendra Chauhan (PW-10). He first asserted that he knows the two accused persons present in the court. He thereafter gave a graphic description of the dacoity. He also stated about the bag being brought from a customer and the bag of the staff having been taken by the dacoits and the said bags being filled with the currency notes. He also stated about Daman Singh (PW-5) giving the keys. Lastly he asserted that in the test identification parade about 10 persons were present and out of whom he identified Harish and Pravin. He, however, admitted that he had wrongly identified Pravin as per Exhibit P-22. We would, therefore, chose to ignore his evidence since he had wrongly identified the appellant in the identification parade.

F 17. The other evidence is that of Shiv Sagar (PW-14). He was the witness on the arrest of the appellant. He reiterates that in his presence Pravin spoke about the jeep, the currency notes and the slips attached to the currency bundles. The witness asserts that the accused had agreed to show the jeep which was behind the Chappan Dukan complex. He then reiterates that the police seized the jeep, the bundle of notes and the slips on the bundles of notes. He proved his signatures on Memorandum (Exhibit P-23) and the subsequent panchanama (Exhibit P-24). He asserted that the police had seized Rs.40,000/- at the instance of Pravin Sharma but from where, he did not know. He also spoke about the seizure of .12 bore pistol and a black bag. He, accepted his signatures on Exhibit P-21, P-17, P-18 and P-19. The Public Prosecutor was permitted to put the questions in the nature of cross-examination

wherein he had accepted that Pravin Sharma had spoken about the Ambassador Car MP-9W-552. In the cross-examination by the accused, he rejected the suggestion that the Panchanama were already written on which he was asked to put his signatures.

18. The other relevant witnesses is Raj Narain Tandon (PW-21) who deposed about the dacoity but did not identify the appellant. Similar is the case of Ashish Goyal (PW-22). He had gone to the bank along with his friend on that day. However, he also refused to identify the accused. The next witness is Deepak Sompurkar (PW-23) who was a clerk in the bank. His evidence is of no consequence as he has not identified the appellant. Similar is the story of Suresh, son of Motilal (PW-24) and Nathulal, son of Kaluram (PW-25). Arvind Kumar (PW-26) has also refused to identify the accused. Again the evidence of Sangeeta Silawat (PW-27) is also of no use since she has also not identified the accused. She has, however, reiterated that the dacoits took the bags from the customers and the staff. The evidence of Govind Singh Dodiya (PW-29) is also of no consequence as he has refused to identify the accused even in the court. Shefali (PW-30) is a child witness. At that time her age was 13 years. Though she has spoken about the dacoity and the other details regarding the dacoity but nothing against the appellant. Manish Chaturvedi (PW-33) who was the landlord of appellant Pravin was also examined. The other witnesses like Ajay Lashkari (PW-34), Ramu Yadav (PW-35), Deepak Jain (PW-36), Alok Namdev (PW-37), Atul Karamsingh Parmar (PW-38) would be of no consequence since all these witnesses have not identified the appellant at all. The only other witness is Sumit Sankala (PW-45) who is an auto dealer and who spoke about the purchase of a vehicle by two persons. He reiterated that the purchase was made by one Pravin Sharma and one other person. He reiterated that Pravin Sharma purchased the vehicle MP-09-W-5521 whose registered owner was Usmanbhai. The other witnesses like Gurdial Singh (PW-46), Jai Prakash Yadav (PW-47) are hostile witnesses. Even the evidence of Narmada

A

B

C

D

E

F

G

H

A Bai (PW-51) is of no use to the prosecution.

19. The most significant evidence is that of Baldev Singh Thakur (PW-52) who was the Investigating Officer. He deposed about the arrest of accused Pravin on 26.9.2003. He then contended that in his presence Pravin Sharma had disclosed that out of Rs. 14 lakhs, Rs. 40,000/- and one .12 bore Katta was hidden by him in an iron box. He also disclosed the place where the concerned jeep was parked. He thus proved Exhibit P-23. Accordingly he reiterated that he had taken Pravin Kumar Sharma to his residence at 32/3, Pardesipura where he recovered articles 1 to 18. He also deposed about the seizure of a jeep. He also deposed about Exhibit P-20 which was a temporary residence of one accused Annu @ Anand. He claimed that from that residence which consisted of only one room, he seized 38 slips and the other articles like rubber rings, plastic strings, etc. He was cross-examined in detail on the discoveries and more particularly on Exhibits P-23 and P-24 and a suggestion was given to him specifically that Pravin, the appellant had not discovered anything. He admitted in his cross-examination that in Exhibit P-23 memorandum it is not written as to from which place accused Pravin got the pistol and the amount. That would be of no consequence since there is no cross-examination on the factum of recovery of gun.

20. The other officer who investigated the case is Irfan (PW-53) who had examined the said pistol. Lastly the prosecution examined Hukum Singh Yadav (PW-54). His evidence is not of much significance in so far as the present accused is concerned. The last witness is Nayab Tehsildar Chand Mohd. Khan (PW-55) who held the test identification parade. He reiterated that Surendra Kumar (PW-4) had wrongly identified the accused while even Mahendra Chauhan (PW-10) had not correctly identified the accused. He, however, reiterated that Daman Singh (PW-5) had correctly identified both the accused. He also reiterated that Ashok Kumar Dubey (PW-1) had correctly identified the accused. In his cross examination it came out that the other persons who were asked to stand for the identification

along with accused persons, nobody was 27 years old. He also admitted that he had not mentioned in the Panchanama that the persons who stood for identification had to put on the blankets, though he asserted that the said persons had covered their whole body excepting their faces with the blankets. It is on the basis of the above said evidence that the accused-appellant came to be convicted.

21. We have deliberately taken stock of the whole evidence particularly because it was very vehemently asserted by the learned counsel for the Defence that there was no proper appreciation of evidence either by the Trial Court or by the High Court. We do not think that such a sweeping statement can be made about the judgments of the High Court and the Trial Court. We have considered the judgments very carefully and find that the High Court as well as the Trial Court have gone into the intricacies of the evidence. We are, therefore, not impressed at all by this contention on the part of the Defence.

22. The main stay of the Defence was that the investigation was not fair in this case inasmuch as the police had shown the accused persons to the identifying witnesses. We have already given our reasons as to why we would be prepared to accept the evidence of Ashok Kumar Dubey (PW-1). It is true that in his substantive evidence he did not speak about his identifying the accused appellant in the identification parade but we cannot forget the fact that there is a clear cut evidence of the Magistrate who conducted the Parade confirming such identification. There is practically no cross-examination of this witness. We are particularly impressed by the recovery of Rs.40,000/- from the possession of the accused-appellant which recovery has been accepted by the Trial and the Appellate Courts. The recovery of the slips as also of the gun which was brandished against the witness is also no less significant. There is no explanation given by the accused as to how a huge sum of Rs.40,000/- and the Dena Bank slips and the other bank documents could be recovered from him.

A  
B  
C  
D  
E  
F  
G  
H

A 23. It was feebly argued before us that there was delay in  
holding the identification parade. In the peculiar facts and  
circumstances of this case we do not think this delay was of any  
significance. We say this as the other accused persons are still  
at large and, therefore, test identification parade could not have  
B been conducted in respect of only some of the accused. Again  
the question of delay was never raised by way of cross-  
examination and no explanation was called for from the  
investigating officer. Had the question been asked, the witness  
would have answered the same. Similar view has been taken  
C by this Court in **Pramod Mandal v. State of Bihar [(2004) 13  
SCC 150]** where the Court had found that there is no fixed rule  
as regards the period within which the test identification parade  
must be held. In this case this Court observed that:

D “If there is any delay, unless the reasons for the delay are  
put by way of questions in the cross-examination to the  
investigating officer, the so-called delay was of no  
consequences.”

This Court in Paragraphs 23 specifically held that:

E “Where the witnesses have ample opportunity to watch  
the dacoits and their physical features, etc., their evidence  
of the identification is strengthened.”

F Therefore, if there was any delay in holding the identification  
parade, it is insignificant according to us in the peculiar facts of  
the present case.

G 24. In **Bharat Singh v. State of U.P. [(1973) 3 SCC 896]**  
a Three Judge Bench of this Court had specifically observed in  
para 6:

H “Although it is desirable to hold identification parade at  
the earliest opportunity, where there is a delay of three  
months in holding the identification parade, it is a duty of  
the accused to cross-examine the police officer who  
conducted the investigation and the Magistrate who held  
the parade if the accused wishes to take advantage out

of such undue delay.”

A

We respectfully follow the above decision.

25. In **State of Rajasthan v. Sukhpal Singh & Ors.** [(1983) 1 SCC 393] this court ignored the wrong identification particularly holding that:

B

“Since the part of the loot as well as the weapons used in the dacoity were recovered and since the testimony of the bank employees were found reliable, they being independent witnesses, some irregularities in the identification parade were liable to be ignored.

C

This was also a case of dacoity on the bank and the bank witnesses were disbelieved. This Court observed:

“Witnesses who had no axe to grind and had no personal motive to implicate the accused on a false charge, have been disbelieved on feeble considerations. And the recovery of incriminating articles has been by-passed and disbelieved by characterizing it as unnatural and incredible. Different crimes have different patterns and the offenders improvise their strategy according to the exigencies of the occasion. “

D

E

This Court also observed similarly about the seizure of Ambassador Car, the chits found with the bundles of currency bearing the name of the bank and the box containing certain documents belonging to the bank. Very significantly the situation is identical as in the present case where also the defence had taken the theory of planting after the arrest of the dacoits as in the present case. We wonder as to how and wherefrom the police would bring a huge sum of Rs.40,000/- for being planted. It is for this reason that we have chosen to accept the evidence of Ashok Kumar Dubay (PW-1), Surendra Kumar (PW-4) and Daman Singh (PW-5).

F

G

26. We cannot again forget that the stolen property was recovered from the possession of the appellant. We would,

H

A therefore, be justified in using the presumption raised by Section 114 of the Evidence Act as was done in the case of **Ronny v. State of Maharashtra [(1998) 3 SCC 625]**.

B 27. There is also supporting and corroborating evidence of the recovery of the other materials like the bag of S.M. Dholey (PW-6) which was recovered during the investigation. This discovery of the bag is also extremely significant because there was no reason for this bag which contained the private documents of Shri Dholey to be recovered from the accused. That also lends credence to the fairness of the investigation by the police. It will not be possible for us, in our jurisdiction under Article 136 of the Constitution, to re-appreciate the evidence and we will have to only see as to whether Trial Court and the Appellate Court were correct in reaching the conclusions that they have recorded. We again reiterate that the identification in the peculiar facts of this case by Ashok Kumar Dubey and other witnesses would be acceptable inspite of the so-called defects shown by the Defence in holding the identification. Considering the overall circumstances in the peculiar facts and circumstances of this case we hold the appellant guilty of committing the offence of dacoity.

28. There is also no explanation about the gun as well as the bullets which were examined by Irfan (PW-53). The gun was obviously an unlicensed pistol and, in our opinion, it was obviously used in contravention of Section 5 of the Arms Act. The conviction of the accused-appellant, under Sections 25 and 27 of the Arms Act was also correctly recorded by the courts below.

29. In the above circumstances we do not find any merits in this appeal and the same is accordingly dismissed.

G B.B.B.

Appeal dismissed.