



2025:CGHC:14218

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**HIGH COURT OF CHHATTISGARH AT BILASPUR**

**CRA No. 1272 of 2018**

**Judgment reserved on 11.12.2024**

**Judgment delivered on 25.03.2025**

Gajendra @ Pappu Sahu S/o Sukhdev Sahu Aged About 24 Years  
R/o Urkura, Bazaar Chowk Police Station Khamtarai District Raipur  
Chhattisgarh, District : Raipur, Chhattisgarh

--- **Appellant**

versus

State of Chhattisgarh Through The Station House Officer, Police  
Station Khamtarai District Raipur Chhattisgarh, District : Raipur,  
Chhattisgarh

--- **Respondent**

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| For Appellant (s) | : Mr. Yogesh Pandey, Advocate |
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| For Respondent(s) | : Ms. Laxmeen Kashyap, Panel Lawyer |
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**HON'BLE SHRI JUSTICE NARENDRA KUMAR VYAS**

**C A V JUDGMENT**

1. This Criminal Appeal under Section 374 (2) of CrPC has been filed against the judgment of conviction and order of sentence dated 26.06.2018 passed by 1<sup>st</sup> Additional Sessions Judge, Raipur in Sessions Trial No. 52 of 2018 by which appellant Gajendra @ Pappu Sahu has been convicted under Sections 394 read with 34

of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for 7 years and to pay fine of Rs. 5000/- in default of payment of fine to further undergo RI for 6 months.

2. Prosecution case in brief is that the complainant has lodged the complaint before Police Station Khamtari on 05.03.2017 at about 3.00 PM alleging that after dropping her sister at Urkura Railway station, he returned towards his bike Honda Shine where it was parked there two unknown persons already standing there asked him about the road in which one person came to him, threatened him on the knife point and looted his mobile, key of his motorcycle, three ATM cards, cash of Rs. 350-300 and one account payee cheque of Rs. 8,000/- thereafter fled away from there. On the basis of report, FIR (Ex.P-8) offence under Section 392 of the IPC was registered against unknown person. The police started investigation; prepared map and recorded memorandum statement of co-accused and on the basis of memorandum statement of co-accused other articles were recovered from the accused.
3. After completion of the investigation, charge sheet was filed before the Court of Judicial Magistrate First Class, Raipur who in turn committed the case to the Court of Additional Session Judge, Raipur which was registered as Sessions Case No. 52 of 2018.
4. The prosecution in order to prove the guilt of the appellant examined as many as 9 witnesses, Kanhaiya Lal Thakur (PW-1), Smt. Malti Jaiswal (PW-2), Ajay Dewangan (PW-3), Ramesh Kumar Sinha (PW-4), Yogendra Verma (PW-5), Prem Lal Sinha (PW-6),

Inspector Yogita Khaparde (PW-7) and exhibited documents letter dated 05.05.2017(Ex.P-1), Map (Ex.P-2 and Ex.P-10), memorandum statement of Rakesh Devdas (Ex.P-3), Seizure memo (Ex.P-4), Seizure memo (Ex.P-5), arrested memo of Gajendra Sahu (Ex.P-6), arrest memo of Rakesh Devdas Manikpuri (Ex.P-7), FIR (Ex.P-8), map of the spot (Ex.P-9), test identification parade (Ex.P-11), arrest information of accused Devdas Manikpuri (Ex.P-12), arrest information of accused Gajendra (Ex.P-13), letter dated 05.05.2017 seeking certificate under Section 65(B) of the Evidence Act (Ex.P-14), Identification parade of accused (Ex.P-15) and Note sheet regarding seeking call details (Ex.P-16). The appellant did not examine any witness in his support.

5. Malti Jaiswal (Ex.P-2) deposed in her cross-examination before the Court that she was not present at the time of incident and whatever she said before the Court regarding incident that was told by her brother.
6. Complainant (PW-4) was examined before the court wherein he has stated that on the date of incident he parked his Honda Shine bike at 200 meters away from the Railway Station and went to platform with his sister and after some time he returned to the place whereas returning he saw that two unknown persons were already standing there and one of them came to him and asked about the road and on the knife point they looted his purse, Samsung mobile and bike. Thereafter, he informed the incident and subsequently informed the incident to his younger brother through his sister's mobile. Thereafter, the incident of loot was

registered at Police Station Khamtarai by his brother under Ex.P-8. This witness further stated that before the incident, he did not know the accused and for the first time, he saw the accused in the Court and during identification parade. He has also stated that the accused snatched key of motorcycle and mobile and he identified the accused in test identification parade. He further stated that he did not park his bike at the parking stand and he did not inform the Police about the loot done on the knife point.

7. Tahsildar Yogendra Verma (PW-5) was examined before the Court wherein he has stated that test identification parade was done before him under Ex.P-11 in which the accused was identified by the complainant. Patwari Kanhaiyalal Thakur (PW-1) has stated that the map was prepared by him under (Ex.P-2) on the basis of application submitted under (Ex.P-1).
8. Inspector Yogita Khaparde (PW-7) was examined before the Court wherein she has stated that on the basis of oral complaint, FIR (Ex.P-8) was registered by her against unknown person under Crime No. 135 of 2017. She has further stated that a knife was seized from the appellant in another crime No. 146 of 2017 under Section 307, 34 IPC which was also registered in the same police station against appellant Gajendra Sahu. She further stated that knife and motorcycle were seized in Crime No. 146 of 2017. This witness has further stated that the motorcycle Honda shine was seized from the accused Gajendra in Crime No. 146 of 2017 and true copy of memorandum statement was enclosed in the charge sheet as original is attached in the charge sheet relates to crime

No. 146 of 2017, as such she has stated that no separate memorandum was prepared from the accused. This witness has reiterated the contents of the FIR (Ex.P-8) and supported the case of the prosecution.

9. Learned trial court after appreciating the evidence and material on record has recorded its finding that the prosecution is able to prove the offence against the appellant under Section 397 read with Section 34 of the IPC and thus convicted the appellant for RI for 7 years with fine of Rs. 5000/-. The trial Court has also considered the fact that though the motorcycle and knife have not been seized in the instant case but it has been seized in another crime number which cannot be said to be illegality as its defective investigation does not give any right of acquittal of the accused. Being aggrieved with the judgment of conviction and order of sentence, the appellant has preferred the appeal before this Court.
10. Learned counsel for the appellant would submit that the trial Court has wrongly convicted the appellant without proper appreciation of evidence and there are material contradictions and omissions in the statements of the prosecution witnesses. Learned counsel for the appellant has also submitted that the conviction of the appellant under Section 397 of I.P.C is erroneous as the ingredients of the said offence requires that the knife and motorcycle used in the incident must have been recovered from the accused by the prosecution then only the involvement of the appellant can be held to be proved by the prosecution but the

prosecution failed to prove the same beyond the reasonable doubt. He would further submit that learned trial court at para No. 15 of the its judgment held that identification parade was doubtful, even on the basis of statement of the witnesses the trial Court convicted the accused though no articles was seized from Gajendra Sahu, as such conviction of the appellant is bad in law, therefore, the judgment and sentence passed by the trial Court be set aside and the appellant be acquitted.

11. On the other hand, learned Penal Lawyer would support the judgment, finding and sentence passed by the trial Court mainly contending that the prosecution has proved its case beyond reasonable doubt and the appellant has rightly been convicted for the offence committed by him which does not warrant interference by this Court.
12. This Court has allowed the application for suspension of sentence and grant bail on 02.11.2020 to the appellant, as he has already undergone fifty percentage of jail sentence awarded to him by the trial Court.
13. I have heard learned counsel for the parties and perused the record.
14. On the above factual matrix the point to be determined by this Court is whether the test identification parade conducted by the prosecution was legal or not, if not legal than what is its effect.
15. To appreciate this point, this Court has to consider the evidence of Tahsildar Yogendra Verma (PW-5) who has conducted the panchanama of test identification parade (Ex.P-11). This witness

has stated before the Court that the complainant has identified the accused before Vishvanath Sahu and Tarun Sahu by keeping his hand on the head of the accused. The record of the trial court clearly demonstrate that none of the independent witnesses have been examined before the trial Court by the prosecution before whom the complainant identified the accused, as such, it creates doubt over the correctness of the TIP. It is well settled legal position of law that under Section 9 of the Evidence Act of TIP, is not substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a test identification parade during the stage of investigation is, firstly, to ensure that the investigation agency is proceeding in the right direction where the accused is unknown and secondly to serve as corroborative piece of evidence when the witnesses identifying the accused during trial. The TIP is only a corroborative piece of evidence and cannot serve as primary proof of identification. "If the witness who identified a person or an article in the TIP is not examined during trial, the TIP report, which may be useful to corroborate or contradict the witness, loses its evidentiary value for the purpose of identification, as such test identification by PW-5 does not inspire confidence and it becomes doubtful.

16. The law with regard to evidentiary value of TIP is subject matter of consideration before the Hon'ble Supreme Court wherein the Hon'ble Supreme Court has examined the evidentiary value of TIP and effect of non-compliance of requirement of proving the same by independent witnesses. Few of the judgments are as follows:-

(a) The Hon'ble Supreme Court in the case of **Rameshwar Singh vs State Of Jammu & Kashmir reported in 1971 (2) SCC**

**715** has held as under in paragraph-6:

6. Before dealing with the evidence relating to identification of the appellant it may be remembered that the substantive evidence of a witness is his evidence in court but when the accused person is not previously known to the witness concerned then identification of the accused by the witness soon after the former's arrest is of vital importance because it furnishes to the investigating agency an assurance that the investigation is proceeding on right lines in addition to furnishing corroboration of the evidence to be given by the witness later in court at the trial. From this point of view it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification is held without avoidable and unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards are effectively taken so that the investigation proceeds on correct lines for punishing the real culprit. It would, in addition, be fair to the witness concerned who was a stranger to the accused because in that event the chances of his memory fading are reduced and he is required to identify the alleged culprit at the earliest possible opportunity after the occurrence. It is thus and thus alone that justice and fair play can be assured both to the accused and to the prosecution. The identification during police investigation, it may be recalled, is not substantive evidence in law and it can only be used for corroborating or contradicting evidence of the witness concerned as given in court. The identification proceedings, therefore, must be so conducted that evidence with regard to them when given at the trial, enables the court safely to form appropriate judicial opinion about its evidentiary value for the purpose of corroborating or contradicting the statement in court of the identifying witnesses.

(b) **Hari Nath And Anr. vs State Of U.P. reported in 1988 (1)**

**SCC 14** has held as under in paragraph 20.

20. The evidence of identification merely corroborates and strengthens the oral testimony in Court which alone in the primary and substantive evidence as to identity. In *Hasib v. State of Bihar* Court observed:

.....The purpose of test identification is to test that evidence, the safe rule being that the sworn testimony of the witness in Court as to the identity of accused who is a stranger to him, as a general rule, requires corroboration in the form of an earlier identification proceeding....

17. Again in the case of **Umesh Chandra vs. State of Uttarakhand** reported in **2021 (17) SCC 616** has held as under in paragraph-9:-

9. A test identification parade under Section 9 the Evidence Act is not substantive evidence in a criminal prosecution but is only corroborative evidence. The purpose of holding a test identification parade during the stage of investigation is only to ensure that the investigating agency prima facie was proceeding in the right direction where the accused may be unknown or there was a fleeting glance of the accused. Mere identification in the test identification parade therefore cannot form the substantive basis for conviction unless there are other facts and circumstances corroborating the identification.

10. But more important than that, the test identification parade being a part of the investigation, has to be proved by the prosecution as having been held in accordance with law. The onus lies on the prosecution to establish that the TIP was held in accordance with law. It is only after the prosecution prima facie establishes a valid TIP having been held, the question of considering any objection to the same arises. If the prosecution has failed to establish that a TIP was properly held by examining the witnesses to the same, there is nothing for the accused to disprove. In the present case, a Magistrate is stated to have conducted the TIP. The Magistrate has not been examined. No explanation is forthcoming why the Magistrate was not examined. The only evidence available is that of PW-4 the Station House Officer that during the investigation the TIP was held in the District Jail, Nainital and he identifies the proceedings in the Court. The identification of the proceedings is irrelevant as obviously he could not have been present during the TIP. The TIP, a part of the investigation, therefore cannot be said to have been proved much less that it was held in accordance with the law. Secondly there cannot be repeated TIPs till such time that the prosecution is successful in obtaining identification of the accused.

18. Hon'ble Supreme Court in the case of **Vinod @Nasmulla Vs.**

**State of Chhattisgarh reported in 2025 INSC 220** wherein

the Hon'ble Supreme Court has held as under:-

14. ....Thus, if the witness who identified a person or an article in the TIP is not examined during trial, the TIP report which may be useful to corroborate or contradict him would lose its evidentiary value for the purposes of identification. The rationale behind the aforesaid legal principle is that unless the witness enters the witness box and submits himself for cross-examination how can it be ascertained as to on what basis he identified the person or the article. Because it is quite possible that before the TIP is conducted the accused may be shown to the witness or the witness may be tutored to identify the accused. Be that as it may, once the person who identifies the accused during the TIP is not produced as a witness during trial, the TIP is of no use to sustain an identification by some other witness.

19. From the above stated legal position, it is quite vivid that evidentiary value of the TIP is not substantive evidence but only corroborative evidence and unless the witnesses before whom the accused was identified by the complainant or victim was examined before the trial Court, test identification parade loses its evidentiary value. In the present case, two witnesses namely Vishvanath Sahu and Tarun Sahu before whom the complainant has identified the accused Gajendra Sahu but the prosecution has not examined them before the trial Court, as such the TIP loses its significance, therefore, I am of the view that the prosecution has failed to prove the guilt of the accused Gajendra Sahu beyond reasonable doubt, therefore, the appellant is entitled to get benefit of doubt.

20. Accordingly the accused is acquitted of the charges for which he was tried. The appellant is reported to be on bail. His bail bonds are not discharged at this stage and the bonds shall remain operative for a period of six months in view of section 437-A of the CrPC. Accordingly, Criminal appeal is allowed.

**Sd/-**  
**(Narendra Kumar Vyas)**  
**Judge**

Santosh