

(1990) 07 OHC CK 0015

In the Orissa High Court

Case No : Criminal Revision No's. 427, 491 and 503 of 1984

Satrughana alias Satrughna Parida and Another etc.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 10-07-1990

Acts Referred:

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 34, 392, 395, 457

Citation : (1991) CriLJ 846

Hon'ble Judges : L. Rath, J

Bench : Single Bench

Advocate : D.P. Dhal and P.K. Ray, for the Appellant; S.K. Das, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

L. Rath, J.—All these revisions arise out of the prosecution of the petitioners along with another Buruba Pallai in Sessions Trial No. 3/146 of 1984/83 before the Assistant Sessions Judge, Puri Under Sections 457 and 395 IPC and hence are disposed of by this common judgment.

2. It was the prosecution case that the petitioners along with the acquitted person and others, in all numbering twelve, committed dacoity in the night of 22-10-82 in the house of P.W. 8 breaking open the doors, entering into the house, assaulting the informant P.W. 1 and other inmates and decamping with valuable properties. The uniform defence plea was one of denial. The learned Asst. Sessions Judge while acquitting accused Dhruba Pallai found the petitioners guilty Under Sections 395 and 457 IPC and convicted them under the first charge of R.I. for seven years each and under the second charge to R.I. for two years each with direction for the sentences to run concurrently. All the petitioners preferred appeals against their convictions and sentences. Satrughna Parida, the petitioner No. 1 in Criminal Revision No. 427/84 preferred Criminal Appeal No. 97 of 1984, and Sudhir Kumar Swain, the petitioner No. 2 therein, preferred

Criminal Appeal No. 103 of 1984. The petitioners in Criminal Revision Nos. 491/84 and 503/84 preferred Criminal Appeal No. 100/84. The appeals having been transferred to the Additional Sessions Judge, Puri were re-numbered as Criminal Appeals 22/97 of 1984, 22/100 of 1984 and 24/103 of 1984. All the appeals were dismissed but the convictions u/s 395 IPC were modified as u/s 392/34 IPC with the sentences remaining unaltered.

3. Even though the prosecution led evidence not only of identification but also of recovery u/s 27 of the Evidence Act of 1973, yet it is fairly conceded by the learned Addl. Government Advocate Mr. S. K. Das that the evidence u/s 27 of the Evidence Act is not credible and that the sole evidence against the petitioners is that of their identification.

4. The witnesses to the identification are P. Ws. 1, 4, 6 and 8, all inmates of the house of the informant. P.W. 8 is the natural father of P.W. 1, who has been adopted to one Gouranga Ch. Das. P.W. 6 is the brother of P.W. 1 and adopted to one Dasarathi Das. P.W. 4 is another brother of P.W. 1 and is adopted to Janaradan Das. P.W. 8 is the illatum son-in-law of Dasarathi Das. All of them reside in one family in the same house. P.W. 10 is the Magistrate who conducted the T.I. parade and P.W. 12 is the investigating officer.

5. Admittedly the petitioner No. 2 in Criminal Revision No. 427/84, Sudhir Kr. Swain, was arrested on 4-2-83 and the T.I. parade in respect of him was held on 11-2-83. The petitioner in Criminal Revision No. 503/ 84, Rabindra Kumar Sahu, and the petitioner No. 1 in Criminal Revision No. 427/84, Satrughna Parida were arrested on 12-11-82 and the petitioner in Criminal Revision No. 491/84, Rabindra Kandy, was arrested on 24-11-82. The T. I. parade in respect of all of them was held on 10-12-82. Both the trial court and the appellate court accepted the evidence of the prosecution regarding identification as also the other evidence and came to the conclusion of the petitioners being the authors of the dacoity and convicted them of the offence.

6. The conducting of the T.I. parade and the identification by the witnesses have been heavily assailed by the learned counsel for the petitioners, Mr. D. P. Dhal and Mr. P. K. Ray. Briefly enumerated, the evidence is challenged on the grounds of:--

(1) Delay in holding the T. I. parade;

(2) Though the suspects were produced in Court on several occasions, there is no evidence of any effort having been made to conceal their identity while they were so produced;

(3) The witnesses having not spoken of the specific roles played by each of the petitioners in the commission of the dacoity, their evidence is to be rejected;

(4) The witnesses having committed mistake in identifying Dhruba Pallai though he has been acquitted as having not participated in the crime, the bona fide of the identification is open to grave doubt;

(5) Any specific identifying features of the petitioners having not been disclosed at the earliest before the police or in the F.I.R., their subsequent identification in the T.I. parade is of no worth; and

(6) The T.I. parade itself was not held properly inasmuch as the suspects were not mixed up with innocent persons in the correct proportions that the parade was not held separately in respect of each suspect.

7. So far as the last submission is concerned, I shall take it up first. It is the evidence of P.W. 10, the Magistrate who conducted the T.I. parade that while he conducted the first identification parade on 10-12-82 in respect of four accused persons, Rabindra Kr. Sahu, Rabi Kandy, Satrughna Parida and Dhruba Pallai, he had intermingled the suspects with thirty under trial prisoners who were similarly dressed and that the witnesses were called one after another for the purpose of identification. After identification each witness was kept out of the sight and hearing of the other witnesses. The places of the suspects were also changed after identification by each of the witnesses. It has been submitted by the learned counsel for the petitioners, placing reliance on a decision of this Court in (1988) 1 OCR 74 (Nirajan Sathi v. State), that since the identification was held simultaneously of all the four suspects, the identification is totally unworthy of credit. It has been held in the decision that T.I. parade should be held with only one suspect mixed up with nine or ten innocent persons. The innocent persons should be changed each time when a fresh suspect is put up for identification and that the proper way to hold identification proceeding is to put up each suspect separately for identification.

8. With great respect to the learned Judge, I am not able to persuade myself to agree with the principles laid down both as regards the number of the innocent persons to be mixed up and as regards holding of a separate identification for each suspect. To me it appears that the principles are too rigorously stated with sweeping effect that unless T.I. parade is held in complete consonance with the guidelines, it is not to be relied upon. Differing from the view taken in the decision I had referred C. Cr. A. Nos. 71, 72, 73, 110 and 188 of 1988 by order dated 29-7-88 to a larger Bench for decision on the question but however the cases were disposed of without resolving the difference of opinion and it was observed:--

"Having examined the facts of the case and the evidence on record and after hearing learned counsel for the parties, we do not feel persuaded to examine the correctness of the aforesaid decision as, in our considered judgment, ends of justice and the anxiety of the law will be satisfied if the matter is examined only on the question of sentence. In fact, the appeals were pressed by the learned counsel for the appellants only on that question. Otherwise also, the prosecution case has been well established by the eyewitnesses and the appellants have not only been identified by the prosecution witnesses in the T.I. parade, but the articles recovered from their possession were also identified."

The division bench felt that a more pragmatic approach would be to maintain the conviction of the appellants in the case u/s 395 IPC but reduce the period of sentence to the period already undergone since going into the merits of the case would further aggravate the agony of the appellants since even if the law is decided in their favour, the appeals were to be reheard by the single Judge which process would have consumed more time.

9. Since the question referred was kept unresolved and has again arisen in this case, I am compelled to reiterate my views on the same.

10. The decision apparently has proceeded upon two decisions of the Allahabad High Court *Asharfi and Another Vs. The State*, and *Anwar and Another Vs. State*, . No doubt, though the principle evolved in (1988) 1 OCR 74 (*supra*) gets full support from the decision in *Asharfi and Another Vs. The State*, , yet it is worthwhile to note that in that very case the T.I. parades held in respect of the two appellants, where each one of them had been put up along with other suspects, had been upheld. So far as the other case *Anwar and Another Vs. State*,) is concerned, therein the principle of having identification parades in respect of more than one suspect at the same time was accepted vide para 27 of the judgment wherein the observations in Criminal Appeal No. 41 of 1955 of that Court made on 24-4-1957 to the effect that where there are only one or two suspects, mixing of ten undertrials with each suspect will not make the parade unwieldy, but if there are seven to eight suspects and the same rule is applied, the parade will become unwieldy and for such reason a ratio of 5 to 1 is preferable where there are several suspects, was quoted with approval. Hon''ble Justice Mulla, who delivered the judgment in both the cases was of the view that while there are three suspects in a parade, the ratio between the suspects and the undertrials may be reduced to 8 to 1 and such proportion may be decreased progressively when the number of suspects is more and more, but in no case, whatever be the number of the suspects, the ratio should be less than 5 to 1. It thus appears that even in the decisions referred to in (1988) 1 OCR 74 though holding of separate identification parades in respect of each suspect was held to be eminently desirable and ideal, yet in the absence of that, the evidence of identification was not thrown out merely on that account. In a previous Division Bench decision of this Court reported in *Sadhu Bag Vs. The State*, , *Asharfi and Another Vs. The State*,) was referred to pointing out that while the principles enunciated therein are wholesome and salutary, yet it is to be noted that the identification parades in that case had not been rejected. The Division Bench case was not brought to the notice of Hon''ble Mr. Justice G. B. Patnaik. To me it appears that though conduct of identification parade in respect of each suspect separately mixing him with undertrials at the ratio of 8 to 1 should be complied with, yet an infraction of the same would not ipso facto invalidate the parade without anything else. A similar question was also examined by the Andhra Pradesh High Court in 1956 Andh WR 788 (*Public Prosecutor (Andhra) v. Mahendra Singh*) before whom the same contention had been advanced relying upon *Satya Narain and Others Vs. The State*, . It was held that the Allahabad

decision must be understood in its own context and as not laying down a general rule that wherever more than one suspect is put up in an identification parade, the identification must be held to be invalid; that each case must be decided on its particular facts and that no hard and fast rule could be laid down in such a matter. In *Somappa Vamanappa Madar and Shankarappa Ravanappa Kaddi Vs. State of Mysore*, it was observed that because of some defects in the proceeding relating to identification parade, there is no justification for rejecting the evidence of the witnesses regarding participation of the accused in the crime. The Division Bench decision on the question is also otherwise binding upon me.

11. While on behalf of the petitioners the bona fides of the identification parade has been questioned as having been held such belatedly, such charge has been refuted by the learned Addl. Govt. Advocate contending that there has been no delay in holding of the parade since so far as Rabindra Kandy is concerned, the T. I. parade was held barely two weeks after his arrest. So far as Rabindra Kr. Sahu and Satrughana Parida are concerned, the T. I. parade in respect of them was held within less than a month of their arrest and that so far as petitioner Sudhir Kr. Swain is concerned, the T.I. parade in respect of him was held only a week after his arrest.

12. Delay as a factor fatal to the T.I. parade has two aspects, one remediable and the other beyond remedy. So far as the remediable aspect is concerned, it is the delay in holding the parade after having already, apprehended the suspect legitimately casting doubt on the bona fides of the parade. Since unless there is reasonable explanation for the delay, the chances of there being manipulation and sustained attempt for organising a sure identification cannot be ruled out. If however the prosecution comes up with some acceptable explanation for the delay, the disadvantage of there being defect in the investigation on this count would stand cured. So far as the irremediable aspect is concerned, it is the time lapse between the date of the occurrence and that of the identification parade. If the gap is too large, it may not be possible for human memory to recall the identification of a suspect. The test is not of a person endowed with extraordinary memory, but the probability of an ordinary person's capacity to remember the features of a person under circumstances in which the identifying witnesses saw the accused. Where the delay is such as would convince the Court that the impressions of the witness of the accused might have been blurred or obliterated, his identification of a suspect would intrinsically be not acceptable even though the T.I. parade has been held within a short time after apprehension of the suspect. Where such is the case, no amount of explanation can improve the inherent weakness of the identification. Speaking on such question, the Supreme Court observed in *Hindu Singh v. State of Uttar Pradesh*, (1982) 3 SCC 368 where the identification parade was held fortytwo days after the arrest of the appellant that the delay in holding the T.I. parade threw a doubt on the genuineness thereof, apart from the fact that it is difficult, after lapse of such a long time, that the witnesses would be remembering the facial expressions of the appellant. In *Wakil Singh and Others Vs. State of Bihar*, , where there had been a

delay of three and half months after the dacoity in holding the T. I. parade, the Supreme Court observed that after such long lapse of time it is not possible for any human being to remember the features of the accused and it is, therefore, very likely to commit mistakes. In *Manzoor Vs. State of Uttar Pradesh*, , it was observed that if the witness had not mentioned to the investigating officer the identifying features of the culprits at the earliest opportunity, it is difficult to believe as to how he would have identified them nearly two months after the occurrence. Relying upon such authorities, it may be held, though not as a mathematical rule, that ordinarily an identification parade held beyond two months from the occurrence would not inspire confidence though however there may be exceptions like when there are peculiar circumstances or reasons for the witness to remember the impressions, expressions or features of the accused with greater intensity and vividness, or that there are peculiar identifying features which were disclosed by the witness at the earliest opportunity and the identification parade is held taking all precautions so as not to enable the witness to single out the suspect in the parade because of such exclusive features alone. It has to be remembered that though a general rule may hold good in most of the case, it cannot be fool proof in all cases since incidents/ interactions between the witness and the suspect at the time of the occurrence may vary from case to case, like where, say for instance, a woman has been raped either in course of dacoity or otherwise and she had the occasion to observe the features of the person from very close quarters for a sufficiently long time, in which event, it may be possible for her to identify him even after lapse of a greater length of time. A witness and the accused are involved in human situations which will vary from case to case and the credibility of the identification has to be judged on a consideration of the totality of the situation.

13. Viewed from the angle as discussed above, it is seen that the identification of the petitioner Sudhir Kumar Swain was made more than three and half months after the occurrence. There is also no other special reason advanced by the prosecution for him to have been identified by the witnesses and hence after such a lapse of time the chances of committing mistakes cannot be ruled out. The defect in his identification in the parade is thus irremediable and evidence in that regard is to be rejected. Since identification is the only evidence against each of the petitioners and it is the settled law that identification of an accused for the first time in Court is inherently a weak piece of evidence, I am of the view that the prosecution has not been able to establish its case against petitioner Sudhir Kumar Swain and hence he must be acquitted. So far as the other three accused persons are concerned, their identification was made within about one and half months of the occurrence and hence it cannot be said that intrinsically the witnesses were incapable of identifying them because of lapse of time and as such the submission made by the learned counsel for the petitioners to throw out the identification on such account must be rejected.

14. Next is the question regarding non-offering of explanation by the prosecution for the delay in holding the T. I. parade after the arrest. It is true that even

though the arrest of Rabi Kandy was on 22-11-82 and that of Rabindra Kumar Sahu and Satrughana was on 12-11-82, yet the T.I. parade in respect of them was held on 10-12-82, i.e. within a period of less than a month so far as the last two are concerned, and fifteen days after so far as the first one is concerned. Considering a similar question, it was held in *Bharat Singh Vs. State of U.P.*, that though the prosecution is responsible to establish the guilt of the accused, yet it cannot be expected to lead evidence to dispel all possible defences and that if contention is raised regarding undue delay in holding the T.I. parade or it having been done in an irregular manner, the Magistrate who held the T.I. parade and the investigating officer should be cross-examined on that score. There are of course a large number of authorities including that of the Supreme Court which state that unless the prosecution has offered explanation for the delay in holding the T.I. parade the evidence of such parade must be thrown out, but in view of the decision of the Supreme Court in *Bharat Singh Vs. State of U.P.*, it appears that what is in effect meant is that ordinarily the Magistrate conducting the T.I. parade and the I.O. are to be cross-examined on the question unless however either the delay is so gross, as was held in *Antar Singh Vs. State of Madhya Pradesh*, or there are other such factors which would intrinsically show a lack of bona fide in the investigating agency or the existence of positive prejudice to the accused, and that otherwise the Court would not be justified in throwing out the identification parade.

15. Referring to the evidence of PW 10 as also the ordersheet, it has been urged by the learned counsel for the petitioners that the petitioners were produced on several dates before the Magistrate prior to the identification parade. It has been contended by the learned counsel that since neither the order-sheet nor PWs 10 and 12 stated of the petitioners having been produced in Court after precaution was taken to conceal their identity, it is to be concluded that they were exposed to the public before the identification parade and that the witnesses had the opportunity to see them earlier for which reason the evidence regarding the identification in the parade has to be rejected. Reliance for the purpose has been placed on decisions of this Court reported in 1983 CLR (Cri) 377 : 1984 Cri LJ NOC 22) (*Radha Bhakta v. State*), *Ghanashyam Das and Others Vs. The State*, and (1988) 1 OCR 74 (*Niranjan Sethi v. State*). The question was examined by the Supreme Court in *Ramanathan Vs. The State of Tamil Nadu*, and *Mohd. Shabir Vs. State of Maharashtra*. In the first case argument was advanced relying on ILR (1953) 3 Raj 762 (*Dhokal Singh v. State*) that evidence should be produced to prove that the accused had been kept Ba Parda it was the duty of the police to warn the accused to cover his head and that entry to such effect should be made in the police records. Rejecting such submission, the Supreme Court pointed out that a later Full Bench decision of the Rajasthan High Court *Municipal Health Officer Vs. Matta Ranganayakulu*, had in effect overruled the earlier Rajasthan decision holding that the case could not be regarded to have laid down the proposition as a rule of law which had been far too broadly stated to merit acceptance even as practical propositions and could only lead to the

accentuation of the difficulties of honest investigating officers and truthful witnesses. It was held that the appellant in that case knew about the evidence from the date the parade was held and if he wanted to demolish it, it was for him to do so by effective cross-examination of the witnesses and/ or by examining his own witnesses in rebuttal. As the appellant has not succeeded in doing so, it was futile to contend that the Court should reject this important piece of evidence merely because the prosecution did not lead evidence of the nature referred to in ILR (1953 3 Raj 762 (supra). In that case an attempt had also been made to argue that the witnesses were able to identify the appellant because his photograph had been published in the local newspaper. Such submission was also rejected since one of the identifying witnesses had stated that she was not in the habit of reading newspapers and did not know about publication of any issue of the newspaper containing the photograph of the accused, and the other identifying witness had also stated that he had not noticed any such publication. The Court held the evidence of the identification parade to be wholly acceptable basing upon the evidence of the Judicial Magistrate who held the parade that he had selected sufficient number of undertrial prisoners to participate in the parade, that they were of the same size and complexion as the suspects and that three of the undertrial prisoners had also slight beard just like the suspects and of his having observed the other formalities. Mohd. Shabir Vs. State of Maharashtra, reaffirmed the earlier decision in Ramanathan Vs. The State of Tamil Nadu, in upholding the Full Bench decision of Rajasthan. From such authorities it would appear that merely because there is absence of evidence that when the suspects were produced precaution was taken to conceal their identity, it would not lead to an automatic conclusion that they were produced in an exposed manner and that the identifying witnesses had the opportunity to see them earlier. As a fact, it is essential that the suspects must be produced in Court or taken to the identification parade concealing their identity but in the absence of evidence that such steps had not been taken, and if such defence is taken, the necessary cross-examination to that effect should be made independently, but unless it is so done, the evidence of the identifying witnesses which would otherwise be acceptable cannot be thrown out. As a matter of fact Ramanathan Vs. The State of Tamil Nadu, has reiterated the view taken in Bharat Singh Vs. State of U.P., regarding the question of cross-examination by the defence, if such a defence is to be taken. In the present case, all the identifying witnesses have consistently stated not to have seen the petitioners earlier before the parade and there was no cross-examination nor even any suggestion that the suspects were not kept Ba Pardah. The evidence of the Judicial Magistrate, PW 10, was that proper number of undertrial prisoners had been mixed with the suspects and that they had been similarly dressed. The witnesses were kept out of the sight of each other and places of the suspects were being changed after identification by each of the witnesses. PW 1 of course stated that after identification the position of the suspects remained the same, but however his evidence is not acceptable since after identification by him was over, he must have been kept beyond the

identification site and could not have known as to whether the places of the suspects were changed or not. In that respect the evidence of the Judicial Magistrate is more acceptable.

16. It was next contended by the learned counsel for the petitioners that the identifying witnesses did not describe the specific roles played by each of the accused during the commission of the crime and that more identification by them would not be of any avail. Such submission has no force in view of the decision of the Supreme Court in *State of Andhra Pradesh Vs. K. Venkata Reddy and Others*, which negated the contention and held that despite such fact having not been stated by the witnesses, their evidence was admissible and that such evidence was in conformity with the substantial evidence of the witnesses in Court identifying the accused.

17. A further submission was made that since the witnesses committed mistake of identifying the acquitted accused Dhruba Pallai as a party to the crime, yet reliance was placed on their evidence. It is true that the acquitted accused was identified in the T.I. parade, but he was not named by the witnesses in the Court as one of the miscreants and hence was acquitted. It is in the evidence of PW 4 that Dhruba Pallai is a co-villager of the witnesses. It is hence not unreasonable to assume that he was a person earlier known to the witnesses and hence there was no point for him to have been included in the T.I. parade. Whatever may be the mistake regarding Dhruba Pallai, yet there were no mistakes so far as the petitioners are concerned and hence the evidence regarding them cannot be brushed aside.

18. The other submission made on behalf of the petitioners is that the witnesses having not disclosed any special identifying features or having not given description of the accused at the earliest when they were examined by the police, nor any such features having been disclosed in the F.I.R., the evidence of identification in the identification parade cannot be accepted. Reliance for the purpose has been placed on *Wakil Singh and Others Vs. State of Bihar*, *Manzoor Vs. State of Uttar Pradesh*, *State Vs. Kalia* " *Baghrai Bindhani and Others*, and 56 (1983) CLT 60 : 1983 Cri LJ NOC 191) (*State of Orissa v. Ramesh Chandra Mahapatra*). Before such cases are considered, it is worthwhile to notice some features of the evidence led in the case. As noticed earlier, the four identifying witnesses are PWs 1, 4, 6 and 8. All the witnesses give vivid description of the dacoity committed at their house, which continued for about 1 1/2 hours as stated by PW 4 in para-7 of his evidence. The witnesses also stated specifically the role played by each of the petitioners during the commission of the dacoity. In the F.I.R. PW 1 had stated that he and other inmates of the house would be able to identify the culprits. There is also no evidence that the accused had taken any precaution to conceal their identity except having put Thekas on their heads. In the identifying parade the witnesses unerringly identified the petitioners and categorically denied the suggestion of either having been shown the photographs of the petitioners earlier or they having seen them earlier. Doubtless the

witnesses stated that they had not noticed any special identifying features on the petitioners at the time of occurrence but PW 4 explained that though such special marks of identification had not been noticed, yet he memorised their faces. All the witnesses were not only witnesses to the dacoity but also were subject to physical assault and PW 8 had grappled some of the petitioners in course of which he was heavily assaulted. The accused had also individually threatened or assaulted the witnesses.

19. In *Wakil Singh and Others Vs. State of Bihar*, the Court refused to accept the evidence of T.I. parade where only a single witness had identified the dacoits in the T.I. parade but none of the witnesses had given any description of the dacoits in their statement or in their oral evidence nor did they give any identification mark such as the stature of the accused or whether they were fat or thin or of fair or dark colour. Because of such factors, the Court found it difficult to sustain the conviction on the basis of a single identification in which case the reasonable possibility of mistake of identification could not be excluded. It was held that the evidence of such a single witness could not be accepted completely overlooking the fact that the identification itself was made in the T.I. parade about 3 1/2 months after the dacoity. *Manzoor Vs. State of Uttar Pradesh*, was again a case of identification by a single witness in the T.I. parade and the Court found it difficult to accept his testimony if at the earlier opportunity he did not mention any identifying feature of the culprits when they were examined by the I.O. and the T.I. parade was held nearly two months after the occurrence. It would be seen that in both the cases the Supreme Court had thought it best not to rely upon the evidence of a single identifying witness where the T.I. parades were held after long lapse of time when memory would normally become failable and there was no evidence of either the description of the accused or any of their special features for aiding their identification to have been disclosed at the earliest opportunity. 56 (1983) CLT 60 : 1983 Cri LJ 191) (supra) relied upon *Wakil Singh and Others Vs. State of Bihar*, to hold non-giving of the description of the accused earlier to be a factor to discard the evidence. Here again it was a case of a single witness (P W 2) identifying three of the accused in Court. In *State Vs. Kalia " Baghrai Bindhani and Others*, it was held, relying upon *Manzoor Vs. State of Uttar Pradesh*, and other cases, by Justice D. K. Behera that if at the earliest opportunity the identifying features are not mentioned by the persons required to identify the suspects and the test identification parade is conducted after a long period, the identification parade is conducted after a long period, the identification at the test identification parade would not only lose its value, but also may be rendered suspicious. Thus it was never held that mere non-mention of the identifying features by the witnesses at the earliest would ipso facto render the identification parade invalid, but that it may be so rendered if the parade itself is held after a long period since in such event the parade itself would become suspicious. Even though disclosing at the earliest in the F.I.R. and in the oral statement before the police of the description of the accused and the special identifying features, if any, of them is wholesome and necessary, yet

where the statement of the identifying witnesses are otherwise . believable, the identification parade has been held not after a long lapse of time and has been conducted in a fair manner with observation of all formalities taking sufficient precaution that the identification is not reduced to a mere formality or a tainted affair, there is no reason to throw out the evidence of such identification merely for the reason that the description or any specific identifying feature of the suspect has not been stated earlier to the parade. It has also to be remembered that it may not be always possible for a witness to give out the special identifying features of a person since there may not be any, but all the same the totality of his impression has been retained by the witness and is capable of being recalled at the time of identification. It is common human experience that human mind records many uncommunicable and untranslatable impressions of an object, be it living or otherwise and that unless sufficient time has elapsed to obliterate such impression, the mind may be well at ease to recall the impression to aid unerringly identification of the object.

20. The evidence of an identification parade, in substance, is the statement of some persons of their having recognised the suspects as the persons who had participated in the commission of the crime. Such statement belongs to the realms of investigation and serves only the purpose of corroboration to the substantive evidence in Court as to identification by the same persons. The corroboration assumes importance since identification for the first time in Court is inherently weak evidence and thus is in need of corroboration. Hence it is the concern of the courts while considering such corroborative evidence to reach the conclusion not upon isolated aspect of the evidence, but on the totality of the circumstances as to whether the evidence of identification parade is trustworthy. Very many aspects have to be considered by the Court in considering the credibility of the witnesses identifying the suspects in the parade, the bona fides of the parade and whether it was held properly. Without claiming to be exhaustive, some such aspects are the period of exposure of the suspects to the witnesses at the time of the commission of the crime, the existence of probable conditions including sufficiency of light to make the identification possible, whether the accused had taken precaution to conceal their identity, marking of any special identifying feature of the respective accused to aid their identification, the existence of any special or particular reason for the witness to remember the accused, whether at the earliest the witness disclosed the description or special feature of the suspect to the police, whether the F.I.R. and more particularly if it was lodged by an eye-witness contained the description of the accused or their features, whether the identification was made in the T.I. parade by a single witness or by a number of witnesses, whether the witnesses had the opportunity to see the suspects earlier to the identification parade, the interval between the date of the occurrence, the date of the arrest of the accused and the date of the identification parade, whether in holding the parade all necessary formalities, regarding the number of the innocent persons mixed with the suspects, their stature and the dress whether were similar to the suspects,

whether any distinguishing feature of the suspect was also covered by similar other innocent persons as far as possible, whether the place of the suspects was changed after identification by each witness, whether the witnesses after identification were kept apart from the witnesses who were yet to identify, whether there was presence of any police officer at the time of identification, etc. and whether any cross-examination was made or evidence was led by the defence as regards any defect in holding of the T.I. parade, etc. It is of course not essential that each of such features must simultaneously exist so as to vitiate the identification parade. Court may, in any given case where only some of the factors are present, also reach such conclusion because of their gravity and total effect.

21. In such background of the law and in consideration of the evidence as analysed, it cannot but be said that the conclusion reached by the two courts below of the charges having been established "against the petitioners was correct and no interference therewith is called for.

22. In the result, the revisions have no merit and are dismissed.