

(1986) 01 OHC CK 0012
In the Orissa High Court
Case No : Government Appeal No. 99 of 1982

State	Vs	APPELLANT
Kalia ' Baghrai Bindhani and Others		RESPONDENT

Date of Decision : 29-01-1986

Acts Referred:

Evidence Act, 1872 — Section 9

Citation : (1986) 61 CLT 262 : (1986) 1 OLR 232

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : D.P. Sahu, for the Appellant; S.K. Nayak-(1), for the Respondent

Final Decision : Dismissed

Judgement

B.K. Behera, J.—Upon hearing the teamed Standing Counsel for the State and Mr. Nayak for the respondents, I find no case for interference in this appeal against the order of acquittal of the five respondents who stood charged u/s 395 of the Indian Penal Code with having committed dacoity in the house of Mangulu Charan Bindhani (P. W. 6) at village Jhinoi in the district of Mayurbhanj in the course of which the inmates of the house had been assaulted and the articles had been removed during the night of September 17, 1979, and I would give the reasons for this conclusion.

2. The learned Standing Counsel has not pressed into service and rightly so, the evidence with regard to the recoveries of the utensils (M. Os. I to V) from an accessible and unfenced place in the back yard of the house of the respondent Baghrai Bindhani who could not be said to be in possession of these articles and the recovery of M O.-a Dhoti from the possession of the respondent Dhanga Majhi, who had claimed it to be his and which claim was not to be brushed aside, as observed by the trial Court.

3. The prosecution had mainly banked on the evidence of P. Ws. 4, 6 and 7 who had identified the respondents in the Court and prior to that in the test

Identification parades conducted by two Judicial Magistrates (P. Ws 1 and 2) as per their reports, Exts. 1 and 3. P. W. 1 had conducted the test identification parade on April 4, 1981, in respect of the respondent Dhanga Majhi and the other Magistrate (P W. 2) had conducted the test identification parade in respect of the other four respondents, namely, Badatang Majhi, Bhua Tudu, Mota Tudu, and Baghrai Bindhani on March 17, 1981, long after the occurrence. I do not share the view recorded by the trial Court that the delay was owing to the inaction on the part of the police agency as it would clearly appear that the test identification parade had been conducted by P. W. 2 after undue delay which could reasonably be attributed to the inaction on the part of P. W. 2.

4. In the first information report lodged by P. W. 6, a witness to the occurrence, no descriptions of the culprits had been mentioned. He had given only the descriptions of their dresses. There was no material that the three identifying witnesses had given the descriptions of the culprits to any one soon after the occurrence. The respondents were not known to the identifying witnesses from before and they were thus strangers. In such state of affairs, their evidence in the Court identifying the respondents for the first time would lose its value without identification of the suspects in test identification proceedings. But the identification proceedings would themselves lose their value when conducted after undue delay, as has rightly been observed by the trial Court as by that time, the identifying witnesses had enough opportunities to see the suspects who had earlier been released on bail.

5. One may keep in mind the well-established principles relating to appreciation of identification evidence. The substantive evidence of a witness as regards identification is a statement made by him in the Court. The evidence of mere identification of an accused person at the trial for the first time is, from its very nature, inherently of a weak character. The purpose of a test identification parade is to test and strengthen the trustworthiness of the evidence given in the Court. As a safe rule of prudence, it is considered necessary to generally look for corroboration of the sworn testimony of a witness in the Court as regards the identity of an accused who is a stranger to him in the form of an earlier test identification proceeding. Keeping in view the purpose of identification parades, the Magistrates holding them are expected to take all possible precautions to eliminate suspicions of unfairness and to reduce the chances of testimonial error. They must take intelligent interest in the proceedings bearing in mind that the life and liberty of an accused person may depend on their vigilance and caution. The identification to be of value should also be held without much delay. In this connection, reference may be made to the cases reported in *Budhsen and Another Vs. State of U.P.*, *Sheikh Hasib alias Tabarak Vs. The State of Bihar*, *Chander Singh Vs. The State of U.P.*, *Sampat Tatyada Shinde Vs. State of Maharashtra*, *Antar Singh Vs. State of Madhya Pradesh*, *V.C. Shukla and Others Vs. State (Delhi Administration)*, and *AIR 1982 S. C. 639 Mohanlal Gangaram v. State of Maharashtra*. Reference may also be made to two cases of this Court reported in 52 (1981) CLT 512 *Sidha Dehury and Ors. v. State* and 56(1983) CLT

60 Rarnesh Chandra Mohapatra v. The State and Ors.. It is highly desirable that prompt steps should be taken by the investigating agency to have the identification proceedings conducted and it is the duty of the judicial Magistrates to see that the test identification parades are held without undue delay on their parts.

6. in the very nature of things, it would not be possible for the inmates of the house where the offence was committed to remember the special features of the culprits for a long time. If at the earliest opportunity, the identifying, features have not been mentioned by the persons required to identify the suspects and the test 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 (See. Manzoor Vs. State of Uttar Pradesh, and Mohd. Abdul Hafeez Vs. State of Andhra Pradesh,). Delay in holding the test identification parade would affect its value. in the cases reported in Antar Singh Vs. State of Madhya Pradesh, in which the test identification parade had been conducted about twelve months after the occurrence, 7983 SCC (Cri) 49 Soni State of Uttar Pradesh in which the test identification parade had been conducted forty-two days after the arrest Manzoor Vs. State of Uttar Pradesh, in which test identification proceeding had been conducted after two months of the occurrence and Mohd. Abdul Hafeez Vs. State of Andhra Pradesh, in which the identification had been made in the Court after four months of the occurrence without any prior test identification parade, the Supreme Court did not accept the evidence with regard to the identification because of undue and unexplained delays. Regard being had to the importance of the test identification proceedings, proper and prompt steps should be taken by the appropriate authorities to see that the test identification proceedings are conducted within a few days after the apprehension of the suspects and while they are in custody, taking care to keep their identities concealed until the test identification proceedings are over, so that there would be no criticism levelled against the bona fides of the investigating agency or the magistracy on the propriety or fairness of such proceedings.

7. In the Instant case, the respondents Kalia alias Baghrail Bindhani Badatang Majhi and Dhanga Majhi were produced in the Court in custody after being arrested in connection with this case on September 21, 1979. On November 14, 1979, the respondents Bbua Tudu and Mota Tudu were produced in the Court on being arrested in connection with the same case. As far back as on November 23, 1979, the Investigating Officer" made a prayer before the Sub divisional Judicial Magistrate for a test identification parade to be held and on the same day, the (learned Subdivisional judicial Magistrate forwarded the case record to Mr. R. C. Patnaik, Judicial Magistrate, Second Class, Baripada, to conduct the test identification parade early. The learned Magistrate to whom the record had been forwarded posted the case to December 10, 1979, for holding the test identification parade. On December 10, 1979, the learned, Magistrate directed that the matter be put up on the 17th of that month for holding the test identification parade as he had no time on that day. This was certainly not

proper. On December 17, 1979, the record was sent to the Court of the Subdivisional Judicial Magistrate by the learned Judicial Magistrate, Second Class, recording in the order-sheet that the suspected persons should be mixed with other persons who had not been brought. On December 19, 1979, the learned Subdivisional Judicial Magistrate sent back the record to the same Magistrate with a request to conduct the test identification parade in his convenient time. On January 9, 1980, the respondents whose period of detention had exceeded 90 Days were released on bail under the proviso to Sub-section (2) of Section 167 of the Code of Criminal Procedure. On July 18, 1980, the other respondents who had also completed 90 days" period of detention were released on bail under the same provision. Unfortunate as it might seem, nothing happened thereafter until December 10, 1980, when the Investigating Officer renewed his prayer for the test identification parade and this application was endorsed to the same Magistrate (Mr. R. C. Patnaik) for action. On December 15, 1980, the learned Magistrate - recorded in the order-sheet thus :

" It is orally submitted by the C. R. A. S. I., Sri B. Pradhan that out of four accused persons, three are on bail. This case stands posted to 23. 12. 1980 for further order before the S. D. J. M. Baripada. So T. I. Parade of suspects cannot be conducted before 23. 12. 1980. 23. 12. 1980 is the last working day of the year. 1980. So it will not be possible for me to conduct T. I. Parade of the suspects of this case on 23. 12. 1980. Put up on 13. 1.1981 for conducting the T. I. Parade. The I. O. is to take steps accordingly. "

On January 13, 1981, an order was passed directing the Investigating Officer to arrange the test identification parade on February 12, 1981. On the fixed date, the learned Magistrate also did not conduct the test identification parade as he was on leave and the matter was posted to February 22, 1981. On the date fixed, the test identification parade was not held on the ground that the learned Magistrate was busy in the trials of year-old cases and the learned Subdivisional Judicial Magistrate was requested to authorize another Magistrate to conduct the test identification parade, but on the same date, the record was sent back to the same Magistrate with a request to conduct the test identification parade as soon as possible as the police agency had been complaining of delay and a convenient date should be fixed. The learned Magistrate then posted the matter to March 11, 1981, for conducting the test identification parade and on that date, it was posted to March 17, 1981, because of the absence of the identifying witnesses. On March 17, 1981, the test identification parade was at last conducted by the learned Magistrate (Mr. Patnaik) in which four respondents were identified. The test identification parade in respect of the other respondent was conducted by another Judicial Magistrate on April 4, 1981. To say the least, it was a highly unsatisfactory state of affairs. The importance of prompt test identification proceedings has been lost sight of. The Magistrates who are entrusted to conduct the test identification proceedings should keep in mind the importance of such proceedings and should not delay such matters unreasonably and unjustifiably as had been done in this case.

8. Delays on the part of the magistracy in holding test identification parades have come to the notice of this High Court. In this Court's letter No. 4840/XXIX-41/75 dated May 10, 1978, direction had been issued as under:

"To

All the District Judges of the State All the Chief Judicial Magistrates of the State
Dated, Cuttack, the 10th May, 1978. SUBJECT : Holding of T. I. Parades.

Sir,

I am directed to say that it has been brought to the notice of the Court that abnormal delay is caused in holding T. I. Parades in spite of frequent approach by the Investigating officer for the same. As a result, the Criminal Cases are not disposed of promptly.

The Court, therefore, directs that necessary instructions may be issued to the Chief Judicial Magistrates and other Subordinate Magistrates to see that the Judicial Magistrates and Special Judicial Magistrates hold T. I. Parades promptly on being approached by the Investigating Officers.

I am to request that the above instructions may be followed scrupulously in future.

Yours faithfully, Sd/- B. N. Misra, 10. 5. 78. Joint Registrar."

In spite of the aforesaid direction, there have been undue delays by the Magistrates in a number of cases in holding test identification parades. It is hoped that the District and Sessions Judges and the Chief Judicial Magistrates will remedy this grave malady by proper instructions and supervision.

9. For the reasons recorded by the trial Court which need not be re-stated and for the pre-varicating statements made by the three identifying witnesses and regard being had to the undue delay in the test identification proceedings, the evidence of P. Ws. 4, 6 and 7 has not been acted upon and in my view, rightly so.

10. There was no other evidence to connect the respondents or any of them with the commission of the offence of dacoity. In my view, the order of acquittal is well-founded and cannot be dislodged.

11. The appeal fails and is dismissed.

12. Copies of this judgment shall be forwarded by the Registrar (Judicial) of this Court to all the District and Sessions Judges and the Director General of Police, Orissa, for information and appropriate action.