

Rapani Laxman and Etc. Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Aug-05-2003

Reported in : 2004CriLJ136

Judge : S.R.K. Prasad, J.

Acts : [Evidence Act, 1872](#) - Sections 9; Criminal Rules of Practice and Circular Orders, 1990 - Rule 34; [Indian Penal Code \(IPC\), 1860](#) - Sections 395; Code of Criminal Procedure (CrPC) , 1974 - Sections 276 and 317

Appeal No. : Criminal Appeal Nos. 1877 of 1999 and 1355 and 1725 of 2000

Appellant : Rapani Laxman and Etc.

Respondent : State of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : I. Aga Reddy, Adv. in Cr. A. 1877/99, C.S. Venkatesh, Adv. in Cr. A. 1355/2000 and M.L. Lakshmi Prasad, Adv. in Cr. A. 1725/2000

Disposition : Appeal allowed

Judgement :

S.R.K. Prasad, J.

1. These three criminal appeals arise against the judgment in Sessions Case No. 452/1998 rendered by Assistant Sessions Judge, Jagtial on 16-4-1999 convicting A-1, A-2 and A-4 and sentencing them to rigorous imprisonment for 8 years and to pay a fine of Rs. 50/- in default simple imprisonment for one month for the offence under Section 395, I.P.C.

2. The case of the prosecution is that on 13-4-1997, PW-1 Gurijala Chinna Rajam went to Metpally, collected due amount of Rs. 20,000/- from Grain Market of Metpally towards turmeric, which he sold earlier and returned to his house in Raghavapet by evening. He kept the amount in his house in almirah and locked it. He slept with his family members in the front Varandha, while his son slept in the rear yard. The main doors were only bolted from outside. At about mid-night some unknown offenders entered into Varandha of his house by scaling over the front compound wall. They woke him up and threatened by saying 'Annalu' and questioned him as to why he was selling wine. They took him into the house, got opened the doors and searched the house and got opened almirah and stole Rs. 20,000/- from it and took him upto 200 yards towards Mallapur side on pretext of meeting dalam leader. On 14-4-1997 at 4. p.m. a report was received from PW-1, which was registered by the S.H.O. P. S. Mallapur. On the same day PW-4 took up investigation of the case. On 6-6-1997 A-1 to A-5 were arrested at Yousufnagar cross roads and Gundampally village and were interrogated and stolen cash of Rs. 15,000/- was recovered. Rs. 10,000/- was recovered from A-2 and Rs. 5,000/- was recovered from A-5. PW-5 conducted test identification parade on A-1 to A-5 on 5-7-1997 at District Jail Karimnagar where PW-1 identified A-1 to A-5. Thereafter accused have been charge sheeted for the offence under Section 395, I.P.C. The accused pleaded not guilty for the charge under Section 395, I.P.C. Prosecution in all examined nine witnesses.

3. PW-1 is the complainant who spoke about the incident, which occurred during the summer of 1997 around midnight. Five dacoits entered forcibly into his house by jumping over the compound wall claiming to be the extremists and taken away cash of Rs. 20,000/- from his house, which was kept in almirah. He also deposes that accused searched for whisky bottle and picked up, the money from the almirah. He further stated that his wife saw the culprits taking the money. The

culprits did not touch the jewellery of his wife. He also speaks about his participation in the test identification parade and identifying A-1 to A-5. He states that A-3 now present in the Court was among the culprits who committed the offence. He also identified A-2 present in the Court who committed the offence, and whom he identified in the test identification parade conducted at the District Jail, Karimnagar.

4. PW-2 is the wife of PW-1. She deposes that five culprits armed with axes and sticks forcibly entered into their house and snatched away Rs. 20,000/- kept in the almirah. Her husband lodged police complaint. Police recorded her statement. She also deposes that she did not see the culprits.

5. PW-3 deposes that after the culprits left the house he woke up by his parents.

6. PW-4 deposes that on 14-4-1997 at 4 p.m. PW-1 came to police station and presented a report-Ex. P-1. Sri G. Hariprasad, the Sub-Inspector of Police registered the crime and issued printed FIR-Ex. P-2. PW-4 also deposes that he visited scene of offence on 14-4-1997 at about 5.30 p.m. Then he examined PWs-1 to 3 and conducted panchanama Ex. P-3 and drew a rough sketch for the scene under Ex. P-4. According to him on 6-6-1997 at 3.30 p.m. he arrested A-1 and A-2 at Yousufnagar Cross road and interrogated them in the presence of panch witnesses Thotal Chinnaiah Cinna Reddy and Gurijala Rajam covered by Ex. P-5 relating to A-1 and Ex. P-6 relating to A-2.

7. PW-5 speaks about conduction of test identification parade choosing suspects and non-suspects in the ratio of 1:5. According to his version A-1 to A-5 were produced by the Jail authorities and also 25 non-suspects of similar height and physical features were taken up for mixing with the suspects. They were standing in a line and PW-1 was sent for, who correctly identified A-1, A-2 and A-4 and two non-suspects. He states that suspects represented to him that they were shown to the witnesses earlier and that their photographs were taken and shown to the witnesses. Ex. P-8 is the requisition given by C. 1. of Police and Ex. P-9 is test identification parade report.

8. PW-6 G. Raju deposes that the culprits snatched away Rs. 5000/- from their house, when they were asleep. He did not see the culprits.
9. PW-7 also spoke that during last year summer dacoity took place in the house of PW-1. He deposes that police called him to the scene of offence and drafted panchanama Ex. P-3, which bears his signature.
10. PW-8, Katla Chinnaiah deposes that his signatures were obtained on white papers about an year back and Exs. P-5, P-6, P-7, P-10 and P-11 bear his signatures and also of other panchas.
11. PW-9 M. Chinna Raja Reddy also deposes that his signatures were obtained on blank papers of the Ex. P-5 to Ex. P-7, Ex. P-10 and Ex. P-11. No suspects were present at that time with the police.
12. After trial the Sessions Judge has disbelieved the recovery and gave a finding that A-1, A-2 and A-4 are guilty under Section 395, IPC on the strength of identity made in the test identification parade before the Court. He has convicted and sentenced them to undergo rigorous imprisonment for a period of eight years and to pay a fine of Rs. 50/- in default simple imprisonment for one month. He has acquitted A-3 and A-5. Aggrieved by the same A-1 preferred Criminal Appeal 1355 of 2000, A-2 preferred Criminal Appeal 1725 of 2000 and A-4 preferred Criminal Appeal 1877 of 1999.
13. The point that arises for consideration is whether the prosecution has proved the guilt of the appellants beyond all reasonable doubt for the charge under Section 395, I.P.C.
14. It is a case where the prosecution has come with a specific case that Rs. 10,000/- was recovered from A-2 and Rs. 5,000/- from A-5. The said amount was not produced before the Sessions Judge though recorded in their confessional statements as can be seen from Ex. P-5, Ex. P-6 and Ex. P-7.
15. It is also contended by the counsel appearing for A-4 that no amount was recovered from him and the Court believed the participation of only three persons, which will not fall under dacoity, under Section 395, I.P.C. It is also contended that

the evidence of PW-1 that he has identified the accused, cannot be relied on as the identity before the Court was held long after the commission of offence. It is further contended that a person, who received the report Ex. P-1 and registered FIR-Ex. P-2, is not examined by the prosecution.

16. The counsel appearing for other accused also canvassed that the offences are not proved against the accused, since no amount has been produced in the Court and the identification is also not reliable.

17. Ex. P-5, Ex. P-6 and Ex. P-7 confessions are not admissible, as they are hit by Section 27 of the Evidence Act since total statements are marked. The property recovered has not seen the light of the day and not marked. The Investigating Officer, who received the report and registered the crime, has been given up by the prosecution and it is fatal to the prosecution since it caused prejudice to the accused. The only evidence is the test identification parade and the evidence of PW-1. In so far as test identification parade is concerned PW-5H: Chandrashekar, who has worked as Munsif Magistrate, Jagtial deposed that he has selected the place of identification inside the jail and as per instructions A-1 to A-5 were produced by Jail Authorities and also mixed 25 non-suspects of similar height and physical features. It discloses that only a common identification parade was conducted by the Magistrate.

18. Rule 34 of Criminal Rules of Practice and Circular Orders, 1990 (hereinafter referred to as Circular Orders) reads as follows:

'Rule 34:-- Identification Parades: In conducting identification parades of suspects, the Magistrate shall observe the following rules:

[(i) (a) The Police should send a requisition for holding identification parade by the Magistrate as nominated by the Sessions Judge. On such requisition, the Magistrate shall conduct the identification parade as expeditiously as possible.

(b) Where bail application is pending for the release of the accused and on being informed so by the Police Officer, the Magistrate shall as far as possible fix a date earlier to the date of arguments on the bail application and hold the identification

parade.)

(ii) (a) As far as possible, non-suspects selected for the parade shall be of the same age, height, general appearance and position in life as that of the accused. Where a suspect wears any conspicuous garment, the Magistrate conducting the parade shall, if possible, either arrange for similar wear to other or induce the suspected person to remove such garment.

(b) The accused shall be allowed to select his own position and should be expressly asked if he has any objection to the persons present with him or the arrangements made. It is desirable to change the order in which the suspects have been placed at the parade during the interval between the departure of one witness and the arrival of another.

(iii) (a) The witnesses who have been summoned for the parade shall be kept out of the view of the parade and shall be prevented from seeing the prisoner before he is paraded with others.

(b) Before a witness is called upon to identify the suspect, he should be asked whether he admits prior acquaintance with any suspect whom he proposes to identify. He shall also be asked to state the marks of identification by which he can identify the suspects.

(c) Each witness shall be fetched by a peon separately. The witness shall be introduced one by one and on leaving shall not be allowed to communicate with witness still waiting to see the persons/paraded.

(iv) Every circumstances connected with the identification including the act if any attributed to the person who is identified shall be carefully recorded by the officer conducting it, whether the accused or any other person is identified or not. Particularly any objection by any suspect to any point in the proceeding shall be recorded.'

It is clear from Clause (ii)(a) that the non-suspects to be selected for the parade shall be of the same age, height, general appearance and position in life as that of the accused. It is also mentioned in Clause (ii)(b) that the accused shall be

allowed to select his own position and should be expressly asked, if he has any objection to the persons present with him or the arrangements made. It is also clear from Clause (i)(b) that the identification parade has to be conducted in case of an application pending for the release of the accused on bail before the arguments are completed. It is nowhere stated under Rule 34 that one parade can be conducted for all the accused. What is contemplated under Rule 34(ii)(a) is non-suspects selected for the parade shall be of the same age, height, general appearance and position in life as that of the accused. If there were several accused, they cannot select non-suspects of the same age, same height and the general appearance. Hence the only interpretation that can be put on to Rule 34 is that a separate test identification parade has to be conducted by the Magistrate for each of the accused. I am of the considered view that Rule 34 does not contemplate conducting common parade for all the accused. It is a fit case where directions have to be issued to all the Magistrates. Hence the Registry is directed to instruct all the Magistrates to conduct separate identification parades for each of the accused, so that it will be in accordance with Rule 34 of Criminal Rules of Practice and Circular Orders, 1990. It is not stated in this Rule that the suspects and non-suspects must be in the ratio of 1:5. It should be left to the discretion of the Magistrate and he shall only choose sufficiently large number for mixing up some suspects with non-suspects.

19. It is also observed by the Supreme Court in a decision, reported in *Anil Kumar v. State of U. P.*, (2003) 2 Supreme 319 : (2003 Cri LJ 1524) as follows:

'We remind ourselves that identification parades are not primarily meant for the Court. They are meant for investigation purposes. The object of conducting a test identification parade is two fold. First is to enable the witnesses to satisfy themselves that the prisoner whom they suspect really the one who was seen by them in connection with the commission of the crime. Second is to satisfy the investigating authorities that the suspect is the real person whom the witnesses had seen in connection with the said occurrence.'

It can be seen from the principles laid down by the Supreme Court that the test identification parades are only meant for process of investigation to know whether

the investigation is proceeding on the right lines and to know whether the suspect is a right person whom the witness had seen in connection with the occurrence.

20. Their Lordships of Supreme Court have approved the principles laid down in a decision reported in *State of Maharashtra v. Suresh*, (1999) 1 SCC 471.

21. As the test identification parade is not conducted as contemplated under Rule 34 of Circular Orders it cannot carry much weight. Even otherwise, it is not substantive evidence and it is used to test the memory of the witness. In this case the only witness, who is said to have identified the accused is PW-1. He has given a report Ex. P-I soon after commission of the offence. The incident is said to have happened on 13-4-1997. The report was presented at about 4 p.m. on 14-4-1997. In his report he has stated that the culprits were wearing black pants and silk shirts and are aged approximately about 20 to 25 years and speaking in Telugu and that himself and his family members can identify them. Examination was conducted on 20-1-1998.

22. It is stated in a decision reported in *Shivarathri alias Gundlakomuraiah v. State of Andhra Pradesh*, (2000) 2 Andh LD (Cri) 748 : (2002 Cri LJ 133) that when identification parade was conducted one month after the arrest of the accused and delay is not explained, the identification in Court does not help the prosecution. It is also further observed that when recovery of articles from the accused also found not reliable, conviction cannot be sustained.

23. It is also observed by the Supreme Court in *Shabad Pulla Reddy v. State of Andhra Pradesh*, (1997) 2 Andh LD (Cri) 580 : (1997 Cri LJ 3753) at paragraph 7 as follows:

'That brings us to the crucial question as to whether the prosecution has been able to conclusively prove the involvement of the appellants in the above offences of rioting and murder. To connect A-17 to A-22 with the crimes, the prosecution relied upon the evidence of their identification in Court by the witnesses and the corroborative evidence of their earlier identification in two Test Identification (T.I.) parades held on January 4, 1982 and January 12, 1982 by a Judicial Magistrate (PW-6). The evidence of PWs-1 and 2 along with that of PW-6 proves that in the

T.I. parades PW-1 identified A-17, A-19 and A-21. In other words, A-17 and A-19 stand identified by one witness, namely, PW-1 and A-20 and A-21 by both the witnesses, namely, PWs-1 and 2. Though the trial Court and the High Court accepted the evidence of such identification in Court as it was corroborated by the evidence of their identification in T.I. parade, we find it difficult to rely upon the same as no explanation --much less plausible -- was offered by the prosecution for the inordinate delay in holding the T.I. parades. As earlier noticed, the occurrence took place on July 11, 1981 and five of the above six accused persons (A-17 to A-21) were arrested on October 4, 1981 and the T.I. parades were held 3 months after their arrest. This unusual and unexplained delay in holding the T.I. parades makes it difficult for us to conclusively hold that after such long lapse of time the witnesses were still able to have a clear image of the accused in their minds and identify them correctly at the identification parades. So far as A-22 is concerned, he was arrested earlier -- (on September 13, 1981) -- and was identified in the T. I. parade by PW-1 as one of the miscreants. He was also identified by Papaiah (PW-10), who claimed to have seen him earlier in the day in question, going across the field armed with an axe. For the reasons earlier mentioned, we are also unable to accept the identification of A-22 by PWs-1 and 10. The other evidence on which the prosecution relied upon -- and both the learned Courts accepted to convict A-17 to A-21 -- is the alleged recovery of gold chain (MO5), a pair of gold bangles (MO6), a torch light (MO8), a gold ring (MO3) and a pair of gold ear-flowers (MO7) from them respectively, on October 4, 1981 when all of them were arrested. According to the prosecution all those articles either belonged to the deceased or to the members of his family. In our considered view, the evidence of recovery is too artificial to be believed. It seems strange that even after three months of the incident all of them were carrying a stolen article each -- including torchlight, If really they had stolen such articles, at the time of the murder, it was expected in the fitness of things that they would dispose of them as early as possible -- more so when the nature of articles was such that they could pass hands quickly. This apart even if we proceed on the assumption that evidence regarding the identification of the articles and recovery thereof is acceptable, still then, no presumption can be drawn after such a long lapse of time that they were party to the murder itself. The most favourable conclusion that can be drawn for the

prosecution from such recovery is that they dishonestly retained the stolen properties knowing them to be stolen but in absence of any charge framed under Section 411, I.P.C. and on their acquittal of the charge under Section 396, I.P.C., no order of conviction can be recorded against them. So far as A-22 is concerned, the allegation is that the gun belonging to the deceased along with cartridges was recovered from his possession, but then the only reliable evidence in support thereof is recovered from an open shed belonging to PW-9 and not from him. It cannot, therefore, be said that the prosecution has been able to conclusively prove its case against A-22. Lastly, coming to A-26, we find that the prosecution relied upon his retracted judicial confession and some other evidence in corroboration thereof. On carefully going through the confessional statement we find that A-26 confessed about a conspiracy to commit the murder of the deceased, but did not at all confess that he was a party to the murder. In other words, so far as the incident that took place in the night of July 11, 1981 in which the deceased met with his death, the statement made by A-26 before the Magistrate is exculpatory. Once the confession made by A-26 is left out of consideration as it must be in view of the acquittal of the charge under Section 120-B, I.P.C. -- there is no other substantive evidence to connect him with the offences in question. Incidentally it may be mentioned that though, admittedly, A-26 was a resident of the same village and was known to PW-1 from long, he did not name him as one of the miscreants nor mention his name in the FIR.'

24. It is also observed by the Supreme Court in *State of A. P. v. M. W. Ramana Reddy*, : 1991 CriLJ2703 , when the evidence of prosecution regarding identity of accused is not absolutely reliable the accused is entitled to benefit of doubt.

25. It is also observed by the Supreme Court in *Vaikuntam Chandrappa v. State of A. P.*, : AIR 1960 SC1340 as follows :

'(6) The main question canvassed before us by the learned counsel for the appellants is that even if the matter is approached in the manner in which the High Court had approached it, there was no corroboration of the evidence of the driver (PW-3) insofar as two of the accused, namely, Vaikuntam Chandrappa (A-3) and Nabi Sab (A-4) were concerned. We shall first examine this contention with

respect to Accused 3. He is one of the three brothers who were the leaders of Kamma group. He has been named by PW-3. The corroboration on which the High Court relied in his case is the statement of PW-1, This witness did not know any of the assailants from before. Therefore, after the arrest of the assailants, seven of them (except Vaikuntam Narayana) were put up for identification by him. These seven were mixed with thirty-nine other persons. PW-1 picked out three out of seven suspects and also picked out six out of the remaining thirty-nine. Thus, in effect, he made three correct identifications and made six mistakes at the identification parade. It was urged that in the circumstances, the identification by this witness, even though he was disinterested, was unreliable and could not be used as corroboration of the evidence of the driver. If this identification is left out of account, the circumstantial evidence against this accused would not be sufficient to corroborate the statement of the driver as to the presence of this accused at the time of the incident. It has, therefore, to be seen whether the identification by this witness is reliable inspite of the fact that he was a disinterested person. The first circumstance in that connection that stares one in the face is that this witness while picking out three out of the seven suspects picked out double that number out of those mixed with the suspects. The first report was made by this witness is which he gave the number of assailants as about 8 or 9. The impression which one gets from this identification by him is that he was prepared to identify the maximum number of the assailants, namely, nine which he had given in the first report, without being sure whether he was picking out persons whom he had really seen at the time of the incident. Further the identification looks as if he was bent on picking out nine persons irrespective of his being certain that he had seen them at the time of the incident. It seems to us that in these circumstances no reliance can be placed on such an identification even of a witness who is disinterested. The second circumstance in connection with this identification is that in a parade of this kind consisting of 46 persons in all in which there were seven suspects and in which nine persons were picked out, the probability is that even if a person who had not seen the murder were to pick out suspects he would by mere chance be able to place his finger on one or two of the suspects. In these circumstances, the conclusion cannot be escaped that the three suspects might have been picked out by this witness by mere chance. It is true that when he came to give evidence

in Court, the witness did point out to the same three accused as having been seen by him at the time of the murder. It is also true that the substantive evidence is the statement in Court, but the purpose of test identification is to test that evidence and the safe rule is that the sworn testimony of witnesses in Court as to the identity of the accused who are strangers to the witnesses, generally speaking, requires corroboration which should be in the form of an earlier identification proceeding. There may be exception to this rule where the Court is satisfied that the evidence of a particular witness is such that it can safely rely on it without the precaution of an earlier identification proceeding. But in this case we are not prepared to consider PW-1 as a witness of that exceptional kind. Further when a test identification has taken place, as in this case, its effect on the evidence of the witness in Court must always be assessed; and in the circumstances of this case we are not prepared for reasons already given to rely upon the identification of PW-1 in Court. In the result, therefore, the evidence of PW-1 as to the identification of the accused is such that it must be rejected inspite of the fact that he is a disinterested witness. Once it is rejected it cannot be used as corroboration of the evidence of PW-3. Thus so far as this accused is concerned one is left only with the testimony of PW-3 and the circumstantial evidence, We have already said that the circumstantial evidence by itself is not such as to make certain the presence of this witness at the time of the murder. The High Court convicted this accused mainly because it was of the opinion that the evidence of PW-1 could be used as corroboration. Once, however, that evidence is rejected, there is no corroboration and on the principle laid down by the High Court that there should be no conviction on the uncorroborated testimony of PW-3 this accused must be given the benefit of doubt in the same way as the fifth person acquitted by the High Court.

Nabi Sab (A-4).

7. Then we come to Accused 4, namely Nabi Sab. The evidence against him consisted of the statement of PW-3 and its corroboration by PW-2. This witness also did not know any of the assailants before. He also went for identification on the same day as PW-1 and there was a similar parade in his case also in which seven suspects were put up along with thirty-nine other persons. He picked out

two of the suspects and one wrong person. He did not pick out this accused in the parade. When he came to give evidence at the trial he said that this accused was also present at the time of murder and took part in it. He explained why he had failed to pick him out in the identification parade, namely, change in the personal appearance of the accused on account of the absence of moustaches. The witness had also failed to pick out this accused in the Committing Magistrate's Court, and the explanation for this failure was also the same. The question is whether in these circumstances the evidence of this witness when he picked out this accused for the first time in the Sessions' Court can be used as corroboration of the statement of PW-3, It is again true that the substantive evidence of the witness is his statement at the trial; but in these circumstances when the witness failed to pick out this accused both in the identification parade as well as in the Committing Magistrate's Court, it would, in our opinion, be entirely incorrect to rely upon this belated identification in the Sessions Court. The evidence of this witness therefore must be rejected on account of these reasons so far as this accused is concerned. Once this evidence is rejected, there is the sole testimony of PW-3 against this accused. Circumstantial evidence against him is not of such a nature as to lead to the certain inference that he must have been present at the time of the incident. In his case also, the High Court maintained the conviction because it accepted the identification of PW-2. On the same principle on which Accused 8 was acquitted by the High Court, we are of opinion that this accused is also entitled to benefit of doubt and must be acquitted. once the evidence of PW-2 with respect to him is rejected.'

26. As already stated, the test identification parade was not conducted as per Rule 34 of the Criminal Rules of Practice and Circular Orders of 1990 and it is not conducted as per the statutory rules. Hence, it does not carry much weight and cannot be made use of. The only thing that remains is the identification made before the Court and whether the evidence of PW-1 is reliable. When A-2 and A-3 are not present in the Court, the Court has recorded the evidence of PW-1 and asked to identify the remaining accused in Court. A peculiar procedure has been followed by the Sessions Judge, which is not permissible in law, namely, recording of evidence of witnesses in the absence of the accused without dispensing with their absence. It appears that after completion of the cross-examination of PW-1,

A-2 is said to have been produced and again further cross-examination has been conducted. Thereafter he started identifying A-2. It is clear that A-2 was not produced by the time PW-1 was examined-in-chief and cross-examined in part but was subsequently produced. Therefore, he can always identify A-2 since he is produced after closure of the evidence of PW-1. The procedure adopted by the Sessions Court and the identification conducted does not inspire confidence to believe it. Taking up trial even in the absence of the accused and even without his production shall be deprecated unless his presence is dispensed with as per Section 317 of Cr. P. C. The procedure to be adopted regarding the conduction of trial and recording of evidence is mentioned under Section 276 of Cr. P. C. The procedure that has to be followed and the method of recording that has to be adopted in sessions cases has also been adumbrated in Sections 276 and 277 of Cr. P. C. It is also stated under Section 278 of Cr. P. C. that when the evidence of each witness under Section 275 or 276 is completed it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears through pleader, and shall, if necessary, be corrected.

27. It is clear that in a criminal trial the evidence has to be recorded in the presence of the accused or in the presence of the counsel when the presence of the accused is dispensed with. If is a case of non production of witness by the jail authorities. The Court hastily proceeded with the examination of the witnesses and the recording of the evidence also affects the trial.

28. In that view of the matter I cannot but state that the evidence of P.W. 1 does not inspire confidence to believe it. The procedure adopted by the Sessions Judge also adds to the suspicion. It is also a factor to suspect the competence of P.W. 1 to identify. Hence I am of the considered view that accused are entitled to be given benefit of doubt for the following reasons.

1. The identification proceedings are not conducted as per Rule 34 of Criminal Rules of Practice and Circular Orders of 1990.
2. The property said to have been recovered have not seen the light of the day.

3. Non examination of the S.H.O. Who received the complaint and registered the FIR, is fatal to the version as it causes prejudice.

4. It is unsafe to act on the uncorroborated testimony of P.W. 1 and when his wife and children have not Identified the culprits. Moreover there is discrepancy in the evidence of P.Ws. 1 and 2 regarding the theft of Rs. 20,000/- which was kept in the almirah. P.W. 1 has stated that his wife knows about the culprits taking the money, whereas his wife denied about the commission of offence by the accused, as she did not see.

29. In view of the above factors I disbelieve the version of P.W. 1 regarding the identity of person. Even otherwise when participation of two accused is disbelieved and they were acquitted, it throws doubt about the participation of the remaining accused in the absence of production of the property recovered. It does not constitute an offence under Section 395, IPC as it falls short of five persons, in view of the acquittal of others.

30. In that view of the matter there is no need to decide about the nature of offence committed. As this Court has come to the conclusion that prosecution has miserably failed to prove the guilt beyond all reasonable doubt for the alleged commission of offence including the offence under Section 395, IPC, the accused are entitled to be acquitted, and they are acquitted.

31. The three Criminal Appeals are allowed accordingly.