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Pirthi and anr. Vs. State

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Court : Allahabad

Decided On : Sep-27-1965

Reported in : 1966CriLJ1369

Judge : M.H. Beg, J.

Appellant : Pirthi and anr.

Respondent : State

Judgement :

M.H. Beg, J.

1. The two appellants before me have been convicted under Section 395 I.P.C. and sentenced to ten years' rigorous imprisonment by a Civil and Sessions Judge, Varanasi. It was alleged that they had taken part in a dacoity committed at the houses of Nankoo (P.W. 2) and Gauri (P.W. 22) and Shyam Narain alias Samman (P, W. 4) al Umralia Bazar, police-station Chaubepur, in the district of Varanasi, on the night between 3rd and 4th October, 1961. The dacoits, said to be about 12 in number, came armed with lathis, ballams, and guns, and carried torch lights. They first tried to break open the door on the back of Nankoo's house which lay across the lane towards the north of the house of Lachman (P. VV. 24). Nankoo himself was asleep on the Jagat of his well whereas his wife and son were asleep in the house, tachman's wife was also asleep inside her house. There was a window in Lachman's house, towards the north, overlooking the back of the house of Nankoo

through which the dacoits could be seen. It was, therefore, quite natural that Lachmari's wife should have detected the presence of the dacoits first and raised an alarm which awakened Nankoo.

Nankoo looked down the lane towards the west and saw some dacoits in the light of the torch (lashed by him. Nankoo was threatened by the dacoits and raised an alarm. A man called Kamla who was coming up on the road in front of the row of houses running east to west was shot al as he tried to interfere and he fell by the side of the road. Nankoo's wife Smt. Gulabi, opened the front door facing the east and ran with her husband and son towards the north. Near the door of Gauri, a few steps further towards the north, the dacoits surrounded them and beat Nankoo and his wife and snatched a Sikari from the neck of Smt. Gulabi. In the meantime, Gauri opened his door and asked Nankoo and his wife to step in. Thereupon, the dacoits entered the house of Gauri and deprived him of Rs. 22. Shyam Narain who was also asleep outside his house further north asked his wife to open the door of the house and then went in and bolted it from inside. The dacoils then came to his bouse also and gave a push to the door and entered Shyam Narain's house in which a lantern was lit. When they wanted to take the gold car-rings of Smt. Dhakna (P.W. 3), she handed them over to the dacoits herself. She also handed over a silver kardhani to the dacoits.

The dacoits also looted other ornaments from the house of Shyam Narain. After the dacoits had rushed towards the north, Mustaqeem (P. W, 5) reached there, and also Bashir (P.W. 21) who had a torch, and others who are said to have seen and chased the dacoits Bashir and Mustaqeem are said to have overtaken the dacoits after having chased them when the dacoits returned from the north and went towards the south. The dacoits are said to have turned round and hit them with their lathis.

2. It appears that another dacoity had also been committed' during the same night at village Kodupur at about 11 p.m. and a first information report had been lodged at police station Chaubepur at about mid night and two police-constables, Pheku Singh and Brij Raj Singh, had been deputed to go towards Varanasi in order to inform the Flying Squad. These 1wo police constables passed Umraha Bazar

about 10 or 15 minutes affer the dacoity in Umraha Bazar which was committed soon after the dacoity at Kodupur, possibly by the same Rang of dacoits, and they were informed by the villagers at Umraha Bazar about what had taken place. The two constables went in pursuit of the dacoits for about a furlong and were shot at near a culvert so that Brij Raj Singh was injured, Nankoo Singh then lodged his first information report at 2-30 a.m. at police-station Chaubepur setting out the details of the dacoity committed at Umraba Bazar. In the meantime, one Dr. Bismilla (P.W. 31), after bicyling from Umraha Bazar, sent information about the dacoi-fy at Urpraha Bazar from Sarnath outpost by telephone so that a Flying Squad started from Varanasi in a jeep.

When the jeep was coming towards Umraha Bazar it met the bus which was taking the injured from. Umraha Bazar to the hospital, and the squad, was informed that the dacoits had gone towards Ashapur. The Flying squad then went towards Ashapur Bazar, and, while the jeep had stopped near Ashapur and its occupants were talking to Sri Tegh Bahadur, S.O. Adaropur (P.W. 30), and Ram Adhar Yadav S.I., cries of 'thief 'thief were heard. When the policemen proceeded in that direction, they were told by Garbabandi constables that two persons, found going on a bicycle from east to west, had, on being challenged, left a bicycle and a handbag and run away after threatening to shoot with a pistol. After that, the Flying Squad proceeded towards Pandeypur. At a place 'Called Latchungi. at about 4 a.m., they saw three persons going in a rickshaw. When the Flying Squad stopped near the rickshaw, the three persons rushed out and ran. Two of them escaped while Pirthi appellant was captured and made baparda immediately. He was carrying a 'Jhola' from which a number of Articles Exts. 1 to 8 and Fxts. 10 to 12 were recovered.

Pirthi appellant was taken to police station Adampur. He was lodged in the jail on the afternoon of 4.10.1961 and was shown to have been kept baparda throughout. He was put up for identification on 20th January, 1962, fit a test parade and was identified by Smt. Dhakna (P.W. 4) and Muslaqeem (P.W. 5) & Bashir (P.W. 21) and Lachhman (P.W. 24). Out of these, the learned Sessions Judge has relied upon the evidence of identification by the three witnesses other than Bashir who did not identify Pirthi appellnnl at the trial.

3. It appears that Samual, appellant, resident of village Bara Gaon, police station Bagaha, from the district of Champaran, in Bihar, who was residing at May in the district of Azamgarh at'the time of the occurrence was also suspected after the arrest and interrogation of Pirthi appellant. It is alleged that he could not be found when the police looked for him. Certain items of clothing were recovered when his quarter was searched on 5.10.1961 in the presence of Vir Shamsher, the father of Samual. But, these were not connected with the dacoity at Umraha Bazar. This appellant surrendered in the Court of the Additional District Magistrate at Varanasi, on 30.3.1962, when he was taken into custody and made immediately Baparda and sent to jail. He was put for identification at a parade on 28.4.1962 and correctly identified by Smt. Dhakna (P.W. 3) and Gauri (P.W. 22) and Lachhman (P.W. 24) who have been relied upon by the learned Sessions Judge for convicting this appellant.

4. The main attack upon the evidence of identification against the two appellants relates to the reliability of the identifying Witnesses who are said to have seen the dacoits. So far as Smt. Dhakna (P.W. 3) is concerned, it is pointed out that she identified two suspects correctly and identified two wrong persons in the test identification parade of other suspects. Therefore, it is pointed out that her final result is two right against two wrong identifications. The trial Court considered Smt. Dhakna a sufficiently good identifying witness on the ground that the parade at which the appellant Pirthi was identified was separated by three months from the parade in which the appellant Samual was identified. Smt. Dhakna, would, even if this was a correct test to apply, be an unsatisfactory witness of identification against Pirthi appellant inasmuch as her results would be lower than 50 per cent if her successful identification of Samual is not taken into account. So far as the testimony of Smt. Dhakna against Samual appellant is concerned, it is true that the test parade was held three months later than the first one, but I do not think that the trial Court was justified in not taking into account the wrong identifications made at the earlier test parade held at a time when her memory was fresher.

In my opinion, the rule that results of test identification parades separated by too long intervals of time should not be considered together ought to apply only to exclude later test indentation parades and not earlier ones when the memory is

fresher. Therefore, I hold that Smt. Dhakna (P.W. 3) is not a sufficiently reliable identifying witness against Samual appellant also. She does not give any special reason for remembering the features of either the appellant Samual or the appellant Pirthi.

5. As against Mustaqeem (P.W. 5), it is pointed out that he made the statement that he saw no dacoits standing near the well where other witnesses saw them and also that he did not see Kamta, who had been injured at the outset of the dacoity, and that he even stated that he hid not see Nankoo at the time when he arrived at the spot where the dacoity was going on. Afterwards, he also stated that he did not remember whether he saw Nankoo at all so long as he remained at the scene of occurrence. After having gone through the whole statement of Mustaqeem closely and comparing it with the statements of other witnesses, I find that he omits earlier incidents from his account simply because he arrived later at a time when the dacoits had gone ahead towards the north and had finished with Nankoo. He had however, seen the dacoits when they were returning from the north towards the south and he chased them after they had gone past him. It is true that he also did not give any reason for remembering the features of the dacoits and not give any description of any dacoit.

It is, however, not established that there is any such peculiar feature in the face of Pirthi, whom he identified, that an omission to give any description of the features of Pirthi could affect the credibility of the witness. Often, there are faces of which the impressions may be retained out which cannot be described properly by villagers or even by more educated people. The fact that a witness succeeds at a test identification proceeding which is shown to be above board, as in the present case, demonstrates that the picture of the suspect identified must have been fixed on the mind of the identifying witness. The evidence of the witness Bashir (P.W. 21), who identified Pirthi only, need not be considered as he did not identify Pirthi at the trial at all.

6. Gauri (P.W. 22) has his house slightly to the north of the house of Nankoo. It was pointed out that he had stated in the course of investigation that he 'did no recognise (nahin pahchana) them at that time.' Although this dubious statement

was made by him before the Investigating Officer, it was not clearly proved to have reference to the dacoits, and, even if it were assumed that the word 'them' was used to make a reference to the dacoits, the particular time to which reference was being made had not certainly been brought out. He stated even at the trial that he could not 'recognise' dacoits when they were at the well. This means that he did not see them well enough when they were at the well. After that, this witness saw four or five dacoits beating Nankoo and his wife. After that, the dacoits came to his own house and looted Rs. 22. After that he came out into the open and saw the faces of dacoits in the light of torches of Bashir and Badal, and possibly also of Lachhman. He had also seen the snatching of the ornaments of Smt. Gulabi. He had, after the dacoity, chased the dacoits.

Therefore, even if it be assumed that he meant to say that he had not seen the dacoits well enough at a particular stage, probably when they were at the well, it did not mean that he did not see them well enough at any stage so as to be able to recognise them afterwards. No such contradiction or improbability which could affect the credibility or reliability of his evidence was brought to my notice in spite of very prolonged arguments relating to his testimony.

7. The evidence of Lachhman (P.W. 24), who is said to have watched the whole occurrence for the longest period of time, was subjected to greatest amount of criticism. He had no doubt stated in the course of his examination in chief that Nankoo and his wife ran towards the north and that the dacoits snatched the Sikri from the neck of Nankoo's wife, but, in the course of his cross-examination, he stated that he did not see the wife of Nankoo at all and that he had only heard about it afterwards from villagers. It seems rather odd that he failed to see such a striking incident as the snatching of Smt. Gulabi's Sikri in the course of the dacoity if he was watching the dacoits all the time. He also stated that he first saw the dacoits coming out of the lane and going towards the house of Nankoo and others and that the dacoits were facing north and that he was at a distance of 10 or 15 paces from towards the south at that time.

In that position, the faces of the dacoits would not be visible. He also stated that he hid behind the neem tree in front of his house before Gauri was looted and that

he did not go into the lane at all. He was probably in hiding after the shooting. But, he tried to make out that he saw the dacoity from the beginning to the end. Even if this was true, the fact that he omitted to notice such prominent features as the dacoits snatching the Sikri from Smt. Gulabi a few steps to the north and the fact that Kamta was lying a few steps away after having been shot at shows that his powers of observation are not reliable at all.

8. Some argument has been advanced about differences in the sequence of events given by different witnesses or by the same witness at different stages. I think that such differences in the sequence of events tried to be recalled after a lapse of nearly two years are not unnatural. Lachhman appears to be an unsatisfactory witness of identification because it is not clear from his evidence what he actually saw. It is noteworthy that no witness of identification has tried to give the particular act which he saw performed by a particular accused whom he identified. Nor did any witness give any description which could fit a particular dacoit or mention any characteristic in the physiognomy of a particular dacoit which could enable him to remember the face of that particular dacoit. Although such evidence of identification is not necessarily untruthful or incorrect, yet its reliability is diminished if this is the position in the case of any dacoit who has prominent facial or other physical peculiarities.

9. Reliance was placed on behalf of the appellants on Maula Dad v. Emperor AIR 1925 Lah 426 where it was held with regard to the evidence of identification in that case:

As the night was dark, it is difficult to believe that he could identify any of them after about two or three months. If he had given some description howsoever slight, of some or all of the culprits, his evidence as to subsequent identification might have carried some weight, but, as he gave no description whatsoever and stated, on the other hand, that MX or 11 of them wore mundasus (i.e. were muffled) and that five or six of them were Sikhs, his testimony as to identification could not be relied upon.

Reliance was also placed on Nathwa v. State : AIR1951 All452 where it was observed by V. Bhargava, J. with regard to evidence as to the identity of a man

whose face was said to have been seen in the course of pursuit when he looked back and fired at his pursuers:

In this connection, it is also important to note that during the investigation none of these witnesses gave any description al all of the man who had escaped at the time of the raid. In fact, I have to remark at this stage that in this ease the investigation by the circle inspector of police appears to have been highly unsatisfactory. All that the investigating officer seems to have done was to record the statements of members of the raiding party and to take the statements of the persons, who were captured on the spot. He seems to have taken no trouble to do anything further in this case and he did not even take the elementary precaution of asking for the description of the escaped man from the witnesses who told him that they had seen his face and would be able to identify him later.

10. On behalf of the State, my attention was directed to the case relied upon by the learned Sessions Judge, Ram Pal v. the State 1954 All WR (AC) 627 where Asthana, J. held with regard to a similar contention:

It is true that the witnesses have admitted in their statements that they did not describe the features of the dacoits which they had recognised in their statements before the police but that alone does not discredit their testimony. It is a matter of common knowledge that during the investigation the witnesses examined by the police answer only those questions which are put to them, It may be that the investigating officer did not ask the witnesses if they could describe the features of the dacoits whom they had seen and recognised and as this question was not put to them they did not consider it necessary to describe their features themselves. The investigating officer probably asked them if they had seen the dacoits and could identify them, and they replied that they could identify them if they were shown to them. The statements of the witnesses during the police investigation are not detailed ones but very brief and in the circumstances the omission of the witnesses to describe the features of the dacoits does not necessarily mean that they did not know their features. It would have been different if the witnesses during police investigation had been definitely asked by the investigating officer if they could describe the features of the dacoits and then they would have said that

they could not do so. In my opinion, the mere omission on the part of the witnesses not to mention the features of the dacoits in their statements during the police investigation does not reduce the value of their evidence.

11. The evidence of identification based on personal impressions certainly requires careful scrutiny because it is apt to be deceptive and has led to miscarriages of justice as in the well known case of Adolf Beck which resulted in the appointment of a Royal Commission in I England. The Royal Commission expressed the' opinion that evidence of identification based upon personal impressions, uncorroborated by other facts, is an unsafe basis for conviction. There is, however, no such fixed rule of caution or practice laid down by Courts of law. Al any rate, no such rule has been adopted by Courts in this country. It has to be remembered that Adolf Beck's case, in which there was a test identification parade and correct identifications by a large number of witnesses of unquestionable integrity, was a case of a very extraordinary resemblance between Beck and the actual criminal named Smith who was found afterwards. A Full Bench of this Court has held in Jwala Mohan v. State : AIR1963 All161 that no hard and fast rules can be laid down to fetter the powers of Courts weighing evidence of identification by witnesses. All that can be said is that all the facts and circumstances of each case have to be carefully scrutinized.

12. Evidence of identification, based upon personal impressions, does call for caution before acceptance. Prof. Wigmore observed, in his 'Principles of Judicial Proof.'

(1) It calls for caution, in that testimonial assertions to identity must be accepted only after the most careful consideration. On the one hand, the process of recognition being often more or less subconscious, it may be quite correct, even though no specification of marks can be given as reasons for recognition. On the other hand, the risk of injustice being so serious, the great possibilities of lurking error should cause hesitation and the investigator should seek to establish as many marks as possible that may serve circumstantially to check the testimonial assertions. Al this point, there may be a logical value in number of witnesses.

(2) The process-also calls for precaution, in taking measures beforehand objectively to reduce the chances of testimonial error:

(i) At the time of original observation, the investigator (police) should obtain from the observer a note of any marks of the personality observed, so that there will be less need to depend later on the observer's memory.

(ii) At the time of presenting for recognition, whether upon arrest or at trial in the Court room; measures should be taken to increase the stimulus of association and to decrease the risk of false suggestion, (a) The persons to be identified should be clothed and placed (so far as feasible) in the same conditions as when originally observed, (b) The person to be identified should be presented in company with a dozen others of not too dissimilar personalities.

13. There is a wide-spread belief, perhaps not without some foundation, that the police in this country either coach witnesses for a test parade in such a way as to enable them to identify the suspects or that the suspects are often shown to the identifying witnesses before hand. Courts of law cannot, however, take such beliefs into consideration at all in deciding cases. The law presumes that witnesses giving evidence under solemn oaths before Courts of justice are witnesses of truth, unless the contrary is shown by those who challenge their veracity, as held by a Division Bench of this Court in Tahsildar Singh v. State : AIR1958 All214 .

14. The practice of pasting slips on the faces of the suspects so as to cover up any marks which may be used for the purpose of giving hints to the identifying witnesses has grown up in an attempt in counteract the suspicion against the police. I have had occasion to point out in other cases that this practice, resulting from allegations against the police, tends to falsify the test identification proceedings. The correct way of showing that the evidence of identification is above board and reliable is that investigating authorities should try to gather from witnesses the particulars about the features and the actions of the persons seen. It may be that in some cases the features cannot be properly described by witnesses. This is likely to be so when there is no special feature in the appearance of an accused person. Nevertheless, it appears to me that the

investigating officer must try to obtain descriptions from the identifying witnesses and say that they arc unable to give any, descriptions if that is the position in a case. I also find that the printed form used for the memorandum of a test identification parade contains a note at the end showing that the Magistrate conducting a test parade should ask the witnesses participating in the parade about the particular action in which they saw a particular suspect whom they identify.

I find that this direction is invariably overlooked by Magistrates conducting test identification proceedings. I find that the Magistrates are apt to examine minutely the bodies of the suspects and note down even and insignificant marks which are not likely to be seen in the course of a dacoity by witnesses. These marks are noted in the column meant for marks which are 'likely to affect identification.' The test identification proceedings would be more useful, if, instead of containing descriptions of minute marks on the bodies of the suspects, they contained the statements of the identifying witnesses about the particular action in which particular suspects were seen. This would help to make the test identification proceedings more reliable guides and more effective tests of truthful identifications.

15. In the present case, I find that the witnesses have deposed that the Investigating Officer did not ask for descriptions of the dacoits seen. I also find the Magistrate who conducted the test identification proceedings did not ask the witnesses at the test parades about the particular act which they saw the suspect identified performing. These features would not, in my opinion, be sufficient to justify discarding the evidence of identification altogether although they may diminish its value.

16. In the case of Pirthi appellant there are several identifying witnesses out of whom I have held at least two, namely Gauri (P.W. 22) and Mustaqeem (P.W. 5), to be sufficiently reliable. Moreover, no particular feature in the appearance of Pirthi appellant has been brought out from the cross examination of witnesses so as to make it possible to argue that a failure to note that particular feature in the appearance of any suspect indicated that Pirthi appellant was not there. It was

argued that this appellant was identified because he has a deformed and bent little finger on his left hand and that the toe of the left food was also somewhat twisted and that no-special precautions were taken in respect of these. As the trial Court has observed, these features were shown in column No. 3 for marks likely to affect identification,' although it appears to me that they were not likely to be observed by a witness in the course of a dacoity and, therefore, not 'likely to affect identification.' Nevertheless, the Magistrate who conducted the test parade took the precaution of covering the body of Pirthy and the other participants in the parade with blankets upto the chest.

It was argued that either the little finger of the left hand must be still visible while holding the blanket or that precaution was not effective. The basis for this argument was a statement shown to have been made by Mustaqueem (P.W. 5), in the Committing Magistrate's Court that he had looked at the faces, bodies, hands and feet of the participants of the parade welt before identifying. It seems likely that the statement was made in the form of an affirmative answer given to a leading question put by the defence counsel who had the bodily peculiarities of Pirthi in. mind. Unfortunately, the evidence is not taken down in the Mofussil in the form of questions and answers. At any rate, the witness Mustaqeem did not remember such a statement, and the statement of the Magistrate who conducted the test parade of Pirthi, together with the entry in the column 4 of the identification memo, proves that the body of Pirthi was covered in such a way that the witnesses could not have seen the little finger of the toe of Pirthi. No witness stated that these parts of Pirthi's body were visible during the test parade, These peculiarities could not be ordinarily expected to be observed in the course of the dacoity or described by the witnesses to the investigating officer.

Moreover, in the case of Pirthi, the evidence of identification is corroborated strongly by the fact that, very shortly after the dacoity, he was arrested with some looted property in his possession and that he tried to run away on having been detected. It was contended that the Jhola seized from him and alleged to have contained a number of articles was too small to hold all these articles. A practical demonstration at the hearing in this Court before me showed, as it had been done in the trial Court, that all the articles said to be found in the Jhola could be stuffed

into it except a piece of cloth which could be kept at the top and held in its place by the hand while holding the loops of the Jhola, Two of the objects found in the Jhola, a Kara (Ex. 5) and a Jantar (Ex. 6), were satisfactorily proved, as a result of a lest identification proceedings to be looted property of Srimati Dhakna.

17. Pirthi denied that he was arrested in the circumstances staled by the prosecution witnesses or that anything was recovered from hi-m. He alleged some enmity with a police constable, but no connection of that constable with the present case was proved. The evidence of Mohan (D.W. 4) produced by Pirthi in an attempt to prove that he was arrested from his quarter was rightly disbelieved by the trial Court on the ground that this very witness had stated that Pirthi's quarter was locked and was lying vacant for several days before the occurrence. In my opinion, the prosecution has succeeded in proving the case against Pirthi beyond all reasonable doubt.

18. As regards, the appellant Samual, I find that, out of the three witnesses who identified him, only Gauri (P.W. 22) is a sufficiently reliable identifying witness. It is true that in exceptional cases evidence of identification by a single witness may suffice. But, the general rule of practice and prudence in dacoity cases of the type before me is that a single satisfactory identification should not be acted upon.

19. The trial Court also relied upon the circumstance that Samual was absent from duty from 3.10.61 and that he was traceless until he surrendered in Court on 30th March, 1962. The trial Court inferred that Samual must have taken a fright after having learnt of the arrest of Pirthi who belongs to his community and caste of sweepers. On the other hand, Samual stated that he had been implicated falsely by Pirthi because he had beaten Pirthi for having teased his daughter and that he had also called a Panchayat of the Biradari at which Pirthi gave a writing Ext. Kha-9 confessing his guilt and asking for forgiveness. He tried to prove this allegation by producing Kishore Ram (D.W. 2) whose evidence was distrusted by the trial Court. The trial Court had held that the alleged confession of Pirthi did not appear to be genuine. Samual also tried to prove that he had gone to Gorakhpur on 3.10.1961 in connection with the betrothal of his daughter with the son of a man called Panchoo and he had produced T.N. Maghaiya (D.W. 1), a sweeper at

Gorakhpur. This defence witness has also been disbelieved by the trial Court on the ground that he is a sweeper belonging to Samual's biradari.

It was, however, clear that Samual was not present at Mau during the night of 3rd of October, 1961. It was also proved by producing Sri J.N. Dwivedi (P.W. 33), a sanitary Inspector of Mau Junction who used to take the attendance of sweepers at Mau Railway Station, that Samual presented himself for duty on 2nd of October, 1961, and that he was absent since then. The Investigation Officer Sri Indrasan Singh (P.W. 37) stated that he had tried to find Samual after the occurrence but was unsuccessful. The Investigating Officer did not state that he took any proceeding under Sections 87 and 88 of the Cr.P.C. against Samual although the house of Samual was searched on 5th October, 1962. Unfortunately, this part of evidence has not been put to Samual at all under Section 342 Criminal Procedure Code, so that, according to the law laid down in Zwinglee Ariel v. State of M.P. : AIR 1954 SC15 , the circumstance that Samual may have taken fright and remained traceless until 30-3-1962, when he certainly presented himself in the Court of the Additional District Magistrate at Varanasi, cannot be used against him.

20. It appears from the defence taken by Samual himself that he must have learnt that Prithi had named him. He might have learnt or suspected this when his house was searched on 5-10-1961. The fact that a man, after finding out that he is wanted by the police, lakes fright and absconds, is certainly suspicious but explicable on grounds other than guilt also. There is also an additional feature in the case of this appellant. He was put up at a test identification parade on 28.4.1962, more than six months after the occurrence. There is no such peculiarity proved in his appearance which could enable the identifying witnessed to remember his face for such a long period. Where the test identification parade takes place after a number of months, there should be some special reason, such as some marked peculiarity in the features of the suspect which had been described beforehand by the identifying witnesses, in-order lo inspire confidence in evidence of identification. It was also argued that a particular single 'identification' by a witness may take place even by chance. In Samual's case, there is only satisfactory identification against him and hot sufficient circumstantial corroboration. Therefore, I am inclined to give him the benefit of doubt.

21. It is true that fire arms were used in such a way as to injure a police constable at a time when the escaping dacoits were being chased, but it has not been even alleged that Pirthi appellant, either carried or used a fire arm in the course of the dacoity or the chase. I, therefore, consider a sentence of seven years' rigorous imprisonment will meet the ends of justice in the case of Pirthi appellant.

22. In the result, I reduce the sentence of Pirthi appellant from 10 years' rigorous imprisonment to seven years' rigorous imprisonment, but subject to this modification, his conviction is maintained and his appeal is dismissed. The appellant Pirthi is in jail and will serve out the remaining period of his-sentence. I allow the appeal of Samual and set aside his conviction and sentence. He is in jail and. will be released forthwith unless wanted1 in some other connection.

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