

Rameshkumar Soni and anr. Vs. State of Madhya Pradesh and Etc.

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Court : Madhya Pradesh

Decided On : Sep-10-1996

Reported in : 1997CriLJ3418

Judge : Tej Shankar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 216, 392, 397 and 411; M.P. Daketi Avam Vyapharan Prabhavit Kshetra Adhiniyam, 1981 - Sections 11 and 13; Arms Act - Sections 25(1) and 27; [Evidence Act, 1872](#) - Sections 25, 26 and 27; Madhya Pradesh Prisons Rules, 1968 - Rule 395

Appeal No. : Criminal Appeal Nos. 72 and 87 of 1986 and 130 of 1989

Appellant : Rameshkumar Soni and anr.

Respondent : State of Madhya Pradesh and Etc.

Advocate for Def. : P.D. Agarmal, Adv.

Advocate for Pet/Ap. : J.P. Gupta, Adv.

Disposition : Appeal dismissed

Judgement :

Tej Shankar, J.

1. An occurrence took place on 5-6-1984 at about 3.35 p.m. inside the compound of tahsil Seondha, district Datia, P.W. 2, Radheshyam, Clerk-cum-Cashier of Punjab National Bank, Seondha and Ramprakash Shukla, P.W. 3, the then Chowkidar of the said Bank were going after taking money from the treasury in an attache. As soon as they reached the aforesaid place three persons met them. One of them sprinkled chilli powder in the eyes of P.W. 3, Ramprakash Shukla, who was driving the cycle and Radheshyam was sitting on the carrier. As a result of sprinkling of chilli powder both of them fell down from the cycle. One of the Badmashes attacked Radheshyam Gupta with a danda and the third by his katta. The attache containing money was snatched. Gupta was threatened to be killed with katta and Badmashes snatched the attache and escaped. After the occurrence Ramprakash Shukla, P.W. 3, was directed by Shri Gupta to inform the Manager of the Bank and hence he went there. O.P. Sharma was the Manager at that time. He got threatened and perplexed. He went straight to the police station where the Station Officer was not available. He then went to the S.D.O. (P) and reported. The report is Ex. P-1. On the basis of the written report a case was registered. Usual investigation took place on 9-6-1984. P.W. 13, Rajendrasingh Raghuvanshi arrested accused Ramesh and prepared arrest memo Ex. P-59. He also recorded his statement whereupon he made a confessional statement with respect to the fact that he had hidden a sum of Rs. 94, 200/- in his private temple Anupganj Seondha and he made recovery. He recorded his statement Ex. P-61 and went to that place. Ramesh thereafter took out a Potli which contained a sum of Rs. 94,200/-. Panchnama Ex. P-61 was prepared by him. He also prepared site plan of that place, Ex. P-62. Again enquiry was made from Ramesh, and as a result of his disclosure Ex. P-49 was prepared by him. He thereafter went to the shop of Rambihari. On being taken to that place by Ramesh he took out a pant and bush-shirt Panchnama of which is Ex. P-53. The recovered articles were Article No. G-1 and G-3. Enquiry was also made from Rambihari and on his disclosure accused Govindsingh Parihar had given him Rs. 20, 800/- which he had kept in his house and he could get it recovered. He prepared Panchnama Ex. P-48 and went to that place and made recovery of Rs. 20,800/-. The memo of which is Ex. P-45. P.W. 14, Ramgulam Dohre arrested accused Ajmersingh on 11-6-1984, vide memo Ex. P-47. He also arrested Farid Mohammad on the same day and on

an enquiry he disclosed that he had given a sum of Rs. 10,000/- to Ajmersingh and remaining Rs. 11, 000/- out of a sum of Rs. 21, 000/- was kept by him and he will get the recovery made. The memo Ex. P-51 was prepared by him. In accordance with the information the accused took him to his house where he took out a plastic bag in which money was kept. Panchnama Ex. P-56 was prepared. He also enquired from Farid Mohammad and Govindsingh and came to know that Govindsingh had hidden a sum of Rupees 25,000/- and a 12 bore katta with its cartridges in his house. He prepared memo Ex. P-50 and accompanied the accused, notes were recovered and memo Ex. P-55 was prepared. Farid Mohammad also disclosed about the attache which too was recovered and memo Ex. P-68 was prepared. Search at the house of Ajmersingh was also made. Ex. P-47 was prepared. There was also recovery of Rs. 10,000/- and recovery memo Ex. P-58 was prepared. The accused persons as well as articles recovered were put up for test identification. After completion of the investigation a charge-sheet was submitted against all the accused persons. The learned trial Court charged accused Ramesh Soni, Farid Mohammad and Govindsingh Under Section 392, IPC read with Sections 11/ 13 of the M.P. Daketi Avam Vyapharan Prabhavit Kshetra Adhiniyam, 1981. Accused Govindsingh was further charged Under Sections 25(1)(a) and 27 of the Arms Act. Accused Ajmersingh and Rambihari were charged Under Section 411, IPC. Accused Rambihari was further charged Under Section 216, IPC. All the accused persons denied the charge and claimed that the police had falsely implicated them. The prosecution examined as many as 16 witnesses and relied upon documents Ex. P-1 to P-58 and several articles which were recovered. Accused persons filed two documents Ex. D-1 and D-2. After considering the evidence and hearing the parties the learned trial Court concluded that the prosecution had proved its case against accused Ramesh Soni, Farid Mohammad and Govindsingh and convicted them Under Section 392, IPC and Under Section 11/13 of Act, 1981 and each one of them were sentenced to a term of 5 years R.I. Accused Ajmersingh and Rambihari were, however, acquitted.

2. The State of M.P. has preferred appeal (Cr. Appeal No. 130/89) against acquittal of Ram Bihari and Ajmersingh whereas Ramesh Soni and Farid Mohammad have preferred Cr. Appeal No. 72/86 and Govindsingh Cr. Appeal No.

87/ 1986. As all the three appeals arise out of the same judgment and relate to the same offence, they have been heard together and are being disposed of by this common judgment.

3. The learned counsel for the accused/ appellants contended that the case of convicted appellants is based on the result of the identification proceedings. He urged that the identification proceedings are of no avail because according to the case of the prosecution itself chilli powder was sprinkled in the eyes and as such they could not see. They had no opportunity to see the Badmashes and could not identify them unless external aid was provided. Learned counsel also criticised the alleged recovery and pointed out that various articles including money are alleged to have been recovered but the recovery is also doubtful. He referred to the contradictions in the statements of witnesses with respect to place of recovery. His contention is that on the basis of the evidence produced by the prosecution it cannot be said that the case against accused persons has been proved beyond reasonable doubt. The conviction and sentence passed against them cannot, therefore, be sustained.

4. The learned counsel for the State, on the other hand, pressed the appeal preferred by the State against acquittal of Rambihari and Ajmarsingh and contended that there was recovery of looted property from them and they ought to have been convicted Under Section 411, IPC. As far as accused Ramesh Soni, Govindsingh and Farid Mohammad are concerned, he urged that there is sufficient evidence on record to convict the accused persons for the offence. He urged that there is identification evidence and during identification proceedings the accused persons were correctly identified. There is also evidence Under Section 27 of the Indian Evidence Act, resulting in recovery of articles disclosed by accused persons. Even if there are minor contradictions in the statements of witnesses they are not of much significance. Most of the looted property i.e. money and attache, was recovered and there is no reason to discard the evidence in that regard.

5. The fact of occurrence claimed by the prosecution does not appear to have been seriously challenged. The challenge is with respect to the involvement of the accused persons as no argument has been made with respect to the fact as to

whether occurrence had taken place or not. However, even if it has not been challenged, I deem it proper to discuss shortly the evidence relating to the occurrence. P.W. 2, Radheshyam Gupta, is an important witness in this connection. He has narrated that on 5-6-1984 at about 2 p.m. under the directions of the Manager of the Branch, Shri O.P. Sharma, he was sent to treasury Seondha to bring the amount of the salary of the teachers amounting to Rs. 1,62,513.70. Along with him P.W. 3, Ram Prakash Shukla, Chowkidar had also gone. They had gone on the cycle which was being driven by the Chowkidar. He had an authority from the Accountant to obtain the cash from the treasury. He obtained payment at about 3 p.m. He has categorically stated that in order to identify, he used to his signatures on the note packets as well on the last note. He had counted all the notes which were received from the treasury. He has detailed the denomination and number which he received. He had kept them in an attache which he had taken with him and had also put the slip in which he had made note about the details. One copy of this slip had been kept by him in his pocket. After locking the attache he and Chowkidar Shukla returned. As soon as they reached the turn of the Fort some Badmashes came out from the place of their hiding. They were three in number. One of them threw chilli powder on the eyes of Shukla. As soon as chilli powder was felt in the eyes both of them fell down from the cycle. As soon as he tried to rise after the falling one of Badmashes gave a danda blow on his back. The other caught hold of his shirt by collar from behind and put a deshi katta on his shoulder. He snatched the attache. He, thereafter tried to chase him and actually snatched from him but the Badmashes snatched the attache second time after showing pistol. All the three Badmashes thereafter escaped. This story has also been corroborated by P.W. 3, Ramprakash Shukla, who had accompanied him. Immediately after the occurrence Shukla went to the Bank to P.W. 1, O.P. Shanna, who was Manager of the Bank at that time. P.W. 1, Shri Sharma has also corroborated the above story to the extent that cashier R.S. Gupta and Shukla had been sent to treasury for bringing cash of the bill. The amount was Rs. 1,62,513.70. He further stated that at 3.35 p.m. Chowkidar Shukla went running and weeping to him and he disclosed that Badmashes had looted the cash. He thereafter narrated the occurrence disclosed to him by Ram Prakash Shukla which is in conformity with the statement given by P.W. 2, R.S. Gupta and P.W. 3,

Shukla. He thereafter went to the police station but the Thanedar was not available. He then went to the S.D.O.P. and got a report lodged. The Ex. P-I also corroborates the statements of these witnesses. The F.I.R. was lodged by P.W. 1.O.P. Sharma. In this way it has been amply proved that the occurrence had taken place as claimed by the prosecution in which the aforesaid amount was looted as stated by P.W. 2, R.S. Gupta along with P.W. 3, Ram Prakash Shukla. There does not remain any doubt so far as this story is concerned. I, therefore, hold that the prosecution has satisfactorily proved that an occurrence had taken place in which the aforesaid amount was looted as claimed by it.

6. Now I come to the most important point relating to the involvement of the accused. I have already pointed out above that the prosecution has claimed that sufficient evidence has been adduced in this case in order to bring home the guilt against the accused persons. The case against them rests upon the oral testimony of two eyewitnesses and the result of identification proceedings and the alleged confessional statement admissible Under Section 27 of the Indian Evidence Act.

Much emphasis has been laid by the learned counsel for the appellants on the identification proceedings. I, therefore, proceed to deal with it initially. It must be observed in the very beginning that the whole object behind identification proceedings is to furnish evidence to corroborate the witnesses tendered before the Court. The identification parade is only for the purpose of corroboration of the substantive evidence consisting of the statements of the witnesses recorded in Court. If the accused persons could not be sufficiently identified and there was no sufficient opportunity to the witnesses to see the accused and to identify them at the time of occurrence the result of identification loses its importance. It is also important to note here that the evidence of identification is a weak type of evidence. The very purpose of identification is to enable the witnesses to identify the persons concerned in the offence who were not precisely known to them. The Apex Court in AIR 1974 SC 791 : 1974 Cri LJ 674 (Sampat Tatyada Shinde v. State of Maharashtra) held as follows (para 16):

The evidence of test identification is admissible under Section 9. It is at best supporting evidence. It can be used only to corroborate the substantive evidence

given by the witnesses in Court regarding identification of the accused as the doer of the criminal act. The earlier identification made by witnesses at the test identification parade, by itself, has no independent value. Nor is test identification the only type of evidence that can be tendered to confirm the evidence of a witness regarding identification. The identity of the culprit can be fixed by circumstantial evidence also.

Thus, in view of the law laid down by the Apex Court in the aforesaid authority the test identification is not only type of evidence that can be tendered to confirm the evidence of a witness regarding identification. His involvement can be fixed by circumstantial evidence also. Here, in the present case, the prosecution adduced evidence of a test identification as well as the alleged recovery on the pointing of the accused persons which shall be dealt with hereinafter. As far as the test identification is concerned, I may point out that there are no fixed rules about the procedure which has to be followed while holding the test identification and as to who is competent as such to hold the test identification. I have been able to lay hand over para 9 of Rule 395 of the Madhya Pradesh Prisons Rules, 1968, which makes a provision with respect to the procedure in respect of under-trial prisoners who have to be subsequently identified. It provides :

(9)(a) Procedure in the case of under-trial prisoners who have to be subsequently identified.- When an under-trial prisoner who may have to be subsequently put up for identification by witnesses is admitted to jail, the Superintendent of Police or some Police Officer not below the rank of an Inspector shall inform the jail in writing at the time of admission, or as soon thereafter as possible, that the prisoner will be put up for identification.

(b) When such intimation has been received the Superintendent of jail shall issue instructions with a view to prevent the prisoner from disguising himself or changing his appearance in such a way as to make recognition difficult.

(c) At the time of identification parade the prisoner shall wear the same clothing as he was wearing at the time of admission. If he cannot wear his own clothes he shall wear clothes of a similar kind, e.g., if he is field labour he should not be dressed in the white clothes of a city man or vice versa. In all cases of doubt the

orders of the Magistrate conducting the identification should be taken. Before the proceedings begin, the Prosecuting Inspector and Counsel for the defence who shall be permitted to be present, may satisfy themselves that all the rules in this paragraph have been fully observed. The proceedings shall also be attended by a jail officer who shall carry out any order given to him by the Magistrate conducting the identification.

(d) The prisoner to be identified shall be placed among a number of prisoners as similar to him as possible in dress, stature and appearance and shall not be allowed to conceal his face or stature so as to impede recognition.

(e) When a prisoner who is wearing fetters is to be identified the prisoners paraded with him should be selected from among those who are wearing fetters. Conversely, if the prisoner to be identified is not wearing fetters none of those paraded with him should be wearing fetters. Where this is impracticable the method of covering up all prisoners in the parade, whether wearing fetters or not, up to the waist with blankets may be adopted.

8. The law with respect to test identification came up for consideration before a Division Bench of this Court in AIR 1965 Madh Pra 225 : 1965 (2) Cri LJ 507 (Narayan Singh Amarsingh). It was observed in this case that (para 18) :

As the identification parades are tests for eliminating false assertions and to guard against honest mistakes of the witnesses, the Courts require that they should be held under conditions most conducive to their being fair tests for the elicitation of truth, such as without undue delay, when the impressions are fresh and other influences are less likely to have operated, without giving an opportunity to the witnesses to see the accused or to acquaint themselves with his features with the aid of photographs, sketches, description or the like, by mixing the accused with sufficient number of other persons to eliminate chance identification, by mixing the accused with persons of the same race, culture, age, height and position in life, so that he is not easily picked out by reason of any of the aforementioned characteristics, by allowing the accused to select his own position in the line, by concealing the distinguishing marks of the accused if any by not permitting the identifying witnesses on their leaving the parade to communicate with others who

are yet to identify, by holding the parade free from the influence of the police and the prosecuting agency etc.

9. A detailed consideration so far as the question of identification is concerned was made by a Division Bench of the Allahabad High Court as early as 1961 in AIR 1961 Allahabad 153 : 1961 (1) Cri LJ 340 (Asharfi v. State). In this case their Lordships of the Allahabad High Court considered in great detail as to what is the object of test identification, who can hold it and what is the legal effect of identification. Their Lordships also took into consideration various aspects relating to identification including delay in holding test identification, conditions necessary for acceptability of identification evidence, identification at the instance of the accused etc. The detailed consideration made in this authority and the law laid down therein still holds good and has not been dissented by any High Court. In this case their Lordships also took into consideration a Division Bench decision of this Court reported in 1960 MPC 216, State of M.P. v. Manka and quoted the following passage from that judgment (at p. 162, para 33 of AIR):

The evidence of identity must be thoroughly scrutinised, giving benefit of all doubt to the accused; but if after a thorough scrutiny there appears to be nothing on the record to suspect the testimony of the identification witnesses, the Court ought not to feel shy of basing a conviction on such evidence alone, because of the bare possibility that there could be honest though mistaken identification.

Their Lordships agreed with the above observation made by this Court. After mentioning agreement with the above decision of the Division Bench of this Court, it held that 12 questions are apt to arise and must be answered by the Court to its satisfaction before it can accept the evidence. They are as follows :

- (1) Did the identifier know the accused from before
- (2) Did he see him between the crime and the test identification
- (3) Was there unnecessary delay in the holding of the test
- (4) Did the Magistrate take sufficient precautions to ensure that the test was a fair one

- (5) What was the state of the prevailing light
- (6) What was the condition of the eye-sight of the identifier
- (7) What was the state of his mind
- (8) What opportunity did he have of seeing the offenders
- (9) What were the errors committed by him
- (10) Was there anything outstanding in the features or conduct of the accused which impressed him
- (11) How did the identifier fare at other test identifications held in respect of the same offence
- (12) Was the quantum of identification evidence sufficient

After laying down the aforesaid questions the learned Judges specifically held that no hard and fast rule can be laid down and each case has to be dealt with on its own merits. I with great respect to the learned Judges fully agree and hold that these questions are of universal application. There cannot be any denial with respect to the questions mentioned by the learned Judges in the said authority and while acting upon the test identification the Court must satisfy itself with the answers of these questions. If the Court comes to the conclusion that answers to these questions do not convey that the result of the test identification is reliable and the test identification is not in conformity with para 9 of Rule 395 of the Madhya Pradesh Prisons Rules mentioned above, it cannot be relied upon. On the other hand, if the Court concludes that there is nothing on record to suspect the testimony of identification witnesses the Court can base conviction on the basis of such evidence alone as held by the Division Bench of this Court in the aforesaid authority of M.P. State v. Manka.

10. There are other authorities as well in which more or less similar view was taken as was taken in Asharfi's case (1961 (1) Cri LJ 340) as well as by this Court. In AIR 1960 Mad 125 : 1960 Cri LJ 358 (Kamaraj Groundar) at page 130 in para 26 the counsel laid down certain hints and precautions which should be noted or

observed. The precautions given in detail and not being repeated for the sake of brevity. It has to be observed that they are more or less similar to those mentioned above. A Division Bench of the Kerala High Court also considered the guiding principles for test identification parade in 1989 Cri LJ 2106 (Mohanan Nair v. State of Kerala). They are also similar. Thus, before acting upon the test identification the Court must be satisfied that it is trustworthy and reliable. I may also add here that the Apex Court in AIR 1979 SC 1831 : 1979 Cri LJ 1358 (Somappa Vamanappa Madar Shankarappa Ravanappa Kaddi v. State of Mysore) held that if in an identification parade the accused was identified by most of eyewitnesses then because of some defects in proceedings relating to identification parade evidence of eye-witnesses regarding participation of the accused cannot be rejected.

11. Having discussed the law on the subject of test identification it has now to be seen as to how far the prosecution it has been able to prove in the case in hand that the test identification is reliable and convincing. I have already believed the story put forward by the prosecution so far as the occurrence is concerned. Consequently it has to be taken that three Badmashes had committed the offence. Learned Counsel for the accused-appellants argued vehemently that in this case the evidence on record shows that there was no opportunity for the witnesses to identify the accused persons and in this connection he referred to the statements given by the witnesses. I proceed to deal with the evidence as to whether the witnesses had an opportunity to see the accused persons. According to the statements of the witnesses referred to above, three Badmashes came out from their hiding. Both the witnesses, R.S. Gupta and Shukla stated that as soon as they reached near the turn in the Fort 3 Badmashes came from their hiding, one of them sprinkled chilli powder in the eyes of Shukla as a result of which both of them fell down from the cycle. Learned Counsel for the appellants drew my attention to the statement of PW 1,0. P. Sharma who had stated in para 15 that Ramprakash Shukla told him that chilli powder was sprinkled in his eyes and he could not see and he was rubbing his eyes before him and tears were coming out. On the basis of this statement he contended that this statement was given by Ramprakash Shukla immediately after the occurrence, as such it should be taken that he was not in a position to see. To my mind, this statement cannot by itself could not see

because even according to the statement of Shri Sharma he did not ask the Chowkidar to go to hospital. Had it been, a fact, that he was in great trouble the natural course on his part should have been to go to hospital but neither Shri Sharma asked him nor he himself had gone. Apart from it, it is only a statement made by Ramprakash Shukla to him and it amounts to hearsay evidence. We have to look to the statement of Ramprakash Shukla himself as he had also appeared as a witness. PW 3, Ramprakash Shukla in his statement categorically stated that he had seen all the three Badmashes properly and had identified them. To quote his own words he stated that 'Maine thion Badmashon ke achhi tarah se pahchan liya tha'. He also stated in para 5 that after the occurrence he had gone to identify the Badmashes in the jail and he had identified all the three. He had identified Rameshkumar Soni, Govindsingh and Farid Mohammad. In para 10 he has specifically stated that prior to the occurrence as soon as the Badmashes moved towards him he seen them. He further stated that even after chilli powder was sprinkled he had seen them. Specific question was put in cross-examination to this witness with respect to the person who had sprinkled the chilli powder and he stated that it was Farid Mohammad. He further stated that Farid Mohammad sprinkled chilli powder and did nothing else. In the next breath he stated that Farid Mohammad had beaten Guptaji with danda and when he had sprinkled chilli he had a danda. He further deposed that out of the three Badmashes one had snatched the attache from Guptaji and the other had put country made katta on Guptaji. He, however, could not say as to who had snatched the attache. The occurrence took hardly a minute or two. He also stated that after the chilli powder was sprinkled his eyes were closed and he could not see the person who had snatched the attache and who had put country made pistol. A suggestion was given to this witness in cross-examination that after the arrest the Badmashes and notes were shown to him at the police station and he had specifically denied this suggestion. Thus, to my mind it cannot be said that he had no opportunity to see the Badmashes. The statement of O.P. Sharma that Ramprakash had told him that he could not see cannot be accepted in view of the specific statement of Ramprakash Shukla shown above. There is nothing in the statement of P.W. 2, R.S. Gupta to show that any chilli powder was sprinkled in his eyes. He specifically stated that one Badmash sprinkled chilli powder in the eyes of Shukla and as soon

as chilli powder was sprinkled both of them had fallen down from the cycle. One of Badmashes gave a danda blow on him on the back and the other caught hold of him by collars from behind. A katta was put on his shoulder and his attachee was snatched. In para 21 he specifically stated that he could not tell as to who had sprinkled chilli powder in the eyes of the Chowkidar and who had hit him with danda and who had snatched the attache. He was terrified. But he had specifically stated that he had seen the person who snatched the attache and he identified him. In his cross-examination he stated pointing out towards Govindsingh accused that it was he who snatched the attache. He Jias also given details of the clothes which were worn by Govindsingh at the time of occurrence in para 22 of his statement made in cross-examination. Learned Counsel for the appellants contended that had it been a fact that he had disclosed the dress and identification marks (Hulia) of the accused to the Manager it must have found place in the F.I.R. but it is not there. He, therefore, urged that it is an afterthought. It must be kept in mind that F.I.R. is not an encyclopedia Minute details need not be mentioned in the F.I.R. The occurrence had taken place in broad day light and the witnesses were terrified as stated by Gupta. Under these circumstances even if these details were not disclosed to the Manager or had been disclosed but not mentioned in the F.I.R., to my mind, it will not go to show that the statement of the witness is unreliable, thus, it is evident from the statements of both these witnesses that they had opportunity to see the Badmashes. It has also not come in the statements of these witnesses nor there is anything on the record to show that the Badmashc were shown to the witnesses after the occurrence and before the test identification. It has also come in evidence that at the time of occurrence it was summer season. When the occurrence had taken place in the day, at that time apart from the two witnesses there was none else. Thus, the possibility of the presence of any other person at the time of occurrence is also ruled out. In this way, there were only two persons i.e. the two witnesses examined by the prosecution at the time of occurrence and both of them have very clearly stated that they had seen and identified the Badmashes.

12. Ramesh Soni was arrested on 9-6-84 by PW 13. Rajendra Singh Raghuvarshi and he prepared memo Ex. P-59. He was arrested before Mangal Singh Ulfat Singh. P.W. 9, Ulfat Singh had also stated that Ramesh Soni was arrested and

memo Ex. P-59 was prepared which bears his signatures. Accused Govind Singh and Farid Mohammad were arrested on 10-6-84 by P.W. 15, B.L. Shukla, who was A.S.I. at P.S. Seondha from 25-6-83. He arrested them before P.W. 10, Madhuri Sharan Sharma but Madhuri Sharan turned hostile, the mere fact that the witness has not supported the prosecution case cannot itself be sufficient to show that the theory that accused was arrested is unbelievable. Shukla had also prepared memo Ex. P-64 and had obtained the signatures of the two accused persons i.e. Govind Singh and Farid Mohammad. He has also stated that at the time of his arrest Govind Singh was found in possession of Rs. 420/- which too were taken into possession and memo. Ex. P-65 was prepared. It too bore the signatures of Govind Singh. All the three accused persons were thus arrested soon after the occurrence as the occurrence had taken place on 5-6-84. They were put up for test identification on 23-6-84 and all the three Badmashes were correctly identified by both the witnesses, namely, R.S. Gupta and Ramprakash Shukla, vide memo Ex. P-7, P.W. 16, Yadram Verma, who was Naib Tahsildar Datia, had conducted the identification proceedings of accused Ramesh Soni, Govind Singh and Farid Mohammad. He specifically stated in his statement that he had mixed 12 persons of the same Hulia as that of the accused persons. He had mentioned the precautions taken by him, vide Ex. P-7. He mixed the persons of the same age group. In para 6 he deposed the procedure which he had adopted. It was suggested to him that the accused persons had disclosed at the time of identification proceedings that the police personnel had shown them to the witnesses but he specifically denied. Thus, his statement proves the identification proceedings. The memo Ex. P-7 proves that the accused persons were correctly identified by both the witnesses i.e. R.S. Gupta and Ramprakash Shukla. It has been contended for the accused appellants that the prosecution has not led any evidence to show that the accused persons kept Baparda from the time of their arrest upto test identification and it was the duty of the prosecution to have produced the link evidence to show that the accused remained Baparda throughout this period and there was no opportunity for the witnesses to see them. It is true that the prosecution should have adduced evidence to show that the accused persons from the time of arrest were made Baparda and as mentioned above, it is also required that it must be proved that information was given to the

jail authorities in writing at the time of admission or as soon as thereafter as possible that the accused persons were to be put up for test identification, vide Rule 395 of the M.P. Prisons Rules. In the present case there is no evidence to this effect. I may emphasise at this place that the prosecution must adduce evidence to exclude every possibility of the fact that there was an opportunity for the witnesses to see the accused persons. During cross-examination suggestions were given to the effect that the accused persons were shown to the witnesses and witnesses had denied. It is significant to mention that accused persons in their statements have not deposed that they were shown to the witnesses. They also did not say so when witnesses had gone to identify them. In answer to question No. 54 accused Ramesh Soni, (Govind Singh and Farid Mohammad have specifically admitted that in the identification proceedings the witnesses had identified (hern. Even Even they did not claim that they were shown to the witnesses. Thus, in this view of the matter in spite of the fact that the prosecution has failed in its duty in adducing aforesaid evidence, the statements of witnesses given on oath that they identified the Badmashes and they had accordingly identified them in test identification cannot be discarded.

13. I have already said above that the evidence on record goes to show that the three Badmashes, namely, Govind Singh, Ramesh Soni and Farid Mohammad were correctly identified by the witnesses in test identification and there is no reason to discard the testimony of witnesses as well as the result of test identification. Even if for the sake of argument it is taken that there is any doubt in this regard, I may mention that there is other ample evidence to connect these three accused persons with the offence, it consists of evidence Under Section 27 of the Indian Evidence Act. It has come in evidence I hat the money which was Saken from the treasury and which was looted was counted by the witness P.W. 2, R.S. Gupta and he had put his signatures on the note packets as well as on the last note. Evidence has been led by the prosecution to show that there was recovery as a result of the disclosure made by the accused persons of the looted notes. PW 15, B.L. Shukla had arrested accused Govind Singh and Farid Mohammad. P.W. 14, Ramgulam Dohre, slated that on 1 1-6-84 he made enquiry from accused arid Mohammad and he had disclosed that he had Rs. 21,000/- with him. Out of them he had given Rs. 10,000/- to Ajmersingh Sarpanch and the

remaining Rs. 11,000/- were kept by him after wrapping them in a shirt in a plastic bag in a pit at his house and he could give them. He recorded this information in memo Ex. P-51. He (then went along with Mangal Singh and Lakhan Singh to his house where accused Farid Mohammad removed a bora and dug a pit and brought out a plastic bag which was wrapped in a shirt. It contained a packet of 100-100 notes and another of 10-10 rupee notes. It was sealed and memo was prepared which is Ex. P-56. He has also stated that on enquiry accused Govind Singh Lakhansingh that Rs. 25,000/- and a 12 bore katta in which there was a cartridge were kept in a tin dibba in straw in his house and he could give them. He prepared Ex. P-50 which bore his signatures and signatures of witnesses. He then went, to the house of the accused and the accused brought a dibba from Bhusa which was wrapped in a dhoti. There were two packets of 100-100 rupee notes and five packets of 100 notes each 10 10 rupee notes. Thus, in all Rs. 25,000/- were given by the accused to him besides it there was also 12 bore katta in which there was a cartridge. A memo Ex. P-55 was prepared. He further stated that on 11-6-84 at 11.30 hours further enquiry was made from the accused Farid Mohammad where upon he made a disclosure of an attachee which was cut from upward by a knife. He had disclosed that he had kept it at Madan Tal Seondha under a Ghati and he could produce it. This information was given before the aforesaid witnesses Mangalsingh and Lakshansingh and memo Ex. P-52 was prepared. They then went along with the accused to Madan Tal Seondha where the accused got a black attachee Aristocrat. This attachee was opened by him with the key which was taken into custody from the cashier of Punjab National Bank. From this attachee 51 notes of 10 rupee denomination, one 2 rupee note and one coin of one rupee and seventy paise i.e. a total sum of Rs. 513.70 was found. There was also a paper in which details of the notes were mentioned. The attachee had become dirty with soil. He prepared memo Ex. P-57 and obtained signatures of witnesses and the accused. The attachee was Article F. The Parcha which was recovered was Ex. P-68.

14. The above witness Ramgulam Bohre had also arrested accused Ajmersingh on 11-6-84 and prepared memo Ex. P-47. On enquiry from him he too disclosed that he had kept Rs. 10,000/- which were given to him by Farid Mohammad. He had hidden them in his house and he could produce them. Ajmersingh then went

to his house and a packet of 100-100 rupee notes i.e. a sum of Rs. 10,000/- was brought by him which were sealed and a memo E. P-58 was prepared.

15. PW 13, Rajendra Singh Raghuvanshi had arrested Ramesh Soni on 9-6-84 and had also made enquiries from him. The accused Ramesh Soni disclosed before Mangalsingh and Ulfatsingh that he had hidden Rs. 94,200/- at his private temple of Anup Ganj Seondha under the doll of the deity in a room and he could get them. He, there after prepared memo Ex. P-60 and went to the temple. Ramesh Soni took out a key, opened the lock and then opened the door of the room, he went inside and from the door under the deity he took out a Potli which was opened before him and witnesses. It was found that it contained a sum of Rs. 94,200/- consisting of 8 packets of 100 rupee notes 7 packets of 10 rupees notes, 12 packets of 5 rupee notes and 12 packets of one rupee notes. He prepared Panchanama Ex. P-61 and obtained the signatures of the witnesses. The recovered article is article H. The keys were also taken under custody by the witnesses, vide memo Ex. P-63 and it is article 1. He had also prepared site plan of recovery Ex. P-62. Rarnesh Soni was again interrogated on 10-6-84 and in his interrogation he disclosed that he had kept his pant and bush-shirt with Ram Bihari and asked him to burn them and get them destroyed. He then prepared memo Ex. P-39. He went to the house of Ram Bihari who had tailouring shop. He took out a dirty black colour pant and bush-shirt and prepared memo Ex. P-53. The pant and bush-shirt are articles G1 and G3. He then interrogated Ram Bihari and he disclosed that Govind Singh Parihar had given a sum of Rs. 20,800/- to him which were tied in a Tehmad_ and he had kept in a pit under lock and key at his house and he would get them recovered. The witnesses then went to his house and prepared Ex.. P-48 and accused Ram Bihari went inside his house and took out an attachee, opened the lock, took out a Potli in which there was a terecot old pant and in its packet a slip of New Bombay Tailor was stitched. A sum of Rs. 20,800/- was recovered which consisted a packet of 100 rupee notes amounting to Rs. 10,000/, 6 packets of 10 rupee notes i.e. Rs. 6,000/-, 8 packets of 5 rupee notes i.e. Rs. 4,000/- and 8 packets of one rupee notes i.e. Rs. 800/- and thus a total sum of Rs. 20,800/- was recovered. A memo Ex. P-54 was prepared and signatures of witnesses and accused were taken. The pant recovered is Article G2, the key and lock is article G5. The photograph of Ram Bihari recovered from

him is article J, one inland letter Article K and Lungi is article L. He also prepared map of the place of recovery, Ex. P-45 and memo prepared by Ram Bihari is Ex. P-46. Thus, there were recoveries as pointed out above from all the 5 accused persons of the recovered articles. Learned Counsel for the accused-appellants criticised the recovery and contended that there are contradictions in the statements of witnesses relating to the recovery from accused persons with respect to place of recovery as well as possession. Learned Counsel pointed out that in view of the contradictions relating to the place of recovery etc. the recovery becomes doubtful. The learned trial Court considered in great detail the evidence relating to the recovery as a result of disclosures made by the accused persons and has given plausible reasons for accepting the recovery. I do not think that it is necessary to repeat those reasons as I am in full agreement with the reasons of the learned trial Court. The statements of all the witnesses examined in connection with disclosures have been seen to cross-examination. A careful scrutiny shows that their testimonies remained unshattered, except for some minor contradictions, there is no material contradiction which may go to show that the statements are not worth reliance. Minor contradictions are bound to happen as human memory cannot reproduce in verbatim. In this view of the matter even if there-are some minor contradictions I agree with the learned trial Court that the evidence adduced in this connection is trust-worthy and reliable. The findings arrived at, therefore, do not call for any interference.

16. The next question is as to how for the evidence adduced by the prosecution with respect to disclosure by the accused persons and recoveries thereafter in pursuance of the said disclosure is admissible under the law. In this connection it is important to mention that in AIR 1976 SC 483 : 1976 Cri LJ 481 (Mohammed Inayatullah v. State of Maharashtra) the Hon'ble Apex Court has laid down the limit and scope of provable information. It has held :

Section 27 is in the nature of an exception to the preceding sections particularly Sections 25 and 26. The first condition necessary for bringing this section into operation is the discovery of a fact, albeit a relevant fact, in consequence of the information received from a person accused of an offence. The second is that the discovery of such fact must be deposed to. The third is that at the time of receipt of

the information the accused must be in police custody. The last but the most important condition is that only 'so much of the information' as relates distinctly to the fact thereby discovered is admissible. The rest of the information has to be excluded. The word 'distinctly' means 'directly', 'indubitably', 'strictly', 'unmistakably'.

It has also been held in the above case expression 'fact discovered' includes not only the physical object produced but also the place from which it is produced and the knowledge of the accused as to this. In this case the Apex Court followed AIR 1947 PC 67 : 1947 (48) Cri LJ 533 and AIR 1962 SC 1116 : 1962 (2) Cri LJ 251. Thus, in order to bring the evidence adduced within the ambit of Section 27, it must be shown that discovery of a fact is relevant, is in consequence 'of the information received from a person accused of an offence. Here the evidence adduced showed that the accused persons gave information as a consequence thereof the properties were recovered as they are relevant, as shall see hereinafter. The second condition is also fulfilled in this case because it requires that the discovery of fact must be deposited to. All the accused persons made disclosures as is evident from the statements of witnesses as well as various memos relating to accused persons. The third condition too is established in the present case because at the time when the information was received they were in police custody. It is significant to mention that so much of the information as relates distinctly to the fact thereby discovered is alone admissible. I need not mention in detail with respect to each of the accused persons because the evidence in that respect has already been mentioned with respect to each and every accused. There has been discovery of the material i.e. notes, attachee, clothes etc. as a result of the information given. Thus, this evidence is admissible in law.

17. As far as the question of connecting the articles recovered with the offence is concerned it may be mentioned that the articles were put up for test identification. PW 5, K.N. Sharma, who was Naib Tahsildar at that time conducted the identification proceedings on 25-6-84 of attachee, pant, shirt, danda at tahsil Seondha. He had prepared memo Ex. P-8 on 25-6-84. He had also conducted proceedings with respect to identification of signatures on the notes from

Radheyshyam Gupta and Brijmohan Pashricha, Cash Officer, State Bank of India, Datia at 2.30 p.m. and prepared memo Ex. P-9. These witnesses have also stated that they had gone for identification and had identified the property. It is significant to mention that the notes which were recovered bore the signatures as stated by witness Radheyshyam Gupta and thus the property recovered has been connected satisfactorily with the looted property. In this way, it stands connected with the occurrence. No infirmity appears to have been pointed out so far as identification proceedings are concerned. So far as attachee is concerned it has been pointed out that P.W.. Radheyshyam Gupta claimed that it was VIP attachee but the recovered article was Aristocrat. This, to my mind, is not sufficient to discard the identification proceedings. The learned trial Court has relied upon this evidence and in this connection also I do not find anything to disagree with the learned trial Court. As the recovery of looted property has been proved from the possession of the accused persons Section 114 of the Evidence Act comes into play. In illustration (a) it has been provided that the Court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession. The recovery was made a few days after the occurrence and it can safely be said that it was soon after the occurrence. All the accused persons have denied the recovery and have not given any explanation with respect to the property found in their possession on their own pointing out. Thus a presumption can be raised against them that either they were accused persons who had committed the offence or they had received the goods knowing them to be looted. The case of the prosecution in that three persons namely, Govindsingh, Ramesh Soni and Farid Mohammad were the persons who committed the offence. It can safely be said that a presumption can be raised in favour of the prosecution.

18. In view of the fact that the prosecution has satisfactorily proved that the three accused persons, namely, Ramesh Soni, Govindsingh and Farid Mohammad were involved in the occurrence and the property recovered on their pointing out is connected with the offence. The learned trial Court has rightly held them guilty of the offence punishable Under Section 392, IPC read with Sections 11 and 13 of the Madhya Pradesh Daketi Avam Vyavharan Prabhavit Kshetra Adhiniyam 1981. It may be mentioned here that the accused Govind Singh was also charged Under

Section 397, IPC and Under Sections 25(1)(a) and 27 of the Arms Act but the learned trial Court has not found him guilty under these sections. It has not been challenged by the State. I, therefore, confirm the finding of the learned trial Court so far as these offences are concerned.

19. Now there remain the cases of accused Ahmersingh and Ram Bihari. It has been established from the record that properties were recovered from them which include the notes which bore the signatures of the witness as said above. They have been charged Under Section 411, IPC. The question is as to whether the prosecution has been able to prove the case against them. The evidence adduced by the prosecution which has been believed shows that on their pointing out the money and clothes were recovered. Under Section 411, IPC one of the essential ingredients is that, the person must be shown to have received any stolen property, knowing or having reason to believe the same to be stolen property. Thus, unless these accused persons, namely, Ajmersingh and Ram Bihari knew that the property given to them was stolen property, it cannot be said that the prosecution has proved a case Under Section 411, IPC against them. No evidence in this regard has been adduced. The learned trial Court has also observed likewise. It may be mentioned here that it has not drawn any presumption so far as these accused persons are concerned and has placed reliance upon certain authorities mentioned by it in para 74 of its judgment. It is settled law that in an appeal against acquittal if two views are possible no interference can be made unless it is shown that the view taken by the lower Court is palpably wrong or perverse or some important material has been ignored which affects the decision. The State has preferred appeal against their acquittal as mentioned in earlier part of this judgment. In view of the fact that the scope of interference in an appeal against acquittal is limited as held in AIR 1987 SC 1083 : 1987 Cri LJ 974; Totasingh v. State of Punjab and AIR 1988 SC 1158 : 1988 Cri LJ 1154; (Awadhesh K. Singh v. State of M. P.), I do not think that there is any scope for interference in the order of acquittal recorded against them.

20. From what has been said above I conclude that the accused Govind Singh, Ramesh Soni and Farid Mohammad have rightly been convicted and the acquittal of Ajmersingh and Ram Bihari does not call for any interference. As far as the

question of sentence is concerned I may mention that the learned Court below has given sufficient reasons for awarding the sentence of 5 years R.I. each to the accused Govind Singh, Ramesh Soni and Farid Mohammad. There is no scope for interference in the sentence. All the appeals therefore fail and I dismiss them. The accused persons, namely, Govind Singh, Ramesh Soni and Farid Mohammad, are on bail. They shall be taken into custody to serve out the remaining sentence. The accused Ajmersingh and Ram Bihari need not surrender. Let a copy of this judgment be placed on record of each case.

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