Supreme Court of India
Surendra Narain @ Munna Pandey vs The State Of U.P on 7 November, 1997
Bench: M.M. Punchhi, M. Srinivasan

PETITIONER:
SURENDRA NARAIN @ MUNNA PANDEY

Vs.

RESPONDENT:
THE STATE OF U.P.

DATE OF JUDGMENT: 07/11/1997

BENCH:
M.M. PUNCHHI, M. SRINIVASAN

ACT:

HEADNOTE:

JUDGMENT:

THE 7TH DAY OF NOVEMBER, 1997 Present:

Hon'ble Mr.Justice M.M.Punchhi Hon'ble Mr.Justice M.Srinivasan Arvind Kumar) Adv (Ms. Manisha Bhardwaj) Adv. for Ms. Laxmi Arvind, Advs for the appellant Vishwajit Singh, Adv. for A.S.Pundir, Adv. for the Respondent J U D G M E N T The following Judgment of the Court was delivered: SRINIVASAN.J This appeal by special leave is directed against the judgment of the High Court of Allahabad confirming the order of conviction passed by the III Additional Sessions Judge, Kanpur n a charge under Section 302 I.P.C. against the appellant and sentence for rigorous imprisonment for life.

2. The case of the prosecution was as follows:

On April 7, 1977 at about 3.30 P.M. the victim Shree Prakash was gong in rickshaw with is servant Nanhu Singh (PW-3) followed by Balkrishan Bajpai (PW-1) and (PW -2) in another rickshaw in the crossing of Alumandi, Cooperganj, Kanpur within the area of the police station Anwar ganj. At that time the appellant arrived at the spot sitting on the pillon of a motor cycle driven by another person, shot the victim with a pistol and sped away. The witnesses proceeded to the police station which was very near the place of occurrence and lodged a complaint around 3.45 PM The victim was taken to the hospital where he was declared dead. While PW 1 stayed at the police station for giving a

statement, PW 2 went to inform the sister of the victim. The name of the appellant was mentioned by PW 1 in the FIR who could not however give the name of the person who was driving the motor-cycle though he claimed that he could identify him on seeing his face. The appellant could not be traced till he surrendered in Court on 13.5.1977

3. On that date itself the appellant moved an application before the C.M.M.Kanpur claiming that witnesses were not known to him and that a test identification parade should be ordered. The C.M.M. dismissed it on the ground that the offence being one exclusively triable by Court of Sessions, he could not pass orders thereon. That order was challenged in the Court of Session, Kanpur. The latter allowed the prayer by order dated 14.6.77 and directed the appellant to be up for identification. But the identification parade was not held.

4. The trial went on and the prosecution examined as many as nine witnesses, including three eye witnesses. The accused while putting forward a case of total denial examined three witnesses. The trial judge accepted the case of the prosecution and found the accused guilty of murder punishable under Section 302 I.P.C. On appeal, the High Court confirmed the same.

5. In this appeal, learned counsel has urged five contentions - (1) The failure of the police to put up the appellant for identification parade inspite of an order of the Court of Sessions is fatal to the prosecution inasmuch as the appellant has challenged the claim of PWs 1 to 3 that they knew his already. (2) The non-examination of the rickshaw pullers is a vital factor omitted to be considered by courts below; (3) The evidence of PW3 runs counter to the medical evidence and deserves to be rejected; (4) The 'conduct of PW 1 after the occurrence was unnatural and he should have been disbelieved; (5) There was no motive for the appellant to commit the offence.

6. We will presently consider them seriatim. The first contention is pressed rather strongly by the learned counsel on the basis of an observation made in Shri Ram Versus The State of U.P. (1975) 3 S.C.C. 495. The Court said in that case that the circumstance that the accused had voluntarily accepted the risk being identified in a parade but was denied that opportunity was an important point in his favour. In that case the trial court was influenced by the aforesaid circumstance and acquitted the accused. On appeal the High Court rejected the same as inconsequential by observing that oral testimony of witnesses, eve if not tested by holding an identification parade, can be made the basis of conviction if the request made by the accused is groundless and the witnesses knew the accused prior to the occurrence. This Court while holding that no rule of law required that the oral testimony of a witness should be corroborated by evidence of identification and that such evidence is itself a weak type of evidence observed.

> "But the point of the matter is that the Court which acquitted Shri Ram was justifiably influenced by the consideration that though at the earliest stage he had asked that the identification parade he held, the demand was opposed by the prosecution and the parade was therefore not held."

Moreover, in that case there was serous infirmity in the testimony of the eye witnesses who deposed against the accused and this Court found it to be unrealistic and unacceptable.

7. The purpose and evidentiary value of identification parade have been considered in a number of case. In Inre Sangiah 49 Cr. L.J.89 Rajamannar, J discussed the matter at length and said thus:

> I am unable to find any provision in the Code which entitles an accused to demand that an identification parade should be held at or before the enquiry or the trial. An identification parade belongs to the stage of investigation by the police. the question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by the witnesses in the Court. The fact that a particular witness identification parade is only a circumstance corroborative of the identification in a Court. If a witness has not identified the accused at the parade or otherwise during the investigation the fact may be relied on by the accused, but I find nothing in the provisions of the Code wh ch confers a right on the accused to demand that the investigation should be conducted in a particular way. As M.W.N. 427 "Identification Parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy investigating officers of the bone fine of the prosecution witnesses" In AIR 1948 Lah 303 Blacker, J. held thus:
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> "Whenever an accused person disputes the ability of the prosecution witness to identify him, the Court should direct an identification parade to be held save in the most exceptional circumstances"
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> With great respect to the learned Judge I am unable to find any provision of law which compels the Court the so direct a parade. It is not clear from the judgment whether the Court making an enquiry or holding the trial should stay its proceedings and direct the In may opinion it does not take into account the important fact that an identification parade is a part of the investigation and once the case has reached the stage of an enquiry before the Magistrate the investigation is at an end all that takes place in Court form part of the record of the case.
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> Now it is quite clear that statements made at an identification parade are not substantive evidence at the trial. It must be very embarrassing to the Magistrate making an enquiry to listen to statements made by the witnesses at an identification parade which will not be evidence at the enquiry. Further it is not incumbent on the prosecution to examines all the witnesses cited by them and all these who took part in the identification parade. It will then mean that the Magistrate has heard the statement of witnesses who will not be examined at the enquiry. If on the other hand it is suggested that a different Magistrate should hold the identification parade it appears to me that there is no provision whatever for such a course when a particular Magistrate is seized of the case. The observations In AIR 1946 Lah 48 are rally obiter because that case dealt with a regular appeal against the conviction by a Court of Session. In that case the Magistrate who made the enquiry refused an application by the accused to arrange for an identification parade on the following grounds viz. that the witnesses knew the accused before and that the application was made only for the

> purpose of delay. The learned Judges held that the reasons given by the magistrate were not sound. It is true that they went on to observe that should any serious question of identity arises during the course of the trial the ability of the witnesses to identify the accused may be put to tost before the trial. With great respect I do not agree. If a case is posted for trail any test as to the ability or creditability of the witnesses should be decided only in Court and not by means of an identification parade, the proceedings at which will not form part of the record of the Court.

8. In Kanta Prashad Versus Delhi Administration AIR 1958 SC 350, this Court held that failure to hold test identification parade does not make inadmissible the evidence of identification in Court and that the weight to be attached to such identification is a matter for the Courts of fact and it is not for the Supreme Court to reassess the evidence unless exceptional grounds are established necessitating such a course.

9. In State versus Dhanpat AIR 1960 Patna 582 cited before us, it was held that if the witnesses do not give the name of any accused, it is necessary to hold a test identification parade and where a witness gives the name of the accused, ordinarily no such parade is necessary. The Court however said that if any accused hold out a challenge and says that he will not be identified by the witnesses or makes a prayer that he should be put upon a test identification parade, such a parade must always be held in order to meet the challenge. The Court also said that if the accused was arrested on the spot and was in custody from that time upto the date of trial, there could be no question at all about his identity.

10. A Division Bench of the Allahabad High Court dealt with the entire subject of identification Parade in Ashrafi & Anr. Versus The State 1961 (1) Crl. L. J.340. It was held that the identification of an accused who is already known to the identifier is futile.

11. In Budhsen & Anr. Versus State of U.P. AIR 1970 S.C. 132 it was held that identification parades belong to the investigation stage and generally held with the primary object of enabling the witnesses to identify persons concerned in the offence who were not previously known to them, The legal effect of identification parades was stated as follows:

".....that certain person are brought to jail or some other place and makes statements either express or implied that a certain individuals whom they point out are persons whom they recognized as having been concerned in the crime. They do not constitute substantive evidence"

12. In Tek Chand Versus State AIR 1965 Punjab 146, cited by learned counsel, a Division Bench of the Punjab High Court held that the accused cannot compel the prosecution to hold their identification during the investigation and there is no law or procedure under which the Magistrate could pass such an order. The Bench proceeded to hold that if such a prayer is made by the accused and the prosecution opposes the same, it exposes the witnesses of identification to a genuine criticism that they would probably not be label to identify the offenders correctly if the parade was held. The Court held that when the request for identification parade was refused for no valid reason and the court identification was made long afterwards, the identification evidence in the court could

not be relied on, unless it was a corroborated.

13. In Jadunath Singh Versus State of H.P. AIR 1971 S.C.363 a Bench of Three Judges this Court held that failure to hold test identification of accused is not fatal in all cases. The Bench referred to the case law on the subject including the decision of the Madras High Court in the Sangiah's case and held as follows:

> "It seems to us that the reason given by the pubic prosecutor in the report and the reason given by the Additional District Magistrate (Judicial) in the order directing that identification requested for be not held were not valid. The fact that the chargesheet had been received and the accused had been named by P.Ws was no justification for not having ordered the test identification. But on the facts of this case it is clear that PW2 at least knew that accused from before. As regards PW 3 although he claims to have known the accused, it is clear that his knowledge of the accused was very scant and if had not been for the evidence of PW2 we would not have placed reliance on the evidence of PS 3 in view of the fact that the police did not ask him to identify the appellant.
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> It is stated in Phipson on the Law of Evidence, 9th Ed. P.415d as follows:
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> "In criminal cases it is improper to identify the accused only when in the dock: The Police should place him, before hand, with the orders, and ask the witness to pick him out. Nor should the witness e guided in any way, nor asked "is that the main"?" We consider that the same is the law in India, if the identify is in doubt. Accordingly on the facts of this case we are of the opinion that the trial was not vitiated because the accused persons were denied identification.

The same Bench dealt with the State of U.P. Versus Raju AIR 1971 S.C. 708 and held that in the absence of request from accused, State is not bound to hold identification parade when they were arrested on the spot.

14. In Golam Majibuddin Versus State of West Bengal 1972 Crl. L. J. 1342, another Bench of three Judges of this Court held that when the witness stated that he already knew the accused before the day of occurrence and it was not the case of the accused that he was not known to the witness previously, test identification would serve no purpose. The same Bench had not consider a converse case in "Rameshwar singh Versus State of J & K AIR 1972 S.C. 102. The Bench stated the law thus:

> "Before dealing with the evidence relating to identification of the appellant it may be remembered that the substantive evidence of a witness is his evidence in Court but when the accused person is not previously known to the witness concerned then the identification of the accused by the witness soon after the former's arrest is of vital importance because it furnishes to investigating agency an assurance that the investigation is proceeding on right line in addition furnishing corroboration of the evidence to be given by the witness later in Court at the trial. From this point of view

> it is a matter of great importance both for the investigating agency and for the accused and a fortiori for the proper administration of justice that such identification delay after the arrest of the unreasonable delay after the arrest of the accused and that all the necessary precautions and safeguards are effectively taken so that the investigation proceeds on correct line for punishing the real culprit. It would, in addition, be fair to the witness concerned who was a stranger to the accused because in that event the chances of his memory fading are reduced and he is required to identify the alleged culprit a the earliest possible opportunity after the occurrence. It is thus and thus alone that justice and fair play can be assured both to the accused and to the prosecution. The identification during police investigation, it may be re-called, is not substantive evidence in law and it can only be used for corroborating and contradicting evidence of the witness concerned as given in Court. The identification proceeding, therefore, must be go conducted that the evidence with regard to them when given at the trial, enable the Court safely to form appropriate judicial opinion about its evidentiary value for the purpose of corroborating or contradicting the statement in the Court of the identifying witness."

On the facts of the case, it was found that the name of the accused was not mentioned in the FIR. This Court found the witnesss to be untruthful. This Court found that the High Court had erroneously relied upon statements recorded under Section 161 Cr. P.C. for the purpose of corroboration of certain statement made in Court. On that basis, the judgment of the High Court was set aside and the appellant was acquitted.

15. In Dharamvir Versus State of M.P. (1974) 4 S.C.C. 150, it was held that no identification parade was called for as the victim mentioned the names of the accused in the FIR.

16. In Mahtab Singh versus The State of M.P. (1975) 3 SCC 407 the Bench held that the need for identification parade arises only if the assailants are not previusly known to the witnesses. It is to be noticed that it is the very same Bench which dealt with "Shri Ram's case (supra) relied on by the appellant and referred to by us in the beginning.

17. In Harbhajan Singh Versus State of J & K AIR 1975 S.C. 1814 a Bench of Three Judges followed Jadunnath Singh's case (supra) and held that failure of investigating officer to hold identification parade is not necessarily fatal.

18. In Kanan Versus State of Korala, AIR 1979 S.C. 1127, the Court held that where a witness identifies an accused who is not known to hm in the Court for the first time, his evidence is absolutely valuless unless there has been a previous test identification parade to test his power of observation.

19. In Narendra Singh Versus State of H.P. (1987) 2 S.C.C. 236, the attack on deceased was witnessed by an uninterested and independent witness who knew the accused already. That witness snatched from the accused the Kirpan and the turban when he escaped and deposited the same in the police station. the FIR was lodged within 15 minutes and the accused was named therein. The

Court held that the question of identification was of no consequence.

20. In Romesh Kumar Versus State of Punjab, 1993 Crl. L.J. 1800, a Bench of Two Judges held that holding of identification parade was not necessary as the murder took place in the rickshaw and the rickshaw puller stated that the knew the accused and that conviction based primarily on his testimony was proper.

21. On a perusal of the above rulings it is clear that the failure to held the test identification parade even after a demand by the accused is not always fatal and it is only one of the relevant factors to be taken into consideration alongwith the other evidence on record. if the claim of the ocular witnesss that they knew the accused already is found to be true, the failure to hold a test identification parade is inconsequential.

22. Turning to the facts of this case, it is seen that PW 1 had mentioned the name of the accused in the FIR which was given within 15 minutes of the occurrence. The other two eye witnesses, PW 2 and PW3 also knew the accused previously. The crucial factor is that the accused previously. The crucial factor is that the accused was related to the deceased as a son his "Sala" and PW 1 was also related to the deceased. The accused had never denied the relationship. As the trial Judge has observed, " there is not a scintilla of evidence" that PW 1 had a grudge against the accused. There is also no evidence that the wife of the deceased had any enmity with the accused. She would not have allowed a false case to be foisted on her brother's son. The accused was not traceable from 7.4.77 to 13.5.77. On the facts of the case, his application for the test identification parade on his surrender after such a long time does not appear to be bone fide. In any event, the evidence on record as accepted by the Courts below is sufficient to prove the guilt of the accused. Further the point does not seem to have been argued before the trial court or the High Court. On the facts of this case there is no doubt that the failure to hold a test identification parade in spite of an order passed by the Sessions Court is not fatal to the prosecution.

23. The second contention is without any merit. The evidence adduced by the prosecution is adequate to prove the charge. The non-examination of another person who was on the scene of occurrence does not make the evidence of PWs 1 to 3 unreliable. It is needless to point out that evidence has to be weighed and not counted.

24. The third contention is based on the statement of PW3 in his deposition that Shri Prakash sustained injury in the back whereas the medical report showed that two gunshot wounds were in the left side chest upper part and inner to nipple. Another gunshot wound was found in the spine medial part in thoracic region. The fact that PW3 was travelling in the same rickshaw as his master, the deceased is established beyond doubt. His clothes which got stained by the blood which oozed out of the wounds of the deceased were taken by the investigating officer. The High Court has discused this aspect of the matter at some length and we agree with the reasoning of the High Court. As pointed out by the High Court the witness having seen the exit wound on the back of the deceased bleeding, thought that he had been hit in the back. Hence we reject this contention.

25. The fourth contention is equally without any substance. The argument is that PW1 would have in the first instance taken the victim to the hospital instead of police station and in any event would have accompanied PW 3 to the hospital. According to the learned counsel the fact that PW 1 stayed in the police station to given a statement after sending PW3 and the victim to the hospital throws considerable suspicion on his credibility. We are unable to accept this contention. The evidence shows that the victim died immediately after the firing. The witness thought fit to stay back at the police station to get his complaint registered. Here again, the reasoning of the High Court is unassailable and we agree with the same.

26. The fifth and the last contention that there was no motive for the appellant t commit the offence is also without any merit. There is ample evidence on record to show that there was a dispute between the appellant and the deceased which romainod unsettled. The way in which the deceased was killed shows that the appellant had the intention to commit the offence of murder and accordingly carried out the same. But it is well settled that when the fact of murder has been proved. there is necessity to prove motive.

27. In sum, the appeal has to suffer a dismissal and is accordingly dismissed.