



2026:AHC:156668

AFR

Reserved on 06.07.2026

Delivered on 29.07.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1470 of 1987

Kanahi and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: A.k. Shukla, Ajay Sengar
Counsel for Respondent(s)	: A.G.A.

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Sri Ravi Shankar Tripathi, learned counsel for the appellant and Sri Hari Prakash Singh, learned A.G.A. for the State and perused the record.

2. This criminal appeal has been preferred against the judgment and order dated 15.5.1987 passed by the learned Special Judge, Budaun in Special Sessions Trial No. 98 of 1985, whereby the accused Kanhai, Harpal, Dal Chand and Kalloo were convicted under Section 392 I.P.C. and each of them was sentenced to undergo five years' Rigorous Imprisonment. During the pendency of the present appeal, accused-appellants Harpal and Dalchand have since died. Their deaths have been brought on record and the appeal, insofar as it relates to the deceased appellants Harpal and Dalchand, stands abated vide order dated 26.11.2025. The appeal survives and is being

disposed of qua the remaining two appellants, namely, Kanhai and Kalloo.

3. Briefly stated, the prosecution case was that on 21.2.1985 at about 6.30 P.M., the complainant Radhey Shayam Sharma, while going from Bisauli to his village Palia on a cycle, was way-laid on the side of the road between village Kot and Bisauli by four miscreants who surrounded him, held a knife to his chest and, after conducting a personal search, looted two containers of desi ghee weighing 4 kgs. each, a sum of Rs.126.50 and certain grocery articles. The written report was lodged at Police Station Bisauli against unknown persons, on the basis of which a case was registered as Crime No. 69 of 1985 under Section 392 I.P.C. The accused were subsequently arrested, put up for test identification and, after investigation, charge-sheeted. The learned Trial Court, on the basis of the evidence led, convicted all four accused and sentenced them as aforesaid. Aggrieved thereby, the present appeal has been preferred.

4. Learned counsel for the appellants has assailed the impugned judgment on the following grounds: The First Information Report was lodged against unknown persons. The occurrence is stated to have taken place on 21.2.1985, whereas the test identification parade of the accused was conducted only on 6.5.1985, i.e., after a gap of about 42 days from the date of their admission to jail (accused Dalchand and Harpal having been admitted to jail on 9.3.1985 and accused Kanhai and Kallu on 21.3.1985 and 20.3.1985 respectively). No explanation whatsoever has been furnished by the prosecution for this inordinate and unexplained delay in holding the identification parade. The report of the identification parade itself demonstrates that the two independent witnesses associated therewith, namely Ram Dass (P.W.1) and Ganga Sahai (P.W.3), could not correctly identify all four accused persons. It is well settled that a test identification parade is, at best, a weak type of evidence and is only corroborative in nature; it does not constitute substantive evidence. No independent public witness of the incident itself has been examined by the prosecution.

There is no recovery whatsoever, either of the looted articles, cash, or any weapon, from the possession of the appellants, which would have lent independent assurance to the prosecution case. The First Information Report was lodged against unknown persons, and the names of the appellants did not figure therein at all.

5. On the strength of the above submissions, it has been contended that the entire prosecution case rests on a delayed and doubtful identification parade, uncorroborated by any independent witness, recovery, or other circumstance, and that the Trial Court has erred in placing reliance on the sole testimony of the complainant to record conviction.

6. Learned Additional Government Advocate, per contra, has supported the impugned judgment and has submitted that the delay in holding the identification parade stands sufficiently explained inasmuch as it was held within a reasonable time of the arrest of the accused, and that the sole testimony of the victim, if found trustworthy, is sufficient to sustain conviction, as held by the Trial Court.

7. I have given our anxious consideration to the rival submissions and have examined the evidence on record.

8. It is not in dispute that the First Information Report of the incident, dated 21.2.1985, was lodged against unknown miscreants. The appellants were, admittedly, not known to the complainant prior to the occurrence and the entire prosecution case therefore hinges upon identification of the appellants as the culprits.

9. So far as the test identification parade is concerned, it is an admitted position that accused Kanhai and Kallu were admitted to jail on 21.3.1985 and 20.3.1985 respectively, whereas the identification parade was conducted only on 6.5.1985, a gap of about 42 days and more from the date of their admission to jail, and over two and a half months from the date of the incident itself. No explanation, much less

a satisfactory one, has been offered by the prosecution for this delay. It is well settled that where there is unexplained and inordinate delay in holding a test identification parade, and the accused are not previously known to the witness, such delay affords the accused a reasonable opportunity of being shown to the witnesses, whether by design or otherwise, and seriously dilutes the evidentiary value of the identification proceedings. In the absence of any explanation for the delay, the identification parade in the present case cannot be said to inspire confidence.

10. What is of greater significance is that the identification parade, even on its own terms, does not support the prosecution case qua the appellants. The report of the identification parade shows that the two independent witnesses associated with the proceedings, namely Ram Dass (P.W.1) and Ganga Sahai (P.W.3), were unable to identify all four accused. P.W.1 Ram Dass identified only the deceased appellants Dalchand and Harpal, and P.W.3 Ganga Sahai identified only the deceased appellant Dalchand. Neither of them identified the present appellants Kanhai and Kallu at the parade. Thus, the very safeguard of independent corroboration, which a test identification parade is intended to furnish, is conspicuously absent qua the appellants before us. This is not a case of partial success in identification of some culprits out of a gang, where the witness who deposed in court had also identified all the accused at the parade and his court testimony stood corroborated by the parade. In the present case, on the contrary, neither independent witness identified appellants Kanhai and Kallu at the identification parade at all, and their identification rests exclusively upon the solitary testimony of the complainant given for the first time in the witness box, without any corroboration from the identification parade.

11. It is a well-settled principle that evidence of test identification is not “substantive evidence” it is, by its very nature, only “corroborative evidence” meant to lend assurance to the identification

of the accused made in court. Where the identification parade itself is vitiated by unexplained delay and, further, fails to connect the appellants with the offence through any independent witness, it ceases to furnish any corroboration at all. In such a situation, the Court is left with nothing but the bare, uncorroborated word of the complainant, given more than two years after the occurrence, identifying persons who were total strangers to him at the time of the incident.

12. It has also been brought to our notice that the Investigating Officer did not conduct the identification proceedings in strict conformity with the safeguards prescribed under the U.P. Police Regulations and the Jail Manual for holding such parades, which are designed precisely to guard against the possibility of the accused being shown to the witnesses before the parade and to ensure a fair and reliable identification. Non-observance of these safeguards, coupled with the delay noticed above, further diminishes the reliability of the identification proceedings.

13. In Uttar Pradesh, the procedure for a Test Identification Parade (TIP) conducted in jail is governed principally by: *Paragraph 116 of the U.P. Police Regulations, and Paragraph 416 (renumbered as Paragraph 443 in the 2022 U.P. Jail Manual 1955)* dealing with undertrial prisoners who are to be identified by witnesses. The object of a TIP is not to constitute substantive evidence, but to test the memory and veracity of a witness who claims to have seen an unknown offender. The substantive evidence is the witness's identification of the accused during trial before the Court.

14. Step-by-step procedure regarding identification parade are;

(a) When the accused is sent to judicial custody, the Investigating Officer moves an application before the Magistrate requesting a Test Identification Parade.

(b) Normally, the parade should be held inside the jail, not at the police station.

(c) The Superintendent of Police or an officer not below the rank of Inspector informs the Jail Superintendent in writing that the prisoner is to be put up for identification. This information should be given at the time of admission or as soon thereafter as possible.

(d) After receiving such intimation, the Jail Superintendent must ensure that: the accused does not shave or grow a beard contrary to his appearance at arrest; hair style and moustache remain unchanged; no disguise is permitted; the accused wears the same or similar type of clothing as at the time of arrest.

(e) The Investigating Officer must ensure from the beginning of the investigation that: witnesses do not see the accused before the parade; police avoid showing the accused to witnesses; unnecessary production before witnesses is avoided. This is one of the most important safeguards because prior exposure substantially weakens the evidentiary value of the TIP.

(f) The TIP should ordinarily be conducted by a Judicial Magistrate. Police officers should not participate in the actual proceedings. A jail officer remains present only to comply with directions of the Magistrate.

(g) The accused is mixed with several persons of similar: age, height, complexion, build, dress, general appearance. The object is to ensure fairness and eliminate suggestive identification. Prisoners who themselves have to be identified in other cases should not be used as dummies.

(h) Each witness is brought individually. Witnesses are kept separate. They are not permitted to communicate with each other. Each witness identifies independently.

(i) Normally, after each witness: the accused is allowed to change his position in the line; the Magistrate records whether such change was requested or made. This prevents identification merely by remembering the position.

(j) The Magistrate records: names of persons mixed with the accused; objections raised by the accused; whether position was changed; exact words and conduct of each witness. whether identification was immediate, hesitant or mistaken. The proceedings are signed by the Magistrate.

(k) The U.P. Jail Manual provides that before the proceedings begin, the prosecuting inspector and the defence counsel (if present) may satisfy themselves that the prescribed safeguards have been observed. However, they do not participate in the actual identification process, which remains under the exclusive control of the Magistrate. In this case at hand, the test identification parade has not been conducted properly as per existing rule and procedure, thus the accused persons are liable to provide the benefit of the material omissions and procedural lapses committed by the prosecution in this regard.

15. The settled law of the Supreme Court In **Budhsen v. State of U.P.**, (1970) 2 SCC 128 , **Malkhansingh v. State of M.P.**, (2003) 5 SCC 746 and in **State of H.P. v. Lekh Raj**, (2000) 1 SCC 247 that The TIP is only corroborative evidence under Section 9 of the Evidence Act. Failure to hold TIP is not invariably fatal, especially where the accused was previously known to the witness. Where the accused was unknown and is identified for the first time in court

without an earlier TIP, such dock identification is generally considered weak unless supported by other evidence.

16. In **Malkhansingh (supra)** Hon'ble Supreme Court held in paras 7 and 16 :-

“7. It is trite to say that the substantive evidence is the evidence of identification in court. Apart from the clear provisions of Section 9 of the Evidence Act, the position in law is well settled by a catena of decisions of this Court. The facts, which establish the identity of the accused persons, are relevant under Section 9 of the Evidence Act. As a general rule, the substantive evidence of a witness is the statement made in court. The evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character. The purpose of a prior test identification, therefore, is to test and strengthen the trustworthiness of that evidence. It is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. This rule of prudence, however, is subject to exceptions, when, for example, the court is impressed by a particular witness on whose testimony it can safely rely, without such or other corroboration. The identification parades belong to the stage of investigation, and there is no provision in the Code of Criminal Procedure which obliges the investigating agency to hold, or confers a right upon the accused to claim a test identification parade. They do not constitute substantive evidence and these parades are essentially governed by Section 162 of the Code of Criminal Procedure. Failure to hold a test identification parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification should be a matter for the courts of fact. In appropriate cases it may accept the evidence of identification even without insisting on corroboration.

16. It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine.....”

17. Further in **Lekh Raj (supra)** The Hon'ble Supreme Court held in para 3:

“3.....During the investigation of a crime the police agency is required to hold identification parade for the purposes of enabling the witness to identify the person alleged to have committed the offence particularly when such person was not previously known to the witness or the informant. The absence of test identification may not be fatal if the accused is known or sufficiently described in the complaint leaving no doubt in the mind of the court regarding his involvement. Identification parade may also not be necessary in a case where the

accused persons are arrested at the spot. The evidence of identifying the accused person at the trial for the first time is, from its very nature, inherently of a weak character. This Court in Budhsen v. State of U.P. [(1970) 2 SCC 128 : 1970 SCC (Cri) 343] held that the evidence in order to carry conviction should ordinarily clarify as to how and under what circumstances the complainant or the witness came to pick out the particular accused person and the details of the part which he allegedly played in the crime in question with reasonable particularity. In such cases test identification is considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in court as to the identity of the accused who are strangers to them.”

18. I further find that no reliable independent ‘public witness’ to the actual occurrence has been examined by the prosecution. P.W.1 Ram Dass and P.W.3 Ganga Sahai, whose names do not figure in the First Information Report at all, were introduced for the first time before the Trial Court; even otherwise, as noted above, they have failed to identify the appellants at the identification parade. There is also ‘no recovery’ of the looted ghee, cash or any other article, nor of any weapon, from the possession of the appellants, which could have furnished independent corroboration to the prosecution story.

19. In these circumstances, what remains is the sole testimony of the complainant, P.W.2 Radhey Shayam Sharma, identifying the appellants for the first time in court, unsupported by any reliable identification parade and unaided by recovery or any other independent corroborative circumstance. While the sole testimony of an injured or robbed witness can, in appropriate cases, sustain a conviction, such testimony must be of unimpeachable quality, particularly where the accused were strangers to the witness and the case rests entirely on identification. Having regard to the delayed and doubtful identification parade, the failure of the independent witnesses associated with that parade to identify the appellants, the absence of any independent eye-witness, and the absence of recovery, we are of the considered opinion that the prosecution has failed to prove the identity of the appellants Kanhai and Kallu as the perpetrators of the offence beyond reasonable doubt.

20. The learned Trial Court, in my view, fell into error in placing implicit reliance on the sole testimony of the complainant without adequately appreciating the cumulative effect of the delayed identification parade, the failure of the independent witnesses to identify the appellants thereat, and the total absence of any other corroborative material. The benefit of the resultant doubt must, therefore, go to the appellants.

21. For the reasons recorded above, the appeal is **allowed**.

22. The judgment and order dated 15.5.1987 passed by the learned Special Judge, Budaun in Special Sessions Trial No. 98 of 1985, convicting the appellant Kanhai and the appellant Kallu under Section 392 I.P.C. and sentencing each of them to five years' Rigorous Imprisonment, is hereby set aside qua the said two appellants.

23. The appellants Kanhai and Kallu are acquitted of the charges under Section 392 IPC and are on bail, their bail bonds and sureties stand discharged. They need not surrender, and if in custody, they be released forthwith unless wanted in any other case.

24. The trial court record be sent back 'forthwith' to the trial court, along with a copy of this judgment, for information and necessary compliance.

25. Register (compliance) is directed to communicate this order to the concerned trial court through district and Sessions Judge within three days.

(Santosh Rai,J.)

July 29, 2026
Asha