

CASE NO.:
Appeal (crl.) 631 of 2001

PETITIONER:
Lal Singh and others

RESPONDENT:
State of Uttar Pradesh

DATE OF JUDGMENT: 04/11/2003

BENCH:
N. SANTOSH HEGDE & B.P. SINGH

JUDGMENT:
J U D G M E N T
WITH

SPECIAL LEAVE PETITION (CRL.) NO. 4657 OF 2003
(Crl. M. P. No.7792 of 2002)

B.P. SINGH, J.

The four appellants in this appeal (Criminal Appeal No. 631 of 2001) by special leave were tried by the Special Judge (Dacoity Affected Area), Mainpuri in Sessions Trial No. 216 of 1981 and by judgment and order dated 10th December, 1990 they were found guilty and convicted of the offences under sections 394 and 411 IPC and sentenced to undergo rigorous imprisonment for seven years and three years respectively. On appeal, being Criminal Appeal No. 2240 of 1990, the High Court of Judicature at Allahabad affirmed their conviction under section 394 IPC but set aside their conviction and sentence under section 411 IPC since they had been found guilty and convicted of the principal offence under section 394 IPC.

The State of Uttar Pradesh has also preferred Special Leave Petition and Crl. M. P. No.7792 of 2002 against the impugned judgment and order of the High Court acquitting the appellants of the charge under section 411 IPC.

It may be noticed at the threshold that apart from the appellants one Ram Swaroop was also tried by the learned Special Judge charged of the offence under section 120 B IPC. Hukam Singh was additionally charged under section 397 IPC. However, the trial court found Ram Swaroop not guilty of the offence under section 120 B IPC and also acquitted Hukam Singh of the charge under section 397 IPC.

A train robbery is said to have taken place between railway stations Shikohabad and Etawah at about 4.45 a.m. on 30th October, 1980 when the train had just moved out of Shikohabad railway station and was proceeding at a very slow speed. In this incident, according to the prosecution, PW.1 Amar Nath, who was carrying a sum of Rs. 3.5 lakhs kept in his holdall which he had kept under his head, was deprived of the said amount by the appellants herein, who after snatching the holdall jumped out of the running train and could not be apprehended despite the best efforts of PW.1 and other co-passengers. It appears from the record that Hukam Singh and Prakash Chandra, appellants herein, are brothers. They are both residents of village Khairabad within the jurisdiction of Jahanabad Police Station. Lal Singh, their associate was a member of the police force and was resident of Azmatpur. Chandrika Prasad, another appellant herein is

also a resident of Khairabad.

The case of the prosecution is that a firm known as Panna Lal Banarasi Das of Kanpur has a branch office in Katra Chauban, Chandni Chowk, Delhi. Amar Nath, PW.1., Hari Shankar, PW.4, Sharda Charan and Gaya Prasad Lath, PW.16 are the employees of the said firm. The firm deals in silver metal and often transports goods from Kanpur to Delhi. The case of the prosecution is that on 28th October, 1980 Hari Shankar, PW.1 carried a sum of rupees five lakh from the Kanpur office to Delhi office. PW.1, Amar Nath and Sharda Charan had also carried silver to Delhi by train. After reaching Delhi next morning, they went to M/s. Lunia & Co. and then came to the branch of its firm in Chandni Chowk and delivered cash and silver to Gaya Prasad Lath, PW.16. However, PW.16 later received instructions on phone from Kanpur to return the sum of rupees five lakh to the Kanpur office through Amar Nath, PW.1 and Sharda Charan. He, therefore, gave to Amar Nath, PW.1 a sum of Rs. 3.5 lakhs and to Sharda Charan the remaining amount of Rs.1.5 lakh to be taken to Kanpur. PW.1 kept the amount in a jute bag and kept it on the left side of his holdall while Sharda Charan tied Rs.1.5 lakhs around his waist. They had reserved their berths for the return journey to Kanpur by 12 Down Delhi-Howrah Express. They were travelling in a three tier bogie. PW.1 kept the holdall below his head and lay on his berth. Other passengers who had reservations also occupied their respective berths but there were several passengers who did not have reservation and who kept sitting or loitering in the gallery of the bogie. At about 4.45 a.m. on 30th October, 1980 the train left Shikohabad railway station and was moving at a very slow speed. One of the culprits who was travelling in the same compartment pulled the holdall from under the head of PW.1, who covering his head was lying on the berth but was awake. When he found that the holdall was being removed by someone, he jumped down from his berth and caught hold of the holdall. A scuffle followed and one of the accomplices of the person who was trying to snatch the holdall pressed his gun against his chin due to which a slight injury was caused to his chin on the right side. Then the one who had snatched the holdall from him handed over the same to his other accomplice and they jumped from the train. Two of the co-passengers also jumped from the train behind them. Amar Nath, PW.1 who also attempted to chase the culprits was deterred by other passengers from continuing the chase because the culprit holding the rifle threatened to shoot them if they chased them. He, therefore, again boarded the same bogie and tried to stop the train by pulling the chain but the train did not stop. Two of the culprits were wearing khaki uniform and one of them was armed with a single barrel rifle. The other two characters were wearing pyjama and bushshirt. There was sufficient light in the bogie and therefore, he and other passengers had seen their faces. The currency notes which were looted had chits affixed to the bundles which carried the signatures of the 'munim' of the firm. In the First Information Report which was lodged by Amar Nath, PW.1 at the Etawah G.R.P. Police Station, it was stated that he was confident that Kishan Lal, TTE, who was posted in the said bogie was also mixed up with the bad characters and he had taken money from them and permitted them to travel even when they had no reservations. He had noticed the rifle wielding character talking to the TTE for quite sometime. The same TTE was on duty on the train by which he had come to Delhi on 28th October, 1980.

The First Information Report was lodged by Amar Nath, PW.1 when the train reached Etawah station and on the basis of the same a case was registered under sections 394/397 IPC.

The case of the prosecution is that apart from Amar Nath, PW.1, and Sharda Charan, who were carrying the cash to Kanpur and who had seen the culprits, even Gaya Prasad Lath, PW.16, who had

gone to see them off at the railway station had noticed two persons strolling on the railway platform wearing dress which was like the dress of the policemen. Those two persons had entered the same bogie in which PW.1 and Sharda Charan had their reservations. He claimed that he had earlier seen those very persons eating chat in a shop opposite the office of the firm in Chandni Chowk.

The investigation of the case was entrusted to Inspector Surjan Singh of C.B.C.I.D. who was examined at the trial as PW.48. After taking up the investigation he examined the witnesses including one Durga Prasad Goyal, PW.3, a co-passenger who had also witnessed the occurrence. He also inspected the record of the firm to verify their claim and visited the place of occurrence.

It appears that the changed and lavish life style of Hukum Singh, appellant, attracted public notice. The Investigating Officer, PW.48 received an information on 17th December, 1980 from a reliable source that Constable Driver Hukum Singh, appellant and his brother Prakash Chandra, a dismissed constable, were squandering money and had purchased a motor cycle and other items. The Investigating officer deputed a Constable of the C.I.D. to collect further information. After collecting further information it was reported to the Investigating Officer that apart from these two, Chandrika and Lal Singh were also involved. This aroused a great deal of suspicion in the mind of the Investigating Officer and he decided to investigate the complicity of the appellants in the occurrence in question. On 28th December, 1980 PW.48 alongwith Inspector O.P. Tyagi, PW.18 reached Jahanabad at about 11.30 a.m. He received information through a police informer that appellants Prakash Chandra and Chandrika were coming to Jahanabad. After associating two public witnesses PW.48 waited for them at the culvert of Kora Jahanabad. When those persons were seen they were accosted by him at 2.30 p.m. On search of the person of Prakash Chandra a sum of Rs.5,000/- was found in his pocket. The currency notes were of the denomination of Rs.100/- each. On search of Chandrika Prasad a sum of Rs.7,500/- was recovered. The recoveries were duly recorded in the recovery memos prepared immediately after the search and marked exhibits Ka-111 and Ka-112. On the bundles of the currency notes the seal of the firm was found as also the signatures of Gaya Prasad Lath, PW.16. On further interrogation the involvement of Lal Singh and Hukum Singh, who were both members of the police force was revealed. It was further stated by them that they had deposited some amounts in the bank and in the post office. Chandrika Singh suffered a disclosure statement and offered to get recovered National Saving Certificates ; Fixed Deposit Receipts and the Pass Book of his bank account. He took them to a 'kotha' in village Khairabad and got recovered one pass book of the District Co-operative Bank, Fatehpur showing a deposit of Rs.4,000/- on 6th December, 1980. He also got recovered 12 National Saving Certificates of the denomination of Rs.500/- each issued on 6th December, 1980. He also got recovered Fixed Deposit Receipt for a sum of Rs.9,000/- also dated 6th December, 1980. A receipt evidencing the deposit of Rs.9,000/- by him in the same branch of the bank was also produced by him.

Inspector O.P. Tyagi, PW.18 alongwith Inspector Raghunath Prasad went in search of Hukum Singh. They came to Kanpur and then went to police station Rasoolabad where from they arrested appellant Hukum Singh at 11.55 p.m. on 28th December, 1980 and made him 'baparda'. He was brought to Kanpur at 2.45 a.m. on 29th December, 1980.

While Surjan Singh, PW.48 was returning after searching for the accused on 28th December, 1980 at Chauraha Bara Devi at about 10.00 p.m. he got information from a police informer that Lal Singh

was about to reach his house in Safed Colony Govind Nagar. PW.48 associated two public witnesses, namely Zila Singh, PW.40 and Sunil Mishra and reached the colony at 10.30 p.m. He arrested Lal Singh at 10.45 p.m. A sum of Rs.63,200/- was recovered from Lal Singh. There were six bundles of Rs.10,000/- each and 32 currency notes of Rs.100/- each. The bundles of currency notes of the denomination of Rs.100/- each had chits affixed to them which bore the seal of the firm and also the signatures of Gaya Prasad Lath, PW.16. The licensed gun and cartridges belonging to Lal Singh were also seized and sealed and recovery memo exhibit Ka-116 prepared.

On interrogation by PW.48 appellant Hukum Singh disclosed that he and his brother Prakash Chandra had, out of their share of the looted money, purchased utensils ; ornaments and a motor cycle. They had also purchased National Saving Certificates from the post office Kora Jahanabad for a sum of Rs.20,000/- and a sum of Rs.20,000/- had also been deposited in the name of appellant Prakash Chandra on 4th December, 1980 in Special Term Deposit at Lalitpur Branch of the State Bank of India. He volunteered to get these articles recovered. He took the investigating officer and other police officers to his house situated in the campus of police station Collector Ganj and in the presence of the witnesses he produced 20 National Saving Certificates of Rs.1,000/- each issued on 10th November, 1980 in his own name from post office Kora Jahanabad ; 20 National Saving Certificates of Rs.1,000/- each issued on 10th November, 1980 in the name of appellant Prakash Chandra from the post office Jahanabad ; a Special Term Deposit Receipt of Rs.20,000/- issued by Lalitpur Branch of the State Bank of India in the name of appellant Prakash Chandra ; two gold rings and utensils of stainless steel. The Investigating Officer also found a bullet motor cycle standing in his house. All these recovered articles were taken into custody alongwith a single barrel gun with 15 live cartridges which was also recovered from his house. The recovery memo is exhibit Ka-117, The seized articles were duly sealed. These recoveries were made on 29th December, 1980 whereafter the appellant Hukum Singh was lodged 'baparda' in the lock-up of police station Juhi. Later the same day appellant Hukum Singh gave further information that he and his brother appellant Prakash Chandra had kept for safe custody a sum of Rs.80,000/- with Constable Bishamber Singh Yadav, PW.17, resident of Baragaon and posted in Police Lines Lalitpur. On receiving such an information PW.48 came to Hamirpur on 30th December, 1980 and alongwith PW.41 and other police force reached village Baragaon. He went to the house of Bishamber Singh, PW.17 who disclosed that Hukum Singh and Prakash Chandra had come to his official quarter at Lalitpur on 4th December, 1980 and after appellant Hukum Singh had gone away, appellant Prakash Chandra had handed over to him a sum of Rs.80,000/- consisting of currency notes of Rs.100/- each in the form of 4 bundles of Rs.20,000/- each. He was entrusted with the amount with the promise that he would return them when demanded though he could spend out of that money for his personal needs subject to the condition that the full amount would be refunded when demanded. He brought the amount to his village home and kept it there. Out of the said amount he had purchased a motor cycle for Rs.13,000/- as also a gun alongwith cartridges for a sum of Rs.2,355/- and had also spent some money on his house etc. A sum of Rs.57,000/- was still with him and he handed over the currency notes totalling Rs.57,000/- to PW.48. The currency notes were in bundles of the denomination of Rs.100/- each. Five bundles were of Rs.10,000/- each while the sixth bundle contained only 70 currency notes of Rs.100/- each. The currency notes were taken into custody together with the motor cycle, gun and the cartridges etc. and memo exhibit Ka-51 prepared.

On 3rd January, 1981 on being interrogated, appellant Lal Singh disclosed to PW.48 that he had repaid a loan of Rs.5,000/- to Hira Chandra of Sirki Mohal, Police Station Collectorganj, out of the

amount which fell to his share. PW.48 took the appellant Lal Singh to the house of Hira Chandra, PW.32 at 1.00 a.m., who offered to return the money in the morning after looking into his books of account. Later on the same day PW.32 produced a sum of Rs.5,000/- before the Investigating Officer and the same was seized by the Investigating Officer under memo exhibit Ka-106. From the books of account inspected by the Investigating Officer it appeared that appellant Lal Singh had borrowed a sum of Rs.5,000/- from Hira Chandra Jain on 9th June, 1980 and had repaid the same on 5th December, 1980. Later the same day appellant Lal Singh further disclosed that he had deposited some amount in his own name and in the name of his daughter. The relevant documents were kept in his house behind the photograph of Radha Krishna. He was taken to his house and he produced two Fixed Deposit Receipts dated 22nd December, 1980 \026 one of Rs.10,000/- in his own name and the other of Rs.20,000/- in the name of his daughter issued from the State Bank of India, Govind Nagar Branch, Kanpur. These Fixed Deposit Receipts were duly seized under memo exhibit Ka-161. The bank record confirms these deposits.

On 2nd January, 1981, Inspector O.P. Tyagi, PW.18, interrogated Hukum Singh who disclosed to him about the shop from which he had got made and purchased the ornaments and paid the amount. He was taken to the shop of Jhabboo alias Jamuna Narain, PW.34 who confirmed the fact that he had been given a sum of Rs.10,000/- for preparation of ornaments. He produced Rs.10,000/- which was given to him by the said appellant and the same was seized by PW.18.

Appellant Hukum Singh also disclosed to PW.48 that he had given a sum of 3,000/- to Chunni Lal, PW.43. He was taken to the house of Chunni Lal on 19th January, 1981 and said Chuni lal confirmed that Rs.3,000/- in currency notes were given to him by appellant Hukum Singh on 4th December, 1980. He produced the said currency notes which were duly seized and sealed vide memo exhibit Ka-164.

Shri G.C. Saxena, Special Executive Magistrate, Mainpuri conducted the test identification parade at the District Jail, Mainpuri on 4th February, 1981. Amar Nath, PW.1 correctly identified all the four appellants. Durga Prasad, PW.3 correctly identified Hukum Singh and Lal Singh appellants. Gaya Prasad Lath, PW.16 also correctly identified Hukum Singh and Lal Singh. All the three identifying witnesses did not commit any mistake in identifying the accused.

Appellants were put up for trial alongwith co-accused, since acquitted, before the Special Judge (Dacoity Affected Area), Mainpuri charged variously under sections 394/397/411/120 B of the IPC. The prosecution examined a large number of witnesses to prove its case. The appellants pleaded not guilty to the charges framed against them. In his examination under section 313 Criminal Procedure Code, Lal Singh admitted having been arrested in front of his house on 28/29th December, 1980 and having been found in possession of Rs.71/- and two keys of his brief-case in the pocket of his coat. He also admitted having opened the brief case and having taken out the tin box from inside the brief-case but he denied the recovery of Rs.63,200/- from the tin box. He admitted that there were some loose currency notes amounting to Rs.3,200/- but denied the recovery of Rs.60,000/-. He also denied the other recoveries made from Hira Chandra Jain and in fact denied the entire transaction. He further admitted that three Fixed Deposit Receipts were taken into custody by the Investigating Officer from his house but he denied that those Fixed Deposit Receipts were got issued by investing the money obtained by him in the train robbery. He claimed that the amount had been collected by him and

four others to purchase a house at Kanpur. Regarding the identification proceedings he submitted that the witnesses knew him from before. According to him the shop of the firm was at a distance of 1 furlong from the police station. He had not been made 'baparda'. According to him he had arrested Sharda Charan on 6th March, 1980 in connection with smuggling of gold. In that connection PW.1 and other persons working in the firm as well as Inspector Rathi had approached him, but since he did not favour them, they became inimical and have got him falsely implicated. According to him the Investigating Officer, PW.48 was also a friend of Inspector Rathi.

Appellant Hukum Singh stated that he was arrested on 20th December, 1980 but he was not made 'baparda'. He denied that the recoveries were made at his instance. He also denied that he had given a sum of Rs.80,000/- to Bishamber Singh Constable. The articles were not purchased from the money which he had got by robbing PW.1 and he further denied that the bundles of currency notes bore the seal of the firm and signatures of Gaya Prasad Lath, PW.16. He also denied that he had any transaction with Jhaboo or Chunni Lal. As regards the identification by the witnesses he stated that he had been shown to the witnesses. He further stated that in the arrest of Sharda Charan by Lal Singh his jeep had been used and that is why the witnesses were not happy with him.

Appellant Chandrika Prasad denied that he had been arrested in the manner alleged. In fact he was arrested from his house. He admitted the recovery of cash from his house but claimed that a sum of Rs.4,200/- belonged to Ram Gopal who lived in his house and the balance Rs.3,300/- belonged to him which was recovered from his house. As regards the amount of Rs.4,000/- in the Saving Bank Account and the amount invested in fixed deposit, the same belonged to him and were not obtained by him in the robbery. He was not kept 'baparda' and the witnesses knew him from before because he had gone to the shop of the firm for getting ornaments made. He admitted having invested a sum of Rs.6,000/- in National Saving Certificates. He had been implicated because Hukum Singh happened to be his cousin.

Appellant Prakash Chandra also denied that he was arrested in the manner alleged by the prosecution. In fact he was arrested from his house and a sum of Rs.5,000/- in loose currency notes was recovered from his house. There were no chits or seals on the bundles of currency notes as alleged by the prosecution. He had earned the amount recovered from him by looking after the properties of his father-in-law. He claimed to know PW.1 and he further stated that he had been shown to the witnesses while in the lock up at Juhi Police Station. He had also been photographed. He had been falsely implicated because he happened to be the brother of appellant Hukum Singh.

The defence also examined witnesses namely \026 DW.1 to DW.5 in support of its case.

The prosecution on the other hand relied upon the evidence of the two eye witnesses, namely PW.1 Amar Nath and PW.3 Durga Prasad Goyal. It further sought corroboration from the evidence of Hari Shankar, PW.4 who had carried Rs. 5 lakh from Kanpur to Delhi. It also relied upon the evidence of Gaya Prasad Lath, PW.16, who had handed over the amount to Amar Nath, PW.1 for being taken to Kanpur. He had also deposed about the fixing of slips on the bundles of currency notes on which the seal of the firm was stamped and that they also contained his signatures on each slip. The prosecution also relied upon the evidence collected by PW.48 which included recoveries made from the accused. The testimony of Shri G.C. Saxena, Special Executive Magistrate, who conducted the test identification parade proved that the accused were identified by the

witnesses in the test identification parade. PW.7 Dr. Mehrotra testified to the fact that he had examined the injuries of Amar Nath at 8.30 p.m. on 31st October, 1980 while he was on duty as Medical Officer in the dispensary at Etawah.

The defence did not seriously contend before the High Court that a robbery did not take place in the manner alleged by the prosecution in which PW.1 was robbed of a sum of Rs.3.5 lakhs by the miscreants. There is abundant evidence on record to establish the fact that PW.1 was in fact carrying a sum of Rs.3.5 lakhs and that he was robbed of the same when the train had just left the Shikohabad railway station and the culprits made good their escape by jumping from the train and running away after threatening witnesses. What was disputed seriously before the High Court and also before us is the identity of the miscreants. All the appellants have denied that they had taken part in that incident and each one of them set up a defence against the charge framed.

The trial court as well as the High Court after a detailed consideration of the evidence on record came to the conclusion that the prosecution had proved its case beyond reasonable doubt. The judgments of the trial court as well as of the High Court are exhaustive and deal with every aspect of the case. In fact the High Court sitting as a Court of Appeal has devoted 247 pages to the discussion of the evidence on record. It has meticulously considered every aspect of the matter, considered each piece of evidence, and has exhaustively dealt with the submissions urged before it in the light of the defence taken by the appellants. It came to the conclusion that the evidence on record clearly established the case of the prosecution that Amar Nath, PW.1 while travelling with Sharda Charan was carrying a sum of Rs.3.5 lakh and that he was robbed of the same by the miscreants at about 5.00 a.m. on 30th October, 1980 when the train had just started moving out of Shikohabad railway station. The presence of Durga Prasad, PW.3, a co-passenger who claimed to have witnessed the occurrence, could not be disputed. When his presence was challenged, the prosecution produced ample documentary evidence to show that he was travelling in the same bogie and by the same train on the date of occurrence. The prosecution produced before the court the railway reservation sheet exhibit Ka-109 which showed that the name of this witness was at Sl. No.27. The High Court also found that there was ample opportunity for the witnesses to see the appellants since there is consistent evidence that there was electric light in the compartment. PW.1 who was carrying a sum of Rs.3.5 lakh was obviously very conscious of the fact that he was carrying a huge amount and, therefore, his claim that he was merely lying on the berth and was not sleeping appears to be true. The witnesses had travelled from Delhi to Shikohabad in the same compartment and, therefore, they were together in the same compartment for several hours. PW.3 also claimed to have seen two of the appellants at Delhi and from their dress he took them to be police guards. He had seen the incident at Shikohabad. The High Court after a careful consideration of his evidence held that there was no reason to doubt his testimony. The evidence with regard to the identification was also accepted by the High Court. It did not find that there was any inordinate delay in holding the test identification parade. So far as PW.1 and PW.3 are concerned, they being eye witnesses, their identification in the test identification parade clearly implicated the appellants. Gaya Prasad Lath, PW.16, who also identified appellants Hukum Singh and Lal Singh in the test identification parade was not an eye witness but it could not be said that it was not possible for him to remember the features of two of the appellants whom he identified in the test identification parade. He had seen them earlier while eating chat in front of their office in Chandni Chowk. They were dressed in khaki uniform and obviously when he saw them again at the railway station and noticed that they

boarded the same bogie as PW.1, their faces must have got imprinted in his memory. However, the High Court held that even if the identification by PW.16 is kept out of consideration, the identification of the appellants by PW.1 and PW.3 could not be challenged on any ground. It considered in detail the link evidence produced by the prosecution to establish that the appellants had been kept 'baparda' ever since they were arrested and there was no opportunity for any one to see them while in police custody. Apart from a vague suggestion, there was no evidence on record to probabalize their having been shown to witnesses at any time. The High Court in great detail has considered the evidence relating to this allegation and has held that the evidence of the prosecution in this regard deserves acceptance. The evidence also established that the bundles of currency notes which were recovered had chits on them which bore the seal of the firm and the signatures of PW.16. The original bundles had been produced in court when PW.1 was in the witness box and he identified them and gave proper description of those bundles. The High Court also considered the defence of Lal Singh and others that since appellant Lal Singh arrested Sharda Charan, the prosecution witnesses were hostile to him and had deposed falsely. It found no substance in the defence case. It also examined the defence of Lal Singh that since he had been visiting the shop of the firm in Kanpur with Sadhu Singh, DW.1, he was known to the witnesses. In his examination under section 313 Cr. P.C. this witness had claimed that he used to get ornaments made from the firm, but the evidence examined by the defence sought to prove that he had been visiting the shop of the firm in the company of Sadhu Singh, DW.1 who got ornaments made from them.

Learned counsel for the parties have taken us through the relevant evidence on record and the judgments of the courts below. We find that the High Court has undertaken a very meticulous and exhaustive analysis of the entire evidence on record. Nothing has been left out and each piece of evidence has been noticed and discussed threadbare. All contentions urged by the appellants have been considered at length and proper findings have been recorded. The defence of the appellants has also been considered fully and there is really no scope for the criticism that the High Court has either ignored any important material on record or that it has failed to notice the submissions urged before it. We have also found the conclusions reached by the High Court to be reasonable and based on the evidence on record. Learned counsel for the appellants could not point out anything in the judgment of the High Court which requires our interference. In fact before us the main thrust of the argument of the learned counsel for the appellants was about the identity of the miscreants. It was submitted on behalf of the appellants that there was considerable delay in holding of the test identification parade, apart from the fact that the appellants had been shown to the witnesses. It was further urged that the recoveries were planted on the appellants and that in fact no recoveries were made from them. It was further submitted that Prakash Chandra and Chandrika Prasad had been identified only by PW.1 Amar Nath and, therefore, they deserve an acquittal. Lal Singh and Hukum Singh were identified by PW.1 Amar Nath, PW.3 Durga Prasad and PW.16 Gaya Prasad Lath. Their identification had no value since the witnesses had already seen the appellants while in police custody. So far as the recoveries are concerned we have carefully perused the judgments of the courts below. The courts below have carefully analysed the evidence on record and have extensively dealt with them in their judgments. The concurrent findings of fact recorded by the courts below on this aspect of the matter do not call for interference by this Court. We have heard learned counsel for the parties at length on this aspect of the matter and we find nothing which may persuade us to record a contrary finding. We, therefore, affirm the finding of courts below on this aspect of the matter.

The crucial question is whether the prosecution has proved its case as against the appellants beyond reasonable doubt. We may observe that an offence of the nature with which we are concerned in the instant case, is committed more often than not, by persons who are unknown to the victims. The perpetrators of such crime are usually persons who are motivated by sheer greed to commit such offences. Such an offence does not fall within the category of those offences where an accused out of revenge or enmity commits an offence. In such cases, of course, the identity of the accused poses no problem. But in cases where the offence is usually committed by unknown persons with a criminal and professional background, it is only in very rare cases that they are known to the victim. In most cases of such nature the accused is an unknown person and the only evidence which may connect him with the crime is the evidence of identification in a test identification parade, and in some cases evidence of recovery of the articles which are the subject matter of robbery. Cases of robbery, therefore, mostly depend on such evidence. Moreover the arrest of the culprits in such cases is often delayed on account of the inherent difficulties which the prosecution naturally faces in such cases. The fact that the victim is not named in the first information report in a case of this nature is, therefore, not of much significance. The prosecution can prove its case on the basis of recovery of the articles which are the subject matter of the offence and identification of the culprits in a test identification parade.

So far as the recovery of currency notes is concerned, we are satisfied that they were recovered from the appellants and they had been properly identified in court in the light of the fact that the currency note bundles contained slips bearing the seal of the firm and the signatures of PW.16.

The next question is whether the prosecution has proved beyond reasonable doubt that the appellants are the real culprits. The value to be attached to a test identification parade depends on the facts and circumstances of each case and no hard and fast rule can be laid down. The Court has to examine the facts of the case to find out whether there was sufficient opportunity for the witnesses to identify the accused. The Court has also to rule out the possibility of their having been shown to the witnesses before holding a test identification parade. Where there is an inordinate delay in holding a test identification parade, the Court must adopt a cautious approach so as to prevent mis-carriage of justice. In cases of inordinate delay it may be that the witnesses may forget the features of the accused put up for identification in the test identification parade. This, however, is not an absolute rule because it depends upon the facts of each case and the opportunity which the witnesses had to notice the features of the accused and the circumstances in which they had seen the accused committing the offence. Where the witness had only a fleeting glimpse of the accused at the time of occurrence, delay in holding a test identification parade has to be viewed seriously. Where, however, the Court is satisfied that the witnesses had ample opportunity of seeing the accused at the time of the commission of the offence and there is no chance of mistaken identity, delay in holding the test identification parade may not be held to be fatal. It all depends upon the facts and circumstances of each case.

If we examine the facts and circumstances of this case we find that the appellants as well as the witnesses had boarded the train at Delhi on 29th October, 1980 at about 10.00 p.m. in which the occurrence took place at about 5.00 a.m. in the morning of 30th October, 1980. There is consistent evidence on record that there were extra passengers in the reserved coach who were moving about in the gallery of the compartment. Two of them were wearing khaki uniform and one was carrying a single barrel rifle. The evidence on

record discloses that they had been talking to the TTE for a considerable time and that is what annoyed PW.1 who suspected the involvement of the TTE also in the offence, and had so reported in the first information report. Having seen those persons for so many hours, it cannot be disputed that PW.1 and PW.3 had ample opportunity to see the appellants who travelled with them in the same compartment from Delhi to Shikohabad. When the occurrence took place, PW.1 was awake and was merely lying on his berth covering his face with a towel. As soon he noticed that his holdall was being pulled away, he jumped down from his berth and held the holdall. He was thereafter threatened by the person who was carrying a rifle. Thereafter the holdall was passed on from the first culprit to the second and then to the third and then to the last one who jumped out of the train and they also followed him. PW.1 also jumped out of the train in an attempt to catch hold of the culprit but on the advice of the passengers he came back to the compartment. The evidence of PW.3 is also to the same effect. He had noticed two of the persons wearing khaki uniform in Delhi when the train left the Delhi station. He had also woken up when there was a scuffle between PW.1 and the culprits. His presence in the compartment is fully established. He had seen the occurrence as it took place and his evidence is quite consistent with the evidence of PW.1. This witness is a dis-interested witness and there is no reason to suspect his testimony. The vague suggestions made against him have been critically scrutinized by the courts below which have found no substance in them. We are, therefore, satisfied that both the eye witnesses, namely PW.1 and PW.3 had ample opportunity to see the appellants who were travelling in the same compartment for about 7 hours. There was sufficient light in the compartment which facilitated their identification by the eye witnesses.

Even though a plea was urged before the courts below that the appellants had been shown to the witnesses, there is no evidence on record which may deserve notice on this aspect of the matter. It was submitted that the holding of the test identification parade was delayed. The appellants were arrested on 28th December, 1980 and they were put up for identification in a test identification parade on 4th February, 1981. We do not think that this delay can be said to be inordinate in the facts and circumstances of this case. In any event having regard to the opportunity which the witnesses had to identify the appellants, the possibility of mis-taken identity must be ruled out. We have very carefully perused the evidence of PW.1 and PW.3 and we find that their evidence is trust worthy and implicit reliance can be placed on their testimony. We find no difficulty in acting on the identification by these witnesses.

Learned counsel for the appellants placed reliance on several judgments of this Court and submitted that in view of the principles laid down by this Court, the evidence of identification in this case should not be relied upon. On the other hand learned counsel for the State submitted that none of those decisions help the appellants and he also relied upon certain decisions of this Court. We shall now proceed to consider the decisions cited at the Bar.

Reliance placed by the appellants on the decision of this Court in Budhsen and another vs. State of U.P. : AIR 1970 SC 1321 is of no assistance to the appellants. It appears from the report that the entire prosecution case depended upon the identification of the appellants and this identification was founded solely on test identification parade. This Court found that the High Court had not correctly appreciated the evidentiary value of these parades though they had treated it as the primary evidence in support of the prosecution case. The High Court seems to have proceeded on the erroneous legal assumption that it was a substantive piece of evidence and that on the basis of that evidence alone the conviction could be

sustained. The Court also ignored important evidence on the record in regard to the manner in which the test identification parades were held suggesting that they were held more or less in a mechanical way without the necessary precautions being taken to eliminate unfairness. This was clearly an erroneous way of dealing with the test identification parades and had caused failure of justice. It was in these circumstances that this Court set aside the conviction of the appellants in that case, which was based solely on the identification of the appellants in a test identification parade. The principle laid down in the above decision does not apply to the facts of this case. In the case in hand the witnesses had identified the appellants in Court and that is corroborated by their earlier identification in the test identification parade. The prosecution had also established by examining the Executive Magistrate that necessary precautions were taken to eliminate unfairness.

In *Soni vs. State of U.P.* : (1982) 3 SCC 368, a test identification parade was held after a lapse of 42 days from the date of the arrest of the appellant. The delay in holding the test identification parade created a doubt on the genuineness thereof, apart from the fact that it may be difficult that after lapse of such a long time the witnesses would be remembering the facial expressions of the appellant. This Court, therefore, held that if this evidence cannot be relied upon there is no other evidence which can sustain the conviction of the appellant. In these circumstances the appellant was acquitted. The judgment is a short judgment of only one paragraph and conviction of the appellant in that case rested solely on his identification by the witnesses. There was no other evidence which proved the complicity of the appellant. In the instant case, apart from the identification in Court corroborated by identification in test identification parade, there is evidence of recovery of the currency notes from the possession of the appellants which were the subject matter of robbery.

In *Bali Ahir and others vs. State of Bihar* : AIR 1983 SC 289 this Court found that all the identifying witnesses except PW.2 had seen the accused from behind only when they were running away from the scene of occurrence. So far as the remaining witness, namely Harihar Prasad Singh, PW.2 was concerned he was known to the appellant and, therefore, his identification in Court had no value whatsoever. It will thus be seen that this Court came to the conclusion that except PW.2, who was already known to the appellant, the other witnesses did not have sufficient opportunity of identifying the culprits who were running away after commission of dacoity.

In *Subhash and another vs. State of U.P.* : AIR 1987 SC 1222 the test identification parade was held three weeks after the arrest of the appellant. There was, therefore, a room for doubt as to whether the delay in holding the test identification parade was in order to enable the identifying witnesses to see him in the police lock-up or in the jail premises and make a note of his features. The Court also noticed that 4 months had elapsed between the date of occurrence and the date of holding of the test identification parade. The descriptive particulars of the appellant were not given when the report was lodged. But while deposing before the Sessions Judge, the witnesses had stated that the appellant was a tall person and had sallow complexion. If on account of these features the witnesses were able to identify appellant Shiv Shankar at the identification parade, they would have certainly mentioned about them at the earliest point of time when his face was fresh in their memory. As the conviction of the appellant was based solely on the identification at the test identification parade, this Court give to him the benefit of doubt, while upholding the conviction of the co-accused. This is also a case where the conviction of the appellant was based solely on the evidence of identification. There being a delay in holding the test identification parade and in the absence of corroborative evidence,

this Court found it unsafe to uphold his conviction.

In the instant case, however, as earlier noticed apart from identification by the eye witnesses, there is evidence regarding the recovery of the looted articles from the possession of the appellants.

In State of Andhra Pradesh vs. Dr. M.V. Ramana Reddy and others : AIR 1991 SC 1938 this Court was dealing with an appeal against acquittal. The appeal in so far as it related to the first respondent was allowed, but in so far as the second respondent was concerned, the Court upheld the finding of acquittal recorded by the High Court. This Court found that there was delay in holding the test identification parade for which there was no valid explanation. The defence had suggested to the concerned witnesses that the accused, who were in custody, were shown to the witnesses and the police had secured a group photograph in which accused Nos. 3 and 5 figured to facilitate their identification. The High Court was, however, reluctant to place absolute reliance on the evidence of PW.1 regarding the identity of accused Nos. 3 and 5. This Court held that in the absence of a valid explanation for the delay, this approach of the High Court could be said to be manifestly wrong calling for intervention. It will thus be seen that even in this case the conviction was based on the identification by PW.1 and the High Court suspected that the holding of the test identification parade was delayed with a view to show the respondents to the witnesses. The High Court was reluctant to place implicit reliance on PW1. In these circumstances this Court held that this Court's interference was not called for against an order of acquittal.

In Rajesh Govind Jagesha vs. State of Maharashtra : AIR 2000 SC 160 : accused No. 2 was arrested on 20th January, 1993 but the identification parade was held on 13th February, 1993. It was also not disputed that at the time of identification parade the appellant was not having beard and long hairs as mentioned at the time of lodging of the first information report. It was also not disputed that no person with beard and long hairs was included in the parade. The witnesses were alleged to have identified accused No.2 at the first sight despite the fact that he had removed the long hairs and beard. This Court held that the Magistrate should have associated 1-2 persons having resemblance with the persons described in the FIR and why it was not done was a mystery shrouded with doubts and not cleared by the prosecution. In these circumstances the Court observed that the possibility of the witnesses having seen the accused between the date of arrest and the test identification parade cannot be ruled out. This case also rests on its own facts, and mere delay in holding the test identification parade was not the sole reason for rejecting the identification.

On the other hand learned counsel for the State has relied upon the decision of this Court in Delhi Administration vs. Bal Krishan : (1972) 4 SCC 659 wherein it was held that it cannot be laid down as a proposition of law that after a lapse of a long period, witnesses would, in no case, be able to identify the dacoits they had seen in the course of a dacoity committed during the night. However, the courts will have to be extremely cautious when such evidence is before them.

In Vikram Singh vs. Raj Singh : 1998 SCC (Cr.1) 578 this Court held that in the absence of anything to indicate that the accused were shown to the witnesses, the test identification parade held after a month of the arrest of the accused could not be rejected.

In Bharat Singh vs. State of U.P. : (1973) 3 SCC 896 this Court held that although it is desirable to hold identification parade at the earliest opportunity, when there is a delay of three months in

holding the identification parade, it is the duty of the accused to cross-examine the police officer who conducted the investigation and the Magistrate who held the parade if the accused wishes to take advantage out of such undue delay.

In a recent case, *Daya Singh vs. State of Haryana* : (2001) 3 SCC 468 this Court held that the identification of the accused in court after seven or eight years would not affect the evidence of the eye witnesses, where the trial was delayed for one or the other reason in a case where it was apparent that the witnesses had gained an enduring impression of the accused during the incident.

It will thus be seen that the evidence of identification has to be considered in the peculiar facts and circumstances of each case. Though it is desirable to hold the test identification parade at the earliest possible opportunity, no hard and fast rule can be laid down in this regard. If the delay is inordinate and there is evidence probalising the possibility of the accused having been shown to the witnesses, the Court may not act on the basis of such evidence. Moreover, cases where the conviction is based not solely on the basis of identification in court, but on the basis of other corroborative evidence, such as recovery of looted articles, stand on a different footing and the court has to consider the evidence in its entirety.

In the instant case we have found that the prosecution has successfully established the recovery of the currency notes from the possession of the appellants which were the subject matter of robbery. The currency notes have been duly identified having regard to the special features, namely \026 existence of chits on the bundles bearing the seal of the firm and the signatures of PW.16. PW.1 correctly identified all the appellants while PW.3 identified two of them, namely \026 Hukum Singh and Lal Singh. He, however, made no mistake in identifying the said appellants. We have already held that these witnesses had ample opportunity of noticing the facial features of the appellants since they had travelled in the same compartment for almost seven hours and there was sufficient light in the compartment. Moreover the delay in holding the test identification parade was not inordinate, and nothing has been elicited from the investigating officer as well as the Special Executive Magistrate who held the test identification parade that the appellants had been shown to the witnesses before holding of test identification parade or that there was any irregularity in holding the test identification parade. The prosecution also produced evidence which satisfactorily proves that right from the day of their arrest, they were kept 'baparda' so as to rule out the possibility of their faces being seen while in police custody. No irregularity in the holding of the test identification parade has been pointed out. In these circumstances even if it is assumed that there was some delay in holding the test identification parade the court was required to apply the rule of caution. In the instant case the conviction of the appellants is based not solely on the evidence of identification by PWs. 1 and 3 but also on the basis of the corroborative evidence in the form of recoveries of looted currency notes from the possession of the appellants. The substantive evidence of identification in Court is, therefore, supported by corroborative evidence which is unimpeachable in nature and, therefore, conviction of the appellants is fully justified.

In the result Criminal Appeal No.631 of 2001 fails and is dismissed.

As stated above, the State has also preferred a special leave petition against the acquittal of the appellants of the charge under section 411 IPC. The delay in filing the petition is condoned. We find no merit in the special leave petition, which is accordingly dismissed.

JUDIS