

Vicky Sarkar

v.

State of Arkadappa

1. The Republic of Arka Santorin, a South Asian country, is a union of 28 states. It has a written Constitution and a federal democratic pattern of government. Arka Santorin, being one of the largest democratic countries in the world, has signed and ratified most of the international human rights instruments.

2. The Republic of Arka Santorin is at the forefront of the protection of human rights. The Constitution of Arka Santorin guarantees most of the basic human rights as fundamental rights. The judiciary in Arka Santorin also plays an active role in this field and incorporates several human rights through the interpretation of different constitutional provisions and has assigned many of these rights the status of a fundamental right.

3. The incidents of sexual abuse are on the rise in the country of Arka Santorin. Hence, the Central Government has introduced several amendments to their criminal laws in the year 2013. Recently, the century-old criminal major laws were replaced with updated provisions in the name of Arka Nyaya Sanhita; Arka Nagarik Suraksha Sanhita; and Arka Sakshya Adhinyam.

4. Mr. Mohan Sharma and his wife Sakuntala Devi live in the village of Arkepur, Santorin District, State of Arkadappa with their two daughters, Ashraya and Anugraha. Mohan Sharma is running a provisional store near the bus stand of Arkepur. Miss Ashraya, the eldest daughter is 21 years old and has interest in studies. However, she lost her vision due to Microphthalmia. Sakuntala Devi is a housewife and she is taking care of her daughter Ashraya and helping in her studies. As a result, Ashraya has graduated successfully. Though Ashraya is not able to see she can distinguish and identify persons by hearing their voices.

5. On 10th August 2022, Mohan Sharma went to his shop in the morning. The younger daughter Anugraha, went to attend her school. By 11.00 a.m., Sakuntala Devi went to a nearby village to attend a religious ceremony. At about 1.00 p.m., Sakuntala Devi returned home and when she came near to Ashraya's room, she found that somebody had broken the door lock and entered inside. Sakuntala Devi rushed into the room of Ashraya, and hearing the noise, Ashraya started crying. From the condition of the room, Sakuntala Devi could feel that somebody had entered the room. After a few minutes of crying Ashraya explained to her mother that a boy had entered her room and sexually abused her.

6. From the explanation of Ashraya, Sakuntala Devi understood that Ashraya was raped and it was committed by a boy named Vicky Sarkar who lived in the neighbourhood. Vicky is the son of Mr. Madura Sarkar, who is an MLA and is about to be inducted as a minister in the State of Arkadappa. Vicky and Ashraya were childhood friends as they had studied in the same school till 5th class. Afterwards, both of them had studied in different institutions.

7. On receiving the information about the incident, the police officer reached the house of Mohan Sharma and took the first information statement from the victim. The victim also had to undergo a medical examination and the examination report supports the statement of the victim that there was forced sexual intercourse. However, there was no material evidence like the presence of semen, any other fluid, or hairs, etc. to suggest towards the accused. Moreover, there were no physical injuries found in the body to suggest resistance from the side of the victim.

8. Based on the statements of Ashraya and Sakuntala Devi, the investigation officer made a preliminary investigation and subsequently arrested Vicky on 12th August 2022. Before the arrest, the police filed an application to the Magistrate to conduct a test identification parade, in which based on the voice and touch, the victim identified Vicky. (The TIP Report is attached as an Annexure). The investigating officer

has also collected measurements from the accused based on the procedure laid down in the appropriate laws and rules.

9. Subsequently, during the trial, the defence questioned the legality of the test identification parade conducted by the police and also questioned the admissibility of its result as evidence. However, the trial court convicted the accused for a term of 14 years imprisonment.

10. The said conviction was challenged by the accused in the High Court of Arkadappa. The appellant challenged the admissibility of the evidence collected through the test identification parade and also challenged the legality of the law permitting the police officer to collect measurements from an accused.

11. During the pendency of the said appeal, the appellant preferred another petition to the Hon'ble High Court to issue an order thereby prohibiting the publication of news and stories about the said incident of alleged rape. The petitioners argued that, the publication of exaggerated news and stories by different media including online media and social media platforms would vitiate the trial. However, both the appeal and the petition were dismissed by the Hon'ble High Court of Arkadappa and the High Court reaffirmed the trial court's judgement. Aggrieved by the dismissals, the accused filed two appeals to the Hon'ble Supreme Court of Arka Santorin.

12. The Hon'ble Supreme Court of Arka Santorin for the sake of convenience, decided to hear both petitions on the same day with the following issues:

- A. Whether the evidence collected through the test identification parade, in this case, is admissible as valid evidence?**
- B. Whether the conduct of a test identification parade is a violation of the fundamental rights of the accused?**
- C. Whether the Section 3 of the Criminal Procedure (Identification) Act, 2022 is constitutionally valid?**

D. Whether the issuance of a direction to refrain from publishing details of a criminal case and stories about the accused is constitutionally permissible?

Notes:

- a) The Arka Nyaya Sanhita; Arka Nagarik Suraksha Sanhita; and Arka Sakshya Adhinyam (*in pari materia* to Bharatiya Nyaya Sanhita; Bharatiya Nagarik Suraksha Sanhita; and Bharatiya Sakshya Adhinyam) are the law in force in the Republic of Arka Santorin. All other laws in the Republic of Arka Santorin and the Union of India are *in pari materia*.
- b) The Counsels representing both sides are required to address the issues that are specifically mentioned in the moot proposition.

REPORT OF TEST IDENTIFICATION PARADE

Submitted By Mr. Sayantan Verma, Judicial Magistrate of Class I, Arkepur, Santorin District, State of Arkadappa at Sub Jail premises, Santorin on 12. 08. 2022 in Crime No. 680/2022 in Arkepur Police Station.

1. By Order No. A2-154/2022 dated 11.08.2022, I have decided to conduct a test identification parade of the suspect in Crime No. 680/2022 in Arkepur Police Station.
2. This order was passed by me in pursuance of reports submitted by the investigating officer in the said case.
3. I have decided to conduct the TIP of the suspect Mr. Vicky Sarkar at Sub Jail premises after issuing notice to him. Hence, I issued a notice to suspect Mr. Vicky to appear at the gate of Sub Jail of Santorin at 10.00 am on 12.08.2022.
4. Similarly I have issued a memo to the Sub Jail Superintendent, Santorin to make necessary arrangements for conducting TIP at 10.30 pm on 12.08.2022. Similarly, I have issued a memo to the Victim. Also, a memo was issued to the investigating officer to give adequate protection to the victim while she visits the jail for TIP.
5. On 12.08.2022, I proceeded to Sub Jail, Santorin to conduct TIP and reached there at 10.10 am. My staff Mr. Abhinav Sahu also accompanied me to assist me in conducting the TIP.
6. At the gate the suspect was present. I have taken him inside the jail premises and kept him in the unoccupied cell situated at the western side of the jail.
7. The Superintendent of Sub Jail informed me that he has made all other necessary arrangements for conducting the TIP including a sufficient number of non-suspects. All of them were entered in the cell where the suspect was sitting. The said room will be considered as Parade Hall.
8. At 10.30 am, the victim along with her father and mother reached the Sub Jail and I have asked them to be seated at the resting room of the jail.
9. The suspects and the other 9 non-suspects are directed to wear light cream colour shirts and lunki supplied by the jail officers. After arranging the parade hall, I decided to conduct TIP of the suspect.
10. Before starting the TIP I have verified and satisfied that the suspect is not having any conspicuous feature which is distinguishable from the non-suspects. The non-suspects who are selected by me are almost resemble the suspect in size, height, voice, complexion and appearance. The names of non-suspects selected by me in the parade of suspects are as follows:

a) Gopiram S/o Ramrattan

- b) Ram Mathan S/o Ramakant
- c) Gopal Sahu S/o Madn Sahu
- d) Balraj S/o Jayakant
- e) Monu Sharma S/o Jagadhish Sharma
- f) Madh Khure S/o Khurshid
- g) Jalag Saxena S/o Palak Singh
- h) Dayaram S/o Mona Singh
- i) Dattan Singh S/o Darpan Singh

11. In the parade hall there is no other person other than the suspect, non-suspects and myself. A camera was arranged to record the proceedings in the hall. Thereafter, I gave direction to the non-suspects to form a line. Accordingly, they formed a line facing towards the eastern side. Thereafter I permitted the suspect to select his position in the line at his choice. He selected the 7th position in the line from the left side. For the first round of the parade of suspects, the suspect and non-suspects are lined in the following manner left to right:

- 1) Gopiram S/o Ramrattan
- 2) Ram Mathan S/o Ramakant
- 3) Gopal Sahu S/o Madn Sahu
- 4) Balraj S/o Jayakant
- 5) Monu Sharma S/o Jagadhish Sharma
- 6) Madh Khure S/o Khurshid
- 7) SUSPECT
- 8) Jalag Saxena S/o Palak Singh
- 9) Dayaram S/o Mona Singh
- 10) Dattan Singh S/o Darpan Singh

12. Then I called Mr. Abhinav who was standing outside the hall to take the victim to the hall from the resting room. After putting the victim in the Hall Mr. Abhinav quit the hall. Then I asked the victim to identify the suspect. The victim took my assistance to go near to all those who were in the line.

13. The victim went near to each person's standing in line and I asked them to read a few sentences which I had given to them in writing. When the victim went near to the

Suspect, she identified the suspect by touching his hand and listening to the voice. Then the victim was taken to the resting room.

14. After the conclusion of the 1st round of the parade, I have asked non-suspects to shuffle their position. Thereafter I permitted the suspects to select his position in the line. The suspect selected the 5th position in the line from the right. For this round of parade, the suspect and non-suspects are line up in the following manner from left to right:

- 1) Monu Sharma
- 2) Balraj
- 3) Gopiram
- 4) Jalag Saxena
- 5) SUSPECT
- 6) Ram Mathan
- 7) Gopal Sahu
- 8) Dayaram
- 9) Dattan
- 10) Madh Khure

15. Then I called Mr. Abhinav to bring the victim from the resting room to the parade hall. After putting the victim, Mr. Abhinav left the Hall.

16. With my assistance the victim went near the persons in line and when she reached near the suspect, identified him by hearing his voice and touching his hand. The victim was taken into the resting room.

17. I have directed the non-suspects to shuffle their position. I have also permitted the suspect to select his position at his choice in the line. He selected the 6th position in the line. The suspect and non-suspects are lined up for the 3rd round of parade in the following manner:

- 1) Madh Khure
- 2) Gopal Sahu
- 3) Monu Sharma
- 4) Gopiram
- 5) Ram Mathan

- 6) SUSPECT
- 7) Jalag Saxena
- 8) Dayaram
- 9) Dattan
- 10) Balraj

18. Then I called Mr. Abinav to bring the victim to the Hall. He brought the victim into the Hall and left the hall. Then I asked the victim to identify the suspect. The victim with the help of me went near to the persons in line and heard their voices and also touched their hands. When she reached the suspect, by touching hands and listening voice, she identified him. Thereafter the victim was sent back to the resting room.

19. After the conclusion of 3rd round of the parade, the suspect and non-suspect were sent back from the parade hall.

20. I have conducted three rounds of TIP of suspect by shifting the position of suspect and non-suspect in different orders.

21. In the test identification parade conducted, in all three rounds, the victim identified suspect Mr. Vicky Sarkar. The entire proceedings were recorded in the video recorder.

22. The Test identification was commenced at 10.45 am and it was concluded at 12.10 pm.

Sd/-

Mr. Sayantan Verma

Office Seal

Judicial Magistrate of Class I

Arkepur, Santorin District