

Satyavir Vs. State of U.P.

Satyavir Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/486530

Court : Allahabad

Decided On : May-30-1997

Reported in : 1998CriLJ124

Judge : J.C. Gupta, J.

Acts : Indian Penal Code (IPC) - Sections 149, 302, 307, 325, 394, 399, 402 and 411

Appeal No. : Criminal Misc. Bail Appln. No. 706 of 1997

Appellant : Satyavir

Respondent : State of U.P.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Sanjay Srivastava, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

J.C. Gupta, J.

1. This is an application for bail on behalf of accused-applicant Satyavir in case Crime No. 238 of 1996 under Sections 302, 307, 394 and 411, I.P.C., P. S. Baraut,

District Meerut.

2. The case of the prosecution, in brief, is that on 21-6-96 the applicant along with two others came to the house of the first informant to hire Maruti Van Day-6718 which was being plied as Taxi by the son of the first informant. First informant's son Aadesh Kumar, first informant and three accused persons left the house at about 8.30 in the morning and in the way three accused persons committed the murder of Aadesh Kumar. They also fired upon the first informant who any how escaped and ran away from the spot and informed the police, whereupon the police chased the Maruti Van and succeeded in apprehending one of the accused namely Sanjay with Maruti Van. His companions Om Pal and the present applicant Satyavir managed to escape. F.I.R. was lodged, case was investigated and the police submitted charge-sheet against the applicant also.

3. It is urged by the applicant's counsel that since the applicant was not arrested on the spot, an application was moved before the Chief Judicial Magistrate to put up the applicant on test identification by the witnesses, but his prayer was opposed by the prosecution and his application was rejected. Learned counsel for the applicant argued that on this ground alone the applicant is entitled to bail and in support of his contention he has relied upon a number of decisions, which would be referred to in the later part of this order.

4. The primary object of holding test identification parade is to enable the witnesses to identify persons concerned in the offence, who were not personally known to them. This serves to satisfy the Investigating Officer of the bona fide of the witnesses and to furnish further evidence to corroborate their testimony and the whole object behind such proceeding is to find out whether or not the suspect is the real offender. Where the witnesses themselves state during investigation that the accused persons were unknown to them and they would identify them if confronted with, it may be necessary for the investigating agency to put up the suspect for identification by the witnesses.

5. As early as in the year 1955, the Supreme Court in the case of Ram Krishna Mithan Lal Sharma v. State of Bombay AIR 1955 SC 104, observed-

Test identification parades are held by police in the eoures of their investigation for the purpose of enabling witnesses to identify the properties which are subject matter of the offence or to identify the persons who are concerned in the offence.

6. The purpose of a prior test identification has been explained by the Apex Court in the decisions of Budh Sen v. State of U.P. AIR 1970 SC 1321 and Vaikunthan Chandruppa v. State of A.P. AIR 1960 SC 1340. It was held that the purpose of a prior test identification seems to be to lest and strengthen the trustworthiness of the 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 identifying the accused who are strangers to them, in the form of earlier identification proceedings. There may, however, be a particular witness on whose testimony it can safely rely without such or other corrboration.

7. Need for holding identification arises only when culprits arc not previously known to the witnesses and not otherwise. In this connection reference may be made to the two decisions of the Supreme Court: (1) Jadunath Singh v. State of U.P., 1971 Cri LJ 305 : AIR 1971 SC 363 and (2) Mehtab Singh v. State of M.P. AIR 1975 SC 274.

8. In Jadunath Singh's case (AIR 1971 SC 363) (supra) it was held that failure to hold test identification of accused is not fatal in all cases. If the accused is well known to prosecution witnesses, it would be waste of time to put him for identification, if, however, there is any doubt in the matter, the prosecution should hold identification parade. Where during the course of the investigation of a murder case the accused files an application for holding an identification parade on the allegation that he is not known to eye-witnesses and that application is rejected on the ground that charge-sheet against the accused has been filed and the accused has been named by eye-witnesses, but during the course of the trial the allegation of the accused is found true then the rejection of the application on aforesaid ground is not valid and unless there is some other evidence, the trial will be liable to be vitiated.

9. While on the question in hand I may with advantage place some observations of the Apex Court made in the case of Kanta Prasad v. Delhi Administration AIR

1958 SC 350 (Para 5) :

As far the test identification parade is concerned, it is true that no identification was held. The appellants were known to the police officials, who had deposed against the appellants and the only persons who did not know them from before, were the persons who gave evidence of association, to which High Court did not attach much importance. It would no doubt would have been prudent to hold an identification parade with respect to the witnesses who did not know the accused before the occurrence, but failure to hold such a parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification would be a matter for the Courts of fact.

10. In the case of *Dharamvir v. State of Madhya Pradesh* AIR 1974 SC 1156, accused were named as assailants by Kartar Ahmad in his First Information Report. In his statement before the Court Kartar Ahmad stated at one place that he did not know the accused persons and stated at another place that he knew them for about two or three years. The Apex Court held that this would not go to show that Kartar Ahmad's evidence about the actual assault on him by appellants is not worthy of credence and holding of an identification parade by Kartar Admad would have arisen only if the names of the appellants had not been mentioned in the First Information Report.

11. No positive rule, therefore, can be laid down as to when the test identification parade is necessary and when not and each case has to be decided on its own facts and circumstances. Whether failure to hold identification despite a request made by the accused will prove fatal to the prosecution is also a question which cannot be answered on any general priciple in isolation of the facts of that case. Where the Court alter recording evidence finds some reasonable doubts in the claim of the witnesses of their knowing the accused from before, non-holding of test identification in the absence of other corroborative evidence may amount to a lacuna which may be sufficient to discard the prosecution story, but, if, on the other hand, the Court feels fully satisfied that such claim of the witnesses is trust worthy and acceptable, the mere fad that on an earlier occasion the prosecution had opposed the prayer of the accused for getting him identified by the witnesses

at a test identification parade will have no adverse effect on the prosecution case.

12. Now I will refer to the cases relied upon by the learned counsel for the applicant.

13. The first case is Suresh Chandra v. State 1979 All Cri C 250 : 1979 All LJ 1160. It was an appeal against the order of conviction recorded by the Sessions Court. In this case the accused was alleged to have been amongst the dacoits, who committed dacoity, they left the shop and tried to escape. The villagers gave them fight and killed three of them at the spot. They also caught one of them alive, but the rest managed to escape. The person caught was said to be the accused. The Court doubted the prosecution story about the arrest of the appellant in the manner as alleged by the prosecution and in these circumstances non-holding of test identification, though claimed by the accused, was held to be a serious lacuna in the prosecution case and the appellant was given benefit of doubt and was acquitted. After referring to a number of decisions, Hon'ble V.N. Verma, J. observed 'My appreciation of law is that if the accused is a stranger to the prosecution witnesses and he claims identification, his request in this regard must always be allowed because it is only by holding his test identification that the veracity of the eye-witnesses could be checked. And if the prosecution turns down the accused's request for identification, it runs the risk of the veracity of the eye-witnesses being challenged on that ground. In the instant case eye-witnesses did not know the appellant from before-according to their own admission, it was only after questioning him that they had come to know about his name. Obviously, therefore, the appellant was a complete stranger to them. In view of this, it was absolutely necessary that the appellant should have been put up for identification, when from the very beginning he had been repeatedly making requests for his test identification.

14. Thus it would appear that in that case even as per their own admission of the witnesses, they did not know the accused from before. In those peculiar circumstances non-holding of test identification was held to be fatal.

15. The next case relied upon is Mohd. Yaqoob v. State 1974 All Cri C 43. In this case also as per the prosecution case, the accused persons were arrested on the

spot in respect of the offence under Sections 399, 402 and 325 read with Section 149, I.P.C. in the presence of 7-8 public witnesses. However, none of them except one Lalta Prasad, who also did not support the prosecution case, was examined and no reason was given by the prosecution as to why this was not done. The accused persons had also claimed identification by the public witnesses but no identification was held. The defence of the accused was that they were arrested from different places and not from the place as alleged by the prosecution. In these circumstances when the accused persons were not known from before and in the absence of any corroboration by public witnesses, non-holding of test identification was considered to be a lacuna in the prosecution case. In paragraph 12 Hon'ble H. L. Capoor, J., as then he was, observed. 'It is true that if an accused person is well known to the witnesses an identification parade would be only a waste of time.

16. The third case referred to by the learned counsel for the applicant is State of U.P. v. Rajju AIR 1971 SC 708. In this case the accused person were arrested on the spot and it was held that in the absence of any request made by the accused, State is not bound to hold identification parade. This case is hardly of any help to the applicant's case.

17. The last decision on which the learned counsel for the applicant has laid great stress is Prakash Dhobi v. State of U.P. 1994 All Cri C 38, which was an application for bail and Hon'ble K. Narain, J. allowed bail to the accused and on the basis of this case, it is argued by the applicant's counsel that bail was allowed solely on the ground that no identification was held despite a request made for the same on behalf of the accused. In this report facts of the case have not been narrated and it is not clear whether the claim of the prosecution witnesses of knowing accused from before had any legs to stand or not and in view of the law laid down by the Apex Court the question as to what would be the result of non-holding of test identification even after a request is made on behalf of the accused on the claim of witnesses knowing the accused from before, can only be answered after having the evidence at the trial and no hard and fast rule can be laid down as to under what circumstances a test identification parade should or should not be held.

18. To sum up the proposition is well established that it is not at all a legal requirement to hold identification parade in each and every case nor can it be laid down as a rule that whenever the accused himself claims identification from the witnesses on the allegation that he is not known to the witnesses and no identification parade is held, the prosecution would always fail. The necessity of holding test identification may be felt when there is a doubt about the identity of the accused for where the evidence adduced at the trial may give rise to a suspicion on the claim of the witnesses knowing the accused from before, but if there is no such doubt or suspicion the prosecution case is not adversely affected by refusal of the prayer of the accused for putting him for test identification. What value should be attached to the claim of the witnesses of their knowing the accused from before can only be decided after the evidence at the trial is recorded and tested in the context of the facts of the case. The prosecution case is not weakened at all merely on the ground that an application moved on behalf of the accused for getting him confronted by the witnesses at identification parade is rejected on opposition by the prosecution on the plea that the accused is previously known to the witnesses. In such cases prosecution runs a risk because if ultimately the claim of the witnesses is not accepted, that may amount to a big lacuna which the prosecution may not be able to fill. However on that ground alone accused does not become entitled to bail irrespective of the merits of the case and the nature of the charges levelled against him. Each criminal case depends upon its own facts and intrinsic worth of the evidence adduced in the case. The question of credibility of a witness has primarily to be decided by referring to his evidence given at the trial and finding out as to how the witness has fared in cross-examination and what impression is created by his evidence taken in the context of other facts of the case. Criminal case cannot be put in a strait-jacket. In bail matters also the same principle will apply and no hard and fast principles can be laid down for granting or refusing bail and reference to decided cases hardly seems apposite when the question before the Court is whether in a given case the accused should or should not be admitted to bail and that question has to be decided in the context of the facts of that particular case.

19. There cannot be any inflexible rules governing a subject which rests primarily with the Court's discretion in the matter of allowance or refusal of bail. The

probability or improbability of prosecution terminating in conviction is not a conclusive consideration for the grant or refusal of bail, particularly in a case in which evidence has not so far been led. For their guidance the Courts also look to other circumstances which may be determinative, as for example, the Courts consider amongst others: (1) the enormity of the charge, (2) the nature of accusation, (3) the nature of evidence which is to be led in support of the accusation, (4) the severity of punishment which the conviction will entail, (5) the danger of the accused absconding if he is released on bail, (6) the danger of the witnesses being tampered with, (7) the protracted nature of the trial etc. There are other considerations also and the above is by no means an exhaustive catalogue of the factors which should weigh with the Courts. It is not, however, the law that a man charged with heinous offences committed in a daring manner should be admitted to bail merely on the ground that he claimed identification from those witnesses who stated of knowing the accused from before and no identification parade was held. The doubt or suspicion in such claim of the witnesses may arise only when evidence at the trial is recorded or there may be facts and circumstances of the case in a particular case, which may prima facie show that the accused was a stranger to the witnesses and in that event non-holding of test identification is liable to be taken into consideration in the context of other facts of the case while considering the application for bail. The consideration of this question at the stage of bail thus depends on facts which vary from case to case and the discretion has to be exercised on a consideration of the combined effect of all the circumstances of the case.

20. In the view I have taken, the argument that once the prayer of the accused for putting him to identification by the witnesses, who claim to be knowing the accused from before, is opposed by the prosecution and is not accepted, the accused becomes entitled to be released on bail irrespective of other facts of the case, must fail.

21. In the present case, on a consideration of the facts and circumstances, I find that the accused applicant does not deserve bail. The application is accordingly rejected.

