

iqbal Singh Vs. the State

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Court : Delhi

Decided On : Jan-09-1981

Reported in : 1981CriLJ512; ILR1981Delhi365

Judge : G.R. Luthra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 173 and 313

Appeal No. : Criminal Appeal No. 110 of 1977 (From order of P. K. Bahri, Addl. S.J., Delhi, D/- 4-3-1977)

Appellant : iqbal Singh

Respondent : The State

Judgement :

1. Iqbal Singh son of Nanak Singh was convicted by Shri P. K. Bahri, Addl. Sessions Judge, Delhi on June 7, 1975 in respect of commission of an offence punishable under Section 307, I.P.C. and sentenced to undergo rigorous imprisonment for five years. He went in appeal to the High Court. On December 16, 1976, the case was remanded to the trial Court for giving an opportunity of being heard to the appellant on the point of sentence. Accordingly, opportunity was given to him and on March 4, 1977, he was again sentenced to undergo rigorous imprisonment for five years. Feeling aggrieved, the present appeal has been brought by him.

2. The case of the prosecution, in brief, is as follows :

Kamla wife of Titu was running a Tea Shop in the compound of Tis Hazari Courts. Rafiq P.W. 1, Ram Asra P.W. 2 and one Munna were working as employees in that shop. On April 30, 1973, at about 10 p.m. said employees were lying outside the shop because they used to sleep there. Iqbal Singh, appellant accompanied by two persons came and started abusing Ram Asra to which Ram Asra objected. The appellant took out a knife and stabbed Ram Asra in the abdomen and on account of which the latter became unconscious and was taken away to Irwin Hospital. After stabbing, the appellant and his companions ran away from the spot. Rafiq P.W. 1 went immediately to the Police Post, Tis Hazari and lodged a report Ex. PA. As none of the witnesses knew the name of the appellant, his description was mentioned in the F.I.R. as 'One Sardar having fair complexion with medium physique'.

3. In the Irwin Hospital, operation of Ram Asra was performed. On May 3, 1973, Ram Asra was declared to be fit by the doctors attending on him to make a statement. Accordingly, his statement was recorded.

4. Dr. Arun Malhotra, P.W. 5 after examining the history sheet and the operation notes expressed his opinion that injury to Ram Asra was dangerous because the wound had tired the stomach, small intestines and the large ball.

5. On May 16, 1973, the present appellant was arrested and was produced before Shri Darshan Singh Sidhu, Metropolitan Magistrate (P.W. 6) by Shri Raj Singh, ASI, Police Post along with an application Ex. PG to the effect that an identification parade be held. Appellant refused to join the identification parade and therefore no date for the said purpose was fixed.

6. After completion of the investigation a report under Section 173, Cr.P.C. was filed in the Court.

7. There were three eye-witnesses of the occurrence. But only two witnesses namely, Rafiq P.W. 1 and Ram, Asra P.W. 2 were produced. They supported the case of the prosecution. The third eyewitness Munna was not produced because

he had gone away somewhere and his whereabouts were not known.

8. In his statement under S. 313, Cr.P.C. the appellant denied that he had committed the crime. According to him he has been falsely implicated on account of a quarrel with one Amirullah alias Tiger.

9. The main question involved in the case is one of identity of the appellant. Rafiq P.W. 1 admitted on cross-examination that he did not know the accused earlier. P.W. 2 Ram Asra stated that the appellant used to go to the shop of Kamla for taking tea and that he knew him by face. Under these circumstances, it was desirable for the police to have resorted to test identification parade. The prosecution relies upon the statement of Shri Darshan Singh Sidhu, Metropolitan Magistrate (P.W. 6) and A.S.I. Raj Singh (P.W. 7) to the effect that on 16th May, 1973, on which date the appellant was arrested, an application Ex. PG was made by the latter to the former for holding identification parade and that appellant refused to join the same on account of which the former made an endorsement Ex. PG/1 indicating the said refusal. The learned trial Judge relied upon that refusal for raising an adverse presumption and believed the testimonies of the aforesaid eyewitnesses. But the learned trial Judge did not take into consideration the Explanation of the appellant, which is plausible from evidence of the prosecution itself, that is refusal to join the identification parade was on account of his having been shown to the eyewitnesses before tat. Cross-examination of Raj Singh A.S.I of police shows that on the very day of arrest, i.e., on May 16, 1973, the appellant was taken to the Police Post of Tis Hazari and that on that very date itself appellant was shown to the witnesses. When the appellant was shown to the witnesses, holding a test identification parade became merely a formality and a farce. The prosecution thus did not resort to a good test of checking that P.W. 1 and P.W. 2 could identify the appellant. Under these circumstances, it is not safe to rely upon identification of appellant by them in Court especially when admittedly he was shown to them prior to their deposing in the Court.

10. In the presence of aforesaid infirmity in the evidence of the prosecution, the evidence in defense assumes importance. Naresh Kumar, D.W. 1 and Jit Bahadur, D.W. 2 stated that they were present when the quarrel took place and that

appellant was not the person who had stabbed Ram Asra. It is important to mention that D.W. 1 and D.W. 2 were originally cited as witnesses of the prosecution for the propose of proving that they guided the appellant to the shop of Kamla. But afterwards they were given up. The learned trial Judge disbelieved their statements on the ground that those were contradictory to the ones made before the police because in the Court they tried to impress that they were eye-witnesses while before the police they had merely stated that they had pointed out the shop of Kamla and that they were not eye-witnesses of the occurrence. But those observations of the learned trial Judge do not take note of S. 162 of the Code of Criminal Procedure which imposes a complete bar to the use of statement of a witness recorded under Section 161 of the code of Criminal Procedure except in one contingency of contradicting tat witness when he appears on behalf of the prosecution. In the present case, the aforesaid witnesses were never examined by the prosecution. They appeared as defense witnesses and thereforee their statements given before the police could not be used at all even for the purpose of contradicting them. It was held in *Shakila Khader v. Nausher Gama*, : AIR 1975 SC1324 that the statements to the police under Section 161 of the Code of Criminal Procedure cannot be used for any purpose except for contradicting them when they appear as witnesses on the side of prosecution and that their statements cannot be used even for contradicting them when they appear as defense witnesses.

11. It is obvious from the above that the case of the prosecution does not stand proved beyond reasonable doubt and thereforee the appellant is entitled to acquittal.

12. I, thereforee, accept the appeal, set aside the conviction and sentence of the appellant and I acquit him. His personal and surety bonds are discharged.

13. Appeal allowed.