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State Vs. Shankar @ Raju

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Court : Delhi

Decided On : Dec-17-1986

Reported in : 1988CriLJ780; 1987(12)DRJ240

Judge : Yogeshwar Dayal and; Malik Sharief-Ud-Din, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 302

Appeal No. : Murder Reference No. 1 of 1986 and Criminal Appeal No. 22 of 1986

Appellant : State

Respondent : Shankar @ Raju

Advocate for Pet/Ap. : R.K. Naseem,; D.R. Sethi,; A. Ahlawat,;

Judgement :

Malik Sharief-Ud-Din, J.

(1) The learned Additional Sessions Judge. New Delhi has convicted Devi Chai an accused under Section 302/34 Indian Penal Code and sentenced him to imprisonment for life and to the payment of fine of Rs. 2,000.00 and in default of payment to further imprisonment for six months. He has also been convicted and sentenced to undergo imprisonment for life and to the payment of fine of Rs. 1,000.00 and in default of fine to further imprisonment for six months for an offence under Section 394 Indian Penal Code.

(2) Shankar, another accused, has been sentenced to death under Section 302 Indian Penal Code and to a fine of Rs. 2,000.00 and in default of fine to further imprisonment for the months. Shankar has also been sentenced to life imprisonment for the offence under Section 394 Indian Penal Code read with Section 397 and 398 Indian Penal Code and also to a fine of Rs. 1,000.00 and in default of fine further imprisonment for six months.

(3) The learned Additional Sessions Judge has, thereforee, made a reference to this court for confirmation of the death sentence. There is a connected appeal No. 22 of 1986 also. We have heard the learned counsel for the parties at length. The date of incident is 15/10/1979 at about 7.15 p.m. The place of incident is the crossing of road leading to '?' Block and 'K' Block within the jurisdiction of police station Hauz Khas, Delhi. The deceased is one Smt. Ranjita Prithvi Singh.

(4) The brief facts of this case are that at the time and date of incident the deceased had gone for a walk with her friend Public Witness 12 Miss Prem Wati Thapar, an aged lady. While they were at the crossing of P and K Blocks the appellants suddenly appeared on a two-wheeler scooter and are alleged to have come to a bait about 5 paces from the ladies. The accused Devi Charan was driving the scooter while the other accused Shankar was riding on the pillion seat. Soon after the scooter came to a halt, Shankar accused got down from the pillion seat and approached the ladies armed with a pistol. Then Shankar pointed his pistol towards the deceased and demanded her gold chain. The deceased is alleged to have stepped back whereupon Shankar accused warned to shoot her. At this stage Prem Wati Thapar Public Witness 12 entreated her friend deceased to hand-over her ornaments to Shankar accused. In the meantime Shankar accused allegedly pulled her chain and fired a shot at the deceased. The chain fell on the ground and the shot pierced through the chest of the deceased who fell in a pool of blood. During this time Devi Charan accused was all the time on scooter keeping the engine of the scooter running. Both the accused then escaped from the scene on the scooter after leaving the chain behind.

(5) The prosecution case further is that Vinod Mehta Public Witness 54 at the time of incident was passing that side in his car and he is alleged to have seen the

incident. The accused area alleged to have escaped from the scene in this presence. He chased the accused in his car but failed to over-power them as they disappeared on the scooter in some street.

(6) At this stage we may notice another limb of the case which relates to the sequence of events leading to the apprehension of the accused as also the facts on the basis of which the accused were found to be involved in the commission of this crime. One Mrs. Reena Dutt Public Witness 2 on learning about the incident informed the police on telephone. Prithvi Singh Public Witness I and Sanjay Dutt Public Witness 3 had meanwhile removed the deceased to the hospital where she was declared as brought dead. S.I. Tikarn Chand Public Witness 11 recorded the statement of Smt. Prem Wati Thapar Public Witness 12 which statement in fact forms the basis of Fir in this case. On the same night statement of Public Witness 54 Vinod Mehta was recorded after he had re-appeared at the scene of incident on the same night.

(7) It is alleged by the prosecution that around that period a spate of 'similar incidents were taking place but there was no trace of the culprits. A break-through allegedly came when police received a secret information that certain miscreants were residing in house No. C-l/25 Lawrance Road. On the night of 21/10/1979, Ram Narain S.I. Public Witness 49 in pursuance of the secret information and accompanied by other officers of the crime branch conducted a pre-dawn raid on the said house and arrested three persons Mahinder, Surinder and Ram Bachan from that place. The police also recovered from their possession some arms and ammunition and country made bombs. This house on investigation was found to be belonging to Public Witness 19 Vijaypal Singh who disclosed that this house was taken on rent by one Raj Kumar and it was being also occupied by several other boys including the three persons who were arrested from the house. It was only on the interrogation of these three arrested persons that the investigating agency came to know about the involvement of the accused in the commission of this crime. They also learnt that some of the culprits were at the house of one Bhakti Nai within the area of village Azadpur.

(8) On 24/11/1979. Public Witness 46, Inspector Raj Bahadur, 'S.H.O. Police station Adarsh Nagar had also received information at 4.40 Am about some miscreants present in the house of Bhakti Nai. He raided the house and found the accused Shankar along with one Mahabir and Ram Kishan and apprehended them. At the time of arrest the appellant Shankar had a bag slung on his shoulder. It was found to contain a country made pistol of 12 bore with long barrel and two 12 bore cartridges. These were formally seized and secured. Face of ihe accused Shankar was allegedly muffled and on that very day he was taken to Shri Ravi Kumar C.M.M. Public Witness 38 for a test identification parade in this case and other cases. The accused Shankar is stated to have refused to submit to the test identification parade on the plea that he had been shown to the witnesses.

(9) On 27/11/1979 some secret information was received about the availability of appellant Devi Charan in the village Gadiapur at Mehrauli Road, Gurgaon. This resulted in the arrest of accused Devi Charan. His face was also muffled and on the next day he was also presented for test. identification parade before Shri Prem Kumar M.M. Public Witness 26. Devi Charan accused also refused to submit to test identification parade on a similar plea. It was only thereafter that the investigating agency got it confirmed from the witnesses that these two persons were involved in the commission of crime.

(10) The above facts noted by us, though strictly not very relevant for the disposal of this case, do assume importance in the light of facts and circumstances of this case. It would appear that the clue is provided about the involvement of the accused by persons who are neither witnesses in this case nor are they alleged to be eye-witnesses to the incident. This entire sequence is made a part of this case only to indicate as to how the investigating officer was able to lay his hands upon the accused involved in the commission of this crime. We may at once point out that the pistol . recovered from the Shankar accused is admittedly not connected with this. incident. It is, thereforee of no assistance to the prosecution. In our view,, the only relevant part of this sequence of events is the evidence regarding: refusal of the accused to participate in the test identification parade. The prosecution case is that it was only after refusal that they confirmed about the involvement of the accused from the witnesses. We shall be taking up this aspect of the case for

examination separately.

(11) On consideration of the contentions raised and on examination of the record we are of the view that no reference is required to be made to the testimony of autopsy surgeon. Neither the injuries sustained nor the weapon offence used nor the cause of death is in dispute. We, thereforee assume that the sequence of events in which this offence came to be committed is. absolutely true as that is also not in dispute. The real and important question that, however, arises for consideration is as to whether the prosecution has conclusively established the involvement of the accused in the commission of this crime. If the answer to this question is in affirmative that will be the end of the road for the accused. In turn the answer to this question rests on the acceptability of the testimony of two eye-witnesses Public Witness 12 and Public Witness 54 regarding the identity of the accused.

(12) Public Witness 12 Prem Wati Thapar and Public Witness 54 Vinod Kumar Mehta, indeed, seem to us to be respectable persons and there seems to be no earthly reason for them to involve the accused in this heinous crime. They have in their testimony lent qualified support to the prosecution case and have fully and completely supported the sequence of events leading to the commission of this crime. The only flaw in their evidence, to our mind, is that they have identified the accused only in the court long time after the incident. That raisers an important question as to whether this identification of the appellants' in the court by these two witnesses long after the incident can be acted upon or not and whether this identification can be made a safe foundation for the conviction of the appellants. This aspect assumes added significance in view of many other facts to which we shall soon advert.

(13) Mr. R.K. Naseem, counsel for the State urged before us that once the accused refused to submit to the test identification parade there was no other way to identify the accused and the only option left with the investigation was to confirm about their involvement by showing them to all the eye-witnesses. Mr. D.R. Sethi contends that the accused Shankar was never produced before any Magistrate in test identification parade in this case. Reliance in this regard is placed by Mr. Sethi

on document Ex. Public Witness 29/A application for holding test identification parade in Fir 1392 dated 28th September 1979 under Section 392, 394, 397 Indian Penal Code police station Kalkaji). Mr. Sethi maintains that this application was submitted to Chief Metropolitan Magistrate Shri Ravi Kumar by S.I. Partap Singh for test identification parade in that case and the witnesses mentioned therein are also the witnesses who had to identify the accused in that case. Mr. Sethi further contends that even Public Witness 29 Shri Ravi Kumar does not state that the test identification parade was to be carried in the present case as well. We see no reason to subscribe to the view taken by Mr. Sethi. It will be noticed that in the document Ex. Public Witness 29/A just above the endorsement of Shri Ravi Kumar there is a request in writing by Shri R.P. Kochar Inspector that the test identification parade is also to be conducted in Fir No. 999/79, police station Hauz Khas and Fir No. 1162/79 of police station defense colony. This document has been proved by Public Witness 29 Ravi Kumar Chief Metropolitan Magistrate. It will be seen that the application was only meant to ascertain from the suspect if he was ready to submit to the test identification parade. Had he desired to do so the rest of the formalities would have followed. It is on record that all these cases were being investigated under the direct supervision of Shri R.P. Kochar Public Witness 27, the inspector in the crime branch We are under the circumstances left with no option but to dismiss the contention of Mr. Sethi in this regard and we hold that request for test identification parade was made in this case while accused Shankar had declined to participate.

(14) Before we proceed further, we may make reference to Cross on Evidence (Fifth Ediction) Butterworths, as was referred by Mr. Sethi. In this book the author has made the following observations :-

'IT might be thought that in criminal cases there could not be better identification of an accused than that of a witness who goes into the box and swears that the man in the dock is the one he saw coming out of a house at a particular time, or the man who assaulted him. Nevertheless, such evidence is suspect where there has been no previous identification of the accused by the witness, and this is because its weight is reduced by the reflection that, if there is any degree of resemblance between the man in the dock and the person previously seen by him. The witness,

may very well think to himself that the police must have got the hold of the right person, particularly if he has already described the latter to them, with the result that he will be inclined to swear positively to a fact of which he is by no means certain. People have mistakenly identified friends and relations well known to them with sufficient frequency to make them question the propriety of convicting an accused person on nothing more than the visual identification of a single witness who may only have had a fleeting glance of him in poor light.'

(15) In Budsken & another v. State of U.P. : 1970 CriLJ1149 it has been observed:-

'THE evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of weak character, though as a matter of general rule, the substantive evidence is a statement made in the court. The purpose of a prior test identification, thereforee, 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 a court as to the identity of the accused who are strangers to them, in the form of earlier identification proceedings. There may, however, be exceptions to this general rule, when, for example, the court is impressed by a particular witness, on whose testimony it can safely rely, without such or other corroboration.'

(16) To our mind, the crucial question is the quality of evidence in this regard. If the evidence is poor the court has no option but to direct acquittal in the absence of supporting evidence. The courts have always stressed the need for cautious approach in this regard. The courts have to guard against the mistaken identification and have also to exclude the possibilities of the identification being based on merely visual impressions of the witness. It is in these circumstances that the dock identification without any supporting evidence has been considered as a suspect. There can, however, be no rigid rule as an accused person may refuse to be subjected to test identification parade for even invalid reason. It will, thereforee, always depend on the quality of evidence in the circumstances of each case. All that is thus required is a cautious approach in which the judicial maturity, strict adherence to the rule of prudence, judicial and pragmatic approach to

evidence together with experience in human affairs are the factors which do guide the court in determining the weight of such evidence.

(17) With this in mind, let us now advert to the evidence of identification in the lock in this case. It wilt be seen that on 15/10/1979, the investigating officer had no knowledge about the culprits involved in the commission of this crime. It was only on 21/11/1979 when they raided the premises on the Lawrance Road that they came to know that this offence was committed by the accused. The police arrested three persons from that premises along with pistol and a scooter. They, however, did not send their pistol to Csfl to rule out its being the weapon of offence in this case. The police did not even send these persons for test identification parade to rule out their involvement. Thus the police did this even though wanted person according to their information were in that house. Public Witness 27 Shri R.P. Kochar maintains that those persons were not put for identification parade, in this case and he came to know about the accused persons from those three persons after interrogation. We have already noticed that the pistol recovered from Shankar accused is not connected with this case. In dock identification of the accused the court has to depend on the impression of somebody, one who can falter as well. In this case apart from the identification in court by Public Witness 12 and Public Witness 54, there is no supporting evidence.. Public Witness 12 Premwati Thapar has identified Shankar accused in court on 17.2.81 almost after one year and three months, the incident being of 15/10/1979. Public Witness 54 identifies both the accused in court on 21/9/83 i.e. almost about four years of the incident. Public Witness 12 at the time of incident was aged 79 years. The incident has taken place at 7.15 evening. She was admittedly suffering from cataract/arthr IT is and heart problem. At the time her testimony was recorded by the police, she had given no description of culprits. How then could she identify the accused in court after such a long time This would definitely not appeal to any prudent man. She does not make mention of Public Witness 54 having seen the incident. She does not even know as to in which direction the accused drove. The incident was just a matter of minute or so and she must have also been excited.

(18) In the same manner Public Witness 54, Vinod Kumar Mehta states that he saw the accused from his car grappling with a woman from 8 to 10 yards while he

was driving his car. Obviously, he saw the incident from the back of the accused. He says that he chased the accused but again it was from the back side of the accused and in the evening. According to him he was stunned and did not notice the registration number of the scooter. The only description of the accused he gage is that one was short stature and the other was a thin bow. This is no description but are only his impressions. It can hardly be said that he could identify the accused after four long years on the basis of this description under the circumstances of this case. The evidence in respect of identification of these two eye-witnesses can hardly be said to conclusively establish the identity of the culprits as the persons connected with the commission of this crime. With so many disabilities of Public Witness 12 and with the situation in which Public Witness 54 was placed and in that horrifying atmosphere during evening time within such a short time, it is not at all possible for any eye-witness to identify unless the witness had an opportunity to see the accused on some earlier occasion. If these two eye-witnesses had really observed them they would have given some sort of broad description at the time when they mad either statements to the police. That alone could inspire faith in their identification of the accused. In this case dock identification has further lost credibility due to the identification by the witnesses after such a long time. In our view no reasonable man can rely and act on such identification as it would amount to taking a great risk unless this identification is corroborated by some supporting evidence. It is not uncommon that due to mistaken identification mishaps have taken place and innocent persons have been convicted. It is difficult to make ones judgment subservient and dependent on the impression of somebody. It is not, thereforee safe to base a conviction on such evidence. With these observations we decline the Murder Reference and acquit both the accused.

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