

**Parmod Kumar Vs. State**

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**Court :** Delhi

**Decided On :** Oct-18-1989

**Reported in :** 1990CriLJ68; 40(1990)DLT289

**Judge :** Charanjit Talwar and; Malik Sharief-Ud-Din, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 302

**Appeal No. :** Criminal Appeal No. 159 of 1986

**Appellant :** Parmod Kumar

**Respondent :** State

**Advocate for Pet/Ap. :** D.R. Sethi,; Raman Sawhney and; R. Wasu, Advs

**Judgement :**

**Malik Sharief-Ud-Din, J.**

(1) Five persons, namely, Padam Singh, Ram Avtar, Ramesh, Parmod Kumar appellant and Sri Kant were charged by the learned Additional Sessions Judge, Delhi, for offences under sections 148, 302 read with section 149, section 307 read with section 149, section 324 read with section 149 of the Indian Penal Code. Parmod Kumar appellant was additionally charged under section 27 of the Indian Arms Act. All the accused excepting Parmod Kumar appellant, were acquitted. Parmod Kumar was convicted under section 302 Indian Penal Code and was

sentenced to undergo imprisonment for life and was also directed to pay a fine of Rs. 4000.00 , in default of payment of which the trial court imposed a further rigorous imprisonment for two years. This appeal has been preferred by Parmod Kumar making a grievance against his conviction and sentence.

(2) Briefly stating, the facts are that on 18th of November 1982, one Balram along with Parshotam had gone to Amba Cinema to purchase advance tickets for the 'Noon Show'. While they were standing in the queue, Ramesh and Ram Avtar (now acquitted) tried to jump the queue. This was objected to by Parshotam who also slapped one of them. At this Ramesh and Ram Avtar went away after extending threat that he will soon be taught a lesson It is alleged by Balram (P.W.8) that when they came out they found Ramesh and Ram Avtar standing at the gate with Padam Singh, Parmod Kumar and Sri Kant. Padam Singh took out a knife and hurled it towards the abdomen of Balram. Balram warded off the attack but in the process his hand was injured. In the meantime Sri Bhagwan, a police constable, who was a neighbour of Balram, came there and caught hold of Padam Singh. Sri Bhagwan is then stated to have shown his identity card but it was of no effect. Padam Singh cried and called Parmod to rescue him and on that Parmod is stated to have stabbed Sri Bhagwan in the abdomen with a knife. Padam Singh is also said to have stabbed Brahm Prakash (P.W. 19) with the knife. Ram Avtar and Padam Singh were overpowered while the other accused succeeded in escaping from the scene of the incident. Brahm Prakash injured is stated to have gone to Bara Hindu Rao Hospital in a three-wheeler picking up Ashok Kumar on his way. Sri Bhagwan, the deceased, was also taken to the same hospital by Yogesh Kumar (P.W.3). Sri Bhagwan died at 11.15 A.M. on the same day consequent to the injuries sustained in the incident.

(3) There is hardly any need for us to refer to testimony of autopsy surgeon. This is because the nature of the injuries sustained and the cause of death is not in dispute. All that we are required to do is to consider if the appellant is involved in the commission of this crime. The learned Additional Sessions Judge has disbelieved the prosecution evidence in respect of the remaining four accused who were also charged for similar offences. He has however, come to the conclusion that there was enough evidence to show that the appellant was involved in the

murder of Sri Bhagwan. This the learned Additional Sessions Judge has held on the testimony of Public Witness .2 Balram who had stated that it was Parmod who had inflicted the fatal injury on the person of the deceased. Public Witness .2 Balram had also identified Parmod Kumar in the court during the trial. The testimony of Public Witness .19 Brahm Prakash was to the same effect and he too had identified Parmod in the court during trial. The trial court further found that even though the prosecution had moved an application for identification parade and even though Parmod was produced in muffled face he refused to participate on the plea that he was known to the witnesses. The learned Additional Sessions Judge felt that this was a false plea and that is why in his statement under section 313 Cr.P.C. Parmod took the stand that he had been shown to the witnesses and on that ground he had refused to participate in the identification parade. We want to make it clear at this stage that the prosecution case is that Parmod was not known to any one of the aforesaid witnesses prior to the incident. The evidence of P.W.8 Parshotam was to the effect that he saw Parmod a knife.

(4) MR.D.R. Sethi, learned counsel for the appellant, has assailed the order under appeal on various grounds. According to him, the evidence regarding recovery of knife which, in fact, is not connected with this crime has been rejected by the court below and the evidence regarding refusal to participate in test identification parade has been held against the appellant while it has been rejected in respect of the other accused. He further urged that even the scene of the incident is not correctly stated as there was no blood at the place where the incident took place. According to him even though admittedly there are number of shops and vendors at the alleged place of incident, witnesses from one group have been examined by the prosecution. Mr. Sethi further submits that if the story that Balram and Parshotam had gone to the Cinema to purchase advance tickets was correct then there was no reason for the prosecution not to take these tickets into possession. Mr. Sethi submits that where five persons were charged an for offence with the aid of section 149, the effect of the acquittal of four of them on the case of the appellant would be that the prosecution story is not to be believed.

(5) In our view, there is no need for us to go into all these details, as the prosecution case has to be thrown out on absolutely a different ground' The

ground is that there is no evidence to the effect that Parmod appellant was identified by the prosecution witnesses.

(6) It is clearly admitted by all the eye-witnesses Public Witness s. 2, 8 and 19 that the appellant was not known to them before the date of incident. The prosecution case, in fact, is that the appellant was not known to the witnesses. It was for this reason that the investigating officer had made an application for carrying on the test identification parade. The case of the prosecution is that Parmod was produced in a muffled face before the Magistrate for the test identification parade, but he refused to join the same. The learned Additional Sessions Judge, it seems to us, has been swayed by the fact that Parmod appellant at the time of the refusal had said that he was known to the witnesses, but in his statement under section 313 Cr.P.C. Parmod had taken the stand that he had been shown to the witnesses. We are of the view that not much importance can be attached to this. The fact, however, remains that where the accused is not known to the eye-witnesses the prosecution has to show that the accused refused to join identification parade without any just reason. But before we examine the validity of the reasons given by the appellant for refusing to join the test identification parade we would like to refer to the settled legal position. In *Tain Singh v. State (Delhi Admn.)* 1987 Cri. L.J. 53, one of us (Talwar.J.) while examining the proposition has held as under ;

'IT is settled law that the accused is not to prove conclusively that he was shown to the prosecution witnesses before he declined to participate in the identification parade. It is enough if he brings on record cogent circumstances to show that he was or could have been shown to the prosecution witnesses while he was in police custody or when he was produced before the Court for remand.'

(7) It is also the settled principle of law that where the dock identification of the accused was after a long time of the incident and there was no supporting evidence, the conviction of the accused on the basis of such identification would neither be proper nor safe. Since dock identification very often depends upon the visual impressions of the witness it has been considered as suspect without there further being any supporting evidence particularly when there has been no

previous identification of the accused by the eye-witnesses.

(8) The evidence of identification by its very nature is weak type of evidence. It is therefore all the more necessary that the prosecution should affirmatively prove that there was no possibility of the accused being shown to anybody. The witnesses who are examined by the prosecution should have been asked as far as possible to give broad description of the accused while recording their statement under section 161 Cr.P.C. An invalid plea taken by the accused would not validate the prosecution action unless it is shown that proper precautions were taken not to show the accused to any one before the test identification parade. The accused does not know and will not know if he has been seen by the eye-witnesser. He has only to show a mere possibility of his being shown to the witnesses.

(9) In the present case, we find complete justification for Mr. Sethi to urge that the appellant was justified in refusing to join the test identification parade. The appellant, in our view, on the facts this case, has sufficiently shown that there was possibility of his being shown to the witnesses. The appellant was arrested on 25th of November 1982 and on the same day, according to the prosecution case and the evidence, he is said to have made a disclosure statement. After making the disclosure statement he was taken to Roshanara garden where he is stated to have got recovered the alleged weapon of offence. It was only thereafter that his face was allegedly muffled and he was taken to the court for test identification parade. The investigating officer has not been examined by the prosecution. He, in fact, was the only person who could have given the details in respect of the precautions taken by him to rule out the possibility of the appellant being seen by the eye-witnesses. In the circumstances of this case, therefore, is every possibility that the appellant might have been seen by the witnesses when the recovery was allegedly being made at the instance of the appellant. The least that can be said is that the possibility of his being seen by the witnesses during this period could not be ruled out. That apart, none of the eye-witnesses examined in this case had given any sort of description of the appellant in their statements under section 161 Cr.P.C. It is the prosecution case that during the process of the recovery the appellant was not in muffled face. In our view, therefore, the appellant was justified in refusing to join the test identification parade as he has clearly

established the possibility of his being shown to the eye-witnesses during the course of the alleged recovery of the weapon of offence. In this case since the appellant was not known to the eye-witnesses from before the identification of the appellant for the first time in the court without any supporting evidence is not a valid identification and cannot be made the basis for his conviction. On this ground alone the conviction of the appellant is not sustainable and we hold accordingly. The result is that we allow this appeal and set aside the conviction and sentence passed by the learned Additional Sessions Judge and acquit the appellant.

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