

**ila Ram Vs. the State**

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**Court :** Delhi

**Decided On :** Aug-31-1990

**Reported in :** ILR1990Delhi17

**Judge :** Malik Sharief-ud-Din and; Jaspal Singh, JJ.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302

**Appeal No. :** Criminal Appeal No. 106 of 1987

**Appellant :** ila Ram

**Respondent :** The State

**Advocate for Pet/Ap. :** B.B. Lal,; R.L. Kohli,; D.R. Sethi and;

**Judgement :**

**Jaspal Singh, J.**

(1) We discern not many a knots in the strand woven by the prosecution. However, first, the prelude. In the posh locality of Saket there is a Central Market known also as Super Bazar. It comprises of twenty-six shops. Shop No. 24, however, provides the central stage. Its proprietors were Davinder Kumar Aggarwal and Parveen Kumar Aggarwal, though some times their father Gian Chand Aggarwal also used to look after the business. Hardly a few yards away from the market are residential houses and one of the occupants of one of those residential buildings is Rajpal

Sharma, Advocate. Quite nearby also lives Vinod Kumar Singhal. He is the brother-in-law of Parveen Kumar Aggarwal. They are the central characters besides, of course, Lila Ram @ Liloo and Rajinder Kumar, who were arrayed by the prosecution as the accused. Allegedly their victim was Parveen Kumar Aggarwal.

(2) A thumb nail sketch of the sequence of facts is necessary to get a hang of the core of the case of prosecution. Drawn from the First Information Report recorded on the basis of the statement of Davinder Kumar Aggarwal, it emerges out as follows.

(3) On December 29, 1983 at about 5 P.M. Davinder Kumar Aggarwal and his brother Parveen Kumar, deceased, were present at the shop. A boy, short statured, sallow complexioned and slightly heavy built, came to the shop and asked for a speaker for his jeep. When told that they had no speakers for vans, he took a television speaker on approval, came back after some time, and demanded screws to fit it in the jeep. It so happened that at that time, four screws were lying on the counter meant for a heater belonging to a customer. The boy picked up those screws. This was objected to by Parveen Kumar to which that boy took offence and Threatened to teach him a lesson. However, on being pacified by Davinder Kumar Aggarwal, that boy went away in his white coloured jeep. The scene then shifts to January 1, 1984. On that day at about 9.15 P.M. while the shop was being closed by the said two brothers' and their employee Akhilesh, a person sallow complexioned slim and aged about 26-27 years came to the shop, stared at Davinder Kumar, asked him whether he was the same person, and gave a slap on his face. In the meanwhile, the boy who had visited the shop on December 29, 1983 also came there and, while pointing out towards Parveen Kumar, told him that it was Parveen Kumar who was the person concerned. By that time that. slim person had taken out a screw-driver from inside the belt of his pant. He gave two or three blows with it to Davinder Kumar Aggarwal which were successfully warded off and as soon as Parveen Kumar enquired as to what the matter was, that slim person gave three or four blows with it in his chest, and stomach. Parveen Kumar fell down on the ground on which the built boy remarked: 'Bas Sala Mar Gaya, Chalo.' Thereafter, both of them took to their

heels. Parveen Kumar was later taken to the hospital by Davinder Kumar Aggarwal and Akhilesh Kumar where he was declared dead. The occurrence as per the First Information Report, was witnessed by two three shopkeepers and by Akhilesh Kumar. However, in the course of the trial, Davinder Kumar Aggarwal disowned the shopkeepers and the prosecution made an attempt to show that it was Rajpal Sharma, Advocate, who had actually witnessed the occurrence.

(4) As per the prosecution the boy who had visited the shop on the 29th was Rajinder Kumar and the person who had inflicted the injuries with a screw-driver was Lila Ram.

(5) The prosecution claims that Lila Ram was arrested on January 3, 1984 at about 7.30 P.M. while driving a white jeep and Rajinder Kumar surrendered in court on January 9, 1984 and that though applications were moved for holding of the test identification parades, both of them refused to participate on the ground that they had been shown to the witnesses. It is also claimed that on the intervening night of 12th and 13th January, 1984 at about 2.30 A.M. Rajinder Kumar made a disclosure statement with regard to the screw driver and on the same day at about 7.30 A.M. led to its recovery from a Mullahs not only in the presence of two police officers., Asi Mahak Singh and Si Dharampal (Public Witness s 17 and 21 respectively) but also in the presence of Vinod Kumar Singhal (Public Witness -20). That screw driver is Ex. P-6.

(6) Before concluding the resume' it may be mentioned that it was Dr. S. P. Aggarwal (Public Witness -3) who had examined Parveen Kumar on January 1. 1984 at about 9.45 P.M. and had declared him dead. The mortal remains of Parveen Kumar were thereafter subjected to post-mortem by Dr. Chanderkant (Public Witness -17). He found as many as four injuries. One was a lacerated contused wound caused by a blunt object while the remaining three were circular penetrated wounds, two of which were found to be individually and collectively sufficient to cause death in the ordinary course of nature. He was also shown the screw driver (Ex. P-6). As per him the three circular penetrated wounds could be caused by it.

(7) As would be borne out from what has been noticed by us above, it was on the 29th of December, 1983 that Rajinder Kumar had allegedly visited the shop of the deceased. With regard to the incident of that date the prosecution has examined three witnesses, namely, Davinder Kumar Aggarwal (Public Witness -12), Nawal Kishore (Public Witness -2) and Gian Chand (Public Witness -5). Nawal Kishore was an employee at the shop. We need not lose much breath on him as he has not supported the prosecution version. Gian Chand is the father of the deceased. Admittedly he was not present at the relevant time at the shop. His only statement is that on the night of 29th of December. Parveen Kumar came to him with a perplexed and horrified look and told him that only over four screws, a boy, who was a regular visitor at the shop of Gupta Ji, had hurled filthy abuses and had threatened him with dire consequences.

(8) With regard to the occurrence of January 1, 1984, we have on the record the statements of Davinder Kumar Aggarwal, Akhilesh Kumar and Rajpal Sharma, Advocate (Public Witness s. 12, 13 and 16 respectively). Out of these three alleged eye witnesses, Akhilesh Kumar has not uttered a word favorable to the prosecution. The other two, however, have lent their full throated support.

(9) The learned trial judge found the statement of Rajpal Sharma, Advocate unworthy of reliance. However, relying principally upon the statement of Davinder Kumar Aggarwal and the evidence regarding recoveries of the screw-driver and the jeep with a speaker and the refusal of the accused to participate in identification proceedings, the convicted Rajinder Kumar under section 302 and Lila Ram under section 302 read with section 34 of the Indian Penal Code, and sentenced them to undergo imprisonment for life. Hence these appeals.

(10) As expected, sparks all around were witnessed on the clash of wordy arms during arguments. Whereas according to S Shri R. L. Kohli, D. R. Sethi and B. B. Lall, Advocates appearing for the appellants, the evidence led by the prosecution deserved to be ignored with certain element of contempt, the other side led by Ms. Usha Kumar and Shri S. K. Aggarwal, Advocates found nothing but all virtue in everything said and done by the prosecution. Though they did give expression to their dismay over the rejection of the evidence of Rajpal' Sharma by the learned

trial judge, the fact that he had found acceptable till statement of Davinder Kumi.!. - Aggarwal and the evidence regarding recovery of the screw-driver and tin.' jeep proved to be a great source of satisfaction to them. The witness stated us to accept not only what had been found to be acceptable by

(21) To meet the situation. it was argued on behalf of the State that as the appellants had refused to take part in the test identification parade, presumption adverse to them deserved to be drawn and as the appellants had been correctly identified in the dock, the question of their identification stood settled firmly and squarely against them. However, on this aspect of the matter also we find ourselves unable to make ourselves agree with the contention. Lila Ram was allegedly arrested while driving a jeep from a busy road. From there he was taken first to Police Station Hauz Khas and then to Police Post Saket. Although the Investigating Officer does state that Lila Ram had muffled his face with a chuddar on his arrest, we are not inclined to place reliance on his solitary bald statement not only because he is a person who has actively connived at the introduction of witnesses like Rajpal Sharma and Vinod Kumar Singhal and has thus shown scant regard for truth and objectivity, but also because, on this aspect of the matter, the other two witnesses, though police officials, have not lent their voice in his support, we are, thus, inclined to agree with Shri B. B. Lal, Advocate, appearing for Lila Rani that after his arrest while Lila Ram was being shifted from the place of his arrest to the Police Station and from the Police Station to the Police Post, necessary precautions to protect his identity were not taken. This, however, is not the end of the matter. On January 4, 1984, Lila Ram was produced before Shri K. C. Lohia, Metropolitan Magistrate, where he made statement Ex. Public Witness 22 B) refusing to participate in the test identification proceedings on the ground that he had already been shown to the witnesses. The proceedings recorded by the learned Magistrate are Ex. Public Witness 22 A. What is of significance is that neither in the proceedings nor in his statement as Public Witness -22 has the learned Magistrate stated anywhere that Lila Ram was produced before him a muffled face.

(22) Coming to Rajinder Kumar, he had surrendered in court on January 9, 1984 and was sent to judicial custody with directions to produce him in court on the

11th. On the 11th, at about 2.15 P.M. he was produced in the court of Shri O. P. Gogne. Metropolitan Magistrate. As the learned Magistrate was 'not available, he was produced before the learned Additional Chief Metropolitan Magistrate who directed him to be produced before Shri M. K. Gupta, Metropolitan Magistrate. It was thereafter that Rajinder Kumar was produced before Shri Gupta who recorded the proceedings Ex. Public Witness 23 A showing that Rajinder Kumar had refused to take part in the test identification proceedings. Unfortunately no separate statement of Rajinder Kumar was recorded. Significantly, in the proceedings (Ex. Public Witness 23 A) it is nowhere recorded that Rajinder Kumar had appeared in muffled face. The learned Magistrate has entered into the witness- box as Public Witness -23. He states: I cannot specifically say whether the accused Rajinder Kumar was produced in my court with his face muffled or not.' We felt that had Rajinder Kumar been produced with his face muffled, the learned Magistrate must have recorded that fact in the proceedings.

(23) Though the proceedings recorded by the learned Magistrate Ex. Public Witness 23 A) and his statement do not show that Rajinder Kumar was produced in court with his face muffled, the Investigating Officer, S.I. Dharam Pal (Public Witness -21) comes out with an amusing statement. He says that when Rajinder Kumar appeared in the court of Shri O. P. Gogne. he 'interrogated' him and that 'sometimes, he used to un muffle his face and sometimes he. used to muffle his face' What should we make out of this statement Firstly, who told the Investigating Officer that the person concerned was Rajinder Kumar. After all, Rajinder Kumar was not known to him from before. Secondly, what made him 'interrogate' him outside the court room before his having been produced before the Magistrate ' And, what should we make out of this muffling and business Lastly, if Rajinder Kumar had really muffled his face, why the Investigating Officer did not warn him not to keep on un muffing it for he wanted to move an application for holding of a test identification parade And let us not forget that Rajinder Kumar was produced in the courts located in the Patiala House, where Rajpal Sharma, Advocate was practicing and who had been assiduously keeping a track of the inch-by-inch progress of the investigation. And this is not. all. The Investigating Officer had come to know about the surrender in court of Rajinder Kumar on the 9th and that is why he was in the court ready with an application for test identification. A police

officer of even an average intelligence would have known that the description given was too general in terms and consequently not sufficient to nab the accused. In such a situation the anxiety to get the accused identified becomes greater. It was argued that at the relevant time both Davinder Kumar Aggarwal and Rajpal Sharma were present in the Patiala House Court Complex and that the so-called 'interrogation' of Rajinder Kumar outside the court-room of Shri Gogne. was merely a ruse de quire to signal and pin-point the identity of the accused to the witnesses, and that the entire exercise was born out of the anxiety of which we have talked about above. We are inclined to agree. The reason being a significant admission made by Davinder Kumar Aggarwal in his cross-examination wherein he says: 'It is correct that on 11-1-84 I had seen Rajinder Kumar accused with Shri Sharma, Advocate.' He thus makes the cat run out of the bag.

(24) We feel that having come to know on the 10th that Rajinder Kumar had surrendered in court and was to be produced on the 11th, it was the bounden duty of the Investigating Officer to request the Magistrate for an order that as he wanted to have an identification parade, he should not be produced in court, and the jail authorities should warn him to keep his face muffled or in the alternative the jail authorities should warn the accused that he should keep his face muffled while leaving for the courts on the 11th. Failure on the part of the Investigating Officer to take such precautions makes the whole affair look fishy and inauspicious.

(25) And while we are on the matter of identification, we may mention that we do expect the Magistrates to record separately the statement of the accused in case of his refusal to participate in an identification parade and to record in the proceedings whether the accused was properly and adequately muffled or not when produced in court. We also expect that where an accused is in judicial custody and an application for holding of identification parade is moved with regard to him before his production court, the Magistrate would immediately inform the jail authorities about the application with a clear direction to them to warn the accused to keep himself properly and adequately muffled. We also expect that till the conclusion of the identification parade or his refusal to participate in the proceeding, as the case may be, the accused would not be brought to the court premises.

(26) Cases of mistaken identity have been all but innumerable and that is why the Courts have to be ever vigilant, ever on guard. It need scarcely be said that even a small slip here or there may offer a grave possibility that the innocent may be convicted. Such a brutality has to be avoided. The anxiety is not to have Adolf Becks and their suffering kinds in our midst.

(27) Evidence of identification is to be regarded as inherently weak, least to be relied upon, and in itself, an unsafe basis for conviction. Even a mere possibility that the accused was or could have been shown would be a sufficient justification for refusal to participate in identification proceedings or to reject identification evidence. [See Tain Singh v. State (Delhi Admn.)<sup>1</sup> 1987 Cri. L.J. 53(2) & Parmod Kumar v. State : 40(1990)DLT289 (3) We feel that both Rajinder Kumar and Lila Ram were justified' in the present case to refuse to participate in identification proceedings.

(28) Coming to dock identification, it is considered a suspect and inherently of weak nature. To quote from Cross on Evidence (Fifth Edition) :

'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.'

What we find here is that the accused were strangers to Davinder Kumar Aggarwal. He was examined in court after more than an year of the occurrence.

Even otherwise, for what has been discussed' by us', he is not a person who inspires our confidence. The only other supporting evidence is of Rajpal Sharma who has rightly been held by the trial judge as unworthy of reliance. Consequently, conviction on the basis of such identification cannot be held to be proper.

(29) A feeble attempt was made to resurrect Rajpal Sharma. The learned trial judge has dissected his evidence with craft and dexterity. We lend him our voice in support.

(30) Was it not Cicero who said about someone: "He saw life clearly and he saw it all.' The Judges have to have that while dissecting evidence and applying law. The totality of the circumstances must unerringly establish that the accused are the real culprits. It is here that the prosecution gets its burial.

(31) We accept the appeals and set aside the judgment of conviction and the order of sentence. The appellants stand acquitted.

(32) We direct that the judgment be circulated to all the judicial officers and their attention be particularly drawn to the paragraphs relating to the holding of test identification parades.

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