

Anoop Singh Vs. the State

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Court : Delhi

Decided On : Jul-29-1994

Reported in : 1994IIIAD(Delhi)1001; 1994CriLJ3442; 1994(3)Crimes212; 55(1994)DLT637; 1994(30)DRJ291

Judge : Dalveer Bhandari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 392, 397 and 451; Arms Act - Sections 27, 54 and 59; [Code of Criminal Procedure \(CrPC\) , 1973](#); Evidence Act - Sections 9

Appeal No. : Criminal Appeal No. 48 of 1991

Appellant : Anoop Singh

Respondent : The State

Judgement :

Dalveer Bhandari, J.

(1) This appeal is directed against the Judgment of the Additional Sessions Judge, dated 20th February, 1991 given in Sessions Case no. 15 of 1989.

(2) The appellant has been convicted under Section 451 Indian Penal Code . and sentenced to undergo R.I. for 2 ye.ars and to pay a fine of Rs.5()().00 , and in default of payment of fine, to undergo R.I. for three months, under Section 392,

Indian Penal Code . and sentenced to undergo R.I. for 3 years and to pay a fine of Rs.300).00 , and in default of payment of fine, to undergo R.I. for two months, and under Section 397 of the Indian Penal Code and sentenced to undergo R.I. for 7 years. In addition to this, the accused/ appellant has been further convicted under Sections 27/54/59 of the Arms Act and awarded a sentence to undergo R.I. for six months and to pay a fine of Rs.300 / -, and in default of payment of fine, to undergo R.I. for two months. All the sentences were, however, ordered to run concurrently.

(3) Brief facts, according to the prosecution are that at 1.30 P.M. on 6.5.1988, the complainant (Public Witness -3) Smt. Munni Chandra was alone in her house while her husband had gone to the office and the children were at school. She heard the sound of tapping at the door. While she was opening the door, someone pushed the door from outside and opened it. The intruder came inside the drawing room and took out a country-made pistol and after putting the pistol on Smt. Munni Chandra, he demanded that all jewellery and money be handed over to him. In panic, she gave the jewellery and money to him.

(4) The prosecution in support of its case has examined 15 witnesses, including the complainant.

(5) The accused was examined u/s 313 Cr.P.C. He denied all the allegations of the prosecution and pleaded innocence.

(6) Mr. Mukesh Kalia, learned counsel appearing for the accused/appellant submitted that conviction of the accused/appellant is based on inadmissible evidence, conjectures and surmises. The prosecution wanted to conduct Test Identification Parade after the accused/appellant was shown to the witnesses. The accused/ appellant was arrested on 16th March, 1989. On the same day, he was taken to the residence of the complainant and was shown to all the witnesses and immediately thereafter, on 7th March, 1989, the prosecution wanted to conduct Test Identification Parade. Since the accused/appellant was shown to the witnesses immediately before the Test Identification Parade, therefore, he refused to participate in the Test Identification Parade. 7. Learned counsel appearing for the accused/ appellant submitted that the accused/ appellant was

fully justified in not participating in the Test Identification Parade. Learned counsel has invited my attention to the statement of the various prosecution witnesses to support his contention. He referred to the statement of the complainant (Public Witness -3). In her statement, she has mentioned that 'I saw the accused in the company of my husband, afterwards at the Police Station.'

(7) Learned counsel has drawn my attention to the statement of PW-7, Constable Sri Bhagwan, who, in his cross-examination, has stated that 'On 6.3.89, after making disclosure statement, the accused took the Police Party to the house of Munni Chandra, during day time from the spot. Public Witness .14, Lala Ram in the Security Staff of Rashtrapati Bhawan stated in his statement that the disclosure statement of the accused was recorded by him correctly which is Ex. Public Witness .17/A signed by me, the witnesses and the accused at point B. The accused thereafter led the Police party to the place of incident.

(8) Shri R.K. Yadav, Metropolitan Magistrate (P.W.4) has mentioned that on 7.3.W, he was working as M.M. Delhi Tis Hazari Court. On that day application Ex.PW-4/A was marked to me by Shri P.D. Gupta for holding TIP. He further mentioned in his statement that accused was asked about his willingness to join the Tip proceedings but he refused.

(9) Mr. Kalia, learned counsel for the accused/appellant has submitted that identification by the complainant in Police Station which has weighed heavily with the learned Additional Sessions Judge is not admissible in evidence.

(10) Learned counsel for I he accused/appellant has placed reliance on the leading case Ramkrishan Mithanlal Sharma and others vs . State of Bombay : 1955 CriLJ196 . In this case, the Supreme Court has held that 'in the case of test identification parade arranged by the Police and held in the presence of punch witnesses, the statements involved in the process of identification would be statements made by the identifying witnesses to the Punch witnesses and would be outside the purview of S.I 62, Criminal P.C. provided the process of identification is carried out under the exclusive direction and supervision of the Punch witnesses and the police had completely obliterated themselves from the parade.'

(11) The learned counsel has further relied on *Budhsen and another vs. State of U.P.* : 1970 CriLJ1149 , and has particularly drawn my attention to para 7 at page 1324, in which it is laid down that 'the persons required to identify an accused should have had no opportunity of seeing him after the commission of the crime and before identification and secondly that no mistakes are made by them, or the mistakes made are negligible.' It has also been laid down in the same judgment that identification to be of value should also be held without much delay. The court has also observed that the evidence as to identification deserves, therefore, to be subjected to a close and careful scrutiny by the court. The court has also mentioned that the evidence of mere identification of the accused person at the trial for the first time is from its very nature inherently of a weak character.

(12) The evidence, in order to carry conviction, should ordinarily clarify as to how and under what circumstances, he came to pick out the particular accused person and details, and the part which the accused played in the crime in question with reasonable particularity. The purpose of a prior Test Identification Parade, therefore, is to test and strengthen the trustworthiness of that evidence. In this case, the court was of the opinion that it is the safe rule of prudence to generally look for corroboration of the sole testimony in court as to identify the accused who are strangers to them in the form of earlier identification proceedings.

(13) In this case, the court has emphasized that identification parade held after a lapse of several months is virtually meaningless, and is of not much value because it is highly improbable that witnesses should be able to retain the impression of the accused in their mind for so many months.

(14) Learned counsel further referred to and relied upon *Kanan and others vs. State of Kerala*, : 1979 CriLJ919 . In this case, the court has held as under: It is well settled that where a witness identified an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observations. The idea of holding T.I. parade under S.9 of Evidence Act is to test the veracity of the witness on his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held then it will be wholly unsafe to

rely on his bare testimony regarding the identification of an accused the first time in Court. In these circumstances, therefore, we feel that it was incumbent on the prosecution in this case to have arranged T.I parade and get the identification made before the witness was called to identify the appellant in the court.'

(15) Learned counsel has placed reliance on Mohanlal Gangadash Ghani vs. State of Maharashtra, 1982 CGC 45. In the judgment, the Supreme Court has laid down the accused was shown by police by the police his identification in court, his evidence became valueless on the question of identification and on this ground alone the appellant is entitled to acquittal.

(16) Learned counsel has placed reliance on Division Bench judgment of this court Lila Ram vs. State 1990 (2) C.C.C 402 (h.c.) In almost similar circumstances, both accused in this case refused to participate in identification proceedings. The court held that they were justified in doing so. In this case the Division Bench held that even a mere possibility that the accused was or could have been shown, be a sufficient justification for refusal to participate in identification proceedings or to reject identification evidence. While quoting Crook on Evidence (Fifth Edition), the Court has observed: '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.'

(17) Learned counsel for the appellant submitted that apart from identification, the only other incriminating evidence is recovery of ball. Learned counsel for the appellant submitted that according to the version of the prosecution accused gave Ball is to Ashok Kumar Goldsmith. He is examined as PW-9 but he could not identify the accused. Secondly, no case of ownership of ball is has been set up by PW-3 Mrs. Munni Chandra. Public Witness .3 Munni Chandra has stated in her evidence that the ball is were given to her by her mother six months before the incident. Prosecution failed to produce PW-3's mother to give credence to the testimony of complainant PW-3 Mrs. Munni Chandra.

(18) Mr. Kalia appearing for the accused also submitted that no public witnesses were joined at the time of recovery, .pa

(19) The learned counsel also submitted that even the approximate weight of the Ball is was not given to the Police by the complainant. There is nothing on record by which the accused can be connected with the recovery of Ball is. therefore, there is virtually no cogent and admissible evidence on record by which accused can be connected with the recovery of Ball is.

(20) Learned counsel has vehemently submitted that the conviction of the accused is based on surmises and conjectures. The approach adopted by the learned Addl. Sessions Judge in convicting the appellant is against all nuns of law and principles which have been crystallized by the Supreme Court in number of cases.

(21) The learned counsel for the accused /appellant has particularly invited attention of the court to para 35 of the judgment in which learned Addl. Sessions Judge has observed as under:

'35.So far as the question of identification of the accused is concerned, I am convinced that prosecution has established its case beyond any doubts against the accused having committed this crime. From the perusal of PW-3 it is clear that after the incident, the police showed her number of photographs but she did not identify any of the photographs out of those photographs to be the person resembling to that of the accused. She was also shown number of persons by the police but she did not point towards anyone of them to be the robber and she has identified the robber from among 3/4 persons shown to her at the P.S. as the robber in this case. All these things prove that it is only the accused who committed this crime and none-else.'

(22) This approach of the learned Additional Sessions Judge is totally erroneous and has led to grave miscarriage of justice. Another circumstance on which a reliance has been placed is that no question was put to PW-2 who saw the accused running from the house of the complainant, whether the accused was shown to him by the Police after the arrest of the accused and before the refusal by the accused to join Test Identification Parade. The witness has categorically

stated that it was the accused who had been running from the spot was seen by this witness immediately after the occurrence. The Additional Sessions Judge has held that identity of the accused has been established beyond any doubt by the prosecution, that it is the accused who had committed robbery in the house of the complainant and none else.

(23) Admittedly the accused was not known to PW-2. Public Witness .2 had seen the accused running. His statement has been recorded on 20-2-1991. It would be difficult for any person to correctly identify a person after a lapse of over a couple of years, particularly, when he had not known that person at all and had seen him only on the date of the incident for a very short while. Reliance on this circumstance has led to grave miscarriage of justice.

(24) I have heard learned counsel for the parties at length and perused large number of judgments of the Hon'ble Supreme Court and High Court cited by the counsel for the accused/appellant. Careful marshaling of the evidence particularly in the light of the other documents on record clearly lead to certain irresistible conclusion.

(25) That the appellant was fully justified in declining to participate in the Test Identification Parade in the peculiar facts and circumstances of this case.

(26) According to PW-4, Shri R.K. Yadav, Metropolitan Magistrate, the appellant's Test Identification Parade was to take place on 7th March, 1989, and on 6.3.89 the accused was taken at the residence of PW-3, Complainant Mrs. Munni Chandra and other witnesses had also seen him. Conducting of the Test Identification Parade one day after the accused was shown to the complainant and other witnesses was a total farce and the appellant rightly did not participate in such a Test Identification Parade. The conduct of the appellant in such circumstances was fully justified even according to a catena of judgments.

(27) The approach which has been adopted by the learned Addl. Sessions Judge is absolutely contrary to the provisions of the Code of Criminal Procedure as crystallized in large number of judgments of the Supreme Court.

(28) Learned Addl. Sessions Judge has seriously erred in coming to the conclusion that identity of the accused has been established beyond doubt on the basis of the testimony of PW-2 Mr. Rajiv Gupta. Public Witness .2 was examined on 21.2.1990 whereas the alleged incident had taken place on 6th May, 19W. Admittedly, this witness had not known the appellant at all and he saw him while scaling over the boundary wall at the time of the incident for less than a minute. To place implicit reliance on the testimony of such a witness, who had seen the appellant for less than a minute almost after one year and 9 months would be quite unsafe. Even the description given by the said witness is of a very general nature and character. Large number of persons can fit in the description given by this witness. This witness is not worthy of such implicit reliance and testimony of such a witness ought not to be the basis of conviction of the accused.

(29) The learned Additional Sessions Judge has placed reliance on that testimony of PW-9 Ashok Kumar. He could not identify the accused in court. Careful examination of the testimony of this witness leads to the conclusion that he is also not good enough to place reliance and eredence.

(30) The Ball is were not produced before the Police. No approximate weight was given. PW-3 in her statement has mentioned that Ball is were given to her by her mother six months prior to the incident. PW-3's in other was not produced. ownership of Ball is was also not produced. There an' so many loose ends in the prosecution version. It would be quite unsafe to base the conviction of the appellant on such quality of evidence.

(31) Careful marshaling and scrutiny of the entire evidence on record clearly leads to the irresistible conclusion that on the basis of the evidence available on record the appellant cannot be connected with the alleged offence u/s 451,397,392, Indian Penal Code . and u/s 27, 54,59 of the Arms Act.

(32) In view of my conclusion aforesaid, the judgment of the Addl.Sessions Judge passed in Sessions Case no.15/89 dated 20th February, 1991 is set aside. The appellant is acquitted of all the charges.

(33) The bail bonds stand discharged and in case the accused is not required in any other case, he shall be released forthwith.

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