

Siri Ram Sharma Vs. State

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Court : Delhi

Decided On : Nov-22-1994

Reported in : 56(1994)DLT684

Judge : P.K. Bahri and; S.D. Pandit, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149, 302 and 436; ;Old Code of Criminal Procedure (CrPC) , 1898 - Sections 342; New Code of Criminal Procedure (CrPC) , 1973 - Sections 313

Appeal No. : Criminal Appeal Nos. 120, 122, 148 and 163 of 1988

Appellant : Siri Ram Sharma;lekh Raj and ors.;dhram Raj;man Singh Rawat

Respondent : State;state;state;state

Advocate for Pet/Ap. : K.K. Sud,; K. Vohra,; A.N. Mulla,;

Judgement :

P.K. Bahri, J.

(1) S/SHI Sin Ram Sharma. Dharam Raj, Lekh Raj, Rajpal Singh. Suresh and Man Singh Rawat have been convicted. of offences punishable under Sections 436 and 302 read with Section 149 I. P. C. and for offence punishable under Section 147 read with Section 148 of the Indian Penal Code vide judgment dated October 25, 1988 and by an order of the even date. they have been sentenced to undergo

rigorous imprisonment for life and pay a fine of Rs. 2,000.00 each and in default to undergo rigorous imprisonment for three months more under Section 302 read with Section 149 and to undergo rigorous imprisonment for five years and a fine of Rs. 2,000/- and in default rigorous imprisonment for three months each for the offence punishable under Section 436 read with Section 149 I. P. C. and to undergo rigorous imprisonment of two years for offence punishable under Section 147 read with Section 148 I. P. C. each with the direction that substantive sentences shall run concurrently and fine, if realised, shall be paid to the heirs of the deceased. These four appeals have been filed by the said convicts challenging their convictions and the sentences.

(2) Counsel for the appellant had informed during the course of the arguments that Lekh Raj. appellant. has since died. We required the State to verify this fact. After the judgment was reserved, the State has now filed the affidavit of Head Constable Rajinder Singh who had made the enquiries and had confirmed that Lekh Raj, appellant, has since died and he has also attached copy of the Death Certificate.

(3) Soon after the assassination of Smt. Indira Gandhi, the then Prime Minister of India, on October 31. 1984. there had taken place horrendous and shocking wide spread incidents of killing of innocent persons belonging to Sikh religion in Delhi and also at some other places in India. Not only the demons. in the torn' of human beings, had killed and burnt the Sikhs but had also burnt and looted the houses and the shops of the Sikh persons in some areas of Delhi

(4) The gruesome murders of innocent persons, which took place in three days, required to be investigated seriously and with some sense of urgency so that the culprits, who had committed such heinous crimes could be brought to book. The present case pertains to murder of three young sons of Smt. Mohinder Kaur. Public Witness -1. W/o Late Sh. Raghbir Singh and one Sohari Singh Pradhan. Mohinder Kaur Along with her three sons namely Jasbir Singh. Sukhbir Singh and Kulvir Singh had taken up residence in House No. R7.-84. Mahavir Enclave Part-II, New Delhi in about March 1984. Sohan Singh was in process of constructing a house in the vicinity of the house of Mohinder Kaur and 'was present in the said

premises on the fateful day. Cr. A. 120/88, 122188 Cr. A. 148/88 & 163188 342

(5) It is the case of the prosecution that on November 1. 1984, at about 5.30 P.M. or so, a crowd of hooligans comprising about 500 to 600 persons having lathis' and 'sarias' had raided the locality of Mahavir Enclave and they were carrying lighted torches and they burnt houses of Sikhs then vehicles and they not only dragged the unarmed Sikh males but brutally battered them and killed them and put them to fire and their houses were also burnt and the belongings of the Sikhs lying in the houses and the shops were looted and such a crowd is stated to have forced Sohan Singh. Jasbir Singh and Kulvir Singh to come out from the house of Sohan Singh Pradhan and had killed them and burnt them and the other son Sukhvir Singh of Mohinder Kaur, who was stated to be hiding himself in the adjacent house of a neighbour named Bhardwaj was also forced to come out and was brutally killed and burnt by the said horde of hooligans.

(6) Later on Mohinder Kaur deposed in Court that one Harnam Singh. who was also present in the house of Sohan Singh Pradhan. was also killed and burnt in that very occurrence and besides that. one more unknown person was killed in the similar manner who was also present in the house of Sohan Singh Pradhan.

(7) On November 1. 1984, at about 9.15 A.M.. a daily diary report was recorded at Police Station Delhi Cantt. which is D.D. No. 4A (Ex. Public Witness 5/A) to the effect that Ravi Shankar, S.I. has, from South Control Room. given a telephonic message that some unknown person had given a call from public telephone intimating that the hooligans were stopping the buses and were indulging in looting from the area of Janak to Nagal Raya. S.I. Suraj Prakash along with. Constable Suraj Bhan is stated to have proceeded to the spot. On reaching the said area. Suraj Prakash is stated to have witnessed the hooligans in large number committing various atrocities on the properties belonging to Sikhs and also killing Sikhs and burning them. He found that the people were having sticks which had been turned into burning torches by wrapping the sticks with kerosene soaked clothes and they were burning the properties and throwing the stones at the properties of the Sikhs. He had then sent a Rukka. Ex. PW4/A. in corporationg such facts for registration. of a case under Sections 147/148/436/427/302 I. P. C.

read with Section 149 I. P. C. The Rukka was sent at about 615 P.M. on the basis of which a case was registered which is F. I. R. 412. copy of which Is Ex. Public Witness 4/6, Thereafter, there occurred a complete slumber in the police station.

(8) We do not find on the record as to what investigation was carried on in respect of this particular F. I. R. and who were the persons who were interrogated in order to find out the identity of the Sikh persons killed and the identity of the culprits. No efforts were made for taking into possession the tell-tale evidence of the havoc caused by the hooligans in the said areas. No site plans were prepared indicating the various houses and shops which were subjected to such inhuman assault by rowdy persons. No effort was made to take into custody any of such rowdies out

(9) However, we are to deal with the case as put up by the prosecution against these appellants before the trial court and examine whether the conviction of these appellants is based on legal, cogent and convicting evidence or not.

(10) Mohinder Kaur, the star witness set up by the prosecution to bring home the offences against the appellants, had taken shelter Along with similarly placed victims of such assaults on their family members and on their valuables in various safe places like schools and Gurudwaras. Mohinder Kaur had taken shelter in Gurudwara Singh Sabha Hari Nagar and some public spirited persons appeared to have reached the victims and had started writing out their versions of the incidents faced by them and Mohinder Kaur gave her version which was scribed by some unknown person and was signed by Mohinder Kaur which is Ex. Public Witness 1/A.

(11) As a matter of fact, this is the first version given by Mohinder Kaur in respect of the murder of her sons which came to the notice of the police and in law this should have been treated as an F. I.R. instead of showing that this evidence came while investigating the case registered vide F. I. R. No. 412. The contents of F. I. R. No. 412 do not at all indicate that the occurrence pertains to the sons of Mohinder Kaur or to the property belonging to Mohinder Kaur or to the property belonging to Sohan Singh or to the murder of Sohan Singh. Be as it may, this writing Ex. Public Witness 1/A came into existing on 14th November 1984. It appears that Mohinder Kaur had no opportunity of giving her version of the

occurrence to anyone prior to this date as the circumstances existed then she along with many more persons had to take shelter in a particular place and no one had come from the police side to take their versions and get the cases registered on the basis of such versions so that sonic scientific investigation could be carried out for bringing home the offences to particular culprits.

(12) Be ax it may in this particular writing, Mohinder Kaur mentioned that when the said hooligans wanted to kill her sons, she begged them to spate her young sons as she. was a widow but no mercy was shown and they were killed and their house was also burnt and looted. She mentioned that the said crowd was accompanied by some of the persons whom she knew and who were residents of the same locality and she gave the following information in this writing about the said persons:-

1.Lekh Raj; 2. One Gorkha who was having a shop there; 3. Another person who is known as Doctor in that area; 4, Sharma, who was a cashier in a Committee: and 5. Munna, rickshaw-puller.

She mentioned further that she could recognise some persons by faces who were also members of the said crowd which killed her sons and destroyed and looted her property. This particular document is bereft of the details as to how and in what manner her three sons were killed as to whether the three sons were present in her house or were present in neighbouring houses. Even the. name of Sohan Singh does not find mention in this writing.

(13) The police appears to have come into action on receiving this document which was addressed to the S.H.O. of the Police Station concerned. Sh. Mahinder Singh, who was then posted in Special Investigation Team of South District, Public Witness -8, had taken up the investigation and he prepared site plan Public Witness 8/A in respect of the house of Sohan Singh and also took into possession certain bones and ashes lying in the compound of house No. 90 RZ. Mahavir Enclave Part-11, New Delhi and also in the street. Some other material was also seized which is of no consequence. The memo in respect of the same is Ex. PW8/8. As a routine, he had sent the case property to C. F. S. L. and reports, Ex. Public Witness 81C and Public Witness 81C-1 were received which were totally

inconsequential and do not advance the case of prosecution to any logical ends because what was found was that there was a piece of danda, but of gun and stone piece having human blood of 'O' group and some human hair but no opinion was obtained whether the bones were human bones or of animals surprisingly.

(14) Sh. K. K. Sud, Advocate, who appeared for Sin Ram Sharma, had argued that the prosecution has not been able to prove that in fact three sons of Public Witness -1 and Sohan Singh and one unknown person had been murdered. The other counsel appearing for the other accused has not challenged the finding'- of Additional Sessions Judge on this point. We do not find any merit in the contention raised by Sh. Sud. The testimony of PW-I that she had witnessed her three sons and Sohan Singh being killed by the said crowd was not challenged in cross-examination. DW-1 also did not say that such occurrence had not taken place, although he expressed ignorance whether Mohinder Kaur had three sons or not. But he did say that Sohan Singh's house and Mohinder Kaur's house were burnt by the said crowd. As there has been no challenge to the testimony of Public Witness -I in cross-examination that her three sons and Sohan Singh had been murdered, we hold that Additional Sessions Judge was right in coming to the conclusion that such murders had taken place on that date at that time and at those places at the hands of unruly, may be organized, crowd.

(15) The case of the prosecution is based on' the sole testimony of Public Witness -1, Mohinder Kaur, the unfortunate widow who lost her three young sons in this macabre killings. We are unable to know from the evidence led before the trial court as to how and in what. manner the investigator officers had identified the appellants as the culprits with the names of the culprits appearing in the said writing of Mohinder Kaur. The said writing given by Mohinder Kaur contained five 'culprits who were not fully 'described' and it wais incumbent upon the prosecution to have collected sufficient evidence to link the appellants to' the particulars of the culprits given in that statement of Mohinder Kaur. We agree .with the reasoning of the -Additional. Sessions Judge that delay occurring in- disclosing the names of culprits by Public Witness -1 is quite explainable in as much as she must be in a trauma and she, had, no one, to look forward-for any help so-that.she could give her version of the events.and on the first opportunity becoming available to her,

she gave out her side, of the .story in-the ..said particular writing.

(16) Public Witness -8, Mahinder Singh. the .investigating' officer in examination in-chief, is silent.as to how he came to arrest the appellants as the culprits of this case linking with the murder of the said three young sons of Mohinder Kaur and murder of Sohan Singh Pardhan. In such a serious case of murder, keeping in view the exceptional cirmustances, it was incombent upon the prosecution at feast to have conducted the case properly before the trial court in eliciting all material facts from the investigator who apart from saying that he recorded the statements of the witnesses and arrested the accused did not disclose either in examination in- chief or in cross-examination as to how he came to identify the appellants as the culprits in this case when there were no descriptions and full names of the culprits available to the police in the said writing of Mohinder Kaur.

(17) NO. efforts have been made by the investigation officer to take resort to test identification parades in order to pin-point the identity of the appellants as the culprits of whom some: vague description were there in the writing of Mohinder Kaur. The test identification parade. might not have been necessary if full particulars of the culprits had been given in the said writing of Mohinder Kaur but when there were no such particulars available and only vague details had been given about the culprits, it was absolutely necessary in this case that the investigating officer ought to have resorted to test identification parades of the appellants so that Mohinder Kaur could pin-point the appellants if they were the same culprits whom she mentioned in her writing.

(18) What we find in the present case is the testimony of Maunder Kamria Court in identifying the appellants as culprits when some questions in cross-exmination were put to her by & Khan, who appeared for accused. Lekh Raj and then she pointed out that Suresh Dariwala, was having an if on rod in his hand. Dr. Garhwali was having a 'danda*' in his band and cashier Sharma was also having an cross rod whereas Lekh Raj, Head of the colony, who was a property dealer was having a stick in his hand and Rajpal, brother-in-law of Suresh was having a 'danda' in his hand and Gorkha 'dukandar' was having a stick. The court has recreated that she had correctly identified the appellants in Court.

(19) The Learned Additional Sessions Judge had placed implicit faith the testimony of Public Witness 1 and had convicted the appellants as noticed above. The learned Additional Sessions Judge has forgotten. that in law, the witness making identification of the culprit for the first time in Court is not to be made basis for convicting the accused.

(20) The Supreme Court in Budhsen Vs . State of U.P., : 1970 CriLJ1149 has laid down that as a general rule the substantive evidence of a witness is a statement made in Court and 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. 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 the details of the part which the accused played in the crime in question With reasonable particularity. It was emphasized that the purpose of test identification, therefore, is to test and strengthen the trustworthiness of that witness and it is accordingly considered a safe rule of prudence to generally look for corroboration of the sworn testimony of witnesses in Court as to the identity of the accused who were strangers to them, in the form of earlier identification proceeding. It was further laid down that there may, however, be exceptions to this general rule when, for example, the Court is impressed by a particular witness and whose testimony it can safely rely without such of other corroboration.

(21) In Hasib Vs . State of Bihar, : 1972 CriLJ233 it was laid down that the purpose of test identification is to test the statement of the witness made in Court which constitutes substantive evidence, it being the safe rule that some testimony of witness in Court as to the identity of the accused requires corroboration in the form of an earlier identification proceedings. It was also held that such identification parade, which belonged to the investigation stage, serve to provide the authority with material to assure themselves if the investigation is proceeding on right lines and therefore it is desirable to hold them at the earlier opportunity and a further reason is that an earlier opportunity to identify also tends to minimise the chances of the memory of identifying witnesses fading away due to long lapse of time.

(22) The importance of holding test identification parade at the earliest at investigating state where the names of the offenders are not mentioned in the first information report by the eye witness, has been also highlighted by Supreme Court in case of Ramanathan Vs . The State of Tamil Nadu, : 1978 CriLJ1137 .

(23) In case of Kanan Vs . State of Kerala, : 1979 CriLJ919 . it was held that where a witness identifies 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 test identification parade to test his powers of observations.

(24) It has been contended on behalf of the State that Mohinder Kaur. in her writing. has mentioned that the said five persons. whose some details were' given by her. were known to her ..as they were residents of locality and thus; it was not a case where ..some unknown persons were being mentioned as the culprits so that investigating officer ought to have resorted to getting the suspects identified by her in some test identification parade. There is no merit in this contention because full particulars of the culprits had not been given by Mohinder Kaur. She had only given vague particulars which had to be linked with particular culprits and for. that purpose if the police had from some secret source learnt that the appellants were the said persons who matched the said particulars, then the easiest way for the investigating officer was to get these appellants identified by Public Witness-1 in some test identification parade to ensure the fairness the investigation.that.police was on the right track in. identifying , culprits of this case. But unfortunately- nothing of this sort was attempted to by the investigating Officer.

(25) It appears that police perhaps had got appellants identified as the-culprits from Public Witness-1 in the manner that after arresting the appellants they were shown to Public Witness-1 at the police station and her supplementary statement is stated to have been recorded, copy of which 'is Ex. Public Witness 1/DE but Public Witness-1 categorically stated that she never,made any-such identification of the appellants as the culprits at any time in the police station and she never gave any statement, copy-of which is Ex. Public Witness I IDE. In Ex. Public Witness 1/DB, the names of the appellants and their father's name. and their addresses have been incorporated. Significantly enough, Public Witness-8, who

had allegedly got identified the appellants as culprits in this case by Public Witness-1 and had recorded her statement. Ex. Public Witness I IDE has not eye supported this part of the prosecution case in his testimony. He has not made any reference to such, facts in his testimony in Court.

(26) However, in the present case. incase the prosecution had, in investigation collected some evidence to show how Public Witness -1 connected the appellants with the description of 'the culprits given in her writing' dated 14th: November, 1984 and the said evidence had been produced m the trial, there could be then, in that case, held that perhaps the test identification parade was not required as PW1-claimed to have known these culprits by their short names or by their holding some offices in the mohalla committees and thus, there was no need for putting the culprits in any test identification parade but in this case no such -evidence has been at all collected either in investigation or produced in the trial to indicate how Mohinder Kaur came to connect the appellants with .the insufficient, detail of. the culprits .given in the writing dated.. 14th November, 1984.,... " .

(27) It .has. been' held in Mohanlal Gangaram Gehani Vs . State of Maharashtra. : [1982]3SCR277 , that if the accused is not known to the eye witness, then identification . of such accused by the eye witness for the first time in Court is valueless and it cannot be relied upon.

(28) In Ramji Suriya Vs . State of Maharaahtra, : 1983 CriLJ1105 , the Supreme Court has held , that there is no doubt that even where there is only a sole eye witness of a crime, a conviction may be recorded against an accused provided the Court which hears such witness regards him as a honest and 'truthful but prudence requires that some corroboration should be sought from other prosecution evidence in support of testimony of a solitary witness particulary where such witness also happens to be closely related to deceased.

(29) The learned Standing Counsel for the State, Mr. P.S. Sharma, contended that mere fact that Public Witness -1 is the only witness in the case and is also relation of the deceased is no ground to discard her testimony regarding the identity of the appellants as the culprits. He has placed reliance on State of Gujarat Vs . Naginbhai Dhulabhai Patel,. : 1983 CriLJ1112 (7). It is held in this judgment that

mere fact that witnesses were relations of the accused would not by itself be sufficient to discard , their evidence straight away unless it is proved that their evidence suffers from serious infirmities which raise considerable doubt in the mind of the court.

(30) As narrated above, Mohinder Kaur. in her written complaint dated 14th November 1984, had only given name of Lekh Raj while had given some particulars of other culprits, whose names she perhaps did not know. It is only in Court, for the first time, that she had connected, those insufficient particulars of the culprits with the appellants. She admittedly had come to that particular, for residing a few months prior to the occurrence and for these reasons, it was very cumbent on the prosecution to have collected more evidence to link the appllants with the said particulars of the culprits given in tile written complaint by

(31) There have been made certain 'embelishments by Public Witness -1 in her testimony in Court from what she had mentioned in her first complaint. There was no mention of her two sons having taken shelter in the house of Sohan Singh and her third son having hidden himself in the house of Bhardwaj in that complaint and she gave these details in Court. She also made a statement .that .the crowd had opened .a window , the. house of Sohan Singh .and had thrown same inflammable material in house for setting the house on fire. This also does not .find mention in her statement made to.theoolice..The name of Harrim Singh as one of the victim had not figured in her .police statement with which she was duly confronted. in her first complaint, there is no mention about Suresh Dariwala and his brother-in-law. In Court, when she was as^ed to identify Dharam Raj, she pointed towards Rajpal and then again stated that he was not Dharam Raj but she did not identify Dharam Raj in Court.

(32) As a matter of tact, the names of Suresh and his brother- in-law Rajpal do not figure in her first complaint. In the first compliant, she had mentioned that she could identify some more culprits from their faces. If that was the position of Public Witness -1, it was again necessary that she should have been asked to identify the culprits in some test identification parade. In cross-examination, at one stage, she stated that she had made enquiries from the residents of the area and someone,

whose name she did not recollect, told her that Suresh and his brother-in-law were also among the said crowd. It means that she is not even sure whether Suresh and Rajpal were the actual culprits or not.

(33) According to prosecution., Public Witness -I had made some more detailed statement on 10th January 1985 wherein she had given the names of Suresh and Rajpal. Now from her testimony in Court, it appears that she gave those names to the police on the information being supplied by some other person. If that is so, it is not understood how such shaky evidence of Public Witness -1 could be given credence for bringing home the offence to the appellants. If her testimony had been without blemish on core of the prosecution case, the Court might have been justified in placing complete reliance on such testimony of a single witness for bringing home the offences to the appellants, but unfortunately, such is not the case here.

(34) We are not satisfied that the identity of the appellants as the culprits who perpetrated the ghastly crimes has been established so as to bring home the offences to the appellants. There is no evidence that there is only one Le3th Raj in the said locality and there is only one cashier in the said locality and there is only one doctor in that locality and there is only one Munna rickshaw-puller in that locality and the appellants are known by such designations in the locality.

(35) We, hence, hold that additional Session Judge was not justified in convicting the appellants for the aforesaid offences on mere identification of the appellants as the culprits by Public Witness -1 in the Court for the first time.

(36) It has been also pointed out that in examination under Section 313 of Shree Ram Sharma, appellant, no question had been. on.t to him that he was cashier of any committee and it has been held in Shivaji Vs . State of Maharashtra, : 1973 CriLJ1783 (8) that such material evidence appearing against the accused has to be put to the accused for his Explanationn when accused is examined under Section 342 of the Old Criminal Procedure Code which is equivalent to Section 313 of the new Criminal Procedure Code.

(37) It is true, that unless it is shown that some prejudice is caused to the accused for omission to put such material question to the accused under the said provision, the same would not be fatal to the prosecution case. Be as it may, keeping in view the discussion above, we come to the conclusion that prosecution had not been able to bring home the offences to the appellants beyond reasonable doubts.

(38) We allow the appeals except appeal No. 322188 of Lakh Raj and set aside the convictions and sentences of the appellants and acquit the appellants of the charges. Appellant Lekh Raj of Cr. A. 122188 has died & hence his appeal is dismissed as abated.

(39) THE appellants are on bail. There bail bonds are discharged.

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