

Vinod Kumar and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-10-2003

Reported in : RLW2004(2)Raj783; 2003(4)WLC364

Judge : Shiv Kumar Sharma and; Fateh Chand Bansal, JJ.

Acts : Indian Penal Code (IPC) - Sections 147, 148, 149, 307, 342, 396, 397, 398 and 458; Arms Act - Sections 4, 25 and 27; Criminal Procedure Code - Sections 44, 52, 161 and 313

Appeal No. : D.B. Cr. Appeal No. 484 of 2000

Appellant : Vinod Kumar and ors.

Respondent : State of Rajasthan

Advocate for Def. : B.M. Sharma, Public Prosecutor and; A.K. Gupta, Adv.

Advocate for Pet/Ap. : Biri Singh,; Y.C. Sharma and; Mahesh Sharma, Advs.

Disposition : Appeal dismissed

Judgement :

Sharma, J.

1. The eight appellants were placed on trial for dacoity and murder before the learned Additional Sessions Judge Khetri (Jhunjhunu) who convicted and

sentenced all of them vide judgment dated August II, 2000 as under-

U/s. 148 IPC to undergo three years R.I. and fine of Rs. U/s. 342 IPC 1000/- and in default of payment of fine to further sentence of 3 months S.I. U/s. 458 IPC to undergo ten years R.I. and fine of Rs. 5000/- and in default of payment of fine to further suffer two years S.I. U/s. 396 IPC to suffer imprisonment for life, and fine of Rs. 5000 in default to further suffer two years S.I. U/s. 397 IPC to suffer seven years R.I. U/s. 398 IPC to suffer seven years R.I.

All the sentences were ordered to run concurrently.

2. The occurrence of dacoity and murder which was the subject matter of the charge against the appellants, is said to have taken place on November 6, 1996 around 8.45 p.m. at the house of Satyaveer Mehrda (PW. 2) who submitted written report to the Police Station Khetri on the same day at 10- p.m. The report was to the effect that around 8.45 when the informant, Sunder, Subhash and Ram Singh were sitting in the outward room of their house and his grand father Sheodan was lying on a cot in the opposite room, suddenly Om Prakash along with six seven persons entered their house and threatened them to kill. On being protested by Sunder, one of the intruders inflicted knife blow on his stomach. When his grandfather raised hue and cry, Om Prakash shot him dead. All the intruders then commanded the family members to go inside and snatched away all ornaments wearing by his mother, maternal aunt and sister in law. The intruders broke open the boxes and removed ornaments, clothes and other articles. After confining family members in the room and kitchen the intruders fled away.

3. On the basis of the said report the police station Khetri registered a case under Section 147, 148, 149, 458, 342, 396 IPC and 27 Arms Act and investigation commenced.

4. The investigating officer inspected the site, sent the injured Sunder for medical examination, drew inquest report and got the autopsy on the dead body of Sheodan conducted. The statements of witnesses under Section 161 Cr.P.C. got recorded. In the early hours of November 7, 1996 appellants Om Prakash, Vinod Kumar, Jahid, Tokhir, Mohd. Salim, Nazim son of Putan and Tasleem were

arrested from the nearby place and ornaments, country made pistols and knife got recovered from their possession. The ornaments got identified by the informant and other family members. Appellant Nazim s/o Akhtar was arrested on November 17, 1996. Identification parade was conducted on December 18, 1996 and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge Khetri. Charges under Sections 147, 148, 458, 307, 307/149, 396, 396/149, 397, 397/149, 398 and 398/149 were framed against all the appellants. Additional charge under Section 4/25 Arms Act was framed against Om Prakash, Mohd. Salim and Tokhir and under Section 4/25 Arms Act was framed against appellant Vinod. The appellants denied the charges and claimed trial. The prosecution examined as many as 26 witnesses in support of its case and got exhibited 26 documents. In their explanation under Section 313 Cr.P.C. the appellants claimed innocence. However, no evidence in defence was produced. Learned trial judge on hearing the final submissions convicted and sentenced the appellants as indicated herein above.

5. In order to prove its case the prosecution examined seven eye witnesses viz. Satyaveer (PW. 2), Smt. Durga (PW. 3), Smt. Prem (PW. 4), Smt. Sona Devi (PW. 5), Subhash (PW. 6), Ram Singh (PW. 7) and Sunder (PW. 10) and also led evidence regarding recovery of stolen articles and identification of the appellants.

6. The fact that dacoity took place in the house of Satyaveer (PW. 2) is not in dispute. It is also not in dispute that in order to commit the dacoity the dacoits had caused injuries to Sheodan and Sunder, out of whom Sheodan lost his life because of the gun shot injury received by him. What is now left to be considered is whether the evidence regarding identification of the appellants and recoveries is so reliable that conviction of the appellants can be sustained.

7. It was contended by the learned counsel appearing for appellant Om Prakash that evidence adduced against him was tainted testimony and it was not probable that he would submit dacoity in his own village without taking the least precaution to conceal his identity. On behalf of other seven appellants it was urged that six were arrested on November 7, 1996 in the early hours near the place of incident

and one was taken in custody on November 17, 1996 but their identification parade was held on December 6, 1996 and no explanation for this delay has been assigned. Therefore no reliance can be placed on such identification as there was ample opportunity with the witnesses to see the appellants. In regard to recoveries it was canvassed that in the FIR details of stolen ornaments or other articles were not given. List of stolen articles was handed over to police on November 8, 1996, i.e. after the arrest of seven appellants. As per the FIR and the statements of the eye witnesses the ornaments were snatched by the dacoits from the person of women but such allegations did not get corroboration from the medical evidence. Even in view of the statements of Sawai Singh (PW. 24) and Ramji Lal (PW. 5) the recovery and identification of articles loses the sanctity and no reliance can be placed on such evidence. Reliance is placed on Rang Bahadur v. State of U.P. (1), Shatrughan v. State of Orissa (2), Shambhu Dayal v. Subhash Chand (3), State of A.P. v. M.V. Ramannareddy (4), and Ram Shanker Singh v. State of U.P. (5).

8. On behalf of the State it was urged that the dacoity was committed by the appellants around 8.45 p.m. while informant Satyaveer and other family members were awakened. The appellants are dare devils and except. Om Prakash all others belong either to Delhi or Uttar Pradesh. It was Om Prakash who guided all others to accompany him to his village Khetri for committing dacoity. Om Prakash since long back started residing some where in Delhi and he did not care to conceal his identity as he wanted to show his power to the people of Khetri that is why he came armed with pistol along with other appellants to commit dacoity in the house of the informant while all the family members were awakened. Had the appellants any intention to conceal their identity they could have waited the fall of darkness and took advantage of it. It was further urged that on receiving the FIR the police forthwith surrounded the area and arrested the seven appellants from the nearby place only next morning with the looted ornaments and other articles. The appellants neither gave any explanation as to how they came in possession of those ornaments and articles nor they claimed the same. It was next contended that the Investigating Officer categorically stated that all the appellants were kept with covered faces therefore the delay in identification parade is not fatal.

9. Before dealing with the arguments advanced before us it will be appropriate to advert to the fact situation of the case which may be summarised thus-

(i) Appellant Om Prakash being inhabitant of Khetri, was known to the informant and named in the FIR.

(ii) Appellant Vinod Kumar was the resident of Jahangirpuri Delhi, Appellant Jahid resided at Bijnor, whereas Tokhir, Mohd. Saleem, v. Nazim son of Putan Khan, Tasleem and Najim son of Akhtar Khan resided at Muradabad (UP).

(iii) Tokhir was arrested on November 7, 1996 at 6.00 a.m. and Camera article 2, Golden Galsari Article 14, and Silver Tagri Article 25, were recovered vide Ex.P.57 from his possession.

(iv) Mohammed Salim was arrested at 5.30 a.m. on November 7, 1996 and as per Ex.P.56 and Ex.P.62 Silver Payjeb Article 23, one pair Gold ear-ring Article 18, Gold Neckless Article 13, Silver Kada Article 21, one Deshi Katta and one live cartridge were recovered from his possession.

(v) Najim son of Akhtar was arrested on November 17, 1996 at 8.30 a.m. from Muradabad.

(vi) Jahid was arrested on November 7, 1996 at 8.30 a.m. and as per Ex.P.60 Watch Article 28, Golden madalia Article 16, Gold ring article 20 and Silver Jhumki Article 22 were recovered from his possession.

(vii) Taslim was arrested on November 7, 1996 at 8.00 a.m. and vide Ex.P.59 one pair of Silver Payjeb Article 23, and one pair of Golden ring Article 18 were recovered from his possession.

(viii) Najim son of Putan was arrested on November 7, 1996 at 7.15 a.m. and vide Ex.P.58 and Ex.P. 18 Golden Tika article 15, Silver Chhad of children Article 21, silver chhad article 24 and Tape recorder were recovered from his possession.

(ix) Vinod Kumar was arrested on November 7, 1996 at 6.30 a.m. and vide Ex.P.55 Golden Jhumki Article 119, Nose ring Article 17, Silver Tagri Article 26, Small Silver Tagri Article 27 and bag containing articles were recovered from his

possession.

(x) Om Prakash was arrested on November 7, 1996 at 5.00 a.m. and vide Ex.P.54, two Silver Kadiya, one pair Silver Nevari, Two Gold patla, Four Gold Kaddas were recovered from his possession. At the time of arrest one Deshi Katta was found tied with his belt containing live cartridge in its chamber and four live cartridge were found in the pocket of the Pant. Deshi Katta and cartridges got seized vide memo Ex.P.63.

(xi) As per Post Mortem Report Ex.P. 10 death of Sheodan was homicidal and he sustained following antemortem gun shot injuries -

(a) One gun shot Entry wound - size 1' x 1/2 ' x Penetrating, skull cavity on the left temporal region.

(b) One gun shot Exit wound 2' x 1 1/2' x skull cavity deep Rt. side over right temporal region.

(xii) As per injury report Ex.P.11 Sunder sustained incised wound measuring 1/2' x 1/2' x 1/2' on the left side of abdomen.

(xiii) The articles recovered from the possession of the appellants were got identified vide identification memo Ex.P.6.

(xiv) Identification parade of the appellants was held on December 6, 1996.

(10). In the backdrop of the aforesaid facts we first proceed to consider the evidence of identification. As already noticed by us that the appellants Vinod Kumar, Tokhir, Mohammed Salim, Najim son of Akhtar, Jahid, Taslim, and Najim son of Putan, were not named in the FIR. Only Najim s/o Akhtar was arrested on November 17, 1996 whereas all others were taken in custody on November 7, 1996 but their identification parade was held on December 6, 1996.

11. As per the testimony of Ashok PW. 8, eight persons stayed in the fort situated near Khetri Babaji. In the morning they got up and took tea and had gone for a walk. They also took their lunch and remained in the fort. They were carrying bags. In the evening they left and did not return back. He identified those persons in the

Jail at Neem Ka Thana and he put his signatures on identification memo Ex.P.7.

12. Investigating Officer, Girdhari Lal Sharma, PW.26 in his deposition categorically stated that all the appellants were kept baparda from the date of their arrest. He testified the arrest memos as well as recovery memos. He was cross examined at length but nothing was extracted which could help the appellants. He denied the suggestion that he got snapped photographs of the appellants before their identification parade, But he emphasised that ail the appellants were kept baparda.

13. Sawai Singh, PW. 27 deposed that in his presence Om Prakash, Taslim,Nazim, Vinod Kumar and one more person were arrested and ornaments and otherarticles got recovered.

14. Rajendra Sharma, PW. 23, ACJM Khetri deposed that he conducted identification proceedings of the ornaments and drew Ex.P.26.

15. Jhabar Mal PW. 19, Judicial Magistrate Chirawa conducted the identification parade of the appellants and drew identification memo Ex.P.7.

16. In regard to evidentially value of identification parade their Lordships of the Supreme Court in Abdul Waheed Khan alias Waheed and Ors. v. State of A.P. (6), indicated thus -

'Identification tests do not constitute substantive evidence. They are primarily meant for the purpose of helping the investigating agency with an assurance that their progress with the investigation into the offence is proceeding on the right lines. The identification can only be used as corroborative of the statement in court. The necessity for holding an identification parade can arise only when the accused are not previously known to the witnesses. The whole idea of a test identification parade is that witnesses who claim to have seen the culprits at the time of occurrence are to identify them from the midst of other persons without any aid or any other source. The test is done to check upon their veracity. In other words, the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also

to enable the prosecution to decide whether all or any of them could be cited as eye witnesses of the crime. The identification proceedings are in the nature of tests and significantly, therefore, there is no provision for it in the Code of Criminal Procedure, 1973 and the Evidence Act. It is desirable that a test identification parade should be conducted as soon as after the arrest of the accused. This becomes necessary to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade. This is a very common plea of the accused and, therefore, the prosecution has to be cautious to ensure that there is no scope for making such allegation. If, however, circumstances are beyond their control and there is some delay, it cannot be said to be fatal to the prosecution.'

17. In *Dana Yadav alias Dahu and Ors. v. State of Bihar* (7), it was held as under 'Identification parades are held during the course of investigation ordinarily at the instance of investigating agencies and should be held with reasonable dispatch for the purpose of enabling the witnesses to identify either the properties which are the subject matter of alleged offence or the accused persons involved in the offence so as to provide it with materials to assure itself if the investigation is proceeding on right lines and the persons whom it suspects to have committed the offence were the real culprits.'

18. In *Jayawant Dattatraya Suryarao v. State of Maharashtra* (8), their Lordships of the Supreme Court propounded thus:

'Substantive evidence of a witness is his evidence in court. Identification parade is not primarily meant for the court but is meant for investigation purposes. It serves two purposes, namely, to enable the witness to satisfy that the prisoner whom he suspects is really the one who was seen by him in connection with the commission of the crime and for satisfying the investigation authority that the suspect is the real person whom the witness had seen in connection with the said occurrence. In case when the evidence is cogent, consistent and without any motive, it is no use to theoretically imaging that as the witness has seen the accused for a few minutes it would be difficult for him to identify. It always depends upon one's capacity to recapitulate what he has seen earlier. Power of perception and memorising differs from man to man and also depends upon the situation. Finally,

appreciation of such evidence would depend upon the strength and trustworthiness of witnesses.'

19. Principles that may be deduced from the aforequoted pronouncements may be summarised thus -

(i) Identification tests do not constitute substantive evidence. They can only be used as corroborative of the statement in court.

(ii) The main object of holding an identification parade during the investigation stage is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye witnesses of the crime.

(iii) In order to eliminate the possibility of the accused being shown to the witnesses prior to the test identification parade and it is desirable that a test identification parade should be conducted as soon as after the arrest of the accused.

(iv) Appreciation of such evidence would depend upon the strength and trustworthiness of witnesses.

20. Coming to the facts of the instant case admittedly the identification parade was conducted on December 6, 1996 after a delay of about 29 days from the date of arrest of the seven appellants. From the statements of Satyaveer PW. 2, Smt. Durga PW. 3, & Smt. Prem PW. 4, Smt. Sona Devi PW. 5, Subhash PW. 6, and Sunder PW. 10, it is revealed that neither did they see photographs of the appellants nor the appellants were shown to them before they identified the appellants in Jail. Satyaveer PW. 2 in his deposition stated that the identification parade was conducted at Neem ka Thana Jail and it took about one and half hours. The police only informed him to reach at the Neem Ka Thana Jail and he himself had gone to the Jail. He further stated that at the time of identification one accused was mixed with 7-8 persons who were all inmates of Jail. He categorically denied the suggestion that the appellants were shown to him prior to the identification. Smt. Durga PW. 3 deposed that at the time of identification the

appellants got mixed in the 60-70 persons and all the persons were dressed in a similar fashion. She emphasised that neither the appellants nor their photographs were shown to her before she identified the appellants in Jail.,

21. Smt. Prem PW. 4, Smt. Sona Devi PW. 5, Subhash PW. 6, Ram Singh PW. 7, and Sunder PW. 10 also stated that they had gone to Neem Ka Thana Jail for identifying the accused involved in dacoity and prior to the identification parade, they had not seen the appellants or their photographs. Statements of these witnesses have been corroborated by the Investigating Officer Girdhari Lal PW. 26, who stated that till the identification parade was held the appellants were kept in baparda. The testimony of the witnesses could not be shattered in the cross examination. We thus find that delay of 29 days in conducting identification parade in the facts and circumstances of the instant case is not fatal. The appellants, except Om Prakash as already noticed came from Delhi and U.P. and were caught immediately in the next morning immediately after the incident with ornaments and other looted articles. The appellants neither explained as to how they came into possession of those ornaments and articles nor they claimed that the ornaments and articles belonged to them.

22. So far as recoveries of ornaments, weapons of offence and other articles are concerned we find it trustworthy in view of sections 44 and 52 of the Criminal Procedure Code under which the Investigating Officer had powers to arrest and recover the articles and weapons possessed by them. The ornaments and articles were identified by the informant Satyaveer, and other witnesses namely Surendra PW. 1, Smt. Durga PW. 3, Smt. Prem PW. 4, Smt. Sona Devi PW. 5, Subhash PW. 6 and Sunder PW. 10, in the presence of Judicial Magistrate Rajendra Sharma PW. 23 and we do not see any infirmity in the identification proceedings.

23. That takes us to the allegations levelled against Om Prakash. As already seen Om Prakash was known to the informant and his family members prior to the date of occurrence. It also appears from the record that Om Prakash remained in Delhi for sometime and he guided other appellants to visit Khetri. It is also established that all the appellants entered the house of the informant around 8.45 p.m. while informant and other family members were awakened. Om Prakash did not care to

conceal his identity and he entered in the house of the informant armed with pistol. Looking to the conduct of Om Prakash it appears that without caring for his identification he entered the house of the informant while he and his family members got awakened. Om Prakash appears to be devil and the ratio indicated in Ram Shanker Singh and Ors. v. State of Uttar Pradesh (supra), on which reliance is placed by the learned counsel, is not applicable to the facts of the instant case. In the case of Ram Shanker Singh, dacoity was committed while informant and other persons were sleeping on separate cots in the open courtyard in front of the residential house and they were awakened by the intrusion of 14 or 15 persons armed with lathis and spears. The High Court in that case acquitted the three accused belonging to the informant's village on the ground that evidence against them was tainted testimony and it was not probable that they would commit dacoity in their own village without taking the least precaution to conceal their identity. But in the case before us it was Om Prakash who as a leader guided other appellants to commit the dacoity in the house of informant without caring to conceal his identity. Om Prakash came armed with pistol and in no lime shot Sheodan dead. The evidence against appellants is trustworthy and we find no illegality in the impugned judgment of the learned trial judge. We therefore confirm the conviction and sentences awarded to the appellants.

24. The appeals deserve dismissal which we direct.