Jadunath Singh and Another

Vs

The State of U. P.

Criminal Appeal No. 55 of 1970

(S. M. Sikri, I. D. Dua, V. Bhargava JJ)

07.12.1970

JUDGMENT

SIKRI, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad confirming conviction of the two appellants by the Sessions Judge, Mainpuri, under Sections 302/34 of the indian Penal Code. Appellant Jadunath Singh was sentenced to death by the Sessions Judge and appellant Girand Singh was sentenced to undergo imprisonment for life.

2. In order to appreciate the points raised before us by the learned counsel for the appellant it is necessary to state a few facts. It is alleged against the appellants that on February 26, 1968 at about 7.30 a.m., in furtherance of their common intention, they murdered one Ram Swarup Pandey by repeatedly stabbing him to death, when he was passing on the Grand Trunk Road in the town of Bewar to catch a truck. As many as 34 injuries were found on the deceased at the post-mortem conducted on his body on the same day at about 3 p.m.

3. The prosecution case in brief is as follows : it is common ground that there was great enmity between the deceased and Laturi Ahir and his sons, the two appellants. The deceased apprehended danger to his life from them and on November 23, 1967, he sent an application to the Superintendent of Police Mainpuri, alleging that Laturi and his sons, Jadunath, Brahma, Panna Lal and Anokhey, etc. were terroising the weaker and poorer sections of the village community and declaring openly that they would kill the deceased to silence his opposition for ever. He prayed that an enquiry may be made and suitable action taken against them. On February 25, 1968, the deceased came to Bewar in the evening to meet A.D.O. in connection with an enquiry on a complaint made against Munshi Lal Pradhan of the village. He would not meet the A.D.O. as he was out of station. He stayed during the night with Prem Narain, P.W. 3, who happened to be a brother-in-law of his cousin Gulati Ram. According to Prem Narain, both of them got up in the morning at 6.45 a.m. and since it was Shivratri that day the deceased did not take any food and they left for the bus-stand at Bewar. When they reached the bus-stand at about 7.10 a.m. They found that the bus for Etah via Sultanganj had already left. The next bus was due to go at 9.30 a.m. but, as the deceased thought that he could get a seat in some tuck near the Prem Hotel and the Octroi Barrier, they left the bus-stand for the Octroi Barrier, when they reached the house of Kotwal Singh on the way, both the accused attacked the deceased with Chhuri and knife, respectively; Jadunath had the Chhuri and Girand Singh had the knife. Both the deceased and Prem Narain were unarmed. On hearing the cries of the deceased Prem Narain asked the appellants why they were attacking he deceased. Then Girand Singh, appellant, advanced towards him and gave a knife cut at his right wrist. On the deceased falling down both accused persons attacked him with their respective weapons. On his

raising the alarm Mahesh Chandra and Dwarka Prasad who were coming along the same road came and they shouted at the appellants. On hearing their shouts the accused an away. The deceased died on the spot.

4. The first information report was lodged at 8 a.m., the Police Station being only two furlongs from the scene of occurrence. In the First Information Report, in the second column, under the heading "Name and residence of accused", it was stated as follows :

> "1. Jadu Nath Singh, father's name not known and
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> 2. Girand Singh father's name not known.
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> Ahirs by caste, residents of Carbia Kishunpur, P. S. Bewar, Distt. Mainpuri."

The accused surrendered on March 12, 1968 and it appears that an application was filed by the advocate on their behalf that they be kept Ba-pardah as they night claim identification. Another application was put in on March 25, 1968, in which it was stated that the witnesses other then Prem narain were strangers and they applied that there should be an identification parade. On April 19, 1968, the then public prosecutor submitted a report to the Additional District Magistrate as under :

> "Accused Jadu Nath Singh and Girand Singh in Case Cr. No. 24 under Section 302, I.P.C., P.S. Bewar, have applied for identification vide application herewith attached. Pt. may be submitted that they are named in the F.I.R. and charge-sheet against them has also been received. The applications are moved to delay his case. Submitted for n. a."

The additional District Magistrate (Judicial) passed the following order on the application on April 20, 1968 :

> "As charge-sheet has already been received and the accused have been named by P.Ws., there appears to be no justification for ordering test identification. Accused be informed accordingly. The jail authorities be informed not to keep them Ba-parda."

5. We have set out these facts in detail because as will presently appear, one of the points raised by the leaned counsel is that failure to put up the accused for identification either vitiated the trial or, in any case, rendered the evidence of P.W. 2, Mahesh Chandra and P.W. 3, Dwarka Prasad, useless.

6. We may here notice that portion of the evidence of Dr. N. K. Mital, who conducted the post-mortem examination and on which one other point is sought to be founded. He found that the stomach was empty and the small intestines were half full and the large intestines were also half full. In cross-examination he started that "since the stomach was empty, the deceased should have taken has last meal about 4 to 6 hours before the infliction of the injuries". He was asked : "The evidence is the deceased took Puris and vegetable at 8 p.m. on 25-2-68 and according to the case for the prosecution his murder took place at 7.30 a.m. on 26-2-68. At the time of post-mortem the stomach was fund empty and both the mall and large intestines we found half full. Does it not indicate that in all likelihood the man was murdered between 3 and 4 a.m. ?" To this question Dr. Mital answered :

> "No. It is not an indication of this fact. After finishing his meal at about 8 or 8.30 p.m. on 25-2-68 the stomach could have got empty by 2 or 2.30 a.m. The digested

> food material should have come in the small intestine by about 2 or 2.30 a.m. complete digestion takes place in the small intestine ..... and if he had answered the call of nature the preceding evening fully and completely, even then the small and large intestines might be half full and stomach empty if he had taken Puries with vegetable at 8 p.m. on 25-2-68."

7. The learned Sessions Judge believed the evidence of Prem Narain, corroborated as it was by the injuries sustained by him in the course of the occurrence at the hands of one of the assailants, namely, Girand Singh. He also believed the evidence of Mahesh Chandra, P.W. 2 and Dwarka Prasad, P.W. 3. He relied on the fact that the appellants had absconded immediately after the crime and had only appeared before the Court as late as March 12, 1968, after proceedings under Sections 87 and 88 of the Code of Criminal Procedure had been taken against them. Regarding the claim of the appellants for identification the learned Sessions Judge observed that during the course of investigation both Mahesh Chandra and Dwarka Prasad had named the accused persons, and it would indeed have been surprising if the Additional District Magistrate (Judicial) had directed the accused to be paraded at a test identification parade in the Jail. He observed that the evidence indicated that the accused persons were not strangers even to Mahesh Chandra and Dwarka Prasad at the time of the occurrence. Mahesh Chandra had stated in his evidence that he had known the accused persons for about 4 years and that they were living at village Garhiya lying at a distance of three furlongs from Bewar, and that Girand Singh was reading at the Amar Shaheed Inter College, Bewar. Dwarka Prasad had stated that he had seen Girand visiting Bewar before that day. He had also seen Jadu Nath Singh at Bewar but only once or twice before that. For all these reasons the learned Sessions Judge held that the applications claiming identification were not bona fide and were intended to protract the proceedings, and accordingly he was unable to draw any adverse inference against the prosecution for the omission to parade the accused persons at a test identification parade in the jail.

8. The High Court believed the three eye-witnesses, Prem Narain, Mahesh Chandra and Dwarka Prasad. The High Court held that "Mahesh and Dwarka Prasad are wholly independent witnesses having no affinity with the deceased and entertaining no animosity towards the appellants". The High Court observed that these witnesses had claimed to have known the appellants for the last six or seven years as they had been frequently visiting the town of Bewar and the appellant, Girand Singh, was a student in a college at Bewar.

The learned counsel for the appellants raised two principal points before us :

> (1) Since the accused were denied identification the trial was vitiated;
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> (2) The medical evidence is in conflict with the prosecution case about the time of the assault.

9. The learned counsel further urged that the number and nature of injuries belie the prosecution story and that the application by the deceased to the Superintendent of Police was nothing but a Peshbandhi. He urged that eye-witnesses were not reliable and the courts below had missed the points that the appellants could not have anticipated that the deceased would be at this particular spot at that time.

10. The learned counsel relied on the following observations of the Lahore High Court in Sajjan Singh v. Emperor : (AIR (1945) Lah 48, 50)

> "If an accused person is already well-known to the witnesses, an identification parade would of curse, be only a waste of time. If, however, the witnesses claim to have known the accused previously, while the accused himself denies this, it is difficult to see how the claim made by the witnesses can be used as reason for refusing to allow their claim to be put to the only practical test. Even if the denial of the accused is false, no harm is done, and the value of the evidence given by the witnesses may be increased. It is true that it is by no means uncommon for persons who have been absconding for a long time to claim an identification parade in the hope that their appearance may have changed sufficiently for them to escape recognition. Even so, this is not in itself a good ground for refusing to allow any sort of test to be carried out. It may be that the witnesses may not be able to identify a person whom they know by sight owing to some change of appearance or even to weakness of memory, but this is only one of the facts along with many others, such as the length of time that has elapsed, which will have to be taken into consideration in determining whether the witnesses are telling the truth or not."

State of U. P. v. Jagnoo (AIR (1968) All 333) refers to Sajjan Singh v. Emperor (supra) with approval.

In re Sangiah (AIR (1968) All 333) the decision of the Lahore High Court in Sajjan Singh v. Emperor (supra) was dissented from Rajamannar, J. observed :

> "I am unable to find any provision in the Code which entitled an accused to demand that before the enquiry or the trial. An identification parade belongs to the stage of investigation by the Police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by the witness in court. The fact that a particular witness has been able to identify the accused at an identification parade is only a circumstance corroborative of the identification in court. If a witness has not identified the accused at a parade or otherwise during the investigation the fact may be relied on by the accused, but I find nothing in the provisions of the Code which confers a right on the accused to demand that the investigation should be conducted in a particular way."

11. In Parkash Chand Sogani v. The State of Rajasthan, (Cr. A. No. 92 of 1956, decided on January 15, 1957) an unreported decision of this Court in connection with the point regarding identification it was observed :

> "Much is sought to be made out of the fact that no identification parade was held at the earliest opportunity in order to find out whether P.W. 7 Shiv Lal could have identified the appellant as the person who was at the wheel of the car and drove it and reliance is placed upon Awadh Singh and Others v. The Patna State; (AIR (1954) Pat 483) Provash Kumer Bose and Another v. The King (AIR (1951) Cal 475) and Kanta Prasad v. Delhi Administration. ((1958) SCR 1218, 1221) Sarkar on Evidence, 9th Ed., p. 415 to justify the contention that in criminal cases it is not sufficient to identify the prisoner in the dock but the police should have held an identification parade at the earliest possible opportunity to show that the accused person had been connected with the crime. It is also the defence case that Shiv Lal did not know the appellant. But on a reading of the evidence of P.W. 7 it seems to us clear that Shiv

> Lal knew the appellant by sight. Though he made a mistake about his name by referring to him as Kailash Chandra, it was within the knowledge of Shiv Lal that the appellant was a brother of Manak Chand and he identified him as such. These circumstances are quite enough to show that the absence of the identification parade would not vitiate the evidence. A person, who is well-known by sight as the brother of Manak Chand, even before the commission of the occurrence, need not be put before an identification parade in order to be marked out. We do not think that there is any justification for the contention that the absence of the identification parade or a mistake made as to his name, would be necessarily fatal to the prosecution case in the circumstances."

12. In Awadh Singh v. The Patna State (supra) it was held that the accused person may or may not have legal right to claim for test identification and the holding of test identification may or may not be a rule of law, but it is a rule of prudence. Test identification parade should be held especially when the accused persons definitely assert that they were unknown to the prosecution witness either by name or by face and they requested the authorities concerned to have the test identification parade held.

13. In Provash Kumar Bose v. The King (supra). Division Bench of the Calcutta High Court (Harries, C.J. and Das Gupta, J.), held :

> "The fact that the witnesses have identified in Court the accused is of very little consequence in a prosecution under Section 384, Penal Code, when none of the witnesses knew the accused from before ..... the corroborative evidence which one is entitled to expect in cases of this nature is the evidence of the witnesses having pointed the accused whom they identified in Court from the midst of other persons with whom they were mixed up at a test identification parade. The evidence of their having identified such persons at a test identification parade has no substantive value, but is very important, corroboration of their evidence in Court."

14. In Kanta Prasad v. Delhi Administration (supra) a point was made regarding non-holding of test identification parade by the police and this Court observed :

> "As for the test identification parade, it is true that no test identification parade was held. The appellants were known to the police officials who had deposed against the appellants and the only persons who did not know them before were the persons who gave evidence of association, to which the High Court did not attach much importance. It would no doubt have been prudent to hold a test identification parade with respect to witnesses who did not know the accused before the occurrence, but failure to hold such a parade would not make inadmissible the evidence of identification in Court. The weight to be attached to such identification would be a matter for the Courts of fact and it is not for this Court to reassess the evidence unless exceptional grounds were established necessitating such a course."

15. It seems to us that it has been clearly laid down by this Court, in Parkash Chand Sogani v. The State of Rajasthan (supra), that the absence of test identification in all cases is not fatal and if the accused person is well-known by sight it would be waste of time to put him up for identification. Of course if the prosecution fails to hold an identification on the plea that the witnesses already knew the accused well and it transpires in the course of the trial that the witnesses did not know the

accused previously, the prosecution would run the risk of losing its case. It seems to us that if there is any doubt in the matter the prosecution should hold an identification parade specially if an accused says that the alleged eye-witnesses did not know him previously. It may be that there is no express provision in the Code of Criminal Procedure enabling an accused to insist on identification parade but if the accused does make an application and that application is turned down and it transpires during the course of the trial that the witnesses did not know the accused previously, as pointed out above the prosecution will, unless there is some other evidence, run the risk of losing the case on this point.

16. In the present case, however, it is clear that P.W. Mahesh Chandra knew the accused persons for about four years for he said :

> "I know the accused persons, Jadunath Singh and Girand Singh for about 4 years. They live at village Garhiya lying at a distance of three furlongs from Bewar. Girand Singh is reading at the Amar Shaheed Inter College, Bewar."

No cross-examination was directed on this point. P.W. 3, Dwarka Prasad, stated :

> "I had seen Girand visiting Bewar before that but I had seen Jadunath at Bewar only once or twice before that day. Identifies both the accused persons in the dock. Lays hand correctly on Jadunath; and also lays hands correctly on Girand in the dock."

In cross-examination he stated :

> "I had seen Jadunath accused at Bewar at the shop of one Chhakku once or twice before the occurrence. I had seen him two or 2 1/2 years back."

17. It seems to us that the reason given by the public prosecutor in the report and the reason given by the Additional District Magistrate (Judicial) in the order directing that identification requested for be not held were not valid. The fact that a charge-sheet had been received and the accused had been named by P.W. was no justification for not having ordered the test identification. But on the facts of this case it is clear that P.W. 2 at least knew the accused from before. As regards P.W. 3, although he claims to have known the accused, it is clear that his knowledge of the accused was very scant and if it had not been for the evidence of P.W. 2 we would not have placed reliance on the evidence of P.W. 3 in view of the fact that the police did not ask him to identify the appellant.

18. It is stated in Phipson on the Law of Evidence, 9th Ed., p. 415, as follows :

> "In criminal cases it is improper to identify the accused only when in the dock; the police should place him beforehand, with others and ask the witness to pick him out. Nor should the witness be guided in any way, nor asked 'Is that the man ? '"

We consider that the same is the law in India, if the identity is in doubt.

19. Accordingly on the facts of this case we are of the opinion that the trial was not vitiated because the accused persons were denied identification.

20. Regarding the second point, we have already extracted the evidence of the doctor and it is quite clear to us that the evidence is not in conflict with the prosecution case. If the occurrence took place at about 7.30 a.m. and the deceased had not taken any food in the morning, his stomach would still

be empty at 7.30 a.m. If anything the medical evidence destroys the case of the defence that the murder took place at about 3 in the morning. We are unable to think that the deceased would leave with Prem Narain at 3 a.m. to catch a bus which was supposed to leave at about 7 a.m.

21. This appeal is by special leave and this court does not re-appreciate the evidence. The other points raised by the learned counsel are of that nature, and at any rate there is no substance in those points.

22. The appeal accordingly fails and is dismissed.

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