

SUPREME COURT OF INDIA

State of Madhya Pradesh

Vs.

Ghudan

Crl.A.No.551 of 1996

(N. Santosh Hegde and B. P. Singh JJ.)

15.10.2003

JUDGEMENT

Santosh Hegde, J.

1. State of Madhya Pradesh is in appeal before us against a judgment of the High Court of Madhya Pradesh at Jabalpur in Crl. A. No. 825 of 1988 whereby the High Court allowed the appeal of the respondent herein and set aside the conviction and sentence imposed on him by the Additional Sessions Judge, Bhopal under Sections 302, 380 and 457 of the IPC in ST No. 90 of 1986.

2. Brief facts necessary for the disposal of this appeal are as follows:

“According to the prosecution, Arun Kumar Mehta (PW-26) was a typist working with a Member of Legislative Assembly who was residing in Quarter No. 116/17, Shivaji Nagar, Bhopal and at that relevant point of time the said MLA was not in town and this PW-26 was occupying the garage attached to the house of the said MLA. On 13-2-1985 at about 10 p.m. PW-26 noticed some flashing of the light inside the unoccupied house of the MLA and apprehending that there was something wrong, he went to the house of Narayan Dubey (the deceased) who was living just behind the house of the MLA. At the request of PW-26, the said Narayan Dubey came out of the house with a sword in his hand along with him came a little later Dubey's son (PW-11) when they saw a person with medium height aged about 20-25 years with curly hair and having somewhat darkish complexion covering himself with a white shawl coming out of the house of the MLA. When PW-26 called out to him to stop, the said person started abusing him and threatened him to fire with a pistol carried by him and in fact fired at PW-26 with the pistol which missed PW-26. The prosecution then alleged that Narayan Dubey tried to stop the said person, consequent to which the said person fired three times which caused gun shot injury on Narayan Dubey. Thereafter, the said person allegedly ran away from the place of incident. The injured Narayan Dubey was rushed to the hospital where he succumbed to gun shot injury. As per the prosecution case, the investigation commenced on a complaint made by PW-26 which

did not make much progress. It is the further case of the prosecution that on 22-9-1985 about 7 months after the incident in which Narayan Dubey died and during the investigation of another Crime No. 7/85 by the police of Police Station Sarni, the respondent herein was arrested and on an alleged disclosure statement made by him as per Ext. P-18 one .22 bore pistol was recovered from the house of one Chandan and same was seized as per Seizure Memo Ext. P. 18. During the course of the investigation of the case involving the death of Narayan Dubey certain empty cartridges had been seized from the spot of incident and the pistol then recovered at the instance of the respondent herein was sent for ballistic examination who opined that the empty cartridges found at the place of incident could have been fired by the pistol recovered at the instance of the respondent. The report of the ballistic expert was marked as Ext. P-19. On this basis the respondent was arrested. A week after the respondent was arrested a test identification parade was held at Betul Jail where PW-26 allegedly identified the respondent as the person who shot Narayan Dubey on the date of incident, hence, a charge sheet under Sections 302, 457, 380 IPC was laid against the respondent who, as stated above, was convicted by the Additional Sessions Judge but on appeal was acquitted by the High Court.”

3. The High Court during the course of its judgment which is now impugned before us came to the conclusion that the evidence of PW-26 which was the basis for conviction of the respondent cannot be relied upon because the High Court was of the opinion that PW-26 could not have identified the respondent for want of sufficient light. It is, of course, an admitted fact that the respondent was a stranger to PW-26. The High Court also came to the conclusion that the identification by the appellant at the test identification parade cannot also be relied upon and there was every possibility of the respondent being shown to PW-26 prior to the test identification parade. The High Court also chose not to place any reliance on the ballistic report because even according to the prosecution the empties which were recovered from the place of incident six months earlier were not really sealed. Therefore, it came to the conclusion that these being the trial Court and the same being not very trustworthy, the respondent herein was entitled to benefit of doubt, hence, acquitted him.

4. In this appeal Shri R. P. Gupta, learned senior counsel appearing for the State of M.P. contended that the finding of the High Court in regard to the possible identification by PW-26 of the respondent is highly erroneous. Learned counsel contended that there was sufficient light at the place where the incident in question took place and PW-26 had sufficient time to have a good look at the respondent. Therefore, there was every possibility of the witness properly identifying the accused even though the test identification parade took place about six months after the incident in question. He also contended that the High Court erred in not placing reliance on the evidence of the ballistic expert which clearly showed that the empties which were found at the place of incident have in fact been fired from the pistol that was recovered at the instance of the respondent. Therefore, there was sufficient material for the Courts below to have based a conviction on the respondent which the trial Court did, but the High Court erroneously failed to do so.

5. Shri Siddarth Dave, learned counsel appearing for the respondent strongly supported the judgment of the High Court. He contended that from the material produced by the prosecution itself it is clear that there was not enough light at the place of incident and the respondent being a stranger to PW-26 could not have properly identified him. More so, because of the fact that he saw the respondent next time only after about six months. He pointed out that under similar circumstances PW-11 who also supposed to have seen the accused at the time of incident did not identify the accused in the identification parade. Learned counsel pointed out the very recovery of the pistol at the instance of the respondent is unbelievable because the person from whose house the said weapon was recovered allegedly at the instance of respondents did not support the prosecution case. He contended, admittedly the weapon was in possession of Chandan, therefore, no inference could be drawn that at any point of time this weapon was with the respondent. Learned counsel also submitted that the High Court was justified in coming to the conclusion that the report of the ballistic expert cannot be relied upon because the empties which were recovered from the place of incident were not sealed.

6. We have heard the learned counsel for the parties as also perused the records. The prosecution in this case relies on three facts to establish its case; firstly the eye-witness version of the incident as stated by PW-26; secondly the recovery of the weapon allegedly at the instance of the respondent and thirdly the report of the ballistic expert.

7. From the evidence of PW-26, it is seen that he states that he noticed a person of medium height with curly hair having somewhat darkish complexion coming out of the house of the MLA who after threatening him shot the deceased three times. According to him, there was a tube light near the place of incident, hence, he could identify the accused. The High Court in its judgment has observed that the factum of the existence of a tube light at the place of incident is doubtful because the sketch of the place of the incident as prepared by the prosecution did not indicate any such light. It is only for the first time while giving evidence before the Court, PW-26 pointed out a place in the sketch where according to him the tube light was placed. The trial Court accepted it and came to the conclusion that there was sufficient light at the place of incident. The High Court, per contra, observed that if really there was a tube light at the place of the incident, the investigation officer would not have failed to mark the existence of that tube light in the sketch. The omission to do so creates doubt as to the possibility of there being sufficient light for identification. We are in agreement with this finding of the High Court. If really there was a tube light by which PW-26 identified the respondent then investigating agency would certainly have shown the existence of a tube light and its placement in the sketch because it was a very important fact mainly because the identification of the accused is a vital factor to be proved by the prosecution. The benefit of the omission to point out the existence of such light in the sketch, in our opinion, should go to the accused. That apart, we find some serious discrepancies in the manner in which the PW-26 identified the respondent in the parade. As noticed above, this witness has specifically stated certain salient physical features of the respondent which assisted him in identifying the accused respondent. But if we peruse his evidence given in the Court in regard to test identification parade, we notice that none of those features which

assisted in identifying the accused really existed at the time of the test identification parade. PW-26 in the course of his examination stated thus:

"The Tehsildar called five-six prisoners from inside. All those who were brought were wrapped in blankets and all of them were young. I do not remember their looks as all were wrapped in blankets. Their hairs were not visible. I did not notice this even, how many of them had moles on their noses, I cannot tell how many of them were dark and how many were fair. I cannot tell how many of them were of medium stature and how many were short statured. I did not tell the Tehsildar about the mark of my identification. I did not tell the Tehsildar, that the person whom I have come to identify possesses curly hair and is dark coloured."

8. From the above extract of his evidence, it is clear that he was neither able to see the stature of the respondent, nor the hair, nor the mole on his nose, nor his complexion or his height. For the above reason, we are in agreement with the High Court that the identification of the respondent by PW-26 is not reliable especially in the background of the fact a similarly situated witness like PW-11 had failed to identify this respondent.

9. We have already noticed that the weapon allegedly used in the crime was recovered from the house of one Chandan who though examined did not support the prosecution case. The recovery in fact cannot be said to be from a place to which the respondent alone had the exclusive access. The possibility of the said weapon being with the said Chandan always cannot be ruled out. In such factual background much importance cannot be placed on a recovery of this nature.

10. We are also in agreement with the finding of the High Court that it is not safe to place reliance on the report of the ballistic expert because it is an admitted fact that the empties which were sent to the ballistic expert after six months were not sealed at the time of seizure. Therefore, the identity of the empties seized from the place of incident and those tested by the expert cannot be safely tallied.

11. For the above reasons, we are in agreement with the findings of the High Court. We find no merit in this appeal, the same is dismissed.

12. We place on record our appreciation for the services rendered by the learned amicus curiae and direct that a sum of Rs. 750/- be paid to him for his valuable assistance.

Appeal dismissed.