Lajja Ram vs The State on 22 July, 1955

Equivalent citations: AIR1955ALL671, 1955CRILJ1547, AIR 1955 ALLAHABAD 671

JUDGMENT

Chowdhry, J.

1. Lajjaram, aged 26, of village Jagannathpur, P.S. Ajitmal, District Etawah, has been convicted and sentenced to death under Section 302, I. P. C., for the murder of Pragu of village Kakraiya within the same police station by the learned Additional Sessions Judge of Etawah. Lajjaram has appealed against his conviction and sentence. The record is also before us for confirmation of the death sentence. Three men, Ramdas, Kanhai and Lakhan, who were charged with the abetment of the offence, have been acquitted.

2. Kakraiya is about a mile from Jagannathpur, wad the offence is said to have been committed after, sunset on 8-3-1954. It is said that the deceased was sitting in front of his door when the aforesaid three persons who have been acquitted came up from the east and engaged him in talk in a low tone. Suddenly one of them addressed him in a loud tone. This is said to have served as a signal whereupon two other men, clad in Khaki and armed with guns, came up from the east.

One of them was the appellant and the other a person whose identity has remained untraced. From a distance of about 10 paces the latter flashed a torch at Pragu and the former shot at him hitting him in the knee. As Pragu rose to his feet, the appellant again shot at him, this time hitting him in the abdomen. Pressing his hand against his wound in the abdomen, Pragu ran inside his house followed by the appellant. Pragu crossed an outer room and a courtyard and fell down in a thatched verandah adjacent to another room.

The appellant, who had come up to the junction of the outer room and the courtyard, aimed his gun again at Pragu but the latter's wife Lareti, who happened to be in the room in front of which Pragu had fallen, pulled him in and bolted the door. The appellant knocked at the door and then came out and went back with his companions the way he had come.

3. The occurrence was witnessed by Chiddu, a nephew of the deceased, who lived in an adjacent house and was at the time having a wash on a nearby Chabutra, by Chiddu's brother Moti Lal and sister Rati and Har Prasad and Ram Sanehi, who were warming themselves round a fire pit, and by Gajadhar who, along with others, was warming himself at another fire pit. Both these fire-pits were very close to the deceased's door. Chiddu, Gajadhar and Ram Sanehi from amongst these and one other, Ram Singh, went into Pragu's house and Pragu said in their presence that Ram Das, Kanhai and Lakhan had him shot at by Lajjaram to satisfy their grudge against him.

In about half an hour Pragu succumbed to his injuries. It is said that the appellant was wanted in several cases of dacoity, murder and attempt to commit murder and had been absconding since 1951, and that he committed the murder because Pragu had been acting as a police informer.

4. The police station of Ajitmal is 5 miles from Kakraiya and report was lodged there at 9 p.m. by Chiddu. In this report the appellant and the co-accused who were acquitted were named. Second Officer Jamuna Nath reached the place of occurrence within an hour of the lodging of the report and found the dead body in the said room. He held an inquest, prepared a "site plan, found blood where Pragu had fallen in the thatched verandah and recovered seven pellets and two card-board discs at the place where Pragu had been hit.

The post mortem, conducted by Dr. S. P. Saxena at noon on 10-3-1954, showed the aforesaid two gun-shot injuries, one in the right knee and the other in the abdomen. Death, in the opinion of the doctor, was syncopal due to shock and haemorrhage caused by the injuries of the abdominal organs as a result of discharge from firearm,

5. The appellant was arrested on 30-4-1954.

The investigation was completed on 3-7-1954, and the charge-sheet was submitted to the Magistrate concerned on 16-7-1954. The appellant applied from jail to the District Magistrate on 23-8-1954 for his being put up for Identification. The District Magistrate sent the application to the Public Prosecutor for report on 26-8-1954 On 28-8-1954 a report appears to have been made in compliance with that order, but the report is not on the record. On 2-9-1954 the appellant was taken out of jail and produced before the Magistrate. While coming out of jail he protested that no action had been taken on his application for identification. There is nothing to show that any order was passed on the said application of the appellant dated 23-8-1954. No identification parade was held.

6. The defence was a denial of the prosecution case. It was pleaded by the appellant in both the courts below that none of the alleged eyewitnesses knew him, and that none of them could have identified him if an identification parade had been held as desired by him.

7. The learned Sessions Judge acquitted Ram Das, Kanhai and Lakhan because he was of the view that the mere fact that the attack was launched immediately after one of those three men had talked loudly to the deceased did not necessarily prove a conspiracy between them and the appellant. He thought that Lajja Ram and his companion may have appeared on the scene at that moment by sheer coincidence.

So far as the present appellant is concerned, the learned Sessions Judge discarded the circumstantial evidence of the appellant having been seen with a gun near the place of occurrence shortly after the murder and of his having absconded. He however convicted him on the findings that the motive alleged by the prosecution had been proved, and that there was direct evidence of eyewitnesses proving that the murder had been committed by the appellant. He also held that Pragu made the aforesaid dying declaration and that it incriminated the appellant.

8. The prosecution produced six eye-witnesses: Chhiddu, Moti Lal, Har Prasad, Ram Sanehi, Mst. Rati and Gajadhar. Out of these the learned Sessions Judge discarded the testimony of all but three, i.e. Chhiddu, Moti Lal and Mst. Rati. The main contention put forward on behalf of the appellant before us, as it was also before the learned Sessions Judge, is that even these three witnesses were not worthy of belief inasmuch as their testimony was open to grave doubt by reason of the appellant not having been put up for identification inspite of his application.

Now there is no doubt that the holding of Identification parade is a procedure not prescribed by any law but one which can be usefully adopted at the investigation stage, before the accused has become a cynosure of witnesses, to test the veracity of eye-witnesses who profess either to have known the accused or to have identified an accused not already known.

Though not bound by law therefore to do so, the prosecution usually adopts it for the latter purpose, initially for selecting witnesses who pass that test, and later at the trial stage as corroborative of identification by those witnesses in court and as a token of their reliability. On the other hand, if witnesses do not pass that test, or do so but poorly, and are yet produced, the accused can rely upon that circumstance as destructive of identification by those witnesses in court and as a mark of their unreliability.

Furthermore, provided it is not too late to do so, the accused can challenge the prosecution to an identification parade to falsify the claim of eye-witnesses who profess to have known him, and, although there is no law which could be said either to confer any right upon the accused to throw such a challenge or to impose any duty upon the prosecution to take up the challenge, the prosecution which ignores that challenge without justification would be doing so at its peril.

It would be exposing the aforesaid claim of the witnesses to the criticism that the test of identification was shirked because, the witnesses would not have been able to stand that test. Unless therefore the prosecution can nullify that criticism (e. g., by showing, that even though the witnesses were not put to the test of identification, there is evidence aliunde which establishes without doubt that the accused was known to them), there would be an element of doubt attaching to the testimony of those witnesses of which the benefit should go to the accused.

9. In the present case, the appellant did challenge the prosecution to an identification parade to falsify the claim of eye-witnesses that they knew him. It cannot also be said that he was too late in doing so since, as adverted to above, he submitted the aforesaid, application for identification from jail 10 days before he was produced before the Magistrate. There was there fore ample time for the prosecution to have put him up for identification in compliance with his request.

That request was however ignored. It was argued before the learned Sessions Judge, as it has been done before us also, that Inaction on the part of the prosecution on the aforesaid application of the appellant was not deliberate but due to a misconception of the law, and that the latest decision of this Court came to the knowledge of the prosecution too late. The latest decision referred to was Shakoor v. State', 1955 All WR HC 55 (A), wherein the views of Asthana J., following -- 'Sajjan Singh v. Emperor', AIR 1945 Lah 48 (B), were in effect the same as those expressed above.

The ruling of this Court which is said to have been misconceived by the prosecution is reported as -- 'State v. Ghulam Mohiuddin', AIR 1951 All 475 (C). The learned Sessions Judge accepted this contention. We are of the view that he was not right in doing so. The 1951 ruling of this Court just referred to was given on a reference by a Sessions Judge recommending that the order of the trying Magistrate rejecting the accused's application for the holding of an identification parade be set aside as the accused had a right to claim such an identification.

Rejecting the reference, Bhargava J., held that the accused had no such right. At the same time, he held that the accused's right to cross-examine and challenge the veracity of witnesses in the manner provided by law, and further to contend that no reliance should be placed upon the witnesses who were not called upon to identify him at proper time, remained unaffected.

It would appear therefore that it was laid down in this ruling also that although the accused may have no right to claim identification, if the prosecution turns down his request for identification it runs the risk of the veracity of the eye-witnesses being challenged on that ground. This ruling, if it was at all consulted, should therefore have led the prosecution to comply with and not to reject the appellant's request. It appears however that the prosecution itself wanted to put up the appellant for identification. By two applications, dated 11-6-1954 and 31-7-1954, remand was taken for that specific purpose. Eventually, however, the Station Officer in charge of the police station reported on 24-8-1954 against putting up the accused for identification. Why this was done and where this report was made does not appear. If it was made at the head-quarters, it would appear that that was done in the teeth of the foresaid application of the appellant which had been made a day previously.

In these circumstances, the finding of the learned Sessions Judge that the omission was not deliberate is unsupportable. On the contrary, from what has been stated above it would rather appear that the omission was deliberate and anything but bona fide. That being so, it lay on the prosecution to justify the omission. That has been sought to be done by the alleged sterling worth of the witnesses themselves.

It, is contended that even though the witnesses were not put to the test of identification, their evidence was 'intrinsically of such quality that it led one irresistibly to the conclusion that their assertion that the appellant was known to them was correct. The learned Sessions Judge accepted this contention in regard to the aforesaid three eye-witnesses, Ghhiddu, Moti Lal and Mst. Rati on whose testimony he has convicted and sentenced the appellant.

(Their Lordships then reviewed the testimony of these witnesses and considered the probabilities arising from the prosecution version of the case and reached the conclusion):

> (1) that it could not be said with respect to any of the three witnesses, Rati, Moti and Chhiddu, whose testimony the Sessions Judge relied for the conviction of the appellant, that they certainly knew the appellant from before;
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> (2) that the element of doubt attaching to the testimony of these witnesses by reason of the "omission of identification test subsisted and the benefit of it went to the

appellant.

(3) that there were certain circumstances which showed that the prosecution version of the case was inherently improbable and therefore un worthy of belief;

(4) that it was difficult to accept the prosecution case relating to the appellant having followed the deceased into his house and come back without being able to shoot at him again; and (5) that it was difficult to believe that the deceased's wife Mst. Lareti should have been able to pull the deceased bodily into the room where she was and bolted the door and thereby prevented the appellant, who was said to have raised his gun again at the deceased, from shooting at the deceased.

10. In view of the aforsaid circumstances, and in view of the testimony of the so-called eyewitnesses being open to grave doubt on account of the omission on the part of the prosecution to put the appellant up for identification inspite of his repeated requests, it cannot be said that the guilt has been brought home to the appellant.

11. As regards motive, that is a piece of circumstantial evidence which cuts both ways. If the testimony of eye-witnesses were worthy of belief, that circumstance could have justifiably been used as establishing that the appellant committed the murder of the deceased because he was a police informer. In the absence of reliable eyewitnesses, however, the aforesaid evidence with regard to motive would rather go to show that the police had engineered a false case against the appellant because he was wanted in several cases.

12. So far as the dying declaration in which the deceased is said to have named the appellant is concerned, the learned Sessions Judge has held it proved on the testimony of three witnesses, Chhiddu, Mst. Bilaso and Mst. Lareti. Of these three witnesses it has already been held that the testimony of Chhiddu as an eye-witness was open to grave doubt. So is also the testimony of Mst. Lareti in view of the fart that the story about her having pulled the deceased inside the room has been found to be improbable.

As adverted to above, the prosecution case in the sessions court was that the dying declaration was made not only in the presence of Msts. Lareti and Bilaso but also in the presence of a large number of persons who entered the house at the time. In the court of the committing Magistrate however Mst. Lareti clearly stated that when Pragu made the said statement only she and her daughter were present.

She further stated that after making that statement Pragu fell down and became unconscious. It is also noteworthy that according to the F. I. R. version of this matter the dying declaration was made only to the aunt of Chhiddu. It would appear therefore that there are material discrepancies in the aforesaid three versions, and that the prosecution developed the case in the sessions court in trying to show that witnesses besides Lareti were also present when dying declaration was made.

Moreover, in view of the fact that a torch is said to have been flashed at the deceased by the appellant's companion before, the appellant shot at him, it is difficult to believe that the deceased should have been able to recognise who his assailant was. In view of these circumstances, the prosecution evidence with regard to the dying declaration is also unworthy of credence.

13. Before we conclude it seems necessary to animadvert on the omission on the part of the prosecution in this case to hold an identification parade after an application to that effect had been made by the appellant. If the prosecution failed in that duty, the Magistrate should have ordered the holding of identification proceedings when the appellant's application was put up before him. He however neither allowed nor rejected the application. This 'non possumus' attitude of the Magistrate laid him open to charge that he was acting in concert with the police in not giving the accused a fair deal.

This joint and several remissness on the part of the prosecution and the Magistrate in the present case created a rock of disbelief and suspicion on which the entire case for the prosecution has foundered. If there exists any doubt in regard to the proper course to be adopted when an accused moves at the proper time for 'being put up for identification, it is to be hoped that it is dispelled by the observations made in this judgment.

14. We would also like to express our appreciation of the closely reasoned and well expressed judgment which the learned Judge, Sri K.B. Srivastava, has written even though we have not agreed with his findings.

15. The appeal is allowed, the reference is rejected and the conviction of the appellant under Section 302, I. P. C., and the sentence of death imposed upon him are set aside and he is acquitted. He shall be released forthwith unless wanted in some other connection.