

Saghir Ahmad And Ors. vs The State on 18 July, 1950

Equivalent citations: AIR1950ALL723, AIR 1950 ALLAHABAD 723

JUDGMENT

Chandiramani, J.

1. The appellants Saghir Ahmad alias Iftikhar Husain, Azadur Husain and Qamar All were convicted by Shri L. N. Misra Sessions Judge, Lucknow, on 6th February 1960 under Section 394, Penal Code, and sentenced each to rigorous imprisonment for seven years.

2. The prosecution case briefly was that on 31st August 1948, at about 9 p.m. Gopal Mahraj P. W. 4. boarded an ekka at Goldarwaza, Chauk, Lucknow. He had a box with him containing cash Rs. 1,800/- and unsold ghunghroos worth Rs. 900/-. The same ekka was boarded by Ram Krishna Das alias Bachchu Lal P. W. 3. A third person also got into the ekka. The ekka was going to Charbagh Railway station. The ekka proceeded towards Charbagh via the Medical College crossing. The third passenger who got into the ekka requested the ekka driver Sardar Ahmad P. W. 17 to proceed via the Jubilee College as he had to get down there. After going beyond the railway oven bridge, the ekka stopped near the mosque and the triangular park. The third passenger got down there and paid annas two whereas annas two three were due. He then went to three persons who were standing a little distance away. Two of them on one side of the road and the third was on the other, and he had a cycle. The third passenger soon returned to the ekka and the driver thought that he was going to receive the one anna due to him, but at that moment two of the three persons, who had been standing on the road, came up and threatened the party in the ekka with pistol. Some shots were actually fired. One of the men threatened Ram Krishna Das with a knife and later picked up the box of Gopal Mahraj and began to take it away. Gopal Mahraj resisted and the box fell down. Gopal Mahraj was stabbed with a knife. Ram Krishna DAS ran away to the bungalow of Shri Chatterji, Advocate. The ekkawala drove in the direction in which Ram Krishna had gone. Gopal Mahraj fell down on his legs being pulled by one of the robbers and another ran away with the box. Gopal Mahraj chased him. Gopal Mahraj was stabbed again by another robber. After a little while, it seems that the robber carrying the box staggered and fell and Gopal Mahraj ran up and picked up the box. The robber made good his escape. Gopal Mahraj took shelter in a pit and a little while later returned to Chauk. In the meantime, Ram Krishna Das had also returned to Chauk and told people as to what had happened. Ram Krishna Das went to police station kotwali to make a report, but he was asked to find out the identity of the victim of the robbery and to report at the Wazirganj thana which had jurisdiction in connection with this crime. At this time Gopal Mahraj met Ram Krishna Das and they went to the thana. As Gopal Mahraj became unconscious on account of loss of blood, the report was made by Ram Krishna Das. The investigation resulted in the arrest of five persons, including the three appellants. Identification proceedings were held three times and eventually the five persons were prosecuted, Qamar AH appellant is said to have absconded and identification proceedings in his case were held on 7th October 1949. All the appellants and the other two co-accused pleaded not

guilty. FOR the prosecution were examined Gopal Mahraj P. W. 4 the victim, Sardar Ahmad P. W. 17 the ekka driver and Ram Krishna Das P. W. 3, who was a co-passenger in the ekka with the victim, and also three other persons Imami P. W. 5, Maddhey P. W. 6 and Babu P. W. 7, residents of the locality where the dacoity took place. There was also evidence that shortly before the occurrence the three appellants and two others had been seen near the scene of occurrence by Rahat Husain P. W. 11. There was also the retracted confession of one of the accused in the case, Bahadur. The case was tried by jury, and they were unanimously of the opinion that two co-accused with the appellants Bahadur Mirza alias Doctor and Syed Ali Zaheer, were not guilty. The verdict of the majority also was that the three appellants Azadar Husain, Saghir Ahmad and Qamar Ali, are guilty of the offence under Section 394, Penal Code. The learned Judge seeing no reason to differ from the verdict of the jury convicted the three appellants and acquitted the other two, Bahadur Mirza alias Doctor and Syed Ali Zaheer.

3. In this appeal it has been contended that the verdict of the jury is erroneous on account of their misdirection by the learned Judge. It is pointed out that the learned Judge while referring to the identification evidence of the various witnesses, did not specifically point out to the jurors the mistakes which had been made by the witnesses, which materially affected the value of the identification evidence, and that on account of this the jury failed to realise the true value of the identification evidence and came to an erroneous conclusion. There is considerable force in this contention,

4. The learned Judge has referred to the case against each individual appellant in his charge to the jury. The learned Judge observed:

"Summing up I may point out that there are three good identifications against Azadar Huaain, viz., by Bam Krishna Das Gopal Mahraj and Sardar Ahmad about whose presence on the ekka there can be no doubt."

The use of the words "good evidence" is clearly misleading. When dealing with each eye-witness of the occurrence the learned Judge has referred to identifications evidence, but he has not specifically drawn the attention of the jury to the fact that three identifications were held and he has not pointed out what mistakes were made by the witnesses. As regards Ram Krishna Das P. W. 3 the learned Judge said:

"It was he who lodged the first information report Ex. 1. From his testimony and the first information report the existence of only 4 looters is made out. It may be that he noticed only four persons, viz., Qamar Ali who came on the ekka with him as the third passenger along with himself, Gopal Mahraj and three others, out of whom he was able to identify only Azadar Husain accused in jail. The testimony of this witness is entitled to weight as no enmity of any kind has either been suggested or proved against him and as there could be no doubt that he was present on the ekka when the occurrence took place. He is a respectable man who cannot be said to be under the police influence but it is for you to believe or disbelieve his evidence."

The learned Judge makes no reference whatever to the mistakes if any, be made in the identification. Now it appears that actually identification proceedings were held three times in the case. The first proceeding took place on 25th September 1948, when Azadar Husain Bahadur Mirza and some others were put up for identification. The second identification took place on 18th December 1948, in which Saghir Ahmad was put up for identification. The third identification took place on 7th October 1949, when Qamar Ali alone was put for identification. In the first identification Ram Krishna Das identified Azadar Husain correctly and made one mistake; in the second parade he did not identify Saghir Ahmad but picked out a wrong man and in the third parade he identified Qamar Ali correctly and made no mistake. In the trial Court he identified not only the three appellants but also Bahadur whom he had failed to identify in jail. The learned Judge did not pointedly draw the attention of the jury to these facts to enable the jurors to attach proper value to the identification evidence, The result of the three identification parades was that he identified two persons correctly and made two mistakes. The value of the identification was therefore considerably reduced, and it was further reduced by the fact that Ram Krishna identified Bahadur whom he had failed to identify in jail. The evidence of identification of Ram Krishna was certainly not in the circumstances reliable.

5. In the case of Gopal Mahraj P. W. 4., the learned Judge stated that he had identified Saghir Ahmad and Azadar Husain appellants correctly in jail. He made no mention of the mistakes that were made in the identification parades by the witness. The learned Judge pointed out to the jury that the identification by the witness of Bahadur and Qatmar Ali in Court when he had failed to identify them in jail, could not be depended upon. The learned Judge did not point out that in the first identification parade, when Gopal Mahraj identified Azadau Husaiu, he had made one mistake. The learned Judge also did not point out to the jury, that although in jail Gopal Mahraj had correctly identified Saghir, yet at the time of the trial, he had been unable to identify him. These were all circumstances which materially affected the value of the identification evidence, and there is no doubt that the identification evidence is not reliable.

6. As regards Sardar Ahmad P. W. 17, the learned Judge observed that he must have been on the ekka when the occurrence took place, and his identification is therefore entitled to weight. The learned Judge made no reference at all to the mistakes which Sardar Ahmad had made in the various identification parades. In the first parade, when identifying Azadar Husain correctly, the witness made one mistake. In the second parade he identified one person, but it was an incorrect identification. In the third parade he picked up one person, but that again was a wrong identification. It thus appears that in identifying one person correctly, he made three mistakes, and clearly such identification evidence is worthless. The learned Judge's failure to point out these mistakes undoubtedly deprived the jurors of the material with the aid of his identification evidence. It will be seen that had the relevant material been specifically brought to the notice of the jurors, they would have realised the worthlessness of the identification evidence. On the identification evidence no conviction was possible. There is no doubt, therefore, that the failure of the learned Judge to point out the various mistakes made by the identifying witnesses in the identification proceedings has led to an erroneous verdict and the consequent failure of justice.

7. So far as the appellant Saghir Ahmad is concerned, the learned Judge stated in his charge to the jury that there are three identification witnesses against him, viz., Gopal Mahraj, Imami and Maddhey. In no part of his charge to the jury has the learned Judge pointed out the various mistakes committed by the witnesses which materially affected the value of the identification evidence. The shortcomings in respect of the evidence of Gopal Mahraj regarding identification have already been referred to while dealing with the case of Azadar Husain appellant. It has been pointed out that the evidence of Gopal Mahraj regarding identification is really worthless. The learned Judge did not even point out that the witness failed to identify, Saghir in Court. So far as Imami P. W. 5, is concerned, the learned Judge has stated that "as already observed, Imami correctly identified Saghir Ahmad alias Iftikhar and Qamar Ali without any mistake." It appears that in the first identification parade he made one mistake and in the second and third identification parade he identified Saghir Ahmad and Qamar Ali respectively. He identified both, Saghir and Qamar Ali also at the time of the trial. The learned Judge has pointed out to the jurors :

"He is now definitely lukewarm for the prosecution as he said that he was shown to Saghir Ahmed accused in the hawalat at police station Qaisarbagh before the identification proceedings in jail."

The learned Judge ought to have further pointed out that in such circumstances the identification evidence is certainly not of any value. If the learned Judge had done so, the identification evidence of Imami against Saghir Ahmad would have been discarded. Other identification evidence against Saghir Ahmad appellant was that of Maddhey P. W. 6. As regards him the learned Judge says : "Maddhey correctly identified Bahadur Mirza and Saghir Ahmad alias Iftikhar." He has also pointed out that like Imami, Maddhey also stated that he had been taken to the police station that very night and detained there till the next day, but he had not seen Saghir Ahmad at the police station. The learned Judge had therefore drawn (sic) the attention of the jury to such circumstances as could reduce the value of the identification. The learned Judge also ought to have cautioned the jury that, if the only evidence is that of identification, then, as a rule of prudence, the evidence of one witness of identification is not enough to justify conviction. In this case so far as Saghir Ahmad is concerned, out of three identification witnesses, two at least were such that their evidence of identification carried no weight. The evidence of Maddhey even if believed, was not sufficient to warrant a conviction. It is clear that the failure of the learned Judge to draw pointedly the attention of the jury to the short comings in the identification evidence has led to an erroneous verdict by the jury and clearly there has been failure of justice.

8. So far as appellant 3 Qamar Ali is concerned, the evidence against him consisted of identification by two witnesses, Ram Krishna Das P. W. 3 and Imami P. W. 5, and the additional fact that Qamar Ali was found absconding. It has already been pointed out in discussing the case of Azardar Husain that the learned Judge failed to point out the short-comings in the identification of Ram Krishna and it has also been shown that on account of those short-comings the evidence of Ram Krishna is valueless. In the case of Imami P. W. 5 it has been pointed out that his identification of Saghir Ahmad in the Qaisarbagh police station before the identification proceedings. It has been pointed out that in the first identification parade Imami identified nobody correctly and made one mistake, that in the third parade, when Qamar Ali was put up for identification, the witness identified him

correctly and made no mistake. The sum total of the identification, after discarding the proceeding relating to Saghir Ahmad was that the witness identified one person correctly and one person incorrectly. This considerably reduces the value of the identification evidence of Imami. It will thus appear that the identification evidence of both, Ram Krishna and Imami, is really valueless. Had the circumstances been pointedly brought to the notice of the jury, there was little doubt that they would have given the benefit of the doubt to Qamar Ali. The verdict is clearly erroneous and there has been a failure of justice.

9. I am satisfied that due to the failure of the learned Judge to draw the pointed attention of the jury to the short-comings in the identification evidence of the various witnesses an erroneous verdict has been given. The evidence does not establish any clear case against any of the three appellants. There is a clear failure of justice. On the evidence produced there can be no conviction of the three appellants. Accordingly I allow the appeal, set aside the conviction and sentences of the appellants and direct that they be released forthwith unless required in any other case.