

CASE NO.:  
Appeal (crl.) 636 of 2007

PETITIONER:  
Ravi @ Ravichandran

RESPONDENT:  
State Rep. by Inspector of Police

DATE OF JUDGMENT: 27/04/2007

BENCH:  
S.B. Sinha & Markandey Katju

JUDGMENT:  
J U D G M E N T

S.B. SINHA, J :

CRIMINAL APPEAL NO. 636 OF 2007  
[Arising out of S.L.P. (Crl.) No. 6341 of 2006]

Leave granted.

1. Accused No. 2 before the learned Trial Judge is the appellant before us. He along with one Udayakumar and three others were tried for commission of offences punishable under Section 120-B read with Sections 302, 307, 147, 148 and 149 of the Indian Penal Code.

2. The prosecution case shortly stated was as under :

Liaqut Ali (PW-1), a school teacher, was a resident of 6th street in TSR Layout in the town of Tirupur. On 09.0-8.1993, at about 05.30 a.m., he was going to a mosque for offering the morning prayers. He was returning back to his house accompanied by one Rasheed (PW-2) from the mosque. John Basha (deceased) and Usman Ali (PW-3, the injured), were walking ahead of them. Saleem (PW-4) and one Mubarak were behind them.

3. When the deceased, PW-2 and PW-3 turned towards a lane which was on the eastern side of the house of PW-2, the appellant and Udayakumar were seen coming from the opposite direction. Appellant allegedly shouted that they were the persons who had thrown the bomb at the RSS office and started stabbing the deceased indiscriminately. PW-3 (Usman Ali) was allegedly stabbed by Udayakumar. When they cried for help, the appellant allegedly picked up a stone and dropped it on the head of the deceased. Appellant and the said Udayakumar thereafter allegedly ran away from the place of occurrence.

4. A First Information Report was lodged against unknown. No mark of identification of the accused was also disclosed therein. While, however, the Investigating Officer was preparing an inquest report, the first informant allegedly disclosed to him that he had noticed a scar on the right hand of one of the assailants. On or about 14.08.1993, i.e. after five days, the appellant was arrested. The said Udayakumar was also arrested. Their photographs were published in a local daily with the caption that they were the persons who were the accused of causing murder of John Basha and injury to PW-3.

5. The said publication was made in a Tamil daily 'Dinakaran' on 16.08.1993. Prior thereto or immediately thereafter, the appellant and the said Udayakumar was not put on test identification parade. They were put on test identification parade only on 24.08.1993. In the said purported test

identification parade, whereas PW-1 and PW-3 purported to have identified the appellant, PW-2 and PW-4 could not identify even Accused No. 1.

6. Out of the five accused persons, who not only were charged for commission of the said offences, but also for hatching a conspiracy against the minority community, were put to trial. The learned Trial Judge by a judgment and order dated 17.09.1996 held the appellant guilty of commission of the offence of murder of John Basha punishable under Section 302 IPC and convicted Udayakumar for committing an offence punishable under Section 307 IPC; acquitted the other three accused persons. They were, however, acquitted of other charges.

7. The High Court dismissed the appeal preferred by the appellant herein and the said Udayakumar.

8. We have been taken through the First Information Report as also the depositions of the so-called eye-witnesses. The nature and purport of the evidence of all the eye-witnesses are almost similar.

9. We may at the outset notice the evidence of the first informant (PW-1). According to him, the appellant and the said Udayakumar had been running towards John Basha (deceased) and Usman Ali (PW-3) from about a distance of 15 feet from them. According to him, nobody shouted when the first injury was inflicted. Apart from those two, he stated, nobody else was touched. He stated that he been knowing the accused persons from before as also their names, but then stated that he did not know the same at that time. According to him, he had mentioned in the First Information Report about the scar which he had noticed on the right hand of the appellant, but the First Information Report does not show it. He accepted that the photographs of the appellant and the said Udayakumar had appeared in the newspaper that they had committed the murder of John Basha.

10. PW-2 even could not remember as to whether he had identified the appellant on the basis of scar mark. PW-3 allegedly had disclosed the mark of identification. His statement must have been taken after the inquest report was made. PW-4 even could not say whether he had seen the appellant and the said Udayakumar prior to the date of occurrence. But still then according to him their faces were known. He could not even recollect as to whether he had stated about the said identification mark to anybody else.

11. Photograph of the deceased which had been published in Tamil daily 'Dinakaran' was proved by one King Kong, who examined himself as DW-1. He pursuant to the summons issued to him had brought with him a copy of the newspaper dated 16.08.1993. He in his deposition stated that in the fourth page of the newspaper, two photographs were published showing the persons connected with Tirupur murder case. Their names were also disclosed therein as Udayakumar and Ravi. He was not even cross-examined.

12. The High Court by a curious process of reasoning opined that as the DW-1 did not whisper a word that the photographs published in the newspaper were those of the photographs of the appellant and the said Udayakumar and as he had not been asked to identify them in court, his evidence was not admissible in law.

13. Objections were taken by the accused that their photographs had been taken in the police station. It has further been accepted that whereas the Accused No. 1 was short in stature, the appellant was tall. The age of the persons who had been selected for test identification parade had not been noted by the Magistrate, who conducted the test identification parade. No person having similar scar mark on his hand was put on the test identification parade.

14. PW-2, who had come to identify after the first witness was sent

to the same place. Where PW-1 was sent immediately after the test identification parade, chance of their disclosure about the appellant to PW-3 and others cannot be ruled out. He had identified one Raju, who was not connected with the case. Similarly, Usman Ali (PW-3) had identified one Arun who was not involved in the case. He in the second and third identification had identified one Raju, apart from the said Arun, who was again not connected with the case.

15. Mr. R. Sundaravaradan, learned Senior Counsel appearing on behalf of the State, however, would submit that identification of the prisoners in court only is the substantive evidence and the High Court was correct in its approach in rendering its opinion on the said basis. It was furthermore submitted that DW-1 was merely a hearsay witness.

16. Certain facts are not in dispute. The test identification parade was held after ten days. It is also not in dispute that the photographs of the accused were taken at the police station. The Investigation Officer allowed them to be published. Photographs of the appellant and the said Udayakumar were not only published, according to the prosecution witnesses, they were shown to be the accused in the aforementioned crime. Some of the them admittedly were aware of the said publication. The purported test identification parade which was held ten days thereafter, in our opinion, loses all significance, in the aforementioned fact situation.

17. It is no doubt true that the substantive evidence of identification of an accused is the one made in the court. A judgment of conviction can be arrived at even if no test identification parade has been held. But when a First Information Report has been lodged against unknown persons, a test identification parade in terms of Section 9 of the Evidence Act, is held for the purpose of testing the veracity of the witness in regard to his capability of identifying persons who were unknown to him. The witnesses were not very sure as to whether they had seen the appellant before. Had the accused been known, their identity would have been disclosed in the First Information Report. PW-1 for the first time before the court stated that he had known the accused from long before, but did not know their names earlier, although he came to know of their names at a later point of time.

18. In a case of this nature, it was incumbent upon the prosecution to arrange a test identification parade. Such test identification parade was required to be held as early as possible so as to exclude the possibility of the accused being identified either at the police station or at some other place by the concerned witnesses or with reference to the photographs published in the newspaper. A conviction should not be based on a vague identification.

19. In *Suryamoorthi and Another v. Govindaswamy and Others* [(1989) 3 SCC 24], this Court held :

"10. Two identification parades were held in the course of investigation. At the first identification parade PW 1 identified all the seven accused persons whereas PW 2 identified three of them, namely, accused 2, 6 and 7 alone. It is, however, in evidence that before the identification parades were held the photographs of the accused persons had appeared in the local daily newspapers. Besides, the accused persons were in the lock-up for a few days before the identification parades were held and therefore the possibility of their having been shown to the witnesses cannot be ruled out altogether. We do not, therefore, attach much importance to the identification made at the identification parades\005"

20. Holding of a test identification parade after a long time particularly when their photographs were published has also been commented upon by this Court in *Acharaparambath Pradeepan & Anr. v. State of Kerala* [2006 (13) SCALE 600], stating :

"Descriptions of a few persons were given in the

statements of the child witnesses. Except A1, however, they were not arrested. The reason for their being not arrested had not been disclosed. They were arrested, as noticed hereinbefore, on 6.03.2000 only after their names were disclosed by PWs 7 and 8. Test Identification Parade of the accused persons, other than A1, was held on 4.04.2000. Why the Investigating Officer took such a long time for arranging a test identification parade has not been disclosed. Furthermore, A3 was not identified. A6 was present when the first Test Identification Parade was taken but he had not been identified by any of the witnesses.

We are not impressed with the purported explanation in regard to the holding of test identification parade. Identification of the said accused by the child witnesses, having regard to the facts and circumstances of the case lead us to a definite conclusion that they were the only persons who participated in the commission of the offence.

They are entitled to benefit of doubt. There had been great delay in conducting the Test Identification Parade. Undue delay has also occurred in recording the statements of PWs 7 and 8."

21. Reliance placed by Mr. Sundaravaradan on Samant N. Balakrishna etc. v. George Fernandez and Others etc. [AIR 1969 SC 1201] in regard to evidentiary value of a news item published in a newspaper is misplaced. Therein a news item was published in an election dispute in regard to a matter in respect of which there was no primary evidence, and, thus, it was held to be secondary evidence, stating :

"\005A news item without any further proof of what had actually happened through witnesses is of no value. It is at best a second-hand secondary evidence. It is well-known that reporters collect information and pass it on to the editor who edits the news item and then publishes it. In this process the truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible\005."

[See also S.A. Khan v. Ch. Bhajan Lal and Another \026 (1993) (3) SCC 151]

22. We are not concerned with the speech made by a person, the authenticity or correctness whereof published in the newspaper is in dispute. We have seen the newspaper cutting. Photographs of the two accused have been shown; their names as accused had also been disclosed.

23. Publication of the news item with photographs has clearly been proved by DW-1. Prosecution witnesses, as noticed hereinbefore, accepted the said fact. It was, therefore, wholly unnecessary for DW-1 to identify the accused persons in dock. Not only the authenticity of such publication has not been questioned by the prosecution, DW-1, was not cross-examined at all. It was for the prosecution as also the Presiding Officer of the court to verify the identification of the accused with reference to the said photographs. It was not necessary for the appellant to prove the same.

24. We have noticed hereinbefore that the appellant herein was not named in the First Information Report. The fact that he had some identification marks had not been disclosed in the F.I.R. The purpose of preparing the inquest report is only to notice as to whether the murder committed was homicidal in nature or not and not for making a note in regard to identification marks of the accused.

25. The manner in which the occurrence took place as well as the conduct of the prosecution witnesses as discussed hereinbefore do not lead

to an inference that the appellant has properly been identified. He is, in our opinion, at least entitled to benefit of doubt.

26. For the reasons aforementioned, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. The appellant shall be released forthwith, if not required in any other case.

JUDIS