

PETITIONER:
SHRI RAM & ANOTHER

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH

DATE OF JUDGMENT 06/11/1974

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
BHAGWATI, P.N.

CITATION:
1975 AIR 175 1975 SCC (3) 495
CITATOR INFO :
D 1989 SC1661 (20)

ACT:
Indian Penal Code, Section 107, third paragraph-Abetment, meaning of-Proof that crime charged could not have been committed without the interposition of alleged abettor, if sufficient compliance with the section.
Criminal Trial-Conduct of shouting by accused during the occurrence-Court not justified in heaping one assumption on another to particular conduct of accused a meaning it does not naturally bear.
Code of Criminal Procedure, Section 342-Failure of accused to explain her shout in her statement-Adverse inference, if could be drawn-Accused, if could subjected to cross-examination.
Criminal Trial-Identification parade, a weak type of evidence-Oral testimony of prosecution witness, if should be corroborated by evidence of identification-Accused asking for an identification parade, a circumstance, in his favour.

HEADNOTE:
Three brothers by the name of Sia Ram, Shri Ram and Ram Chandra, a woman by the name of Violet, and her son Ramesh were tried by the learned Sessions Judge Farrukhabad, in connection with the murder of one Kunwar Singh. The learned Judge convicted Sia Ram under section 302, Penal Code and sentenced him to death. Violet was convicted under section 302 read with section 109 and was sentenced to imprisonment for life. The remaining three accused were acquitted by the Sessions Court. Sia Ram and Violet challenged their conviction by filing an appeal in the High Court while the State of U.P. filed an appeal against the acquittal of Shri Ram, Ram Chandra and Ramesh. The High Court confirmed the conviction and sentence of Sia Ram and Violet. It dismissed the appeal filed by the State Government except in regard to Shri Ram whom it convicted under section 302 read with section 109. He was sentenced to imprisonment for life. Shri Ram, Sia Ram and Violet have filed these appeals by special leave.
Allowing the appeals by Shri Ram and Violet and rejecting that of Sia Ram.
HELD : (i) The only part attributed to Violet is that on seeing the deceased Kunwar Singh, a practising lawyer, who

was coming by cycle along with his two brother-lawyers, Brijendra Singh Yadav and Om Prakash Dubey, she shouted "The Vakil has come." The Sessions Court and the High Court have accepted the evidence that she did give the particular shout. In accordance with the practice of this Court, no different view ought to be taken of these simple facts. [625A-C]

(ii) In order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of section 107. intentional aid and therefore active complicity is the gist of the offence of abetment under the third paragraph of sec. 107. [625E-F]

(iii) Apart from the words attributed to Violet, there is nothing at all to show that she was aware of the nefarious design of Sia Ram and his associates. Violet who was working as a nurse with a doctor was friendly with Sia Ram who was his compounder but that may explain why, if at all, she agreed to do as directed. it is true that the assailants were carrying guns and hockey sticks. But on that account no fair inference can be drawn that she knew that they had all gathered to commit the murder of Kunwar Singh. The Court cannot heap one assumption on another to give to Violet's conduct a meaning which it does not naturally

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bear. The Words of Violet are at best in the nature of a circumstance and they do not, without more, necessarily justify the inference that she was a party to the murderous design. [625G-H]

(iv) The High Court found fault with Violet for not having offered any explanation during the trial as to why she uttered the particular words. This approach is impermissible. The burden was on the prosecution to establish its case and no adverse inference could be raised against Violet for her failure to explain her utterance. Besides, an accused cannot while being examined under section 342 of the Code of Criminal Procedure be subjected to cross-examination and a bald assertion to explain a piece of conduct almost always fails to convince.. Therefore, it is not possible to agree with the High Court that Violet would not have announced the arrival of Kunwar Singh "unless she was aware that the accused persons were lying in wait on the other side of the road and it was necessary to inform them so that they might accomplish their aim." [626D-F] ,

(v) Shri Ram, along with Ram Chandra, had moved an application 'before the Additional District Magistrate (Judicial) who was conducting the committal proceedings that he was not known to the witnesses and therefore he should be put up for being identified in 'an identification parade. The Public Prosecutor objected to that request.. The learned Magistrate upheld the objection and refused to direct that a parade be held. The circumstance that Shri Ram had voluntarily accepted the risk of being identified in a parade but was denied that opportunity was an important point in his favour. The High Court rejected it as inconsequential by observing that the oral testimony of witnesses, even if not tested by holding an identification parade, can be made the basis of conviction if the request made by the accused is groundless and the witnesses knew the accused prior to the occurrence. It is correct to say that no rule of law requires that the oral testimony of a witness should be corroborated by evidence of identification. In

fact, evidence of identification is itself a weak type of evidence. But the point of the matter is that the court which acquitted Shri Ram was justifiably influenced by the consideration that though at the earliest stage he had asked that an identification parade be held, the demand was opposed by the prosecution and the parade was therefore not held. But that is not the only point in favour of Shri Ram. Brijendra Singh who was riding on bicycle in the company of the deceased did not implicate Shri Ram. It was the other lawyer, Om Prakash Dubey, who implicated him. His evidence shows that it would be unsafe to rely on his capacity or ability to identify Shri Ram. Sone Lal who gave the First Information Report at the police also implicated Shri Ram. Sone Lal's evidence is insufficient to sustain the conviction of Shri Ram. In view of the serious infirmities from which the evidence of Dubey suffers, the High Court ought not to have interfered with the order of acquittal passed by the trial court in favour of Shri Ram. [626-627C; 628A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 142 & 205 of 1973.

Appeals from the Judgment and Order dated the 12th April 1973 of the Allahabad High Court in Govt. Appeal No. 2847/72 and by Special Leave from the Judgment and order dated the 12th April, 1973 in CrI. A. No. 1954 of 1972 and Ref. No. 87 respectively.

D. B. Mukherjee, K. C. Agarwal, M. M. L. Srivastava and E. C., Agarwala, for the appellant.

D. P. Uniyal and O. P. Rana, for the respondent.

The Judgment of the Court was delivered by

CHANDRACHUD, J.-These two appeals by special leave arise out of the judgment of the High Court of Allahabad dated April 12, 1975. Three brothers by the name of Sia Ram, Shri Ram and Ram Chandra; a woman by the name of Violet; and her son Ramesh were tried by.

9-L319Sup. CI/75

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the learned Sessions Judge Farrukhabad, in connection with the murder of one Kunwar Singh. The learned Judge convicted Sia Ram under section 302, Penal Code and sentenced him to death. Violet was convicted, under section 302 read with section 109 and was sentenced to imprisonment for life. The remaining three accused were acquitted by the Sessions Court. Sia Ram and Violet challenged their conviction by filing an appeal in the High Court while the State of U.P. filed an appeal against the acquittal of Shri Ram, Ram Chandra and Ramesh. The High Court confirmed the conviction and sentence of Sia Ram and Violet. It dismissed the appeal filed by the State Government except in regard to Shri Ram whom it convicted under section 302 read with section 109. He was sentenced to imprisonment for life.

The incident in question took place at about 5 p.m. on October 20, 1970. The deceased Kunwar Singh was a practising lawyer and after finishing his work for the day he left the Fatehgarh court along with the brother-lawyers, Brijendra Singh Yadav and Om Prakash Dubey. They were proceeding on their bicycles and as they reached a spot near Barhpur Block, Violet is alleged to have shouted : "The Vakil has come". Sia Ram and his companions who were hiding behind a Shisham tree came out and confronted Kunwar Singh and his companions. Sia Ram, Ram Chandra and Shri Ram are

alleged to have been armed with guns while Ramesh and an unknown person were carrying hockey sticks. Sia Ram fired a shot from a point blank range as a result of which Kunwar Singh fell down. All the accused thereafter ran away. Brijendra Singh removed Kunwar Singh to a nursing home but the latter succumbed to his injury at 5-25 p.m. The other lawyer, Om Prakash Dubey, contacted the District Magistrate and the Superintendent of Police vainly attempting to have the dying declaration of Kunwar Singh recorded.

A person called Soney Lal, also alleged to be an eye-witness, lodged the First Information Report at the police station at about 5-45 p.m. The Superintendent of Police K. N. Daruwala reached the spot of occurrence shortly before 6 p.m. R. N. Singh, the Sub-Inspector, held an inquest on the dead body of Kunwar Singh and sent it for postmortem examination. Dr. Rizvi who performed the postmortem examination found a firearm wound on the left upper chest of the deceased. There were tattooing, and scorching marks around the injury.

The evidence of Brijendra Singh Yadav (P.W. 4) is clear on the part played by the appellant Sia Ram. That evidence shows that Sia Ram fired a shot from his gun as a result of which Kunwar Singh fell down and died within half an hour, Brijendra Singh's evidence has been accepted by both the courts and we are unable to see any valid reason for rejecting it. Brijendra Singh is a natural witness for he, like the deceased Kunwar Singh, had left the court after the court hours. Apart from the fact that he was a colleague of the deceased he was not in any manner concerned with the deep-seated enmity between the appellant Sia Ram and the deceased. The order of conviction and sentence in regard to Sia Ram must therefore be confirmed.

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Different considerations, however, arise in regard to Violet. The only part attributed to her is that on seeing Kunwar Singh she shouted: "The Vakil has come". It is difficult to believe that Violet was assigned the particular role, especially when Sia Ram and his companions could themselves have detected the presence of Kunwar Singh more easily and with lesser ado. Violet's brother Ramesh, a lad of 16, could have with greater ease and effectiveness played the swift role of alerting the assailants of Kunwar Singh. But the Sessions Court and the High Court have accepted the evidence that Violet did give the particular shout and in accordance with our usual practice we would not like to take a different view of these simple facts.

The question which then arises for consideration, a question to which the Sessions Court and the High Court have not paid enough attention, is whether the only inference which arises from the fact that violet gave the particular shout is that by so doing, she intended to facilitate the murder of Kunwar Singh,, Section 107 of the Penal Code which defines abetment provides to the extent material that a person abets the doing of a thing who "Intentionally aides, by any act or illegal omission, the doing of that thing." Explanation 2 to the section says that "Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid and the doing of that act." Thus, in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of section 107. A person

may, for example, invite another casually or for a friendly purpose and that may facilitate the murder- of the invite. But unless the invitation was extended with intent to facilitate the commission of the murder, the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime. Intentional aiding and therefore active complicity is the gist of the offence of abetment under the, third paragraph of section 107.

Apart from the words attributed to Violet, there is nothing at all to show that she was aware of the nefarious design of Sia Ram and his associates. Violet who was working as a Nurse with a doctor was friendly with Sia Ram who was his compounder but that may rather explain why, if at all, she agreed to do as directed. Learned counsel for the State contended that Sia Ram and his companions were carrying guns and hockey sticks and therefore she would know that they had all gathered to commit the murder of Kunwar Singh. That is a far not a fair inference to draw. We cannot heap one assumption on another to give, to Violet's conduct a meaning which it does not naturally bear. The words of Violet are at best in the nature, of a circumstance and they do not, without more, necessarily justify the inference that she was a party to the murderous design.

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The High Court concluded on the complicity of Violet by a process of reasoning which does not commend to us. It says

"In case Smt. Violet had not given intimation of-the arrival of the advocate, the persons concealing themselves behind the SHISHAM tree may not have noticed the arrival of kunwar Singh in time to assault him. In case the, accused were not assisted by Smt. Violet, they would have to sit in such a manner that they could watch persons moving about on the road. They could not have concealed their identity completely. They could realise that if they were not assisted by Smt. Violet and they had to act on their own, the deceased may notice their presence and may not proceed further. In case the accused persons concealed themselves thoroughly, they may not notice the arrival of the deceased in time to successfully aim at him. Assistance asked for and rendered by Smt. Violet was real and valuable."

This chain of reasoning contains a multiplicity of inferences hardly justified by the solitary circumstance that Violet informed Sia Ram and his colleagues of the presence of Kunwar Singh. The High Court found fault with Violet for not having offered any explanation during the trial as to why she uttered the particular words. This approach is impermeable. The burden was on the prosecution to establish its case and no adverse inference could be raised against Violet for her failure to explain her utterance. Besides, an accused cannot while being examined under section 342 of the Code of Criminal Procedure be subjected to cross examination and a bald assertion to explain a piece of conduct almost always fails to convince. We are, accordingly, unable to agree with the- High Court that Violet would not have announced the arrival of Kunwar Singh " unless she was aware that the accused persons were lying in wait on the other side of the road and it was necessary to inform them so that they might accomplish their aim".

In regard to Shri Ram, yet different considerations prevail because the High Court was dealing with an appeal against an order of acquittal in his favour. There are certain important considerations which lend weight to the view of the trial court-that it was unsafe to convict Shri Ram.

Shri Ram, along with Ram Chandra, had moved an application before the Additional District Magistrate (Judicial) who was conducting the committal proceedings that he was not known to the witnesses and therefore he should be put up for being identified in an identification parade. The Public Prosecutor objected to that request. The learned Magistrate upheld the objection and refused to direct that a parade be held. The circumstance that Shri Ram had voluntarily accepted the risk of being identified, in a parade-but was denied that opportunity was an important point in his favour. The High

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Court rejected it was inconsequential by observing that the oral testimony of witnesses even if not tested by holding an identification parade, can be made the basis of conviction if the request made by the accused is groundless and the witnesses knew the accused prior to the occurrence. It is correct to say that no rule of law requires that the oral testimony of a witness should be corroborated by evidence of identification. In fact, evidence of identification is itself a weak type of evidence. But the point of the matter is that the court which acquitted Shri Ram was justifiably influenced by the consideration that though at the earliest stage he had asked that an identification parade be held, the demand was, opposed by the prosecution and the parade was there

fore not held,

That is not the only point in favour of Shri Ram. Brijendra Singh Yadav who was riding on the Bicycle in the company of the deceased, Kunwar Singh did not implicate Shri Ram. It is the other lawyer, Om Prakash Dubey, who stated in his evidence that Shri Ram was armed with a gun and he emerged from behind the Shisham trees after Violet gave the call. Dubey is a practising lawyer and we will spare hard words. But his evidence leaves much to be desired and, at the least, it shows that it would be unsafe to rely on his capacity or ability to identify Shri Ram. In paragraph 4 of his evidence, repeated attempts were made by counsel for Shri Ram to test the claim of Om Prakash Dubey that he knew Shri Ram and was therefore able to identify him. Question after question put in cross-examination was answered by the witness by saying either that he did not remember or that he did not know. Dubey claimed that he had appeared for the complainant in a prosecution arising out of the murder of one Hari Singh in which Shri Ram figured as an accused. There were two other accused in that case called 'Manphool' and 'Balister'. Dubey admitted that he, could not say if he would be able to recognise Balister and that it was possible that he may not be able to recognise Manphool. It is doubtful whether Dubey appeared in the case at all, which explains why he made the guarded statement that he had appeared on behalf of the complainant in so far as he could remember. He was unable to say who had engaged him or who appeared the case along with him or who was examined as a witness in the case or who used to instruct him in the case. Enveloped in this atmosphere of doubt, Dubey thought the better of it to say : "I think I had filed my Vakalatnama in that case". The young Dubey had a standing of but 2 years in the District when he is supposed to have appeared for the complainant in the particular case. It is unrealistic to

assume that he was so flooded with work that he could remember no details of an important murder trial.

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Soney Lal who gave the First Information Report at the police station, also implicated. Shri Ram but, apparently, the High Court was not impressed by his evidence. has relied on the evidence of Om Prakash- Dubey in order to hold that Shri Ram had played an important role in the murder of Kunwar Singh. Considering the serious infirmities from which the evidence of Dubey suffers we are of the opinion that the High Court ought not to have interfered with the order of acquittal passed, by the trial. court, in favour of Shri Ram. Soney Lal's evidence seems to us insufficient to sustain the conviction of Shri Ram.

In the result we dismiss the appeal of Sia Ram and confirm his conviction and sentence. We allow the appeals of Violet and Shri Ram and acquit them. These two shall be set at liberty forthwith.

V.M.K.

Appeals partly allowed.

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