

A

D. GOPALAKRISHNAN

v

SADANAND NAIK AND ORS.

OCTOBER 15, 2004

B

[K.G. BALAKRISHNAN AND DR. AR. LAKSHMANAN, JJ.]

Criminal Law:

C

Identification of accused—During investigation police showing photographs of the accused with names written underneath, to witnesses and recording their statements u/s 161 Cr.PC—Held, procedure adopted by police is not justified—Not a fit case to interfere with acquittal recorded by High Court—Procedure for showing photographs to witnesses—Explained—Code of Criminal Procedure, 1973—s.161—Investigation.

D

During strike in a branch of a company in Goa, some of the striking employees were said to have attacked the supervisors, who had been posted there from Chennai branch a few days back to train new employees. One of the victims later died in the hospital. The trial court found the accused-respondents guilty of the offences charged. In appeal before the High Court, it was contended for the accused that during the investigation the Police Officer showed the witnesses an album containing photographs of the striking employees with the names written underneath and recorded their statements under s.161 Cr.P.C. and, as such, the investigation and the trial were vitiated. The High Court allowed the appeal and acquitted the accused. Aggrieved, the State filed the appeal.

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Dismissing the appeal, the Court

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HELD: 1. The procedure adopted by the police is not justified under law as it will affect fair and proper investigation and may sometimes lead to a situation where wrong persons are identified as assailants. There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But, nevertheless, the police is entitled to show photographs to confirm whether the investigation is going on in the right direction. During the course of the investigation, if the witnesses had given the identifying features of the assailants, the same could be confirmed by the

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investigating officer by showing the photographs of the suspect and the investigating officer shall not first show a single photograph but should show more than one photograph of the same person, if available. If the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance. [524-B-C; 523-H; 524-A] A

2. In the instant case, the witnesses had not described the physical features of the accused or any identifying characteristics as to how they identified the assailants. To such a witness, showing of photograph would only lead the investigating officer to make the wrong conclusion regarding identification. [523-E] B

3. The High Court held that the witnesses had no occasion to properly identify the assailants as they had no previous acquaintance with them. The witnesses had been travelling in a vehicle while going to the factory, and if they saw a group of workers while travelling, it may not be easier to identify them. It cannot be said that the High Court has made a perverse appreciation of evidence. The view taken by the High Court is plausible. This is not a fit case to interfere with the order of acquittal passed by the High Court. D

[524-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1197-1203 of 1998.

From the Judgment and Order dated 12.11.97 of the Bombay High Court at Panaji in CrI. A. Nos. 20-25 and 38 of 1996. E

K.V. Vishwanathan, K.V. Venkataraman and B. Raghunath for the Appellant.

U.U. Lalit, Arun Pednekar, Nitin Sangra, V.D. Khanna and Ms. A. Subhashini with him for the Respondents. F

The Judgment of the Court was delivered by

K.G. BALAKRISHNAN, J. These appeals are filed against the acquittal of 7 persons by the High Court of Bombay reversing the conviction passed by the Sessions Court, Panaji. Altogether, 14 accused were tried by the Sessions Judge and out of them six were found guilty of the offences punishable under Sections 143, 147, 148, 452, 325 and 304 Part II read with Section 49 IPC. A-7 Arthur Viegas was found guilty for offences under Sections 143, 147, 148, 452 and 325 read with Section 149 IPC. H

A In February 1987, the employees of Madras Rubber Factory (hereinafter being referred to as "MRF") at Ponda in Goa went on strike and the accused persons were members of that striking group of employees. The management of the MRF recruited some new persons as employees and in order to give them training, some senior supervisors working in the factory of MRF at Chennai were brought to Goa and these persons were given accommodation by the company at its guest house 'Vailankani' situated at Miramar. They were staying in flats which formed part of the guest house. According to prosecution, on 13.3.1987, at about 9.15 p.m., the accused persons came there with lathies, rods and chains and attacked the supervisors who had come from Chennai. Some of the accused attacked one Venugopal with iron rods and lathies. They also assaulted D. Gopalakrishnan and Danial. When these persons called out for help, the accused persons left the place immediately.

PW 10 E.M. Mathai, General Manager of MRF at Ponda, was informed of the incident and he came to the 'Vailankani' guest house. The injured were shifted to G.M.C. Hospital. Injured Venugopal was in serious condition and he was shifted to Vaidya Hospital at Panaji where he died on 25.3.1987. The police filed the charge-sheet against the accused persons. The Sessions Judge found the accused guilty as afore-stated and he was of the opinion that the accused were properly identified by the injured persons who were examined as prosecution witnesses. The High Court reversed this finding on the ground that the witnesses including the injured witnesses had no previous acquaintance with the accused persons and their identification was extremely doubtful. This finding is challenged before us.

The Sessions Court held that the injured persons who were examined as eye-witnesses had an occasion to see the accused persons who were also the members of the striking employees and were often seen sitting near the security gate of the factory shouting slogans. The witnesses who had been going to the factory had an opportunity to see them and in that way all the accused had been identified properly by the witnesses. PW 6 Gopal Krishnan, PW 7 Danial Thomas and PW 8 C. Ravindranath are the witnesses who were examined to prove the incident. These witnesses deposed that they had been working at the MRF factory situated at Ponda for about 25 days. PW 5 William Johnson is one of the eye-witnesses who deposed that the Police Officer showed him several photographs in an album with the names of the persons written underneath and he immediately identified accused A-3 Gokuldas Babi Gaonkar and A-12 Cypriano D' Costa.

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The learned counsel for the respondents-accused submitted that the eye-witnesses were questioned by the Police Officer with an album and the photographs were shown to them and at that time, Section 161 statements were recorded. The respondent's learned Counsel relied on the statement of PW 10 E.M. Mathai, General Manager who deposed that the Police Officer wanted the photographs of the employees and he had been given instruction to give it on the same day and PW 13 Investigating Officer, who registered the complaint made by PW 10 E.M. Mathai, General Manager deposed that PW 10 General Manager had supplied the photographs of the striking workers of the MRF on 14.3.1987 itself and that he had shown the photographs to the witnesses while recording their statements. Admittedly, no identification parade was conducted in this case.

The learned Counsel for the appellant vehemently contended that showing of photographs to the witnesses for the purpose of identification is permissible under law. He even drew our attention to the Police and Criminal Evidence Act, 1984 which is in force in England and submitted that the provisions of the said statute permit the showing of photographs to the witnesses for the purpose of identification and there is nothing in law which prohibits such action being taken by the Investigating Officer. In the instant case, the witnesses had not described the physical features of the accused or any identifying characteristics as to how they identified the assailants. To such a witness, showing of photograph would only lead the investigating officer to make the wrong conclusion regarding the identification. Even under the provisions of the Police and Criminal Evidence Act, 1984 which is prevalent in England, the photographs could be shown to the witnesses only under certain specified conditions. Annexe E of the Act are the guidelines and it says that before showing the photographs of the suspect, the supervising officer must first confirm that the description of the suspect given by the witness has been recorded, and if the supervising officer is unable to confirm the description, the officer shall postpone the showing of the photographs. The other condition as stated in Annexe E of the statute says that a witness must not be shown photographs or computerized or artist's composite or similar likeness or pictures if the identity of the suspect is known to the police and suspect is available to take part in a video identification, an identification parade or group identification.

There are no statutory guidelines in the matter of showing photographs to the witnesses during the stage of investigation. But nevertheless, the police is entitled to show photographs to confirm whether the investigation

- A** is going on in the right direction. But in the instant case, it appears that the investigating officer procured the album containing the photographs with the names written underneath and showed this album to the eye-witnesses and recorded their statements under Section 161 Cr. P.C. The procedure adopted by the police is not justified under law as it will affect fair and proper investigation and may sometimes lead to a situation where wrong persons are identified as assailants. During the course of the investigation, if the witness had given the identifying features of the assailants, the same could be confirmed by the investigating officer by showing the photographs of the suspect and the investigating officer shall not first show a single photograph but should show more than one photograph of the same person, if available.
- C** If the suspect is available for identification or for video identification, the photograph shall never be shown to the witness in advance.

D In the instant case, the High Court held that the witnesses had no occasion to properly identify the assailants as they had no previous acquaintance with them. The witnesses had been travelling in a vehicle while going to the factory, and if a group of workers were seen by them while travelling, it may not be easier for them to identify them. It cannot be said that the High Court has made a perverse appreciation of evidence, and the view taken is plausible and this is not a fit case where this Court can interfere with the acquittal passed by the High Court.

E The criminal appeals are without any merits and they are dismissed.

R.P.

Appeal dismissed.