

Ganga Singh And Ors. vs The State on 12 September, 1955

Equivalent citations: AIR1956ALL122, 1956CRILJ181, AIR 1956 ALLAHABAD 122

ORDER

Roy, J.

1. This is an application in revision by Ganga Singh, Hodal and Pratap, who have been convicted under Section 379, I. P. C. and each of whom has been sentenced to undergo one year's rigorous Imprisonment. The only question, which arises in revision is whether the two Courts below were justified in acting upon the evidence of identification with particular reference to the circumstances of the case in coming to the conclusion that that evidence, which was the only evidence against the applicants, was sufficient to establish the charge.

2. Briefly stated, the prosecution story was as follows: On the night between the 27th and 28th of January, 1954, three cattle belonging to one Ram Chandra were stolen from his house. The matter was detected some time during the night and a party consisting of several men left the village in search of the cattle and they followed a track which indicated that the cattle had been taken in a certain direction. The party followed the footprints of the cattle.

It was said that at about 5 in the morning when the party reached a place known as Mania Khera at a distance of about 2 & half miles from the house of the complainant after having crossed a certain bridge, they noticed that two men were holding the cattle with ropes and another two were driving the cattle from behind. The miscreants on seeing the chasing party left the cattle and ran away and could not be apprehended.

3. The complainant lodged a report on 28-1-1954, at 2 P. M. the police station having been at a distance of about four miles from his village. In that report suspicion was raised against another Ram Chandra of the same village and, no indication had been given in the report as to who those four men were who, according to the complainant, had been noticed taking away the cattle.

Indeed, the Sub-Inspector stated in his evidence in the trial Court that the witnesses of the chase who had been examined by him did not furnish any clue or description of the persons who had been seen taking away the cattle. How, therefore, the police arrested Hodal and Ganga Singh on 12-2-1954, and Pratap on 20-2-1954, who are all residents of other localities, is shrouded in mystery. It appears, however, that Hodal and Ganga Singh were enlarged on bail after their arrest and so was Pratap.

4. The identification proceedings of the first two had been held on 3-3-1954, and the identification

proceedings of Pratap were held on 13-4-1954 when they were already on bail. Ganga Singh was correctly identified by seven witnesses, and Hodal by seven witnesses, and Pratap by four witnesses, who did not commit any mistake. One of these witnesses was Raghunath Singh. He was in the service of the zamindar and he admitted that he used to visit the village of Ganga Singh where he had been on a number of occasions in order to collect rent from the father of Ganga Singh.

It is therefore not inconceivable that Raghu-nath Singh witness knew or had the occasion to know Ganga Singh applicant from before. If Ganga Singh was a known person the omission of his name from the first information report cannot at all be excused. Moreover, it seems to me that when the accused persons were arrested and the only evidence against them was intended to be the evidence of identification, their release on bail was not at all dictated by prudence and should not have been allowed.

The bail application of Hodal and Ganga Singh and the order passed on such an application could not be traced out from the record. But the application of Pratap and the order passed thereon by the learned Magistrate indicate something very astounding and, at any rate, they reveal that the learned Magistrate did not bring his judicial mind to bear upon the matter when he thought that Pratap could be released.

It appears that the Magistrate was led into that error partly because of the undertaking held out by counsel for Pratap to the effect that if Pratap be admitted to bail, he would not raise any objection subsequently to the effect that the witnesses who were to be put up at the identification proceedings had the occasion to see him before the proceedings were held. The undertaking was recorded in writing by the counsel himself on the reverse of the application after the Assistant Public Prosecutor had noted down his objection to the grant of bail.

The Assistant Public Prosecutor had specifically said that the accused is to be put up for identification at the hands of witnesses in jail and the application for bail was, therefore, premature and should not be considered at that stage. The learned Magistrate, after the undertaking aforesaid given by counsel for Pratap, thought fit to enlarge Pratap on bail. The learned Magistrate should have considered, that where the evidence against an accused person is said to be the evidence of identification alone, the person in question should not have been enlarged on bail before the identification proceedings were held.

It was open to the Magistrate to accelerate the proceedings of identification. It was further open to him to postpone the grant of bail and to have taken up the application for bail after the proceedings of identification had been conducted. But simply because an accused person gives an undertaking that he will not raise the plea that the witnesses had the occasion to see him before the identification proceedings are conducted, it is not open to any Magistrate to grant bail to the accused.

An undertaking of that nature never acts as an estoppel and what the Magistrates in such a case have to consider is whether prudence requires that bail should be granted at that stage. If bail is granted, the risk of the accused person being seen by the witnesses before the identification proceedings are held cannot be eliminated. And if that risk is there, the identification proceedings

are reduced to an absolute farce.

5. Under these circumstances the Courts below should not have acted upon the evidence of identification, which was tainted and especially when there was no proof on the record as to how these witnesses who had identified came to know of the features of the accused persons in the absence of any description "having been given by them either in the first information report or at the inquiry conducted by the police. Under these circumstances the conviction of the applicants was not based upon proper evidence or upon proper appreciation of evidence.

6. In the result the application in revision is allowed and the conviction and sentence of the applicants under Section 379, I. P. C. are set aside. Ganga Singh, who is on bail, need not surrender, and his bail-bond is discharged. The other two applicants must be set at liberty at once if they are still in detention in this case.