

State vs Ghulam Mohiuddin on 4 October, 1950

Equivalent citations: AIR1951ALL475, AIR 1951 ALLAHABAD 475

ORDER

P.L. Bhargava, J.

1. This is a reference by the Sessions Judge, Mirzapur, Under section 438, Criminal P. C. The facts leading to the reference are few and simple: Ghulam Mohiuddin is being prosecuted for an offence punishable under Section 188, Penal Code. When he appeared before the City Magistrate of Mirzapur for trial, he made an application to the Court alleging that the prosecution witnesses had not seen him and would not be able to identify him, and praying that, before recording their evidence, steps may be taken for his identification by the witnesses. The learned Magistrate passed the following order on the application:

"This is being tried summarily. No formal identification parade is essential. In view of Ruling In re Sangiah, 49 Cr L. J. 89 : (A.I.R. (35) 1948 Mad. 113) of the Madras High Court, the application is rejected. No later Ruling has been shown to me."

2. Against this order, Ghulam Mohiuddin filed a revision in the Court of the Sessions Judge. The learned Judge has, in the order of reference, stated:

"On principle, it seems perfectly clear to me that it is an important and valuable right of an accused to say that he should be placed in such a position as to be able to ask the witnesses to point him out correctly. The answer to a question about pointing out the accused would be an important piece of evidence crediting or discrediting the veracity of the witnesses, and it is one of the most important modes of testing if a witness is genuine or not. In my opinion, it would be seriously prejudicing the trial if that right is refused by depriving the accused of the means of putting that test to the witnesses. Any conviction after taking away that right would be, in my opinion, not justified."

The learned Judge realised that "there is no provision in the Criminal P. C., prescribing a procedure for the identification parade to be held at the instance of the accused"; but he has observed: "But there is no provision for identification parade being held at the instance of the prosecution either. This method, has, however, been always recognised and adopted as furnishing a valuable mode of testing evidence, since it has an important corroborative value for the prosecution. If it can be adopted affirmatively to corroborate a thing, it can equally be adopted to negative it."

The learned Judge thought that the "right" can be claimed by an accused and it would be proper for the Court to allow it to be exercised before recording evidence. Accordingly, the learned Judge has

recommended, "that the order of the Magistrate be set aside and the Magistrate be directed to take further proceedings for identification of the accused by the prosecution Witnesses before recording the evidence."

3. At an identification parade, the witnesses, who claim to have seen or recognised an accused person in the act of committing a crime, are called upon to identify the accused when he stands in the midst of a number of other persons. It is presumed that the witnesses did not know him from before and had no occasion to see him between the date of the commission of the crime and the date when they are called upon to identify him. The main object of holding the parade is to test the memory of the witnesses based upon first impressions and also to enable the prosecution to decide whether all or any of them could be cited as eye-witnesses of the crime. The test is usually adopted during the investigation of a crime by the police, when the witnesses are interrogated for the first time and state that they had seen some persons committing the crime but do not know their names and would be able to identify them if they could see them again. In such cases, as a rule, the Investigating Officer submits a report to the proper authority for the holding of an identification parade; and if the Investigating Officer omits to do so, the accused may, if so advised, point out the omission but he has no right to demand that an identification parade must be held. The omission will certainly entitle the accused to challenge the veracity of the witnesses on that ground at the trial.

4. In cases where a Magistrate takes cognizance of an offence upon a police report or upon a private complaint, the accused may inform the Court that he is not known to the prosecution witnesses, and even suggest that the prosecution may arrange for an identification parade for his identification; but he cannot ask the Court to direct the prosecution to arrange for such a parade; obviously because there is no provision of law under which the Court can issue any such direction. There may be cases, where the prosecution may not be prepared to put up an accused for identification at all, e.g., in cases where there is reason to believe that the accused had directly or indirectly succeeded in influencing the witnesses, or where having remained absconding for a long time he had brought about a material change in his appearance, or, where he intended to delay or obstruct the case against him.

5. According to the procedure laid down in Criminal P. C., in a case like the one before us, which is a summons case, unless the accused admits that he has committed the offence, the Court is bound to hear the complainant and take all such evidence that might be produced in support of the prosecution: (Section 244, Criminal P. C.). Even if it had been a warrant case, the Court was bound to proceed to hear the complainant (if any) and take all such evidence as was produced in support of the prosecution: (Section 252, Criminal P. C.). Consequently, when, at the commencement of or during the course of the trial, the accused, informs the Court that the prosecution witnesses had never seen him committing the crime, and he was not even known to them, the Court may in its discretion, satisfy itself by asking the accused to stand among other persons present in Court and then call upon the witnesses, who appear before the Court, to identify the accused and make a note of the result on the record, but the Court cannot make an order for the holding of a regular identification parade, there being no provision in Criminal P. C. authorising the Court to do so.

6. The learned Sessions Judge has mixed up the right of an accused person to challenge the veracity of the prosecution witnesses, in the absence of an identification proceeding, which, in the circumstances of the case, ought to have been held, with the alleged 'right' to obtain an order from the Court directing the prosecution to arrange for an identification parade. There being no provision in Criminal P. C. under which an accused can ask the Court or the Court can direct the prosecution to take steps for the identification of the accused by the prosecution witnesses, before they are examined in Court, it is incorrect to say that the accused has any 'right,' which he can claim or exercise at any stage of the trial. The accused's right to cross-examine and challenge the veracity of the witnesses in the manner provided by law, and further to contend that no reliance should be placed upon the witnesses, who were not called upon to identify him at proper time, remains unaffected. If we keep the two things separate, the position becomes quite clear.

7. The learned Sessions Judge has stated that there is no provision in Criminal P. C. for an identification parade being held at the instance of the prosecution. The learned Judge has, however, observed that the identification is a "mode of testing evidence" and it has "corroborative value." It has been pointed out above that the main object of holding an identification parade, during the investigation stage, is to test the memory of the witnesses based upon first impression and also to enable the prosecution to decide whether all or any of them could be cited as eye-witnesses of the crime. The identification proceedings being in the nature of tests, no provision is to be found in the Code or even in the Evidence Act. The proceedings are record of facts "which establish the identity of any thing or person" and which may be relevant Under section 9, Evidence Act. The facts are to be proved according to law, and in the absence of such proof the identification proceedings are valueless. The facts if proved can be used both for purposes of corroboration as well as for contradiction. But, this does not mean that the accused acquires any "right" to ask the Court to direct the prosecution to hold an identification parade, so that some facts may come on record and he may be able to use them for the purpose of contradicting the prosecution witnesses when they are examined in Court. Such a procedure has no legal sanction behind it.

8. The learned Sessions Judge has further stated that as the accused has been deprived of an opportunity to test the veracity of the prosecution witnesses, which would have been available to him if he had been put up for identification, he would be seriously prejudiced, in his trial. We have to proceed on the assumption that there had been no identification proceedings in the case; and it is not permissible to speculate what would have been the position if certain thing might have happened. The method which the accused wanted to adopt for testing the veracity of the witnesses in this case is not warranted by law; and other methods are still available to him. The refusal of the request to postpone the trial and to direct the prosecution to arrange for the holding of an identification parade cannot, therefore, prejudice the accused in any manner.

9. The learned Sessions Judge has, in the order of reference, referred to a case, cited before him by the counsel for the accused, as "1948 Criminal Law Journal (Lahore), p. 528". There is, however, no case of the Lahore High Court reported at p. 528 of this volume; and the case of the Calcutta High Court, printed at p. 528, has no bearing on the question under consideration. It is always desirable to give full particulars of the cases cited, and, in this particular instance, it appears that the case was cited without looking into the report.

10. There are, however, two other cases of the Lahore High Court, reported in *Amar Singh v. Emperor*, 45 Cr. L. J. 98, also reported in A. I. R. (30) 1943 Lah. 303, and in *Sajjan Singh v. Emperor*, 46 Cr. L. J. 550, also reported in A. I. R. (32) 1945 Lah. 48. In the first case, Blacker J. observed:

"It seems to me that whenever an accused person disputes the ability of the prosecution witnesses to identify him, the Court should direct an identification parade to be held save in the most exceptional circumstances."

This case is no authority for the view taken by the learned Sessions Judge, namely, that an accused person possesses "an important and valuable right" to claim that an identification parade be held before the evidence in the case is recorded. The other case also does not support that view. In that case, the accused was charged for murder, and he had alleged that the witnesses did not know him, and made an application that the veracity of the witnesses be tested by means of an identification parade. The application was opposed on behalf of the prosecution and consequently refused. The accused was convicted, and, on appeal, the validity of the order, refusing the application, was challenged. The learned Judges, who decided that case, observed that the application should have been allowed, as it would have helped the Court in judging the veracity of witnesses examined before it. In neither of these cases, reference was made to any provision of law, under which the Court had the power to give a " ' direction, that before the witnesses were examined in Court, the accused should be put up for identification at an identification parade.' In the present case, it has been conceded that there is no such provision.

11. The learned Magistrate relied upon a decision of the Madras High Court. In *re Sangiah*, 49 Cr. L. J. 89: (A. I. R. (35) 1948 Mad. 113). There an application was made by the accused person for holding an identification parade. The application was made when the enquiry had not commenced and no witness had been examined. It was stated in the application, that neither the first information report nor the inquest report mentioned the names of any of the accused in the case, and that none of the witnesses knew them, either by name or by identity, and that in the interest of justice it was necessary that an identification parade be held in respect of both, the identity and the names of the accused, by the witnesses named therein. The application was rejected on the ground that there was no provision for holding a parade at that stage of the case under similar circumstances. When the matter came up in revision before the High Court, it was pointed out by Rajamannar, J.:

"An identification parade belongs to the stage of investigation by the police. The question whether a witness has or has not identified the accused during the investigation is not one which is in itself relevant at the trial. The actual evidence regarding identification is that which is given by the witnesses in Court. The fact that a particular witness has been able to identify the accused at an identification parade is only a, circumstance corroborative of the identification in Court. If a witness has not identified the accused at a parade or otherwise during the investigation the fact may be relied on by the accused, but I find nothing in the provisions of the Code which confers a right on the accused to demand that the investigation should be

conducted in a particular way."

12. The learned Judge referred to an earlier decision in Public Prosecutor v. Sankarapandia Naidu, 1932 M. W. N. 427, where it was held that:

"Identification parades are held not for the purpose of giving defence advocates material to work on, but in order to satisfy investigating officers of the bona fides of the prosecution witnesses."

If I may say so with respect, I am in entire agreement with the above observations.

13. In my opinion, therefore, the order made by the learned Magistrate, rejecting the application,, filed on behalf of Ghulam Mohiuddin,. in which he requested the Court to first arrange for an identification parade for his identification, and then to record the evidence of the prosecution witnesses, was perfectly correct. The reference is, accordingly, rejected.