

(1947) 08 MAD CK 0020
In the Madras High Court
In Re: Sangiah

Date of Decision : 07-08-1947

Acts Referred:

Citation : AIR 1948 Mad 113 : (1948) ILR (Mad) 667 : (1947) 60 LW 571 : (1947) 2 MLJ 252

Hon'ble Judges : Rajamannar, J

Bench : Division Bench

Judgement

Rajamannar, J.—This is an application by the first accused in R.C. No. 8 of 1947 pending enquiry before the Special Second Class

Magistrate, Madura, to revise the order of the Magistrate rejecting the application made by him and other accused in the case requesting the

Magistrate to hold an identification parade in respect of the identity and names of the accused. The petitioner and others were accused of the

offence of murder.

2. The enquiry had not commenced and no witness had been examined when the application was made by a memorandum filed on behalf of the

accused by their advocate. It was stated in the memorandum 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 should be held in respect of both the identity and names of the fifteen accused mentioned therein by the eight

witnesses also mentioned therein. The Magistrate rejected the application on the ground that there was no provision for holding a parade at that

stage of the case and under similar circumstances.

3. It was contended before me by Mr. N. Rajagopalan that it was an elementary

right of the accused to insist upon proper identification and it was necessary in the interests of justice that an identification parade should be directed when the accused disputed the ability of the prosecution witnesses to identify them either by name or by recognition. He relied on the decisions of the Lahore High Court in *Amar Singh v. Emperor* AIR 1943 Lah. 303 and *Sajjan Singh v. Emperor* AIR 1945 Lah. 48. Reference was also made by him to the judgment of Kuppaswami Ayyar, J., in Crl. R.C. No. 1318 of 1946.

4. I am unable to find any provision in the Code which entitles an accused to demand that an identification parade should be held at or before the enquiry or the trial. 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. As the learned Judges point out in *Public Prosecutor v. Sankarapandia Nadar* (1032) M.W.N. 427 "" 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.

5. In *Amar Singh v. Emperor* AIR 1943 Lah. 303 Blacker, J., held 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.

With great respect to the learned Judge I am unable to find any provision of law which compels the Court to so direct a parade. It is not clear from the judgment whether the Court making the enquiry or holding the trial should itself hold the parade or if the Court should stay its proceedings and direct the parade to be held before another Magistrate. In my opinion it does not take into account the important fact that an identification parade

is a part of the investigation and once the case has reached the stage of an enquiry before the Magistrate the investigation is at an end and all that takes place thereafter should take place in Court and form part of the record of the case.

6. Now it is quite clear that statements made at an identification parade are not substantive evidence at the trial. It must be very embarrassing to the

Magistrate making an enquiry to listen to statements made by the witnesses at an identification parade which will not be evidence at the enquiry.

Further it is not incumbent on the prosecution to examine all the witnesses cited by them and all those who took part in the identification parade. It

will then mean that the Magistrate has heard the statements of witnesses who will not be examined at the enquiry. If on the other hand it is

suggested that a different Magistrate should hold the identification parade it appears to me that there is no provision whatever for such a course

when a particular Magistrate is seized of the case. The observations in *Sajjan Singh v. Emperor* AIR 1945 Lah. 48 are really obiter because that

case dealt with a regular appeal against the conviction by a Court of session. In that case the Magistrate who made the enquiry refused an

application by the accused to arrange for an identification parade on the following grounds, viz., that the witnesses know the accused before and

that the application was made only for the purpose of delay. The learned Judges held that the reasons given by the Magistrate were not sound. It is

true that they went on to observe that should any serious question of identity arise during the course of the trial the ability of the witnesses to

identify the accused may be put to test before the trial. With great respect I do not agree. If a case is posted for trial any test as to the ability or

credibility of the witnesses should be decided only in Court and not by means of an identification parade, the proceedings at which will not form

part of the record of the Court.

7. The order of *Kuppuswami Ayyar, J.*, in *Crl. R.C. No. 1318 of 1946* was made in quite different circumstances. That case dealt with

proceedings in Court. There was an application on behalf of the accused that two accused in the case may be re-shuffled with some others and

that the witnesses who had been examined for the prosecution should then be permitted to be cross-examined by the counsel for the accused. This

application was rejected by the Magistrate. In revision Kuppuswami Ayyar, J., passed an order as follows:

The lower Court was not justified in refusing to shuffle the parties and arrange them in a different order so" that the accused may have a chance of

knowing whether the witness is able to identify him. or not. This is a common right which every litigant is entitled to claim. The learned Magistrate

was not justified in dismissing the application of the accused for this purpose. The revision is allowed and a further opportunity will be given to the

witness to identify the accused after re-shuffling.

This case obviously dealt with an identification of the accused in Court by a witness who was being examined for the prosecution. If a similar

request is made in the present case also at the time of the examination in Court of any of the prosecution witnesses, I am sure, the Magistrate will

accede to such a request.

8. In my opinion the Magistrate was right in holding that the accused were not entitled as of right to demand that an identification parade should be

held at which the witnesses mentioned by them should be called upon to identify the accused.

9. The revision case is therefore dismissed.