
(1958) 11 AHC CK 0003
In the Allahabad High Court
Case No : Criminal Ref. No. 348 of 1958

State	Vs	APPELLANT
Madanlal Jaggi and Others		RESPONDENT

Date of Decision : 24-11-1958

Acts Referred:

Evidence Act, 1872 — Section 9

Citation : AIR 1959 All 504 : (1959) 29 AWR 254 : (1959) CriLJ 934

Hon'ble Judges : M.C. Desai, J

Bench : Single Bench

Advocate : H.N. Seth, for the Appellant; P.C. Chaturvedi and L. Chandra, for the Respondent

Final Decision : Dismissed

Judgement

M.C. Desai, J.—The question raised in this reference is about the rights of the prosecution and the accused in respect of disguising the face of prominent marks of identification on it. The opposite party, Madan Lal Juggi, is being prosecuted along With others for the offences of Sections 302 and 120B, I. P. C., before a Magistrate. He has two prominent marks, one a scar on the left cheek and the other a scar in the middle of neck, and the precise question is whether he is entitled to cover the marks or to adopt any disguise when he appears in court during the trial. He is on bail.

Under the law he is only required to be present at the trial; there is no law which prescribes the dress to be worn by him or prevents his putting on any dress he likes or adopting a disguise or covering his face or changing it or not taking steps to prevent its natural change (by growth of hair etc.) At the same time a prosecution witness has a right to see his face as much as it is necessary for (identifying him. A prosecution witness deposing against an accused can refer to him by his name if he knows him by the name, or point him out in court if he does not know him by the name. In this case there are some prosecution witnesses who did not know Madan Lal Juggi by name and have, therefore, to

refer to him by pointing at him in the dock, and must have full opportunity of doing so.

The court is under a duty to see that justice is not defeated by the prosecution witnesses being deprived of an opportunity of seeing his face or as much of it as is necessary for identifying him. It is evident that if they cannot see his face sufficiently, or it is disguised so much that identification is rendered practically impossible or very difficult, they cannot point him out in court and so cannot connect him with the crime sought to be established against him.

The right of the opposite party to dress in any manner that he likes or to cover his face or marks on it is subject to the right of the prosecution witnesses to see so much of his face as is necessary for their being able to identify him. An accused can claim the right to go to the court wearing a mask, but certainly he cannot claim this right in order to prevent the prosecution witnesses being able to identify him. If an accused has prominent marks on his face so that he may be identified by any person, though he has never seen him before, merely on the basis of the information that he has such and such marks, it may be necessary to cover the marks so that if the person identifies him it cannot be contended that he identified him because he was informed of the marks.

The court must be assured that the identification is genuine, i. e., is based only upon the recollection that the witness has of the features of the person committing the crime. A witness can identify an accused having certain marks on his face in court not only because he remembers having seen him committing the crime but also because he has been instructed to identify a person having such and such marks on his face, and it is in the interest of the State itself that the identification by a witness of the accused is free from the suspicion that it was based upon information about the marks. There can, therefore, be no objection to an accused person's concealing prominent marks on his face so that he may not be identified by witnesses merely on account of their being directed to identify a man having such and such marks. But this covering of marks should be within reasonable limits and should not be carried on to such an extent as to disfigure the face or to make its identification practically impossible or extremely difficult. The covering of marks should not be allowed to defeat the very object of identification.

If there are so many prominent marks that they cannot all be covered without rendering the identification practically impossible or extremely difficult, they should not be covered at all, otherwise there would be instantaneous failure of justice because the accused will not be identified by anyone, and for no fault of the witnesses. In such a case the question will arise subsequently whether the witnesses identified the accused on account of their information that he had such and such marks or on account of their having seen him committing the crime. This is essentially a question of credibility of the witnesses and it is always better to face this question than to prevent all identification by completely disguising the face.

2. No question of testing the credibility of a prosecution witness arises at the stage when he identifies the accused during his examination-in-chief; therefore, at that stage the accused has no right to subject him to any test. While he is being examined in-chief, he is under the control of the State counsel and the accused has no right to interfere with the examination-in-chief and cannot direct the manner in which he should be asked to identify him. He cannot require the Magistrate to have an identification parade or to collect men to stand with him. It is only when the witness is being cross-examined that he can put questions to test the truth of his statement that he had identified him only on account of seeing him committing the crime and not on the basis of having seen him somewhere else or on the information that he had such and such marks.

3. I have satisfied myself that if Madan Lal Juggi covers his two scars with pieces of paper of not more than 1"x1" dimensions, it would not amount to a disguise and would not prevent his identification by the witnesses who had seen him committing the crime with which he has been charged. He can, therefore, be permitted to go to the court with pieces of paper 1"x1" pasted on the two scars.

He should not be permitted to disguise or conceal his face in any other manner. There can be no objection to his bringing a number of men to stand near him in the court room, but he has no right to any assistance from the court in collecting the men or in having their faces similarly covered with pieces of paper. Courts are open to the public and anyone can go inside a court room provided there is space and he does not cause any disturbance or interruption in the proceeding going on in the court. So if Madan Lal Juggi takes with him some men who behave themselves in the court room, the prosecution cannot insist upon their being turned out of the court room by the magistrate.

4. With these observations the reference is rejected.