

CRIMINAL REVISION.

Before S. K. Ghose and Henderson J.J.

1935

Feb. 7.

KRISHNACHANDRA DHENKI

v.

EMPEROR.*

Test-identification—Admissibility of test-identification before a police officer—Code of Criminal Procedure (Act V of 1898), s. 162.

The evidence of test-identification before an investigation officer is inadmissible in evidence under section 162 of the Code of Criminal Procedure

Harendra Nath Saha v. Emperor (1) and Keramat Mandal v. King-Emperor (2) referred to.

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The material facts of the case and the arguments in the Rule appear from the judgment.

Debendranarayan Bhattacharjya, Phaneendra-mohan Sanyal and Praphullakumar Banerji for the petitioner.

No one for the Crown.

GHOSE J. The petitioner in this Rule has been convicted under section 379/511 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for six months. The Rule was issued on the ground that the evidence of the so-called test-identification, held by the police in course of the investigation, was inadmissible in law in view of the provisions of section 162 of the Criminal Procedure Code. I may say that in this Court there is no appearance for the Crown, although an explanation

*Criminal Revision, No. 1189 of 1934, against the order of Kanti-chandra Basak, Sessions Judge of Hooghly, dated Nov. 19, 1934, upholding the order of Boulchandra Chatterji, Deputy Magistrate of Serampore, dated May 15, 1934.

is submitted by the trial magistrate. The prosecution case is that the petitioner in this case tried to pull out a *churki* from the hand of a girl of 10 as she was returning home. She cried out and the man ran away and the present petitioner was apprehended afterwards. The question is one of identification. The only evidence on the point is that of the girl and she is sought to be corroborated by the fact that at the *tháná* she was shown one Prabhat whom she did not identify, but that subsequently she identified the petitioner at a test-identification which was also held by the police. The learned magistrate in his explanation says that hardly any value has been placed on this so-called test-identification. But it is clear from the judgment of the learned judge that this test-identification has been relied on by the magistrate as corroborative evidence. Whatever it be, the statement, express or implied, which the girl must have made by way of identifying the petitioner at the *tháná*, is hit by the provisions of section 162 of the Criminal Procedure Code. The proposition, as Mr. Bhattacharjya for the petitioner has pointed out, is not without authority, and he has referred to the cases of *Nagina v. Emperor* (1), *Harendra Nath Saha v. Emperor* (2) and *Keramat Mandal v. King-Emperor* (3). There is no other evidence against the petitioner. On the contrary, evidence appears to have been given to the effect that he is well-off and the learned judge rejected it, saying that "the contention leads to the "absurd theory that rich men can do no wrong". We think that this conviction cannot be sustained. The petitioner is acquitted and directed to be set at liberty. He will be discharged from his bail bond.

HENDERSON J. I agree that this Rule must be made absolute. It seems clear that the statement made by the complainant to the investigating officer to the effect that the petitioner was the person who had attempted to rob her was inadmissible in evidence

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(1) (1921) 95 Ind. Cas. 477 ;
19 All. L. J. 947.

(2) (1924) 40 C. L. J. 313.

(3) (1925) 42 C. L. J. 524.

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in view of the provisions of section 162 of the Criminal Procedure Code. In the course of his argument, Mr. Bhattacharjya referred to the case of *Nagina v. Emperor* (1) and I desire to say that, as at present advised and with all respect to the learned judge who decided that case, I should not be prepared to say that evidence of a test-identification is only admissible under sections 155 and 157 of the Evidence Act. It is not necessary to decide that point in disposing of this Rule and it may, therefore, be left open.

Rule absolute.

A. C. R. C.

(1) (1921) 95 Ind. Cas. 477; 19 All. L. J. 947.