

Cause Number:16/2020

**IN THE INTERMEDIATE COURT OF MAURITIUS**

In the matter of :-

**ICAC**

**VS**

**FEROZ KHAN RUJBALLEE**

**Ruling**

Accused stands charged with:

- I. Money Laundering in breach of sections 3(1)(a), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 under Count 2;
- II. Money Laundering in breach of sections 3(1)(b), 6 and 8 of the Financial Intelligence and Anti-Money Laundering Act 2002 under Count 1 and Count 3 to Count 23.

This case was lodged before Intermediate Court (Criminal Division) bearing CN: 904/2015 and pursuant to Section 80A of the Courts (Amendment) Act 2020 the case was transferred to Intermediate Court (Financial Crimes Division).

The accused has pleaded not guilty to all the charges and the trial has already started. On 24<sup>th</sup> June 2021 objection was raised by Defence Counsel to witness no.10, Rajini Dulthumun, being asked whether he could recognize accused in Court and the matter was fixed for argument.

The Court has duly considered all evidence on record, the submissions of Learned Counsels and the relevant authorities in connection with the present case.

## DETERMINATION

As per the evidence on record no identification parade was carried out and prosecution did not provide any explanation as to why an identification parade was not carried out at enquiry level. As per the evidence of witness no.10 she knows Mr Feroz well and she described him as "li ti longue, maigre" [At Page 70 Transcript dated 24/06/2021]

Now the issue is whether to allow the identification of the accused in the dock by witness no.10 ?

It was made clear in several cases that whether a dock identification should be admitted in the exercise of discretion is for the Court to decide, **Barnes v DPP [1997] 2 Cr App R 505**. As a general rule an identification of the accused for the first time in court is undesirable and should be avoided, **Philippe and Ors v The State [2013] SCJ 141**. The reason being that the safeguards built into the out-of-court identification procedures are not available when the witness is asked to identify the accused in the dock during the trial. It is clear that the accused is at a great disadvantage as the eyes of the witness are bound to go to the person sitting in the dock. The proper practice is to hold an identification parade then to elicit evidence from the witness in respect of his previous out-of-court identification before asking the witness whether that person is in court. The Privy Council in the case of **Tido v The Queen [2011] UKPC 16** held that the main issue which a court must always consider before allowing a dock identification is why there was no identification parade and if there was no good reason not to hold the parade this would militate against the admission of the evidence. The Court also stated that the discretion to admit the evidence must be exercised in light of the particular circumstances of each case.

However these principles would not apply to all cases of dock identification and this was clearly stated in the case of **Philippe and Ors v The State [Supra]**:

*"These principles however would not invariably apply in any case of 'dock identification' except where the dangers inherent in such an identification are present as would be the case where the witness is identifying an accused, who is not well known to him, for the first time in the dock. The dangers of acting upon dock identification would not, however,*

arise in the same manner where the accused has already been identified or recognized on a previous occasion by the witness or is well known to the witness. It is useful for that purpose to refer to the following passages from **France v The Queen [2012] UKPC 28**:

"33. ... ..A dock identification in the original sense of the expression entails the identification of an accused person for the first time by a witness who does not claim previous acquaintance with the person identified. The dangers inherent in such an identification are clear and have been the occasion of repeated judicial warnings."

"34. There has been a tendency to apply the term "dock identification" to situations other than those where the witness identifies the person in the dock for the first time. This is not necessarily a misapplication of the expression but it should not be assumed that the dangers present when the identification takes place for the first time in court loom as large when what is involved is the confirmation of an identification already made before trial. Nor should it be assumed that the nature of the warning that should be given is the same in both instances. Where the so-called dock identification is the confirmation of an identification previously made, the witness is not saying for the first time, "This is the person who committed the crime". He is saying that "the person whom I have identified to police as the person who committed the crime is the person who stands in the dock."

Therefore a difference must be made between a recognition and a first time identification. There is no doubt that a first time identification in Court will be of no probative value but the same cannot be said of a recognition.

In the present matter, witness no.10 described the accused in her statement and in Court she stated that she knew the accused at the time of the offence. In the circumstances the Court is of the view that there is a need to apply the guidelines set out in **R v Turnbull** about the dangers of untrue or mistaken identification especially in absence of any other significant evidence. This issue was dealt in the case of **Reedoo R. v The State [2014] SCJ 156** :

"In such a situation, the need would still arise for an application of the **Turnbull** principles. This would require a close examination of the circumstances and conditions in which the

witness saw the appellant at the material time before he later recognized him at the police station [**Beckford v R [1993] 97 Cr App R 409**]. As was pointed out in **Turnbull (Supra)**.

*“Recognition may be more reliable than identification of a stranger, but even when the witness is purporting to recognise someone whom he knows, the jury should be reminded that mistakes in recognition of close relatives and friends are sometimes made”*

*In considering the circumstances in which the identification came to be made it is apposite to recall the questions raised and considered to be material in **Turnbull (Supra)**, which are aptly summarized in the following extract:*

*“How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way, as for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his actual appearance?”*”

### **CONCLUSION**

In light of the evidence already before the Court in the exercise of its discretion the Court allows the prosecution to ask the witness whether she recognizes the accused. The Defence would have ample opportunity to cross-examine the witness and assess her credibility.

For the above reasons the objection of defence counsel is overruled.



**[Delivered by Ag Vice President : N DAUHO]**  
**[Delivered on 30<sup>th</sup> August 2021 ]**