

MUSONDA v THE PEOPLE (1968) ZR 98 (HC)

HIGH COURT

WHELAN J

4th OCTOBER 1968

Flynote and Headnote

[1] Evidence - Identification parade - Fairness - Witnesses' view of the accused prior to parade.

In a case in which a vital issue was identification, two witnesses who identified the accused at trial as the guilty party had seen him at the police station shortly before an identification parade, and the State failed to disclose to the trial court that such a parade had been held. In light of the possibility that the witnesses' identification might have been influenced by their having seen the accused at the police station, the judge concluded that it was "unsafe" to allow the conviction to stand.

Case cited:

- (1) *Dahl v R* (1952), 5 NRLR 159.

Gani, Legal Aid Counsel, for the appellant

Heron, Senior State Advocate, for the respondent

Judgment

Whelan J: On 6th August, 1968, in the subordinate court of the first class for the Luanshya District, the appellant was convicted of careless driving, failing to render assistance, and failing to report an accident. He was fined a total of K55, and it was ordered that he be disqualified from driving for two years. He appeals to this court against conviction and sentence.

The State do not support the conviction and have drawn my attention to the case of *Dahl v R* [1].

[1] In view of the fact that the vital issue in this case was one of identity and there was a possibility of mistaken identity because at least two prosecution witnesses had seen accused at the police station shortly before the identification parade, which might have influenced their identification of him, and also the fact that the State did not disclose in evidence to the trial court that there had been an identity parade and the outcome of it, I consider that it would be unsafe to allow this conviction to stand and the appeal against conviction on all three counts is allowed. The convictions are quashed and the fines imposed in respect of each of them and the order relating to disqualification are set aside.

Appeal allowed.