

Emperor Vs. Tukaram Malhari

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Court : Mumbai

Decided On : Mar-22-1912

Reported in : (1912)14BOMLR373

Judge : Batchelor and ;Heaton, JJ.

Appeal No. : Criminal Appeal No. 516 of 1911

Appellant : Emperor

Respondent : Tukaram Malhari

Judgement :

Batchelor, J.

1. The 21 appellants before the Court were charged before the Sessions Judge together with one other accused person, who was No. 15, under Section 401 of the Indian Penal Code, with the offence of belonging to a gang of persons associated for the purpose of habitually committing theft or robbery. The 21 appellants were all convicted by the Sessions Judge of that offence, and hence their present appeal. The accused who was No. 15 before the Sessions Judge was acquitted by him. The assessors were for acquitting accused Nos. 5, 12 and 20 out of the 22 persons indicted. But as the learned Sessions Judge has pointed out they were unable to give any reasons why these three accused persons, Nos. 5, 12 and 20, should be held to stand on any different footing from that occupied

by the other accused excepting No. 15. It may be added that no attempt has been made by the learned Counsel here to suggest that the case of accused Nos. 5, 12 and 20 is in any way different from the case of the other appellants.

2. In examining the evidence upon which these appellants have been convicted we start with this, that they are related to each other; that they are inhabitants of the villages of Rui in Satara and of Vadgaon, Karanje, Baburdi and Morgaon, in Poona; and that they all belong to the tribe known as Bhamtas or Uchlas. Now this record shows, what is otherwise familiar learning to those acquainted with these districts, that the Bhamtas are a tribe of thieves. By that I do not suggest that they are to be convicted merely because they were born into a certain class of people, but I do suggest that their connection with this particular tribe is a fact in favour of the prosecution. This record shows that of recent years the Bhamtas have specialized in running train thefts where their methods are so distinctive that their handiwork can be recognized without difficulty by police officers concerned in such investigations.

3. Mr. Branson for the appellants, who has said everything on behalf of his clients that ingenuity would suggest, has dealt with the case rather on its broad aspects than in minute detail. We think that that is the proper way in which the case should be approached, and we propose to follow the learned Counsel in that respect. For, it seems to us that no good purpose would be served by any attempt to analyse the evidence in its bearings against each individual accused, inasmuch as the evidence of identification and of association is clear and uniform against all the accused. By that we mean that the evidence is good against any one accused as it is against all the others; nor has there been any argument before us that the evidence is comparatively weak or inclusive against any particular accused person.

4. In discussing the question as to the manner in which the evidence in such a case as this should be assessed, the learned Counsel has drawn our attention to several cases of which we need only refer to that which is latest in time, namely, *Bhona J v. Emperor* ILR (1911) Cal. 408. The passage to which Mr. Branson more particularly referred is as follows (p. 411):-

In cases where the other evidence has established association for purposes of habitually committing theft, evidence of previous convictions, whether for offences against property or for bad livelihood, has, we find, always been admitted, not as evidence of character, but as evidence of habit.

5. It seems to us that for the purposes of the present appeal it is unnecessary that we should go a step further than the Calcutta Judges went in that case. At the same time if the meaning of the passage, which we have cited, is that no evidence of previous convictions is admissible until the prosecution have affirmatively established the association for the purpose of habitually committing theft, then we are doubtful whether we should be able to follow that ruling if the point arose for decision. For it appears to us with great respect that where the question is, as it is under Section 401, Indian Penal Code, whether a party of accused persons constituted a gang of persons associated for the purpose of habitual theft, evidence that each individual of that party is a convicted thief is relevant evidence for the purposes of that question. And whether that evidence is tendered before or after the prosecution have established the association seems to us to be a matter of no particular moment. We understand that is the view which commended itself to this Court in the unreported criminal appeals Nos. 196-207 of 1910.

6. Then Mr. Branson was successful in pointing out 2 or 3 instances where matters, which were not admissible in evidence, have been admitted by the learned Sessions Judge. Of these matters, the only instance, which we think, calls for particular notice is the testimony of the witnesses Mahamadsha Sheikh Faizalla and Maulabuksh valad Vazirkhan (Exts. 293 and 294). The learned Counsel has contended that their testimony should not have been received upon the record inasmuch as they were examined in Calcutta in the absence of the accused who at that time were under arrest in Koregaon. The Government Pleader has admitted his inability to defend the admission of this evidence, and we must, therefore, lay it out of our consideration. Apart from that we do not think that anything has been admitted which being inadmissible is likely to have any effect in the decision to be pronounced.

7. It must be observed that the evidence in this case is cumulative, or to vary the simile, it converges from various points to the one conclusion which the prosecution seek to establish.

8. Speaking quite generally, the effect of the evidence which the prosecution have called is this: that these appellants, members of the Bliamta tribe as described, and residents in the villages of Satara and Poona, are found associated in remote parts of India, moving about in disguise as Marwari merchants, giving false names and carrying with them the usual implements of Bhamta gang-thieves, that is to say, special canvas bags for the receipt of stolen property, together with knives, scissors, and packing needles, such as would be useful in first rifling and then repairing the bags in which the Indian railway travellers are accustomed to carry about their moveable property.

9. So far, we think, we have said nothing, which counsel for the appellants has doubted or contested. And the point which we wish to make is that no explanation whatever is offered by these appellants as to their expatriation in those distant parts of India or the manner of their livelihood there. This is the more significant when we remember, what the evidence establishes beyond all cavil, that the appellants' sojourns in those foreign parts are throughout characterized not only by the admitted occurrence of numerous attempted thefts, but by the admitted convictions of many of the appellants in respect of those thefts. That in our view is a fair statement of the general effect of the evidence.

[After discussing the evidence with more particularity His Lordship observed.-]

10. It appears to us upon this evidence that the prosecution have very satisfactorily established that there was an association between these accused persons, probably including also other members of their tribe, and that the object of that association was to live by committing thefts principally in railway trains. If support for this view were desired, it is, we think, afforded by the monotonous record of convictions which the accused's previous history supplies.

[After specifying the various convictions his Lordship proceeded-]

11. It appears to us that all this evidence, which I have done my best to summarise, leads to the irresistible conclusion that these accused persons were associated for no other purpose than to prey upon society by petty thieving. The only alteration which it seems to us desirable to make in the learned Sessions Judge's order is in regard to the sentence of transportation for life which he has passed upon the accused No. 22, Mari Parsu. As we have said, against this accused there is only one conviction of theft and that occurred in March 1910. It appears very doubtful whether that conviction should be used for the purpose of calling in aid the provisions of 3.75. But in any case we think that this accused's history does not warrant the imposition of so severe a sentence. We, therefore, alter his sentence to one of seven years' rigorous imprisonment under Section 401, Indian Penal Code, and in all other respects we dismiss these appeals and confirm the convictions and sentences recorded by the learned Sessions Judge.

12. We wish to say in conclusion that we are much indebted to the learned Government Pleader for the impartial and thorough going manner in which he has laid before the Court this somewhat difficult and complicated case.

13. We are also of opinion that the result of this case reflects very great credit on the Police Officers who were entrusted with the laborious task of its investigation.