

**Goli Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/447630](http://sooperkanoon.com/447630)

**Court :** Allahabad

**Decided On :** Jun-24-1929

**Reported in :** AIR1930All17

**Appellant :** Goli

**Respondent :** Emperor

**Judgement :**

1. Goli appeals from his conviction under Section 477 read with Section 75, I.P.C. and a sentence of transportation for life. The charge under Section 75, I.P.C. referred to no less than 5 previous convictions of theft and house-breaking with sentences beginning with three months and ending with three years. The accused pleaded guilty to all these convictions, with the exception of one, which he said had been set aside in appeal. But the learned Judge says that he has seen the record of that case and finds that the appeal was dismissed. It is a regrettable feature of these cases, where a man has already had a number of convictions, that everything seems to be assumed against him and that care is not devoted to the enquiry as to whether the present charge is well founded or not. The record of the evidence is very small, but we have had to give the case considerable time, because it was obviously neither desirable that a man who was of a bad character should escape punishment, if he were really guilty, nor that he should suffer further punishment unjustly merely because he had already committed several offences. The accused was arrested in Nautanwa Bazar of Bhundi, which is evidently close to Nautanwa Bazar, the place of his arrest being variously described: These

places are close upon the Nepal border. The home or birth place of the accused is in Nepal, but the place where he lives is a village in Purandarpur in the district of Gorakhpur. Purandarpur is about 20 miles south-west from Nautanwa Bazar. Nautanwa Bazar is in the police circle of Naikot and at Nautanwa Bazar or Bhundi there is only a police outpost. The story for the prosecution is that the complainant, Kahabir Thapa was half asleep in the middle of the night when he noticed somebody moving about in his house. According to the first information report, he jumped up and seized the person and had a struggle with him. The thief escaped from him and he chased him a distance of 30 or 40 yards and seized him with a stolen brass vessel in his hand. Upon the outcry of the complainant three persons came up and helped him to secure the thief. Two of these three alleged witnesses have been produced to give evidence. They are Gorey Thapa and Jas Bahadur Thapa. The accused was taken to the police outpost, and in the morning to the police station at Naikot, where the first information report was recorded, and he was later sent up for trial.

2. The accused's story is that he had only been released from jail in Gorakhpur a few days previously and having gone part of the way by train, he went to his own home. Finding his wife not there he made enquiries and eventually set off for Nepal to fetch his wife. He does not say whether he found his wife there or whether he did not, and neither the Magistrate nor the learned Judge thought it worth while questioning him on this point. It is hardly necessary to repeat that neither a Magistrate nor a Judge is entitled to cross-examine an accused person, but it is their bounden duty to question him generally on the case and give him an opportunity of explaining any point in the evidence against him. In cases of the description of the one before us we fear that a conviction is generally regarded as more or less a foregone conclusion and very little trouble is taken to enquire into the facts. This man had made a statement about having gone in search of his wife and being, on his way back to his village, found at Nautanwa Bazar where he was arrested. There is nothing improbable *prima facie* in that story. That is one mention of the wife. Again the Judge's attention was specifically drawn to the fact that the accused really had a wife, because the defence witness mentioned her as being the person at whose instance she (the witness) was giving evidence. This fact the Judge has used to discredit the defence witness, but it did not suggest the

desirability, as it should have, of making any enquiry as to where the wife was at the time of the offence.

3. The accused talking continues that he was asked by the police where he was going to spend the night and told them that he was sleeping in a hut in Nautanwa Bazar, when the police on their rounds paid him no less than three visits, on the first occasion asking him who he was and on the second occasion assuring themselves that he was still sleeping in the hut. He says that on the third occasion at 5 O'clock in the morning he was aroused and arrested and this false charge brought against him. Taking the prosecution evidence first, we find that in the first information report a mention, very brief it is true, but still a clear mention of a struggle between the complainant and the accused finds place. On the other hand, there is also mention of the fact that in the complainant's own house were sleeping at the time three visitors, Pahari pensioners. It is manifest that if a struggle did take place and if three Pahari pensioners were, as admittedly they were, sleeping in the house at the time, they must have known a great deal more about it than anybody who merely saw from outside what happened at a later stage. None of these three men have been produced and no explanation is offered as to why. It may be that they left the place, as they were apparently only birds of passage. On the other hand, they were pensioners and they must have been known to the complainant, for he gave them shelter in his house and prima facie there could have been no difficulty in tracing them. It is noteworthy that all mention of the struggle in the house is dropped in the complainant's deposition. We were disposed ourselves to feel doubts about the correctness of this conviction in view of the points that we have already mentioned. There is a third point, that the accused is alleged to have been actually arrested with a brass vessel worth only Rs. 2 in his hand. It is a small point, but it does strike us as improbable that a thief, being pursued and seeing himself about to be caught, would be actually so foolish as to keep a brass vessel that he had just stolen in his possession. No doubt he could not have concealed the fact that he had it, but his first instinct would be to throw it away.

4. We did feel, however, that there was one point which might strongly be urged in favour of the truth of the story told by the police. The accused was arrested at Nautanwa Bazar and the learned Judge has made a great point against him as to

what could he be doing in this village 20 miles away from his own home so soon after he had been released. We have already referred to the accused's story as giving a not unreasonable explanation of his presence in Nautanwa Bazar, but the very fact of the distance of Nautanwa Bazar suggests another consideration in favour of the prosecution and that is, how did the police know anything about this man? If it were suggested that the case was a false one brought by them merely in order to get into jail again the well known offender, how did they know that he was a previous convict? The accused alleged that they had paid him no less than three visits on the night in question. This fact alone should have raised the Magistrate's and the Judge's suspicion and, at, any rate, led to some enquiry on the point. We felt that as the case stood we were unable to feel satisfied as to the correctness of the conviction. Having arrived at that view, we decided to look into the police diary to see whether there was anything further that ought to have been brought on the record of the case. If the learned Judge had done that, as he should have done, not with a view to using it as evidence, but with a view to seeing whether further evidence was available, he would have found that the accused was perfectly well known to the police of Naikot and the police of Nautanwa Bazar. It appears that of the previous sentences which the accused had served, at least two or three of them were in respect of offences which had been committed at Nautanwa and the police at Naikot not only know the man well as a previous convict, but even knew that his home was at Gol Suqra. This being so, it is very natural indeed that when they found him again at Nautanwa Bazar they would recognise him and pay him several visits in order to see whether he was still sleeping in the hut. In this we find much corroboration of the story told by the accused and it further removes the main difficulty that we had, which was to answer the question, why should the local police 20 miles away from Gol Suqra and perhaps three times that distance from Gorakhpur, have had what is commonly described as a down upon this particular man? This only increases the doubts which had already formed in our minds. We feel that the conviction cannot stand. In conclusion, we would suggest to the Magistrate and to the Judge that in these cases, where Section 75, I.P.C. is to be applied, a great deal more care should be given to the enquiry and trial than is usually given to them, and was given in this particular case. An accused person, though he has several convictions behind him, is entitled to have his case treated

as if it was not a foregone conclusion that he is guilty. We set aside the conviction and sentence and direct that the accused be forth with released. Let copies of the judgment be sent to the Judge and the Committing Magistrate.

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