SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Budhan Vs. Emperor

Budhan Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/461828

Court : Allahabad

Decided On : Apr-14-1925

Reported in : AIR1925All694

Appellant : Budhan

Respondent : Emperor

Judgement :

Boys, J.

1. This is a ease in which security has been taken from three persons under Section 110 of the Code of Criminal Procedure. One of them, Budhan, has applied to this Court in revision. He, together with the others, received a copy of an order under Section 112 of which the following are the material terms : 'are members of a common gang of dacoits, and that you are dacoits, and house-breakers and thieves by habit and you jointly commit offences.' The Magistrate found in following terms at the end of his judgment : ' I, therefore, confirm the notice given to the accused and order them each to execute a bond, etc., etc.' As he took security for three years, the case went up to the Sessions Judge who confirmed his order. The application for revision made by Budhan in this Court came before Mr. Justice Stuart. In the first of the grounds reliance was placed upon a ruling of this Court in the case of Ram Prasad v. Emperor : AIR1925 All250 . Mr. Justice Stuart referred the case to a Bench because he did not agree with the proposition laid down in

that case. The argument before us has been directed to two points : (1) that in view of the ruling to which we have just referred, the order of the Magistrate could not be sustained, and (2) that eliminating the evidence of association as a member of a gang of dacoits, there was no sufficient evidence remaining to support the order of the Magistrate. Much of the public time and money would be saved in these cases if the Magistrate who issues an order under Section 112 were to be careful to see first that the order that he is issuing is in the terms of the section which he proposes to apply. We have quoted above the order under Section 112 which the Magistrate issued. He there gives the accused notice that they are charged with being members of a common gang of dacoits. A reference to Section 110 of the Code will show that no such phrase occurs in it from beginning to end. He goes on to say 'and that you are dacoits.' The word 'dacoit' similarly does not occur anywhere in the section. The second error is, however, of less importance than the first, but it would have been desirable to avoid both. Finally we note that the Sessions Judge, in his order of the 31st of January, 1925, says : 'Apart from this positive evidence, there is general evidence of his (Budhan's) being a habitual robber and that bad characters assemble at his house.' Section 110 does, of course, make mention of a habitual robber, but there is no such charge permitted by Section 110 as that based on 'bad characters assemble at your house,' and evidence, whether there be much or little, to that effect is absolutely irrelevant unless it is evidence, and is found to be evidence, showing that the bad characters were robbers, or that the assembly was for the purpose of robbery, and not, e.g. merely for the purpose of gambling. We find, therefore, that we must eliminate entirely from the notice to the accused, and from the findings of the Magistrate and the Judge against him, the irrelevant matter to which we have referred. Before leaving this question, we may refer to the judgment of Mr. Justice Mukerji, in the case of Ram Prasad v. Emperor : AIR1925 All250 , to which reference has already been made. That case is entirely distinguishable from the present. In that ease the notice to the accused was, as it is set forth on page 18 of the judgment : 'to show cause why they should not be bound over on the ground that they were habitual dacoits and belonged to the dangerous gang of Dhani and Ram Kishen dacoits.' The charge of being habitual dacoits was clearly part and parcel of the charge that they belonged to the dangerous gang of Dhani and Ram Kishen dacoits. We have

already adverted to the fact that no such charge comes within the terms of Section 110, and we should, therefore, have been entirely in agreement with the learned Judge in setting aside the order for security in that case. That case has, however, been pressed upon us, and we have little doubt that it was so pressed upon Mr. Justice Stuart who referred this case to a Bench as authority for a much wider proposition, namely, that evidence indicating the commission of a substantive offence punishable under the Indian Penal Code or other Act dealing with substantive offences is inadmissible in proceedings under Section 110. We do not think that such a proposition can possibly be supported. The case which we have just mentioned does not even purport to go so far. It dealt with a state of facts which did not come within Section 110 of the Code of Criminal Procedure and did fall within Section 400 of the Indian Penal Code. It is true that Mr. Justice Mukerji used the words 'being a member of a gang of dacoits is a definite offence defined and punishable under the Indian Penal Code, and it was for that reason that under the preventive section action could not be taken for having committed a specific offence;' but it is clear from his preceding remarks that he was only suggesting an explanation, a suggestion with which we agree, of why the legislature had thought it unnecessary to insert in Section 110 any provision relating to association with a gang of dacoits, and was very far from holding that the fact that evidence points to the commission of a substantive offence punishable as such renders it inadmissible in a case under Section 110 of the Code of Criminal Procedure. The latter proposition is on a wholly different footing from that which Mr. Justice Mukerji was approving. It is quite impossible to hold, and there is no justification in the terms of Section 110 for holding, that because there is some evidence that a substantive offence has been committed, that evidence cannot form part of the evidence upon which an order under Sections 110 and 118 can be based. We need only take a particular case. If a witness comes into Court and says that the general repute of A is that he is a habitual thief, that evidence is clearly admissible. Is the evidence of the witness to be ruled out because in cross-examination he says : 'My reason for saying this is, amongst other things, that I am certain that he is the man I saw stealing my property, and I have heard from many persons that he is believed to be the man who stole the property of B, C, D and E on various dates.' His evidence is clearly directed to a specific substantive offence punishable

as such, but if it is quite clear that if he has no other evidence to support him, it would be futile to institute a substantive case. Yet there could hardly be better evidence to show the real reason why the accused had earned the general reputation of being a habitual thief. We hold, therefore, that it is impossible to accept the proposition that evidence going to show that a substantive offence had been committed, or, in other words, evidence which might possibly form the basis of a charge of a substantive offence, is necessarily to be excluded in proceedings under Section 110, and cannot form the basis of an order under Section 112 and a finding under Section 118.

2. After eliminating, then, that portion of the notice which charges the accused with being a member of a gang of dacoits, we have remaining a notice which charged him with being a habitual thief and robber, and we have to consider whether there is any evidence on the record, which could reasonably and properly in the exercise of judicial discretion be believed by the Magistrate and Judge as establishing that charge. Without weighing ourselves the exact value of the evidence, which we think we are not entitled to do in revision except in exceptional cases, we find that there is ample evidence upon which the lower Courts could, in the exercise of their judicial discretion, come to the opinion that the accused was a habitual robber and thief. It is unnecessary for us to detail all the evidence to which the Magistrate and the Sessions Judge referred. There is some of it which is clearly wholly irrelevant to the charge, either as it was made in the order under Section 112, or in the form to which we have amended it. It is quite irrelevant that the accused was a gambler. The fact that he gathered bad characters at his house does not go far enough to be in itself relevant. It would have been necessary to show that these bad characters were robbers, or were gathered there for the purpose of robbery or theft. In the absence of such evidence, they might very well have been gathered there for the purpose of gambling. After eliminating this and other evidence which is wholly irrelevant to the charge, we think there is ample ground to justify the order. The only further criticism as to the admissibility of some of this evidence, which we need particularly note, is the suggestion that because the accused had been acquitted in two of the numerous oases put in evidence against him no evidence of the allegations made in those oases against him was admissible. We cannot agree to the general proposition that the fact that he has been acquitted

entitled the accused to have all evidence excluded of the incident which formed the subject of his trial. It is entirely a question of the value of that acquittal. It is perfectly certain that if he was acquitted on the ground that the case was totally false against him, no Magistrate or Judge would think of taking it into consideration against him. On the other hand, if he was only given the benefit of the doubt, there is no reason why the incident should not be put in evidence and given whatever value it might be worth. As this argument was pressed upon us, we may give a simple illustration. A is charged with having committed dacoity. The evidence against him is based on that of two approvers with a certain amount of corroboration. The accused or his friends bribe the approvers to resile from their statements. The result is that the balance of the evidence is sufficient to raise a suspicion against him, but not sufficient to justify finding him guilty. Subsequently the approvers are put on their trial, and at that trial conclusive evidence is forthcoming that the accused and his friends bribed them to resile. Could anybody reasonably say that the evidence of the fact that he had been suspected and charged with having committed a dacoity ought to be excluded in proceedings under Section 110? We hold, therefore, that the fact that an accused person has been acquitted of a particular charge may diminish, - will diminish - in many cases and may even destroy wholly, the value of the evidence, but does not render it inadmissible. We may add that Mr. Justice Mukerji has since seen the view that we have expressed above in regard to the case of Bam Prasad v. Emperor : AIR1925 All250 , and entirely concurs in our interpretation of his judgment therein. For the reasons we have given, we see no reason to interfere with the order of the Magistrate, and the application is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com