Emperor Vs. Babu Ram

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Court : Allahabad

Decided On : Sep-08-1927

Reported in : AIR1928All1

Appellant : Emperor

Respondent : Babu Ram

Judgement :

1. This is an appeal on behalf of the Local Government against an order of a Sessions Judge setting aside the order of a Magistrate calling upon the opposite party to furnish security for good behaviour for a period of one year. A preliminary objection is taken that no appeal lies, and the importance of the objection lies in the fact that, if no appeal lies, then the local Government can only apply to this Court in revision, and the ordinary principles governing interference by this Court on the revisional side will be applicable; in other words, we shall have to be satisfied that the lower Court has erred, and erred prejudicially to the opposite party on some question of law, or has so grossly erred in the principles which it has applied to the weighing of the evidence that interference is called for.

2. We are of opinion that the objection must be sustained. Under Section 417, Criminal P.C., the local Government is only given the right of appeal against an acquittal. It is unnecessary to do more than to mention the sections to which we have been referred. They are as follows: Sections 118, 406, 417 and 423 of the Code. We think that there cannot be the least doubt that the terms 'conviction' and

acquittal' are nowhere applied throughout the Code to an order under Section 118, and that they are, in fact, wholly inapplicable. We think that this point is so clear that it is unnecessary to discuss it in greater detail; nor, in our view, does it require the support of authority. We may, however, mention that there are cases reported in Empress v. Phullu [1898] A.W.N. 127; Ali Mahomed v. Tarak [1909] 13 C.W.N. 420; Chand Khan v. Empress [1883] 9 Cal. 878; which all bear on this point and favour the view that we have stated.

3. We have, therefore, limited our consideration of this case by the principles ordinarily applicable to cases heard on the revisional side. We have had placed before us the judgment of the learned Additional Sessions Judge, and it has only been possible, apart from the weight of the evidence, for the learned Government advocate to make one serious criticism of that judgment. The learned Judge has in dealing with the prosecution witnesses excluded altogether from consideration the evidence of seven police officers holding that the evidence of such police officers 'is of no value to prove bad character.'

4. In this we think that he is clearly wrong if he means that it is not entitled to consideration at all as being prejudiced evidence. If he had said that it must be received with caution, he would of course have been right, and with a little more caution than would be necessary in the case of ordinary witnesses who might prima facie be supposed to be independent, such as zamindars and other persons of respectable position unconnected with the prosecution of offences or charges of this nature. The learned Judge having then, in our view, been wrong in, as it were, cutting right out of the record this evidence, the next question that we had to ask from the learned Government advocate was whether he was prepared to say that the evidence of those seven witnesses was so valuable that, if considered, it would turn the scale. We did not understand him to be prepared to describe that evidence in those terms, but we were invited to look at it, and we are not prepared to hold that there is anything so striking about it that it would justify us in reweighing the whole of the evidence on the record. There are a succession of statements that the accused is reputed to be an habitual thief, robber and dacoit, but in at least some of the cases, the evidence is also weakened by the police officer being allowed to state that the opposite party in this case 'was suspected'

by him to be a bad character. It has been laid down a number of times that suspicion in the mind of a witness is not admissible evidence. There is nothing in the evidence of these witnesses so starting as to justify us in embarking on the course of reweighing the whole of the evidence. Again, however, for our personal satisfaction we have considered some of the evidence for the defence with a view to seeing whether it was strikingly of such a nature that the learned Judge's reliance on it was not guided by the exercise of a judicial discretion. It would be quite impossible to hold that of the first half-a-dozen witnesses whom we have read. They are men of position, and most of them had opportunities of knowing about the accused, and they speak to his good character. We could only reject that evidence by holding that they were deliberately committing perjury, and there is no ground for any such assertion. The worst that can be said against them is that their sympathies are with the accused, because he has become a religious leader. It may be so, and quite probably is so, but there remains the fact that these persons who are respectable and hold responsible positions are prepared to testify to the good conduct of the accused since he left jail. We see no reason, therefore, to be drawn into a reweighing of the whole of the evidence on the record. There is nothing in the evidence of the half-a-dozen witnesses whom we have examined on both sides to suggest that the Judge was wrong in his estimate, and we see no reason for interference.

5. Before we leave this case we think we should draw attention to the notice that was framed under Section 112, Criminal P.C. It is a long rambling production which covers more than a full page of printed foolscap. It refers only to Clause (a), Section 110. It refers to burglaries and extortion, neither of which terms occur in Clause (a) at all. It charges the opposite party with committing thefts, and doss not charge him with that with which he should be charged, being by habit a thief. It tells him that he has been 'strongly suspected' to have committed thefts, etc. We have already noted that 'suspicion' is not a legitimate basis for findings under Section 110. A witness may have suspicion against a person in respect of whom he is giving evidence, but if he has, he ought to be able to give the grounds for that suspicion, and the value of the facts stated can then be weighed by the Magistrate. The evidence which he can give of general repute is of a totally different matter. A witness can come into Court and say:

This man is by general repute a habitual thief.

6. Whether his evidence is worth anything will depend upon his position, his partiality or impartiality, and whether the defence have by cross-examination been able to show that the witness has no real grounds for saying that he has knowledge of the general reputation of the man in the dock. There should really be little difficulty in prosecuting these cases if the police and the Magistrate keep clearly in view the terms of the various clauses of Section 110 and the provisions of Section 117 (4), Criminal P.C., and if they bear in mind that the allegations in Section 110 can only be proved by direct evidence of people who have knowledge of facts to which they depose with the exception that, in regard to all other clauses except Clause (f), Section 110, a witness may say:

I know the general repute of the man to be se and so.

7. Such evidence of general repute does not offend against the rule against hearsay evidence. This is not hearsay. It is direct evidence given on the basis of the witness' own knowledge of a fact, to the fact that people are talking about this man in a certain way; the fact that he has such and such a general reputation.

8. For the reasons we have given above we see no reason to interfere with the order of the learned Additional Sessions Judge setting aside the order of the Magistrate. The appeal, as it has been described, that is, the application in revision, as we have held that it should be, is dismissed. The bail bond will be discharged.