

Babu Pershad Vs. Emperor

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Court : Allahabad

Decided On : Nov-14-1910

Reported in : 13Ind.Cas.102

Judge : Tudball, J.

Appellant : Babu Pershad

Respondent : Emperor

Judgement :

Tudball, J.

1. This is an application in revision from an order of the District Magistrate of Meerut whereby he dismissed the applicant's appeal from the order of a first class Magistrate binding him over to be of good behaviour in his own bond for Rs. 2,000 with two sureties for Rs. 2,000 each for a period of one year. As remarked by Alston, J., in the case of Sham Lal v. Emperor 6 A.L.J. 487 : 2 Ind. Cas. 225 : 9 Cr. L.J. 628 the High Court will not ordinarily interfere on the merits with proceedings under Section 110 of the Code of Criminal Procedure provided that the Court hearing the appeal under Section 406, shows in its judgment that it has really and not merely nominally considered the evidence on the record. In the present case some fifty three witnesses for the prosecution were examined by the Court of first instance. The case was keenly contested by the applicant, who called about one hundred and twenty witnesses to establish his good character. The Magistrate

who heard the case wrote a judgment covering some eight or nine pages of typed matter. He discussed the evidence and came to a conclusion in respect thereto. The District Magistrate decided the appeal in a judgment of some fourteen lines. He has merely stated therein that the Sub-Divisional Magistrate had tried the case carefully and conscientiously and had given sound reasons for his conclusions and that he (the District Magistrate) agreed with his reasons and considered that the evidence on the record warranted the order passed. There is no attempt, whatsoever in this judgment to show that the evidence was at all examined and carefully weighed. It is a judgment written as if it were the case of a revision and not of an appeal. The learned Judge of this Court before whom this application was filed, therefore, admitted it in order that the evidence might be examined with the assistance of the applicant's Counsel. I would, therefore, call the attention of the District Magistrate to the remarks by Alston, J., in the above mentioned case with which I fully agree.

2. There are certain facts in this case which are either admitted by the prosecution witnesses or clearly proved on behalf of the applicant. The latter is a Brahmin by caste and a resident of the town of Ghaziabad, his father Debi Diyal is a retired Kanungo and apparently a well-to-do man. It has even been said by one of the witnesses for the prosecution that he is worth a lakh of rupees. He owns zemindary in several villages, house property and also earns an income by money-lending. The accused is a man of about 36 years of age who has acted as general-attorney on behalf of his father. Income tax has been jointly assessed on both father and son and there can be no doubt that the son has been managing his father's estate especially when the latter was in service. The accused has two uncles who have served in the Police force as Sub-Inspectors and his cousins are in Government service in the Postal Department. He is also a general attorney on behalf of these cousins. He is, moreover, the only son of his father. It will thus be seen that the surrounding circumstances of the accused's life are not such as tend to make a man an habitual thief, receiver of stolen property, a harbourer of thieves or so dangerous or desperate a character that it is unsafe to allow him to mix with the public. Furthermore, it is in evidence that the applicant was a candidate for a seat on the Municipal Board of Ghaziabad. In 1902 he very keenly contested with one Abdullah Khan the seat which the latter had held for many years. He was

defeated but he contested the validity of the election in the Court of the District Magistrate. Sub-Inspector Juni Singh, a witness for the prosecution, has clearly admitted that there is ill-feeling between Abdulla Khan and Debi Dayal also over property. There is no doubt that the property of Ibadullah, a brother of Abdullah Khan and father of the witness Siraj Ahmed, was attached and sold up by Debi Diyal. The evidence of Syed Farzand Ali, Tahsildar, also shows that when he became Tahsildar of Ghaziabad in 1908 the accused made a complaint to him that the local Police Officer (who was then Agha Sher Ali Khan) was doing his best to dishonour him. One Budhu was prosecuted under Section 110 of the Code of Criminal Procedure and was bound over to be of good behaviour. This was apparently in the year 1909. He, I understand, was one of the applicant's servants, who has, however, been dismissed since the case. In the course of the case against Budhu some of the witnesses, who are also witnesses in the present case, namely, Sheo Charan Das, Siraj Ahmed, Gokul Chand, Bhagwan Das, Madda Mal and Zaharia Mal, stated in their evidence that Budhu was an associate of the present applicant and that the latter was a badmash, against these six witnesses the present applicant filed a suit for damages for defamation in the Civil Court. These suits have been subsequently dismissed, I understand on a technical point, namely, that the statements were privileged. It is in these circumstances that the present case was launched against the applicant sometime towards the end of the year 1910. The charge against him falls under Clauses (a), (b), (c) and (f) of Section 110 of the Code of Criminal Procedure. It is that he is by habit a robber and housebreaker; that he habitually receives stolen property; that he habitually protects and harbours thieves, and that he is so desperate and dangerous a character as to render his remaining without security for good behaviour, hazardous to the community. In addition to a mass of irrelevant and inadmissible evidence which has been admitted on the record, the other prosecution evidence was directed to proving the applicant's reputation. It was further alleged that he had committed certain specific offences for none of which he was ever prosecuted excepting one case in which he was convicted of an offence under Section 232, Indian Penal Code, and fined Rs. 25. In the matter of the charge under Clause (f) of Section 110 this one conviction is practically the sum total of the evidence to prove that the applicant is desperate and dangerous to the community. One

witness does, indeed, state that the applicant extorted money from a man who is now dead, He further stated that the accused attempted to extort money from a person who is still alive, but who is not called to prove the fact. This witness is speaking solely from hearsay. Several witnesses have stated that they are so afraid of him that they remain indoors after dark. They say that they fear for their lives. I have examined the record. Not one of them can give a reasonable cause for this fear. In so far as the charge under Clause (f) is concerned, there is practically no evidence at all. The charge under this Clause cannot be proved by general repute. The one case of assault which has been established against the applicant is utterly insufficient to prove that he is a dangerous character. I would point out that the Magistrate took into evidence the record of a case against the accused in which on the 13th of October 1909 he was fined a sum of Rs. 10 for failing to attend this police station on summons issued by the Sub-Inspector. This record is perfectly irrelevant. It does not, for a single instant, indicate that the accused is a man of bad or violent character. It is one instance of the evidence which was inadmissible but on which the Magistrate placed great reliance. Coming to the charges under Clauses (a), (b) and (c), eliminating inadmissible evidence, there remains a considerable number of witnesses of the town of Ghaziabad and neighbouring villages, who have testified to the fact that the applicant has the reputation of being a man, who habitually harbours thieves, commits theft and receives stolen property. The majority of these witnesses have stated that they have seen the accused associating with various persons some of whom they declare to be persons of bad character, but in the majority of these cases, however, beyond the opinion of the witnesses themselves there is nothing to show that these alleged associates are persons of bad character. In the cases only of Mohan Kedarn and Budhn. have the convictions been established. The question remains whether this evidence for the prosecution is worthy of acceptance. I have gone minutely and with great care through both that for the prosecution and the defence. Omitting the Government servants, namely, the Police Officers and the Tahsildar, seventeen of the witnesses are residents of the town. Others are of the neighbouring villages. As I have noted above, the accused is a man of about 36 years of age. The majority of witnesses against him state that it is only during the last three or four years that he has taken to evil ways. One or two have stated that

he has always been such a man. All of these witnesses are neighbours, many of whom have known him all his life and nearly all have known him for a long period. It is impossible for the two statements to be correct, namely, that the man has been a bad character all his life and that he has only been a bad character during the last three or four years. As I have already pointed out, the surrounding circumstances of his life are not such as tend to make a man become an habitual thief or receiver of stolen property. If he had been such all his life it is clear that all his neighbours must have heard of this many years ago. We may take it, therefore, for granted that of the two statements made by the prosecution witnesses in this respect one is more likely to be correct which goes to show that it is only in later years he has taken to evil courses. But there are very clear indications in the evidence of the witnesses themselves as well as from the surrounding circumstances that the witnesses have done their best to exaggerate and to make things look as black as possible against the accused. I take the case of Sheo Charan Das as an example. He is a zemindar and moneylender of Ghaziabad. He gives the reputation of the accused. He states that he associates with Mohan, Budhu and certain others who were his servants and of whom Budhu was bound over. His statement that Murli and Ghasi, goldsmiths, are also his associates is valueless as evidence. He states that these goldsmiths melt down stolen property for the accused. The basis of his knowledge he cannot give, nor is it established that Murli and Ghasi are men of bad character. He then states what he must know to be a lie, i.e., that the accused has no honest occupation, although it is proved from other evidence that the accused lends money and has obtained decrees in the Civil Courts. The character of this witness is further indicated by a little episode in his life, which has been proved. Prosecution witness No. 11 is one Chaudhari Bhagwan Das, who like Sheo Charan Das is a member of the Municipal Board. On the 8th of February 1909, Sheo Charan Das and Madda Mal, Prosecution witness No. 4, and Bam Obandar, Prosecution witness No. 7, and one other person presented a petition to the District Officer as against Bhagwan Das. They therein gave to Bhagwan Das the very character and reputation which they now ascribe to the present accused. In his cross-examination Sheo Charan Das admitted having made this complaint and stated that at that time Bhagwan Das was a man of bad character but that he had since reformed and is now a good man. Bhagwan Das,

when examined as a witness for the prosecution in this case, stated that Sheo Charan Das, etc., had filed this petition against him because the present accused Babu Prasad, being hard pressed by the Police had gone to him to seek his assistance and to pray him to intercede on his behalf with the Police Officer. He says that seeing Babu Prasad on several occasions in his company these misguided men Sheo Charan Das, et cetera jumped to the conclusion that he and Babu Prasad were alike and, therefore, filed the petition of the 8th of February 1909. That petition is on the record. An examination of it shows that while Sheo Charan Das et cetera, set forth therein the names of many persons of alleged bad character with whom they said Bhagwan Das was associating, they nowhere in that petition mentioned the name of Babu Prasad. Now, Babu Prasad is said (vide the evidence of Agha Sher Ali Khan, Sub-Inspector) to have had a hand in every crime which was committed in the years 1908 and 1909 in the town of Ghaziabad. Two thefts occurred in the two houses, which adjoin that of the accused on either side. Even in these cases, according to the Sub-Inspector, the accused had a hand. I do not for a moment believe the statement of the Sub-Inspector. It is palpably gross exaggeration, even if Baba Prasad were a man of bad character. But granting that Babu Prasad is an habitual thief and receiver of stolen property and has been so for several years to the knowledge of all these witnesses, and granting that Bhagwan Das's statement is true, it is impossible to understand why the petition of the 6th February 1909 contains no mention of the present accused. As a matter of fact, there is nothing to show that Bhagwan Das was ever an habitual thief or receiver of stolen property. The petition was probably the outcome of ill-feeling over some local matter; apparently no action was taken on it. It shows how persons of Sheo Charan Das's position and character are ready to make a false statement of this kind and it is a most significant fact that the petition mentioned above contains no trace of the present accused's name. In a case like the present one, where a man has been for thirty-two years of his life apparently a respectable and honest member of society and who is said to have taken to evil courses without any ostensible reason it would, I think, be dangerous to rely on the statement of a man of this description, Sheo Charan's credibility is also indicated by other portions of his evidence. He states that Debi Dayal accused's father is a wealthy man and that he owns a small share in 'one' village. He does not know

that Debi Dayal is a money-lender. He knows of no ill-feeling between Abdul Khan and Debi Dayal. Now, this witness is a joint zemindar with Abdulla Khan in several villages. He must know that Debi Dayal is a money-lender. The ill-feeling between Abdulla Khan and the accused must be a matter of notoriety in a small town like Ghaziabad, especially since the contest over membership of the Municipality. The witness is clearly lying. The remarks I have made in respect of this witness, who is one of this most respectable of the prosecution witnesses, apply with equal force to Zaharia Mal, Madda Mal, Gokal Chand, Sambhu Ram Chander, Mannu Lal, Bhagwan Das, Girdhari and Chajju Mal. Of the other Ghaziabad witnesses, Akhtar Buland Khan, a petition-writer, is clearly shown by his cross-examination to be inimical to the accused. The majority of these Ghaziabad witnesses are connected with each other by relationship or business. One of the prosecution witnesses No. 16 curiously enough states that the accused is a man of good character. The witness Siraj Ahmad Khan was examined at a late stage of the case, He also states that the accused has no ostensible means of livelihood, but he is clearly a man who is moved by bitter ill-feeling against the accused. In a matter of reputation it would be a gross absurdity to place any reliance on the evidence of a witness like this. Abdulla Khan is his uncle. He holds a mukhtarnama on behalf of his father. He has been cross-examined. He states that he does not know whether or not the accused had his father's property sold up.... He even says that he does not know that the accused contested his uncle's seat on the Municipal Board. He states that the accused threatened him after he had given evidence against Budhu. He adds that he filed no complaint in respect thereto as he did not know that the accused could be bound over. He pretends to be terrified by the accused. It is curious conduct for a Pathan. The remaining witnesses come from the neighbouring villages of Ghaziabad. An examination of their evidence will show that a large number of them, in fact the majority are co-sharers in villages in which Abdulla Khan and Sheo Charan Das, et cetera, are also co-sharers. Mohan Singh is a Thela-wala, Bansi and Bhawani are persons who ply carts for hire, very few of these witnesses are persons of any social standing. Most of them state that they have known the accused only for a few years though he has lived all his life in their neighbourhood. Many of them admit that they obtained their information as to the accused's character from Bhagwan Das, Sheo Charan Das and Madda Mai. The

evidence of Salig and Hardeo Singh is purely hearsay and is of no value in regard to the accused's character. They nearly all mention different persons as being associates of the accused. They say these men are bad characters. There is no evidence to show this nor are there proofs on the record of any conviction against them. I take the evidence of Bhagwan Singh as a typical example of this class of witness. He says: I live in Karera about two miles off Ghaziabad. I am a zemindar paying revenue Rs. 100 on my own account and Rs. 1,025 as lambardar. I have known the accused for three years. I have often seen him with Wali Dad of Mula who is a bad character. His gang was connected with the dacoity in Razapore. Hence, I consider him a badmash. He admits that Abdulla Khan and Ramrichpal are co-sharers in his village. Now, the Razapore dacoity or robbery was not committed in his presence so that his statement merely amounts to this that he heard certain rumours and, therefore, considered the accused a badmash. As evidence establishing reputation, this is valueless. It establishes no reputation whatsoever. In this second batch of witnesses I also note that one Chote speaks for the accused and states that he is a good man. There remains the evidence of the Police Officers and the Tahsildar. The Police Officers are, of course, not impartial witnesses considering the relations that have clearly been existing between them and the accused. Their evidence, moreover, on the face of it contains gross exaggerations and misstatements. The Police Officers state that the accused has no means of subsistence which is palpably false. I notice that the Magistrate allowed the first Police Officer to put in a list of crimes in which he himself and another Officer suspected the accused. This class of evidence is quite inadmissible in such a case as this to establish the matter of a man's reputation. No doubt, a Police Officer is a competent witness to speak to the reputation of persons who dwell within his circle. No doubt, in the course of inquiries his suspicion may have been directed against certain persons and he may by reason thereof have received an impression as to their character and their reputations. He, no doubt, is entitled, when he has sworn to the reputation of a man, to give the basis of his knowledge and to point out how he has come to consider the accused a man of bad character. But it is quite a different thing for the Magistrate to take into evidence a list of cases in which other Police Officers, who have not been called as witnesses, have remarked in their diaries that suspicion had fixed itself

on a certain person. If the local Police feel at all disposed to do harm to any resident of their circle it is a very simple matter for them to enter in their diaries from time to time that suspicion has fallen on certain persons and then finally to have their names registered in the Police register of bad characters and ultimately to take steps against them. I do not say that this is either always or frequently done. But it is so easily done that this class of evidence is of very little value and, unless the actual Police Officer is called who made the inquiry in his diary, a list of such cases is totally inadmissible in evidence. It is also very easy for a Police Officer to say that suspicion fell on the accused in certain cases. I note here that in the case of one Nanak in which suspicion was said to have fallen on the present accused, Nanak has himself been called as a witness for the defence and has given the lie to this statement. There is another case in which one Kedaru was convicted in 1909, certain witnesses have actually stated that the accused joined with Kedaru in committing the offence. The untruth and the exaggeration of this statement is evident from the fact that the Police Officer cannot even say why he did not send up the accused for trial. Referring to the evidence of Agha Sher Ali Khan, Sub-Inspector, I see that he makes reference to the capture of a gang of men who were carrying arms in a grove in Ghaziabad. The men in that case were sent up for trial, were convicted under the Arms Act and were also bound over to be of good behaviour. I see that in the course of the case it was alleged that the accused Babu Prasad had sent for the gang to commit crime. The untruth of this is palpable. For if there had been any evidence whatsoever on the point, the Police most assuredly would have prosecuted Babu Prasad along with the others. This witness showed great bias against the accused and was thus led to make incredible statements. He alleged that crime had been very rife in 1908 and 1909 in the town, and that all investigations showed that the accused was concerned in them. He even states that the accused was concerned with the burglaries in the houses of those persons who live next door to him. It is hardly possible to believe this. He admits that on no occasion has he ever searched the accused's house. The Magistrate allowed him to give hearsay evidence to the effect that he had heard that Mohan and Ghasi, goldsmiths melted down property for the accused. The Tahsildar Syed Farzand Ali Khan has limited himself to stating that Babu Prasad did not bear a good character but that his reputation was 'very bad indeed.'

He added that he had no personal opinion about the accused. He admitted that his informants on the question of Babu Pershad's character were Bhagwan Das and Siraj Ahmed whom I have already discussed. He admitted that when the accused made a complaint to him about the Police he made no inquiry about the matter. It is surprising to me that a man of this witness's position, holding the post of a Magistrate, should have lent himself to a case like the present one. The fact that Siraj Ahmed and the accused were on bad terms must have come to his knowledge. Likewise, the character of the other Ghaziabad witnesses. According to himself, he merely swallowed what those persons told him and his statement is valueless as evidence. The Magistrate took into evidence the record of the case Emperor v. Budhu, under Section 110 Criminal Procedure Code, which was decided on the 23rd September 1909. Now, the record of this case was inadmissible except to prove the fact that Budhu, an alleged associate of the applicant, had been bound over. But the Magistrate in his judgment says, 'from the evidence of witnesses in the above case and from the Magistrate's judgment it is fully established that the said Budhu was an associate of the accused whom the Magistrate styles a notorious badmash according to the witness.' To treat this record as evidence in this matter was most unfair to the present accused who was no party to the former trial of Budhu and had no opportunity of defending himself. Practically, the Magistrate has taken into evidence against the accused the statement of witnesses who were examined in a case to which the accused was no party and whom he had no opportunity of cross-examining; next the Magistrate took into evidence the record of the case, Emperor v. Dalip, under Section 109 of the Code of Criminal Procedure decided on the 23rd September 1909. This was equally inadmissible in evidence. No evidence whatsoever (except hearsay) has been produced to show that the present accused has any concern with the accused in that case. The Magistrate has clearly taken into consideration the evidence of the witnesses in that case, for he refers to it in his judgment. He has also taken into evidence the case against the same persons under the Arms Act and also the record of the case against the present accused under Section 174, Indian Penal Code, which I have already mentioned. He has also taken into consideration the record of the civil suit brought by Debi Dayal against other persons for recovery of money on the basis of a mortgage-deed. Babu Prasad was

no party to that suit, though his father was. It is said that the Munsif came to the conclusion that Babu Prasad was guilty of fraud. How this evidence is admissible to prove that the accused is a habitual robber, receiver of stolen property or harbourer of thieves I fail to see. The Magistrate has taken the Munsif's judgment as evidence, proving that the accused was an extravagant man from whom his father had separated. The Munsif may on the evidence before him have come to that conclusion for the purpose of that case. But as Babu Prasad was no party to that suit it is clear that that judgment was not admissible in evidence to prove that the accused is an habitual thief, robber or receiver of stolen property.

3. In the view I have taken of the evidence for the prosecution, it is unnecessary to discuss the evidence for the defence at any length: I wish to lay no stress on it, because, in my opinion, the prosecution evidence is tainted and is unworthy of acceptance. But I cannot conclude my judgment without pointing out how unjust the Magistrate has been in the manner in which he weighed this evidence. He divided the witnesses into three groups, (a) Brahmins, of whom there were sixty-four, (b) Railway servants and (c) forty-seven men of different castes. The Brahmins he rejected en bloc because they were Brahmins. The Railway servants he rejected en bloc because the local Police in the year 1910 had successfully prosecuted a European Railway official named Mr. Roots for illicit importation of cocaine. The balance of forty-seven he rejected because most of them said that they had no personal knowledge of the accused's character, the rest he said were either partizans of the accused or were threatened by him. The Magistrate did not deign to point out the grounds on which he held that some of the witnesses were his partizans. He selected one witness Niadar as an example of those cowed by the accused. Mula Mal, a brother of Niadar, at the trial of Budhu, stated that Babu Prasad was Budhu's associate and a bad character. Niadar has in the present case come forward to state that the accused is a man of good character. The Magistrate concludes that Niadar had done this in order to avert the wrath which had fallen on the head of his brother, because Babu Prasad sued him for defamation. There is no presumption that Mula Mal stated the truth any more than that Niadar has stated the truth, yet for no real reason the Magistrate concludes that the latter is a liar. The Magistrate has also generally rejected the evidence for the defence because the witnesses state that they do not know other local bad

characters. He also say a that they have not had a sufficient opportunity of watching the movements of the accused. The majority of them are neighbours and have had just as much opportunity as the witnesses for the prosecution. I would point out that the Magistrate had nowhere in his judgment even mentioned the fact that the present accused had complained against the Police to the Tahsildar. In his judgment he even goes so far as to cast a slur on the character of the accused's father, though the witnesses for the prosecution themselves have almost unanimously stated that his character is above suspicion. He says in his judgment.--'The prosecution witnesses put the accused's father's present worth at about a lakh. How that was acquired I must not discuss here.' This inuendo is unjust and unfair. A document was produced on behalf of the defence to show that the father of the accused had made adverse remarks against the Ghaziabad Police in an application to the Collector of Aligarh for leave. In respect to this, the Magistrate remarks that it is not shown that the Ghaziabad Police had any information of it at all. Yet, curiously enough, he omits all mention of the other petition presented to the Tahsildar which I have already noted above, Towards the end of the judgment the Magistrate observes,--'Moreover, it would appear from the record that the present prosecution was proposed as far back as February 1910, but it was not sanctioned until the authorities had fully satisfied themselves on the point.' This was not a relevant fact in the first place, and in the second place there is no evidence to establish it, any more than there is to establish the explanation given by the accused himself, of this very delay in launching the prosecution against him. His explanation is that in February 1910 the then District Magistrate, Mr. Poster, and the Superintendent of Police after inquiry into the matter decided to take no proceedings against him and that the present proceeding was only taken on the arrival of a new District Magistrate who was ignorant of the true facts. It is unnecessary to say any more. The evidence against the accused is, in my opinion, open to very grave suspicion and the case is not one in which a Court would be justified in calling on the applicant to give security for his good behaviour. The appeal was one which, in my opinion, was worthy of much more consideration at the hand of the lower Appellate Court than it actually received. I admit the application, the order of the Magistrate is set aside in toto.

