

Bhona Vs. Emperor

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Court : Kolkata

Decided On : Feb-07-1911

Reported in : (1911)ILR38Cal408

Judge : Holmwood; and Sharfuddin, JJ.

Appellant : Bhona

Respondent : Emperor

Judgement :

Holmwood and Sharfuddin, JJ.

1. This is a jail appeal in a gang case, under Section 401 of the Indian Penal Code which before admission was sent to us by one of the Benches constituted to try undefended appeals in Chambers, for argument on the point whether, having regard to the decision in the case of Mankura Pasi v. Queen Empress (1899) I.L.R. 27 Cal. 139, evidence of previous convictions for offences against property and for bad livelihood are admissible in gang cases. We have heard the learned Deputy Legal Remembrancer for the Crown and have considered the reported and unreported cases. It was held by Prinsep and Hill JJ., in the case above cited that the character of the accused was not a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft, and that, therefore, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence. The

judgment is a doubtful one inasmuch as the case of *Empress v. Naba Kumar Patnaik* (1897) 1 C.W.N. 146, where it was held that previous convictions for dacoity are relevant on a charge under Section 400 of the Indian Penal Code, provided they are prior to the inception of the charge of belonging to a gang, is cited with approval.

2. Further, the decision went on the ultimate ground that even if convictions for theft and bad livelihood were admissible they were not sufficient in themselves for a conviction. 'Such evidence,' the Judges observe, rather curiously we venture to suggest, considering the statement set out in the judgment of what the evidence showed, 'had in the case before them, formed the main, if not the only, ground on which the appellants had been convicted.'

3. But 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, and it would seem that of such evidence convictions for bad livelihood would be more cogent than those for isolated thefts.

4. Such evidence must of course be weighed. A single instance of theft, for instance, would count for little or nothing. There must be at least two or more cases against the same individual to show habit, but that the evidence of such convictions is inadmissible is clearly against the weight of authority in this Court. We have already cited the case of *Empress v. Naba Kumar Patnaik* (1897) 1 C.W.N. 146. We may proceed to cite four unreported cases that have been laid before us affirming the admissibility of such evidence. The first is a judgment of the same two learned Judges, Prinsep and Hill JJ., in *Meher Ali Sarhar v. Emperor* Unreported Cr. App. 742 of 1900, decided 20th Mar. 1901). There the Judges say : 'It is also shown that several of the prisoners have been convicted of dacoity or other offences against property, and that some have been required to give security for good behaviour. These convictions and orders are of course evidence only against the particular persons concerned.'

5. Clearly then the decision in *Mankura Past v. Queen-Empress* (1899) I.L.R. 27 Cal. 139, cannot have been intended by the learned Judges to exclude such evidence in gang cases, but only in the case then before them, where they appear to have been under the impression that there was no other evidence. Then we have the case of *Madhu Dhari v. Emperor* Unreported Cr. App. 582 of 1905 dated 20th July 1905, under Section 401 decided by Rampini and Mookerjee JJ. where it is said 'the accused are clearly all habitual thieves. They have been repeatedly convicted of theft or have been called on to give security for their good behaviour, and many of them have been tried jointly in these cases.'

6. In two appeals from the same District, *Khania Karwal v. Emperor* Unreported Cr. App. 78 of 1909 decided on 28 Jan. 1909, by Holmwood and Fletcher JJ. and *Gobardhan v. Emperor* Unreported Cr. App. 958 of 1910 decided on 21st Nov. 1910, by Holmwood and Fletcher JJ., the learned Sessions Judge, in charging the jury, cited these two cases at length and told the jury that on this authority the previous convictions were admissible. One of us was a party to each of the orders passed on these appeals, which were summarily dismissed after consideration of the point of law raised, the first by Holmwood and Ryves JJ., the second by Holmwood and Fletcher JJ.

7. We do not, therefore, think it necessary to admit these appeals on the point of law referred to us, as the admissibility of these convictions seems to be well established and the rules as to their weight and value have been clearly laid down. On the merits the findings of the Jury appear to be based on overwhelming evidence apart from the previous convictions. The appeals are, therefore, summarily dismissed.