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Court : Kolkata

Decided On : Nov-20-1908

Reported in : 4Ind.Cas.10

Judge : Holmwood and ;Ryves, JJ.

Appellant : Parasulla and ors.

Respondent : Emperor

Judgement :

1. These were two rules issued, one upon the Sessions Judge of Khulna and one upon the District Magistrate of Khulna, to show cause why the judgment of the District Magistrate in appeal and the order of the Sessions Judge on reference should not be set aside and the appeal and, reference re-heard on the ground that the complicity of each of the accused individually has not been separately considered and also on the ground that the evidence for the defence has not been similarly considered.

2. Taking the reference order of the Sessions Judge first, as it is the more important, we find that the Judge has directed his attention to the joint conduct of the father and the three sons, who, he holds, were habitually associated together for the purpose of committing theft and burglaries and in the habit of wreaking vengeance by looting the paddy of their enemies and also hiring themselves to zemindars and others for the purpose of coercing tenants and intimidating people.

There are other allegations such as outraging women which have been disbelieved. He finds that there is ample evidence in the case to bind down the accused under Clause (a) of Section 110. He says that evidence was placed before him at length and was commented upon very fully. The Deputy Magistrate also dealt with it very carefully and has shown from the past history of these men how their employment as lathials now by one man and then by another has resulted in one party or another backing them up, and that the evidence fully justifies the binding down of the 4 men under cl.(a) of Section 110. He further says that a careful consideration of the whole evidence leads him to accept that for the prosecution which must be held to mean that he accepted it in preference to that of the defence. He also had present to his mind the fact that various parties would be seeking to get them into trouble which was strongly argued before him. The ground upon which he convicts these 4 men is that they associated together and as he holds that 4 of them were associated in the acts which make up the charge under Clause (a) it does not appear to us that any minute enquiry into the complicity of each of the accused individually was necessary. Such an enquiry had been made in the first Court and the learned Judge says that he has considered the enquiry there made and that he agreed with the findings of the lower Court. The evidence against them all being the same and they being father and three sons it appears to be a clear case of association and one in which the evidence could rightly be dealt with together. As regards the defence we find that the learned Judge has given full consideration to that evidence. We therefore, see no reason to interfere with the order of reference.

3. It is not necessary for us to say anything about the legal points raised in regard to Clause (f). The ruling in *Akhoy Kumar Chatterjee v. The Queen-Empress* 5 C.W.N. 249 has been modified by the ruling laid down in *Wahed Ali Khan v. The Emperor* 11 C.W.N. 789; 6 Cr. L.J. 1 and it is clear that where evidence is admissible and has been admitted to show that a man is a habitual offender under other clauses of Section 110 and is also being tried under Clause (f) that it is a mere inference of fact from the nature of the offences whether he is a dangerous and desperate character or not. This is thrown out in the ruling which we have just referred to, in the case of *Wahed Ali Khan v. The Emperor* 11 C.W.N. 789; 6 Cr. L.J. 1 where it was held that under Clause (f) evidence of general repute is not

admissible, but the Court further held that evidence of acts of extortion committed by a person, unless those acts were accompanied by acts causing danger to the person and properties of other persons, is not sufficient to bring the case within Clause (f) of Section 110; that is to say, if the habitual crime of extortion or whatever else causes danger to the persons and properties of other persons, though there may be evidence of general repute, it would be sufficient to bring it within Clause (f) by mere inference of fact. We, therefore, discharge the rule as regards the order of reference.

4. That being so, we have now to consider the judgment in appeal of the learned District Magistrate. The judgment is not very full but the same remarks apply to it as to the judgment of learned Sessions Judges so far as the evidence for the prosecution is concerned. He says that the question is whether the present appellants have been associated with others in committing thefts burglaries, dacoities and habitual cutting paddy by force. He considered the long list of witnesses before the lower Court and found that not merely there was strong evidence of association but some evidence that they proceeded independently of any connection with the other accused. He considers that it is proved beyond any reasonable doubt that the appellants are members of a gang and that it is necessary for the public safety that they should give security. It is to be regretted that he does not specifically consider the evidence for the defence and on that ground we might have been inclined to remand the case to him for further consideration, had it not been shown to us that the whole of the evidence for the defence was read on behalf of the accused and that evidence had had the consideration of the learned Sessions Judge and it is clear from the judgment of the first Court that no useful purpose could be served by remanding the case.

5. Another point has been urged that these men had in previous years been arraigned on similar charges and that the fact that those charges were held not to be proved and that they were brought through enmity of the Ghose party should have great weight with the appellate Court in deciding the appeal. We do not think that as a matter of law the previous history of the accused should have any weight unless there was evidence to show that the very witnesses who are now accusing these men were the persons who had accused them before and that they still have

grounds for enmity. It so happens that a large number of cases have occurred in the last two years and they can have nothing to do with the previous proceeding, the decisions in which may or may not have been justified. On the whole we think that this rule should be discharged and we direct accordingly.

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