

REVISIONAL CRIMINAL.

Before Mr. Justice Wazir Hasan, Chief Judge and Mr. Justice A. G. P. Pullan.

1930
March, 24.

JAI SINGH AND OTHERS (APPLICANTS) *v.* KING-EMPEROR
(COMPLAINANT-OPPOSITE PARTY).*

Criminal Procedure Code (Act V of 1898), section 110—Proceedings started under section 110 because no evidence could be found against accused on a charge of substantive offence—Evidence admissible in a charge under section 110 of the Criminal Procedure Code—General reputation under section 110, meaning of.

Courts should always look with grave suspicion on cases in which proceedings are started against an accused because the police have failed to procure evidence against him on a charge of substantive offence. The *badmashi* sections were not intended for furnishing the police with the means of detaining persons against whom a definite charge has been made but has broken down. At the same time evidence going to show that a substantive offence had been committed or which might form the basis of a charge of a substantive offence, is not necessarily to be excluded in proceedings under section 110. Under certain circumstances even an order of acquittal must not be held to be conclusive for in a case under section 110 the court is not considering whether the accused person has or has not committed a specific offence but whether his general reputation is such that security should be taken for his good behaviour.

General reputation means the opinion of those members of the public who are in a position to know the man's character. Where a large number of persons come forward and swear that they believe a man to be of a desperate and dangerous character and there is little or no counter evidence of good character such evidence will possibly justify a court in taking action even if the grounds of belief are indefinite. But when an equal or greater number of persons in the same class or classes depose that the same man is of good character the court must sift closely the grounds on which the prosecution witnesses have based their belief. If it is found that their

*Criminal Revision No. 21 of 1930, against the order of S. Asghar Hasan, Sessions Judge of Hardoi, dated the 18th of November, 1929, upholding the order of Sub-Divisional Magistrate of Shahabad, dated the 3rd of April, 1929.

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belief is based on their suspicion that the accused has committed a crime and certain acts of oppression and the court holds that the suspicion in the former case is unjustified and the so-called acts of oppression are merely "youthful frolics" the court will be reluctant to demand security; and the position of the accused is much strengthened when a large body of public opinion finds him to be a good landlord and a peaceful citizen. *Bhagwat Prasad v. King-Emperor* (1), and *King-Emperor v. Budhan* (2), followed.

Messrs. *John Jackson, Ali Muhammad and Avadh Behari Varma*, for the applicants.

The Assistant Government Advocate (Mr. *H. K. Ghose*), for the Crown.

HASAN, C. J. and PULLAN, J. :—This is an application in revision of an order of the learned Sessions Judge of Hardoi requiring the applicants to give security for their good behaviour or in default to undergo rigorous imprisonment for a period of three years under section cedure. The applicants are Jai Singh, a zamindar, and 123 read with section 110 of the Code of Criminal Prohis three servants Mata Din, Anandi Din and Murli. The charge against them is that they are dangerous characters and that their being at large without security is hazardous to the community. It is not alleged that Jai Singh gave any signs that he was a dangerous character before the year 1926 and it is admitted by the Sub-Inspector who took proceedings against him that the proceedings were only taken because the Sub-Inspector could not find enough evidence to bring a charge of murder against Jai Singh and his servants. The murder in question was committed on the 21st of May, 1928. The victims were Musammat Deo Kuari, her daughter, two maid servants and their two children. These three women and three children were cut to pieces with a sword and their dead bodies partially burnt in their house in the middle of a large village of Raigon in the middle of the night. At that time of the year the whole village community must have been asleep outside their houses in

(1) (1921) 24 O.C., 317.

(2) (1925) I.L.R., 47 All., 783.

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or in the neighbourhood of the village and we cannot believe that the murder and the fire which consumed two whole kothris were unnoticed by the villagers. Yet not a shred of evidence was obtained by the police to lead directly to the perpetrator or perpetrators of the crime. The fact that such an atrocity could be committed under such circumstances and that no evidence should be forthcoming which could lead to the conviction of any of the persons who took part therein is a black spot on the administration of criminal justice in Hardoi district. We have however only to consider whether the proceedings instituted against Jai Singh and his servants under section 110 of the Code of Criminal Procedure are justified or whether the order passed by the Sessions Judge is a proper order. The learned Judge has stated the law dealing with the admissibility of evidence as to particular crimes in cases of bad livelihood. In our opinion the law was correctly stated by the Judicial Commissioner of Oudh in *Bhagwat Prasad v. King Emperor* (1) in the following passage :—

“This court, and indeed every High Court, always looks with grave suspicion on cases in which proceedings are started against an accused because the police have failed to procure evidence against him on a charge of substantive offence. The *badmashi* sections were not intended for furnishing the police with the means of detaining persons against whom a definite charge has been made but has broken down.”

But we also accept what is stated by a Bench of the Allahabad High Court in *King-Emperor v. Budhan* (2) “that it is impossible to accept the proposition that the evidence going to show that a substantive offence had been committed or which might form the basis of a charge of a substantive offence, is necessarily to be excluded in

(1) (1921) 24 O.C., 317.

(2) (1925) I.L.R., 47 All., 788.

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proceedings under section 110 and cannot form the basis of an order under section 112 of the Code of Criminal Procedure." Under certain circumstances even an order of acquittal must not be held to be conclusive and the reason for this view is that in a case under section 110 the court is not considering whether the accused person has or has not committed a specific offence but whether his general reputation is such that security should be taken for his good behaviour. When evidence is taken as to reputation of bad behaviour the court cannot and should not exclude the reasons which induced the members of the community to form a bad opinion of the accused person, and if their opinion is based wholly or partly on the belief that the accused person committed a crime which has not been brought home to him the court cannot rule out as inadmissible all evidence on which the belief of the witnesses is based. We are not therefore prepared to dissent from the view which he expresses "that instances of specific crimes are admissible in evidence in these proceedings although they are not supported by evidence of such amount and value as would secure a conviction for the substantive offence." This is not a case in which Jai Singh and his supporters had been put on their trial and either acquitted or discharged. There was not sufficient evidence to put them on their trial but evidence has now been given to the effect that Jai Singh was in the village on the night of the crime, that the lady Musammat Deo Kuari was his widowed sister-in-law, that she was in receipt of an allowance paid by him, and that he was under an obligation to carry out the marriage of her daughter. On these facts the theory is built up that he had a motive for the murder and therefore may have been concerned in it, and the Judge, not altogether properly in our opinion, drew deductions from the conduct of Jai Singh in the morning after the murder pointing out that he left undone certain things which he might have been expected to do had he been innocent. In our opinion it is unwise to draw conclusions from the con-

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duct of a person in face of a terrible calamity such as this. Whether innocent or guilty he might very well fail to act with that prudence which might commend itself to an educated person considering the circumstances afterwards at leisure. It is true that the suggested motive is a possible motive and had there been evidence sufficient to put Jai Singh on his trial for murder it might have been fairly alleged that he was actuated by that motive but where there is no evidence that he committed the murder there is no evidence that he acted on the motive and as a matter of fact there is nothing to show that he wished to discontinue the allowance to his sister-in-law or to repudiate his liability to pay for her daughter's marriage. The evidence therefore that Jai Singh and his servants were guilty of this murder is not more than a vague suspicion and as such it must take its place along with the other evidence as to the general repute of the applicants before us. The suggestion is that Jai Singh's character took a change for the worse in the year 1926 and that he became oppressive to his tenants and so desperate and dangerous that he should not be allowed at liberty without security. Specific instances have been adduced to show his oppressive nature and an attempt has also been made to produce witnesses of general reputation. The year 1926 was chosen as the starting point because from the year 1915 to 1925 Jai Singh had the strongest support of two officers of police, Mr. Young and Bai Bahadur Man Singh, both officers of the greatest experience who held a high opinion of Jai Singh during their tenure of the office of Superintendent of Police in the Hardoi district. We have considered very carefully the specific instances of so-called "desperate and dangerous" behaviour. The Magistrate remarked of these incidents that "they might be connived at or ignored as petty frolics and privileges of a zamindar of his position and influence" and the Judge has accepted this view. It appears that like many other zamindars Jai Singh had some disputes with his tenants and that on occasions he acted with some severity.

But many of the examples have been excluded by the learned Judge and of those that he retained the only one which appears to us of any importance is the incident of one Inayet Khan who states that he had purchased a jungle and a grove and offered the wood for sale. Because he demanded Rs. 4 per *chatta* and Jai Singh only offered Rs. 14. Inayet says that he was taken to Jai Singh by Murli and Mata Din and kicked and assaulted and his cartload of wood emptied at the accused's *bhatta*. This incident is corroborated by a witness described as unreliable, but we must accept it as proved and it is certainly an instance of violence. On the other hand no report was made of it and we cannot resist the conclusion that the incident was perhaps exaggerated and if it be taken as an isolated act of a young zamindar it would certainly not be a sufficient cause for taking action against him under section 110 of the Code of Criminal Procedure. There are also some instances in which tenants have complained against Jai Singh. One of them Mewa Ram complained that his field had been trampled by his elephant but Mewa Ram was a man who attempted to cultivate the fields as a sub-tenant against the wish of the zamindar and he was subsequently compensated by another field. Another tenant named Chheda made a report of forcible dispossession of his field but this man appears to have attempted to assert a claim of tenancy two and a half months after Jai Singh had reported the land to be abandoned under section 21 of the Oudh Rent Act. In our opinion such incidents are of common occurrence and there are few zamindars who have not at one time or another had similar disputes with their tenants and there is no special feature of guilt or oppression in these instances as they have been described which would lead us to connect the conduct of Jai Singh in his dealings with the tenants with the conduct of the person or persons who committed the horrible murder of three women and three children on the 21st of May, 1928. Indeed we have on the one hand suspicion of an atrocious

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crime and on the other hand evidence pointing to a young zamindar who is inclined to use drastic measures in dealing with tenants. The two pictures do not coincide and we cannot disregard the fact that Jai Singh was able to produce in his defence no less than 74 tenants of whom 29 come from the village of Raigaon, and his witnesses in all represent 54 villages in a radius of twelve miles. All these persons describe him as a good landlord and deny that he is a man of violent or desperate character. In fact the only tenants who give evidence against him are those who speak to the specific incidents to which we have already referred.

The learned Judge deals very briefly with the evidence of general bad character and we have been referred to the evidence of one Qazim Husain who is clearly influenced by malice and who stated, in our opinion quite falsely, that Jai Singh had at the time when he agreed to pay the allowance to his sister-in-law threatened to lock her up in a kothri and murder her. This is not the only instance of evidence of an apparently vindictive nature brought forward in this case. The prosecution also relied upon the fact that Jai Singh's servants had been suspected of another murder but in that case not only were they acquitted but the court held that it was a false case got up by one of the witnesses for the prosecution in the present case.

We would also point out that the general evidence as to character in this case hardly goes beyond the statement of the specific instances to which we have already referred. General reputation means the opinion of those members of the public who are in a position to know the man's character. Where a large number of persons come forward and swear that they believe a man to be of a desperate and dangerous character and there is little or no counter evidence of good character such evidence will possibly justify a court in taking action even if the grounds of belief are indefinite. But when an equal or

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greater number of persons in the same class or classes depose that the same man is of good character the court must sift closely the grounds on which the prosecution witnesses have based their belief. If it is found that their belief is based on their suspicion that the accused has committed a crime and certain acts of oppression and the court holds that the suspicion in the former case is unjustified and the so-called acts of oppression are merely "youthful frolics" the Court will be reluctant to demand security; and the position of the accused is much strengthened when (as in the present case), a large body of public opinion finds him to be a good landlord and a peaceful citizen. In our opinion the evidence in the present case comes to this. A number of persons believe that Jai Singh and his servants are responsible for the murder of Musammat Deo Kuari, her daughter and her servants and they also consider that Jai Singh is an oppressive zamindar. On the other hand a great number of persons do not believe that Jai Singh and his servants were concerned in the murder and they consider that he is not an oppressive zamindar

Among these witnesses is included a vast majority of his own tenants. In our opinion Jai Singh is not shown to be unusually oppressive as a zamindar and there is insufficient reason for suspecting him of complicity in the murder. Thus there is no foundation for finding that he is so desperate and dangerous as to render his being at large without security hazardous to the community. Admittedly the case of the servants depends on that of the master. It is not suggested that independently of Jai Singh they are in any way dangerous to the community. We, therefore, allow this application and set aside the order requiring security.

Application allowed.