

REVISIONAL CRIMINAL

Before Mr. Justice Bisheshwar Nath Srivastava and
Mr. Justice E. M. Nanavutty

1936
January, 23

KING-EMPEROR (APPLICANT) v. BACHCHU (COMPLAINANT-
OPPOSITE-PARTY)*

Criminal Procedure Code (Act V of 1898), sections 110, 117(4), 118, 310 and 311—Reports of suspicions to police—Evidence of bad repute and association with bad characters—Order binding over, if proper—Sections 110 and 117(4), Cr. P. C. proceedings under—Strict proof of previous convictions, if necessary—Evidence of bad repute, admissibility of.

Where reports of suspicions of several thefts against a person are made at a police station long before proceedings are taken against him under section 110, Cr. P. C. and even before, the police opens his history sheet, and evidence in respect of such suspicions is found to be reasonable and reliable, and there is further evidence by witnesses of good position and his neighbourhood about his general bad repute and his association with thieves and ex-convicts, an order passed under section 118 binding over such person to be of good behaviour and requiring him to execute a surety bond is justified. *King-Emperor v. Gajadhar* (1), followed.

In proceedings under section 110, Cr. P. C., it is not necessary for the prosecution to prove a previous conviction of any person in the same formal manner as that required by sections 310 and 311 in respect of offences tried in the Sessions Court.

In Proceedings under section 110, Cr. P. C., evidence of general bad repute of an accused is admissible under section 117(4), and cannot be rejected on the ground that there is no solid foundation for the opinion held by prosecution witnesses.

The Government Advocate (Mr. H. S. Gupta), for the Crown.

Mr. Nasir Ullah Beg, for the accused.

SRIVASTAVA and NANAVUTTY, JJ.:—This is an application for revision filed on behalf of the Local Government against an appellate order of the learned Sessions Judge of Hardoi setting aside the order of the learned

*Criminal Revision No. 135 of 1935, against the order of Pandit Tika Ram Misra, Sessions Judge of Hardoi, dated the 9th of September, 1935.

(1) (1932) 9 O.W.N., 1012.

Sub-Divisional Magistrate of Hardoi, binding over the accused Bachchu Brahman under section 110 of the Code of Criminal Procedure by furnishing a surety in Rs.100 and a personal bond of Rs 100 to be of good behaviour for a period of one year.

Upon a report made by the Station Officer of thana Beniganj in the district of Hardoi, Bachchu Brahman, son of Badri Brahman of village Basen in the district of Hardoi, was called upon by the Sub-Divisional Magistrate of Hardoi to show cause why he should not be bound over to be of good behaviour for a period of one year. The learned Magistrate, after recording the evidence of the prosecution and that produced by Bachchu, passed an order under section 118 of the Code of Civil Procedure binding over Bachchu to be of good behaviour for a period of one year. Bachchu filed an appeal in the Court of the Sessions Judge of Hardoi and his appeal was allowed, and the order of the Magistrate passed under section 118 of the Code of Criminal Procedure was set aside and Bachchu was discharged. Against this order of the learned Sessions Judge, the learned Government Advocate, on behalf of the Local Government, has filed this application for revision.

We have heard the learned Government Advocate as well as the learned counsel on behalf of the accused and examined the evidence on the record. In our opinion, the evidence adduced on behalf of the prosecution, if carefully examined and properly appreciated, was quite sufficient to justify the order passed by the learned Sub-Divisional Magistrate.

Sixteen witnesses have been examined on behalf of the prosecution. P. W. 1, Sub-Inspector, Wilayat Husain of police station Beniganj has deposed that he had opened a history sheet in respect of the accused Bachchu under the orders of his superior officer over a year ago, and that the general reputation of the accused in village Basen and in its neighbourhood is that he is by habit a thief and a burglar and that he associates with Mangli Dhanuk, Sadhoa Pasi and Soha Pasi and other bad

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characters, who are thieves and ex-convicts. P. W. 5, Sub-Inspector Raghunath Singh, second officer of police station Beniganj, has deposed that he investigated into the cases of thefts committed at the houses of Chhedi and Ram Nath and that in the course of his investigation, he learnt that Bachchu was suspected in both cases and that he learnt from Chheda Kumhar that the accused Bachchu Brahman had been instrumental in the commission of the theft committed at the house of Chhedi, and that these facts have been noted in the police diary prepared by him at the time when he investigated this crime. P. W. 2 Baldeo, who lives in Garbi Har which is about a mile from Basen, has deposed that a burglary had been committed at his house about a year ago and that he suspected the accused Bachchu and others of having committed that offence. He made the report (exhibit 1) on the 13th of May, 1934, in which he stated that his suspicion had fallen upon Bachchu accused and others. The evidence of this witness has not been shaken in cross-examination. All that was asked of him in cross-examination was whether Bachchu was prosecuted in respect of that crime. The mere fact that Bachchu was not prosecuted because there was no direct evidence connecting him with the commission of the crime would not go to prove that the suspicions of Baldeo that Bachchu had committed the crime, were not well founded. P. W. 3, Chhedi, who lives in Basen, has deposed that a theft was committed in his house on the 14th of February, 1935, and property was stolen from his house and that he suspected Bachchu of having committed the offence. He sent a written report in Nagri to police station Beniganj through Narain chaukidar (exhibit 2) in which he set forth his suspicions against Bachchu Brahman and Lallu Brahman. The only thing brought out against this witness in cross-examination is that Mathura the uncle of Bachchu had given evidence against Bhima the brother of this witness some 14 years ago. That fact would not in our opinion go to

show that this witness was now telling a lie. P. W. 4, Ram Nath, who lives in Basen, has deposed that some 4 months ago a burglary was committed in his house and that he suspected Bachchu and Lallu of having committed that offence. He sent a written report to police station Beniganj through a chaukidar in which he mentioned the fact that he suspected Bachchu and Lallu Brahman who live in his village of having committed that offence. The learned Sessions Judge has discarded the evidence of all these three witnesses, P. W. 4 Ram Nath, P. W. 3 Chhedi and P. W. 2 Baldeo, on the ground that Chheda was not produced to corroborate their statements and further that the report to the police was made about the time when preparation was being made to prosecute Bachchu accused. In our opinion, both these grounds are insufficient. It was not necessary to examine Chheda who was a criminal on his own showing to corroborate the testimony of honest men; and in the second place, if any corroboration of these witnesses was necessary, then that corroboration is to be found in the statement of Sub-Inspector Raghunath Singh (P. W. 5), who has deposed that, in the course of his investigation, he came to know through his inquiries that Bachchu was suspected of having committed the thefts at the houses of Baldeo and Ram Nath. As to the insinuation that these reports of suspicion against the accused were made about the time when preparation had been made by the police to prosecute the accused Bachchu, all that need be said is that the report of Baldeo Gaddaria, in which he suspected Bachchu Brahman, was made over a year ago and even before the police had opened the history sheet of Bachchu Brahman. The learned Sessions Judge has stated that Ram Nath witness did not give any reason why he suspected Bachchu, who he says, was his nephew, and that therefore he was not prepared to place any reliance on the evidence of Ram Nath. The learned Sessions Judge, in our opinion, has not carefully examined the evidence

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of Ram Nath. It is true that Ram Nath has deposed that Bachchu was his nephew, but in the next sentence he has also stated that he (Ram Nath) is a Pathak by caste and Bachchu is a Shukul Brahman, thus clearly showing that Bachchu could not be a real nephew of Ram Nath. As to the contention, that Ram Nath had given no reason for suspecting Bachchu of having committed theft at his house, that was a matter for the counsel on behalf of the accused Bachchu to elicit. No question appears to have been asked from Ram Nath as to why he suspected Bachchu. Had any such question been asked, Ram Nath would have been in a position to give the explanation which the learned Sessions Judge wanted, but in our opinion there was no reason to reject the sworn testimony of Ram Nath simply because Ram Nath was not asked to explain why he suspected Bachchu of having committed theft at his house. We also do not understand what the learned Sessions Judge means when he says that these three cases of suspicion are too far-fetched to be taken into account against the accused Bachchu. The evidence in respect of these three cases of suspicion seems to us to be very reasonable and quite worthy of belief.

We next turn to the evidence of general repute of the accused Bachchu and of his association with thieves, bad characters and ex-convicts. The evidence of P. W. 6 Gajraj Singh, Mukhia of Hans Barauli, which is only a furlong from the house of the accused, of P. W. 7, Anrudh Singh of Gobardhanpur about 2 miles from Basen, of P. W. 8 Jit Bahadur Singh of Hans Barauli, of P. W. 9 Bachchu Singh, a zemindar of Hans Barauli, of P. W. 10 Baldeo Prasad Brahman, ziledar of Ghanshyamnagar, a hamlet of Basen, of P. W. 11 Gajodhar Bakhsh Singh, resident of Hans Barauli and a zemindar of Basen, of P. W. 12 Baldeo Singh, a zemindar of Hans Barauli, of P. W. 13 Ram Singh of Atra which is a mile and a half from Basen, of P. W. 14 Sheoraj Singh, a zemindar of Bhadaya, a hamlet of Basen, of

P. W. 15 Jagannath Prasad, a ziledar of Bazidpur which is $2\frac{1}{2}$ miles from Basen and of P. W. 16 Dharmu Singh, a zemindar of Mamrezpur about 2 miles from Basen—all goes to prove that the accused is reputed to be a thief in his own village and in the neighbourhood and that he associates with Sadhua Pasi and Sobha Pasi who are thieves and ex-convicts and that he goes about with other bad characters. The learned Sessions Judge has, in our opinion, misunderstood the evidence of these prosecution witnesses when he stated that the testimony of these witnesses as to the general reputation of the accused Bachchu is reduced to the opinion of five men. This is not so at all, if the evidence is carefully examined. P. W. 13 Ram Singh has deposed that "Jit Bahadur Singh, Jagraj Bahadur, Gajodhar Singh, Sheoraj Singh and *many others* complained to me against Bachchu". P. W. No. 10, Baldeo Prasad has deposed as follows: "Others also told me." When in cross-examination, the names of certain witnesses were put into the mouth of these prosecution witnesses and they were asked to say whether so and so told them that the accused was a bad character, they replied that they did. That, however, does not go to show that the evidence of general reputation of the accused given by these witnesses was based only upon the opinion of the persons named by them in their evidence. The learned Sessions Judge has rejected the evidence of the prosecution witnesses, who have deposed that Sobha and Sadhua Pasis are thieves and ex-convicts and has remarked in his judgment that that statement appears to be pure hearsay and has little or no value. This appears to us to be a complete misapprehension of the evidence of Sub-Inspector. Wilayat Husain was Officer in charge of police station Beniganj, and as such was in a position to depose that Mangli Dhanuk, Sadhoa Pasi and Sobha Pasi were thieves and ex-convicts; that statement of his has not been challenged in cross-examination by the counsel for the accused, and we, therefore, fail to understand

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why the positive testimony of the Station Officer Sub-Inspector Wilayat Husain as to Sadhoa and Sobha Pasis being thieves and ex-convicts has been rejected by the learned Sessions Judge as mere "hearsay" and "of little or no value." In proceedings under section 110 of the Code of Criminal Procedure, it is not necessary for the prosecution to prove a previous conviction of any person in the same formal manner as that required by the provisions of sections 310 and 311 of the Code of Criminal Procedure in respect of offences tried in the Court of Session. The learned Sessions Judge has stated that he is not prepared to accept the testimony of prosecution witnesses Nos. 10 and 11 who have deposed that others beside the persons named by them also told them that the accused Bachchu had a bad reputation. In our opinion, the learned Sessions Judge seems to have arbitrarily rejected the evidence of these witnesses on that point. The witnesses who have come forward to give evidence on behalf of the prosecution are men of the neighbourhood and men holding good positions in their villages. P. W. 6 Gajraj Singh is not only the mukhia of the village but also a zemindar paying a land revenue of Rs.175, P. W. 7 Anrudha Singh is a zemindar paying Rs.500 a year as land revenue on his own behalf, P. W. 8 Jit Bahadur Singh is a zemindar who pays a land revenue of Rs.1,200 a year, P. W. 9 Bachchu Singh is a zemindar who pays a land revenue of Rs.500 a year, P. W. 11 Gajodhar Bakhsh Singh is a zemindar of Hans Barauli paying a land revenue of Rs.2,000 a year, P. W. 12 Baldeo Singh is a zemindar of Hans Barauli paying a land revenue of Rs.600 a year, P. W. 13 Ram Singh is a zemindar of Atra paying a land revenue of Rs.555, P. W. 14, Sheoraj Singh is a zemindar who pays a land revenue of Rs.200 to Rs.250 a year, P. W. 15 Jagannath Prasad is the ziledar of Pandit Ratan Lal who pays a land revenue of Rs.800 a year and P. W. 16 Dharmu Singh is a zemindar of Mamrezipur paying a land revenue of Rs.100 a year. He is also a mukhia of the village.

These men all reside in the neighbourhood of village Basen and are men of social position and wealth in that neighbourhood. No enmity has been alleged by the accused against any one of these zemindars and there is no reason why these Hindu zemindars should be giving false evidence against the accused who is comparatively a young man and a Brahman by caste. In *King-Emperor v. Gajadhar* (1) to which one of us was a party, it was held that where in a proceeding under section 110 of the Code of Criminal Procedure, there was evidence showing that the accused had been suspected of complicity in certain thefts and had been mentioned in each case in the reports made in police station at the time of each theft and there was further un rebutted evidence of the residents of the village that he had the general repute of being a burglar and a thief, an order under section 110 of the Code of Criminal Procedure requiring the accused to execute a bond with sureties to be of good behaviour was a proper order. In the present case too, we find that the learned Sessions Judge has himself rejected the testimony of all the defence witnesses except one, viz., D. W. 5 Baldeo Singh, who has deposed that the accused at one time used to cook food for him and do his *sir* work. In cross-examination, however, Baldeo Singh (D. W. 5) has deposed that all his zemindari has been sold off. It is clear, therefore, that the accused Bachchu may at one time have been looking to the *sir* fields of Baldeo Singh and cooking food for him, but at present he is doing nothing. Baldeo Singh has also deposed, in cross-examination, that his own house was searched by the police at the same time when the house of Bachchu accused was searched in connection with the theft at the house of Chhedī (P. W. 3). We have, therefore, no hesitation in rejecting the testimony of Baldeo Singh (D. W. 5) also as unreliable. We need not discuss the

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evidence of the other defence witnesses as they are not relied upon either by the learned Sessions Judge or by the learned Sub-Divisional Magistrate who tried the case against the accused.

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The learned Sessions Judge has rejected the evidence of general bad repute of the accused Bachchu given by the prosecution witnesses on the ground that there is no solid foundation for the opinion held by the prosecution witnesses that the accused is a bad character. Sub-section 4 of section 117 of the Code of Criminal Procedure runs as follows :

"For the purposes of this section (section 110) the fact that a person is a habitual offender (or is so desperate and dangerous as to render his being at large without security hazardous to the community) may be proved by evidence of general repute or otherwise."

It is, therefore, clear that under this provision, evidence of general repute is admissible. This has also been held in the ruling cited above—*King-Emperor v. Gajadhar* (1)—in which it was laid down that in proceedings under section 110 of the Code of Criminal Procedure, if the witnesses have clearly deposed that the accused has the general repute of being an habitual offender such evidence is admissible under sub-section (4) of section 117 of the said Code.

In our opinion the evidence on the record, as framed by the learned Sub-Divisional Magistrate, fully justified the passing of the order under section 118 of the Code of Criminal Procedure, binding over the accused Bachchu Brahman to be of good behaviour for a period of one year by furnishing a surety of Rs.100 and a personal bond in Rs.100. We, therefore, allow this revision, set aside the order of the learned Sessions Judge discharging the accused and restore the order of the learned Sub-Divisional Magistrate, dated the 23rd of July, 1935.

Application allowed.