THE
INDIAN LAW REPORTS
PATNA SERIES.

REVISIONAL CRIMINAL

Before Jwala Prasad, J.

BHUBANESHWAR KUER

v.

KING-EMPEROR.

1926

Feb., 2.

Code of Criminal Procedure, 1898 (*Act V of* 1898), *section* 110 "*by habit*", "*habitually*", *meaning of.*

The words "by habit" and "habitually" are used in section 110, Criminal Procedure Code, 1898, in the sense of depravity of character as evidenced by the frequent repetition or commission of the offences mentioned in the section.

Certain tenants, pending the preparation of a record-of-rights, agreed inter se that those amongst them whose names should be entered in the record-of-rights would divide the land allotted to them with certain other tenants who had contributed towards the expenses of litigation which had resulted in the settlement of the land by the landlord. Some of the parties to this agreement, in trying to enforce

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*Criminal Revision no. 689 of 1924, from an order of G. J. Monahan, Esq., Sessions Judge of Monghyr, dated the 3rd November, 1924, modifying an order of B. Raghunandan Pande, Deputy Magistrate, Monghyr, dated the 18th July, 1924.

1925.

BHUBANESHWAR KUER v. KING-EMPEROR.

its terms, committed offences of loot and assault against recalcitrant parties and were called upon to execute bonds for good behaviour under section 110 on the ground of the above mentioned offences coupled with previous acts of aggression committed against the landlord prior to the settlement referred to above. *Held*, that the mere fact that some of the parties to the agreement resorted to improper means to enforce its terms did not prove them to be habitual offenders within the meaning of section 110 (*a*) to (*e*) but that the evidence of their conduct towards the recalcitrant parties to the agreement showed that they had become so desperate and dangerous as to render their being at large without security hazardous to the community in which they lived and, therefore, that they were liable to be bound down under section 110 (*f*) *Kali Prasanna Bose* v. *Emperor*(1), *Kasi Sundar Roy* v. *Emperor*(2) *and Sri Kanta Nath Shaha* v. *King-Emperor*(3), referred to.

As, however, some of the persons proceeded against had in the meantime been convicted on substantive charges and their sentences had not expired the High Court held that these latter were not "at large" within the meaning of section 110 (*f*), and, therefore, that there was no necessity for an order against them under that clause.

The facts of the case are stated in the judgment.

Sir Ali Imam, with him *S. A. Sami*, for the petitioners.

Manuk, with him *H. L. Nandkeolyar*, Assistant Government Advocate, and *N. C. Roy*, for the opposite party.

JWALA PRASAD, J.—This is an application against an order passed under section 110 read with section 118 of the Code of Criminal Procedure, directing the petitioners to furnish bonds and sureties of the amounts detailed in the order of the Magistrate, dated the 18th July, 1924, to be of good behaviour for two years. The order has been upheld in appeal by the Sessions Judge of Monghyr by his judgment, dated the 3rd November, 1924.

(1) (1911) I. L. R. 38 Cal. 156. (2) (1904) I. L. R. 31 Cal. 419.
(3) (1904-05) 9 Cal. W. N. 898.

The case of the prosecution has been succinctly and clearly set forth in the report of the Sub-Inspector in charge of Bihpur Thana, dated the 22nd November, 1923, on the basis of which the proceeding under section 110 of the Code of Criminal Procedure was drawn up by the Magistrate on the 24th November, 1923. The ground for the proceeding as stated therein is that the petitioners are by habit thieves and habitually commit or attempt to commit or abet the commission of theft, mischief and offences involving a breach of the peace and are so desperate and dangerous as to render their being at large without security hazardous to the community.

The learned Sessions Judge says that grounds for the order under section 110 of the Code against the petitioners are that they are

"Leaders of a formidable gang which is in the habit of committing loot and mischief in furtherance of an unlawful common object and that they have on many occasions promoted breach of the peace and are dangerous people."

This observation of the Sessions Judge is taken from the finding of the Magistrate in his judgment of the 18th July 1924.

The petitioners are residents of village Sonebarsa which is merely inhabited by Bhuinhars. During the years 1322 and 1325 Fasli a large quantity of land in mauza Sonebarsa, Bishunpur Gopal and Takbazpore in the zamindari of one Mr. Grant, which had come out of the river Ganges, became cultivable. He made settlements of a portion of these lands with tenants on payment of salami and at Rs. 6 a bigha as rent. These tenants are described as Naramdal or moderate party. Certain other tenants applied for settlement of the lands at the old rate of Rs. 3 a bigha, which being refused they formed themselves into an organisation known as Garamdal or extremists party with a view to force the landlord to accept their terms. The petitioners belong to the Garamdal party. Many acts of loots and assaults

1925.

BHGBANESHWAR KUER v. KING-EMPEROR.

JWALA PRASAD, J.

took place, with the result that certain members of the Garamdal party were bound down on the 3rd of February 1920 for a year under section 107 of the Code of Criminal Procedure (Exhibits 61 and 62). Suffice it to say that the situation became so grave that Mr. Grant had to requisition the services of a band of Gurkhas which was followed by the tragic murder of about 20 of them in a riot said to have been committed by the Garamdal party. Twenty persons were put on their trial, but only one of them Dhally Kuar (who is not before us) was convicted under section 147, Penal Code, and sentenced to two years' rigorous imprisonment (judgment, Exhibit 63). Three of the present petitioners Hari Kuar, Bhutti Kuar and Ramrup Kuar were accused in that case but were acquitted. The gravity of the situation attracted the intervention of the authorities, with the result that Mr. Sen, Commissioner of Bhagalpur Division, held a conference at his house between the parties and had a settlement arrived at between Mr. Curtis as Manager of Mr. Grant and the tenants. It was agreed that a record-of-rights would be prepared and the tract of land which by the fluvial action of the river became the khudkasht lands of Mr. Grant would be settled with tenants, but that the tenants who would be able to identify any of the reformed lands as being part of their previous holding would have those lands settled with them. Consequently by orders of the Local Government survey and settlement was carried out by Babu N. L. Basu, Deputy Magistrate, who was appointed Assistant Settlement Officer. It is said that during the progress of this survey a number of armed lathials of the Garamdal party used to wander about the Diara driving out the tenants going before the Assistant Settlement Officer in support of their claims. The result was that 21 persons of the Garamdal party were bound down for a year on the 23rd September, 1921. Amongst those bound down were the petitioners Bhubaneshwar Kuar, Ramarup Kuar, Bhokar

Kuar, Puchha Rai, Hari Kuar and Dudhraj Kuar (judgment, Exhibit 64).

A few months after, in December 1922, the record-of-rights was finally published. As no one was able to identify any of the newly formed lands, they were divided up into three blocks. The larger block was assigned to the Garamdal party and the lesser area to the Naramdal party and the Gangoutas. The petitioner no. 1 Bhubaneshwar Kuar, leader of the Garamdal party, drew up a list of the tenants of his party to whom the lands were to be assigned within the area allotted to them. This list was accepted by Mr. Curtis and the record-of-rights was prepared accordingly.

In the meantime in June 1922, some 234 tenants of the Garamdal party executed an agreement. The agreement (Exhibit A) was registered from June 1922 to February 1923. The reason of this agreement is stated therein as well as in the petition before us, and it is that both the 1st and the 2nd parties to the agreement contributed towards the expenses of the litigation between the zamindar and themselves on the basis of ploughs, whereas according to the compromise between the zamindar and the tenants, some of them only would be recorded in respect of the lands which have come out and which are still under water and others who cultivate jointly with them would not be recorded. So that the interest of these persons might not suffer, and those whose names would be recorded might not acknowledge their rights and possession which might cause endless litigation, both the 1st and the 2nd parties executed the agreement whereby whatever land would be allotted in the names of the 1st and the 2nd parties by the zamindar would be divided amongst themselves according to ploughs at present possessed by them, and irrespective of the names of the tenants being recorded in the zamindar's sarishta each individual of the 1st and the 2nd parties would pay rent and have his name recorded in the

1925.

BHUBANESHWAR KUER v. KING-EMPEROR.

JWALA PRASAD, J.

landlord's sarishta in accordance with this arrangement, and so long as the landlord would not recognise this division the rent would be paid by the persons holding the lands in accordance with the agreement through the persons recorded in the survey record-of-rights and in the landlord's sarishta.

The agreement further provides that if any member of the 1st party refuses or puts off dividing the land to be recorded in his name according to the terms aforesaid he will get it done by suit or "any other means he thinks fit". A committee of 13 persons including the petitioners Ramarup Kuar, Hari Kuar, Puchha Rai and Jagarup Kuar was nominated to carry out the arrangement.

The penultimate clause of the agreement makes provision for the maintenance of a Middle English School at Sonebarsa by means of subscription to be paid by the 1st and the 2nd parties at the rate of Rs. 3 per plough annually to the Secretary of the school. The Secretary has been authorized to recover subscription by suit or "any other means he thinks fit".

The prosecution relies upon the terms of the agreement as showing a determination on the part of the parties to the agreement to enforce the terms thereof by whatever means they think fit lawful or unlawful. It is said that the expression in the agreement "any other means he thinks fit" referred to above indicates that the parties were resolved to resort to force in order to give effect to the agreement in question.

The learned Sessions Judge says,

"As regards the alleged agreement (Exhibit A) it is possible that it may not itself be illegal. However as I have already pointed out there is one ominous clause therein to the effect that the person with whom the land is to be divided may enforce the agreement by suit or by any other means he thinks fit. Obviously the appellants are not justified in enforcing this agreement by illegal means."

The learned Sessions Judge is correct in his view that no party has a right to enforce the terms

of the agreement by illegal means, he however does not definitely find that the clause in question is illegal or unusual though he calls it ominous.

Now, the dispute with regard to the Diara lands was originally between the landlord and the tenants. The dispute was settled by certain arrangement which resulted in the preparation of the record-of-rights. There is no longer any dispute between the landlord and the tenants. The present dispute is beween the tenants inter se and the history prior to the preparation of the record-of-rights in December 1922 is not of much importance except as showing that the petitioners have by a course of conduct acquired a disposition to commit offences such as those mentioned in section 110 of the Code of Criminal Procedure.

The word "habit" implies a tendency or capacity resulting from the frequent repetition of the same acts. The words "by habit" and "habitually" imply frequent practice or use. The aforesaid words have been used in section 110 of the Code of Criminal Procedure in the sense of depravity of character as evidenced by the frequent repetition or commission of offences mentioned in the section.

We have not been taken back to a period prior to 1919 when the Diara lands appeared. We do not know the habits of the petitioners prior to that date and the first thing that brought them within the purview of the criminal law is their attempt to take possession of the lands thrown out by the river Ganges. Apart from this Diara land dispute, nothing has been brought upon the record to show that the petitioners bore any despicable character, that they were implicated in any theft, extortion, cheating or mischief or that they ever provoked a breach of the peace. To my mind, section 110, clauses (*a*) to (*e*), of the Code has no application to the present case. Rightly or wrongly they thought that they would get the lands in question and the result shows that they

1925

BHUBANESHWAR KUER v. KING-EMPEROR.

JWALA PRASAD, J.

were right in their estimation, for accepting the case of the prosecution they were able to obtain from the zamindar a settlement whereby a large tract of land was made available for settlement with them. Their object was gained, and we find that since then they have not committed any offence so far as the zamindar is concerned. But the dispute has now arisen with respect to the division of the booty. The large tract of land referred to above was sought to be settled with them by means of a record-of-rights. The record-of-rights was prepared for these lands not with a view to exclusively record the rights and possession which existed at the time of its preparation. Its object was to settle the dispute between the landlord and the tenants whereby the lands were to be allotted to the tenants in a certain way irrespective of whether they had held the lands previously. This is at least true with respect to the block of lands in dispute allotted to the Garamdal party and in respect of which the agreement in question (Exhibit A) was executed. It is conceded by Mr. Manuk that so far as these lands are concerned the record-of-rights is not such as is required to be prepared under the Bengal Tenancy Act which acquires certain presumptions. While the record-of-rights was being prepared the Garamdal party entered into an agreement to divide the lands allotted to them by the landlord in a particular way. They do not ignore the record-of-rights altogether. It is said in the agreement that the persons whose names would be recorded would divide the lands allotted to them with other tenants whose names were not recorded on the ground that they had contributed towards the expenses of the litigation which ultimately resulted in the settlement of the lands by the landlord. This agreement, no doubt, is not binding upon the landlord as he is not a party to it, but it is an arguable question as to whether the agreement is not binding upon the executants thereof. The learned Sessions Judge very rightly says that the

agreement may be a lawful one. He is also right in pointing out that the parties to the agreement are not justified in enforcing this agreement by illegal means. The case of the prosecution is that in trying to enforce this agreement amongst themselves the tenants have committed loots and assaults against the recalcitrant members of their parties, which coupled with their previous acts of oppression committed against the landlord, bring them within the purview of section 110, clauses (*a*) to (*e*) of the Code of Criminal Procedure. This contention does not commend itself to me. Rightly or wrongly the petitioners believed that the agreement is a valid agreement and if in enforcing the same in an improper way they committed offences they cannot be said to have acquired the habit of committing those offences or that they were habitually offenders so as to bring them within the purview of the aforesaid clauses. The primary dispute with the landlord, which led them to commit offences, was settled by the lands being allotted to them. The moment this was done they ceased to commit any offence as against the landlord. The present dispute amongst themselves has arisen on account of the division of the booty and the moment this will be settled they would probably cease to commit the offences complained of. Therefore they cannot be said to be habitual offenders so as to bring them within the purview of clauses (*a*) to (*e*) of section 110. To bring them within those clauses where there is a land dispute is calculated to seriously prejudice them. They rely upon a registered agreement settling their rights. It is not possible to decide in a criminal court the validity or otherwise of this agreement, but surely no tenant, whether he is a party to the agreement or not, has a right to take the law into his own hands. After the execution of the agreement the tenants committed offences of loot and assaults which led to an inquiry being instituted, resulting in the present proceedings under section 110 against them. After the proceeding

1925.

BHUBANESHWAR KUER v. KING-EMPEROR.

JWALA PRASAD, J.

was initiated they are said to have committed certain riots which have since been tried. Evidence with respect to these cases has been given in the present case. One of them has ended in acquittal; in two of them tried separately all the petitioners except petitioner no. 1 Bhubaneshwari Kuar were accused and convicted. The investigation into the present case by the police officer was occasioned by certain complaints with respect to several occurrences said to have taken place about the 9th of November 1923. The kolai crops of Lachmi, Dhaneshwar, Chandi and Rajeshwar were grazed and a plough of one Panchu Hazari and Dhaneshwar was broken. In most of these cases all the petitioners including petitioner no. 1 Bhubaneshwar Kuar were concerned. Previous to the publication of the record-of-rights the petitioners were concerned in many cases of loot and assault culminating in the murder of twenty Gurkhas mentioned above. Both in the old dispute with the landlord and in the present dispute with the members of their own parties, the petitioners have shewn desperation and disregard of life and properties of others. Formerly their acts of *zulum* were directed against the landlord and his adherents, the members of the Naramdal party. Their present desperate action is directed against the members of their community who have either not accepted or resiled from the terms of the agreement. The course of their conduct shows that they have become desperate and dangerous and therefore it is not safe to let them wander about at large. This would bring them within the purview of clause (*f*) of section 110 of the Code under which if the course of conduct exhibited by a person shows that he has become so dangerous and desperate that it is not safe to let him remain at large he should be bound down to be of good behaviour. The learned Counsel on behalf of the petitioners contends that this clause does not apply, inasmuch as the recalcitrant tenants, who do not accept the terms

of the agreement, cannot be said to form a community. The petitioners along with other persons formed into a party called the Garamdal party. They claimed to have common interest and professed to have common rights and privileges. They thus formed themselves into a society of people having common rights, privileges and interests. In other words, they became members of a community. Those who have fallen out are also members of that community and may besides be regarded as forming a separate community. All of them are residing at Sonebarsa within the local limits of the jurisdiction of the Magistrate who has passed orders under section 110 against the petitioners. The petitioners have by their conduct made themselves dangerous to their fellow brothers living in Sonebarsa, who are members of a community. I therefore overrule this contention. In coming to this conclusion I have considered the following authorities cited at the Bar :

Kali Prasanna Bose v. *Emperor*(1), *Kasi Sundar Roy* v. *Emperor*(2) *and Sri Kanta Nath Saha* v. *King-Emperor*(3).

The concurrent finding of the Courts below is that by their behaviour for a number of years the petitioners have made themselves so desperate and dangerous that it is not safe to let them remain at large. The finding is in accordance with the evidence in the case and is not open to challenge in revision. In this veiw the order passed under section 110 of the Code of Criminal Procedure is not fit to be disturbed.

It appears, however, that the necessity of the order does not exist in the case of eight of the petitioners, for we find that all the petitioners except Bhubaneshwar Kuar have already been punished for the riot committed on the 7th and 8th February 1924.

(1) (1911) I. L. R. 38 Cal. 156. (2) (1904) I. L. R. 3 Cal. 419.
(3) (1904-05) 9 Cal. W. N. 898.

1925.

BHUBANESHWAR KUER v. KING-EMPEROR.

JWALA PRASAD, J.

In those riots the petitioners Ajab Lal Issar, Hari Kuar, Puchha Rai, Jagarup Kuar, Ramarup Kuar and Bhutti Kuar have received punishments of rigorous imprisonment of one year each in one case and nine months in the other case. Thus, these petitioners have to undergo imprisonment for a period of one year and nine months. Similarly, the petitioners Bhokar Kuar and Bilachhan Kuar have got six months' imprisonment in one of these cases and nine months' imprisonment in the other. The convictions and sentences in those two riot cases have now been finally confirmed by this Court on the 28th January, 1925(1). I am told that the accused have not served yet more than a few days of the period of imprisonment imposed upon them. So they will have to undergo almost the entire term of imprisonment from now. Therefore the petitioners are not " at large " to quote the words of the section and hence there is no necessity of taking any bonds from them. As to what will happen after they come out of jail will depend upon the circumstances existing at that time. Certainly, if they do not reform themselves and have recourse to illegal ways of enforcing their rights the authorities will take such action against them as will be applicable under the criminal law. So far as Bhubaneshwar Kuar is concerned, he is not undergoing any term of imprisonment and he is said to be the ring-leader of the accused persons in the sense that they are guided entirely by his counsel and advice, besides active part taken by him in many cases. I would, therefore, uphold the order of the Magistrate so far as he is concerned.

I would commend the action taken by the authorities in this case and the careful inquiry made by the investigating officer and the judgments of the Court below.

(1) Cr. Rs. 686 and 687 of 1924.