(1899) 08 CAL CK 0001

Calcutta High Court

Case No: Appeals Nos. 226 and 308 of 1899

Dwarka Bunia and Others		APPELLANT
	Vs	
The Empress		RESPONDENT

Date of Decision: Aug. 7, 1899

Judgement

1. The Appellants in these sets of appeals have all been convicted at the same trial under sec. 401, Penal Code, of belonging to a gang of persons associated for the purpose of habitually committing thefts. The evidence shows that they all came from the same neighbourhood in Oudh and that they are in many respects associated together. The question however raised is, whether the evidence proves that the particular offence that their association was for the purpose of habitually committing thefts. The circumstances which have led to this case are remarkable. There was a big religious gathering or mela at Gya early in September last, and the police were on the look-out to protect the public against thefts committed where crowds were assembled. Lachman Pasi was caught in the act of picking a pocket and his companion was pursued towards a certain house. That house was surrounded by the police and searched, and in it the Appellants were found including Thakur Basi who has been identified as the man who was pursued. While the house was ''surrounded, a man was seen trying to escape by walking on the cornice towards the roof of the adjoining house. The cornice gave way, he fell and was killed instantaneously by the fall. He was the man who had taken in the Appellants as lodgers. Some money and various articles were found with the Appellants, but none of these articles have been shown to be stolen property.

2. The conviction of the Appellants really depends upon suspicious circumstances under which they were arrested. There is some evidence of bad character, there are the convictions of some of them for theft, and orders requiring some of them to furnish security for good behaviour, and there is the fact that they are possessed of little means of subsistence. The reported cases of convictions of this offence are few. In Sriram Venkata and another 6 Mad. H, C. R. 120 (1870) it was laid down, that in order to prove an offence under sec. 401, Penal Code, there must be (1) proof of

association, (2) proof that such association was for the purpose of habitual theft; and it was added that habit is to be proved by an aggregate of acts. In that case the report seems to show there was some evidence, which was accepted by the jury, that a number of thefts occurred at the same time and in the same neighbourhood where the accused were found from which it was found that the association of the accused was for the purpose described by sec. 401, Penal Code, and it was apparently on this ground that although the learned Judges held that the charge to the jury was defective, they refused to interfere because it was not shewn that the accused had been prejudiced by this defect. In the present case there is no such evidence. We have only the evidence of this one instance of picking a pocket for which Lachman Pasi was arrested.

3. There are two cases Queen v. Kamal Fukeer and others 17 W. R. 50 (1872), and Queen v. Mooktaram Sirdar 23 W. R. 18(1875) on sec. 401, Penal Code, a cognate offence, which do not throw much light on the matter now under consideration except that it was held that there must be evidence that the accused were members of a gang associated for the purpose of habitually committing dacoity.

4. We have also been referred to the case of Empress v. Nabakumur Patnaik and others 1 C. W. N. 146 (1897) in which it was considered whether evidence of the previous convictions of some of the accused of dacoity was admissible for the purpose of proving association for that purpose and bad character. It is unnecessary to repeat the grounds upon which the learned Judges held on consideration of sec. 54 of the Evidence Act, as amended by Act III of 1891, sec. 6 and sec. 14 of the Evidence Act as well as upon the terms of sec. 310 of the Code of Criminal Procedure, that such evidence was inadmissible as evidence of bad character, because we concur with the judgment delivered. It is sufficient to add in reference to the case now before us that the character of the accused was not in issue and that in consequence evidence of such character or reputation is not admissible. Such evidence, we observe, has in the case before us formed the main, if not the only ground on which the Appellants have been convicted, and when that evidence is examined, it will be found to consist of convictions of theft against only a few of the Appellants. It would be very unsafe to rely upon these convictions so as to connect all the Appellants with the unlawful association within sec. 401 even if such evidence were admissible. And in addition to such evidence we find on the record some orders in which some of the Appellants have been required to give security for good behaviour. But even here it is not shown by those orders that the grounds on which they were passed were that these persons were habitually addicted to theft so as to form a link in the evidence in this case supposing for the sake of argument and on such grounds '' only that such orders were admissible.

5. The case against the Appellants therefore rests on their being found together at some distance from their houses that they are all intimately connected with one another, that they are in the habit of visiting melas together, that one of them was

arrested in the act of picking a pocket, and that when they were arrested many of them gave false names and false addresses. However suspicious the circumstances in this case may be, we think the evidence falls short of what is necessary for conviction under sec. 401, Penal Code, for, in our opinion, there is no proof that the Appellants belonged to a gang of persons associated for the purpose of habitually committing theft. The conviction and sentences are there-fore set aside, and the Appellants must be released.