

Gauri Shankar And Anr. vs State on 20 February, 1952

Equivalent citations: AIR1952ALL927, AIR 1952 ALLAHABAD 927

ORDER

Beg, J.

1. This is an application in revision filed by Gauri Shankar and Sri Ram, residents of Sarawan and Bhanpur respectively, Police Station Tarabganj, District Gonda, against the order of the Temporary (Additional) Sessions Judge, Gonda confirming the order of Sri J. P. Govil, S. D. M., Tarabganj, Gonda binding them down to be of good ' behaviour for a period of one year under Section 110, Criminal P. C., on account of their being by habit house-breakers and thieves and so desperate and dangerous as to render their being at large without security hazardous to the community.

It may be mentioned that along with the two applicants named above there were two other persons against whom proceedings under Section 110 were instituted by the police. Their names are Jaipattar and Kalapanth, residents of village Sarawan. All the four persons were bound down by the order of the trial Court. An appeal was filed against the said order to the lower Court. The appeal of all the aforesaid persons was dismissed. The case has been argued before me on behalf of the two applicants who have filed this revision. I am informed by the office that the remaining two persons proceeded against have not filed any revision.

2. The proceedings in the present case were instituted by the police. The prosecution examined 37 witnesses to prove its case. On behalf of the defence in rebuttal (sic). In order to be able to appraise the relative value of the prosecution and the defence evidence, it is necessary to mention some preliminary facts which are admitted in the prosecution evidence.

3. It has come out in the prosecution evidence itself that there were two parties in the locality. One party was headed by a person named Siddhu Singh and the other was headed by the applicants. Most of the prosecution witnesses have some connection or other with Siddhu's party. The fact that there were two rival parties as mentioned above is admitted by P. Ws. 30 and 36. P. W. 36 goes to the length of saying that Siddhu Singh and Gomti Singh and Naresh Singh of Siddhu's party obtained his signature on a paper and compelled him to undertake to appear as a witness failing which he would be turned out of the village.

4. It may be mentioned that there was another case arising out of the murder of one Sri Bhukhan Sirwar of Bhaiya Lachmi Dut. This Sri Bhukhan deceased belonged to the applicants' party. One Surajpal, a grandson of Siddhu, was an accused in that case. Some of the witnesses produced by the prosecution in this case were either the accused in that case or their relations.

5. Prior to the murder of Sri Bhukhan, there was another case under Section 308, Penal Code, arising out of an attack on Sri Bhukhan in which the nephew of a prosecution witness P. W. 22 was an accused.

6. There is another ground of enmity also. P. W. 36 has admitted that Jaipattar, one of the accused in this case, got a theka of some land from one Sm. Mandraji. There was a dispute between him and one Hakim Singh of Siddhu's party about the possession of the property in respect of which the theka was obtained. Jaipattar was supported by the other three persons who are turned down in this case along with him. Keeping the above facts in view, the prosecution evidence may now be briefly scrutinised. (His Lordship discussed the evidence of the prosecution and the defence and proceeded:) 7-9. In addition to the oral evidence referred to above, the prosecution have produced a large number of first information reports. If, however, the substantive evidence of witnesses in Court is found to be untrustworthy, the reports which are merely corroborative pieces of evidence cannot have a higher value.

10. Having considered the entire prosecution as well as the defence evidence I have no doubt in my mind that the defence evidence is far superior to that of the prosecution both in the quality as well as in quantity. Where the appraisal of evidence by the lower Courts in a case under Section 110, Criminal P. C., is so wrong as to border on perversity, the High Court should interfere to rectify the error. This seems to be case of that type. In Manni Singh v. Emperor, A. I. R. 1919 ALL. 399, it was held that in a case under Section 110, Criminal P. C., if the evidence of the defence is as good as that of the prosecution, no bonds should be taken from the accused. The High Court interfered with the order of the lower Court in revision and set aside the order binding down the accused.

In Angnoo Singh v. King Emperor, A. I. R. 1923 ALL. 35, it was observed that the High Court is not in, such oases a Court of appeal but it is its duty to endeavour to weigh the evidence and to see whether the case has been fairly considered from the point of view of the defendants. Secondly if the evidence for the defence is equally good as that for the prosecution, the High Court may quash the order in revision.

In Jai Singh v. Emperor, A. I. R. 1930 Oudh 357, a Bench of the late Chief Court of Oudh laid down that where a large number of persons come forward and swear that they believe a man to be 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 a 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 beliefs.

In Gur Dayal v. Emperor, A. I. R. 1925 Oudh 277, it was held that where the prosecution witnesses were mostly enemies of the accused and they were men of influence so as to procure a large number of people to speak as to the general bad character of the accused, the accused should not be bound down on such evidence especially when there was a large number of persons who deposed to his good character. The present case seems to be stronger than the cases mentioned above. Having gone into the merits of the case I feel that the order binding down the two applicants is unjustifiable. In

spite of the fact that Jaipattar and Kalapanth have not filed any revision against the order binding them down, I feel that I must in exercise of the High Court's revisional powers set aside the order against them suo motu.

11. I accordingly allow the revision application of Gauri Shankar and Sri Ram and set aside the order passed against them as well as against non-applicants Jaipattar and Kalapanth. If they have executed any bonds the said bonds will be discharged.