

(1925) 01 CAL CK 0002
In the Calcutta High Court

Ledu Molla and Others and Asmatiali Mirdha and Others
Vs

APPELLANT

Emperor

RESPONDENT

Date of Decision : 15-01-1925

Acts Referred:

Penal Code, 1860 (IPC) — Section 400

Citation : 87 Ind. Cas. 925

Hon'ble Judges : Babington Newbould, J; B.B. Ghose, J

Bench : Division Bench

Judgement

1. The 18 appellants before us in these two appeals have been convicted of an offence punishable u/s 400, Indian Penal Code, namely, of belonging to a gang of dacoits. One of the appellants Ledu Molla was convicted on his plea of guilty. The other 17 have been convicted on a unanimous verdict of guilty by the Jury. In this case 171 witnesses were examined for the prosecution, 35 witnessess were examined for the defence and one witness was examined by the Court. There were also 69 documents exhibited on behalf of the prosecution. As there is no appeal on the facts it is unnecessary for us to discuss this evidence. The learned Sessions Judge has dealt with it carefully and at sufficient length in his charge to the Jury.

2. On behalf of the appellants the points taken are that there have been misdirection and also wrongful admission of evidence on certain points. The first point raised is that in a trial for an offence punishable u/s 400, Indian Penal Code the evidence of commission of an offence or that the accused were bound down u/s 110, Cr. P.C. is not admissible. Some support to this contention is to be found in the case of Kasam Ali v. Emperor 55 Ind. Cas. 994 : 47 C. 154 : 31 C.L.J. 192 : 21 Cri.L.J. 386 following an earlier decision of this Court in Mankura Pasi v. Queen-Empress 27 C. 139 : 4 C.W.N. 97 : 14 Ind. Dec. 92. But these cases have been decided on the point that evidence of previous conviction could not be used for the purpose of proving character. In the latter of these cases, a doubt was expressed whether they might not be used for proving association, and further,

the attention of the learned Judges who decided the last of these two cases was not drawn to other cases of this Court in which it was distinctly held that such evidence was admissible. The cases in which a contrary view was taken are *Bhona v. Emperor* 9 Ind. Cas. 555 : 38 C. 408 : 15 C.W.N. 461 : 12 Cri.L.J. 97 and *Kader Sunder v. Emperor* 13 Ind. Cas. 279 : 16 C.W.N. 69 : 13 Cri.L.J. 39 and in both these cases it was held that such convictions can be proved for the purpose of proving habit as well as association. In the case *Bhona v. Emperor* 9 Ind. Cas. 555 : 38 C. 408 : 15 C.W.N. 461 : 12 Cri.L.J. 97 several unreported cases are cited in support of the view that was taken, and in the present case our attention has been drawn to a more recent unreported case *Emperor v. Arajulla Pramanik*, decided by Walmsley and Pearson, JJ. on the 17th November 1921. We are in entire agreement with the authorities which hold that such evidence is admissible for this purpose and overrule this objection.

3. The next point taken is that the Jury were not properly charged as regards certain circumstances under which the approver who gave evidence in this case first conferred. It is not alleged that the facts proved as to these circumstances have not been correctly stated to the Jury. What is urged is that the learned Judge should have told the Jury that these circumstances made the approver's evidence unworthy of credit. It would appear, however, that the learned Judge himself was of opinion that the approver was a witness of truth and he could not therefore have told the Jury that in his opinion the approver should be disbelieved on account of these circumstances. In this connection it is said that the Jury were misdirected as to the failure of the prosecution to call as witness the C.I.D. Inspector, Akhoy Kumar Gupta who had interviews with the approver on two occasions. We agree with the learned Sessions Judge that it is very doubtful as to the point on which this; witness could give evidence of any value and that the settlement made by the" approver to this witness could not have been proved by the prosecution. The learned Judge, told the Jury that they might draw an inference adverse to the prosecution if they held that this Inspector was an important witness and had been deliberately withheld, and that under the circumstances was quite sufficient.

4. As regards the general direction as to the evidence of the approver the learned Sessions Judge gave the ordinary direction in a manner to which no objection can be taken. It is said that he was wrong in telling them that if the approver was corroborated on some points they might believe him on other points in respect of which he was not corroborated. The Jury were told, however, that the condition of believing him on these uncorroborated points, was if they thought it reasonable it is not necessary that the approver should be corroborated as regards every single statement that he makes and as we read the charge in this respect we hold that the Jury were rightly directed.

5. Objection has been taken to the evidence as to the verification of his confession by the approver. It is said firstly that the learned Sessions Judge attached too much weight to this evidence and was too dogmatic in telling the

Jury his own opinion as to its value. The passage to which objection has been taken is in the following terms: "I would suggest to, you that it would be possible for Asmat Ali to be tutored to this extent by the Inspector in the course of two interviews in the Jail; but it appears to me that the results of the verification of the confession of Asmat Ali prove without doubt that Asmat Ali Sheikh did himself take part in the dacoitigs which he describes." That passage by itself might be objectionable. But reading the charge as a whole we find over and over again that the Judge impressed on the Jury that they were to form their own opinion on questions of fact, and in, this particular passage he told the Jury that the matter was one for them to decide.

6. It is further urged that the procedure adopted in verifying the confession had been condemned in this Court. Our attention has been drawn to certain decision but those decisions do not lay down as a general rule that in no case can the statement of a confessing accused be verified by enquiry on the spot. They are rather condemnatory of the procedure which was in fact followed in those individual cases. They cannot beheld to support the contention that the identification proceedings in the present case were of no value as corroboration of the accomplice evidence.

7. Some other points were urged, but on our expressing the opinion that they are untenable they were not pressed by the learned Vakil for the appellants.

8. The sentences passed on several of the accused are severe, but the learned Sessions Judge has given good reasons for severity of these sentences.

9. The appeals are dismissed.