

Lala and ors. Vs. Emperor

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Court : Allahabad

Decided On : Mar-22-1917

Reported in : AIR1918All299; 40Ind.Cas.729

Judge : George Knox, J.

Appellant : Lala and ors.

Respondent : Emperor

Judgement :

George Knox, J.

1. This case has got into a bad tangle. It appears from the evidence for the prosecution that Lala, Udai Ram, Moja, Har Chandi and Puran were convicted of offences under Sections 325 and 323 of the Indian Penal Code, Udai Ram and Moja under Section 323 and the others were convicted under Section 325. The accused applied in revision to the Court of the Additional Sessions Judge of Aligarh. The view apparently taken, though this is not clear, by the learned Sessions Judge was that Lala was attempting to take cattle to the pound; that Kallua, Parshadi, Genda and Heta tried to rescue the cattle by force. Upon their doing so Lala, Udai Ram, Moja, Puran and Harchandi assaulted those who were trying to rescue the cattle. As a result both parties received injuries and one of them Lala accused received grievous hurt. The learned Sessions Judge, being of opinion that the Magistrate had gone wrong in convicting the applicants, was about

to report the case to this Court but the parties, according to the learned Sessions Judge, have compromised and have duly attested a form before him to that effect. He sends the case on with a recommendation that the conviction and sentence be quashed. The so-called application for compromise is No. 14A of the record. In it Parshadi on the one side and Puran, Udai Ram, Moja and Lala on the other, say that the parties have come to an understanding with each other and the prayer is that, the case be struck off and not decided. The paper No. 14A is worthless. In the first place one of the accused Harchandi is no party to it. In the second place, and this is the more serious difficulty, Kallua who was one of the persons to whom hurt was caused is also no party to it. Section 345, Clause (1), of the Code of Criminal Procedure lays down that the offenses punishable under the Sections of the Indian Penal Code described in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table. When we look down the table and come to the offence of causing hurt under Section 323, the person by whom the offence may be compromised is the person to whom the hurt is caused. The learned Sessions Judge appears to have misunderstood the meaning of the word 'compounded.' The table shows that the person by whom the offence may be compounded is the person to whom the hurt is caused, it is not the person who causes the hurt. In the case with which I am dealing the persons hurt were Parshadi and Kallua.

2. Again on turning to Section 439 of the Code of Criminal Procedure, I find that while the High Court may exercise several powers enumerated therein which are conferred on a Court of Appeal, the powers granted to the Court of Appeal by Section 345, are not mentioned. Looking to the case as reported by the learned Additional Sessions Judge, I can find no adequate reason why the conviction and sentence should be quashed.

3. There is another paper on the record No. 35A which purports to be a compromise between Lala, on the one side and Kallua, Parshadi, Genda and Heta on the other and it says that the matter between them has been settled and the case be struck off from undertrial cases. It is described by the learned Sessions Judge as a cross-complaint. The Magistrate before whom the paper was filed had endorsed upon it the words: 'I allow the compromise, these are cross-cases and

the parties are related. I acquit the accused under Section 345 of the Criminal Procedure Code'. The case which the Magistrate had before him was a complaint under Section 325 of the Indian Penal Code. How the learned Magistrate could accept a compromise under this Section it is difficult to understand, especially as some of the persons to whom hurt had been caused were no parties to the compromise. As mentioned above the learned Sessions Judge describes the compromise as a cross-complaint. It is nothing of the kind. Lala, Udai Ram, Moja, Harchandi and Puran were sent up by the Police for the offence of causing grievous hurt under Section 325. Lala appears to have filed a complaint against Kallua, Pershadi and Heta for the same offence, i.e., the offence under Section 325 of the same date. There was only one case. The remarks made by the learned Sessions Judge and the Magistrate show the extreme danger there is of taking up what are supposed to be two oases together. There was only one case of which the Police took cognizance and which Lala tried to bolster up by a complaint of his own. The paper No. 35A is, for the reasons given above, equally defective.

4. I refer the learned Sessions Judge to the cases of *Ram Chandra v. Emperor* 28 Ind. Cas. 103 : 37 A. 127 : 13 A.L.J. 104 : 16 Cr. L J. 247 and *Murray v. Queen-Empress* 21 C. 103 : 10 Ind. Dec. (N.S.) 701.

5. Let the record be returned.

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