

Dhu Ram Vs. Emperor

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Court : Allahabad

Decided On : Sep-25-1928

Reported in : AIR1929All299

Appellant : Dhu Ram

Respondent : Emperor

Judgement :

Dalal, J.

1. The consideration of this case by the learned Sessions Judge has suffered considerably by the wrong defence set up before him. Dhu Ram has been convicted of an offence under Section 304-A, I.P.C. His brother made a report at the Police Station to the effect that he and his brother were sleeping on the roof of the residential house one night while their father was absent at Banda, that they heard the noise of thieves and going to the end of the roof they noticed three persons on the roof of the cattle-shed close by. Baij Nath challenged them whereupon they began to run away and Dhu Ram thinking that they were thieves and bad characters fired a gun which he had carried to the corner of the roof. A thief fell down at some distance from the house to the north and died soon after. Baij Nath had the stupidity to deny the correctness of this report and naturally irritated the learned Judge. The learned Judge was also suspicious of the Sub-Inspector. In a case of this kind the sympathy not only of the Sub-Inspector but of

every one else would be for the boy Dhu Ram who after all had fired at a dacoit or a robber. One does not wait for firing until a dacoit or robber comes up to shake hands or to enquire after one's health. The lie told by Baij Nath and the suspicion against the Sub-Inspector misdirected the mind of the learned Judge who did not carefully enquire how far the act of Dhu Ram was safe from criminal liability by the provisions of Section 103, I.P.C. According to the first report made by Baij Nath, the thieves were on an adjoining roof and a house-holder would be entitled to draw the conclusion that the three men were there for the purpose of breaking into the house of the house-holder. The learned Judge after inspecting the locality came to the conclusion that the gun could not have been fired from the corner of the roof of the residential house to the roof of the cattle-shed because there would be obstruction in between and was of opinion that this little incident in the first report was an invention. The question then arises that if the incident is invented in the report what is there else on the record to indicate the circumstances under which the gun was fired. The learned Judge complains that the idea of private defence 'struck the head' of the Sub-Inspector. I am afraid that it has 'struck the head' of this Court also. We may enquire into the competing view of the circumstances put forward by the Judge himself though that view rests on no evidence. He says:

The facts as they happened are quite clear. Three or four men being armed with lathis, guns or phrases came to the village. They might have been dacoits and they had come there for the purpose of committing dacoity. They were in the village. Baij Nath and Dhu Ram saw them. They commenced to run away and while so running Dhu Ram fired one or two shots and the deceased was injured.

2. As the dacoits had come to commit dacoity a villager was fully-justified in firing at the dacoit. Possibly the point which the Sessions Judge desired to make, though he has not stated it specifically, is contained in the last para of Section 99 where it is enacted that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. I believe the learned Sessions Judge's idea to be this. There were dacoits who came to the village to commit dacoity but as they ran away the villagers ought to have thanked God for it and gone off to sleep. The firing in such a case was unjustified. Obviously though the Court entirely changes the circumstances of the

firing from those given in the first report it harps back to the running away mentioned in the first report. The position of the shots, however, do not justify the Court's view that the gun was fired at an enemy who was running away. All the shots were received in front and not one on the back. The theory therefore of dacoits running away is demolished. According to the learned Judge's own observation 'people might speak lie but the facts cannot.'

3. I hold that the firing by Dhu Ram was in the right of private defence of property against intended robbery and house breaking by night. There is no reason to believe that more harm than necessary was inflicted by Dhu Ram for the purpose of defence. If persons were as quick as Dhu Ram with their guns I believe there will be fewer dacoities in villages. I set aside the conviction and sentence and order the appellant to be released. If he is on bail his bail shall be cancelled. If he has paid any fine it shall be refunded.

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