

Debi Ram Vs. Emperor

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Court : Allahabad

Decided On : Feb-15-1935

Reported in : 157Ind.Cas.524

Judge : Kendall, J.

Appellant : Debi Ram

Respondent : Emperor

Judgement :

Kendall, J.

1. The appellant, Debi Ram, has been convicted by the learned Sessions Judge of Agra of an offence under Section 324, Indian Penal Code, and sentenced to two years' rigorous imprisonment. He has appealed, and has been represented in this Court by Mr. A.P. Dube. The story for the prosecution is that there was a long-standing enmity between Phool Chand and the accused Nek Ram, brother of the appellant and his family. Nek Ram is the zamindar, and on the date of this incident, June 7, 1934, he had called Phool Chand to the house of the Patwari and demanded arrears of rent from him. There was a quarrel between the two, and abuse, which led to a struggle in which Nek Ram felled Phool Chand to the ground. Afterwards as Phool Chand was on the way home, he was attacked by Nek Ram and also by Buddha and Debi Ram, the present appellant. The last-named had a sword, with which he struck Phool Chand several times on the arm,

and Phool Chand fell down and lost consciousness. He was afterwards taken to the hospital, and the medical evidence shows that he had received several incised wounds on the right hand and arm. It appears, therefore, that he was trying to protect himself against blows from a sword.

2. The story for the defence is that the quarrel started very much in the manner described in the case for the prosecution, but that when Nek Ram arrived at the Patwari's house and had a quarrel with Phool Chand, Phool Chand and his friends Mangal, Khacheru and Reoti beat Nek Ram with lathis and knocked him down, and Khacheru bit him on the nose with his teeth and that on the news of the fight being given to Debi Ram, he ran up with a sword to protect his brother and caused the injuries to Phool Chand which have been described above, in the exercise of his right of private defence under Section 97 of the Indian Penal Code.

3. The story for the prosecution was supported by the statements of three witnesses as well as Phool Chand, namely, Ganga Ram who says that he saw the first fight as described by Phool Chand and that he intervened together with Hukum Singh to save Phool Chand from a beating and that Nek Ram then left the place. Hub Lal and Chajju support Phool Chand's story of how he was attacked in cold-blood by Debi Ram with a naked sword in the presence of Buddha and Nek Ram. Both these witnesses say that Debi Ram ran away when Phool Chand fell down.

4. The story for the defence was supported by three witnesses who described the fight very much in the words of the appellant. According to this account, it will be seen there was only one fight and that the appellant used his sword in order to protect his brother Nek Ram from Phool Chand and several of his friends who had knocked him down and were beating him with lathis.

5. The Judge has believed the story for the prosecution and disbelieved that for the defence, but he does not say why. The most obvious feature of the case is that the circumstantial evidence is strongly in favour of the story for the defence. The story for the prosecution does not account for the injuries to Nek Ram, who was admitted to hospital on the same day as Phool Chand and who is proved to have had at the time 17 injuries in all. He had one injury on his nose and another on his

right ear, which seemed to have been caused by a sharp weapon but most of the injuries seemed to have been caused by lathis. He was discharged from hospital after three weeks, so that it is clear that his injuries were by no means of a slight description. The next point to be noticed is that the oral evidence for the defence is numerically at any rate stronger than that of the prosecution, and the Judge has given no reason for disbelieving these witnesses and for believing the witnesses brought for the prosecution. I have examined the circumstances in which the complaint was made on behalf of Phool Chand. A report was made at the thana on June 7, by Shadi Lal, the brother of Phool Chand. That was a report under Section 323, Indian Penal Code, and Shadi Lal stated that he was going to make a complaint in Court, which he subsequently did, but not until June 21. The only thing to notice about this complaint is that in it Shadi Lal says for the first time that Debi struck Phool Chand under the orders of Nek Ram. The report made at the thana on June 7, did not mention Nek Ram, though it did say that Buddha was present when Debi assaulted Phool Chand. This complaint in the Magistrate's Court was dismissed on June 29, for want of prosecution, and that Shadi Lal made a second complaint to the Magistrate under Section 326, Indian Penal Code, in which he said that he had not heard his case called on the previous date. Even in this complaint no witnesses were named and it was not until July 19, when the case was taken up in the Sessions Court, that the three witnesses for the prosecution named above came forward for the first time.

6. There was a cross-complaint on behalf of Nek Ram which was committed to Sessions, but in which the accused were acquitted by the learned Sessions Judge. There may have been good reasons for acquitting the accused in that case, but they are not known to me now. What does appear from the record of the present case is that the story for the prosecution is at any rate to a large extent clearly untrue and that the appellant appears to have made out a very good case for his account that he caused the injuries to Phool Chand legitimately in exercising his right of private defence. I, therefore, allow the appeal, set aside the conviction and sentence of the trial Court and direct that Debi Ram be acquitted. As he is on bail, his sureties may be discharged.

