

Puttoo Lal and ors. Vs. Emperor

Puttoo Lal and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/485521

Court : Allahabad

Decided On : Jul-12-1923

Reported in : AIR1924All316; 77Ind.Cas.818

Judge : Daniels, J.

Appellant : Puttoo Lal and ors.

Respondent : Emperor

Judgement :

Daniels, J.

1. Of the eight appellants, Raja, Bahadur and Dadu, have been convicts under Section 304, Indian Penal Code, and the remaining five, Mahla, Shilni, Ahaman, Khawaja and Ratishan, have been convicted under sections 325 and 324, Indian Penal Code. In all eight cases Section 149, Indian Penal Code, has been applied.

These convictions are the result of an occurrence which took place on the 15th April and resulted in the death of one Allah Did. According to the findings of the Magistrate soma cattle belonging to Raja, appellant, trespassed in the field of Gahua and Gahua on the 13th April and were beaten and driven out by Gahua. On the 15th April Raja arrived with a body of supporters and attacked the people who were cutting wheat in the field. Allah Dadu was on of these persons and five of the assailants beat him and caused his death. These were Raja, Bahadur and

Dadu appellants and two men who have absconded the remaining five injured Lehna and Budha who attempted to rescue Allah Dad.

2. The learned Counsel for the appellants has confined himself mainly to a plea on behalf on these latter five appellants based on the ground that their names were not mentioned in the First Information Report. The injury to Allah Dad was first reported to a Head Constable named Lal Khan who was in a neighbouring village. He arrived on the scene and recorded a statement by Allah Dad which he sent by one Mahla (not the appellant of that; name) to the Police Station. The statement of Mahla was written down there as the First Information Report and according to it the same five persons, who attacked Allah Dad, also injured Gahna and Budha, and the appellants Mahla, Shahu, Ahman, Khawaja and Raushan, were not mentioned. In Court Mahla stated that he did mention these names and that the report as recorded was not correct. Lal Khan deposed that the names of these five persons were given to him in the village and that he did not mention any names in his letter to the Police Station but merely enclosed the dying declaration of Allah Dad in which the five assailants of the declarant alone were mentioned. It is urged for the appellants that these explanations should be rejected and that the contents of the First Information Report must be presumed to be correct.

3. The Police Officer, who wrote the report, has not been produced as a witness. Thus the (sic) not proved to have been correct written down and the only evidence on the question of correctness is that of Mahla who says that the document is not correct. In such cases the prosecution is bound by practice to produce in Court the First Information Report made to the Police but it is not bound to refrain from leading evidence that the report is not accurate. To hold that the prosecution is tied down tightly to the words of the First Information Report would recognise the recording officer as possessing an authority which in no way belongs to him and would be most dangerous. In the present instance we have the report as placed on the record without the testimony of the person who wrote it against the assertion of Mahla, the reporter, who says that five names given by him were not taken down. Several witnesses have deposed that Mahla, Shahu, Ahman, Khawaja and Raushan did attack and beat Lehna and Budha and Lehna and Budha have themselves said so. No reason is apparent why they

should implicate falsely or deliberately substitute for the names of those actually responsible for the injuries the names of other person. On evidence the guilt of these five appellants is established and there is no good reason for interfering with there conviction.

4. The conviction of the remaining there appellants Rajo Bahadur and Dadu are not challenged and the evidence justifies the finding of the learned magistrate it is pleaded however on be half of raja that the sentence imposed upon him of seven years rigorous imprisonment is excessive in comparison with that of five years rigorous imprisonments imposed upon Bahaur and Dadu the learned magistrate s reason for making the distinction is that raja was the leader of the party and palpably responsible for the whole occurrence the witnesses may have exaggerated his actions and indeed if this were not held to be the case the appellants might have found themselves convicted of a much graver offence but with due allowance for this I consider that the sentence is not excessive.

5. I dismiss the appeal.