

Lumba and anr. Vs. State

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Court : Rajasthan

Decided On : Apr-04-1952

Reported in : AIR1952Raj155

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : [Evidence Act, 1872](#) - Sections 32

Appeal No. : Criminal Appeal (Jail) No. 80 of 1951

Appellant : Lumba and anr.

Respondent : State

Advocate for Def. : Sumer Dan, Public Prosecutor

Advocate for Pet/Ap. : Appellants present under custody

Judgement :

Wanchoo, C.J.

1. This is an appeal by Lumba and Dunga who have been convicted under Section 325, of the Indian Penal Code by the Additional District and Sessions Judge of Udaipur.

2. The prosecution story was briefly this. The deceased Bhera is a cousin of the accused Lumba. It appears that there had been bad blood between them for some

time on account of some dispute about land. On the morning of the 9th of June 1950 Khaju Khan P. W. was returning from village Bhuriya Kheda. On his way back, he found Bhera deceased lying injured in Dharam Talai near the boundary of Saroth. When Bhera saw Khaju passing that way, he shouted to Khaju to come to his help. Khaju went and asked Bhera what had happened. Bhera then told him that he had been beaten by Lumba and Dunga. Khaju found that Bhera's hands and feet had been fractured and he was not fit to walk. Bhera asked Khaju to take him home and thereupon Khaju removed him from that place and took him to the roadside.

Then Khaju raised an alarm which brought a number of people to the scene. Among these were Teja, Hamira, Uda and Panna -- prosecution witnesses. Uda is the son of the deceased, while the others belong to different castes and live in neighbourhood. These people on arrival asked Bhera as to who had caused him injuries & Bhera told them also that he had been attacked by Lumba and Dunga accused. Thereafter some of these persons went to a place about half a mile away, where famine relief work was going on. They found Dunga accused working there. They also found Lumba coming that way. They enquired of these persons whether they had attacked Bhera. These two persons, however, denied this.

The villagers did not accept their denial and caught hold of them and took them to the place where Bhera was lying. By the time, however, they returned with the two accused Bhera was dead. Information was then sent to the police outpost and though the report that was sent by the constable on 'gust' does not mention the names of the accused, it shows that the accused had already been caught.

3. Both the accused denied their guilt and said that they had been implicated on account of enmity. One witness was produced on behalf of each of them to prove alibi.

4. The prosecution has produced Khaju and the other four witnesses whose names we have given above. The medical report shows that there were injuries only on the hands and feet of Bhera and none on his head. Therefore, it is clear that Bhera could have, been in his senses and could have stated on enquiry as to who had caused him injuries. The only evidence in this case consists of the dying

declaration made by Bhera. There are five witnesses who have deposed to this dying declaration, having been made by Bhera when people who arrived on the scene made enquiries from him. Of these, Uda is the son of the deceased while Hamira is said to have been annoyed with the accused, but the other three witnesses, namely, Khaju, Teja and Panna are, in our opinion, perfectly independent and there is no reason for us to disbelieve their statements.

Their evidence clearly establishes that Bhera was in his senses at the time and definitely stated that Lumba and his son Dunga had caused him the injuries. There is also evidence of Panna and Bhera's son Uda to the effect that there had been bad blood between Bhera and Lumba for some time before the incident on account of some dispute over land. Under these circumstances, it is quite probable that Bhera was attacked by the two accused. There is the statement of Ghisulal P. W. 6 to the effect that Lumba had come to him some time before the incident and told him that he would beat up Bhera if the trouble between him and Bhera was not justly decided. We have, therefore, no hesitation in accepting the dying declaration of Bhera as true.

The two defence witnesses who have been produced by the accused are about their alibi. We have gone through their evidence and are satisfied that they do not prove the alibi of the accused. Dunga is said to have been working at the famine relief works. The evidence is that attendance is taken at the works at 9.30 A.M., while the attack on Bhera took place much before 8. A.M. It was, therefore, possible for Dunga to take part in the attack and then reach the works. As for Lumba, the statement of the defence witness is that he was working at the witness' well; but on that day-he merely came to take his wages and then went away. The place where this well was being constructed was only two miles away and, therefore, this evidence is not enough to prove the alibi of Lumba. We are, therefore, satisfied that the dying declaration made by Bhera is correct and he was attacked by the two accused.

5. There is undoubtedly no corroboration of this dying declaration, but there is nothing in law to prevent a Court from convicting the accused on the uncorroborated dying declaration of the deceased provided the Court is of opinion

that that dying declaration is true. We may in this connection refer to two cases, viz., In re 'GURUSWAMI TEVAR', AIR 1940 Mad 196, and 'GULABRAO KRISHNAJEE v. EMPEROR', AIR 1945 Nag 153. The accused have, therefore, been rightly convicted under Section 325 of the Indian Penal Code.

6. We now come to the question of sentence. Lumba has been sentenced to five years rigorous imprisonment and we see no reason to reduce the sentence. But Dunga is a young boy of about 16 or 13 years of age and must have acted under the influence of his father. He has already been in jail for over nine months after his conviction. In his case, therefore, we think that the sentence of imprisonment that he has undergone would be sufficient.

7. We, therefore, dismiss the appeal of Lumba. We also dismiss the appeal of Dunga but we modify the sentence and reduce it to the period already undergone.

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