

Lala Lalung Vs. Emperor

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Court : Kolkata

Decided On : Feb-14-1938

Reported in : AIR1939Cal176

Appellant : Lala Lalung

Respondent : Emperor

Judgement :

M.C. Ghose, J.

1. This is an appeal on behalf of the appellant Lala Lalung who was tried by a jury in the Court of the Assistant Sessions Judge of the Assam Valley Districts. The jury unanimously convicted him under Section 304 (Part II), I.P.C., and the learned Judge accepting the verdict has sentenced him to five years' rigorous imprisonment. The prosecution case is that Surjat and Moharali had gone 'to a certain beel and cut two bundles of reeds and when they were bringing them away, they were met by the appellant who quarrelled with them for having cut the reeds in that particular beel. After an altercation, the appellant dealt a blow on the head of Surjat with a big stick where, upon the deceased fell down and in a short time he died, his skull being fractured. There was another man who was tried along with the appellant but the jury acquitted him.

2. The learned advocate appearing for the appellant urges that the learned Judge misdirected the jury by quoting inadmissible evidence to the effect that the Police

Sub-Inspector had arrested the two accused on the identification of the witness Moharali in the village; that the witness pointed out two accused from among 20 men in the village. The case in *Krishna Chandra Dhenki v. Emperor* : AIR1935 Cal311 is quoted in support of the proposition that a statement express or implied which a witness must have made by way of identifying the accused at the Thana is hit by the provisions of Section 162, Criminal P.C. It is to be noted in the present case that the identification was not at the Thana but in the village. Moharali was the one eyewitness of the occurrence and he did not know the names of the two offenders. The Sub-Inspector took him into the village and it was by his identification that the Sub-Inspector seized the two men. It is urged by the learned advocate that under Section 162, Criminal P.C., no statement made by a person to a police officer may be used as evidence at a trial. The learned advocate urges that here the witness Moharali was allowed to say in Court 'I identified the two accused before the Daroga Babu from among 20 men of the village.' It is urged that this evidence was inadmissible on a correct interpretation of Section 162, for though he said nothing about what the two accused had done, the implication was that these two accused were the men who had assaulted and killed his companion Surjat and that this implied statement ought to be discarded having regard to Section 162, Criminal P.C. With all due respect to the decision by the learned Judges quoted above we are of opinion that Section 162 should be read upon its plain terms. According to it a statement made by a witness to a police officer is not evidence at a trial. Here it is not a statement of the witness which is admitted but the fact that he identified the two accused before the police officer in the village. In our opinion this evidence was rightly admitted in the circumstances of this case and the learned Judge committed no error in reading it to the jury. The appeal is dismissed.

Bartley, J.

3. I agree.