

**Mohammad and ors. Vs. Emperor**

**Mohammad and ors. Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/461455](http://sooperkanoon.com/461455)

**Court :** Allahabad

**Decided On :** Feb-09-1910

**Reported in :** 5Ind.Cas.560

**Judge :** Piggott, J.

**Appellant :** Mohammad and ors.

**Respondent :** Emperor

**Judgement :**

**Piggott, J.**

1. The essential facts found by the learned Sessions Judge in this matter are as follows: There are three adjoining villages Koura Gahni, Khas Deb and Rang Deb respectively. A swamp or tal commences in the village of Koura Gahni and extends through Khas Deb to Rang Deb where it is terminated by a bund or embankment constructed for the purpose of holding up water and so seeming a supply for irrigation purposes. It is obvious that in a case of this sort, the interests of the proprietors of the village in which the bund is situated must often be inconsistent with those of the proprietors of land situated, so to speak, further up stream. Disputes are particularly likely to arise when the general agricultural situation has been subjected to marked deviations from the normal. In this particular case a year of ample, if not excessive, rainfall has followed on two years of draught. During these years, the villages of Koura Gahni had, as the Sessions

Judge finds, extended their cultivation over what was in normal years a portion of the swamp. Last year they found their area of extended cultivation threatened by the heavy volume of water which was being held up by the bund at Rang Deb. A party of them went at night and cut through the bund in order to permit an escape of the water. Now it must be clearly understood that the question, I have to decide, is not whether the persons who so acted were entirely within their rights, whether they may not have laid themselves open to a Civil action for damages, whether they may not have committed other offences under the Indian Penal Code, e.g., that of unlawful assembly. The point which I have to decide is simply whether on the evidence in this case and the findings of the Sessions Court, the convictions under Section 430, Indian Penal Code, are maintainable as against the applicants now before me. It is, of course, obvious that when these applicants joined in cutting through the bund, they did something which they knew was likely to cause a diminution of the supply of water for agricultural purposes. But it is necessary to consider further whether in so doing they committed mischief. Their intent was not to cause loss to any body but to protect certain crops in their own village which were in danger of injury. It must be proved against them affirmatively that they knew that they were likely to cause loss or damage to other persons presumably to the landholders and cultivators of Rang Deb, and that the loss or damage which they knew themselves likely to cause was 'wrongful loss' within the meaning of Section 23, Indian Penal Code. I am not of opinion that either of these facts is proved by the evidence on the record, or that the question whether or not these necessary elements in the offence charged were established was clearly considered by the Courts below. Beyond the fact that the villagers of Rang Deb violently resented the proceedings of the applicants and their companions, there is really no evidence that the former actually suffered loss of damage by the escape of a quantity of water through the bund on the night in question. There is evidence that some at any rate of the land-holders of Rang Deb had recognised a certain right of control on the part of the villagers of Koura Gahni in regulating the escape of excess water round or over the bund in question into a nala situated on the other side of it, during season of excessive rainfall. I am certainly not prepared to hold on the evidence and on the findings before me that the applicants and their fellows, when they cut through the bund as alleged in the charge against them,

knew that they were causing to the villagers of Rang Deb the loss of property to which the said villagers were legally entitled or that they actually caused any such loss. I wish to make myself clear on this point. I conceded at the commencement of this judgment that the mere cutting of the bund did, no doubt, cause diminution in the supply of water then and there available for agricultural purposes. This is sufficiently obvious; but in order to base a conviction under Section 430, Indian Penal Code, it must be further established that wrongful loss or damage resulted to some person or persons from such diminution in the supply of water available. There is no necessary presumption one way or the other. It might, under certain circumstances, be a matter of the utmost benefit to the whole country side that a certain temporary diminution in the supply of water available should be caused, as for instance if the stability of the embankment were being threatened by excessive accumulation of flood water. I have been referred to the case of Nafar Chandra Bhattacharya v. Hilaluddin Mondol 8 C.W.N. 370, which was very similar to the one now before me. The point, as I have already stated, seems to me sufficiently clear on the wording of Sections 430, 425 and 23, Indian Penal Code. I accept this application and set aside the convictions and sentences in respect of each of the applicants in so far as these relate to the charge under Section 430, Indian Penal Code. Two of the applicants, Nur Mohammad and Tajammul, have already served their sentences; amended warrants should be issued in respect of Muhammad, Mahmood and Tayab.