

**Chandan Singh and ors. Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/467930](http://sooperkanoon.com/467930)

**Court :** Allahabad

**Decided On :** Oct-01-1917

**Reported in :** AIR1918All209(1); 43Ind.Cas.438

**Judge :** P.C. Banerji, J.

**Appellant :** Chandan Singh and ors.

**Respondent :** Emperor

**Judgement :**

**P.C. Banerji, J.**

1. The appellants have been convicted of having caused the death of one Girdhar Singh and such of them has been sentenced, under Section 304 of the Indian Penal Code, to ten years rigorous imprisonment.

2. It has been fully proved that there are various factions among the residents of the village of which the deceased was and the appellants are residents and that considerable enmity existed between the deceased and the appellants. A few days before the occurrence the deceased had given evidence against the appellants, and on the day on which he was killed he was to have given evidence against them in the Tahsildar's Court in favour of one of his partisans. That morning while he was seated at his chaupal the three accused came there, armed with lathis, and challenged the deceased Girdhar Singh. There was an exchange of abuse

and each side threatened to strike the other. Some of the persons who were there intervened and one of them asked Girdhar Singh to go into his house and pushed him towards the door. When he had moved a few paces the three accused attacked him with their lathis, knocked him down and inflicted injuries. The medical evidence shows that his skull was extensively fractured and this resulted in his death which took place the same evening. The above facts are fully proved by the witnesses for the prosecution, who have been believed by the learned Sessions Judge and whom there is no reason to disbelieve. Their evidence, however, does not show which of the three accused struck the fatal blow which caused the fracture of the skull. With the exception of Hublal, who only says that Tota accused struck the deceased on the head, the others are unable to say anything on the point. Hublal is the brother of the deceased and it is probable that he was exaggerating. The evidence leaves it in doubt which of the assailants of Girdhar Singh struck the blow which proved fatal. Under these circumstances the appellants cannot be convicted under Section 304. The common intention of the accused was not to cause death or such injury as was likely to cause death but only to cause grievous hurt. This case is similar to that of Emperor v. Bholu Singh 29 A. 282 : A.W.N. (1907) 51 : 4 A.L.J. 207 : 5 Cr.L.J. 130 in which it was held, under circumstances which were exactly the same as those of the present case, that the accused were guilty under Section 325 and not under Section 304 I, therefore, alter the conviction to one under Section 325 of the Indian Penal Code and reduce the sentence, in the case of each appellant, to one of five years' rigorous imprisonment.

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