

**Goverdhan Vs. Emperor**

**Goverdhan Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/480864](http://sooperkanoon.com/480864)

**Court :** Allahabad

**Decided On :** Jul-25-1935

**Reported in :** AIR1935All930

**Appellant :** Goverdhan

**Respondent :** Emperor

**Judgement :**

**Bennet, J.**

1. This is an appeal by one person Goverdhan who has been convicted by the learned Sessions Judge of Muttra Mr. Girish Prasad Mathur, under Section 304, Penal Code, and sentenced to four years rigorous imprisonment. There were eight accused persons before the Sessions Court and the prosecution evidence was that these eight persons and one Genda who was absconding came to the fields of Bahori and others and stated that they would not allow Bahori and others to irrigate their fields from the canal, but that the accused would use the canal water for their own use. Abuse followed and the accused party attacked Bahori and the men with him with latihis. These men were Debi Ram, Harey and Lodhi. Injuries were caused on all these persons and Bahori fell down severely injured on his head and died, three days later in hospital. His injuries were fractures of the skull. On the other persons the Civil Surgeon found injuries as follows:

Karey, 2 simple injuries.

Lodhi, 3 simple injuries.

Debi Ram. 4 simple injuries.

2. All these injuries were caused by lathi blows. The evidence of these persons Debi Ram, Karey and Lodhi is that the eight accused before the Sessions Court and the absconder Genda attacked them and beat them. This story also appears in the first report which was made by Debi Ram accompanied by Lakhi and others. Learned Counsel dwells on a report at p. 4 made by Genda who was absconding; but as Genda is not a witness for the defence it is difficult to see how this report is evidence before the Court. It is merely a hearsay statement as it is a statement by a person not called as a witness. In the first report it was stated:

All the said persons attacked us with lathis and Goverdhan and Genda struck my father Bahori with lathis on his head and all the persons assaulted us.

3. This statement is also given in evidence. The lower Court considers that only Goverdhan and Genda can be held responsible for the attack on Bahori because they were the particular persons who are stated to have struck lathi blows on his head. As a matter of law I think this is incorrect. Where a number of men make an attack with lathis on certain men and one of those men is killed all the men making the attack are guilty under Section 149, Penal Code, and other sections. It is not a matter of importance whose lathi blow actually injures the deceased. I may refer to a ruling of a Bench of this Court reported in Emperor v. Gulab 1918 All. 420, overruling the law as laid down by a learned Single Judge of this Court in Emperor v. Chandan Singh 1918 All. 209. I may also refer to a more recent ruling reported in Irshadulla Khan v. Emperor 1933 All 528, by a Bench of this Court where it was stated on p. 1297:

In our judgment the view that Section 84 applied only where a criminal act was done by several persons, of whom the accused charged thereunder was one, and not where the act was done by persons other than the latter is not a correct view. We are of opinion that Section 34 Penal Code would be applicable equally to those cases in which the criminal act done in furtherance of a common intention of several persons is the act of a single individual.

4. These are cases where the number is less than five. In the present case we are dealing with more than five persons and therefore Section 149, Penal Code, would also apply. The lower Court has also given some reasons as to why it considered that it was improbable that Goverdhan should have collected such a mob to prevent Bahori from irrigating his fields. As there were four persons injured in the party of Bahori it does not appear to me at all improbable that nine persons were in the attacking party. In this view of the case I do not find that any portion of the evidence of the witnesses for the assault is discredited and accordingly no question of that nature arises. As regards the conviction of Goverdhan it appears to me that the conviction is correct and the sentence of four years rigorous imprisonment is certainly not severe. I dismiss this appeal and direct that Goverdhan should surrender to his bail to undergo the remaining part of his sentence.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**