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**(1934) 03 AHC CK 0024**

**Allahabad High Court**

**Case No:** None

Mahadeo Singh and Another

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** March 19, 1934

**Hon'ble Judges:** Bennet, J

**Bench:** Single Bench

**Final Decision:** Dismissed

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### **Judgement**

Bennet, J.

This is a criminal appeal by three persons, Mahadeo Singh, Rameshwar Singh and Chhotku Singh, who have been convicted by a former Additional Sessions Judge of Jaunpur, Mr. B. Ahmad who, I am informed, has since been transferred. The learned Sessions Judge found that the four accused had attacked one Moti Singh at a panchayat and the deceased Gajadhar wanted to intervene and the four accused started to beat Gajadhar with lathis and one Ram Samujh who tried to save Gajadhar was also attacked and beaten. A report was made naming the four accused. Gajadhar was sent to hospital next morning. He had three external injuries on the head. He died at 9 a.m., and the post-mortem shows that the skull had been fractured and this was the cause of death. The learned Sessions Judge said in his judgment:

According to the Learned Counsel for, the accused if the four accused persons struck together and it could not be known whose lathi caused the fatal injury they could not be held guilty u/s 304, I.P.C. He produced a ruling, Chandan Singh v. Emperor AIR 1918 All. 209. Which is clearly on this point and which has also taken into consideration similar rulings given before. I seem to agree with him on this point. It cannot be said from that evidence that the accused persons had come with the intention of causing such injuries to Gajadhar as they knew were likely to cause his death. There was certainly no intention of murder and the "marpit" was the result or a temporary excitement... In the absence of specific evidence that the

accused had come prepared to cause death I think it will be dangerous to convict the accused persons u/s 304, I.P.C., and specially those who had not inflicted the fatal injury on the head. The fact that the accused had called a panchayat to settle the dispute shows that they had peaceful aims. Relying on the ruling mentioned above I hold that an offence u/s 304, I.P.C., has not been committed. The injuries inflicted on the person of Gajadhar, Ramsamujh and Moti Singh were simple. Under these circumstances the accused would be responsible for simple injuries only.

2. For these reasons the Additional Sessions Judge convicted the accused u/s 323, Penal Code, only and sentenced them to one year's rigorous imprisonment.

3. There are so many errors of law in this judgment that I consider it is necessary to set the order and conviction aside and order a retrial by the Court of Session in Jaunpur. One error is that the ruling of a learned Single Judge on which the Court relied, Chandan Singh v. Emperor AIR 1918 All. 209, has been specifically dissented from by another ruling of a Bench of this Court in the same volume, [Emperor Vs. Gulab and Others](#), That later ruling specifically referred to the case of Ghandan Singh v. Emperor AIR 1918 All. 209, on p. 733 (of 16 A.L.J.), and definitely stated that the decision was wrong:

We do not agree with the view of the law taken in that case and in that respect we would point out that it was quite inconsistent with the remarks to be found in the case of Emperor v. Hanuman (1913) 35 All. 560.

4. There is no doubt that Chandan Singh v. Emperor AIR 1918 All. 209, is a ruling which is not good law. The next point on which the learned Judge made an error was in his view that the premeditation was necessary for the offence of Section 304, Penal Code. Premeditation is not even a necessary ingredient of Section 299, Penal Code, where culpable homicide is defined. The fact that the accused received grave and sudden provocation would be a reason for reducing the offence from Section 302 to Section 304, as is laid down in exception (1) of Section 300 and this matter appears to have been taken into account by the prosecution when the charge was framed u/s 304. The Sessions Judge made one further mistake in stating that the injuries inflicted on the person of Gajadhar were simple. The medical evidence is that the skull was fractured causing death. Presumably the Sessions Judge meant that the external injuries appeared at first to be simple injuries, but this has no bearing on the point of what was the actual injury caused.

5. In view of the unsatisfactory application of the principles of law in this judgment I consider that the order and conviction must be set aside. Accordingly I set aside the order and conviction of the three appellants. In regard to the fourth person, Gay a Prasad, who was convicted no appeal has been filed, but it is open to me to deal with his case u/s 439, Criminal P.C., in revision, as the record is now before this Court. Accordingly in his case also I set aside the order and conviction u/s 323, Penal Code, and I direct that he be retried also with the three appellants, Mahadeo Singh,

Rameshwar Singh and Chhotku Singh on the charges on which the accused were committed to Session, that is, Section 304, Penal Code, for causing the death of Gajadhar and u/s 323, Penal Code, for causing hurt to Moti Singh and Ramsamujh Singh. Let a copy of this judgment be sent to Mr. M.B. Ahmad.