

Karnail Singh

Vs

State of Punjab

Criminal Appeal No. 262 of 1971

(P.N. Bhagwati, Syed M. Fazal Ali JJ)

20.08.1976

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of Punjab and Haryana High Court, which while upholding conviction of the appellant under Section 302 I.P.C. reduced the sentence to imprisonment for life. The appeal is confined to the question of sentence and nature of the offence committed. According to the prosecution two persons, viz., the appellant Karnail Singh and Zora Singh had assaulted the deceased Sarwan Singh. Zora Singh was acquitted by the Sessions Judge, who found that he was falsely implicated due to enmity. The State did not file any appeal against the acquittal of Zora Singh but the complainant had filed criminal revision in the High Court which was dismissed by the High Court. The High Court found that Karnail Singh had assaulted the deceased and it accordingly upheld the conviction of the appellant under Section 302 I.P.C. but reduced the sentence to imprisonment for life. Accordingly to the prosecution there was some enmity between the deceased Sarwan Singh and Karnail Singh resulting from land disputes. On June 20, 1970 at about 5.00 a. m. in the morning while the deceased was sleeping in khalyan along with his nephew's son Sukhdev Singh the appellant and Zora Singh are alleged to have appeared on the scene and started assaulting the deceased Sarwan Singh with kirpan indiscriminately on various parts of the body. On alarm being raised PW 2 Jeet Singh and PW 5 Malkiat Singh who were also sleeping in their field, came to the spot and witnessed the occurrence. A.F.I.R. was lodged by Jeet Singh at 8.45 a. m. at police station Sahnewal. The appellant pleaded innocence and contended that he was falsely implicated due to enmity.

2. The prosecution case regarding the assault by the appellant Karnail Singh on Sarwan Singh deceased has been proved beyond reasonable doubt by the two courts below. The short question for consideration in this case is as to what is the nature of the offence that the appellant has committed. As Zora Singh has been acquitted the charge under Section 302/34 I.P.C. disappears and the question now is as to what offence the appellant, who alone must have assaulted the deceased, has committed. In view of the acquitted of Zora Singh there is no evidence to show as to what particular injury was caused on the deceased by the appellant although he was armed with kirpan. In these circumstances, it is not possible to convict the appellant under Section 302 I.P.C. simpliciter. As however it is indisputable that the accused was armed with kirpan and used the same in assaulting the deceased, the accused must be held to have committed an offence under Section 326, viz., the offence of grievous hurt, because the injury which was caused was dangerous to life, which ultimately resulted in the death of the deceased. For these reasons we, therefore, allow this appeal to this extent that the conviction of the appellant is altered from one under Section 302 I.P.C. to that under Section 326 I.P.C. and the sentence is reduced from life imprisonment to 7 years' rigorous

imprisonment.

</html