

Hari Ram

Vs

State of Haryana

Criminal Appeal No. 307 of 1975

(Pathak, J.)

17.12.1982

JUDGMENT

PATHAK, J. –

1. This appeal by special leave is directed against the judgment dated February 24, 1975 of the High Court of Punjab & Haryana dismissing appeal by the appellant against his conviction under Section 302, Section 3225 read with Section 149, Section 3223 read with Section 149 and Section 148 of the Indian Penal Code and the sentence of life imprisonment for offence under Section 302, and of six months rigorous imprisonment for each of the remaining offence, the sentence to run concurrently.

2. It appears that on June 2, 1971, as the deceased Ran Singh was pushing his cart through the chowk in village Mundakhera (situated in the district of Rohtak) it struck against the platform belonging to resident Hukam Chand. Hukam Chand, the appellant Hari Ram and some others were sitting at some distance from the platform and an altercation ensued between them and Ram Singh. It is said that the appellant Hari Ram shouted that Ram Singh would not behave unless he was beaten and he ran inside the house and brought out a Jeli. Ran Singh, it is alleged, ran from there and was chased and caught by Hukam Chand. The prosecution case is that while Hukam Chand held the arms of Ran Singh, the appellant Hari Ram thrust the prongs of the Jeli into Ran Singh's chest and that when the jelli was with drawn Ran Singh fell down. He died later. It seems a fight followed between the appellant and his comrades on one side and a number of persons who came in aid of Ran Singh. The appellant Hari Ram, Hukam Chand and several others were committed to the Court of Session for trial for various offences. The learned Sessions judge convicted the appellant Hari Ram, Hukam Chand and several others were committed to the Court of Sessions judgment convicted the appellant Hari Ram for the aforesaid offences and imposed the aforesaid sentences. The High Court dismissed the appeal filed by Hari Ram.

3. The only contention of learned counsel for the appellant before us is that the facts do not make out an offence under Section 302 against the appellant and that a conviction under the second part of Section 304 is called for instead. We agree with learned counsel. It does seem that in the heat of the altercation between Ran Singh on the one hand and the appellant and his comrades on the other, the appellant seized a jeli and thrust it into the chest of Ran Singh. It will be noted that this was preceded by his remark that Ran Singh must be beaten to make him be have. Only one blow was struck by the appellant at Ran Sing. On the evidence it does not appear that there was any intention to kill Ran Singh. On the evidence it does not appear satisfied that there was any intention to kill Ram Singh. We are, therefore, satisfied that, on the contrary, the facts make out an offence under the second part of Section 304.

4. Accordingly, we allow the appeal insofar that we set aside the conviction under Section 3022 of the Indian Penal Code and instead convict the appellant under the second part of Section 304 of the code. In regard to the sentence, we are informed that the appellant has already undergone rigorous imprisonment for five years. We substitute therefore a sentence of rigorous imprisonment for the period already undergone.

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