

PUNJAB AND HARYANA HIGH COURT

Kesar Singh

Vs

State of Haryana

(Rajive Bhalla,J)

14.12.2005

JUDGEMENT

Rajive Bhalla,J

(1.) BY this judgment, two appeals, namely, Criminal Appeal Nos. 61-SB of 1993 (Kesar Singh and another v. State of Haryana) and 185-SB of 1993 (State of Haryana v. Kesar Singh and another) shall be disposed of. Criminal Appeal No. 51-SB of 1993 has been filed by Kesar Singh and Pala Ram, impugning the judgment and order of Additional Sessions Judge, Ambala, whereby they were convicted under Section 304 Part-I, read with Section 34 of the Indian Penal Code. Kesar Singh was sentenced to 8 years rigorous imprisonment and a fine of Rs. 500/-, in default whereof, he was directed to undergo a further rigorous imprisonment for a period of 2 months. Pala Ram was sentenced to undergo 5 years rigorous imprisonment and a fine of Rs. 500/-, in default, he was directed to undergo 2 months rigorous imprisonment. The sentences were ordered to run concurrently. Criminal Appeal No. 185-SB of 1993 has been filed by the State of Haryana, impugning the aforementioned judgment and order of acquitting the appellants under Sections 302 read with Section 34 of the Indian Penal Code (for short the "IPC").

(2.) A factual narrative of the matter, in dispute, would be appropriate. Fir No. 80, dated 30.4.1988, under Section 302 read with Section 34 of the IPC, Police Station Panchkula, was registered on the statement of PW1 Hardev Singh. In his statement before the Police, Hardev Singh alleges that he lives at Dera Bassi, where he is posted as a teacher. On 24.4.1988, he and Karam Chand came to village Budhanpur to meet his father Ujjagar Singh. A patch of Shamlat land exists in front of their house, which land is in possession of Pala Ram, Kesar Singh, sons of Kesar Singh and Binder alias Balwinder s/o Sadhu Ram and Mohna s/o Pala Ram Pala Ram etc. were laying a foundation on the aforementioned (land) and Ujjagar Singh, the complainant's father, asked them to leave a passage, while laying the foundation, whereupon, Pala Ram, appellant No. 2 exhorted his co-accused to teach the old man a lesson, for otherwise he would trouble them. On hearing this noise, the complainant alongwith Karam Chand came out of their house and saw Kesar Singh inflicting a kassi (spade) blow, from its reverse side, on the head of

Ujjagar Singh. Ujjagar Singh fell down. The complainant and Karam Chand rushed him to the Primary Health Centre, Panchkula, where the doctor conducted a medico-legal examination and after providing first aid, referred him to General Hospital, Sector 16, Chandigarh. On 30.4.1988, Ujjagar Singh's condition became serious and he was referred to Post Graduate Institute of Medical Sciences and Research, Chandigarh, where he succumbed to his injury on 1.5.1988. The matter was reported to the Police on 30.4.1988 at 6.00 p.m. leading to the lodging of the Fir, aforementioned.

(3.) UPON completion of the investigation, the final report under Section 173 of the Code of Criminal Procedure (for short the 'Cr.P.C.') was filed before the Illaqa Magistrate. The accused were committed to the Court of Sessions. The accused were charged under Section 302 read with Section 34 of the IPC, to which they pleaded not guilty and claimed trial. ;