

Hari Singh Etc vs State Of Haryana on 13 April, 1993

Equivalent citations: 1993 SCR (3) 61, 1993 SCC (3) 114

Author: N.P Singh

Bench: N.P Singh

PETITIONER:
HARI SINGH ETC.

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT 13/04/1993

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
ANAND, A.S. (J)

CITATION:
1993 SCR (3) 61 1993 SCC (3) 114
JT 1993 (3) 73 1993 SCALE (2) 490

ACT:
Constitution of India 1950:
Article 136-Does not confer right of appeal-Only right to
apply, for special leave to appeal.
Indian Penal code:
Sections. 148, 149, 302, 304 Part II and 323-Different
accused when held to have neither common object or common
intention-Held guilty of offence under Section 323.
Practice and Procedure
SLP of Co-accused rejected-Effect of SLP on other accused-
Doctrine of stare decisis-Applicability of.

HEADNOTE:
The three appellants In the two appeals along with 3 others,
were tried for having committed murder. One of the accused
being a minor, his trial was separated so that the same
could be conducted by the Children Court.
The case of the prosecution was that on the night
intervening 6th and 7th October, 1982 the deceased and PW16.
who was the first cousin of the deceased, were returning

after witnessing Ram Leela. At that time the aforesaid 5 accused were also returning from the show and it was alleged that they teased some girls of the village who had also gone to see the Ram Leela, and that the deceased and PW16 objected to this behaviour of the accused persons. On this the accused persons abused them which was followed by exchange of abuses from both the sides. PW13 intervened and pacified them. Next day at about 2.30p.m. the deceased and PW16 went to their flour mill to bring back

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their bullocks and fodder cart. Two of the accused with Pharsas, one with a Ballam, and three others with sticks came there. One of the accused abused the deceased and PW16 saying that they would teach them a lesson for abusing them the previous night. Having said so one of the accused gave a pharsa blow from the blunt side on the head of the deceased. The other gave a pharsa blow on the head of the deceased. PW16 raised an alarm and the remaining accused gave blow to PW16. PW16 also got a blow of Ballam from the blunt side on his head. Thereafter an alarm was raised and all the accused persons fled away from the place of occurrence. The victim was taken to the local Hospital on a tractor and thereafter he was referred to A.I.I.M.S., New Delhi, where PW1 examined him and also sent information to the police post at about 4.15 p.m. The victim reached the A.I.I.M.S. at about 7.25 p.m. where he was examined. A.S.I., PW17 who had got the information about the occurrence went to the Institute and the statement was recorded. PW17 took up the investigation. The victim died in the Institute the next morning at 7.00 a.m. The postmortem examination was held by PW15 on 8th October, 1982 at 4.30 p.m. on 12th October, 1982 PW1 examined one of the accused Suresh under the orders of judicial Magistrate and he made a report regarding the injuries he had received the duration of the time in respect of the injuries which he stated was 3 to 6 days.

The five accused were put up for trial, and the Session Judge convicted and sentenced all these accused for offences under Section 302 read with 149, Sections 148 and 323 read with Section 149 to imprisonment for life. The High court having dismissed their appeals, the three appellants filed two appeals to this Court.

In the appeals to this court it was contended on behalf of the appellants that on the materials on record the Courts below should have come to the conclusion that the prosecution had suppressed the real manner of occurrence and had disclosed a version of the occurrence which cannot be accepted. It was pointed out that the accused-Suresh, Vijender and Virender were the sons of accused Hari Singh who was aged about 60 years, and that it was highly improbable on the part of Hari Singh to join his sons for committing the murder of the deceased-

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Mange Ram who had protested about the behaviour of his sons.

It was submitted that in view of the admitted position that the residential unit, and the tube-well being by the side of the flour mill of the deceased there was no question of the accused persons going to the flour mill of the deceased to assault the deceased and PW16. It was further submitted that in the First Information Report the name of accused Suresh was mentioned in connection with the previous night's incident and that he and Satbir gave pharsa blows on the head of the deceased, that PW 16 modified his version of the FIR in court by saying that the injuries on the head of the victim were caused by the back side of the pharsa and that this improvement was introduced after it was found during the postmortem examination that injuries had been caused by application of blunt force which was inconsistent with the case of assault on the head of the deceased by pharsa.

The State raised an objection that in view of the dismissal of the Special Leave Petition of the two accused namely Suresh and Vijender against whom similar allegations had been made, it was not open to this Court to entertain any plea on behalf of the present 3 appellants because it will be deemed that while dismissing the special leave petition this Court had affirmed the findings recorded by the Trial court and the High Court in respect of the manner of occurrence and participation of the accused persons including the 3 appellants.

Allowing the appeals in part, and setting aside the convictions of the appellants under Section 302 read with Section 149 of the Penal Code; under Sections 148 and 323 read with Section 149; this court,

HELD: 1. Appellant-Satbir convicted under section 304 Part II and sentenced to undergo rigorous imprisonment for seven years. Appellant Gulbir convicted for an offence under Section 325 Penal code and sentenced to undergo rigorous imprisonment for three years. Appellant Hari Singh convicted for an offence under Section 323 of the penal code and sentenced to the period of imprisonment already undergone. (75-H, 76-A-B)

2 (a). In the system of the justice which is being administered by the Courts. One of the basic principles which has to be kept in view, is that Courts of coordinate jurisdiction, should have consistent

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opinions in respect of an identical set of facts or on question of law. If Courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy. (72-D-E)

(b) Before any such principle is applied It must be held that the earlier order passed by this Court dismissing the Special Leave Petition of the co-accused amounts to a judgement or an affirmance of the findings of the High Court, about the manner of the occurrence, participation of

the different accused persons and the nature of offence committed by them. (72-F)

3. Article 136 (1) of the constitution confers overriding and extensive powers of granting special leave to appeal or rejection thereof in the discretion of this Court. Article 136 does not confer a right to appeal, it confers only a right to apply for special leave to appeal, which taking all facts and circumstances into consideration may be granted or rejected. Even in a case where the special leave application is rejected, the order of the High Court does not merge in the Order of this Court, as is the case while exercising the appellate power. Similarly, when Special Leave Petition is entertained against any final or interlocutory order this Court does not convert itself to a Court of appeal. (72-D-H)

Gian Chand v.. Kunjbehanlal [1977] 3 SCC 317, referred to. (76-E)

4. It is a basic principle of the administration of justice that like cases should be decided alike. It is a very sound rule and practice otherwise on same question of law or same set of facts different persons approaching a Court can get different orders. (73-D)

5. The doctrine of precedent is not applicable to an order passed by this Court rejecting a Special Leave Petition. Any such order cannot be held to be stare decisis so that it is a binding on the Court. (73-F)

6. Rejection of the Special Leave Petition gives a finality to an

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order of the High Court, inasmuch as the same accused cannot file more than one Special Leave Petition. But in rare and exceptional cases this Court has exercised power under Article 32 of the Constitution so that there should not be miscarriage of justice and to avoid a direct conflict and confrontation between two orders of this court. (73-H, 74-A) Harbans Singh v. State of U. P., AIR 1982 SC 849; Pyare Singh v.. State of Madhya Pradesh, [1992] SUPP 3 SCC 45 and (77-F) A.R. Antulay v.. RS. Nayak. AIR 1988 SC 1531, referred to. (78-C)

7. The mere rejection of the Special Leave Petition of co-accused persons cannot seal the fate of the appeals of the appellants which have been entertained after leave having been granted by this Court. The appellants to whom leave has been granted can urge all questions within the framework of Article 136 of the Constitution for consideration. by this Court and a relief to which such appellants may be entitled cannot be denied to them merely on the ground that a Special Leave Petition in respect of co-accused persons with more or less similar charges, evidence and convictions has already been rejected. (75-F- G)

8. On the basis of the evidence of PW16, the informant, it cannot be said that the accused persons had an intention to cause such injuries to the victim which may result in his

death. When they caused the injuries from the blunt side of the Pharsa it will have to be presumed that they had knowledge that those Injuries can cause the death, but there was no intention on their part to cause death. As such the Trial Court and the High Court should not have convicted the appellants under Section 302 read with Section 149. (71-G-H) 9. (a) On the materials on record in the Instant case, the prosecution has not been able to prove and establish that the appellants had the common object or shared the common intention to cause the murder of the victim. From the evidence of the prosecution Itself It appears that the flour mill of the deceased and the residential unit of the accused persons being adjacent to each other, suddenly a fight took place in which the appellant Satbir gave a blow by the back side (wooden part) of the Pharsa, which caused one of the two injuries on

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the head of the deceased. It cannot be held that appellant Satbir had an intention to cause the death of the victim. In such circumstances it can be said that he had only knowledge that such blow may cause an injury resulting in the death of the victim. He should have, therefore, been convicted under Section 304, Part-II, of the Penal Code. (75-C-E)

(b) So far as appellant-Gulbir is concerned, according to the prosecution case, he was carrying a stick and he is alleged to have given a stick blow to the deceased on a non-vital part of the body. In this background, he can be held to have committed the offence only under Section 325 of the Penal Code. (75-F)

(c) In regard to the appellant-Hari Singh, he was aged about 60 years at the time of the occurrence and the prosecution case itself, is that he is said to have given a stick (lathi) blow to the informant PW 16. He is not alleged to have given any blow to the deceased. He has, therefore, to be held guilty for an offence only under Section 323 of the Penal Code. (75-G)

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 698/85 with 59/86.

From the Judgment and Order dated 30.4.1985 of the Punjab and Haryana High Court in Crl. A. No. 345-DB of 1984. R.L. Kohli and Prem Malhotra for the Appellants in Crl. A. No. 698/85.

O. P. Sharma R.C. Gunbrele, K.R. Gupta, Mrs. Nanita Sharma, Vivek Sharma and. Kamaljeet Singh for the Appellant in Crl. A. No. 59/86.

K.C. Bajaj and Ms. Indu Malhotra (NP) for the Respondent. The judgment of the Court was delivered by N.P.SINGH. J One appeal is on behalf of Hari Singh and the other is on behalf of Satbir and Gulbir. They were put on trial along with Suresh, Vijender and Virender for having committed the murder of Mange Ram on 7th October, 1982. Virender being a minor his trial was separated so that the said may be conducted by Children Court. The remaining five accused were convicted for offences under section 302 read with 149, Section 148 and Section 323 read with 149. Sentence of imprisonment for life was imposed against all the five accused persons under Section 302 read with 149. Whereas under Section 148 each one of them was sentenced to undergo rigorous imprisonment for one year, and rigorous imprisonment for three months under Section 323 read with

149. The Sentences were directed to run concurrently. The High Court dismissed their appeal.

Special Leave Petition (Criminal) No.2160 of 1985 was filed on behalf of accused Hari Singh, Suresh and Vijender. On 23rd September, 1985 this Court granted special leave to appeal to appellant Hari Singh, but dismissed the said Special Leave Petition so far Suresh and Vijender were concerned. Leave was granted to appellants Satbir and Gulbir on a separate Special Leave Petition filed on their behalf.

The case of the prosecution is that in the night intervening 6th and 7th October, 1982 Mange Ram (hereinafter referred to as "the deceased") and Ram Kishan PW16, who is the first cousin of the deceased, were returning after witnessing the Ram Leela. At that very time Suresh, Satbir, Vijender, Virinder and Gulbir were also returning after the show. Near the baithak of Jit Ram, the accused persons teased some girls of the village who had also gone to see the Ram Leela. The deceased and PW 16 objected to the behaviour of the accused persons towards the girls of their own village. On this it is said that the accused persons abused them which was followed by exchange of abuses from both the sides. Budhi PW 13 intervened and pacified them, Next day at about 2.30 PM. the deceased and PW 16 went to their flour mill to bring back their bullocks and fodder cart. Suresh and Satbir with Pharsas, Hari Singh with a Ballam, Virinder, Vijender and Gulbir with sticks came there. Suresh abused the deceased and PW16 saying that they would teach them a lesson for abusing them i.e. accused persons on the previous night. Having said so accused Suresh gave a Pharsa blow from the blunt side. on the head of the deceased. Satbir also gave a Pharsa blow from the blunt side, on the head of the deceased. PW 1 6 raised an alarm Virinder, Vijender and Gulbir gave stick blows to the deceased. It is further the case of the prosecution that when PW16 tried to intervene Hari, Singh gave a Ballam blow from the blunt side on his head and Vijender gave a stick blow on the left elbow of PW16. Thereafter an alarm was raised and accused persons fled away from the place of occurrence.

The victim was taken to B.K. Hospital, Faridabad on a tractor. From there he was referred to A.I.I.M.S., New Delhi, by Dr. O.P. Sethi PW 1.PW 1 also sent information to the Police Post No. 5, Faridabad, at about 4.15 P.M. the victim reached the A.I.I.M.S. At about 7.25 P.M. where he was examined. Raghbir Singh, A.S.I., PW17 who had got the information about the occurrence at the Police Station Chhainsa at 5.35 P.M. the same evening from the Police Station, New "Township, Faridabad, went to the Institute aforesaid and recorded the statement of PW16 at 8.30 P.M. which was forwarded to the Police Station, Chhainsa, where a case was registered at 11.30 P.M. the same

night PW 17 took up the investigation and visited the place of occurrence and collected blood-stained earth. The victim died in the Institute the next morning at 7.00 A.M. The postmortem examination was held by PW 15 on 8th October, 1982 at 4.30 P.M. He found three stitched wounds, one on the right parietal region, second on the middle of the scalp and the third on the left parietal region. One out of three wounds, was an operational (surgical) wound. From internal examination, fracture of right occipital bone and right frontal base was found. He also found contusions on the right thigh, left eye and left fore arm of the victim. According to the opinion of PW 15 the injuries found on the deceased had been caused "by application of blunt force" and were sufficient in ordinary course of nature to cause death. The Pharsas from which according to the prosecution case the aforesaid injuries had been caused, were shown to PW 15, the doctor, and he stated as follows:

"I have seen the alleged weapon of offence, Pharsa EX.P. 1 and the ante mortem injuries which are noted on the head cannot be inflicted by this weapon. On the opposite side of Pharsa, there are two projecting devices for holding the Pharsa with Bamboo, having a distance of 15 cm. from each other. Even if Pharsa EX.P. 1 is used from any of its two sides (Between iron blade and the two iron projections referred above) even then head injuries mentioned above are not likely to cause.

At this stage another sealed parcel containing a Pharsa EX.P.2 opened at the instance of defence counsel. It was found containing a Pharsa Ex. P.2 1 have been this Pharsa also. The distances between two projections holding iron blade with bamboos is about 11.5 cm. and as such the injuries in question could not be caused by this weapon also, either used iron blunt side or iron any of the two sides, as stated by me with reference to EX. P. 1 It is correct that the injury No. 2. is a operational (Surgical) wound which correspond with internal examination of head and corresponding piece of bone was absent having a size of 12 cm. X 10 cm."

On the person of PW16 only few superficial injuries were found.

On 12th October, 1982 the aforesaid Dr. O.P. Sethi PW1 of B.K. Hospital, Faridabad, examined accused Suresh under the orders of Shri Raj Kumar, HCS, Judicial Magistrate, Faridabad, and found the following injuries on the persons of Suresh:

"1. A diffused and tender swelling over back of left hand all over the wrist joint and lower half of left fore-arm. There were bluish mark of two bruises (abraded, each 1/2" x 1/2" over back fore-arm). X-ray were advised for left wrist joint including lower half of the fore-arm and the hands. It was advised for posterior, interior and lateral views.

2. A partially healed injury 1" x 1/8"

placed at the top of head 5" above the pinna of right ear. X-ray advised for skull in superior view.

3. A partially healed injury $3/4"$ x $1/8"$ at the left half of head 2" behind the interior hair line. X-ray was also advised.
4. A linear injury having $3/4"$ x $1/8"$ at right half of head, $1\ 1/2"$ behind interior hair line. X-ray skull was advised.
5. A vertical injury mark $2"$ x $1/2"$ at the left shin $5"$ $1/2"$ above left ankle joint."

The duration of the time in respect of the injuries aforesaid was three to six days. PWI stated in the Court that accused Suresh had been medically examined at the request of the Police and a copy of the medical report was also handed over to the Police.

It was urged on behalf of the appellants that on the materials on record the Courts below should have come to the conclusion-that prosecution has suppressed the real manner, of occurrence and has disclosed a version of the occurrence which cannot be accepted. It was pointed out that accused Suresh, Vijender and Virinder are the sons of accused Hari Singh who was aged about 60 years, as such, it was highly improbable on the part of Hari Singh to join his sons for committing the murder of Mange Ram who had protested the behaviour of the sons of Hari Singh, the previous night with the girls of the village. From the evidence of Rang Lal PW7 it appears that the flour mill of the deceased and the fields of the accused persons are across the same road. The tube well of accused Hari Singh is situated adjoining the mill where Hari Singh has also got tile residential unit. It was urged that in view of the admitted position that the residential unit, tube-well are by the side of the flour mill of the deceased there was no question of the accused persons going to the flour mill of the deceased to assault the deceased and PW16. The accused persons and the deceased both having their flour mill and residential unit side by side, most probably clashed as a result of a sudden fight in which injuries were caused to the victim as well as to PW16 on the side of the prosecution and on Suresh on the accused side. It may be mentioned that in the First Information Report, only the name of Suresh, one of the six accused was mentioned in connection with the previous night's incident saying that he along with four or five boys were coming after seeing the Ram Leela and then they started teasing the girls and thereafter an exchange of abuses took place. In the First Information Report it was also stated by PW16 that accused Suresh and Satbir gave Pharsa blows on the head of the deceased. In the First Information Report PW16, the informant, did not state that the injuries on the head of the victim were caused by the back side of the Pharsa. On behalf of the appellants, it was pointed out that this change was introduced after it was found during the postmortem examination that injuries had been caused by application of blunt force' which was inconsistent with the case of assault on the head of the deceased by Pharsa. But merely on the ground that PW16, the informant, did not mention the name of any other accused in connection with the previous _night incident except Suresh or in the First Information Report having said that Suresh and Satbir gave Pharsas blows on the head of the deceased. Modified the same in court by saying that they gave one Pharsa blow each by the back side of the Pharsa, his evidence cannot be rejected outright. But at the same time the case of the prosecution that Hari Singh along with Five accused including a child, went to the flour mill of the deceased, with an intention to cause the death of the victim, because of the previous night abuses and altercations, also does not appear to be the real version of the occurrence. If the intention of the accused persons was to commit the murder,

then they would not have given blows by the back side of the Pharsa on the head of the deceased. In all probabilities because of the previous night's incident, at about 2.30 P.M. a sudden fight took place, in which accused Suresh and Satbir are alleged to have given blows from the back side of the Pharsa on the head of the deceased. PW 15, the doctor, who held the postmortem examination, has stated that those injuries had been caused "by application of blunt force" and has emphatically repudiated that injuries on the head of the deceased could have been caused by two Pharsas Ex, P. 1 and P2 which had been seized and shown to him during the course of his examination. The injuries from the back side of the Pharsa can be said to have been caused by "blunt force". It has been rightly submitted that on basis of the evidence adduced including the evidence of PW 16, the informant, it cannot be said that accused persons had an intention to cause such injuries on the victim which may result in his death. When they caused those injuries by the blunt side of the Pharsa it will be presumed that they had knowledge that those injuries can cause the death, but there was no intention on their part to cause death. As such the Trial Court and the High Court should not have convicted the appellants under- Section 302 read with Section 149.

On behalf of the State an objection was taken that in view of the dismissal of the Special Leave Petition filed on behalf of two accused Suresh and vijender against whom similar allegations had been made, it is not open to this Court now to entertain any plea on behalf of the three appellants because it will be deemed that while dismissing the Special Leave Petition filed on behalf of Suresh and Vijender this Court has affirmed the findings recorded by the Trial court and the High Court in respect of manner of occurrence and participation of the accused persons including the three appellants. It was also pointed out that if any of the appellant is acquitted or the convictions and sentences imposed against them are altered in any manner it will lead to inconsistency in the different orders passed by this Court.

It is true that system of the justice which is being administered by the Courts, one of the basic principles which has to be kept in view, is that Courts of co-ordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on question of law. If Courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy. But before any such principle is applied it must be held that the earlier order passed by this Court dismissing the Special Leave Petition of the coaccused amounts to a judgment or an affirmance of the findings of the High court, about the manner of the occurrence, participation of the different accused persons and the nature of offence committed by them.

Article 136 (1) of the Constitution confers overriding and extensive powers of granting special leave to appeal or rejection thereof in the discretion of this Court. Article 136 does not confer a right to appeal, it confers only a right to apply for special leave to appeal, which taking all facts and circumstances into consideration may be granted or rejected. Even in a case where special leave application is rejected, the Order of the High Court does not merge in the Order of this Court, as is the case while exercising the appellate power. Similarly when Special Leave Petition is entertained against any final or interlocutory order this court does not convert itself in a court of appeals. It was said in the case of Gain chand V. Kunjbehari Lal, [1977] 3 SCC 1 Chandrachud, J (as he was then):

"With regard to the first submission it may be pointed out that an application for special leave under Article 136 of the Constitution against a judgement or an order cannot be equated with the ordinary remedy of appeal, as of right, under any provisions of law. It is an extraordinary right conferred under the constitution, within the discretion of this Court, and such an application for special leave does not come within the contemplation of appeal pending before the Court under Section 13 A (a)."

It is a basic principle of the administration of justice that like cases should be decided alike. It is a very sound rule and practice otherwise on same question of law or same set of facts different persons approaching a Court can get different orders. But can the appeal of an accused, who has been granted special leave to appeal, be dismissed on the ground that the Special Leave Petition filed on behalf of a coaccused with more or less similar charges has already been rejected by this court. although this Court is satisfied that either such accused whose appeal is being heard is entitled to acquittal or ought to have been convicted for a different offence with a different sentence. The doctrine of precedent is not applicable to an order passed by this Court rejecting a Special Leave Petition. Any such order cannot be held to be *stare decisis* so that it is a binding on us.

If it is held that as the Special Leave Petition filed on behalf of Suresh and Vijender having been rejected, this Court cannot alter the conviction or sentence passed against the three appellants, including the acquittal of any one of them. although the Court is satisfied on the materials on record, then what was the purpose, while rejecting the Special Leave Petition of the co-accused Suresh and Vijender, to grant leave to appeal so far the present three appellants are concerned? At the same time it need not be impressed that rejection of the Special Leave Petition gives a finality to an order of the High Court, inasmuch as the same accused cannot file more than one Special Leave Petition.

But in rare and exceptional cases this Court has exercised power under Article 32 of the Constitution so that there should not be miscarriage of justice and to avoid a direct conflict and confrontation between two orders of this Court. In the case of Harbans Singh v. State of U. P., AIR 1982 SC 849, two accused persons had been sentenced to death by a common judgment. Special Leave Petition filed on behalf of one of the accused persons was dismissed. So far the other accused, who had also been sentenced to death, is concerned his Special Leave Petition was entertained on question of sentence. Ultimately his death sentence was commuted to imprisonment for life. The other accused person whose Special Leave petition had been dismissed filed it petition under Article 32. His death sentence was also commuted by the Supreme Court. In that connection it was said:

"Since Kashmira Singh's death sentence was commuted by this Court, it would be unjust to confirm the death sentence imposed upon the petitioner. That will involve the Court as well as the authorities concerned in the violation of rudimentary norms governing the administration of justice. "

In the well known case of A.R. Antulay v. R.S. Nayak. AIR 1988 SC 153 1. it was pointed Out that the Supreme Court is not Powerless to correct its error affairs Court is satisfied that if such power is not exercised it will lead to manifest injustice because no man can suffer for the mistake of the Court.

Again in the case of Pyare Singh v. State of Madhya Pradesh [1992] Supp. 3 SCC 45, this Court in exercise of power under Article 136 of the constitution while altering the convictions and reducing the sentences of the four out of six accused persons who had filed Special leave petitions before this Court. extended the same benefit and relief to other two accused persons who had not even filed any Special Leave petition against their convictions and sentences because this court felt that if the same benefit of alteration of conviction and modification in sentence is not given to other two convicted accused persons. it will lead to gross injustice.

The mere rejection of the Special Leave Petition of co- accused persons cannot seal the fate of the appeals of the appellants which have been entertained after leave having been granted by this Court. The appellants to whom leave has been granted can urge all questions within the frame work of Article 136 of the Constitution for consideration by this Court and a relief to which such appellants may be entitled cannot be denied to them merely on the ground that Special Leave Petition in respect of co-accused persons with more or less similar charges, evidence and convictions has already been rejected.

On materials on record, the prosecution has not been able to prove and establish (hit appellants had the common object or shared the common intention to cause the murder of the victim. From the evidence of the prosecution itself it appears that the flour mill of the deceased and the residential unit of the accused persons being adjacent to each other, suddenly a fight took place in which the appellant Satbir gave a blow by the back side (wooden part) of the Pharsa, which caused one of the two injuries on the head of the deceased. It cannot be held that appellant Satbir had an intention to cause the death of the victim. In the circumstances of 'the case. It can be said that he had only knowledge that such blow may cause an injury resulting in the death of the victim. Accordingly he should have been convicted under Section 304, Part-11, of the Penal Code.

So far appellant Gulbir is concerned, according to the prosecution case, he was carrying a stick and he is alleged to have given a stick blow to the deceased on a non-vital part of the body. In this background, according to us, he can be held to have committed the offence under Section 325 of the Penal code. As already pointed out according to the prosecution case itself, the appellant Hari Singh, who was aged about 60 years at the time of the occurrence is said to have given a stick (lathi) blow to the informant PW

16. It is not alleged to have given any blow to the deceased. Once it is held that different accused persons neither had any common object nor any common intention which they shared together to commit an offence under Section 302 or alike, the appellant Hari Singh has to be held guilty for an offence only under Section 323 of the Penal Code. In the result the conviction of the appellants under Section 302 read with Section 149 of the Penal Code is set-aside. The conviction under Sections 148 and 323 read with 149 is also set-aside. The appellant Satbir is convicted for an offence under Section 304 Part 11 and is sentenced to undergo rigorous imprisonment for seven years. The appellant Gulbir is convicted for an offence under Section 325 of the Penal Code and is sentenced to undergo rigorous imprisonment for three years. So far the appellant Hari Singh is Concerned, he is convicted for an offence under Section 323 of the Penal Code and is sentenced to the period of imprisonment already undergone. Accordingly the appeals are allowed in part to the extent

indicated above.

N. V. K.

Appeal allowed.