

CASE NO.:
Appeal (crl.) 1129 of 1999

PETITIONER:
DAMODAR

RESPONDENT:
STATE OF U.P.

DATE OF JUDGMENT: 02/11/2004

BENCH:
B.P. SINGH & ARUN KUMAR

JUDGMENT:
J U D G M E N T

The appellant herein, along with Ravindra Singh (co-accused) was put up for trial before the IInd Additional Sessions Judge, Jalaun. The trial court by its judgment and order dated 16th July, 1980 in Sessions Trial No.150/79 convicted Ravindra Singh under Section 302 Indian Penal Code (for short 'IPC') and sentenced him to imprisonment for life while convicting Damodar, the appellant herein under Section 302 IPC read with Section 34 IPC and also sentenced him to imprisonment for life. The High Court has affirmed the conviction and sentence by its impugned judgment and order of 28th July, 1999 in Criminal Appeal No.1962 of 1980. The co-accused Ravindra Singh also preferred a petition for special leave to appeal (Crl.) No.3587/1999 which was dismissed by this Court by order dated 28.10.1999. However, the appellant herein was granted special leave and that is how this appeal comes up for disposal before us.

The deceased, namely, Guru Narayan was aged about 70 years. It is alleged that on 21.7.1979 at about 8.00 P.M. when he was returning to his house accompanied by his wife Shakuntla Devi (P.W-3) and Partap Singh (P.W-5) brother of Shakuntla Devi, the appellant - Damodar along with accused Ravindra Singh came from behind and, on the exhortation of the appellant, Ravindra Singh fired at Guru Narayan, as a result of which he was injured, and by the time he could be removed to the hospital, he succumbed to his injuries. PW3 wife of the deceased immediately lodged a report at the police station Kotwali, Orai at 8.45 P.M.

The medical evidence on record discloses a wound of entry on the back 2 c.m. in diameter. Blackening and scorching around the wound was also noticed. The exit injury was situated in an area of 4" x 3" below right nipple.

The witnesses relied upon by the High Court are Pws.3 & 5. The testimony of these two witnesses could not be impeached before us. They appear to be natural witnesses. The first information report was also lodged promptly, within 45 minutes of the offence. In the first information report itself it has clearly been alleged that at the

exhortation of the appellant herein, Ravindra Singh fired from his country made pistol causing an injury which led to the death of the deceased.

It was argued before us that the mere fact that the appellant exhorted his companion to fire at the deceased is not sufficient for the application of Section 34 IPC. It was sought to be contended that there was no prior meeting of minds and, therefore, it cannot be said that what was done by Ravindra Singh was pursuant to the common intention of both the accused.

It is not possible to accept this contention. The facts of the case disclose that murders have taken place on both sides. While the deceased was being tried for the murder of the uncle of the appellant, Ravindra Singh was being tried for the murder of the son of the deceased. The parties are well-known to each other. It so happened that on the day of occurrence, while the deceased was proceeding ahead, he was noticed by the appellant herein who was in the company of Ravindra Singh, who was carrying a loaded country made pistol. He exhorted Ravindra Singh to kill the deceased whereafter Ravindra Singh fired at the deceased from behind and killed him. If these facts cannot be disputed, there can be no doubt about the application of Section 34 IPC. It was pursuant to the common intention of both that Ravindra Singh fired at the deceased resulting in his death. Having heard the parties and perused the records, we find nothing which may lead us to hold that the allegation of exhortation by the appellant is not true.

In view of the above facts and circumstances, we find no merit in the appeal

and the same is accordingly dismissed.

It appears that the appellant has been released on bail by order dated 28th October, 1999 passed by this Court. His bail bonds are cancelled, and the appellant is directed to be taken into custody forthwith to serve out the remainder of the sentence.

JUDIS