

Niraj Singh Vs. the State of Bihar

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Court : Patna

Decided On : Apr-25-2014

Judge : I.a. Ansari & Samarendra Pratap Singh

Appeal No. : Criminal Appeal (DB) No. 239 of 2006

Appellant : Niraj Singh

Respondent : The State of Bihar

Judgement :

S.P. Singh, J

1. The present appeal has been filed by the two accused-appellants, namely, Niraj Singh and Ranjeet Singh, against judgment of conviction, dated 28.01.2006, under Sections 302 read with Section 34 of the Indian Penal Code, passed by Additional Sessions Judge, Fast Track Court-III, Jehanabad, in Sessions Trial Nos. 205 of 2005/126 of 2005, arising out of Karpi P.S. case No.107 of 2004, G.R. No. 1857 of 2004. The accused-appellants have been sentenced, by order, dated 31.01.2006, to suffer imprisonment for life under Section 302 read with Section 34 of the Indian Penal Code.

2. During the hearing of the appeal, appellant, namely, Niraj Singh, took the plea of juvenility vide I.A. No. 724 of 2014, whereupon his conviction was set aside and the case against him was remitted to Juvenile Justice Board, Arwal, for being dealt with in accordance with law.

3. It would be still relevant to state here that in Karpi P.S. Case No. 107 of 2004, dated 20.11.2014, from which the trial arose was registered against four accused persons, namely, 1. Niraj Singh, 2. Mithilesh Singh, 3. Ranjeet Singh, and 4. Ram Chandra Singh. Initially, the investigating officer submitted charge sheet No. 03 of 2005, dated 14.02.2005, against three accused persons, namely, Niraj Singh, Ranjeet Singh and Ramchandra Singh, showing investigation pending against accused Mithilesh Singh.

4. As Mithilesh Singh had been absconding, his case was separated and the case, as against the remaining three accused persons, namely, Niraj Singh, Ranjeet Singh and Ram Chandra Singh proceeded vide Sessions Trial No.205 of 2005/126 of 2005. The learned trial Court convicted the appellants, Ranjeet Singh and Niraj Singh, under Sections 302 read with 34 of the Indian Penal Code, while accused Ramchandra Singh was acquitted vide judgment, dated 28.01.2006.

5. In the meantime, accused Mithilesh Singh was also apprehended and a supplementary charge sheet No. 45 of 2005, dated 03.05.2005, was filed against him and the case, on being committed to the Court of Sessions on 04.03.2011, gave rise to Sessions Trial No.104 of 2011 / 133 of 2011, wherein, too, the learned trial Court recorded judgment of conviction under Section 302 read with Section 34 of the Indian Penal Code as well as under Section 27 of the Arms Act, 1959, against accused Mithilesh.

6. Aggrieved by his conviction, the convict, Mithilesh Singh, preferred an appeal, which gave rise to Cr. Appeal (DB) No. 254 of 2013. The appeal of convict, Mithilesh Singh, was heard and, on 03.04.2014, having set aside his conviction and the sentences passed against him, this Court remanded the case to the learned trial Court with direction, inter alia, to examine the investigating officer and the doctor inasmuch as this Court found that it was not appropriate, on the part of the learned trial Court, to have used, in Sessions Trial No.104 of 2011 / 133 of 2011, the depositions of the two official witnesses aforementioned recorded, in Sessions Trial No.205 of 2005 / 126 of 2005, which involved Niraj Singh, Ranjeet Singh (i.e., the appellant herein) and also accused Ram Chandra Singh (since acquitted).

7. So far as accused Niraj Singh was concerned, his impugned conviction by the learned trial Court's judgment, dated 28.01.2006, as well as his sentence, by order, dated 31.01.2006, have been set aside and his case has been remanded to the Juvenile Justice Board, Arwal, for being dealt with in accordance with law.

8. It is in the backdrop of the above facts that only the appeal of Ranjeet Singh is before us.

9. The case of the prosecution, as unfolded at the trial, may, in brief, be described as follows:

(i) On 19.11.2004, at about 7.00 P.M., when Deepak Singh, son of the informant, Ram Pravesh Singh, while arranging generator and light in the compound of Suraj Mandir on the occasion of concluding ceremony of Chhath Pooja, reached near the house of Ramashraya Singh and was fixing tube lights, then, accused Ram Chandra Singh @ Jethu Singh (since acquitted) questioned Deepak Singh as to why tube light had not been fixed at his (Ram Chandra Singh) house and he (Ram Chandra Singh) also threatened that he would break all tube lights if lights were not arranged in front of his house too.

(ii) Because of the way accused Ram Chandra Singh had agitated and threatened Deepak Singh, an altercation followed. However, elders, in the locality, told accused Ram Chandra Singh that since it was a social function, the arrangement of lighting shall not be disturbed. Ram Chandra Singh and his sons, namely, Niraj Kumar @ Niraj Singh and Ranjeet Singh (i.e. the appellants herein), took out pistols and threatened to kill Deepak. In the meanwhile, local Mukhia (i.e. headman of the village), Vikrant Singh, came and told those, who were organizing cultural programme, that local M.L.A. would come to inaugurate the cultural programme and, at his reception, a dinner should be organized. For the purpose of making arrangement for dinner, Deepak Singh, his brother, Nagendra Singh @ Kariman, Manish Singh and Pintu Singh @ Dara, were deputed.

(iii) At about 8.00 P.M., on 19.11.2004, Nagendra Singh @ Kariman, Manish Singh and Pintu Singh @ Dara went to the shop of one Lalan Sao for purchasing spices and onion. After purchasing the said materials, when Nagendra Singh came out of

the said shop, accused Mithilesh Singh @ Dhananjay Singh (whose trial stands separated) and Niraj Singh (whose case has been sent to Juvenile Justice Board, Arwal (for being dealt with in accordance with law) and Ranjit Singh, who were standing, armed with country-made pistols, in the lane and watching them, shouted that they had come out and, then, accused Mithilesh Singh fired from his pistol on Nagendra Singh. The bullet hit the chest of Nagendra Singh @ Kariman, who fell down on the ground and, then, the said three accused, who were present along with Ram Chandra Singh, fled away. The injured, namely, Nagendra Singh, was taken to Karpi Hospital, where the doctor declared him dead.

(iv) One Ram Kumar Singh, the driver of the local M.L.A., came to Karpi police station and informed there that a young boy had been shot dead. Based on this information, Sanha (Station Diary) Entry No.357, dated 19.11.2004, at 9.20 P.M., (Exhibit 2) was made. Acting on the information, so received, Officer-in-Charge, Karpi Police Station (P.W.-9), rushed to the said Karpi hospital. Inquest was held over the said dead body, which was also subjected to post mortem examination.

(v) On 19.11.2004, a fardbeyan was lodged, at the said police station, at 11.30 P.M., by Ram Pravesh Singh (P.W. 8), father of the said deceased. Based on this fardbeyan and treating the same as First Information Report (hereinafter referred to as 'the F.I.R.') Karpi P.S. Case No. 107 of 2004, under Section 302 read with Section 34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, was registered against accused Ram Chandra Singh @ Jattu Singh, Niraj Singh, Ranjit Singh and Mithilesh Singh @ Dhananjay Singh.

10. On completion of investigation, a charge sheet was laid, under Sections 302/34 of the Indian Penal Code and Section 27 of the Arms Act, 1959, against accused, Ram Chandra Singh @ Jattu Singh, Niraj Singh and Ranjit Singh. No charge sheet, as already indicated above, was submitted against accused Mithilesh Singh @ Dhananjay Singh, on the ground that he (accused, Mithilesh Singh @ Dhananjay Singh) had been absconding. Upon submission of the charge sheet as mentioned above, accused Ram Chandra Singh @ Jattu Singh, Niraj Singh, and Ranjit Singh were put on trial.

11. When a charge under Sections 302 read with Section 34 of the Indian Penal Code was framed against the said three accused, they all pleaded not guilty. In addition thereto, a charge, under Section 27 of the Arms Act, 1959, was also framed against the said three accused persons. To the charges so framed, all the said three accused pleaded not guilty.

12. In support of their case, prosecution examined altogether 10 witnesses, namely, Ram Janam Singh (P.W. 1), Manish Kumar (P.W. 2), Ram Bashistha Singh (P.W. 3), Pintoo Kumar @ Dara (P.W. 4), Deepak Kumar (P.W. 5), Lalan Sao (P.W. 6), Birendra Kumar Singh (P.W. 7), Ram Pravesh Singh (P.W. 8) informant of this case, including the Investigating Officer (P.W. 9), namely, Vimal Kumar Verma, and the doctor (P.W. 10) Dr. R. P. Ojha, who had conducted post mortem examination on the dead body of Nagendra Singh.

13. All the said three accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, all the said three accused denied that they had committed the offences, which were alleged to have committed by them. It was the further case of the defence that Nagendra Singh was killed by extremists. No evidence was, however, adduced by the defence.

14. The trial of the said three accused, namely, Ram Chandra Singh @ Jattu Singh, Niraj Singh and Ranjit Singh, was concluded by judgment, dated 28.01.2006, whereby two of the accused, namely, Niraj Singh and Ranjit Singh were convicted under Section 302 read with Section 34 of the Indian Penal Code. While accused Niraj Singh and Ranjit Singh were so convicted under Section 302 read with Section 34 of the Indian Penal Code, accused Ram Chandra Singh was acquitted. Following their conviction, as mentioned hereinbefore, the two convicted persons, namely, Niraj Singh and Ranjit Singh, were sentenced, vide order, dated 31.01.2006, to suffer imprisonment for life.

15. Aggrieved by their conviction and the sentence passed against them, the two convicted persons, namely, Niraj Singh and Ranjit Singh, preferred jointly an appeal, which has given rise to Criminal Appeal (D.B) No. 239 of 2006. Out of the two convicts, namely, Niraj Singh and Ranjeet Singh, this Court, on 03.04.2014, as

already mentioned above, set aside the conviction of the accused, namely, Niraj Singh, and sent his case to the Juvenile Justice Board, Arwal, for being dealt with in accordance with law.

16. The present appeal, therefore, remains pending as against conviction of Ranjeet Singh and the sentences passed against him.

17. We have heard Mr. Baxi S. R. P. Sinha, learned Senior Counsel, and Mr. Ashwani Kumar Sinha, learned Additional Public Prosecutor.

18. While considering the present appeal, it may be pointed out that according to the evidence of P.W. 1 (Ram Janam Singh) the occurrence took place, at 7.00 P.M., at Mauza Khazuri. One Deepak Singh, along with one electric mechanic, was making arrangement of light. One Ram Chandra Singh wanted that the electric line should be extended to his door, which led to some dispute with Deepak. In the meantime, Neeraj and Mithilesh Singh took out their pistols at Deepak, but this situation was saved by intervention of villagers. In the meantime, Mukhia of the village came and informed that the local M.L.A. would also be coming and as such, arrangement for his dinner should also be made. Thereupon, Nagendra Singh, Manish and Pintu left for the shop of Lalan Sao for purchasing food materials. The accused Mithilesh, Neeraj and Ranjeet were loitering around the place of occurrence from before. As soon as Nagendra, Manish and Pintu came out of the shop, Mithilesh Singh shot at Nagendra @ Kariman. Accused persons soon thereafter fled away towards east by resorting to more firing. Nagendra was brought to Karpi hospital, where he was declared dead.

19. In his cross-examination, P.W. 1 has stated that he had not himself seen Mithilesh firing at Nagendra. He denied the allegation of having made false statement about lighting and that the accused had given threats. P.W. 1 has also denied the suggestion that the deceased was an extremist and the witnesses have falsely implicated him on account of enmity.

20. P.W. 2, Manish Singh, stated that at 8 o'clock in the night, on 19.11.2004, he, along with Nagendra @ Kariman and Pintu Singh @ Dara Singh, had gone to the shop of Lalan Sao for purchasing spices and onion. While returning, they

found Mithilesh @ Dhananjay, Niraj and Ranjeet, all armed with pistols, loitering around. P.W. 2 has deposed that Niraj and Ranjeet caught hold of Nagendra @ Kariman, whereupon Mithilesh opened fire, which hit the latter's chest. The victim, Nagendra, fell and soon, thereafter, he was taken to Karpi hospital, where the doctor declared him dead. It is in the evidence of P.W. 2 that beside him, others also witnessed the occurrence, which was offshoot of a dispute, which took place between Ram Chandra Singh and Deepak on the issue of making lighting arrangement. This witness has fairly admitted that he was not present, when exchange of hot words took place between Ramchandra Singh and Deepak. It is also in the evidence of P.W. 2 that since the local M.L.A. was to come to the village, the local Mukhia desired that food be also arranged for the local M.L.A. and, consequently, he (P.W. 2) accompanied Kariman (since deceased) to the shop of Lalan Sao for doing the purchases. This witness has denied the suggestion that he had not seen Kariman receiving gun shot injury. This witness has also negated the suggestion that Nagendra @ Kariman was shot dead by the extremists.

21. P.W. 3 (Ram Basistha Singh) is a witness to the altercation, which is claimed to have taken place between Ram Chandra Singh and Deepak, who was making lighting arrangement. Ram Chandra Singh threatened that he would disturb the whole programme. Niraj and Mithilesh were also present with Ramchandra Singh and both of them took out pistols at Deepak. A little later, Mukhia came and said that local M.L.A. was coming to inaugurate the ceremony and as such, arrangement of his food was to be made. P.W. 3 has also stated that on hearing sound of firing, he proceeded towards the shop of Lalan Sao and saw Kariman @ Nagendra lying on the ground. It is in the evidence of P.W. 3 that both, Manish and Pintu, disclosed that after shooting, Mithilesh, Niraj and Ranjeet had fled away. It is also in the evidence of P.W. 3 that Kariman was carried to Karpi hospital, where he was declared dead. This witness (P.W. 3) has clarified that Kariman was brother of Deepak and only Manish and Pintu were present at place of occurrence, when he arrived there and that other persons arrived only thereafter.

22. P.W. 4 (Pintu Kumar) claims to be eye witness. He supported the prosecution case. He stated that he had gone to the shop of Lalan Sao for purchasing food

materials along with Manish and Nagendra. As soon as they came out of the shop, Ranjeet and Neeraj caught Kariman, whereupon Mithilesh opened fire on Kariman, who sustained injury on his chest. The accused persons fled away towards east. On halla being raised, people assembled. He claimed to have recognized the accused. In his cross-examination, he has stated that lighting was being arranged on the occasion of Chhath Pooja, as usual, on the day of ĀParan during Chhath festival. He stated that no marpit had taken place prior to the occurrence. In his cross-examination, P.W. 4 has deposed that he had gone to purchase spices and onion, because chicken was to be cooked and when he reached the shop of Lalan Sao, 2-3 persons were already there from before and that one of the persons present there was of Dudhesi and the other one was of his Tola, but he did not know their names. It is the evidence of P.W. 4 that the shop of Lalan Sao had lights and as they came out of the shop, Kariman was shot at and the accused fled away soon thereafter. It is also in the evidence of P.W. 4 that blood had fallen all over and he, along with others, raised halla, whereupon Ram Pravesh Singh, Ramadhar Singh and Ramjanam Singh came, they carried the deceased leaving the food materials and that the villagers showed the place of occurrence to the police.

23. P.W. 5 (Deepak Kumar) has deposed, in his examination-in-chief, that he is not an eye witness to the commission of murder. He heard the incident from Manish, who disclosed that Mithilesh had shot at his brother, while Ranjeet and Neeraj had held him. The evidence of P.W. 5 is that at 7.00 P.M., tube light was being fitted in the lane and, in the meantime, exchange of hot words took place between him and Ram Chandra Singh, who asked Neeraj and Mithilesh to disturb cultural programme. Both, Mithilesh and Neeraj, even pointed pistols at him. However, the villagers intervened and the worst was averted. In his cross-examination, he has reaffirmed that he stated before the police that Dara and Manish had disclosed that Ranjit and Neeraj had caught hold of Kariman, whereupon Mithilesh fired shot upon him.

24. P.W. 6 (Lalan Sao) stated that Nagendra @ Kariman, Dara Singh and Manish had come to his shop for making purchase on the fateful evening. Soon after they left, he heard the sound of firing. In cross-examination, he stated that only one

shot was fired. However, he did not step out of shop for 15-20 minutes due to fear. The people carried the injured to the Block for treatment.

25. P.W. 7 (Birendra Kumar Singh) stated that Kariman Singh sustained gun shot injury on 19.11.2004, but he does not know as to who had fired at Kariman.

26. P.W. 8 (Ram Pravesh Singh) is the informant of the case. He broadly supported the prosecution case as narrated by him in the fardbeyan. He stated that on 19.11.2004, at about 8.00 P.M., while he was at the door of Nawal Singh, he heard sound of firing, whereafter he went to the place of occurrence and found his son lying in a pool of blood having sustained gun shot injury, the place of occurrence being near the shop of Lalan Sao. He learnt that Niraj Singh and Ranjeet Singh had caught hold of his son, while Mithilesh Singh had shot at him. He took the injured to Karpi hospital in a Jeep, where he was declared dead. He identified his signature on the fardbeyan as well as the signature of Ajay Singh and Ram Vashistha Singh, which were marked as Exhibit-1, 1/1 and 1/2 respectively.

27. It is in the evidence of P.W. 8 that the occurrence took place on account of dispute, which took place regarding lighting arrangement on the eve of Chhath Puja, some hot exchange of words took place between Deepak and Ram Chandra Singh, a co-villager, with respect to lighting arrangement, and that Ram Chandra Singh had threatened to disturb the cultural programme. Neeraj and Mithilesh pointed pistols at his son, but the situation was saved by villagers, who had intervened.

28. In his cross-examination, P.W. 8 has stated that the family of the accused persons had not given any contribution in the Chhath festival. In reply to further query, P.W. 8 has stated that Karpi hospital is situated adjacent to his village at a distance of half-a-Kilometer.

29. To a question from the Court, P.W. 8 has stated that his son was alive, when he arrived at the place of occurrence and that about 25-30 persons had already reached the place of occurrence prior to his arrival and that he found his son writhing in pain and within a short span of time, 200-250 people gathered at the place of occurrence, he boarded Tempo in semi-conscious state of mind for the

hospital and he returned home after 20-25 minutes in a vehicle arranged by the local MLA. P.W. 8 has deposed that the Officer-in-Charge recorded his statement at the hospital. This witness has admitted that he had previously lodged cases against 3-4 anti-social elements as well. He learnt about the commission of murder from Manish and Dara, who informed him that Ranjeet and Niraj had caught hold of his son, whereupon Mithilesh Singh fired on him. He denied the suggestion that as accused had enmity with the deceased, he had implicated them in a false case.

30. P.W. 9 (Vimal Kumar Verma) is the Investigating Officer of the case. He has stated that he got an information about the incident of murder from the driver of the MLA and, having recorded a Sanha, he proceeded for the local hospital and took the dead body in his custody. No one, present in the hospital, was ready to make any statement with respect to the incident. Some of the persons, who had gathered, stated that the father of the deceased, who had gone back to his house, would make statement about the incident. He, then, proceeded for the village Khazuri, where he recorded the fardbeyan (Ext.-3) of Ram Pravesh Singh, father of the deceased.

31. In his cross-examination, P.W. 9 has stated that the driver of the MLA only informed him that some firing had taken place. According to this witness, dispute, with respect to generator line/lighting arrangement, was the cause of the occurrence. Ram Chandra Singh was aggrieved as the lighting was not extended to his house. He inspected the place of occurrence, which is a lane, situated in front of north facing house and shop of Lalan Sao running west to east. He found blood in huge quantity spread over the ground in the lane in front of the main door of Lalan Sao. He seized the blood stained earth (Ext-5) and sent it for chemical examination. That apart, he did not find anything incriminating material at the place of occurrence. He recorded the restatement of informant and also the statement of Lalan Sao. He prepared inquest report in presence of the witnesses, Rinku Kumar and Manoj Kumar, which is marked as Exhibit-4. In his cross-examination, P.W. 9 has stated that he could not find any onion or spices around the place of occurrence. In his statement, he admitted that the village Khajuri as well as Karpi police station is extremist affected. He mentioned the names of Manish and Pintu @ Dara, as eye witnesses, because they had gone with the deceased to the shop

of Lalan Sao for purchasing onion and spices.

32. P.W. 10, Dr. R. P. Ojha conducted post mortem on the dead body of the deceased and his findings were as follows:

œCircular lacerated wound with inverted margin over right side of root of neck ? in diameter x cavity deep (would of entry).

On dissection of neck:- A tract is found from the root of neck (R) to back of the chest at the level of T-8. Blood and blood clot present. Laceration of right pleura and lung is found. Vessels of neck and that of lung are found lacerated. Chest cavity full of blood. One metallic substance taken out from muscle of back at level of T-8. Stomach contains about 6g. of semi-digested food materials. Urinary bladder empty. Heart chamber contains little amount of blood.?

33. In the opinion of the doctor (P.W.10), cause of death was shock and haemorrhage as a result of the injuries aforementioned.

34. Learned counsel for the appellant submits that the terrorists had, in fact, killed the deceased and the appellant and others have been falsely implicated due to village politics and factional differences. In support of his submission, the learned counsel for the appellant has submitted that P.W. 7 stated, in his deposition, that people were talking that extremists might have killed the said deceased. However, we find no such person has been produced by the defence in support of these submissions. Merely because suggestions were given to some of the witnesses that extremists might have killed the deceased, such suggestions would not be sufficient without being supported by any evidence so as to make out even a probable case that the said deceased was killed by the extremists. This plea of the appellant is not supported by the evidence on record and, being unfounded, is hereby rejected.

35. It was next submitted, on behalf of the appellant, that there was no cause for the accused to kill Nagendra Singh @ Kariman, because there was no animus or prior scuffle with him. Learned counsel for the appellant states that even according to the prosecution's case, the dispute, with respect to lighting, took place at 7.00

P.M. on the fateful day, i.e. 18.11.2004, between Deepak, brother of Nagendra, and Ramchandra Singh, father of accused Neeraj.

36. With regard to the above submissions, it needs to be pointed out that when the prosecution's case is based on the eye-witnesses account of the murder, the question as to what motive impelled the cause of death pales into insignificance.

37. In the case at hand, the occurrence of murder was preceded by exchange of hot words between Deepak, brother of the deceased Nagendra @ Kariman, on the one hand, and Ram Chandra Singh, father of the accused-appellant, Ranjeet Singh, on the other. During the altercations, which took place between Deepak and Ramchandra Singh, Niraj and Mithilesh took out the pistols and threatened to shoot Deepak. However, the situation was saved, because their co-villagers intervened. The aspect of altercation, which had taken place between Deepak and Ramchandra, has been well proved by the evidence of P.Ws. 1 and 3 and P.Ws. 7 and 8.

38. Coupled with the above, the fact, that the said deceased had gone to the shop of Lalan Sao (P.W. 6) for purchasing onions and spices, stands well proved by the depositions of Pintu and Manish. In fact, P.W.6, Lalan Sao, who is an independent witness, has confirmed, in his deposition, that Nagendra @ Kariman, Dara Singh and Manish had, indeed, come to his shop for purchasing onions and spices and shortly thereafter, when they left the shop, he heard sound of firing, but out of fear, he remained in the shop for 15-20 minutes and when he came out, he saw Nagendra @ Kariman lying on the ground writhing in pain and that the injured was carried to the hospital for treatment.

39. So far as the act of shooting by Mithilesh is concerned, it has also been proved beyond reasonable doubt by unshaken evidence of P.W. 2, who had accompanied the deceased, along with Pintu Singh @ Dara Singh, to the shop of Salan Sao (P.W. 6) for purchasing onions and spices and while they were returning from the shop, apart from the present appellant Ranjeet Singh, Mithilesh @ Dhananjay and Niraj and Ranjeet, who were all armed with pistols, had been loitering around. It is the further evidence of P.W. 2 that Niraj and Ranjeet caught hold of Nagendra @ Kariman and Mithilesh shot by his firearm on the chest of Nagendra @ Kariman,

who fell down and, on being taken to hospital, was declared dead by the doctor. The evidence given by P.W. 2 (Manish Singh) has remained wholly unshaken. His evidence, which is simple, natural, coherent, and consistent and his evidence, having remained unshaken, inspires great confidence and if his evidence is believed, which we see no reason to disbelieve, it becomes transparent that all the three persons, Niraj, Ranjeet and Mithilesh, formed a group and followed Pintu @ Dara Singh, Manish Singh (P.W. 2), Nagendra @ Kariman to the shop of Lalan Sao (P.W. 6), but remained loitering outside the said shop fully armed with pistols and as soon as they got the chance, Niraj and Ranjeet caught hold of Nagendra @ Kariman, while Mithilesh @ Dhananjay shot by his firearms on the chest of Kariman leading to his death. Broadly in tune with the evidence of Manish Singh (P.W. 2) is the evidence of Pintu, whose evidence could not be shaken in cross-examination.

40. It is, thus, well proved on the record by the evidence adduced that Kariman was shot dead by Mithilesh @ Dhananjay, Niraj and Ranjeet in furtherance of common intention of all the three persons, namely, Mithilesh @ Dhananjay, Niraj and Ranjeet.

41. The person, who has been shot dead, was none other than the brother of Deepak, who could have been a convenient target. It is not unusual to target any member of the same family, who could conveniently fall prey, though there may not be any direct animus with him. On these premises, it is difficult to accept the plea of the accused persons that they had no cause to kill the deceased Nagendra @ Kariman. On the other hand, the eye witnesses consistently stated, in their evidence, that this appellant, along with Niraj, had caught hold of the said deceased and Mithilesh opened fire hitting Kariman's chest with bullet, which caused the death.

42. Furthermore, P.W. 1, Ram Janam Singh, P.W. 3, RamBasisth Singh, P.W.5 Deepak Kumar, and P.W.8, Ram Pravesh Singh, and the informant, have stated that P.W.2 Manish Kumar and P.W. 4 Pintu Kumar informed them that appellant, namely, Ranjeet Kumar and Niraj had caught hold of the deceased, whereas Mithilesh opened fire on him. P.W. 6, Lalan Sao, an independent witness has, in

his deposition, confirmed the prosecution version that Pintu, Manish and Nagendra @ Kariman (deceased) had come to his shop for purchasing onion and spices and, soon after they left the shop, sound of firing was heard. He remained in the shop for 15-20 minutes on account of fear and when he came out, he saw Nagendra @ Kariman (deceased) fallen on the ground writhing in pain and the injured was carried to the Block hospital for treatment.

43. The murder was preceded by hot exchange of words between which is the motive assigned for the occurrence. In this respect, we find P.W.1, P.W.3, P.W.7 and P.W.8 are consistent in the version that hot exchange of words ensued between Deepak, brother of the deceased and Ramchandra Singh over not drawing of generator line up to the house of the latter. During the hot discussions, two of the accused, namely, Niraj and Mithilesh, even pistols pointed towards Deepak. The situation got saved, as villagers intervened. However the accused did not stop there, and little later killed one member of the same family, giving vent to their anger.

44. Furthermore, the place of occurrence and the time of occurrence are not under challenge. The fact that Nagendra @ Kariman died on account of bullet fired from a fire-arm is not questioned by the accused-appellant. The evidence on record, indisputably, points to the participations of the appellant and others in the commission of murder of the said deceased.

45. Mr. Baxi, learned Senior Counsel, for the appellant, submits that merely because the appellants were catching hold of the deceased, it cannot be concluded that they too shared the common intention of committing murder. In support of his submissions, he has placed reliance on case of Bhagwan Bux Singh and Another Vs. The State of U.P. (AIR 1978 SC 34).

46. In our view, the decision, in case of Bhagwan Bux Singh (supra), would not be applicable to the facts of the present case inasmuch as the accused therein were not alleged to be armed; whereas in the instant case, the witnesses alleged that the appellant was armed with pistol. Further-more, just prior to the occurrence, two of the accused had even taken out pistols at Deepak, brother of the said deceased.

47. In view of materials on record, we hold that the prosecution has been able to prove the charge against the appellant under Sections 302 read with Section 34 of the Indian Penal Code beyond all reasonable doubt.

48. In the result, this appeal is dismissed. The bail bonds of the appellant, namely, Ranjeet Singh, are hereby cancelled and he shall, forthwith, surrender, in the learned Court below, in order to serve out the sentences passed against him.

49. Let the Lower Court Records, along with a copy of this order, be sent back to the learned trial Court.

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