

Shailesh Kumar and ors. Vs. State

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Court : Allahabad

Decided On : Nov-08-1966

Reported in : 1966CriLJ110

Judge : S.D. Khare and ;Yasodanandan, JJ.

Appellant : Shailesh Kumar and ors.

Respondent : State

Advocate for Pet/Ap. : Sri. C.S. Saran

Judgement :

S.D. Khare, J

1. These are two connected appeals arising out of an order dated 22nd January, 1966, passed by the learned Sessions Judge, Gorakhpur, convicting all the nineteen appellants of the two connected appeals for the double murder of Somti and Bhaddu, for making an attempt to cause the deaths of four persons, namely, Prashad, Sm. Katwari, Swaminatha and Sant Kumar, and for rioting. Shaileah Kumar alias Moti Lal, who was armed with a gun and was responsible for causing the deaths of Somti and Bhaddu, was convicted under Section 302, Penal Code, and sentenced to death. The remaining eighteen appellants were convicted under Section 302 read with Section 149, Penal Code for those offences and sentenced to imprisonment for life. All the nineteen appellants were convicted under Section 307 read with Section 149, Penal Code, and each sentenced to seven years'

rigorous imprisonment. For the offence of rioting the appellants in Criminal Appeal No. 193 of 1966, being armed with deadly weapons such as gun and spears, were sentenced to two years' rigorous imprisonment each under Section 148, Penal Code, while the nine appellants in Criminal Appeal No. 164 of 1966, being armed with lathis only, were convicted under Section 147, Penal Code and each sentenced to one and a half year's rigorous imprisonment. The sentences were ordered to run concurrently.

2. There is also before us the usual reference by the learned Sessions Judge for confirmation of the death sentence parsed on Shailesh Kumar alias Moti Lal (appellant).

3. The two persons who lost their lives and also those who received injuries belonged to one and the same family, as will appear from the following pedigree:

BHOLAI AHIR|_____|| | | Somti (D)Swaminath Santh Prashad
|_____|| | |
Bbaddu =Kumar Sm. Katwari(1) (1) (1) (D) (1)

4. The descendants of Bholai Ahir resided in village Bhitaha, within police circle Bansaon, district Gorakhpur, and relations between them and certain Brahmin families of the village and also of the adjoining village Bhasma were very much strained. About ten or eleven years ago, a criminal case was started against Jitan Tewari, Chinni and Dukharan along with others for having caused hurt to the mother of Swaminath (P.W. 1). Again about sixteen months before the occurrence there was a free fight between Jitan Tewari, Chinni, Bisbambhar, Ganjeshari, Shambhu (appellants) and certain other persons on the one hand and Bhaddu. Prashad and certain other persons on the other. The accused persons in both the cross-cases were convicted and sentenced. In the year 1964 proceedings under Section 107, Criminal P.C. were started against Swaminath, Bisram, Somti, Prashad and others as one party and Jitan Tewari, Sheonat, Chinni, Gunje. shari, Neur (appellants) and certain others as the other party, and members of both the parties were bound down to maintain peace for a period of one year. Again, Jitan Pande started a case' under Section 379, Penal Code, against Bhaddu, Dwarka. (P.W. 6) and Bhonu (P.W. 9) on the allegation that they had stealthily removed his

crop. Shambhu (appellant) had also about a year ago started a criminal case against Swaminath, Prashad, Bhaddu and Sant Kumar. However, both these cases had ended in acquittal. A case under Section 307, Penal Code, was pending against Gunjeshari, Shambhu, Neur (appellants) and others for attempting to cause the death of one Kalika Brahmin of their village and Gunjeshari and other appellants were under the impression that Bhaddu and others were supporting Kalika as against them.

The prosecution case is that it was in this background that on 19th March, 1965, at about 8 a.m. two of the appellants, namely, Gunjeshari and Abbimanau went to the house of Kalika and started abusing him. They were also joined by Jitan Tewari, Dukharan, Sheonath, Chinni, Bishambhar, and Shambhu (appellants). Kalika entered his house and closed the door from inside. Gunjeshari and others started throwing brick-bats inside the house of Kalika and continued to shower abuses. Bhaddu (deceased), Sant Kumar, Somti, Dwarka and Earn Manohar arrived there and asked Gunjeshari and others not to indulge in such lawless activities. They left the house of Kalika at that time after threatening Swaminath (P.W. 1) and others that they had been persistently coming to the aid of Kalika and for that they would be taught a lesson. About one hour later, i.e., at about 9 a.m., the same morning when Bhaddu, Somti, Prashad Swaminath, Sant Kumar and Sm. Katwari were busy in some agricultural operations in their thrashing floor, all the nineteen appellants, arrived there shouting that they must be killed and their crops in the thrashing floor burnt. Shailesh Kumar was armed with a gun, while the remaining nine appellants of criminal appeal No. 193 of 1966 had spears with them, whereas all the nine appellants of criminal Appeal No. 161 of 1966 held lathis. They assaulted Bhaddu and others, who used their lathis in private defence of person and property. While the lathi fight was going on. Shailesh Kumar alias Moti Lal (appellant) fired his gun four times after aiming at Somti and others with the result that Somti and Bhaddu fell down on the ground and expired soon thereafter, while Prashad, Sm. Katwari and Swaminath also received gunshot injuries. Sant Kumar (P.W. 4) had received a spear injury only.

5. The first information report of the occurrence was lodged by Swaminath (P.W. 1) at police station Bansgaon the same day at 11.05. a.m.. In fact a written report

of the occurrence had been handed over by Lalji, the scribe of the report, to Sri Kapoor Singh Yadav (P.W. 19), S.O. Bansaon, at 10.30 a.m. in village Kauri Bam where he happened to be present at that time in connection with other work. The S.O. copied out the report in the case diary and handed over the original to Lalji for being presented at the police station where it was actually presented at 11.05 a.m. Sri Yadav, investigating officer, immediately proceeded to the place of occurrence and reached there at 11.10 a.m.. He found the dead bodies of Bhaddu and Somti lying at the place of occurrence. After holding inquests on their dead bodies he despatched the same to the mortuary for post-mortem examination. The bloodstained and unstained earth was taken from the place of occurrence and duly sealed in the presence of the witnesses. The house of Kalika Tewari was seen and it was noticed that brick-bats were lying there and tiles had been damaged. The Sub-Inspector took in his possession the brick-bats which he found lying at that place. The usual investigation followed.

6. The post-mortem examination on the dead bodies of Somti and Bhaddu was performed by Dr. G.H. Biswas (P.W. 15) on 20th March, 1965, between 12 noon and 2 p. m. Rigor mortis was found present both in the upper and lower limbs and the doctor was of the opinion that they must have died about 27 hours before the post-mortem examination. The ante-mortem external injuries received by Somti as noted by the doctor were-

1. Multiple gunshot injuries ' x ' occupying an area of the left side of the body from the nipple to the lower abdomen.
2. Multiple gunshot injuries ' x ' on the left forearm outer side extending from the left elbow to wrist joint.
3. Abrasion 3' x 1' on the left buttock upper and outer side.
4. Three gunshot injuries ' x ' on the left side of the back lower part.

7. The internal examination revealed that both the lungs were full of gunshot injuries and the pleural cavity as well as the pericardium were full of blood. The walls of the abdomen were punctured at several places and the abdominal cavity

was also full of blood. The spleen was also full of punctures and the stomach was full of blood. In the opinion of the doctor the death of Somti was due to gunshot wounds causing haemorrhage and shock.

8. The external ante-mortem injuries received by Bhaddu were-

1. Multiple gunshot injuries ' x ' in an area on the upper part of the chest and lower part of the neck.

2. Incised wound ' x 1/3' x 1' in the upper part of the outer aide at the right arm.

8. incised wound ' x 1/3' x cavity on the left side of the abdomen upper part.

The internal examination revealed that pleura, larynx, trachea, bronchi, both the lungs peri, cardiacum and large vessels of the heart had been punctured at several places as a result of the gunshot injuries. The abdominal cavity was full of blood. The oesophagus was also punctured. The stomach and the small intestine were empty but the large intestine was loaded. In his case also the doctor was of the opinion that death was due to gunshot wounds causing haemorrhage and shock. The doctor was further of the opinion that the injuries caused to them were sufficient in the Ordinary course of nature to result in death.

9. The injuries received by Prashad, Sm. Katwari, Swaminath and Sant Kumar were examined by Dr. Dmesh Chand Misra (P.W. 18), on 19th March, 1965. The injuries received by Sant Kumar appeared to be serious and, there, fore, he was examined at 3.15 p.m. while the remaining three persons were examined between 9-20 and 10 p.m. on 19.3.1965. They had received the following injuries:

SANT KUMAR.

A punctured wound 1' x ' x depth, not measured to avoid further injury to viscera, at 3 O'clock position and 1' away from umbilicus.

PRASHAD

1. A tiny contused circular wound on right side of head, 3' above right ear, 1/8' in diameter.

2. A tiny circular contused wound on the back of left arm, 1/8' diameter.
3. A tiny circular contused wound in upper part of right thigh, 1/8' diameter.
4. A contusion 1' x ' on the back of right wrist.

SMT. KATWARI

1. A tiny circular contused wound 1/8' diameter outer side of right forearm.
2. A tiny circular contused wound 1/8' diameter on the back of left head.

SWAMINATH

1. Tiny circular contused wounds, 1/8' diameter, one on medial end of left collar bone, and three on upper part of left arm.
2. A tiny circular contused wound 1/8' diameter, 2' latent to left scapular lower angle.
3. A tiny circular contused wound 1/8' diameter, 2' away from umbilicus at 7 O'clock position.

10. From amongst the appellants only one person, namely, Dukharan, had received injuries. Dr. Sita Ram Singh, medical officer in charge Bansaon Dispensary, examined his injuries on 20.3.1965, and found that he had received the following injuries-

1. Incised wound 2' x ' x bone deep on the right side of the head, on the parietal bone, about 1' ' above the top of the right ear.
2. Bruise 2' x ' on the right thigh in the middle on the inner side.
3. Abrasion ' x ' on the left knee joint.
4. Abrasion ' x ' on the left knee joint on the inner Bide.

5. Bruise 8' x ' on the left chest from the axilla to syphoid at the sternam.

Injury No. 1 appeared to have been caused with some sharp-edged weapon, while the remaining four injuries could have been caused with a blunt weapon. The doctor was also of the opinion that injury No. 1 could have been caused by a fall on some sharp-edged weapon.

11. According to the medical evidence, the injuries received by Prashad, Sm. Katwari, Swaminath, Sant Eumar and Dukharan could have been caused at the time of the occurrence.

12. The prosecution relied on the testimony of nine eye-witnesses of the occurrence, out of whom four, namely, Swaminath (P.W. 1), 8m. Eatwari (P.W. 3), Sant Kumar (P.W. 4) and Prashad (P.W. 5) are those who had received injuries at the time of the occurrence. The remaining eye-witnesses are Earn Manohar (P.W. 2) Dwarka (P.W. 6), Jagdambadhar (P.W. 7), Chhotu (P.W. 8) and Bhonu (P.W. 9). Jagdambadhar, a resident of village Sukahna, and Chhotu, a resident of village Dabarpar, did not belong to the village where the occurrence had taken place. They are, however, residents of neighbouring village and happened to be near the place of occurrence at the time the occurrence took place because Jagdambadhar (P.W. 7) was going to scrap grass while Chhotu (P.W. 8) was grazing his buffaloes. All of them fully supported the prosecution case.

13. All the accused persons pleaded not guilty and explained that they had been falsely implicated due to enmity. Except Dukharan (appellant) none of them admitted to be present at the time of the occurrence. Shailesh Kumar (appellant) pleaded alibi and examined four witnesses in support of his case that on the day of the occurrence he was lying ill in the private hospital of Dr. I.S. Bedi (D.W. 4) as an indoor patient in Jabalpur, Madhya Pradesh. The explanation given by Dukharan (appellant) in the Court of Session was as follows:

At 4 a.m. that morning I had gone to keep a guard on my kathal trees which are to the south of the threshing floor of Swaminath. The kathal trees are three in number and stand on plots Nos. 157/1 and 157/2. Bhaddu armed with a pharsa and Sant Kumar carrying a lathi with him arrived there and I told them that they had plucked

and removed kathals from those trees and had again come to do the same. Both of them abused and assaulted me. I raised an alarm and wielded my spear in self-defence. Thereafter several residents of the tillage arrived there and they were armed with lathis, spears and a gun. They asked Bhaddu and Sant Kumar to resist but they did not listen to them and kept on beating me. Thereafter the village people on the one side and Bhaddu, Somti, Sant Kumar, Eatwari, Prashad and Swaminath on the other started wielding lathis and spears. Bhaddu said at that time that the village people should be beaten. On hearing that one of the villagers fired his gun twice thrice and two persons, namely, Somti and Bhandu fell down on the ground as a result of the last gunfire. It was then that those persons left me. I received injuries from the pharsa held by Bhaddu and the Lathi wielded by Sant Kumar. I had fallen down on the ground. The residents of the village took me to my house from where I was arrested by the S.O. at about 7.30 or 8 a.m. in the morning. My father-in-law Thakur (appellant) and members of my family have been falsely implicated.

Sarson had not been sown in any of the fields of Swaminath, at the time of the occurrence, and those people were not busy in agricultural operations concerning any Sarson crop. Gram was not sown in any of the fields of Dwarka. Most of the prosecution witnesses are members of the family of Swaminath. Others belong to his party. The Kathal fruits were about 1 to 1 spans in length, at the time of the occurrence.

14. The learned Sessions Judge, after having considered the entire evidence on the record, arrived at the conclusion that the prosecution witnesses were reliable and no reliance could be placed on the evidence of alibi produced by Shailesh Kumar alias Moti Lal (appellant). No evidence had been led by any other appellant. In the result he convicted all the nineteen appellants as mentioned in the earlier part of this judgment.

15. The main point for consideration in these two connected appeals is whether the witnesses for the prosecution are reliable and the occurrence had taken place in the manner alleged by them.

After discussing the evidence their Lordships proceeded.

29. Having held the prosecution evidence to be reliable, we proceed to examine what in the circumstances of the case could have been the common object of the unlawful assembly. It was submitted by the learned Counsel for the appellants that the common object of the assembly could have not been to cause the deaths of Somti, Bhaddu and other members of the family for the simple reason that on reaching the place of occurrence the appellants did not over-whelm the members of the complainants' party, who were only five in number, and cause serious injuries to them. In fact, till the stage the gun was fired only simple injuries were caused to the members of the complainants' party. Three such injuries were with spears and the fourth could be with a lathi.

30. The conduct of the appellants after their arrival at the place of occurrence clearly indicates that the common object of the unlawful assembly could not be to cause the deaths of Somti and others. It is clear from the prosecution evidence itself that Prashad and three others had not fallen on the ground before the appellants left the place of occurrence. In case they intended to kill them also they could very easily do so.

31. Some of the prosecution witnesses have no doubt stated that as soon as the appellants arrived near the place of occurrence they started shouting that these people must be killed and their stock in the threshing floor burnt. There is, however, some divergence between the statements made by two independent witnesses, namely, Jagdambadhar and Ghhotu on this point. Jag. dambadhar (P.W. 7) stated that the cry raised by the appellants was 'maro' (beat) and 'phoonko' (burn). On the other hand, Chhotu stated that the appellants were crying that these people should be killed and their stock in the threshing floor burnt. The word 'maro' as stated by Jagdambadhar is capable of two meanings 'beat' or 'kill' but it is generally used in the sense of beating. Taking into consideration all the facts and circumstances of the case, it cannot be said that the common object of the unlawful assembly was anything more than to overawe the members of the complainants' party and to cause them hurt.

32. It is clear from the prosecution evidence that as soon as Dukharan fell down on the ground Shailesh Kumar alias Moti Lal (appellant), who was armed with a

gun started firing his gun in the direction of the members of the complainants' party. He fired four shots and since it was a single barrelled gun he had to load every time the gun was fired. The result of those acts of Shailesh Kumar alias Moti Lal was that Somti and Bheddu received fatal gunshot injuries while three other members of their family, namely, Prashad, Sm. Ratwari and Swaminath received 3, 2 and 3 gunshot injuries respectively.

33. The mere fact that Shailesh Kumar had held the gun openly when the attack was launched will not in the special circumstances of the case make any difference. A firearm is most handy for overawing people. Besides, it cannot be said as a general rule that when a gun is held by any member of the unlawful assembly the other members of that assembly must have knowledge that it is likely to be used with fatal results. A person causing injuries with a firearm may in certain cases be guilty only under Section 324, I.P.C.

34. Section 149, I.P.C. reads as follows:

If any offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly is guilty of that offence.

35. This provision of the Indian Penal Code is declaratory of the vicarious liability of the members of an unlawful assembly for acts done in prosecution of the common object of that assembly or for such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. The mere fact that one of the members of the unlawful assembly was carrying a gun and that he used that gun to kill a person will not make other accused persons, who were members of that unlawful assembly, liable for the offence of murder punishable under Sections 302/149, I.P.C. Everything will depend on the common object of the unlawful assembly.

36. The members of an unlawful assembly may have a community of object upto a certain point beyond which they may differ in their objects and the knowledge

possessed by each member of what is likely to be committed in prosecution of their common object may vary not only according to the information at his command but also according to the extent to which he shares the community of object. As a consequence of that the effect of Section 149, Penal Code, may be different on different members of the same assembly. The question as to what was the common object of the unlawful assembly is a question of fact to be determined according to the circumstances of each case. In each of the following three cases gun was used by a member of the unlawful assembly. However, taking into consideration the special facts and circumstances of each case the common object of the members of the unlawful assembly who were not holding the gun was held to be different in each case.

38. In *Mizaji v. State of U.P.* AIR 1939 SC 572 a pistol was used by one member of the unlawful assembly in prosecution of the common, object of the unlawful assembly to kill. It was, therefore, held that the member of the unlawful assembly who had fired the pistol and caused the death was guilty under Section 302, Penal Code, while the other members of the unlawful assembly had been guilty under Section 302/149, Penal Code.

39. In the case of the *Shambhu Nath Singh v. State of Bihar* : AIR 1960 SC725 the common object of the unlawful assembly as found by the Sessions Court and also held by the High Court was to cause grievous hurt. In such circumstances only the person who used the firearm and caused death was held to be guilty under Section 302. Penal Code, while the other members of the unlawful assembly were held to be guilty under Section 326/149, Penal Code. Following the well established principle their Lordships of the Supreme Court accepted the finding of fact arrived at by the two Courts below.

40. In the case of *Queen v. Sabed Ali* (1866) 20 suth WR (Cr) 5 (FB), it was held that where the common object of the members of the unlawful assembly who committed the aggression in order to drive out the other party from the occupation of certain land was to commit the offence of rioting and one of the members of the unlawful assembly fired a gun and killed a member of the other party the person who fired the gun was to be convicted under Section 302, Penal Code, while the

other members of the unlawful assembly were liable to conviction for rioting only under Section 148, Penal Code.

41. The law is, therefore, clear on the point that the vicarious liability of the members of the unlawful assembly will extend only to (1) the acts done in pursuance of the common object of the unlawful assembly, or (2) such offences as the members of the unlawful assembly knew to be likely to be committed in prosecution of that object. The mere fact that one member of the unlawful assembly held the gun will not necessarily lead to the inference that the common object of the unlawful assembly was to cause the death of one or more members of the opposite party.

42. It is clear from the prosecution evidence that Shailesh Kumar alias Moti Lal alone was responsible for firing the gun in the direction of Somti, Bhaddu and other members of the complainants' party. In view of what has been stated above the probability that it could be his individual act not covered by the common object of the unlawful assembly could not be ruled out. As such it has to be regarded his individual act for which he alone was responsible.

43. There is no substance in the plea of alibi raised by Shailesh Kumar. He examined four witnesses in support of that plea. Narad Prasad (D.W. 1) is his own brother, employed as a supervisor in the Ordnance factory at Jabalpur. He deposed that his mother had inherited some property from her father in village Bhasma and both his parents were living in that village and were in possession of that property although some dispute was still being raised by the members of his late maternal grand-father's family. He further stated that Shailesh Kumar alias Moti Lal was in police service at Kanpur and as he was ailing he had come to Jabalpur for his treatment. According to this witness Shailesh Kumar arrived at Jabalpur on 15th March 1966, and remained there till 11th April, 1966, and was admitted as an indoor patient in the Janata Private Hospital of Capt. Bedi from 16th March, 1965, to 11th April, 1966. When cross-examined the witness stated that he had stated merely from his memory that Shailesh Kumar (appellant) had reached Jabalpur on 15th March, 1966.

44. Dr. Indra Sen Bedi (P.W. 4), a private medical practitioner at Jabalpur, supported the statement made by Narad Prasad (D.W. 1) and also produced his patients' register which, as observed by the learned Sessions Judge is an altogether useless document and entries in it were not regularly made. It is not mentioned in that register that Shailesh Kumar had been admitted in his private hospital. It was also not mentioned therein as to from which disease he was suffering and what medicines had been administered to him. The doctor stated that he used to give prescription cards to his patients. However, no such prescription was filed.

45. Sri Alok Kumar Sen (D.W. 2), medical officer in charge police hospital, Gorakhpur, deposed that Shailesh Kumar remained in the police hospital from 23rd May, 1965, to 29th July, 1965. The testimony of this witness is hardly relevant because the occurrence took place on 19th March, 1965. Dr. S.C. Banerji (D.W. 3), a private medical practitioner of Gorakhpur was examined to prove that he had started treatment of Shailesh Kumar alias Moti Lal (appellant) on 2.2.1965 and had recommended that he should be granted leave for the period 7.12.1964 (1963) to 6.2.1964. Even if it be assumed that Shailesh Kumar was suffering from anaemia and low blood-pressure on 2.2.1965, as stated by the doctor and the certificate had been obtained from the doctor not merely for the purpose of obtaining leave, there could be no reason to believe that the said appellant was not hale and hearty on March, 1965, when the occurrence took place. Both his parents had come to reside in village Bhasma from before 19th March, 1965, and, therefore, it is not at all strange that he was there in the said village on the day the occurrence took place.

46. It was contended by the learned Counsel for the appellants that inasmuch as it has come in the prosecution evidence that Shailesh Kumar alias Motilal fired his gun only after Dukharan a member of his party, had fallen on the ground his attack must be deemed to be in private defence of the person of Dukharan. In our opinion there is no force in this argument. It has been established from the prosecution evidence that all the 19 appellants, including Shailesh Kumar had gone to the threshing floor of the complainants' party in order to over-awe them and to beat them up. If during the course of the attack made by the party of

Shailesh Kumar one member of the party fell down on the ground due to the defensive action of the members of the complainants' party, it could not give rise to any right of private defence to any member of the party committing aggression.

47 There is abundant evidence on the record to establish that Shailesh Kumar alias Moti Lal (appellant) alone voluntarily caused gunshot injuries to Bhaddu in his neck and chest and to Somti in his chest and abdomen and the injuries caused to each of them were sufficient in the ordinary course of nature to result in death. We find that the prosecution has succeeded in bringing home the charge under Section 302 I.P.C. to Shailesh Kumar alias Moti Lal (appellant) for having caused the double murder of Somti and Bhaddu. No extenuating circumstance could be pointed out and, therefore, we are of opinion that the proper sentence to be passed against Shailesh Kumar alias Moti Lal on each of the two counts is that of death. Shailesh Kumar was also rightly convicted and sentenced under Section 148, I.P.C. However, in view of the findings recorded above his conviction and sentence under Section 307 (three counts) and Section 307/149 I.P.C. must be set aside and instead he should be convicted under Section 324/149 I.P.C. in respect of the injuries caused to Prashad, Sm. Katwari, Swaminath and Sant Kumar. Criminal Appeal No. 193 of 1966 go far as it relates to Shailesh Kumar is accordingly dismissed with the modifications stated above.

48. The remaining appellants in Criminal Appeal No. 193 of 1966 were rightly convicted and sentenced under Section 148, I.P.C. However, their conviction and sentences under Section 302/149 I.P.C. (two counts) are set aside Their conviction and sentences under Section 307/149 (four counts) are also set aside and instead they will stand convicted under Section 324/149 I.P.C. (four counts) and each sentenced to two years' rigorous imprisonment.

49. Sri C.S. Saran, learned Counsel for the appellants, stated during the course of his argument that Lallan (appellant) is dead. His appeal abates So far as the other appellants in Criminal appeal No. 164 of 1966 are concerned, their appeal is partly allowed, and their conviction and sentences under Section 302/149 I.P.C. (two counts) are set aside. Their conviction and sentence under Section 307/109 I.P.C. (four counts) are also set aside and instead each is convicted under Section

324/149 I.P.C. (four counts) and sentenced to two years' rigorous imprisonment on each count. Their conviction and sentence under Section 147 I.P.C. are maintained.

50. The sentences of imprisonment in the case of each appellant shall run concurrently.

51. The reference made by the learned Sessions Judge under Section 374, Cr.P.C. is accepted, the sentence of death passed on Shailesh Kumar alias Moti Lal is confirmed and it is directed to be carried out in accordance with law.

52. Rajdeo (appellant in Criminal Appeal No. 164 of 1966) is on bail. He must surrender to his bail forthwith and he and the other appellants who are in jail must serve out the sentences as now imposed on them.

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