

KalidIn Singh and ors. Vs. the State

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Court : Allahabad

Decided On : Sep-27-2000

Reported in : 2000CriLJ655

Judge : J.C. Gupta and S.K. Agarwal, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302, 307, 323, 324 and 379;
;Z.A. Act - Sections 122B; Code of Criminal Procedure (CrPC) - Sections 107, 117 and 161

Appeal No. : Crl. Appeal No. 2957 of 1980

Appellant : KalidIn Singh and ors.

Respondent : The State

Advocate for Def. : D.P. Singh, A.G.A.

Advocate for Pet/Ap. : G.P. Dixit, Apul Mishra and R. Sumrao, Advs.

Disposition : Appeal allowed

Judgement :

S.K. Agarwal, J.

1. This appeal has been filed by Kalidin Singh, Ram Kishore Singh and Ram Autar Singh against their conviction under Sections 302/34, I.P.C. 307/34, I.P.C. and

379, I.P.C. They have been sentenced to life imprisonment under the first count, 7 years' R. I. under the second count and 2 years' R.I. under the third count. All the sentences are to run concurrently.

Appellant Ram Autar Singh and Ram Kishore Singh are brothers. Ram Autar Singh was armed with a licensed gun, Ram Kishore Singh was armed with a country made pistol and Kalidin Singh was having a licensed gun belonging to his brother Ram Saran. In the incident Ram Swaroop Singh has lost his life as a result of shots fired by Kalidin and Ram Autar on 22-10-1979 at 1.00 P.M. in village Maduri. The occurrence had taken place in a Mela, which was held near Panchayatghar. The written report about the incident was lodged at P.S. Sajeti by Maharaj Singh, father of deceased Ram Swaroop.

2. A case was registered on the basis of the aforesaid written report at the above said police station at 4.45 P.M. This written report is Ext. Ka-1. It was scribed by Sheopal Singh. The distance between police station and the place of occurrence was six miles.

3. The autopsy on the person of the deceased was conducted by P.W. 6 Dr. S. S. Agarwal at 8.15 P.M. on 24-10-1975. The Doctor noted a single gunshot wound of entry with its corresponding exit wound. This injury was oval in shape. 1 cm x 1 cm in diameter in an area of 6 cm. x 4.5 cm. over right iliac foci. Margins were inverted, collar around the wound was abraded. It was 6.5 cm below the navel and 2 cm above the thigh margins. Tattooing was present, but there was no blackening or scorching. Two oval shaped exit wounds were also found by the doctor on the left buttock. These wounds were separated by 2.5 cm. from each other. There was a fracture of the left hip bone. In the internal examination the brain was found liquified. In the brain cavity 3/4 lbs. of blood was present. Stomach contained 6 ozs. semi-digested food. Small intestine was ruptured through and through. Large intestine was ruptured through and through. Large intestine was ruptured in absenting colon. Rectum was ruptured through and through. Post-mortem examination report is Ex. Ka-6. Doctor has noted that injury No. 2 is exit wound of injury No. 1. He has very clearly stated that apart from the injuries, noted down by him, there were no other injuries on the person of the victim. Fracture underneath

injury No. 1 was the result of this injury. The directions of the injury was downward. According to the Medical Officer direction of the weapon must have been downward, but he clearly exhibited his inability to opine whether such an injury can occur only when the killer was standing on a higher level.

4. Learned counsel for the appellants urged before us that according to the prosecution it was a case of two shots but the medical evidence clearly contradicts it. It makes the presence of the eye-witnesses at the spot highly doubtful. The witnesses are partisan and also inimical, and in the circumstances their evidence is not worthy of credence. Further the prosecution story, as disclosed in the Court by the witnesses, is full of material improvements and, therefore, is not improbable but wholly unbelievable. In the last the learned counsel for the appellants has claimed the right of exercise of private defence of person on the assumption that no firing was resorted to by any of the appellants at the initial stage. The fire was opened by them upon the deceased when they were fired upon in the Mela by the deceased and his companions.

5. In order to appreciate any conflict with the medical evidence, we have to take into account the fact that there is only one injury upon the person of the victim, which had resulted into fracture of left hipbone and the case set up by the prosecution was of two shots hitting the victim. All the witnesses have clearly stated that the first shot was fired by Kalidin from the gun which struck the deceased in his abdomen and he fell down. Ram Kishore also fired a shot from his country made pistol thereafter hitting the victim on his right shoulder. It was also alleged later on that Ram Autar had also fired upon the victim but that shot did not hit him. Thus, admittedly, a case of two shots hitting the victim is established from the evidence of witnesses, but the medical evidence positively runs against this admitted version. According to medical evidence there was only one gunshot wound that too on the right iliac fossa, 2 cm. above the crease of groin having its exit in the left buttock. The direction of the wound was also going downward. Categorically the doctor has stated that he could not find any other defence very clearly indicates presence of some more curious facts.

The deceased, according to the prosecution had breathed his last on the spot on 22-10-1979 at about 1.00 P.M. The dead body was examined on that day but inquest memo was prepared next morning, i.e. on 23-10-1979 I.O had stated that he had tried to arrange for the petromax from the village, but it was not available. Lantern was brought but the light of the lantern was insufficient for the inquest. The dead body was handed over to the constable at about 9.00 A.M. Consequently the post-mortem in this case was conducted on 24-10-1979 at about 8.15 P.M. A perusal of the post-mortem examination report shows that the body was decomposed, abdomen distended, skin peeling off, tongue protruded, eyes bulging, eyeballs protruded, scrotum swollen, penis swollen and erect. This report also indicates that the brain was liquified, rigor mortis had passed off from all the forelimbs. Rest of the organs of the body were normal. This situation of the body, specially protrusion of tongue, bulging of eyes and protruded eyeballs indicate something typical in this case, for which there is no explanation available from the side of the prosecution. The incident had taken place towards the end of October. The Post-mortem was conducted after over 48 hours. Yet it is not possible to infer that this stage of the body was due to passage of time alone.

6. The prosecution, in support of its case, has examined four eye-witnesses, namely, P.W. 1 Raja Singh, P.W. 2 Sheopal Singh, P.W. 3 Ram Naresh and P.W. 4 Maharaj Singh, Maharaj Singh is the father of deceased Ram Swaroop Singh. Ram Naresh is his younger brother. Sheopal Singh is nephew and P.W. 1 Raja Singh is brother of Maharaj Singh. Thus, in the present case the prosecution has produced those ocular witnesses who are closely related to the deceased. There is no independent witness of the incident, though admittedly the incident had taken place in a Mela. Mela is always a congregation of people. So presence of many persons at the time of occurrence cannot be doubted nor denied by the prosecution witnesses. Apart from the above said witnesses, Admittedly medical evidence does not show any other injury on the chest or shoulder. Apart from this apparent conflict the eviis the scribe of the check report and G.D. pertaining to registration of the case P.W. 6 Dr. S.S. Agarwal had conducted postmortem examination P.W. 7 R.D. Mishra is Sub-Inspector, he investigated the case and submitted charge-sheet against the appellants.

Appellants had denied prosecution allegations. Kalidin Singh stated that his brother Ram Kishore Singh was a witness against Raja Singh and others in a case under Sections 323/324, I.P.C. A day before the Mela, Ram Autar Singh asked Ram Swaroop Singh not to organise any gambling in the Mela. On the day of occurrence some altercation took place between Ram Kishore and Ram Swaroop on the issue of organising gambling. Both the parties exchanged abuses. Ram Swaroop fired from his gun towards them. The shot injured Ram Kishore, Shivadhar, Ram Kumar, Ram Behari and others. They fled towards their houses. On hearing the report of the shots and seeing Ram Swaroop chasing them, his brother Ram Saran Singh took out his gun and fired a shot to save him and Ram Kishore. They later on, learnt from his brother that Ram Swaroop had died. Thus, according to Kalidin he is not author of this injury on Ram Swaroop but it was his own brother Ram Saran. He along with Ram Kishore went to police station to lodge the report, but the constable informed him that the S.I. and the Head Constable had already left for the village. They came back home. On his return he learnt from his family members that a report was already lodged against three of them. His report was not taken down by the I.O. Ram Autar Singh has stated that on account of enmity he was involved in this case. Karma Singh and his brothers Raja Singh, Maharaj Singh and Subedar Singh are forcibly occupying land belonging to Gram Samaj. The land in their occupation is about 18-20 Bighas. He had executed the Patta of this land in favour of several Harijans of the village. This land was withdrawn from their possession. Ram Kishore Singh and Ram Saran Singh were witnesses against Raja Singh and others in a case under Sections 323/324, I.P.C. Raja Singh fought election of Pradhan against him and he was defeated. A day before the Mela, Ram Swaroop Singh informed him that he would conduct gambling in the Mela as he had already received permission from the police to do so. He remonstrated Ram Swaroop Singh and desired him not to do so. On 22nd he had gone to the market and on his return at about 3.00 P.M. learnt about this incident. This accused admitted his going to Mela along with Kalidin. He himself is an injured on the side of defence. They were chased by Ram Swaroop Singh. On his signal Ram Saran Singh fired a shot, which hit Ram Swaroop Singh. As a result of which he died. He had tried to lodge his report but it was not accepted by I.O.

7. The defence in this case in support of its version had examined D.W. 1 Indra Pal Singh and D.W. 2 Ram Saran Singh. They had proved the defence case D.W. 3. Dr. A.K. Omar had medically examined the injured person on the side of defence. D. W. 4 Shivadhar Singh is also a witness of fact, he also supported the defence case. Thus, in this case before us there are two versions. We have to examine the probability and correctness of these versions. Before undertaking the issue we intend to exhibit our consciousness to the law that prosecution has to stand on its own legs. It cannot derive any benefit from the failures of the defence.

8. Raja Singh is P.W. 1. He had claimed that he along with Ram Swaroop Singh deceased and his brother Ram Naresh had gone to Mela to purchase cattle. The appellate were also present in the Mela. This witness was holding a lathi in his hand. Ram Naresh was armed with a Pharsa and the deceased was holding a licensed gun of his brother Shivraj Singh. The appellants were also armed with double-barrel gun and country made pistol. Ram Autar seeing the Pharsa in the hand of Ram Naresh demanded it from him on the ground that it is his. Ram Naresh told him that the Pharsa belonged to his cousin Barkau Singh and, therefore, he will not give it to him. On this Ram Kumar and Ram Autar tried to snatch it. P.W. 1 Raja Singh scolded them. Abuses were exchanged between them. Ram Autar finally commanded his men to fire. Ram Autar opened fire on him. He took to his heels. It did not hit him. Kalidin chased Ram Naresh. P.W. 1 Raja Singh took shelter behind the wall of Panchayat Ghar. Ram Swaroop lay with his gun on the ground in the field of Shiv Pujan. He fired a shot in air, according to this witness. From the side of the village his brother Maharaj Singh and his nephew Shiv Pal Singh also reached the spot. As soon as Maharaj Singh warned the assailants. Ram Swaroop started running towards the village. He was chased, Kalidin, who was hiding behind the eastern wall on the road, came out and fired a shot upon Ram Swaroop from his gun. It hit Ram Swaroop in the abdomen on the right side. Ram Swaroop fell down. Immediately Ram Autar also fired a shot upon him, which did not hit him. Ram Autar picked up Ram Swaroop's gun and they all ran away, Ram Swaroop breathed his last at the spot.

9. It is admitted to the prosecution that the gun held by Ram Swaroop belonged to Shiv Raj Singh, a Khandani brother of P.W. 1 Raja Singh. It is also admitted that

Ram Autar is village Pradhan for the last 7/8 years. P.W. 1 has further admitted that he had contested election against present Pradhan, namely appellant Ram Autar. He claimed that he withdrew in favour of Dhani Ram but Dhani Ram lost the election. He pleaded ignorance that he got 12 votes in the election. He withdrew in favour of Dhani Ram after taking proper price. It is also admitted to this witness that 16 Bighas of land, which is registered in the name of his brothers was distributed by village Pradhan amongst Harijans. He further admitted that he was also in possession of 1 Bigha and 7 Biswas of land of the Gram Samaj, which he surrendered receiving a notice under Section 122-B of the Z.A. Act. He avoided naming the Pradhan. From his evidence, in paragraph No. 7, it is apparent that on account of this withdrawal of large chunk of Gram Samaj land from them, he and his family was nursing grudge against the Pradhan, appellant Ram Autar. In the assault of Jagatpal son of Sadhu Singh he was an accused along with the deceased, Barkau and Shiv Pal Singh. He denied the suggestion that Kalidin, Ram Kishore and his brother Ram Saran were witnesses in this case against them. The matter was compromised. He further admitted that proceeding under Sections 107/117, Cr.P.C. was contested between Randhir Singh father of Ram Autar and his brother Brahm Singh. He admitted that the day of occurrence was Monday. He further admitted that in connection with the family work he used to go to the market. He was given a suggestion that on the date of occurrence he was in the market held in village Baripal. The village is situated at about 100 yards south of Panchayat Ghar. Main gate of the Panchayat Ghar is towards north. In front of this Panchayat Ghar about a bigha of open land is lying. It is inclusive of the passage. He admitted that he had concealed himself behind the wall of the Panchayat Ghar. According to him Ram Kishore fired first and Ram Swaroop deceased about two minutes thereafter. He stated that this Mela was organised on the day of Bhaiyadoo after Deepawali. The Mela started at about 12.00/12.30 P.M. They used to take their bath after 12.00 or 1.00 P.M. The beating of drum commences at about 11.00-12.00 P.M. A game of skill in playing Lathi starts at about 2.00/2.30 P.M. It is called Dandi. On that day also it started at that time. There may be a difference of half an hour or an hour in the timing. He admitted that the place where his nephew fell after receiving the gunshot injury is near the pond. Nearby it, at a distance of 8-10 steps a Peepal tree stood there. The cattle troughs are

also fixed there. They adjoin house of Kalidin. A little away from these cattle troughs there is a large room (Baithaka). He admitted that the cattle of Kalidin are being tied there. In the north there are more cattle troughs. Adjacent to the above said room is the residential house of Kalidin. The main doors of the room as well as the house open towards east. He further admitted that across the road house of Indrapal D.W. 1 existed. To the north of Indra Pal is house of Swamidin. Across house of Swamidin in the south is the house of Sheo Pal Singh and Bhura Singh. He admitted that these people had also seen the incident. According to him the altercation over Pharsa took place about 10 steps from this Chabutara. He further admitted presence of Ram Saran Singh at his house on the date of occurrence. He also admitted that he is a licensee of a gun. The gun is a double-barrel gun and the same gun was used in the firing. He further claimed that they had gone to the Mela with the gun, Pharsa and Lathi. The villagers go to Mela in this manner. He admitted that from the Mela his house is about a furlong away. The Pharsa was not bearing any special mark of identification. He admitted that the snatching of Pharsa caused annoyance and he asked the Pradhan to act with wisdom. He stated that the place where Ram Swaroop Singh fell was about 100-150 steps from the place where Pharsa was snatched. House of Kalidin was only 25-30 steps away from here. The victim had covered this distance while he was chased. They were following him closely. He further admitted that none had struck any Lathi nor fired any shot on him or others. No other fire was made before it. The fire that was made on Ram Naresh was discharged from a distance of 10-15 steps. Neither any participant nor any cattle had received any injury from the first fire made on Ram Naresh. No pellets were recovered from the spot. Two shots were fired upon the deceased while he was running away. Ram Naresh ran towards east. According to him, Kalidin ran up to the Peepal tree, which was in the east of Lalla Songh's field. From that tree the place where Ram Swaroop sustained injury was 200-250 steps. According to him Kalidin hid himself behind the wall of the Khandahar of Shivraj Singh. He fired from that place. No body had fired upon Ram Swaroop Singh in the Mela. Pharsa was not plied on any one. Ram Kishore fired from his country made pistol upon Ram Swaroop. When Ram Swaroop Singh fell a crowd of 200-250 people gathered around him. The shot hit him on the abdomen. The shot was fired from a distance of 4-6 steps. No injury was caused

on the head, though the second shot hit his shoulder. He denied the defence suggestion that in this cross-firing Ram Kumar, Manohar, Jodhi, Ram Kishore appellant, Shiv Dutt Singh and Chhotu had sustained injuries.

10. The evidence of this witness in the light of the site plan indicates very clearly that this witness had not seen the incident and had also shifted place of incident. He is swelling upon his imagination while deposing about the occurrence. In the site plan the place shown by letter 'A' is that place where Mela was organised. Spot 'P' is field of Shiv Poojan from where the deceased is said to have opened fire. Cross 'C' is that place from where Kalidin and Ram Kishore are said to have fired upon the victim. Cross 'E' is the spot where initially P.W. 1 Raja Singh had concealed himself. Cross 'F' is the place from where the prosecution claims that the first informant P.W. 4 had commanded the accused-person not to fire. Cross 'G' is the place from where the deceased was fired upon by Ram Kishore after his fall. By single arrow the direction towards which the deceased had run is shown. By double arrows the direction in which the deceased was chased by Ram Autar and Ram Kishore and the well is shown just little above cross 'A' in its west. Trees are shown on the east of Panchayat Ghar. Cross 'H' is the place from where it is said that the witnesses and informant had seen the incident. Cross 'I' is the place from where Raja Singh is said to have seen the incident. Cross 'J' is little below cross 'H'. The distance between cross 'A' and cross 'B' is about 60 steps. The distance between cross 'A' and cross 'C' is about 140 steps. The distance between cross 'C' and cross 'D' is 8 steps. The distance between cross 'C' and cross 'H' is 25 steps. It is about 35 steps from cross 'C'. The distance between cross 'A' and cross 'E' is 35 steps. 'F' is at a distance of 90 steps from 'A'. The width of the road is about 12 (feet) where the dead body was found lying. This witness clearly is shifting the place of occurrence on purpose.

11. Presence of the eye-witnesses, specially Raja Singh and Maharaj Singh has been very seriously challenged by the defence. A perusal of the site plan and the admitted distance of the village from the place of occurrence lead us to the inference that these witnesses are not likely to reach the place of incident in time to witness it and thus are not telling the truth. They are concealing genesis of Marpit. It is probable that the deceased had opened fire upon the defence side. So

far as the story with regard to any fire having been made upon Ram Naresh, brother of the deceased, and snatching of Pharsa from him is concerned, we do not find any substance in this story.

12. So far as P.W. 2 Sheopal Singh is concerned, he had admitted that he had also ran to his house. According to him, as long as he was in the village, no other person met him. He had come to the spot later on after he heard the gunshot report. While coming to the spot, he had also heard two more gunshots report. When he came to the outskirts of the village, he noticed people running helter skelter, Subsequently, he had stated that Ram Swaroop Singh sustained gunshot injury. He was near the pond to the south of Ram Swaroop. Maharaj Singh was ahead of him. According to him, Kalidin fired on Ram Swaroop from behind the wall. If the assailant was hiding himself behind the well, it will be impossible for any one to identify him. Moreover, he is related to Ram Swaroop Singh. He is his first cousin. He admitted that people used to go to fair armed with Pharsa, Ballam, Lathi and gun. There was no special mark on the Pharsa held by Ram Naresh. The Pharsa claimed to be his by Ram Autar was like all other Pharsas. According to him it was mortgaged by Dhani Ram for a sum of Rs. 7/- with Ram Kishore. He admitted that he had not witnessed the initiation of the Marpit as at that time he was at his house. He admitted that his house is to the north of the house of Inderpal at a distance of about 150 steps. In between his house and Inderpal's house there exist 10/11 houses. When he heard gunshot report, he came out of his house. According to him when he came to the house of Inderpal, he saw Ram Swaroop Singh lying in the field of Shiv Poojan and Kalidin was near the house of Inderpal. He did not see Kalidin thereafter. Then realising the blunder stated that he had seen the firing. Thus, from his statement it is apparent that he did not see the occurrence. He had only heard the gunshot report and thereafter saw Ram Swaroop lying in an injured condition on the road. He had stated that Kalidin did not conceal himself behind the wall, but was standing there. He denied that from the fire made by Ram Swaroop, Ram Kumar and others sustained pellet injuries. This witness clearly is a gotup witness. He is deposing in favour of the prosecution on account of his relationship with the deceased though it is apparent that he had not seen the incident. He is also on inimical terms with accused persons.

13. So far as P.W. 3 Ram Naresh is concerned, he having run away to his house as soon as Ram Autar opened fire on him, his statement with regard to subsequent part of the prosecution case involving the deceased cannot be accepted. This witness never stated that he at any point of time, before Ram Swaroop was fired upon, returned to the place of occurrence. In this situation his testimony does not provide us any clue whatsoever as to whether it was Ram Swaroop who chased Kalidin or it was Kalidin who chased by Ram Swaroop who fired upon him. He had admitted very clearly in paragraph 7 that on reaching his house he had heard gunshot report. He claimed that he thereafter came to the spot of occurrence. He could not as such see Kalidin firing upon Ram Swaroop. There is only one injury upon the deceased. In these circumstances this witness also cannot be relied upon for the latter part of the incident. His presence is also rendered doubtful from the evidence of P.W. 1 and P.W. 2 for the subsequent part of the incident. He is the own brother of the deceased and is an interested witness. He did not sustain any injury. If really he was fired upon from a gun it would not have been the situation. He is on inimical terms with the appellants. He did not attribute any role to Ram Autar Singh. No one amongst his group sustained any injury as a result of the fire made by Ram Autar. In view of the above said facts and circumstances we are not prepared to place any reliance upon the testimony of this witness as well. We have already discarded the prosecution story regarding snatching of Pharsa.

14. Now coming to the testimony of P.W. 4 Maharaj Singh, father of both deceased and Ram Naresh, he was at his house. He was attracted to the spot by the report of gunshot. It was heard by him in the village- when he arrived at the scene of occurrence he found his son lying below the Mend (Partition wall). He had seen Ram Autar and Ram Kishore present there. Ram Autar was having double-barrel gun and Ram Kishore Singh was holding a Tamancha. He claimed that he had asked them not to fire. When he asked his son to go home, he immediately got up and ran towards the house. Ram Autar and Ram Kishore chased him. When Ram Swaroop reached near the Peepal tree near the pond these accused persons challenged saying 'Kill him. He must not escape', Kalidin, who was hiding himself in the eastern lane, opened fire on his son which hit him in the abdomen. According to him, Ram Kishore also opened fire from his country

made pistol which hit his son on the right shoulder. Ram Autar also fired, but it did not hit his son. When we look into the postmortem examination report and the injuries sustained by the victim, we find that these injuries could be caused by a single shot. The deceased was fired upon from the right side. In the first injury there are 6 pellets in an area of 6 cm x 4.5 cm. over right iliac fossa. The seat of injury is 3 cm. on right side from midline between umbilicus and tip of penis. There are two exit wounds on the left buttock measuring 1.3 cm x . 13 cm. in diameter 8.5 cm. apart from each other 6 cm. below left iliac crest. This further shows that the deceased was on lower level than the accused. According to medical officer's opinion the barrel must have been downward. Thus, the statement of this witness is not corroborated by the medical evidence. He is an interested witness, father of deceased Ram Swaroop, the probability of his having seen the incident is remote in the facts and circumstances of the case. He had not stated that Ram Naresh met him on the way running to the house. This is a very crucial omission and goes to the root of his evidence. He had admitted that Krishna Singh and Raja Singh are his brothers. Raja Singh is P.W. 1. Raja Singh had contested the election of Pradhan against Ram Autar. This witness has stated that he has not nursed any grudge against Ram Autar because his brother Raja Singh withdrew from the contest. He denied that he had contested any litigation for the land of Gram Samaj. This denial is definitely false. It is admitted by P.W. 1 Raja Singh. He made an evasive reply to the effect that in the litigation that is going on whether Pradhan had filed any objection or not, he is not aware. He admitted that a prosecution for the Marpit of Jagatpal was contested, but he made an evasive reply whether in that case Kalidin, his brother Ram Saran and Ram Kishore were witnesses or not. He had admitted that he is not going to the fair for the last 10 years. The reason given by him is the animals are sacrificed there. This fact is not borne out from the statements of other witnesses. Earlier he had stated that Pigs were tied and were made on run to be chased by the cows. He admitted that people used to go to the Mela with guns and Tamanchas. Those who have licences carry their weapons in the Mela. He clearly admitted that when he had heard the gunshot report, he was in his house. His house is in the centre of the village. 10/12 houses about in between his house in the north. Thereafter fields lie. He further admitted that in going to south an elevation is to be negotiated. He did not come across a single

person in the way to the spot including his son Ram Naresh. When he reached the spot he did not find any villager there. He did not see Kalidin in the fair. He denied that anyone had fired upon his son while he was running for safety. He denied that when Ram Swaroop fell down Ram Kishore fired upon him. In his 161, Cr.P.C. statement this witness has stated the above said fact. He admitted that the statement given by him to the I.O. is correct. He claimed that he came out of his house at about 1.00 P.M. He stated that the place where his son sustained gunshot injury is about 135-145 steps from his house. Both the assailants followed his son for about 100-125 steps. His son was having a gun in his hand. He did not fire from his gun. None else was present there. No one has made any attempt to hold them back or fire upon them so that they may stop chasing his son. Except his son he did not see anybody sustaining any injury in the Mela. He had further admitted that since Ram Autar is a licensee for a double-barrel gun, therefore, he has stated that he was armed with a double-barrel gun. Kalidin's brother is also a licensee of a single-barrel gun. According to this witness 6/7 fires were discharged. The gun held by his son did not belong to him. His son did not have any licence. He admitted that his son Ram Naresh is educated, yet he did not get his report transcribed by him. He admitted that at the police station he had a talk with the I.O. for about an hour. He had denied the suggestion that the names of the assailants were finalised during this conversation. The I.O. came to the spot thereafter. An examination of his entire statement gives us a clear picture that this witness, in all probability, had not been seen the occurrence. He had not seen Kalidin firing. He also admitted that he had not seen in the Mela. Apart from it, there are innumerable contradictions. The probability that he rushed to the spot after he heard gunshot report, which killed his son cannot be ruled out like P.W. 2 Sheopal. On reaching the scene of occurrence he found his son lying in a pool of blood appears probable. Sheopal admitted that when he reached the spot after hearing gunshot report the deceased was lying in a pool of blood. His evidence is in conflict with medical evidence also. The Medical Officer has not found any injury on the right shoulder, as alleged by him. In these circumstances we do not find it safe to place any implicit reliance on his testimony as well.

15. The I.O. had stated that he had started for the place of occurrence from the police station at 7.00 P.M. The F.I.R. was registered at 4.45 P.M. He had copied

the F.I.R. check report and recorded the statement of Head Moharrir and informant in case diary and thereafter proceeded for the place of occurrence. According to him it took him half an hour to 3/4th of an hour in completion the above formalities. About an hour was taken by him on the way to the village. He searched for a Petromax in the village, but it was not available but lantern was made available. The light of the lantern was insufficient for the preparation of inquest, but he recorded the statement of the witnesses in the light of lantern. He had handed over the sealed body to the constables for transportation to mortuary at 9.00 A.M. on 23-10-1979. He had not made any entry in the return G.D. at police station about the formalities that were completed by him at the spot. He admitted that in the case diary underneath the signature of Circle Officer no date is there. He showed his inability to tell the time when the Parchas of the case diary were presented before the Circle Officer. He has further admitted that there is no seal of the office of Circle Officer on any Parchas of the case diary. With regard to the people of the locality, especially Inderpal, Sheopal Singh and Mangli Singh, his statement is that they did not meet him. He admitted that he had not shown the distance of the house of Mangli Singh from the spot in the site map. He further stated that Ram Swaroop Singh also never met him in connection with organising gambling. He admitted that he had not shown the distance of Ram Swaroop Singh's house from the spot. He admitted that he had recorded statement of Ram Kumar son of Gunani, but he had not sent him for any medical examination. He admitted that he had not recorded statement of Manohar, Jodhi and Sheopal but admitted that statement of Chhotey was recorded but he had not sent him for any medical examination. He denied the defence suggestion that these persons were having pellet injuries. He denied that he recorded statements of the prosecution side alone and proceeded in the case one-sided and had not investigated the defence version. From the above discussion it easily follows that there was no F.I.R. at the time and date, as alleged by the prosecution. The story of nonavailability of Petromax is apparently an ingenuity of the Investigating Officer. Despite learning of the demise of Ram Swaroop there is no explanation for delay in reaching the place of occurrence. It is deliberate act that the story of petromex not available is introduced in order to eliminate any possibility of F.I.R. being declared ante-timed. We are not prepared to accept this unusual explanation. It

was a village of affluent people. There are so many fire-arm licensees. Nonavailability of a Petromax in these circumstances is only a pretext to save F.I.R. It is not believable that no petromax was available in the village.

16. From the above discussions we find that the evidence of P.Ws. 1 to 4 is not worthy of credence with regard to the manner, place of occurrence and author of the gunshot injury. They are closely related and have motive of a false implication against the appellants, due to their enmity.

17. The defence has come up with a positive case. The defence case is that on the date of incident in the Mela dispute had occurred between Ram Swaroop and Ram Kishore on the issue of gambling. The altercation took a bad turn and abuses were hurled from both sides. Kalidin and Ram Kishore were preventing Ram Swaroop from hurling abuses and in the meantime Ram Swaroop opened fire from his gun upon Kalidin and Ram Kishore. The pellets struck Ram Kishore, Ram Autar, Raj Kumar, etc. they ran towards their houses. Hearing the gunshot reports and seeing Ram Swaroop chasing them Ram Saran brother of Kalidin, appellant opened fire from his licensed gun to protect Ram Kishore and his own brother. When he and Ram Kishore went to the police station, he was informed by the constable that the S.H.O. had gone to his village. They also came back to the village. The family members informed them that a named report against three of them is being prepared. Their report was not accepted. They surrendered in Court thereafter. So far as Ram Autar is concerned, he has denied his presence at the spot. According to him he had left for the market and returned in between 2.30 and 3.00 P.M. Ram Kishore's statement is also identical to that of Kalidin.

18. The defence has also examined Inderpal Singh in whose presence the occurrence is said to have taken place. He had supported the defence version with regard to gambling and insistence of Ram Swaroop that gambling will be held in the fair since he had taken permission from the police. Inderpal denied to have gone to see the fair. He claimed that he was present at the door of his house. The fair is visible from his gate. He heard alarm and also gunshot report emanating from the Mela. He got up and saw Kalidin and Ram Kishore running towards their house from the side of Mela. He also saw Ram Swaroop and Ram Naresh behind

them. Ram Swaroop was holding a gun and Ram Naresh was holding a Pharsa. At some distance there were some more people. He claimed that he ran inside his house. After sometime he heard two gunshot reports and when he came out he saw that at a distance of 8 steps in front of the Peepal tree a crowd had assembled. He admitted that the I.O. had recorded his statement, although the I.O. had denied this fact. He had denied the prosecution suggestion that since Ram Autar had helped him in obtaining property of his brother-in-law by forcing his wife to run away, he is deposing just to repay his debt to Ram Autar in this case. He denied that he is on visiting terms with Ram Autar. He has admitted that Kalidin's house is in front of his house. He further admitted that every year in the fair gambling is played. He had denied presence of Ram Autar at the spot. Incident had taken place near the house of appellant Kalicharan. He is a probable witness of the occurrence. The story of two shots was introduced because, according to defence, first deceased opened fired and thereafter he was fire upon by Ram Saran. Presence of only one gunshot injury upon the victim lends assurance to his version. He, therefore, is a reliable witness.

19. Ram Saran Singh is D.W. 2 in the case. He is brother of Kalidin. He admitted that his brother Kalidin and nephew Ram Kishore had attended the fair. He further admitted that he had heard the alarm and gunshot report coming from the side of the fair. He came out on his platform in front of the house. He had seen Kalidin and Ram Kishore running towards the house crying 'brother save, uncle save'. At a distance of 40-50 steps Ram Swaroop was following them. He was holding a gun and Ram Naresh was possessing a Pharsa. 4/5 persons were also behind them. His brother and nephew entered the house. Ram Swaroop etc. came to their house. He entered inside the house. He asked Ram Swaroop not to quarrel, but he opened fire. Thereafter he had also opened fire from inside his room from his licensed gun. He claimed that he had fired to protect his men and himself. Ram Swaroop sustained injury from his fire and fell down. Thereafter Kalidin and Ram Kishore had gone to lodge the report. In cross-examination he had admitted that Ram Autar is his nephew. He further admitted that he heard the gunshot report from inside his house. Initially he had heard the alarm and thereafter the report of the gunshot from the fair. The gunshot report was heard by him after about two minutes of the initial alarm. The Mela was organised at a distance of 150 yards

towards south of his house and Ram Swaroop had fired at his door. The pellets were embedded in the wall. No pellet was embedded in the door. He did not go to the police station for fear of his own involvement in the case. He admitted that his statement was never recorded by any police personnel. He denied the suggestion that Kalidin had gone to the fair with his gun. He had also denied the prosecution case. We do not find any plausible reason to distrust his version.

20. The defence side has brought on record injury report of Ram Kishore Singh. The injuries of other alleged injured persons on the side of defence was not brought on record nor the I.O. despite recording statement of some of them had sent them for any medical examination.

21. So far as the injury of Ram Kishore is concerned, the duration of these injuries is given as 36 hours. The cause of these injuries could not be noted down by the Medical Officer because of infection in these injuries. The injuries of Ram Kishore Singh are on his fingers. Not much weight can be attached to his injuries because the cause of these injuries is not known to us.

22. So far as the defence version is concerned, we feel it probable if Kalidin was present in the fair along with Ram Autar and Ram Kishore, and Ram Swaroop had gone there then the case of the prosecution that Kalidin had fired upon Ram Swaroop from behind a wall does not appear to us probable. Both appellants Kalidin and deceased Ram Swaroop were young lads. Ram Swaroop was also armed with gun admittedly. It does not stand to our reason as to how and when Kalidin arrived ahead of Ram Swaroop and concealed himself behind the wall of Sheoraj's Khandahar. Apart from this presence of the prosecution witnesses is also not found by us probable at the spot of occurrence. Three of them, viz. P.W. 1 Raja Singh, P.W. 2 Sheopal Singh and P.W. 4 Maharaj Singh claimed to have reached the scene of occurrence after hearing the gunshot reports. In our opinion, it is not possible for them to witness the entire incident including assault on Ram Swaroop near the house of Inderpal. All the four witnesses examined by the prosecution are related closely to each other. Three of them are also chance witnesses. Ram Naresh claimed his presence in the fair at the initial stage, but admittedly he has also taken to his heels and went to his house in the village as

soon as he was fired upon by Ram Autar. Therefore, it is difficult for us to accept his statement that he again came back to that place where his brother was done to death and had seen the entire incident. We do not find any substance in this part of his statement. Either he was present there all along as stated by defence witnesses or was not present there at all. In the circumstances, we are not prepared to accept that he had seen Kalidin firing upon his brother. No other witness present in the fair was examined by the prosecution. Some of the witnesses named as injured by the defence side were examined by the I.O. but neither they were sent for medical examination nor any one of them was produced by the prosecution in evidence. The I.O. did not deny injuries on their person specifically. This further creates serious dent in the veracity of the prosecution story. The F.I.R. also appears to have been transcribed after due deliberation, as admitted by P.W. 4 Maharaj Singh. The investigation in this case had proceeded in a partisan manner. From the statement of the I.O. It appears that he came to know about injuries of firearm upon number of persons, but deliberately he did not send them for their medical examination. The reason behind this must be to eliminate these witnesses from coming to the Court. Medical evidence is also in conflict with the prosecution evidence. The prosecution has come up with two positive injuries sustained from the firearm discharge made by Kalidin and Ram Kishore but according to medical opinion, only one injury of gunshot was found on the person of the victim. This injury appears to have been caused to the victim by some one, who was standing on his right, Sheoraj's Khandahar is to the right of the deceased and house of Kalidin is also on the right side. To that extent the defence story also receives some corroboration. In the presence of these facts it is very difficult for us to uphold the conviction of these appellants. No conviction under Section 379, I.P.C. is possible in this case as the prosecution has failed to allege who had removed the gun of Ram Swaroop. 23. In the result this appeal is allowed. The conviction and consequent sentences of these appellants under Sections 302/34, 307/34 and 379, I.P.C. as awarded by the learned X Additional Sessions Judge, Kanpur, dated 22-12-1980 in S.T. No. 315 of 1979 are hereby set aside and they are acquitted of the above offences with which they were charged. The appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties are discharged.

