

Liyakat and ors. Vs. State of U.P.

Liyakat and ors. Vs. State of U.P.

SooperKanoon Citation : sooperkanoon.com/492555

Court : Allahabad

Decided On : Nov-23-2004

Reported in : 2005CriLJ1994

Judge : S.K. Agarwal and ;Imtiyaz Murtaza, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 148, 149 and 302; Code of Criminal Procedure (CrPC) - Sections 145

Appeal No. : Criminal Appeal No. 2636 of 1979

Appellant : Liyakat and ors.

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : P.N. Misra, ;I.N. Mulla, ;R.K. Jain, ;J.M. Chaturvedi, ;V.M. Zaidi, ;Sunil Gopal and ;N.I. Zafri, Advs.

Disposition : Appeal dismissed

Judgement :

Imtiyaz Murtaza, J.

1. The present appeal has been filed against the judgment and order dated 3-9-1979 passed by Sri R. K. Gupta, Sessions Judge, Muzaffar Nagar in S. T. No. 282

of 1978 whereby the appellants are convicted under Sections 302/149 and 148 I.P.C. and sentenced to under go rigorous imprisonment for life and two years respectively. Their sentences were made concurrent by the trial Court.

2. The brief facts of the case as mentioned in the F.I.R. lodged by the informant Mirajuddin (P.W. 1) are that the father of the informant had enmity with Liyakat in connection with a piece of land. On 3-12-1977 his father had gone to Muzaffar Nagar on a Motor Cycle for collecting the payment of 'Gur' and thereafter he was returning along with his father at about 5.00 p.m. When they reached near the turning of Bewara ahead of Kakrauli near a mango grove Liyakat, Hashim, Shaukat, Mushtaq and Annu came out of the sugar cane field of Indra Sen and Liyaqat loaded his D.B.B.L. gun, Mushtaq Shaukat and Annu were armed with pistol and Hashim was armed with another D.B.B.L. gun. Seeing them, his father stopped the Motor Cycle on the road and ran towards the Bus Station to save his life. They chased him. His father entered into the sugar cane field of Cheta Gaderiya and fell down there. They had fired 5-6 shots on him. He died on the spot as a consequence. The occurrence was witnessed by Ali Mohammad and Kalu. The occurrence was narrated to him by his younger brother Shamim. The assailants ran away towards Tewera. The complainant lodged a written report at police station Bhopa on 3-12-1977 at 8.05 p.m. The distance of police station from the place of occurrence is 8 miles. After registration of the F.I.R. P.W. 13 Virendra Singh started investigation. He recorded the statement of Head Moharrir Dhoom Singh and informant Mirajuddin. He reached at the place of occurrence at 10.30 p.m. and found there constables of police out post Kakrauli. He could not prepare the inquest memo due to insufficient light during night. He deputed two constables to look after the dead body. He prepared inquest memo Ext. Ka-17, Photo lash Ext. Ka-18, Chalan lash Ext. Ka-19 and letter for post mortem examination. He despatched the dead body for post mortem examination through constables Ram Phal and Iqbal Hasan. He prepared the site plan Ext. Ka-20. He recovered three empty cartridges, 8 pellets, two ticklies, one button, one Chashma and Rs. 188/- from the pocket of the deceased. He also collected blood stained and plain earth and leaves from sugar cane field and prepared recovery memo Ext. Ka-21. He also prepared recovery memo of recovered article and also handed over the motorcycle, belonging to deceased to Mirajuddin through Ext. Ka-2. He recorded

the statements of Shamim, Ali Mohammad, Kalu, Sheo Kumar and Arif. On 8-12-1977. He arrested Liyakat and Hashim. On the pointing out of Liyakat he recovered 11 cartridges in a belt and receipt No. 8 of Mushtaq and company and licence of the gun. Its recovery memo is Ext. Ka-23. Recovery memo of receipt and licence of the gun are Exts. Ka-34 and Ka-35. He recovered the gun of Liyakat Ext. 7 from Mushtaq and Company of Meerut. The barrel of the gun was broken. It was reported by this company. He deposited these articles in police station Bhopa. After conclusion of the investigation he submitted charge sheet Ext. Ka-25.

3. The post mortem of the deceased was conducted by P.W. 8 Dr. N. C. Sharma. He had noted the following ante mortem injuries :--

1. Lacerated wound 1 1/2' x 1/2' x bone deep on the bridge of nose. Nasal bone is fractured under the injury.
2. Lacerated wound 1' x 1/2' x muscle deep on the upper lip middle.
3. Lacerated wound 2 1/2' x 1' x muscle deep on the left side face, 1 1/2' above the chin.
4. Abrasion 1/2' x 1/4' on the base of left palm,
5. Lacerated wound 1/4' x 1/10' x muscle deep on the base of left thumb.
6. Lacerated wound 1' x 3/4' x bone deep on the front of right fore arm, 1 1/2' above from right wrist.
7. Abrasion 1' x 1/2' on the inner side of right upper arm, 2' above elbow.
8. Abrasion 1/2' x 1/2' on the right side chest, 2' below from right nipple at 8 O' clock position.
9. Abrasion 3 1/2' x 2 1/2' on the right side chest, 4' below right nipple.
10. Two abrasions each measuring 1/2' x 1/2' on right side chest, 1 1/2' below from inner end of right clavicle.

11. Four abrasions in an area of 2' x 1 1/2', each measuring 1/2' x 1/2' on the left side back of chest, 1' below from left scapula.

12. Gun shot wound of entry 1' x 1' on right side face. Blackening and tattooing was present. Three metallic shots recovered from bucal cavity. Mandible fractured.

13. Three gun shot wounds of exit on the left side chin each 1/2' x 1/2'.

14. Gun shot wound of entry 3/4' x 3/4' on the front of neck upper part. Blackening and tattooing present.

15. Gun shot wound of entry 3/4' x 3/4' on the outer side of neck (right) 1 1/2' away from injury No. 14. Trachea, Oesophagus and right carotid artery lacerated under the injury. Third and fourth cervical vertebrae fractured. Eight metallic shots recovered from the vertebrae.

16. Gun shot wound of entry 1/2' x 1/2' on the right side front of chest, 1' below from inner end of right clavicle directing backward, Upper lobe of right lung ruptured. One metallic shot recovered.

17. Two gun shot wounds of entry each measuring 1/2' x 1/2' on right side chest, 3 1/2' below from right nipple at 4 O' Clock and 6 1/2 O'clock position, directing backwards and downwards through lower lobe of right lung. One metallic shot was recovered from the lower lobe of right lung. One directed downwards to diaphragm and to right lobe of the liver. One shot recovered.

18. Gun shot wound of entry 1/2' x 1/2' on front and inner side of right upper arm, 3 1/2' above, the elbow x bone deep. No metallic shot recovered from this wound.

4. He also recovered one large size metal piece from the wound and two plastic and cork pieces, two metallic shot from the lower lobe of right lung. According to the opinion of Doctor cause of death is shock and haemorrhage as a result of ante mortem injuries.

5. After submission of charge sheet the case was committed to the Court of Sessions.

6. The prosecution relied upon in all 13 prosecution witnesses. P.W. 1 Mirajuddin. He is informant of the case. P.W.2 Dhoom Singh is head constable who had prepared the F.I.R. and chik report. P.W.3 Ram Phal escorted the dead body for the post mortem examination. P.W.4 Randheer Singh is Malkhana moharrir. He stated that D.B.B.L. gun and other articles were deposited on 11-1-1978 and he dispatched the same for analysis on 9-2-1978, he received back the articles on 5-5-1978. P.W.5 Shamim and P.W.6 Kalu are eye witnesses. P.W.7 is Krishan Pal. He stated that in the month of December 1977 he was posted as Constable at P.S. Civil Lines, Meerut and S. O. Virendra Singh had deposited the bundle containing the gun and other article, entry of which he made in the G. D. at No. 23, Ext. Ka-9. He handed over the said article on 9-12-1977 vide G. D. entry No. 20 which is Ext. Ka-10. P.W.8 is Dr. N. C. Sharma who conducted the post mortem of the deceased. P.W.9 is Om Prakash Mani Tripathi a ballistic expert. He stated that the recovered empty cartridges were fired from the recovered gun. P.W. 10 Jagdish Prasad is constable at police station Bhopa. He brought 7 bundles of this case on 11-10-1978 and deposited them in the Malkhana. He had also taken the bundle on 9-2-1978 for scientific section and deposited the same there on 16-2-1978. During this period he did not permit any one to touch the said bundle. P.W. 11 Yash Pal Singh was posted in police lines Muzaffar Nagar. On 5-5-1978 he brought the articles from Lakhimpur and deposited the same in the Malkhana and he did not permit any one to touch the same. P.W. 12 is Masood Ahmad. He stated that in the year 1977 he was an arms mechanic in Mushtaq and Company, Meerut and had licence for the same. This firm belongs to his father Aflaq Ahmad. He died on 24-2-1978. He stated that on 14-12-1977 at about 10.25 a.m. in the register it is mentioned that Liyakat had deposited his D.B.B.L. gun, 12 bore, No. 5028/74 and licence No. 7017 and the entries in the register are in his own writing, Ext. Ka-14, which bears his signature. He repaired the barrel of the gun and the police had recovered the same gun from his shop. P.W. 13 Virendra Singh is the Investigating Officer of this case.

7. P.W.5 Shamim Ahmad stated that about 17 months back he along with his servant had brought 'gur' in market and on the next day his father arrived there on his Motor cycle. He returned at about 3.45 p.m. along with his father on his Motor cycle. As soon as they reached near a grove Liyakat, Hashim, Shaukat, Mushtaq

and Annu came out from sugar cane field of Indra Sen. His father stopped the Motor cycle and tried to turn the same but it fell down on the road. His father then entered in the sugar cane field of Cheta but fell down immediately after covering a few steps inside it. The accused persons chased him and Liyakat fired on his father from his gun. Thereafter Hashim fired and three others had also fired. His father died on the spot. Accused persons ran away. Kalu and Shamim also arrived there and witnessed the incident. He came back and informed his brother Mirajuddin. In the cross-examination he stated that he went to the shop of Mohan Lal and his father had taken money from them but he could not tell the exact amount received by him. He brought one cart load 'gur' which approximately weighed 20-25 quintals. He stated that his father had met him at 10.30 a.m. on the date of occurrence and they took tea and Samosa at about 1.30 p.m. He left Kalu and Anwar near the dead body of his father. When he came again he remained there for the whole night and police of Kakrauli was also present there. The police of police station had arrived at 10 or 10.15 p.m. His statement was recorded on the next morning. He stated that his father had run for about 50 steps before he entered into sugar cane field. His brother who had gone to lodge the report had returned along with the Inspector. He further stated that his field is situated about two furlongs away from the place of occurrence. He witnessed the occurrence from a distance of about 20 or 22 steps. The assailants had fired 5-6 shots on his father.

8. P.W.6 Kalu stated that about 17 months ago at about 4.45 or 5.00 p.m. they were standing on the road for a Tonga. He was standing there along with Ali Mohammad. After some time Yusuf came on the Motor Cycle and Shamim was sitting on the back seat of the said motor cycle. Liyakat, Hashim, Shaukat, Mushtaq and Annu came out from the sugar cane field of Indra Sen. Liyakat was armed with a D.B.B.L. gun and rest of the accused were armed with country made pistol. They all ran towards Yusuf. He stopped his motor cycle and ran towards the crossing and entered in the sugar cane field of Cheta. He fell down in the field. Liyakat fired first shot. Thereafter Hashim had fired and then all other accused had fired. He died on the spot. The accused persons ran away towards Teweda. In the cross-examination he stated that he had gone to Jansath for repair of the tyre of his bogi. He got down at the crossing from a Bus because there was no other

good shop of repair of tyre in Kakrauli. When the accused persons ran towards Yusuf they did not raise any alarm. He was 60-65 steps away from them, The police Inspector had interrogated him in the night.

9. P.W.7 is constable Krishna Pal. He stated that on 8-12-1977 S.O. Virendra Singh deposited one sealed gun along with Liyakat and Hashim which is entered in G. D. No. 23, Ext. Ka 9. On 9-12-1977 vide G. D. No. 20 deposited gun was handedover to S. O. Virendra Singh. In the cross-examination he stated that S.O. Virendra Singh had not deposited any seal. He further stated in examination in chief that S. O. Virendra Singh had also deposited one belt along with 11 cartridges which is entered in G. D. No. 23, Ex. Ka 9.

10. P.W.8 is Dr. N. C. Sharma who had conducted post mortem which we have already discussed in the earlier part of this judgment.

11. P.W.9 Om prakash Mani Tripathi is ballistic expert attached to the Scientific Section, Lucknow. He stated that on 16-2-1978 constable No. 364 Jagdish Prasad had deposited three sealed bundles and one sample seal. He recovered three empty cartridges from one bundle and 14 big pellets from a sealed envelope. Two plastic wads and a cork and a metal piece were also recovered. From third bundle a 12 bore D.B.B.L. gun was recovered, its number was 5028/74. Two pieces of a barrel was also recovered from that bundle. He stated that three shots each were fired and the firing pin marks of the test cartridges were compared with the firing pin marks were found on the caps of the empty cartridges. He stated that one of the cartridges on which he had written E.C.-I were similar to the firing pin marks found on the three cartridges fired from its left barrel. He further stated that firing pin marks on the other empty cartridges were similar to the three cartridges fired in the lab from the right barrel.

12. The expert stated that the firing pin marks found on the third empty cartridge were quite different from the firing pin marks caused on the six cartridges fired from the double barrel gun in the laboratory. He stated that the metallic piece found in the sealed packet which contained empty pellets and cork etc. was a part of the broken piece of barrel received in the laboratory and in fact that piece perfectly fitted in the broken part of the barrel received in the laboratory. He stated

that the material of all the pieces of the barrel was the same and all the three pieces including the broken portion were equal in length to the right barrel. He further stated that the three portions of the barrel marked by him as B, B1 and B2 were portion of one and the same barrel. He stated that in view of the results obtained in the laboratory, the empty cartridge (Ex. 1) was fired from the left barrel of the double barrel gun received in the laboratory and the other empty cartridge (Ex. 2) was fired from the right barrel of the same gun. The third empty cartridge was fired from some other gun. He further stated that the piece of barrel recovered from the wound of the body was a part of the broken piece of barrel. The ballistic expert report is Ex. Ka-12.

13. P.W. 12 Masood Ahmed stated that his father Aflaq Ahmad had a shop of repairing fire arms, namely, Mushtaq and Company. All the weapons' received for repairing are entered in a register. He produced the register in which at page No; 30 against Sl. No. 46 there was an entry of 10.25 a.m. on 4-12-1977 that Liyakat Ali son of Bhoora Khan resident of village Tewara deposited D.B.B.L. gun No. 5028/74 for repairing. These entries are in his hand writing, it is Ex. Ka 14. He also stated that the signature of Liyakat also appeared against this entry. He stated that left barrel of this gun was replaced by him. He stated that a portion of this left barrel had burst. He further stated that the gun was taken by the police from their possession and the piece of the broken barrel was also taken by the investigating officer and recovery memo Ext. Ka-15 was prepared.

14. The case of the defence is of denial and they had not produced any defence witness. The Sessions Judge relying upon the prosecution evidence convicted the appellants, as aforesaid.

15. Learned counsel for the appellants submits that the prosecution witnesses are not reliable, the post mortem report is not corroborated from the prosecution version and the prosecution has failed to prove its case beyond reasonable doubt. It is further submitted that the appellants had no motive to commit the said offence much less any immediate motive. He further submitted that the gun which was recovered by the investigating officer had been given by him to his brother-in-law who some time later informed him that the gun had been damaged and he had

given it to a dealer for its repair.

In order to appreciate the arguments of learned defence counsel we have to examine the evidence in the light of the above submissions.

16. P.W. 1 Mirajuddin, elder son of deceased, stated that a litigation was going on with respect to 60 Bighas of land. In the proceedings under Section 145 Cr. P.C. the land was attached and it was given in the supurdagi of Yusuf deceased. He also stated that a will alleged to have been executed by Ramjani, husband of Smt. Mehrajahan in his favour was set up by Bhoora, father of accused. He also stated that Mohsin brother of the accused Liyakat was murdered and his uncle Usman and grand father Sultan were prosecuted for this murder. However, both of them were acquitted. A case, Bhoora had filed against deceased Yusuf and others for snatching the above will, also ended in their acquittal. It is well settled that where the direct evidence regarding the assault is worthy of credence and can be believed, the motive goes into back ground. Some time motive being clear can be proved and some times, however, the motive is generally shrouded in mystery and it is very difficult to locate the same. If, however, the evidence of eye witnesses is credit worthy and is believed by the Court which has placed implicit reliance on it, the question Whether there is any motive or not becomes wholly irrelevant and academic.

17. In the present case motive is alleged and it is not disputed that there is long standing litigation pending between the parties and it can be a motive for the crime and vice-versa. However it cannot be argued that there was no motive for the accused to commit the murder of the deceased. The motive was briefly alleged in the F.I.R. and it was elaborated in great detail by P.W.1 Mirajuddin, son of the deceased. From the cross-examination of the factum of existence of enmity, on account of the above land between the parties, is well established. Deceased was siding with Meharjahan, is fully borne out from her evidence. Therefore, motive against the accused is proved amply.

18. The Sessions Judge has relied upon the testimonies of P.W. 5 Shamim and P.W. 6 Kalu.

19. P.W. 5 Shamim is younger son of the deceased. He stated that on the date of occurrence he was returning along with his father on a Motor Cycle and when they reached near a grove the accused persons, namely, Liyakat, Hasim, Shaukat, Mushtaq and Annu came out from the field of Lala Inder Sen. Hashim was armed with a S.B.B.L. gun, Liyakat was armed with a D.B.B.L. gun and other three accused were armed with country made pistols. His father stopped his Motor Cycle to take a turn but he could not control it. Motor Cycle fell down. He remained standing on the road and witnessed the whole occurrence. His father ran towards the bus stand and then to Cheta's field. Accused followed his father and entered in the field of Cheta soon after in which sugar cane crop was standing. His father fell down in this field. Thereafter all the accused, had assaulted him with their respective weapons as a consequence his father died. He has fully supported the version of the report which was lodged on his information by P.W. 1 Mirajuddin, his elder brother. He claimed that he had in the past also conveyed gur in the market to the Aarhat of Mohan Lal. He did not know the rate on which his gur was sold. Its price was received by his father. He did not remember exact amount of money received by his father. He is a young boy aged 11-12 years. He was only to carry gur to the destination. Rest of the details were not for his concern. Any failure, therefore, on his part to deliberate on such facts is not expected from him. Nothing otherwise was elicited from him to create any doubt in his testimony. He is a reliable witness.

20. Learned counsel for the appellants submits that in the register maintained at the police out post Kakrauli it is mentioned that someone had been shot near the grove on the road leading to Reeva. If P.W.5 Shamim along with other persons Kalu and Mirajuddin were present at the time of occurrence this could not be mentioned at the police out post. This argument has no force as P.W.5 stated that he remained at the place of occurrence for a few minutes and then left for his village which was at a distance of about two furlong from the scene of occurrence. He stated that Kalu and Ali Hasan alone were there and none else had come from the neighbouring fields or from the crossing. He also stated that constable posted at the police out post Kakrauli, had not come there before he left for his village. It was not suggested to him that he went to the said out post before coming to his house. Therefore, the accused are not entitled to any benefit from it. P.W.3 Ram

Phal has clearly stated that head moharrir told that a murder had occurred on the road near Tewada. He accompanied the said moharrir from out post to the scene of occurrence. He very clearly stated that no one from the family of the deceased was there. Some 15-20 men were present there. Meraj and others came there within 45 minutes.

21. P.W.3 Ram Phal Singh stated that he was posted in police out post Kakrauli, Head constable had informed him that by the side of the road murder has been committed and he along with constable Iqbal Hassan left for the spot and found the dead body in the sugar cane field. He had also arranged a gas lantern and station officer came to the spot at about 9.30-10 p.m. After the report was lodged by P.W. 1 Mirajuddin.

22. P.W.6 Kalu had fully supported the prosecution case. He stated that he was standing on the road along with Ali Mohammad for a tanga. After some time Yusuf came there on a Motor Cycle. Accused persons came out from the field of Indra Sen, Liyakat was armed with D.B.B.L. gun. Hashim was armed with S.B.B.L. gun and other accused were armed with country made pistols. They all ran towards Yusuf. He stopped his Motor Cycle and ran towards the crossing and entered into the sugar cane field of Cheta. He fell down, in the field and accused assaulted him with their respective weapons.

23. Learned counsel for the appellants submitted that he is a chance witness. He belongs to village Tewada and had no occasion to be present on the crossing at the relevant time. He further submitted that he is a distant relative of the deceased. He submitted that they had joint Khata and due to his relationship with the deceased no reliance can be placed on his testimony. As regard this argument of learned counsel for the appellants that P.W.6 is a chance witness, the Apex Court in a large number of cases held that if by coincidence or chance a person happens to be at the place of occurrence at the time it has taken place, he is called a chance witness and if such a person happens to be a relative or friend of the victim or intimately disposed towards the accused then he being a chance witness is viewed with suspicion. Such a piece of evidence is not necessarily incredible and un-believable but this requires a cautious and close scrutiny. A close scrutiny of

this witness indicates that he fully described the prosecution case and the corroboration of his testimony found support from the post mortem report as well as ballistic expert's report. There is no ground for disbelieving this witness solely on the ground that he is a chance witness and relative of the deceased. His evidence cannot be brushed aside or discarded only on this ground. In our opinion he has fully supported the prosecution case and his testimony found corroboration from the other evidence including evidence of P.W.5 Shamim. His name was disclosed in the FIR as well on record and in our view he is also a reliable witness.

24. Learned counsel for the appellants also submits that there is a conflict in the testimonies of the witnesses and the medical evidence. He submitted that in the post mortem report doctor had found a gun shot injury on the neck of the deceased blackening and tattooing was also present around the wound. There was another gun shot wound of entry about one and half inch away from the above injury. There was another gun shot wound of entry on the right side of chest. The contention of learned counsel for the appellants is that role of firing has been assigned to five persons but injuries prima facie are less in number. This contention on scrutiny has no force. The ante mortem injuries indicate that at least three shots must have been fired upon the deceased and this fully support the testimonies of the witnesses. It may be more as well. There are as many as 18 injuries on his person. Most of them are from a fire arm. Therefore, it will be most unsafe to fix their number. It is not necessary that each and every shot must have hit the deceased. It is further submitted that in the post mortem report doctor had found lacerated wound on the upper lip and on the left side of the face, another lacerated wound on the front of right fore arm. Besides an abrasion. These lacerated wounds must have been caused by lathis. He further submitted that these injuries cannot be caused by a fire arm. This submission learned counsel for the appellants cannot be accepted on its face. According to the prosecution case deceased fell down in the field of sugar cane and some struggle had taken place. It is also relevant to mention that the lacerated wound on the right fore arm was caused when the portion of the burst barrel was separated and entered the fore arm. One metal piece was recovered from this wound. The abrasion on the palm can be caused by a fall of the deceased in the field from sugar cane leaves also. There is thus no medical conflict.

25. P.W. 8 Dr. N.C. Sharma stated that lacerated wounds, injury Nos. 1, 2, 3 and lacerated wound at injury No. 5 could be caused as a result of fall. We have already deliberated on the issue. The post mortem report, therefore, fully supports the testimonies of these eye witnesses. We do not doubt their presence.

26. The ballistic experts report fully supports the ocular testimony. It is specifically mentioned in the F.I.R. that Liyakat was armed with D.B.B.L. gun. The investigating officer had arrested Liyakat and thereafter he disclosed to him that the gun had been given to a mechanic in Meerut for repair. Thereafter gun was recovered by the investigating officer from the shop Mustaq and Company, Meerut. The entries in its register bears signature of this very appellant and the broken piece of barrel was also collected by the investigating officer. The left barrel of gun was already repaired by then. We have in this regard evidence of the mechanic cum owner of the shop. We have no doubt in the correctness of his evidence. This report furnishes. We have no doubt in the correctness of his evidence. This report furnishes a very strong piece of evidence against this appellant. His positive participation in the incident.

27. P.W. 12 Masood Ahmad produced the register containing the signature of Liyakat in the relevant column. The licence of the gun as well as the receipt of Mustaq and Company, Meerut issued for repairing the gun was recovered on the pointing out of Liyakat. The belt containing live cartridges was also recovered from there. The statement of ballistic expert, P.W. 9 Om Prakash Mani Tripathi clearly proves that the two empty cartridge found on the spot were fired from the right and left barrel of D.B.B.L. gun of Liyakat. This opinion was recorded because the firing pin marks on the empty cartridges matched with the firing pin marks caused on the test fired cartridges fired from the left and right barrel of D.B.B.L. gun. It is also established that metal piece recovered from the wound in the arm of the deceased by the doctor and received in the scientific section in a sealed envelope was a portion of the barrel on its burst during the firing incident. The use of the gun of Liyakat is fully proved in this case. A piece of a portion of burst barrel entered in the body of the deceased. It was recovered during post mortem. This piece perfectly fitted in the burst portion of the barrel which was also produced in the Court. It is also proved that the gun was given for repairing by Liyakat and his

signatures were taken in the register. The defence of Liyakat is that gun was taken by his Sala (brother-in-law) and he had told him some time later that the gun was damaged and it was given for repairing and he should go and sign the register maintained at the Shop. Under these circumstances he had gone to Meerut and put his signatures in the register. The defence has not examined the brother-in-law of Liyakat. The statement of P.W. 12 Masood Ahmad clearly indicates that signatures of Liyakat were obtained when the gun was deposited. This explanation from Liyakat cannot be accepted. It is a wholly false explanation.

28. No other point was argued by learned counsel for the appellants before us in this appeal.

29. The prosecution has fully proved its case that all the appellants formed an unlawful assembly for the said common object to commit the murder of Yusuf. The murder of Yusuf is in fulfilment of the said common object. Motive has been proved by the prosecution against them.

30. For the reasons stated above, the appeal is dismissed.

31. The appellants are on bail. The C.J.M. Muzaffar Nagar, therefore, is directed to cause the apprehension of the appellants forthwith on receipt of a copy of this judgment and remand them to judicial custody for serving out the sentences as awarded by the trial Court and confirmed by us. Their bail bonds are cancelled and sureties are hereby discharged.