

(2007) 04 AHC CK 0154

In the Allahabad High Court

Case No : Criminal Appeal Nos. 1395, 2032 and 1713 of 1990

Kishan; State of U.P.; Raja Ram

APPELLANT

Vs

State of U.P.; Om Dutt and Another

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 04 AHC CK 0154

Hon'ble Judges : S.S.Kulshrestha, J and V.K.Verma, J

Final Decision : Disposed Of

Judgement

Vijay Kumar Verma, J.—The aforecited appeals and revision have been preferred against the judgment and order dated 1671990 passed by Sri V.K. Jaiswal, the then 6th Additional Sessions Judge, Meerut in Sessions Trial No. 654 of 1986, State v. Om Dutt and Ors., whereby the appellantaccused Kishan S/o Atar Singh, resident of Village Pilana, P.S. Pilana, District Meerut has been convicted under Section 302, I.P.C. and sentenced to undergo imprisonment for life, but the respondentsaccused Om Dutt and Hari Dutt, both sons of Sri Babu Ram residents of Village Pilana, P.S. Pilana District Meerut in Government Appeal and Revision have been acquitted of the charge under Section 302 read with Section 34, I.P.C.

2. The complainant, Raja Ram S/o Bhagwan Sahai resident of Village Pilana, P.S. Pilana, District Meerut had lodged the F.I.R. on 1981986 at Police Station Pilana. The case of the prosecution as appearing from the chik F.I.R. Ext. Ka3, in brief, is that Satya Prakash, the younger brother of the complainant was residing separately from his four brothers and he was working as Post Man in the Post Office of Village Pilana. Since last election of Village Pradhan, enmity was going on between Om Dutt, Hari Dutt, both sons of Babu Ram and Kishan son of Atar Singh and Satya Prakash, who was witness also in a criminal case against Om Dutt and Hari Dutt. These persons were adamant to kill Satya Prakash. Further case of the prosecution is that on 1981986 at about 6.00 p.m. Satya Prakash

was coming back to his house after getting milk from the village and when he reached in front of the house of Chandra Kiran in the way, Om Dutt, Hari Dutt and Kishan met there in the way and overpowered him. Seeing himself surrounded, Satya Prakash raised the noise on which the complainant, his brother Brahmanand, Shanti and Nathu S/o Niyader, Devendra S/o Bhoop Singh and Raj Bal S/o Giri Lal Tyagi and many people rushed towards spot. At that time Om Dutt and Hari Dutt were having Tabal and Kishan was armed with Kripan. Om Dutt exhorted saying, 'Aaj sala bach ke na ja paye. Hamarey khilaff hone ka maza chakha do our jan se mar do?'. When the complainant and other people made attempt to save Satya Prakash, the accused persons with a view to cause his death began to give blows to Satya Prakash by their respective weapons, due to which he sustained injuries and fell down there and died immediately. Thereafter, the accused persons fled away in eastern side.

3. Leaving the deadbody of Sri Satya Prakash on the place of occurrence, the complainant Raja Ram went to Police Station Pilana and handed over the written report (Ext. Ka 1), which was scribed by Lomesh Sharma S/o Brahmanand. On the basis of that report, chik F.I.R. (Ext. Ka3) was prepared by P.W. 6, Ganga Saran and a case under Section 302, I.P.C. was registered against Om Dutt, Hari Dutt and Kishan at Crime No. 112/86 on 1981986 at 7.45 p.m., entry of which was made in the G.D. No. 33 at the same time vide Ext. Ka4.

4. On the F.I.R. being lodged, investigation was started by S.I. Brij Lall (P.W. 9), who alongwith the Constables Ram Kishan and Tek Chand went to the place of occurrence and conducted inquest proceedings on the deadbody, during which inquest report (Ext. Ka 10) and connected papers (Ext. Ka 11 to Ka 14) were prepared. Thereafter, the deadbody in sealed condition was handed over to the Constables, Tek Chand and Ram Kishan, who carried the same for postmortem examination.

5. The postmortem examination on the deadbody was conducted by Dr. P.K. Ohari (P.W. 5) on 2081986 at 4.00 p.m. The following antemortem injuries were found on the deadbody vide postmortem report (Ext. Ka2).

(a) I/W 9 x 2 cm. x bone deep transverse on the Rt. Side of skull 4 cm. above Rt. ear top 9 cm. above the lateral side of Rt. Eyebrow.

(b) I/W 8 x 2 cm. x bone deep Rt. Side skull/oblique in direction founding to midline 10 cm. above the bridge of nose.

(c) I/W 8 x 2 cm. x muscle deep transverse on the Lt. side of neck. 2 cm. below the Lt. ear.

(d) I/W. 5 1/2 x 1 cm. x muscle deep transverse on the Lt. side of neck 1.5 cm below inj. No. 3.

(e) I/W 8 x 2 cm. x muscle deep transverse Lt. side neck. 2 cm. below Inj. No. 4.

(f) I/W. 8 cm. x 3 cm. x muscle deep transverse on Lt. side of neck 1 cm. below

Inj. No. 5.

(g) I/W. 6 x 11/2 cm. x muscle deep on the lateral side of Lt. arm. 23 cm. above elbow joint.

In internal examination, frontal, parietal and temporal bone were found fractured. Brain and membranes were lacerated. Stomach was containing semidigested food weighing about 250 gms.

The death was caused due to shock and haemorrhage as a result of antemortem injuries.

6. After completing the formalities regarding inquest on the deadbody, S.I. Brij Raj made spot inspection and prepared site plan (Ext. Ka15). Simple and blood stained brickbats (Ext. 2 and 3) were taken into possession and Phard (Ext. Ka16) was prepared. One blood stained Kurta (Ext. 4) and Tehmad (Ext. 5) were also taken into possession and memo (Ext. Ka 17) was prepared.

7. Further investigation was taken up by S.O., Nathu Lal (P.W. 10), who during the course of investigation arrested the accused, Kishan on 20/8/1986 and recovered bloodstained Kirpan (Ext. 1) at his instance from the housepipe of the tubewell of Hari Dutt and prepared recovery memo (Ext. Ka9). Site plan (Ext. Ka 19) of the place of recovery of Kirpan was also prepared by him (S.O., Nathu Lal). Thereafter, other formalities in connection with the investigation was made and after completing the investigation chargesheet (Ext. Ka 20) was submitted against all the three accused.

8. On the case being committed to the Court of Session for trial, the accused were charged under Section 302 read with Section 34, I.P.C. vide order dated 19/11/1987. The accused pleaded not guilty and claimed to be tried.

9. In order to prove its case, the prosecution examined ten witnesses in Trial Court. Out of these witnesses, P.W. 1, Raja Ram, P.W. 2, Raj Bal, P.W. 3, Brahmanand and P.W. 4, Devendra Kumar have deposed as eyewitnesses. P.W. 5, Dr. P.K. Ohari had conducted the postmortem on the deadbody, who had proved the postmortem report (Ext. Ka2). P.W. 6, Constable Ganga Saran is the scribe of chik F.I.R. and G.D. who has proved these papers alongwith the copies of G.D. (Ext. Ka4 to Ext. Ka8). P.W. 7, Constable Tek Chand alongwith Constable Ram Kishan had carried the deadbody for postmortem. P.W.8, Shiv Kumar is the witness of recovery of Kirpan at the instance of accused Kishan. P.W. 9, S.I. Brij Raj and P.W. 10, S.O. Nathu Lal are the Investigating Officers.

10. In their statements recorded under Section 313, Cr.P.C., the accused persons have denied all the allegations of prosecution and they have stated that due to enmity, they have falsely been implicated in this case.

11. The accused in their defence, examined Dr. S. K. Mishra as D.W. 1. This witness was posted as Medical Superintendent in the District Jail, Meerut on 22/8/1986 and he had examined the accused Kishan in jail vide injury report (Ext.

Kha 1).

12. After hearing parties' Counsel, the Court below extending the benefit of doubt to the accused Om Dutt and Hari Dutt acquitted them, but convicted the accused Kishan vide impugned judgment dated 16/7/1990. Being aggrieved, the accused, Kishan has preferred Criminal Appeal No. 1395 of 1990 whereas the State of U.P. has preferred Government Appeal No. 2032 of 1990, challenging the acquittal of accused Om Dutt and Hari Dutt. The complainant Raja Ram has also challenged the acquittal of these accused by filing Criminal Revision No. 1713 of 1990.

13. We have heard Sri P.N. Mishra, learned senior Counsel appearing for the appellant, Kishan in Criminal Appeal No. 1395 of 1990, Sri Raghuraj Kishore, learned Counsel for the respondents in Government Appeal and Revision and the learned A.G.A. for the State. Lower Court record has also been perused carefully.

14. First we are taking up Criminal Appeal No. 1395 of 1990, which has been preferred by the appellant accused, Kishan against his conviction and sentence recorded as above by Trial Court. The first and foremost submission made by Sri P. N. Mishra, learned senior Counsel appearing on behalf of appellant Kishan is that the weapon viz. Kripan which is said to be in the hand of the appellant was not used in the alleged incident of murder of the deceased Satya Prakash and hence, conviction of the appellant is bad in law. In this regard, it was contended by learned Counsel for the appellant that according to the post mortem report (Ext. Ka 2), seven (7) antemortem incised wounds were found on the deadbody and no punctured wound was found, which shows that the appellant, Kishan did not use Kripan. The contention of the learned senior Counsel for the appellant was that had the Kripan was used by the appellant, then punctured wounds would have been caused, whereas even a single punctured wound was not found on the deadbody at the time of postmortem examination, which is indicative of the fact that the appellant Kishan has been falsely implicated in this case. On this point, it was submitted by learned A.G.A. that the appellant Kishan had used Kripan as cutting weapon and for this reason no punctured wound was caused, and only the incised wounds were caused to the deceased.

15. We have carefully gone through the evidence led by the prosecution. We find force in the submission made by learned A.G.A. On the basis of the statements of the witnesses, Raja Ram (P.W.1), Rajbal (P.W.2), Brahmanand (P.W. 3) and Devendra Kumar (P.W. 4), this fact has been established beyond doubt that the accused Kishan was having Kripan in his hand at the time of incident. The evidence of these witnesses has been rightly believed by the Trial Court and there is no error in appreciating the evidence of these witnesses. No cross-examination has been made from the witness Raja Ram regarding the manner of occurrence and from his testimony, this fact is born out that accused Kishan was armed with Kripan and he had taken active part in the incident of murder of Satya Prakash. P.W.2., Rajbal, an eye witness of the incident, has stated in para 14 of his statement at page 7 that the Kripan was used by the

accused Kishan as cutting weapon and not as weapon of stabbing. The actual words used by the witness are 'Kripan ko bhokne ke tarika se nahi mara gaya balki katne ke tarika se mara...kirpan girney ke bad mara?'. This statement of this witness has been corroborated by P.W.3, Brahmanand in para 6 of his statement at page 3 saying 'ek hath lambi kripan thi. Ismen ek taraf dhar thi. Kirpan ko katne ke tarika se mara tha?'. P.W 4, Devendra Kumar has stated at page 4 of his statement as under :

'Muljim kripan ko gandase ki tarah chala kar mara raha the, bhokney ki tarah nahi mara. Maine char Kripan marte dekha tha. Charon hi Kripan gandase ki tarah mara tha. Kripan ka phal ek fut lamba tha va handle usmen alag tha. Kripan mudi hui thi. Dhar ek taraf tha Chandrakar mudi hui kripan thi?.'

16. From the aforesaid statements of the witnesses Rajbal, Brahmanand and Devendra Kumar, this fact is fully established that the accused Kishan had used Kripan as cutting weapon and he did not use it as weapon of stabbing. As mentioned above, 7 incised wounds were found on the deadbody at the time of post mortem examination. If the Kripan is used as cutting weapon, then incised wound can very well be caused by it. Therefore, conviction of the appellantaccused, Kishan cannot be said to be bad in law merely because no stab wound was found on the deadbody at the time of postmortem examination, because as mentioned above, Kripan was used by the appellant Kishan as cutting weapon like Gandasa. Therefore, no benefit can be extended to the appellant Kishan due to want of stab wound on the deadbody.

17. Next submission made by Sri P.N. Mishra, learned senior Counsel for the appellant, Kishan was that due to nonexamination of independent witnesses of locality, the case cannot be said to be proved beyond reasonable doubt. For this submission, our attention has been invited towards the following rulings.

(1) State of U.P. v. Madan Mohan and Ors., 1989 JIC 675 (SC) : (1989) 3 SCC (Cri) 585.

(2) Awadesh and Anr. v. State of Madhya Pradesh, (1988).

(3) Harijana Thirupala and Ors. v. Public Prosecutor, High Court of A.P., Hyderabad, (2002) SCC (Cri) 1370.

(4) Jan Singh and Ors. v. State of Rajasthan, (2002) SCC (Cri) 1027.

18. Drawing our attention towards the aforesaid rulings it was contended by Sri P. N. Mishra, learned senior Counsel for the appellant that complicity of the appellant, Kishan in the alleged incident cannot be said to be established beyond reasonable doubt, because only the interested and related witnesses have been examined by the prosecution and no independent witness has been examined. In this regard, it was submitted by learned A.G.A. that the evidence of the witnesses namely Raja Ram (P.W.1), Rajbal (P.W.2), Brahmanand (P.W.3) and Devendra Kumar (P.W.4) is wholly reliable, and hence, the testimony of these witnesses cannot be discarded due to nonexamination of the witnesses of

locality. We find force in the submission of learned A.G.A.

19. On careful scrutiny of the statements of aforesaid witnesses, this fact is born out that they are wholly reliable witnesses and their evidence is worth reliance. Therefore, the evidence of these witnesses cannot be discarded merely due to nonexamination of the witnesses of locality. In this regard, we may refer the following cases :

(1) Malempati Pattabhi Narendra v. Ghattamaneni Maruthi Prasad, 2000(2) JIC 401 (SC) : (2000) 5 SCC 226.

(2) Israr v. State of U.P., (2005) 9 SCC 616.

(3) State of H.P. v. Mast Ram, (2004) 8 SCC 660.

(4) Sucha Singh v. State of Punjab, 2003(2) JIC 896 (SC) : (2003) 7 SCC 643.

(5) Komal v. State of U.P., 2002(2) JIC 976 (SC) : (2002) 7 SCC 82.

(6) Lehna v. State of Haryana, (2002) 3 SCC 76.

(7) Kartik Malhar v. State of Bihar, (1996)1 SCC 614.

(8) Dalbir Kaur v. State of Punjab, (1976) 4 SCC 158.

(9) Alla China Apparao v. State of A.P., 2003(1) JIC 101 (SC) : (2002) 8 SCC 440.

(10) Ramanand Yadav v. Prabhu Nath Jha, (2003) 12 SCC 606.

20. There are several other rulings on this point, but it is not advisable to burden this judgment by citing all such rulings. The substance of these rulings is that if the testimony of the witnesses, which have been examined by the prosecution, is found reliable, then their evidence cannot be discarded merely due to nonexamination of independent witnesses. Therefore, in instant case, also, the testimony of the aforesaid witnesses cannot be discarded merely due to nonexamination of the witnesses of locality, where the murder of Satya Prakash was committed. The testimony of these witnesses cannot be discarded even if they are related to the deceased, because as held by Hon'ble the Apex Court in some of the rulings mentioned above, the witness, who is related to deceased in any manner is not necessarily interested witness and his testimony cannot be discarded merely because he is related to the deceased in some manner.

21. Regarding the recovery of Kripan at the instance of appellant, Kishan, it was contended by Sri P.N. Mishra that false story of recovery of Kripan at the instance of appellant, Kishan has been concocted and he was arrested from his house by the Police and was given severe beating and Kripan has been planted on him. In this regard, it was submitted by learned Counsel for the appellant that the accused Kishan was medically examined by D.W.1, Dr. S.K. Mishra on 22/8/86 in District Jail, Meerut and as many as eleven injuries were found on his body but explanation of these injuries has not been given by the prosecution. If upholding the aforesaid submission made by Sri P.N. Mishra, the recovery of Kripan at the

instance of appellant, Kishan is not believed, even then the conviction of the appellant cannot be said to be bad in law, because on the basis of the oral evidence, which is supported by medical evidence, it is fully proved beyond reasonable doubt that the appellant, Kishan took active part in the Incident, in which murder of Satya Prakash was committed on the alleged date, time and place.

22. It was further submitted by Sri P.N. Mishra, learned Counsel appearing for the appellant, Kishan that there was no immediate motive for the accused Kishan to commit the murder of Satya Prakash and hence, on this ground the complicity of the appellant Kishan in the alleged incident of murder becomes doubtful. We are not impressed with this argument. It is well settled principle of law that where the evidence led by the prosecution is convincing and reliable, the motive loses significance. Therefore, if assuming for the sake of argument that there was no immediate motive for the appellant, Kishan to commit the murder of Satya Prakash, even then his complicity in the incident of murder of Satya Prakash cannot be said to be doubtful, because on the basis of the testimony of the witnesses mentioned above, his complicity in the incident has been proved beyond reasonable doubt and it is fully established on the basis of the evidence of these witnesses examined by the prosecution that the appellant, Kishan was armed with Kripan at the time of incident and he had used it as cutting weapon thereby causing injuries to the deceased.

23. Next submission made by learned senior Counsel for the appellant, Kishan was that the murder of Satya Prakash was not committed at the time as alleged by the prosecution and it appears that his murder was committed some where else in some other manner at some other time and due to enmity, the accused persons have been falsely implicated in this case. In this regard our attention was drawn towards the postmortem report (Ext. Ka 2) and it was submitted by learned Counsel for the appellant that at the time of postmortem about 250 gms. semidigested food was found in the stomach of the deceased, where as according to the witness, Brahmanand (P.W.3), the deceased had taken meal in the morning as alleged by him in para 12 of his statement at page 6. The contention of the learned Counsel for the appellant was that availability of about 250 gms. semi digested food in the stomach of the deceased is indicative of the fact that the murder was committed after 23 hours from his taking meal in the morning and on this ground the story of the prosecution becomes false. We are not impressed with this argument. No doubt, the witness, Brahmanand (P.W. 3) has stated in para 12 of his statement at page 6 that the deceased had taken meal in the morning, but this statement does not carry any weight because deceased. Satya Prakash was leaving separately from his brothers. That being so, there was no occasion for the witness, Brahmanand (P.W.3), to know as to at what time the deceased has taken meal on the date of occurrence. Therefore, on the basis of the aforesaid statement of the witness Brahmanand, the case of the prosecution cannot be discarded and it cannot be said that murder of the deceased was committed at some other time. As already mentioned, there is convincing and

reliable evidence to show that the murder of deceased was committed by the accused persons on the alleged date, time and place. Therefore, due to aforesaid statement of the witness, Brahmanand, time of death of deceased is not rendered falsified.

24. It was further vehemently contended by learned Counsel for the appellant that the F.I.R. of this, case is antetimed and it was lodged in the morning of 2081986. In this regard. it was submitted by learned Counsel that deadbody of the deceased was carried to P.S. Pilana by the Police on 1981986 where it was kept upto about 1011 a.m. and then it was sent to the Head Quarter for the purpose of postmortem and thereafter, the F.I.R. was lodged. For these submissions, our attention was drawn towards the statement of Raja Ram (P.W.1), who has stated in para 19 and 20 of his statement that deadbody of the deceased Satya Prakash was carried by the Police at P.S. Pilana about 11.30 a.m. in the night by tractor and he and other people also had gone with the deadbody, which was kept there upto about 10.00 a.m. and was sent thereafter for the purpose of postmortem by the same tractor. On the basis of this statement of the witness, Raja Ram, it was vehemently contended by learned Counsel for the appellant that en getting information about the murder of Satya Prakash by unknown persons at some other place, the Police of P.S. Pilana came to village and carried the deadbody to P.S. Pilana where it was kept upto about 10.00 a.m. on next day and F.I.R. was lodged thereafter. We do not find force in this contention of learned Counsel for the appellant, because there is convincing evidence on record to show that the F.I.R. of this case was lodged on 1981986 at 7.45 p.m. and only then the Investigating Officer with other Police personnel had gone to village Pilana and after conducting inquest proceedings on the deadbody, the same was sent for the purpose of postmortem. Therefore, even if, it is assumed for the sake of argument that the deadbody of the deceased was carried to P.S. Pilana as stated by the witness Raja Ram even then the F.I.R. cannot be said to be antetimed, because on the basis of the evidence on record this fact is fully established that F.I.R. was lodged at the time, on which it has been shown to be registered.

25. Certain shortcomings and latches on the part of Investigating Officer were also brought to our notice and it was contended by learned Counsel for the appellant that investigation is tainted. We have carefully gone through the record. In our view, there is no serious infirmity or latches on the part of the Investigating Officer in conducting the investigation. Moreover, it is well settled principle of law that if the evidence led by the prosecution is convincing and reliable, then prosecution case cannot be discarded due to any lapse or latches on the part of Investigating Officer. The Full Bench of this High Court in the case of Gopal and Ors. v. State of U.P., 1999(1) JIC 858 (All) (FB), has held that weakness of the Investigation is no ground to reject direct testimony of the prosecution witnesses. In this regard, reference may be made to the cases of State of Rajasthan v. Kishore, 1996(1) JIC 527 (SC) : (1996) 33 ACC 284 and State of West Bengal v. Mir Mohammad Omar and Ors., 2001(1) JIC 62 (SC) :

(2000) 41 ACC 598, also. Therefore, having regard to the well settled principles of law, the appellant is not entitled to get any benefit due to any weakness of the investigation.

26. It was also contended by learned senior Counsel for the appellant, Kishan that charge under Section 302 read with Section 34, I.P.C. was framed against all the three accused but without amending the charge after acquitting the accused Om Dutt and Hari Dutt, the learned Court below has convicted the appellant, Kishan under Section 302, I.P.C, simplicitor, which is bad in law. Without going into the controversy whether the conviction under Section 302, I.P.C. could be recorded against the appellant Kishan without amending the charge, in our view, his conviction can be converted by this Court from Section 302, I.P.C. to Section 302 read with Section 34, I.P.C.

27. For the reasons mentioned above, we are not inclined to make any interference in the impugned judgment and order, which relates to the conviction of the appellant accused Kishan, because learned Court below has not committed any error in convicting the appellant Kishan for the murder of the deceased, Satya Prakash. Consequently, the appeal preferred by the appellant, Kishan is liable to be dismissed.

28. Now we take up Government Appeal No. 2032 of 1990 and Criminal Revision No. 1713 of 1990, which have been preferred against the acquittal of the accused Om Dutt and Hari Dutt.

29. We have carefully gone through the impugned judgment. On perusal of the judgment, it is revealed that the respondents accused, Om Dutt and Hari Dutt have been acquitted by the learned Court below on two grounds. The first ground on which, finding of acquittal in favour of the accused Om Dutt and Hari Dutt has been recorded by the Court below is that the motive as alleged by the prosecution has not been established. The second ground is that no injury was caused by these accused to the deceased. Having regard to the evidence led by the prosecution and after giving our thoughtful consideration to the entire matter, we are of the considered opinion that the findings recorded by the learned Trial Court on both these grounds are perverse.

30. So far as the motive for committing the murder of deceased is concerned, there is evidence on record to show that there was enmity of election between the accused and deceased Satya Prakash, who was witness also against the accused in Marpit case. This fact is fully established on the basis of the testimony of witnesses, Raja Ram and Rajbal. Therefore, it cannot be said that the motive as alleged by the prosecution has not been proved. Moreover, as stated earlier also, where there is direct evidence, the question of motive becomes insignificant. In the case of Nagarjit Ahir v. State of Bihar, 2006(2) JIC 113 (SC) : (2005) 10 SCC 369, the Hon"ble Apex Court has observed that where direct evidence of witnesses supporting the prosecution case is available on record, then it was not necessary to search for exact motive for committing the offence.

In instant case also, there is direct evidence of four witnesses to show the complicity of all the three accused in the incident of murder of deceased, Satya Prakash. Therefore, even if the motive for committing the murder of Satya Prakash was weak as observed by the Court below in the impugned judgment, even then the finding of the acquittal could not be recorded. The presence of these witnesses has not been doubted by the Court below and their testimony has been believed for recording the finding of conviction against the accused Kishan. All these witnesses have categorically stated that the accused Om Dutt and Hari Dutt were armed with Tabal at the time of incident of murder of deceased, Satya Prakash, and they also took active part by giving blows by Tabal. Therefore, recording of the finding of the acquittal against the accused Om Dutt and Hari Dutt due to weakness of motive is perverse and cannot be sustained by this Court.

31. The second ground for acquitting the accused Om Dutt and Hari Dutt is that no antemortem injury appears to have been caused by Tabal. In our view, this finding of Trial Court is also perverse. According to the postmortem report, seven incised wounds were found on the deadbody at the time of postmortem. Antemortem injury No. 1 as noted in the postmortem report (Ext. Ka 2) was incised wound 9 x 2 cm. x bone deep on the right side of skull. Antemortem injury No. 2 was also an incised wound measuring 8 x 2 cm and it was also bone deep on right side of skull. In our opinion, both these injuries can very well be caused by the Tabal, which is heavy sharp edged weapon. Dr. P.K. Ohari (P.W. 5) has also stated at page 3 of his statement that antemortem injury Nos. 1 and 2 are possibly to be caused by Tabal. It is also stated by this witness that internal injuries are also correspondent to these injuries. There were fractures of frontal, parietal and temporal bones of the deceased, as is evident from the postmortem report (Ext. Ka 2) and statement of P.K. Ohari (P.W. 5). If the Tabal is used by force, then injuries like antemortem injury Nos. 1 and 2 could be caused. Therefore, we are not inclined to approve the finding recorded by learned Court below on this point, because the said finding is not supported by the evidence. As already stated, there is reliable evidence of four witnesses to show the complicity of all the accused in the incident of murder of deceased, Satya Prakash and from their testimony this fact is established beyond reasonable doubt that all the three accused have actively participated in the crime and in furtherance of their common intention, they committed the murder of deceased. That being so, the findings of acquittal recorded by learned Trial Court are bad in law being perverse and cannot be sustained by this Court.

32. On merit, almost the same arguments as mentioned above were raised by Sri Raghu Raj Kishore, learned Counsel appearing for the respondentsaccused. Therefore, it is not necessary to reproduce the same arguments here again. Suffice is to say that the complicity of the respondentsaccused Om Dutt and Hari Dutt in the murder of Satya Prakash has been established beyond reasonable doubt and on the basis of evidence led by the prosecution, this fact is fully proved that murder of the deceased Satya Prakash was committed by all the

three accused in furtherance of their common intention. Therefore, he respondentsaccused, Om Dutt and Hari Dutt were also liable to be convicted for the murder of deceased, but the learned Court below recording perverse findings has acquitted them. Hence, the Government Appeal and Criminal Revision have to be allowed.

33. For the reasons mentioned above, we hereby dismiss Criminal Appeal No. 1395 of 1990, but conviction of the appellant Kishan is hereby converted from Section 302, I.P.C. to Section 302 read with Section 34, I.P.C. The sentence imposed by the Court below is hereby confirmed. The surety bonds of the appellant Kishan are hereby cancelled and the sureties are discharged,

Government Appeal No. 2032 of 1990 and Criminal Revision No. 1713 of 1990 are hereby allowed. The impugned judgment and order dated 16/7/1990 passed by the 6th Additions Sessions Judge, Meerut in Sessions Trial No. 654 of 1986 so far as it relates to the acquittal of respondents accused Om Dutt and Hari Dutt are set aside. These accused are hereby convicted under Section 302 read with Section 34, I.P.C. and they both are sentenced to undergo imprisonment for life. Their bail bonds are hereby cancelled and sureties are discharged.

The Chief Judicial Magistrate, Meerut is hereby directed to take steps for sending the accused persons to jail to serve out the sentence.

The office is hereby directed to return the lower Court record alongwith a copy of this judgment without any delay.

Appeal Nos. 2032 and 1713 are allowed and 1395 dismissed.