
(2004) 05 PAT CK 0038
In the Patna High Court
Case No : Cr. Appeal No. 571 of 2000

Sri Bhagwan Singh and Rama Shankar Singh	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 05-05-2004

Acts Referred:

Citation : (2004) 05 PAT CK 0038

Final Decision : Dismissed

Judgement

P.N. Yadav, J.—The Appellants. Shri Bhagwan Singh and his son Rama Shankar Singh were put up for trial before the 4th Additional Sessions Judge, Saranat Chapra. They were charged u/s 302 read with Section 34 of the Indian Penal Code (hereinafter to be referred to as the Code). The Appellant Shri Bhagwan Singh also stood charged u/s 27 of the Arms Act. The trial court vide judgment and order dated the 29th and the 30th September, 2000 rendered in Sessions Trial No. 277 of 1999 found and held the Appellants guilty and convicted and sentenced them to undergo rigorous imprisonment for life each u/s 302/34 of the Code and it further convicted the Appellant Shri Bhagwan Singh u/s 27 of the Arms Act and sentenced him to undergo rigorous imprisonment for five years thereunder, both the sentences inflicted upon the Appellant Shri Bhagwan Singh having been ordered to run concurrently.

2. It would be relevant and convenient to state, in brief, the factual scenario highlighted by the prosecution. The informant Dr. Triloki Sharma (P.W.5) and his brother Shri Bhagwan Sharma (deceased) were at about 9. 00 A.M. on the 25th August, 1998 sitting and talking to each other on a chowki at his DOCHARA (also called Darwaza Dalan) situated contiguous to their house by the side of the brick laid road. Just then both the Appellants arrived there on a motorcycle. After getting off from the vehicles they with pistols in their hands went to the DOCHARA and the Appellant Shri Bhagwan Singh opened fire upon the deceased as a result of which he sustained grievous injury on abdomen right side. Both the Appellants then coming out of DOCHARA boarded the motorcycle to flee away

but the vehicles becoming unbalanced fell down whereafter they ran away opening fire from their pistols leaving the motorcycle there. Certain villagers after hearing hue and cry assembled at the scene and witnessed the occurrence. The deceased was lifted and put on a cot for being taken to Sadar Hospital, Chapra, however, he succumbed to injuries on way to the hospital where he was declared dead. The land dispute between the parties is said to have acted as motive impelling the Appellants to translate their cherished ill designed plan into action.

3. Fardbeyan of the informant was recorded and inquest report prepared at Sadar Hospital, Chapra by S.P. Singh, Sub Inspector of Police, Bhagwan Bazar Police Station at 12.15. P.M. on the same day, that is, the 25th August, 1998. The fardbeyan was forwarded to the Officer Incharge of Bheldi Police Station on the 26th August, 1998 as the place of occurrence situated within its jurisdiction. The dead body of the deceased was sent to mortuary where Dr. Shaligram Vishwakarma (P.W. 6) conducted autopsy at 3.15 P.M. on the 25th August, 1998. Surendra Ram Lohar, Officer Incharge, Bheldi Police Station drawing a formal first information report forwarded the fardbeyan and the formal first information report, to the Officer Incharge of Amnour Police Station for registration of case on the basis of which Amnour Rs. Case No. 154 of 1998 was registered on the 27th August, 1998. Surendra Ram Lohar suo motu took up investigation after he received the fardbeyan and drew the first information report. However, he does not appear to have made any headway in investigation and soon investigation was under the orders of superior authority entrusted to Bhikhari Ram, Sub Inspector of Police of Bheldi Police Station (P.W. 9), who visited and inspected the place of occurrence, recorded statements of witnesses, collected inquest report and postmortem examination report and on conclusion of investigation laid chargesheet before the court and finally trial commenced after commitment.

4. The State examined 12 witnesses at trial in order to bring home the charges levelled against the Appellants. P.W.1, Ram Binay Sharma, P.W. 2, Ram Pravesh Sharma, P.W.3, Shatrughan Singh, P.W. 4, Lai Babu Sharma and P.W. 5, Dr. Triloki Sharma, the informant, are eye witnesses to the incident leading to the death of the deceased. As stated above, P.W. 6, Dr. Shaligram Vishwakarma held postmortem examination on the dead body of the deceased and P.W.9, Bhikhari Ram investigated into the case. P.W. 7 Awadh Bihari Pandey, P.W. 8 Sanjay Kumar, P.W. 10 Suresh Prasad Singh, P.W. 11 Wakil Ram and P.W. 12, Dasai Ram were formal witnesses.

5. The Appellants did not enter into defence. However, as gathered from the trend of cross examination of the prosecution witnesses and the statement of the Appellants recorded u/s 313 Code of Criminal Procedure their defence seemed to be that of total denial and false implication out of sheer enmity emanating from land dispute and as a matter of fact the deceased Shri Bhagwan Sharma alongwith his associates were snatching away the Appellants' motorcycle and cash and in the process someone from amongst the associates of the deceased

resorted to firing but the shot so fired instead of hitting the Appellants hit the deceased causing his death for which a petition of complaint (Ext. 6) giving rise to Complaint Case No. 1539 of 1998 was filed in the court of the Chief Judicial Magistrate, Chapra against the deceased and other members of his family including the informant. The trial court, however, on consideration of evidence brought on records rejecting the plea of innocence recorded findings of guilt and convicted and sentenced the Appellants as stated above.

6. Before embarking upon consideration of the testimony of eye witnesses, I would like to refer to the points raised by the counsel for the Appellants in order to attach vulnerability to the judgment of the court below. Assailing the judgment and order of conviction and sentence, Smt. Anjana Prakash, learned Counsel has vehemently contended that none of the prosecution witnesses is named in the first information report which itself is suspicious document on account of non-examination of S.R Singh, who recorded the same (fardbeyan) and Lalan Singh, who registered the case, all the eye witnesses (P.Ws.1 to 5) being members of the same family are relatives and interested witnesses and at the same time they are inimical to the Appellants and their evidence suffers from inconsistency and contradiction and quality of their evidence is not such as to be relied upon for basing conviction thereon, objective finding such as seizure of blood from the place of occurrence, blood stained clothes etc. is conspicuous by its absence, investigation has not been properly and fairly made and it is thoroughly defective and also there are several cuttings and over writings in the case diary and the part of investigation carried out by Surendra Ram Lohar as well as the motorcycle of the Appellants seized by the police has not been brought on records, medical evidence is contrary to ocular evidence for, wound of entry caused by fire arm is usually smaller than the wound of exit and charring wound be caused if the shot is fired from a very close range, say a distance of six inches, but in the instant case the wound of entry has been described to be larger than the wound of exit and the doctor has also found charred margins of wound of entry but no charring was expected to have been caused as the shot was not fired from a close range and that no overt act was committed by the Appellant Rama Shankar Singh and as such he could not be convicted u/s 302, with the aid of Section 34 of the Code.

7. Resisting the contentions referred to above advanced by the learned Counsel for the Appellants, Shri Ashwani Kumar Sinha, learned Additional Public Prosecutor has strenuously urged that though there is consistent and corroborative evidence of as many as five ocular witnesses only the evidence of the informant (P.W.5) considered together with the contents of the first information report and medical evidence is sufficient for basing conviction of the Appellants.

8. Now adverting to ocular evidence, it is to be noticed that the informant Dr. Triloki Sharma (P.W. 5) supporting the prosecution case in its entirety has stated that while he alongwith his brother, the deceased Shri Bhagwan Sharma was at

about 9.00 A.M. on the 25th August, 1998 sitting on a Chauki and talking to each other in the aforesaid DOCHARA the Appellants arrived there on a Suzuki Motorcycle being driven by the Appellant Rama Shankar Singh and after getting off from the motorcycle they with pistols in their hands went into the DOCHARA and the Appellant Shri Bhagwan Singh opened fire upon the deceased as a result of which he sustained injury on the right side of his abdomen, the bullet so hitting him making exit from the left side of the abdomen and soon thereafter, the Appellants boarded the motorcycle to flee away but the vehicle became unbalanced and it fell down whereafter they fled away opening fire leaving the motorcycle lying there, the deceased was taken to Sadar Hospital, Chapra where he was declared dead. P.W. 5 got his fardbeyan recorded at 12.15. P.M. at the said Hospital by the Officer Incharge of Bhagwan Bazar Police Station. Inquest report was prepared in his presence and the dead body was sent for postmortem examination.

9. The evidence of the other eye witnesses (P.Ws. 1 to 4) was identical to that of the informant (P.W.5), who was corroborated in all material particulars by them. P.W.1 has stated that he saw the incident when he was coming back from a blacksmith where he had been for getting his sickles etc. sharpened. P.W. 2 claimed to have witnessed the incident from his Dalan which situated 10-15 yards away from the DOCHARA of the informant. P.W. 3 has stated that he went to call Dr. Triloki Sharma (P.W.5) for getting his mother examined by him and just then he saw the occurrence leading to infliction of fire arm injury on the deceased by the Appellant Shri Bhagwan Singh accompanied by the Appellant Rama Shankar Singh. P.W. 4 stated that while he was returning to his house after cutting grass, he witnessed the occurrence from a distance of about 15 yards. The incident took place in broad day light. It could have well been seen from the distances as stated by the witnesses. The name of P.W. 1 is mentioned in the first information report. Non mention of the names of P.Ws. 2, 3 and 4 in the F.I.R. cannot cast a doubt on their testimony. The F.I.R. is not the encyclopaedia containing all minute details. It is not at all essential that the eye witnesses must be cited in the F.I.R.

10. The ocular evidence discussed above is quite consistent and corroborative. In spite of elaborate cross examination nothing fragile in their evidence has surfaced. Their evidence is cogent, truthful and trustworthy. From evidence of the Investigating Officer (P.W.9), it would transpire that certain omissions and inconsistencies did crop up in the evidence of the eye witnesses but they are not at all material and vital adversely affecting the core or edifice of the prosecution case. Some minor variations and omissions are bound to occur in the evidence of natural and truthful witnesses. Hardly one comes across a witness whose evidence does not contain a grain of un-truth or exaggeration or embellishment for, a witness when passing through the labyrinth of long cross examination makes certain statement which is not necessarily true for fear that his evidence on what he witnessed may not be discarded. Whatever discrepancies and omissions have been noticed in the evidence of the eye witnesses they are of no

consequence and the same must be ignored.

11. It is true that the eye witnesses seem to be relatives and interested ones and at the same time inimical to the Appellants inasmuch as the parties had been on litigating terms on account of land dispute between them but on that account alone" their evidence cannot be rejected. The settled principle of law is that evidence of a relative and interested witness cannot be discarded outright and conviction can be based on his evidence even without corroboration by some independent witness provided his evidence is consistent and corroborative free from inherent taint and infirmity and the same is wholly reliable. A witness related to and interested in the deceased is not likely to falsely implicate a person in the incident leading to the death of his kith and kin for, there must be intense desire in his mind to get the assailant of his relative punished and he is not likely, to substitute in his place the enemy of the family even though he was not concerned with assault. Similar view was taken in the case of State of Rajasthan v. Hanuman reported in (2000) 1 SCC 337.

12. The eye witness account of the incident leading to infliction of gun shot injury on the deceased causing his death is in consonance with medical evidence. Dr. Shaligram Vishwakarma (P.W.6) conducted autopsy on the dead body of the deceased at about 3.15 P.M. on the 25th August, 1998. He found the following ante mortem injuries on the person of the deceased : (i) an elliptical penetrating wound of dimension of 2" x 3/4" x cavity deep with lacerated inverted charred margins situated on right lateral wall of abdomen at naval plane and (ii) an oval penetrating wound of diameter of 2" with lacerated everted margins (though everted appears to have been inadvertently written as inverted in the evidence of the doctor) and cavity deep situated on left lateral wall of abdomen at naval plane. Both the aforesaid injuries were communicating to each other, injury No. (i) being wound of entry and injury No. (ii) wound of exit. In the opinion of the doctor, the death was caused within 6-12 hours of postmortem examination due to shock and haemorrhage as a result of the aforesaid fire arm injuries. The deceased sustained injuries at 9.00 A.M. and died soon thereafter and autopsy was held at 3.15 P.M. on the same day. The time elapsed since death as per medical report fits in with the time of infliction of fatal injury on the deceased.

13. The learned Counsel appearing on behalf of the Appellants has urged that from the statement of ocular witnesses recorded u/s 161 Code of Criminal Procedure, it would transpire that the Appellant Shri Bhagwan Singh opened fire soon after he got down from his motorcycle and that would mean that he shot at from outside DOCHARA that is, from some distance and not from point blank range and as such there ought not to have been charring around the wound of entry for, charring can be caused if shot is fired from a close range. There is no substance in the submission. There is consistent ocular evidence that the Appellants entered into the DOCHARA and thereafter, the shot was fired. The shot under such circumstance must have been fired from a close range. There is nothing on records to disbelieve the statement and the finding of the doctor

(P.W.5), who was an independent witness and at the same time public servant having no animosity or ill will against the Appellants.

14. The wound of entrance caused by shots is usually smaller than the wound of exit but in the instant case wound of entry seems to be larger than the wound of exit but it does not always happen so. There may be cases in which the wound of exit is smaller than the wound of entry. The dimension" of wound of entry and wound of exit must be depending on so many factors, such as nature and quality of projectile, distance from which shot was fired, the weapon used, the velocity of the projectile, the root along which the bullet travels before it comes out, fragmentation of bullet into pieces inside the body or otherwise. The doctor (P.W.6) in course of cross examination has stated that the width of the wound of entry caused by bullet is generally lesser than that of the wound of exit but it may happen vice-verse sometimes. He has added if the speed of the projectile is slower at the time of exit, it would cause a wound of lesser width and would have almost the size of the circumference of the projectile. In the case at hand a bit smaller size of the wound of exit in comparison to the wound of entry considered together with ocular evidence and broad probability cannot in the least render the prosecution version doubtful.

15. From the above discussion, it would be evident that there is no merit and substance in the contention that ocular evidence is at variance with medical evidence. In the case of Brijpal Singh Vs. State of M.P., version of eye witnesses was contradictory to report of ballistic expert. The accused (A-1) shot at the deceased on the back of his head from his mouser rifle. The other accused (A-2) shot at P.W. 1 with 12 bore gun which missed him-and the pellets got embedded in the wall of the house. The ballistic expert after comparing the bullet with the weapons reported though both the rifle and gun were found to have been discharged recently the empty cartridges that were seized from the spot did not compare and fit in with mouser rifle. He also opined that the pieces of bullet taken out of the wall could have been fired by a similar rifle seized from the Appellant (mouser rifle). In view of report of ballistic expert the weapon alleged to have been used in causing fatal injury was not held to have been mouser rifle carried by A-1 which was the prosecution version. Besides the eye witnesses were related to and interested in the deceased and their evidence was inconsistent and discrepant and though independent witnesses saw the occurrence they were not examined and hence ocular evidence could not form the basis of conviction. This case is not applicable to the case at hand.

16. The case was investigated into by P.W.9 Bhikhari Ram. He visited the place of occurrence and gave a vivid description of the same. He found a wooden Chowki at the DALAN (DOCHARA) which was the scene of incident. From his evidence, it stood proved that the motorcycle used in the commission of crime belonged to the Appellant Shri Bhagwan Singh for, his father had approached the witness with relevant documents for the release of the vehicle. It may be recalled that the Appellants after putting the incident to an end made good escape leaving the

motorcycle there. Though the motorcycle in question was seized by the police neither seizure list was made in respect thereof nor was the vehicle produced in the court. Again the Investigating Officer neither seized blood from the place of occurrence nor blood stained clothes of the deceased. Lapses and omissions committed by the Investigating Officer were writ large on the facts and circumstances of the case and the evidence of the I.O. (P.W.9). P.W. 9 also admitted to have made certain cuttings and overwritings in the case diary but they are immaterial and of no consequence. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of the prosecution when it is otherwise proved. In a case of defective investigation the only requirement is of extra caution to be exercised by courts while evaluating evidence. It would not be just, proper and expedient in the interest of justice to acquit the accused solely on account of defective investigation. Justice should not be made casualty of wrongs committed by the Investigating Officer.

17. In the case of Mohd. Zahid Vs. The Govt. of NCT of Delhi, the evidence of officials making arrest was not supported by independent witnesses. The said officers made interpolations in entries of case diary to keep sequence of entries in order and prove time of arrest. Interpolation was made changing the hour of departure of police officers to conduct raid and search and the hour of arrest with the ulterior motive of justifying wrongful detention of the accused. Cuttings and overwritings in the case diary in the case at hand are not of any important significance and they are fit to be ignored. In Sevi and Another Vs. State of Tamil Nadu and Another, the Investigating Officer (P.W.15) was told by P.W. 10 on telephone that there had been incident of rioting and stabbing at Kottaiyur. He made S.D. entry and proceeded to Kottaiyur taking with him the F.I.R. Book and the Hospital Memo Book. This was "Very extra ordinary and un-usual conduct on the part of the I.O. In view of defence plea that the original F.I.R. which was registered was something altogether different from what has now been put forward as the F.I.R. and the present F.I.R. is one which has been substituted in the place of another which has been destroyed the trial court directed the police officer concerned to produce the F.I.R. Book in the court so that counter foils could have been examined but the police officer was unable to produce the same. Even the general station diary was not produced in the court. Again all the eye witnesses were partisan witnesses whose evidence did not inspire confidence. Investigation was defective and tainted and the ocular evidence also suffered from infirmities and the same was fit to be discarded. None of the aforesaid two cases relied upon by the Appellants is of any avail to them.

18. According to the prosecution the deceased was eliminated by the Appellants as they were very much aggrieved on account of long drawn land dispute between the parties. That the parties had been locked in litigations arising from land dispute is an admitted fact. The Appellants set up defence that they had been falsely implicated out of sheer enmity emanating from land dispute and as a matter of fact the deceased and his associates were aggressors and they tried to snatch away motorcycle and cash from possession of the Appellants and in the

process some one belonging to the prosecution party opened fire and the shot so fired instead of hitting the Appellants hit the deceased causing his death. Though preponderance of facts and circumstances including clinching and unimpeachable ocular evidence established that the Appellants went to the DALAN of the deceased and Shri Bhagwan Singh shot at him resulting in his death the prosecution version also found support and corroboration from the Appellants' document, that is, the Petitioner of complaint filed by the Appellant Shri Bhagwan Singh in the court of the Chief Judicial Magistrate on the 26th August, 1997] alleging therein that the deceased sustained injury from the shot fired by his own associate while the Appellants were being relieved of their motorcycle and money. Certain facts such as date and time of occurrence, the deceased sustaining fatal fire arm injury stood admitted by the Appellants in their complaint case referred to above. S.D. entry No. 399 dated the 25th August, 1998 (Ext.B) would also reveal that the Appellants' motorcycle was recovered from the vicinity of the place of occurrence where the Appellants left the same when it fell down and fled away after committing the crime. Neither Ext. 6 (complaint petition) nor the S.D. Entry (Ext.B) probabalises the defence version rather both the documents lend support to the prosecution version particularly when the Appellants could take no steps to prove or even to probabalise genuineness or truthfulness of allegation levelled by them against the deceased and other members of his family including the informant.

19. Where there is direct and specific evidence on the point of infliction of fatal assault causing the death of the deceased motive becomes irrelevant and the court is not required to probe what motive impelled the assailant to commit the crime. Though as already observed the prosecution version stood proved beyond doubt by cogent and clinching evidence led at trial the materials on records also established that the Appellants put the gory incident to an end resulting in the death of the deceased on account of enmity due to long drawn land dispute. So the genesis of the occurrence and the motive attributed to the Appellants for committing the murder of the deceased also stood proved.

20. It has been submitted that the fardbeyan was recorded by S.R Singh, Sub Inspector of Police, Bhagwan Bazar Police Station and the same was forwarded to the officer incharge, Bheldi Police Station wherefrom it was transmitted by its officer incharge Surendra Ram Lohar to Amnour Police Station where the case was registered by Lalan Singh the officer incharge but none of the aforesaid Police" Officers viz. S.R Singh, Surendra Ram Lohar and Lalan Singh was examined on account of which the first information report has been rendered a suspicious document and if it is so the entire prosecution case must be viewed with doubt and suspicion and the same must be thrown overboard. The submission is non-meritorious and the same cannot be accepted. On account of non examination of the said police officers the first information report cannot be said to be suspicious document.

21. The learned Counsel for the Appellants relying on The State of Bihar Vs.

Mithlesh Rai, Khima Vikamshi and Others Vs. State of Gujarat, and State of U.P. Vs. Arun Kumar Gupta, has contended that in the light of the decisions rendered by the Apex Court in the aforesaid cases the impugned judgment and order of conviction and sentence must be set aside. In the case of State of Bihar v. Mithilesh Rai (supra) as per prosecution version the accused Raj Naresh Rai handed over the weapon (chaff-cutter) to the accused Mithilesh Rai who cut the neck of the deceased. P.W.2 Bindeshwari Rai was the sole witness who saw one accused handing over the chaff-cutter to another accused and also heard Raj Naresh Rai ordering Mithilesh Rai to eliminate the deceased but P.W. 2 did not disclose this to the informant and he stated it for the first time before the police next day, 22 hours after the occurrence. Besides, his testimony remained uncorroborated. There were other infirmities and lacunae in his evidence. In the case of Khima Vikamshi and others (supra) the deceased alongwith his daughter-in-law (P.W.4) was going to consult a doctor in regard to ailment of P.W. 4. On way to their destination the deceased was intercepted and killed by the accused. P.W.4 was the sole witness to see and identify the accused inflicting assault on the deceased. The mother-in-law and the husband of P.W.4 were present in the house. She was a pardanashin lady and her accompanying the deceased alone at the time of incident was held to be a doubtful circumstance. Her evidence suffered from discrepancy and inconsistency as well. The evidence of other witnesses which might have constituted circumstantial evidence too did not inspire confidence. The deceased in injured condition was taken to his house where his wife and son were present but they were not examined. Also was. there absence of blood at the place of occurrence. In the case of State of U.P. v. Arun Kumar Gupta (supra) the accused took the deceased to his house and killed him. The witness (P.W.2) who claimed to have seen the accused take the deceased from his shop was the casteman of the deceased and was a close friend of his father for 20 years. He disclosed the factum of the accused taking away the deceased to his house for the first time to the investigating officer only at the time of his examination u/s 161 Code of Criminal Procedure. He was taking extra ordinary interest in the investigation inasmuch as he remained present at practically every important place at the time and place of investigation. Venue of offence being the house of the accused where he lived with his family was most unsuitable for commission of murder of the deceased. Under such circumstance, prosecution case was held to have not been proved. The facts and circumstances of the cases cited at the bar were entirely different from those of the case at hand and they are not applicable here.

22. The Appellant Shri Bhagwan Singh alongwith the Appellant Rama Shankar Singh was charged u/s 302 read with Section 34 of the Code. There is abundance of materials on records to suggest that the Appellant Shri Bhagwan Singh is the killer of Shri Bhagwan Sharma. Though Shri Bhagwan Singh is the killer of the deceased and there is direct, cogent and reliable evidence to make him answerable for conviction u/s 302 of the Code simpliciter he has been convicted u/s 302 read with Section 34 of the Code alongwith the Appellant Rama Shankar

Singh probably because he was charged u/s 302 read with Section 34 of the Code. We may consider whether conviction of the Appellant Shri Bhagwan Singh u/s 302 read with Section 34 can be altered to conviction u/s 302 of the Code in absence of the charge having been framed thereunder.

23. The Code of Criminal Procedure provides that no error, omission or irregularity in the charge or even total absence of a charge, shall vitiate a trial unless prejudice to the accused is shown. In the case of Willie (William) Slaney Vs. The State of Madhya Pradesh, it was held that no error or omission in the charge and not even total absence of a charge would cut at the root of the trial. It was observed by the Apex Court in the aforesaid case: the Appellant was charged with murder and nothing short of it, although it was stated in the charge that the offence was committed by him in furtherance of a common intention. If the evidence failed to prove that the offence committed by him was in furtherance of a common intention, it would be nonetheless his offence, namely, murder, if his act in law amounted to murder. The law does not require in such a case that separate charge for murder should be framed because the charge of murder was already on record.

24. In the case, we are in seisin of Shri Bhagwan Singh was charged for having committed murder of Shri Bhagwan Sharma though in furtherance of common intention. The entire evidence led at trial depicted him as the sole assailant having caused death of the deceased by shooting at him. While he was being examined u/s 313 Code of Criminal Procedure. he was specifically put question regarding his act of shooting at the deceased and the shot fired by him having caused fatal fire arm injury on the right side of his abdomen. The evidence on records did brand him as the sole assailant of the deceased. He is not likely to be put to any prejudice if his conviction is altered from that u/s 302 read with Section 34 to that under section-302 of the Code simpliciter. Accordingly, conviction of the Appellant Shri Bhagwan Singh is altered to conviction u/s 302 of the Code simpliciter.

25. It has also been urged that the Appellant Rama Shankar Singh committed no overt act to facilitate commission of murder of the deceased and hence he cannot be held liable and his conviction cannot be sustained and he deserves to be acquitted. This plea is also to be negatived. In accordance with the principle of vicarious liability enshrined in Section 34 of the Code a person may be liable for act of an offence not committed by him but committed by another person with whom he shared common intention. In order to attract the mischief of Section 34 of the Code it is not necessary that each one of the accused must inflict assault upon the deceased. It is enough if it is shown that he shared the common intention to commit the crime and in furtherance thereof each played his role by doing some act. In the instant case both the Appellants riding a motorcycle driven by the Appellant Rama Shankar Singh went to the DARWAJA of the deceased and they with pistols in their hands entered the DARWAJA (DOCHARA) and the Appellant Shri Bhagwan Singh shot at the deceased causing fatal injury

to him and thereafter both the Appellants fled away together in the same direction opening fire though the Appellant Rama Shankar Singh was not charged u/s 27 of the Arms Act. The Appellant Rama Shankar Singh must, therefore, be said to have shared common intention with the Appellant Shri Bhagwan Singh to eliminate the deceased and he did play his role in the episode and hence he must be held liable u/s 302 read with Section 34 of the Code.

26. The entire contention put forward on behalf of the Appellants to probabilise their innocence and to render the prosecution case doubtful is devoid of merit and force and the same must be rejected outright. The learned Counsel could not persuade us to accept the defence plea.

27. In view of what has been stated and observed above conviction and sentence of the Appellant Rama Shankar Singh u/s 302 read with Section 34 of the Code is maintained and altering conviction of the Appellant Shri Bhagwan Singh u/s 302 read with Section 34 to the one u/s 302 of the Code simpliciter the sentences awarded to him by the court below are confirmed.

28. In the result, the appeal is dismissed with the aforesaid modification in conviction in respect of the Appellant Shri Bhagwan Singh. It would appear from the records that Shri Bhagwan Singh is behind the bar. He shall serve out the remainder of sentence. Rama Shankar Singh is on bail. His bail bond is cancelled with a direction to him to surrender to the court below within a fortnight from the date of this order for serving out the sentence awarded to him failing which the court shall take coercive steps for procuring his surrender/arrest.

I.P. Singh J.

29. I agree.