

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.491 of 1992

(Against the judgment of Conviction and sentence, dated 17.12.1992 and passed by Shri Abhijit Sinha, 9th Additional Sessions Judge, Arrah in Sessions Trial No. 27 of 1979, arising out of Sahar P.S. Case No. 6(6) of 1978)

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Umesh Singh son of Alakh Singh, resident of Village Ekwari, P.S. Sahar, District Bhojpur	 Appellant
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Versus

State of Bihar	 Respondent
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Appearance :

For the Appellant/s	: Mr. Kanhaiya Prasad Singh, Sr. Advocate Mr. Ramashish, Advocate
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For the Respondent/s	: Mr. Abhimanyu Sharma, APP.
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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 30-01-2017

The instant appeal is filed against the judgment of conviction and order of sentence, both dated 17th December, 1992, passed by the 9th Additional Sessions Judge, Arrah in S.T. No.27 of 1979, whereby all the four appellants were convicted under Section 302/34 of the Indian Penal Code and sentenced to imprisonment for life. The appellant Anil Singh was further convicted under section 148 of the Indian Penal Code and section 27 of the Arms Act and sentenced to rigorous imprisonment for three years on each count. However, appellants Umesh Singh, Jagarnath Rai and Baldeo Rai were convicted under section 147 of the Indian Penal Code and



sentenced to under go rigorous imprisonment for two years. However, all the sentences were directed to run concurrently.

2. During the pendency of the appeal, the appellants Jagarnath Rai @ Jagarnath Singh, Anil Singh and Baldeo Rai died and as such the appeal as against them abated. The appeal, thus, survived against the appellant Umesh Singh.

3. The prosecution case, as set out in the *fardbeyan* of Ram Kishun Kahar of village Ekbari, P.S. Sahar recorded by the S.I. O.S. Singh of Sahar P.S. on 7.6.1978 at 8 A.M. at Police Camp in Village Ekbari, in short is as follows:

(i) The informant stated that the previous evening at about 8 PM, he along with his mother Shankaro Devi, sister-in-law Lalmuni Devi, Dil Sundra Devi, Badami Devi, Dhirikshan Devi, Shanti Devi, Panwati Devi, brother Somnath Kahar, Dasrath Kahar, Sudarshan Kahar and children, were in the court yard of his house. Some of the family members already had their food, while others were taking food. After taking his food, the informant's brother Sudarshan Kahar went towards the northern lane for urinal just outside the house, whereas his sister-in-law Badami Devi went on to the roof. After urinal, his brother hurriedly came and bolted the door from inside and also went up the roof. Soon thereafter, he heard sound of fierce banging of the door. The female members put resistance to hold the door intact, but on account of force exerted



from outside, the latch of the door gave way.

(ii) One Jagarnath Rai was the first to enter the court yard followed by Uma Prasad Singh, Anil Kumar Singh, Ashok Singh (sons of Shankh Singh) all armed with country made pistol as well as Umesh Rai and Baldeo Rai, all residents of village Ekbari. Accused Shankh Singh, Keshav Singh both sons of Nathuni Singh and Sakal Singh son of Ramnandan Singh also of village Ekbari stood in the lane facing the door. Shankh Singh was armed with rifle, where as Keshav Singh was armed with licensed gun and rests were armed with lathi. Baldeo Rai had a big torch in his hand. Uma Prasad Singh, Anil Singh and Ashok Kumar Singh started to look for Sudharshan Kahar soon after entering into the court yard. The wife of Sudharshan Kahar was already on the roof. Baldeo Rai was looking for Sudarshan Kahar with his torch. A small lamp (dhibri) was burning in the court yard.

(iii) The female of the house fell on feet of Uma Prasad Singh and pleaded to spare Sudharshan Kahar to which he did not relent and began to climb on the roof by means of bamboos ladder followed by Anil Kumar Singh and Ashok Kumar Singh. Other persons remained in the court yard. Baldeo Rai was showing torch light from below. They heard sound of two gun shots and also heard the cry of his brother Sudharshan Kahar "Jaan Gail". Badamo Devi, wife of Sudharshan began to cry and sought to know from Uma



Babu her husband's fault. The three accused persons who had gone up on the roof returned to court yard by means of ladder. Sakal Singh and Sankh Singh were exhorting others to finish them as well, to which the informant begged mercy. It is alleged that as Sudarshan Kahar supported the rival candidate in the election of Mukhiya, Uma Singh being aggrieved, committed the occurrence along with other accused.

(iv) On the basis of the *fardbeyan* of the informant, Sahar P.S. Case No. 6(6) of 1978 was registered under section 302/34 and other allied sections of the Indian Penal Code and under section 27 of the Arms Act against all the ten accused persons.

4. The police after investigation submitted charge sheet against 9 accused persons, where after cognizance was taken and the case was committed to the Court of Sessions for trial. All the 9 accused persons were charged under section 302/34 of the Indian Penal Code. Keshav Singh, Uma Prasad Singh, Sankh Singh, Anil Singh and Ashok Singh were also charged under section 148 of the Indian Penal Code and Section 27 of the Arms Act. Accused Keshav Singh, Jagarnath Rai, Umesh Singh, Sankh Singh and Baldeo Rai were additionally charged under section 147 of the Indian Penal Code. The accused pleaded not guilty to their respective charges and claimed to be tried.

5. The prosecution examined altogether seven witnesses.



P.W. 1 is Lal Muni Devi, P.W. 2 is Sanjharo Devi, P.W. 3 is Badamo Devi, P.W. 4 is Sobhnath Kahar, P.W. 5 is Ram Kishun Kahar (informant), P.W. 6 is Deo Sundra Devi and P.W. 7 is Tung Nath Prasad, a formal witness who proved Inquest Report (Ext.1), Diary page nos. 1 to 37(Ext2), F.I.R. (Ext.3), Fardbeyan (Ext.4) and Post mortem report (Ext.5).

6. The defence examined one witness Mun Mun Lal (D.W.1) and exhibited Fardbeyan of Sankh Singh (accused) made on 13.8.1978 as Ext.A. The defence of the accused in their statements under section 313 Cr.P.C. was complete denial of the occurrence.

7. It is relevant to state here that during the trial, accused Uma Prasad Singh died and pending pronouncement of the judgment, Ashok Singh was killed in a shooting incident for which Sahar P.S. Case No.82 of 1992 was registered. As such, only 7 accused survived on the date of judgment.

8. The Trial Court on consideration of the materials on record, acquitted Sankh Singh, Sakal Singh and Kesho Singh of their respective charge and convicted rest of the four accused persons, namely, Anil Singh, Umesh Singh, Jagarnath Rai @ Jagarnath Singh and Baldeo Rai under section 302 read with section 34 of the Indian Penal Code and sentenced them to under go life imprisonment. Accused Anil Singh was further convicted under



section 148 IPC and section 27 of the Arms Act and sentenced to under go R.I. for three years each, under each count. The accused Umesh Singh, Jagarnath Rai @ Jagarnath Singh and Baldeo Rai were sentenced to undergo R.I. for two years under section 147 IPC. However, all the sentences were directed to run concurrently.

9. All the four convicted accused jointly filed the instant appeal, bearing Criminal Appeal (DB) No.491 of 1992. During the pendency of the appeal, appellant No.2 Anil Singh, appellant No.3 Jagarnath Singh and appellant No.4 Baldeo Rai died and their case stood abated. As such, only the case of sole appellant Umesh Singh is before us, facing conviction under section 302/34 and section 147 of the Indian Penal Code.

10. Mr. Kanhaiya Prasad Singh, learned Senior Counsel appearing for the appellant submits that even assuming the prosecution case to be true, no case under section 302/34 or section 302/149 or any other sections of the Indian Penal Code is made out against the appellant Umesh Singh. The appellant is simply said to have entered the court yard along with others. There is general allegation that he was armed with lathi. He submits that it is not uncommon in the village to move with lathi which is generally carried for protection and in absence of any evidence to the contrary, there cannot be any inference that the same was being carried with ulterior purposes. There is nothing on the record to suggest that the



appellant shared any intention with other accused persons or had entered into the premises with a common object or intention to kill the deceased. He further contends that even as per the version of P.W. 1 in paragraph 26 of her evidence as many as 50 persons came first on the heel of the accused persons and it is quite possible that this appellant too was simply one amongst them. Further more, he is the only accused against whom none of the witnesses have alleged any overt act. He next contended that mere presence of the appellant at the place of occurrence along with other accused persons in absence of any other evidence that he shared the same intention would not be sufficient to hold him guilty either with aid of Section 34 or Section 149 of the Indian Penal Code. In support of his submission, learned counsel have relied upon the decisions in the case of *Prem Sagar vs Dharambir & Ors, reported in (2004) 1 SCC 113*.

11. It has been further contended that all the witnesses are family members and they have been implicated at the instance of Lal Mohar and Ram Niwas as they were accused in Sahar P.S. Case No. 9 of 1978 for murder of Nathuni Singh, father of co-accused Kesho Singh of the prosecution side. The Trial Court ought to have excluded the evidence of P.W. 1 along with P.W. 4 as they could not be cross-examined on account of their death. The cause of death of the deceased is not proved on account of non-examination of the



Doctor who conducted the post mortem report though the latter was proved as exhibit by a formal witness P.W. 7. The non-examination of the Investigating Officer had prejudice the defence case as latter did not get an opportunity to establish before the Court that some of the prosecution witnesses have tried to develop the prosecution case in course of trial. For instance, as per accused, P.W. 2 in her evidence before the Court stated the name of the persons who were armed with lathi, whereas she did not state the same before the police.

12. On the other hand, learned Additional Public Prosecutor appearing for the State submits that the appellant was one of the accused who had entered the court yard of the informant at 8 PM, some of whom committed the murder of her husband. The other witnesses in their evidence fully supported the prosecution case that the appellant had entered the court yard along with other accused after breaking the entrance door in the night. He submits that common intention can develop at any juncture and the fact that after the murder all left together signifies the common intention of all the accused including the appellant.

13. We have heard counsel for the parties and perused the materials on record. The submissions of the parties have raised some important issues of law. Before, we consider the issues of law, it would be relevant to notice the facts of the case in brief. The



prosecution in order to substantiate its case, has examined altogether 7 witnesses, out of these P.W. 1 Lal Muni Devi is sister-in-law of the informant, P.W. 2 Sanjharo Devi is the mother of the informant and deceased, P.W. 3 Badamo Devi is the wife of the deceased, P.W. 4 Sobhnath Kahar is brother of the informant, P.W. 5 Ram Kishun Kahar is the informant of the case and P.W. 6 is Deo Sundra Devi, another Bhabhi of the informant. They all have claimed to be the eye witnesses to the occurrence. P.Ws 1 to 6 are all family members of the deceased and their presence in the house in the night was natural. All these six witnesses have stated that they were in the court yard of the house at 8 PM on the fateful evening. Sudarshan Kahar (deceased) who had gone out to answer call of nature after taking his food hurriedly came back to the court yard and bolted the door from inside and climbed on to the roof to hide himself. Soon thereafter, they heard sound of banging on the door and out of fear the female members of the house put forth resistance in order to save the door from collapsing. However, latch of the door gave way and it got opened. One Jagarnath Singh entered the court yard followed by other accused persons. The witnesses stated that Uma Prasad Singh, Anil Singh and Ashok Kumar Singh were armed with country made pistol, Sankh Singh was armed with rifle whereas Kesho Singh was armed with licensed gun and rests were armed with lathi. As soon as they entered, Uma Prasad Singh started



looking for Sudarshan Kahar with vengeance. In order to catch Sudarshan Kahar, Uma Prasad Singh, Anil Singh, Ashok Singh climbed on the roof by means of ladder. Soon thereafter, they heard two sound of firing and yelling of Sudarshan Kahar “Jaan Gail”. They further stated that Baldeo Rai was flashing torch light to help the accused persons to find out Sudarshan Kahar. Besides this, a earthen lamp was also burning in the court yard.

14. The defence has not been able to extract material contradictions worth the name to discredit the evidence of these witnesses, save and except some minor contradictions. Further more, the occurrence took place at 8 PM in the night and the presence of these witnesses in their house is very natural as they were inmates of the house and own family members of the deceased.

15. Learned counsel for the appellant argued that the Trial Court ought not to have considered the evidence of P.W.1 and P.W.4, as they could not be cross-examined by the defence on account of their death. In our view, the submission is only to be noticed to be rejected as P.W. 1 and P.W. 4 were present on the relevant dates and on account of recalcitrant attitude of the accused, they could not be cross-examined and in the meantime they died. As such, the mistake was of the defence as they did not choose to cross-examine the witnesses. It is not the case that the defence wanted to cross-examine the witnesses, but they were prevented from doing



so. The defence cannot take advantage of their own mistake.

16. Section 33 of the Indian Evidence Act, which is relevant in the context, is quoted hereinbelow for easy reference:

33. Relevancy of certain evidence for proving, in subsequent proceeding, the truth of facts therein stated.- Evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving, in a subsequent judicial proceeding, or in a later state of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the Court considers unreasonable:

Provided-

that the proceeding was between the same parties or their representatives in interest;

that the adverse party in the first proceeding had the right and opportunity to cross-examine;

that the questions in issue were substantially the same in the first as in the second proceeding”.

17. The provisions in clear term states that the evidence of a witness would be relevant, if he or she when the witness is dead or cannot be found or is incapable of giving evidence or is kept out of way by the adverse party or his presence cannot be obtained without much delay or expense in a subsequent judicial proceeding or in a later stage of the same judicial proceeding between the same party. In the instant case, P.W.s 1 and 4 were present on two relevant dates for cross-examination, still the defence for reason best known to it, did not cross-examine them. Unfortunately, both of them died. In view of the provisions of law and mandate contained



in Section 33 of the Indian Evidence Act, the evidence of these witnesses would be relevant as they had died during the adjournment sought by the defence. As such, in our considered view, the evidence of P.W.1 and P.W. 4 cannot be discarded from consideration for not being cross-examined, as the fault was entirely of the defence, not to have cross-examined them, when they were present on more than one date. Even if we do not reckon the evidence of these two witnesses, the evidence of P.Ws 2, 3, 5 and 6 are consistence on the point of time of occurrence and manner of occurrence.

18. The defence had next argued that the cause of death of the deceased could not be ascertained as the Doctor who conducted the post mortem had not been examined. We find from the evidence on record that the post mortem report has been brought on record as Ext. 5/1 by one Tung Nath Prasad, P.W.7; as in spite of issuance of processes, the Doctor who conducted the post mortem did not appear for giving his evidence.

19. However, non-examination of the Doctor would not prejudice the prosecution case as the accused have not denied that the death was caused by fire arm. It is the case of the defence that the accused was shot dead at some other place and his body was kept on the roof, and the appellant and others were falsely implicated at the instance of Lal Mohar and Ram Niwas, who were



accused in the murder of Nathuni Singh, father of accused Kesho Singh. The death of Sudarshan Kahar by fire arm in effect admitted by the accused. Thus, the non-examination of the Doctor would not be fatal to the prosecution case.

20. Lastly, counsel for the appellant had argued that no case under section 302/34 of the Indian Penal Code is made out as the prosecution has not brought any material to establish that the appellant also shared common intention of committing murder of the deceased.

21. The ambit and scope of Section 34 of the Indian Penal Code and also as to what are the necessary ingredients for invoking this provision was dealt by the Privy Council in the classic case of *Mahbub Shah v. Emperor, reported in A.I.R. 1945 PC 118*. Later, the issue also came to be considered in the case of *Shankerlal Kacharabhai and others v. State of Gujarat, A.I.R. 1965 Supreme Court 1260*; *Ramesh Singh alias photti v. State of A.P. (2004) 11 SCC 305*; *Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra, (1970) 1 SCC 696*. In recent time, in the case of *Balu @ Bala Subramaniam and another v. State (U.T. of Pondicherry), reported in 2016 Cri. L.J. 176*, the Hon'ble Apex Court after referring to a number of cases, while summarizing the law on the issue, observed as under in paragraphs 10, 11, 12, 13 and 14:

“10. To invoke Section 34 IPC, it must be established that



the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that:- (i) there was common intention on the part of several persons to commit a particular crime and (ii) the crime was actually committed by them in furtherance of that common intention. The essence of liability under Section 34 IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Minds regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention.

11. The classic case on the subject is the judgment of the Privy Council in Mahbub Shah v. Emperor, A.I.R. 1945 PC 118, wherein it was held as under:-

“.... Section 34 lays down a principle of joint liability in the doing of a criminal act. The section does not say “the common intentions of all” nor does it say “an intention common to all”. Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. To invoke the aid of Section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case”.

(underlining added)

Reiterating the above principles laid down by the Privy Council in Mahbub Shah’s case, in Shankerlal



Kacharabhai and others v. State of Gujarat, A.I.R. 1965 Supreme Court 1260, this Court held that the criminal act mentioned in Section 34 IPC is the result of the concerted action of more than one person and if the said result was reached in furtherance of the common intention, each person is liable for the result as if he had done it himself.

12. In Ramesh Singh alias photti v. State of A.P. (2004) 11 SCC 305: (AIR 2004 SC 4545: 2004 AIR SCW 3682), this Court held as under:-

“12.....As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code the legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration. Section 34 IPC embodies the principle of joint liability in doing the criminal act based on a common intention. Common intention essentially being a state of mind it is very difficult to procure direct evidence to prove such intention. Therefore, in most cases it has to be inferred from the act like, the conduct of the accused or other relevant circumstances of the case. The inference can be gathered from the manner in which the accused arrived at the scene and mounted the attack, the determination and concert with which the attack was made, and from the nature of injury caused by one or some of them. The contributory acts of the persons who are not responsible for the injury can further be inferred from the subsequent conduct after the attack. In this regard even an illegal commission on the part of such accused can indicate the sharing of common intention. In other words, the totality of circumstances must be taken into consideration in arriving at the conclusion whether the accused had the common intention to commit an offence of which they could be convicted. (See Noor Mohammad Mohd. Yusuf Momin v. State of Maharashtra, (1970) 1 SCC 696): (AIR



*1971 SC 885: 1971 Cri LJ 793)”.
(Underlining added)*

13. Common intention is seldom capable of direct proof, it is almost invariably to be inferred from proved circumstances relating to the entire conduct of all the persons and not only from the individual act actually performed. The inference to be drawn from the manner of the origin of the occurrence, the manner in which the accused arrived at the scene and the concert with which attack was made and from the injuries caused by one or some of them. The criminal act actually committed would certainly be one of the important factor to be taken into consideration but should not be taken to be the sole factor.

14. Under Section 34 IPC, a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. The question whether there was any common intention or not depends upon the inference to be drawn from the proving facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they could be convicted”.

22. In the light of law laid down by the Hon’ble Apex Court on the issue of invoking Section 34 of the Indian Penal Code, we would now examine whether the appellant could be held guilty for murder with aid of Section 34 of the Indian Penal Code. We have minutely scanned the evidence of all the witnesses. None of them have alleged any overt act against the appellant who is said to be armed with lathi. There is no allegation that he exhorted any one to kill the deceased or for that matter wielded his lathi on any one,



much less the deceased. There is no evidence that the appellant was seen together with the accused persons prior to the occurrence or he had ever threatened the prosecution side. It is true that the common intention can develop on the spot but there has to be some evidence on this score which is lacking in this case. In the case of ***Ghanshyam and others vs. State of Uttar Pradesh, reported in 1983 Cr. L.J. 439***, the Hon'ble Apex Court observed that mere presence of appellant with other accused would not be indicative of sharing common intention with others if the appellant who was 15 years of age did not participate in the attack. It would be apt to quote paragraph 8 of the judgment, which reads as under:

"8. We would first revert to the facts of this case and find out as to whether participation by the present appellant Kehar Singh in the assault on deceased Dhoom Singh is established to the satisfaction of the Court. Dharam Pal, P.W. 2 is the most important witness. Dharam Pal deposed that after accused No.1 Ghanshyam said that he would take revenge, all the four accused belaboured Dhoom Singh. In his evidence he generally involves all the four accused including acquitted accused Hukum Singh. His evidence against Hukum Singh is not accepted. Appellant Kehar Singh, a young boy of 15 years of age is ascribed the role in vague terms. May be, he was present. But is this evidence sufficient to inculcate him? Could he be said to be sharing the intention of his father and elder brother who gave repeated blows? Evidence of other two witnesses, P.W. 3 Ram Pal and P.W. 4 Ved Prakash is to the same effect. The meeting at a place where the incident is alleged to have occurred is purely accidental because there is no evidence to show that the accused knew in advance that the deceased and his companions were to pass by that route. In this state of evidence we are not satisfied that appellant Kehar Singh, a young boy participated in the attack. It is reasonable to believe that he might have been present at the time of occurrence but mere presence in the circumstances of this case is not indicative of sharing the intention of the father



and the brother. Therefore, we are satisfied that there is no convincing and reliable evidence to hold that the present appellant shared the common intention of his father and brother and participated in the assault on the deceased and that the charges under Ss. 302/34 and Ss.323/34, Indian Penal Code, have been brought home to him. His conviction and sentence are, therefore, unsustainable.

23. In the case of ***Baso Prasad and Ors vs. State of Bihar***, reported in 2007(1) PLJR 48, the Hon'ble Apex Court observed that had the other accused shared common intention with other accused, they would have also fired. It would be relevant to quote paragraphs 45 and 46 of the judgment, which reads as under:

“45. The prosecution case is that dispute started on lighting of fire on a heap of straw. The accused allegedly hurled brick bats, which compelled the deceased to come to roof to forbid them from doing so. Whereas Brijnandan Prasad alone fired a shot which had hit the deceased, there is no evidence brought on record to show that any other accused did so. No gun shot injury was suffered by any person. The deceased has also suffered only one gun shot injury. No sign of firing was found on the walls or any other part of the building. No cartridge was recovered.

46. Even no other person had suffered any injury by reason of hurling of brick bats. Having regard to the materials brought on records, we are of the opinion that in this case although the prosecution has proved the charge of committing the murder of the deceased, it has failed to establish that the accused had any common intention in relation thereto. Brijnandan Prasad alone was, thus, responsible therefor. Had the other accused shared common intention with Brijnandan Prasad, they would have also fired. No such evidence having been brought on record, benefit of doubt must be extended to the other accused persons”.

24. In the case of ***Prem Sagar vs Dharambir & Ors***, reported in (2004) 1 SCC 113, the Hon'ble Apex Court observed



that if there is nothing to link the accused with the occurrence, though he was present on the spot, he would not be held guilty with aid of section 34 of the Indian Penal Code.

25. In the backdrop of the discussions made above, we are of the considered view that the prosecution has failed to establish beyond all reasonable doubt that the appellant shared common intention of committing murder of the deceased.

26. In the result, this appeal succeeds. The impugned judgment of conviction and sentence both dated 17.12.1992 passed against the appellant by the 9th Additional Sessions Judge, Arrah in Sessions Trial No. 27 of 1979, arising out of Sahar P.S. Case No. 6(6) of 1978, is set aside. The appellant is, accordingly, discharged from the liability of bail bonds.

(Samarendra Pratap Singh, J)

(Aditya Kumar Trivedi, J)- I agree

(Aditya Kumar Trivedi, J)

Md. Jamaluddin Khan	
AFR	
CAV DATE	09-12-2016
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