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Crl.A.No. 1320 OF 1998

.UP 10 2; Draft, smtst; -n -PA4 -dFX-NORMAL -y -e; dumbp

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ITEM No.105

Court No.5

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No.1320/1998@@
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Raju Ram

Appellant (s)

VERSUS

State of Bihar Respondent (s)
(With appln. for exemption from filing OT and filing addl.papers and
office report)

Date : 14/08/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE K.T. THOMAS
HON'BLE MR. JUSTICE K.G. BALAKRISHNAN

For Appellant (s) Mr. Ashok Kumar Sharma (AC)

For Respondent(s) Mr. BB Singh, Adv.
Mr. Kumar Rajesh Singh, Adv.

UPON hearing counsel the Court made the following

O R D E R

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.SP2

The appeal is dismissed.

.SP1

Hemalatha (HK Bhatia)
Court Master
(Signed order is placed on file)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1320 of 1998@@
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RAJU RAM

Appellant (s)

VERSUS

STATE OF BIHAR

Respondent (s)

O R D E R@@
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.SP2

The appellant is one of the three accused persons convicted for offences under Section 302, 387 read with Section 34 of the IPC. On 22.1.92 at 6.30 P.M. the three persons were alleged to have gone to the shop of the deceased. They asked the shop owner to come out. On the deceased going out of the shop, two of the assailants (one of them is the appellant) held two revolvers on the head of the victim and the third one (Al-Naresh Lal) had a dagger with him. Keeping the victim in that form they asked him to pay Rs.5000/- plus the entire collection in the shop for that day. As the victim could not pay the said amount he expressed his helplessness. Keeping the victim in this form they asked his son PW4-Anil Kumar to meet the demand. PW4 also expressed helplessness to oblige the assailants. Then Al - Naresh Lal plunged the dagger into the abdomen of the victim. Thereafter all the three ran away from the scene. Deceased succumbed to the injury thereby sustained.

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As the trial court and the High Court believed the aforesaid version put forth by three witnesses (one of them was an employee of the same shop, another one was the neighbouring shop owner and the third PW4 - Anil Kumar) there is no scope for us to think that the incident would not have happened as per the said version.

However, Mr. Ashok Kumar Sharma, counsel appointed as amicus curiae made a bold endeavour to contend that the maximum which the present appellant would have intended along with his co assailants was to commit extortion and nothing more. We applied our mind seriously on various facets of the said contention. Learned counsel first submitted that it is possible that the two persons who held the victim with revolvers would not have intended to murder him, because if they had intended they would certainly have used the revolver. Second is an alternative contention that they would have carried and shown only toy revolvers.

Either of the said alternatives is not enough to dispel the possibility of the three persons entertaining common intention to commit the murder of the deceased. Our reasons are the following. If the two persons carried only toy revolvers that would explain why those two persons could not kill the deceased. If the revolvers were genuine why one of them at least did not

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use it need not be contended by us because the third one had plunged his dagger which itself was a lethal weapon. If the three persons have decided to go for committing extortion they would have thought of what should be done in case they failed to extract the money. It is unthinkable for us that the three would have decided to walk back coolly on failure of their mission to commit extortion.

Mr. BB Singh, learned counsel for the State of Bihar invited our attention to the situation and the time, in order to emphasise his point that there would not have been the possibility of the three persons walking back without achieving purpose and without inflicting any harm to the victim. Incident happened at

6.30 P.M. on a day in the month of January at Ranchi. Evidently it would have been dark then. Be that as it may. We find it extremely difficult to de-cipher the intention of the third accused from that of the other two persons for the purpose of de-escalating the penal liability to be fastened on him. In the result we dismiss this appeal.

.SP1

.....J
(K.T. Thomas)

New Delhi
August 14, 2001

.....J
(K.G.Balakrishnan)