

**Kishore and ors. Vs. the State**

**Kishore and ors. Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/527524](http://sooperkanoon.com/527524)

**Court :** Orissa

**Decided On :** Nov-22-1966

**Reported in :** AIR1967Ori118

**Judge :** Ahmad, C.J. and ;S. Barman, J.

**Acts :** [Evidence Act, 1872](#) - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 34 and 302; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367

**Appeal No. :** Death Ref. No. 2 of 1966 and Criminal Appeal No. 159 of 1966

**Appellant :** Kishore and ors.

**Respondent :** The State

**Advocate for Def. :** Government Adv.

**Advocate for Pet/Ap. :** B. Mohapatra, Adv.

**Judgement :**

**Barman, J.**

1. The five accused persons--Kamraj Bhola, Kishore alias Iswar Bhola, Abhimanyu alias Baya Padhan, Adikanda Bhuyan and Ganapati Bhola--were charged under Section 302/84 for the murder of Brundaban Bholir by gun-shot firing and also on a charge of criminal conspiracy to commit the said murder by gun-shot firing under

section 120B Indian Penal Code. Two accused persons Kishore alias Iswar Bhola and Abhimanyu alias Baya Padhan were both convicted under Section 302 Indian Penal Code and sentenced to death; the sentences passed were subject to confirmation. by the High Court. The remaining three accused persons--Kamaraj Bhola, Adikanda Bhuyan and Ganapati Bhola--were convicted under Section 302/34 Indian Penal Code and sentenced to imprisonment for life. All the accused persons were also convicted on the charge of criminal conspiracy under Section 120B Indian Penal Code but there was no separate sentence on the said count.

2. The deceased and the accused persons all belong to village Dangapadara, 8 miles from Gangapur Police Station in Bhanjanagar Subdivision of Ganjam District. The accused Kamraj Bhola aged 54 is the father of Kishore alias Iswar Bhola aged 30. The accused Ganapati Bhola is said to be distantly related to accused Kamraj Bhola. The deceased Brundaban Bhola is an agnate of the three Bhola accused persons. The accused Abhimanyu alias Baya Padhan, a dealer in paddy, is a close neighbour of the deceased and the accused persons. The accused Adikanda Bhuyan, a cultivator and said to be a dealer in cattle, & also a close neighbour residing close to the backyard (Ban) of the house of the accused Kamraj Bhola, Kishore. The other two accused persons and the deceased Brundaban Bhola are also close neighbours on the same road in the village--all as appearing from the Spot Map Ext. 29.

3. The houses of the deceased Brundaban Bhola, his brothers Padmalav Bhola P. W. 9 and Pravakar Bhola P. W. 10 are almost adjacent to each other on the same side of the road; the only house intervening between the house of P. W. 9 and P. W. 10 is the house of Shamsundar Bhola who is a step-brother of the accused Kamraj Bhola. The houses of the accused Abhimanyu alias Baya Padhan and the accused Ganapati Bhola are also on the same side of the village road as of the deceased. On the other side of the village road are the houses of the accused Kamraj Bhola, father of the accused Kishore alias Iswar Bhola, and of Narsu Bhola P. W, 1 which both houses are adjacent to each other; at the back of these houses is the house of the accused Adikanda Bhuyan as aforesaid.

4. The motive of the murder is said to be some ill-feeling among the Bholas for the last 18 years inasmuch as it led to a party faction in the village; on the one side were Kamraj, his son and their associates and on the other were the deceased Brundaban, his brothers (P. Ws. 9 and 10) and their friends and associates. Evidently, apart from the deep-rooted old family quarrel, the immediate cause of inimical relationship between these two Bholas families of the village was some grudge arising out of certain sales of landed properties by the accused Kamraj's step-mother and stepbrother to the deceased and his brothers, shortly before the incident, to which the accused Kamraj objected as hereinafter discussed.

5. It appears from evidence that the family life of accused Kamraj was not quite happy. Accused Kamraj and Kishore alias Iswar do not pull well with their wives; they are living separate. The wife of Kamraj lives in her father's place; so also the wife of Kishore alias Iswar. No female or child lives in the house of accused Kamraj. It is said that the villagers are afraid of the accused Kamraj.

6. The house of Kamraj is right in front (a little to the east) of the house of the deceased and his brothers P. W. 9 Padmanav Bholas and P. W. 10 Pravakar Bholas among other houses with the village Rasta intervening. The house of Kamraj is a thatched house on the ground floor and is 7 or 8 cubits high; the houses of the deceased and his brothers are three storeyed buildings 23 cubits high in front (a little to the west) of the house of Kamraj. It is said that the courtyard and Bari of the house of Kamraj are visible to one standing on the upper storey of the houses of the deceased and his brothers.

7. The prosecution case is that on June 5, 1965 which was a Saturday at 6 p. m. while the deceased Brundaban Bholas was sitting on the step on the outer verandah of his house he was shot from Kamraj's house opposite the house of the deceased with gun as a result whereof he immediately died. The deceased's brother Pravakar Bholas P. W. 10 and one Abhinav Bhuyan P. W. 11 were both very close to the deceased at the point of time he was shot from Kamraj's house.

At 8 p. m. the same night P. W. 10 Pravakar Bholas lodged at the police station the First Information Report which was recorded by the investigating officer P. W. 12. The same night at about 2 a. m. the investigating officer P. W. 12 arrived at the

place of occurrence. Evidently, all the accused persons except the accused Kamraj Bhola had absconded. After investigation in due course the police arrested Kamraj Bhola on June 9, 1965. Accused Kishore alias Iswar Bhola, Abhimanyu alias Baya Padhan and Adikanda Bhuyan were arrested on June 13, 1965. Accused Ganapati was arrested on June 17, 1965. In due course all the five accused persons charged, committed and sent up for trial before the learned Sessions Judge who convicted and sentenced them as aforesaid.

8. There is no eye-witness to who actually had fired guns. The conviction of the accused persons is based on circumstantial evidence. The material witnesses, among others, were the two brothers of the deceased P. W. 9 Padmanav Bhola P. W. 10 Pravakar Bhola and P. W. 11 Abhina Bhuyan said to be a bhag tenant of the deceased's another brother Panchanan Bhola and also P. W. 1 Narsu Bhola a common relation of the deceased and the accused Kamraj Bhola; P. W. 6 and P. W. 7 are witnesses about the prior and subsequent conduct of the accused persons. The Officer-in-charge of Gangapur Police Station P. W. 12 played an important role in the investigation of the case. The medical evidence as to the nature of the injuries was given by the doctor P. W. 8.

9. The most important evidence from the side of the prosecution, by which the complicity of the accused persons in the murder was fixed, was the evidence of the deceased's brother P. W. 9 Padmanav Bhola. The material portion of his evidence was this:

'The occurrence took place on 5-6-65 at about 6 P. M. On that date at 4 P. M. I went to the terrace of my building to bring clothes which I left there to dry up. I went to bring away the clothes as the rain was approaching. From the terrace of my building I round that Ganapati Bhola, Baya Padhan alias Abhimanyu. Adikanda Bhuyan. Kishore Bhola and Kamraj Bhola were standing in the middle courtyard of the house of Kamraj. I came down from terrace of my building and took my bath. Then at about 6 p. m. I again went to the terrace of my building to dry up my clothes. The rain had . already passed by that time. When I was drying my clothes, I heard two gun reports im quick succession. I looked towards the house of Kamraj and found that accused Baya alias Abhimanyu and accused Kishore alias Iswara

running away from the front house of accused Kamraj across the middle courtyard and entered into the back side house of Kamaraj. Both the accused persons Baya and Iswara had each a gun at this time. I could see them when they passed through the middle courtyard. I heard the halla of Prabhakar and others. So I got down from the building and found that the deceased was lying dead with bleeding injuries. He was lying on the village Rasta in front of his house. I found injuries in his head and in his chest.'

10. It is thus clear from his evidence that at 4 p. m. P. W. 9 Padmanav saw from the terrace overlooking the courtyard of Kamraj's house opposite the Rasta (road) all the five accused persons; and then again at 6 p. m. immediately he heard two gun shot firings, he saw the accused Abhimanyu alias Baya Padhan and the accused Kishore alias Iswar running away from the front house each with a gun in his hand towards the back side of the house of Kamraj as stated by the witness. This indeed is a piece of strong circumstantial evidence against the five accused persons in support of the prosecution case of their complicity in the murder. The evidence of this witness about proximity both as to time and place of the murder is clinching to the extent to leading to the reasonable inference that they did the criminal act in furtherance of the common intention of them all. His evidence is further supported by the other two witnesses P. Ws. 10 and 11 who both were on the Rasta close to the deceased when the murder had taken place. They each saw the smoke of gun powder coming through the two holes in the wall of the house of Kamraj. The evidence of these two supporting witnesses is discussed here-under.

11. P. W. 10 Pravakar Bhola, elder brother of the deceased corroborated in all material particulars, the evidence of P. W. 9 Padmanay Bhola to the extent that he (P. W, 10) saw the part of the occurrence to which he himself was an eye-witness. The material portion of the evidence of P. W. 10 Pravakar was this:

'The occurrence took place on Sithalasthi day i. e. on 5-6-65 at about 6 p. m. On this date, at about 4 P. M. I went to the village tank for bath through Adua Sahi. At that time, I found all these accused persons, present in the dock and one Kasi standing on the pucca Platform of the well, in the Bari of Kamraju. I returned home

from the tank at 5 P. M. by the same path, through Adua Sahi. While returning home, I did not find the accused persons in the Bari of accused Kamraj. On reaching home, I changed my clothes, came out to the village Danda and sat down on the step to the outer verandah of my house. At that time the deceased Brundaban was also sitting on the step to the outer-verandah of his house. He was at a distance of 4 cubits from me. We were sitting outside in the breeze, as it was summer evening. At this time, Abhina Bhuyan (referring to P. W. 11) of Ghodapada came to me as he had requested me earlier, to give ft piece of land to him to cultivate on Bhag. I was talking with Abhina. When Abhina was just going to sit down near me, at that time I heard two gun reports in quick succession. I observed, that smoke of gun powder was coming through the two holes, that were in the wall of the house of accused Kamaraju. When I heard the sounds simultaneously, something flew past near my right shoulder, with a hissing sound. Instantly, I noticed that my brother Brundaban had fallen down on the ground. Then I along with Abhina rushed near the deceased and saw the deceased lying with bleeding injuries. I sent Abhina into the house of Brimdaban to fetch water to nurse him. Before Abhina could return with water, Bhima Bhuyan. Dinabandhu Routa and Narsu Bholia (P. W. 1) came to the spot and then Abhina came there with water. By that time, the deceased had expired. Then my brother Padmanabha (P. W. 9) came to the spot and told me that when he was drying Ms clothes on the terraced roof of his house, he saw accused Kishore and Abhimanyu were running away, with two guns from the front row to the back row of the house of Kamaraju through the middle courtyard.'

12. The evidence of P. Ws. 9 and 10 shows that at about the same time at 4 p. m. Padmanav P. W. 9 from the terrace of his three-storeyed house and Pravakar P. W. 10 while passing through Adua Sahi saw all the accused persons in the backyard (Bari) of the house of accused Kamraj. The evidence of P. W. 10 Pravakar also shows that while returning at 5 p. m. by the same path he did not find the accused persons in the Bari (backyard) of accused Kamraj; presumably by that time (by 5 p. m.) the accused persons had entered the road side house opposite the house of the deceased preparing to fire gun-shots through the holes of lie wall of accused Kamraj to commit the murder which in fact took place at 6 p. m. This inference is supported by the evidence of P. W. 9 Padmanav who said that

at 6 p. m. immediately after he heard the gun shots in quick succession he found accused Abhimanyu and accused Kishore running away from the front house (road side) of the accused Kamraj across the middle courtyard and entered into the back side house of the accused Kamraj.

13. The evidence of P. Ws. 9 and 10 was also corroborated by the evidence of P. W.- 1 Narsu Bhola who was in house adjacent (to the west) to the house of accused Kamraj at the material time since prior to 4 p. m. till the murder took place at 6 p. m. The occasion of his having gone into the house of Kamraj at 4 p. m. was that he (P. W. 1 Narsu Bhola)--as then looking after litigation on behalf of the accused Kamraj at his request--went to the house of Kamraj to report about what he learnt from the lawyer whom he met in connection with the litigation. The material portion of his evidence so far as it corroborated P. W. 9 Padmanav and P. W. 10 Pravakar is this:

'On the Sithalasasthi day of 1965, that is the date of occurrence, I came to Berhampur to ascertain the next date of the suit from the lawyer of Bijay (Kamraj's son) Kamraj sent me for this purpose. After meeting the lawyer, I returned to my village and reached there at 4 P. M. I took my food and then I went to the house of Kamraj to report to him what I learnt from the lawyer. I went to his house by the back-side as the front door was shut then. This front-door used to remain shut always, I found that accused Kamraj, Kishore alias Iswar, Abhimanyu and Adikabda were sitting in the middle courtyard, on the steps of the verandah. There were two glasses, one bottle with liquor in it near the accused persons. One gun had been kept near them leaned against the wall. From the colour of the liquid in the bottle I guessed that it was liquor. Kamraj startled at the sight of me. He directed me to go back and to see him after one hour. Then I returned home and started changing my clothes to go out to ease myself. When I was changing my clothes, I heard the report of the two gun-shots. The sound came from the direction of accused Kamraj. Then I ran out of my house to the village Danda and then went up to the front of the house of Kamraj. .... There were two holes in the wall of the house of Kamraj. I found smoke coming out of both the holes and there was a smell of gun powder ..... I found at the time that the deceased was lying on the ground in front of his house on the village rasta. I found gun-shot wounds in the

head, on both the arms and in the abdomen. The deceased was bleeding profusely. He was dead by then.'

The evidence of this witness (P. W. 1 Narsu Bhola) as to what he saw in the middle courtyard or the accused Kamraj at 4 p. m. fits in with what P. W. 9 Padmanav had seen from the roof (terrace) of his three storeyed house at that very moment at 4 p. m. It also fits in with what P. W. 10 Pravakar saw at 4 p. m. from Adua Sahi lane in the Bari (backyard) of Kamraj's house as stated by the witness in his evidence. The effect of the evidence of the three witnesses P. Ws. 9, 10 and 1 is that it fixes the presence of the accused persons in the middle courtyard of the house of Kamraj as seen by these three witnesses from different angles, namely from the top of the three-storeyed house of P. W. 9 overlooking Kamraj's house as seen by P. W. 9; from the back from Adua Sahi lane as seen by P. W. 10; and also by P. W. 1 Narsu Bhola who had occasion to go and in fact went to the middle courtyard of Kamraj's house at 4 p. m.

14. The other witness who was close to the deceased at the time he was shot from Kamraj's house was P. W. 11 Abhina Bhuyan. On the date of the occurrence at about 6 p. m. he went to the house of P. W. 10 Pravakar with the request to give him one acre of land to cultivate on Bhag; at that time P. W. 10 Pravakar was sitting on the step of his verandah; P. W. 11 started talking with P. W. 10 Pravakar about the land; P. W. 10 asked P. W. 11 Abhina Bhuyan to sit down; hardly P. W. 11 Abhina Bhuyan had taken his seat when he heard two gun-shot sounds, the sound came from the direction of the house of accused Kamraj. Instantly P. W. 11 Abhina Bhuyan noticed that the deceased was falling down from the step of his verandah where he sat, he also found that smoke was coming out of the two holes in the wall of the front house of accused Kamraj, the deceased rolled down from the step and fell down on the Rasta below the step. P. W. 11 Abhina and P. W. 10 Pravakar rushed near the deceased, they found that the accused was lying down with bleeding injuries. P. W. 10 Pravakar directed P. W. 11 Abhina to bring water; so he went into the house of the deceased and brought water: when he came to the spot with water he found that among others P. W. 1 Narsu Bhola had already arrived at the spot. P. W. 11 Abhina further said that then immediately P. W. 9 Padmanav came to the spot and told them then that he (P. W. 9) found accused

Iswar (Kishore Bhola) and Baya (accused Abhimmanyu) running away from the front house of the accused Kamraj after firing the guns. The witness P. W. J.1 also said that P. W. 9 told them that he (P. W. 9) saw the two accused running away when he was drying his clothes on the terrace of his house. The evidence of this witness, substantially in all material particulars, corroborated the evidence of P Ws. 9 and 10.

15. One significant fact in support of the prosecution case is that all the three witnesses P. Ws. 10, .11 and P. W. 1 saw and noticed immediately the gun-shots were fired that smoke was coming out of the holes in the wall of the front house of the accused Kamraj, in fact P. W. 1 smelt gun-pwder. In this context P. W. 10 Pravakar said that he heard two gun reports in quick succession; he observed that smoke of gun-powder was coming through the two holes that were in the wall of the accused Kamraj, when he heard the sounds simultaneously, something flew past near his right shoulder with a hissing sound. The evidence of P. W. 11 Abhina Bhuyan is that hardly he had taken seat when he heard two gun-shot sounds, the sound came from the direction of the house of accused Kamraj, instantly he noticed that the deceased was falling down from the step of his verandah where he sat, he also found that smoke was coming out of the two holes in the wall of the front house of accused Kamraj. This portion of the evidence of P. Ws. 10 and 11 is corroborated by P. W. 1 Narsu Bhola who almost immediately after the gun-shots were fired, came out of his house on the Rasta and came to the spot where the deceased was lying dead. P. W. 1's evidence is to the effect that in his house when he was changing his clothes he heard the reports of two gun-shots, the sound came from the direction of accused Kamraj; then he (P. W. 1) Narsu Bhola ran out of his house to the village Danda and then came up to the front house of Kamraj, he found smoke coming out of both the holes and there was smell of gun powder,

16. The complicity of the accused persons in the crime is further confirmed by the evidence of conduct of the accused persons both before and after the murder; the facts as appear from the evidence of P. W. 6 Jarji Panda and P. W. 7 Bauri Behera, both of village Bishnuchakra one mile from the place of occurrence, supply additional links in the chain of circumstances sufficiently indicative of the

participation of the accused persons in the murder as discussed hereunder.

17. P. W. 6 Jarji Parida said that in the usual course of his business dealings with the accused Abhimanyu, a dealer in paddy, he (P. W. 6) in the morning at about 8 A. M. on the date of the murder went to the house of the accused Abhimanyu to ask for payment and found him cleaning one gun at his house; that the accused Kishore alias Iswar Bholu was present with the accused Abhimanyu at that time. P. W. 6 further said that the same night (after the murder at 6 P. M.) at about 9 or 10 P. M. on his way between Ballipadara and Kadapada he met accused Abhimanyu alias Baya, Iswar, Ganapati and Adikanda they were proceeding from the side of their village Dengapadara towards Ballipadara; he met them at 1-1/2 miles away from Dengapadara; at the time the accused persons Abhimanyu alias Baya and Iswar had each a gun; he (P. W. 6) questioned them as to where they were proceeding but they did not respond; shortly after when he reached Kadapada he heard that the deceased Brundaban had been shot dead.

18. P. W. 7 Bauri Behera, a dealer in cattle, said that at about sun-set time on the date of the murder he was going to Dengapadara (village of murder) in connection with his business and while passing by a tank he heard two gun reports in quick succession; upon entering the village he found that the deceased Brundaban was lying shot dead in front of his house; then he went to the house of accused Adikanda with whom he had some previous negotiations for exchange of bullocks and found him absent from home; he (P. W. 7) waited at the house of accused Adikanda for his return; shortly after he found that the accused persons Adikanda, Abhimanyu, Iswar and Ganapati came from the Bari of accused Kamraj; all these four accused persons entered into the house of Adikanda by a side door; at that time accused Abhimanyu alias Baya and accused Iswar had each a gun; then accused Adikanda came out and met him (P. W. 7) on his outer verandah; he (P. W. 7) reported to him about the bullocks; he accused (Adukanda) told P. W. 7 to see him after four or five days about the exchange of the bullocks; then P. W. 7 returned to his village.

The evidence of this witness P. W. 7 also fixes the presence of the accused persons in the house of the accused Kamraj immediately after the murder: it also

fixes the fact of coming out--from the Bari of the accused Kamraj--of the four accused persons including Abhimanyu and accused Kishore each with a gun immediately after the murder at about sun-set. His evidence fits in with and corroborates the evidence of P. W. 9 who from the terrace of his three-storeyed house also saw accused Abhimanyu and accused Kishore coming out each with a gun immediately after he heard two gun-shot reports in quick succession as stated by P. W. 9 in his evidence discussed above.

19. The Investigating Officer P. W. 12 played an important role in the investigation of the case. He was the Officer-in-charge of Gangapur Police Station on the date of the murder. He recorded the First Information Report lodged by P. W. 10 Pravakar Bhola at 8 P.M. at night; he immediately started investigation; then and there at the police station he examined the informant P. W. 10 Pravakar. The examination of P. W. 10 Pravakar however could not be complete because he (P. W. 10) was in a perturbed condition, trembled and complained that his head was reeling. The Investigating Officer also examined at the police station P. W. 1 Narsu Bhola who accompanied P. W. 10 Pravakar.

20. After examining P. W. 10 and P. W. 1 at the police station, the same night the Investigating Officer proceeded to the village of occurrence with two constables, the informant and his companions. They all reached the village of occurrence at 2 A. M. that night. The Investigating Officer went straight to the spot where the dead body was lying. When the Investigating Officer arrived he found four or five females were present round the dead body and were weeping; on seeing the Investigating Officer, Padmanav P. W. 9 and others came out of their houses and described the incident while weeping. The Investigating Officer consoled them stating that he would investigate into the matter following morning; he kept one constable to watch over the dead body and returned to take rest.

21. The evidence of the Investigating Officer P. W. 12 is that he kept one constable on the back side of the house of accused Kamraj and went to take rest for the rest of the night on the pucca platform of the village temple; he said that he did not record the statement of the witnesses that night because the people who had gathered there wept so much on seeing him that it was difficult to proceed

with investigation; further he wanted to trace out the accused persons immediately as he apprehended that they might abscond; he called out at the house of the accused persons but there was no response.

22. The following morning the Investigating Officer started investigation; he held inquest over the dead body and sent the dead body for post-mortem examination; then he inspected the spot; he seized the blood stained earth and also made several other seizures as stated by him in his evidence.

23. The Investigating Officer appears to have made a thorough study of the topography of the place of murder and also of the situation of the houses of the accused persons as also of the deceased and his brothers in the course of which he went to the terraced roof of the house of P. W. 9 and looked over the house of accused Kamraj. He made the necessary measurements of the heights of the houses and noted all relevant points including the dimensions of the holes in the outer wall of the house of accused Kamraj. The Investigating Officer observed that the inner Court yard, the verandah of the back-side house adjoining the inner Court yard and the door of the backhouse on this verandah were visible from the terraced roof of P. W. 9.

The Investigating Officer also noticed that the house of accused Kamraj which adjoins the village Danda is a thatched house with a mud and brick wall; the height of this house would be about 8 cubits; the outer wall of Kamraj's house adjoining the Danda is 19 feet long as found by him on measurement and out of this only 10 feet is under the thatch and the rest of the wall was still lying open. The inner Court yard of Kamraj is approximately 30' x 20'. Behind the inner courtyard to the back side is the back row of house of Kamraj. Behind the back-house is the Bari of Kamraj which is bound by a compound wall of varying height of two to three feet. Inside the Bari there is a well. This well has got a stone platform. There is a foot path from the Bari of P. W. 1 Narsu Bholu to the Bari of accused Kamraj and proceeds towards Adua Sahi. On the back side of the house of the accused Kamraj, there is the house of accused Adikanda with a lane of five feet intervening.

24. In course of investigation, the Investigating Officer P. W. 12 found three holes in the outer wall of accused Kamraj that adjoins the village Danda. This wall stands opposite to the houses of the deceased and P. W. 10 Pravakar. The three holes opened to the wall from one side to the other. All the three holes were of equal dimensions 4' x 5'. Two of these holes on the eastern side of the wall 6' 6' apart with the front door of the house intervening. The Investigating Officer noticed certain evidence of great significance in that he found marks of violence in these two holes; the earth plaster had gone out of the bricks on the inner side of the holes; the third hole is 9' 4' away from the second; he did not notice any mark of violence in the third hole; the place where the deceased sat at the time of occurrence is just in front of the easternmost hole; the height of these three holes was 44' from the ground level. The evidence is that these holes were left in the wall as wooden supporters were placed at the time of the construction of the wall.

25. After completing all the formalities the Investigating Officer P. W. 12 started the examination of the witnesses at 11 A. M. The first witness to be examined was P. W. 9 Padmanav; on that date the I. O. examined 14 witnesses in all and the examination was over at 10 P. M. that night. Thereafter on June 7, 1965 at 7 A. M. he examined P. W. 11 Abhina Bhuyan for the first time. He also examined P. W. 10 Pravakar whose examination at the police station was not complete. On June 7, 1965 he searched the houses of the accused persons and examined witnesses in the village. In the evening of June 7, he sent men to call P. Ws. 6 and 7 but they were not found. Later on on June 8, 1965 the Investigating Officer examined P. W. 6 and P. W. 7.

26. In his evidence the Investigating Officer P. W. 12 described in all details about the seizure made by him after search and also how he arrested the accused persons on different dates--all as stated by him in Court.

27. It was argued on behalf of the defence that the evidence of the prosecution witnesses cannot be relied upon. The evidence of the most important witness P. W. 9 Padmanav Bholia, who stated about that he had seen from the terraced roof of his three-storeyed building as fully discussed above was commented on behalf of the defence, namely, that in the First Information Report P. W. 10 Pravakar did

not refer to P. W. 9 Padmanav having mentioned about what he (P. W. 9) saw from the terrace of his building; in the first information report P. W. 10 Pravakar stated to the effect that it was his full guess (More Purna Anuman) that the accused Kamraj Bhola due to previous enmity and the recent purchase of lands by the deceased and his brothers from Kamraj's step-mother and step-brother killed his brother Brundaban by gun fire with the help of the persons of his party. The defence point is that if in fact P. W. 9 Padmanav told about what he saw from the terrace as stated by him in evidence, then P. W. 10 Pravakar who has come to the police station to lodge the First Information Report would have mentioned about the terrace story to the police while reporting the incident at the police station; that it was for the first time the following day June 6, 1965 at 11 A. M. that P. W. 9 told the Investigating Officer P. W. 12 about the terrace story.

This argument, however, loses its force in view of the fact that evidently P. W. 10 Pravakar himself did not see from the terrace what his brother P. W. 9 Padmanav had seen from the terraced roof of his three-storeyed building. It was presumably on the basis of what P. W. 10 Pravakar heard from his brother P. W. 9 Padmanav that he stated in the First Information Report that it was his full guess (Purna Anuman) that the accused Kamraj and the other accused persons had committed the murder; thus P. W. 10 Pravakar not having himself seen as an eye-witness to what his brother P. W. 9 had seen from the terrace, did not mention in the First Information Report about what he had heard. P. W. 10 Pravakar only said that it was his full guess (Purna Anuman). That apart, the evidence is that while lodging the First Information Report at Police Station P. W. 10 Pravakar was in a perturbed condition; while the Investigating Officer was examining him and he was making the statement P. W. 10 Pravakar trembled and complained that his head was reeling; the Investigating Officer allowed P. W. 10 Pravakar to take rest; so the Investigating Officer could not complete the examination of the witness that night. The evidence of P. W. 10 Pravakar is that when he was making the statement he felt exhausted and his head reeled; so he could not make any further statement; his examination remained incomplete.

28. It is clear from the evidence of the Investigating Officer P. W. 12 that the very same night after he reached the spot he--from the information he gathered and

from what he heard in the village--suspected accused Kamraj Bhola and the other accused persons as having participated in the commission of the murder. When questioned as to why he (the Investigating Officer) did not make the arrest of the accused persons the same night, he explained that he did not break open the doors of the houses of the accused persons that night in order to arrest them, as it was difficult to get independent search witnesses at that hour of the night and also because he had only two constables with him and accused persons were armed with guns. It was in the following morning on June 6, 1965 that he searched the house of accused Kamraj; the other four accused persons were found absconding.

It could not be without any foundation or on mere imagination without any basis that the every same night of the murder the Investigating Officer suspected the accused persons as having committed the murder. Evidently the basis of his suspicion was all the information including the information that the accused persons were seen by P. W. 9 Padmanav from his terrace as stated by him--that he gathered at the spot the same night. It was because of the difficulties as stated above that the Investigating Officer with his meagre strength of two constables did not rightly venture to arrest, the same night, the accused persons who were armed with guns.

29. As regards the terrace story, it was further commented, on behalf of the defence, that though P. W. 1 Narsu Bhola heard the claim made by P. W. 9 Padmanav about what he had seen from the terrace of his three-storeyed building--there is no mention of this fact in the statement made by P. W. 1 Narsu Bhola before the police on the date of the occurrence; that though both P. W. 1 Narsu Bhola and P. W. 10 Pravakar came back to the village from the police station along with the Investigating Officer P. W. 12 but even then they kept mum over it and did not disclose to the Investigating Officer about the claim of P. W. 9 Padmanav having said about what he had seen from the terrace. It was also commented, on behalf of the defence, that though the Investigating Officer on arrival at the village did meet P. W. 9 Padmanav at 2 A. M. the same night but at that point of time P. W. 9 Padmanav did not make any statement to the Investigating Officer about what he (P. W. 9) had seen from the terrace.

30. In our opinion, having regard to the surrounding circumstances, these defence comments on the prosecution case on the terrace story are mere speculative and not based on sound reasoning. The explanation to the above criticism made by the defence is this. The evidence of P. W. 9 Padmanav is that he told about what he had seen from the terrace to P. W. 11 Abhina Bhuyan, Dinabandu Routa (not examined), P. W. 1 Narsu Bhola, Bhima Bhuyan (not examined) P. W. 10 Pravakar and others who were present there; immediately after murder many people--men, women and children--gathered at the spot; then he (P.W. 9) entered into his house out of fear thinking that the accused persons might shoot him down. The evidence of P. W. 1 Narsu Bhola is that before his arrival near the dead body Dina Routa, Bhima Bhuyan, P. W. 10 Pravakar Bhola and Panchanan Bhola were present near the dead body; others came there soon after. P. W. 1 Narsu Bhola further said that he had not seen P. W, 9 Pandmanav at the spot either when he arrived there or after his arrival; he (P. W. 1) found P. W. 9 Padmanav at the spot afterwards before he left for the Police Station. The deceased's relations were all weeping. The implication of the evidence of P. W. 9 Padmanav is that he referred to what he had seen from the terrace to all those present there including P. W. 1 Narsu Bhola, P. W. 10 Pravakar and others. At that point of time nobody could presumably appreciate the legal significance of what P. W. 9 Padmanav casually said about what he had seen from the terrace. In that confused atmosphere of noise and weeping immediately after murder when so many people--men, women and children--gathered, it is likely that P. W. 1 Narsu Bhola did not either hear or catch what P. W. 9 Padmanav had said about the terrace story; it is also possible that P. W, 1 Narsu Bhola could not or did not notice the implication of what P. W. 9 Padmanav said about he had seen from the terrace. Evidently, because of these circumstances there was no occasion for P. W. 1 Narsu Bhola to mention to the police about the terrace story of P. W. 9 Padmanav. In our opinion, this is sufficient explanation of P. W. 1 Narsu Bhola not having mentioned about the terrace story to the police on the night of the occurrence, if in fact he had not so disclosed it.

31. As regards P. W. 1 Narsu Bhola and P. W. 10 Pravakar having kept mum over it while coming back from the police station to the village of occurrence along with the Investigating Officer P. W. 12, there is nothing to show that the Investigation Officer did not get the clue from these two persons on his way from the police

station to the place of occurrence.

The lines on which the Investigating Officer P. W. 12 conducted the investigation immediately after he arrived at the village of occurrence as discussed above clearly show that the Investigating Officer had got the clue to the murder presumably from what he had heard from P. W. 1 Narsu Bholu and P. W. 10 Pravakar both at the police station and also on his way to the village along with them; the Investigating Officer was with them from 8 P. M. to 2 A. M. That apart, after the Investigating Officer reached the village at 2 A. M. that night, he heard generally from all those present there about what had happened. The material portion of the evidence of the Investigating Officer P. W. 12 generally about how and by whom the incident was described to him immediately after his arrival at the village at 2 A. M. that night was this:

'We reached the village of occurrence at 2 A. M. I went straight to the place of occurrence where the dead body was lying. When I arrived I found 4 or 5 females were present round the dead body and were weeping. On seeing me Padmanabha (P. W. 9) and others came out of their houses. All of them started weeping describing the incident.'

There was no defence cross-examination of the Investigating Officer about what exactly was described to him. Evidently, the lines on which the Investigating Officer conducted the investigation as discussed above are sufficiently indicative of his suspicion on the accused persons as having participated in the murder, presumably on the basis of the information including the terrace story which apparently the Investigating Officer received the same night.

32. It was also commented on behalf of the defence that in view of the admitted enmity between the parties, no reliance should have been placed on the partisan testimony of P. W. 9 Padmanav and P. W. 10 Pravakar--both brothers of the deceased--in the absence of any independent corroboration. It was further commented that P. W. 11 Abhina Bhuyan and P. W. 1 Narsu Bholu are both some way or other connected with one or other brother of the deceased as Bhagchasis; therefore, their evidence cannot be held to be independent.

In our opinion, there is also no substance in any of these contentions. In view of the situation of the place where the murder took place on the Rasta in front of the houses of the deceased's brothers P. W, 9 Padmanav and P. W. 10 Pravakar, they are the most competent witnesses to what they respectively saw of the occurrence as discussed above. It is clear that, apart from the prosecution witnesses who were examined, there were also other neighbours who came to the spot immediately after the murder as stated by the witnesses. It is that the evidence of P. W. 9 Padmanav and P. W. 10 Pravakar is without any independent corroboration; P. W. 11 Abhina Bhuyan corroborated their evidence in all material particulars.

33. As regards P. W. 11 Abhina Bhuyan and P. W. 1 Narsu Bhola, there is no substance in the defence comment that their evidence cannot be accepted on the ground of interestedness as Bhagachasis. There is no reason why the evidence of P. W. 11 Abhina Bhuyan of a different village should not be accepted. Evidently P. W. 1 Narsu Bhola was a distant common relation of accused Kamraj as also of the deceased. There is no reason why P. W. 1 Narsu Bhola should speak falsehood. He only said what he had actually seen. In fact he was looking after the litigation on behalf of the accused Kamraj. There is no reason why his evidence cannot be accepted as true.

34. As regards P. W. 6 Jarji Panda and P. W. 7 Bauri Behera who both gave evidence of the accused persons prior to and subsequent to the murder, it was commented, on behalf of the defence, that they both came from the same village where the Samundhi of the deceased is said to reside, further the statement made by them before the police was a belated statement and therefore their evidence is worthy of reliance.

We do not accept this contention made on behalf of the defence. The circumstances and the occasion on which these two witnesses came to the village on that fatal day have been explained above. The only argument against them is that they are chance witnesses. There is no magic in the comment 'chance witnesses'. Though this is the usual argument, its implication is hardly understood. In the normal course different persons are bound to follow their own avocations of

life and while doing so they are likely to come across incidents which in ordinary course they never contemplate to see. Unless their evidence is otherwise assailable it cannot be whittled down merely on the theory that they were chance witnesses. It is not unnatural for such persons to see what they had seen of the occurrence which undeniably occurred at the spot. The witnesses to what they respectively saw of the occurrence also mutually and substantially corroborate one another. On their evidence it must therefore be held that there was the murder at the scene of occurrence on June 5, 1965 at 6 p. m. The significant feature in the case, as discussed here-under, is that all the accused persons belonging to the village Dengapadara deserted the village the very same night following the occurrence when the police visited their village,

35. It was further commented on behalf of the defence that though the village consists of about 200 houses and though the time of occurrence was before dusk there was no independent witness brought on behalf of prosecution to support its case. This submission is also without any merit. It is not that the prosecution witnesses did not mention other persons of the village having come to the place immediate after the murder had taken place. In fact, many persons--men, women and children of the village--came to the place on the Kasta where the deceased was lying dead. P. Ws. 1, 9, 10 and 11 named some other persons who came. It would have been useless to call them all as witnesses because they would have repeated what the prosecution witnesses, who were examined, had said about what they respectively saw of the occurrence. Apart, from the relation witnesses, P. W. 11 Abhina Bhuyan who was of a different village and not a relation was examined as a witness to what he had seen of the occurrence. That apart, in view of the party faction in the village and the fact that the villagers were afraid of accused Kamraj for reasons hereinbefore stated, presumably no villager would volunteer to come forward and depose against him,

36. It is a significant circumstance that the four accused persons Abhimanyu, Kishore, Adikanda and Ganapati were all found absconding. The accused Abhimanyu, Kishore and Adikanda were not to be found either in their village in their neighbourhood till June 13, 1965 on which date they were arrested by the Investigating Officer. As regards the accused Ganapati, he was also absconding

till June 13, 1965 on which date he returned to the village; the Investigating Officer delayed his arrest till June 17, 1965 as he wanted to interrogate accused Ganapati.

37. As regards the conduct of the accused Kamraj, it is not understandable--if in fact he was innocent and had no complicity in the crime--why, when the deceased, who was his near relation and close neighbour, was shot dead right in front of his house on the Rasta, he (accused Kamraj) did not come to the house of the deceased as he should have done in the normal course of human conduct when fellow-men are in distress, like other villagers who appeared on the scene immediately after the murder. This abnormal behaviour is clearly indicative of the guilty conscience of the accused Kamraj as having participated in the murder. This view is supported by his answer to a question put to him in course of his examination under Section 364 Criminal Procedure Code which was this:

'Q. P. W. 1 states that after the occurrence the villagers rushed to the spot to see the deceased excepting any of you the accused persons. What have you got to say?

A. No. I went to my front house and saw the dead body. I did not go near as I have enmity with the deceased and his family.'

It is clear that the accused Kamraj could not explain his unusual conduct from which it can be reasonably inferred that the accused Kamraj had complicity in the murder. This circumstance coupled with the fact that the other four accused persons were not to be found in the village for about eight days after the murder and had in fact absconded further confirms the inference that it was the accused persons who had participated in the commission of the murder. Such absence of explanation of their conduct would itself be an additional link which completes the chain as would rule out a reasonable likelihood of the innocence of the accused. There is no explanation which, if accepted, though not proved, would afford a reasonable basis for a conclusion consistent with their innocence.

38. The admission of the accused Kamraj of his enmity with the deceased and his family exposes the motive of the murder. The evidence of P. W. 9 Padmanav is to

the effect that there has been for many years quarrel between the two Bhoja families. The material portion of his evidence about the old family quarrel was this:

'... .There is ill feeling between our family and the family of accused Kamraj for the last 18 years. Accused Kamraj took away paddy from our threshing floor, sugar-cane from our fields and also took away two sheep and two buffaloes belong to us..... My father gave a written report to the Gangapur P. S. complaining the theft of paddy by accused Kamraj and also about the theft of the sugar-cane, the sheep and the buffaloes. The police investigated into these theft cases. But no witness carne forward to give evidence against accused Kamraj out of fear. So the cases ended in final report. Then Gantayat Bhola, father of Kamraja, brought a suit for partition against Kamaraja. My father financed that litigation for Gantayat. The suit properties were taken charge of by the receiver. So Kamaraja left the village and went away to Berhampur and stayed there for six years. Then from Berhampur he went away and lived in his father-in-law's house at Sumantapalli for six years.'

39. The immediate cause of the accused Kamrafs further strained relationship with the deceased and his family was that within a short time before the murder the deceased and his brothers purchased from the accused Kamraj's step-mother Hema Bhol and step-brother Shamsundar Bhol certain properties in spite of the objection by the accused Kamraj. Thereupon the accused Kamraj formed party in the village against the deceased and his brothers. The accused Kamraj is said to have sold lands to the accused Abhimanyu, Ganapati, Adikanda and others without consideration and took them to his party. The accused Kamraj is also said to have made other alliances ill the village against the deceased and his family. In this context the material portion of the evidence of P. W. 9 Padmanav is this:

'In 1963 we purchased some lands from him, as per the sale deeds, Ext. 1 to 4. Hema Bholain is the step-mother and her son Shyamsundar is the step-brother of Kamraj. Hema and Shyamsundar proposed to sell their lands to me and my brothers. Kamraj objected to the same. But we purchased the lands without listening to his objections. Exts. 5 to 9 are the sale deeds, in this respect. Then again Kamraj fell out with me and my brother and created enmity. Then Kamraja

formed a party in the village against us. He sold lands to Baya Padhan, Ganapati Bhol, Adikanda Bhuyan and others without any consideration and took them to his party. Kasinath Bholo, our agnatic brother, built his house encroaching upon the village Poromboko Basta. My brother, the deceased, objected as he was the vice chairman of Buguda Panchayat Samiti. So, Kasinath fell out with us and formed party with Kamraja.

After this, the front door of the house of Kamraj remained closed always.'

The dates and other particulars of the sale deeds Exts. 5 to 9 are significant. On June 13, 1964 the deceased purchased from Hema Bhol and Shyamsundar A. 2.11 cents lands for Rs. 2,000 under the registered sale deed Ext. 6; on the same date the deceased's brother P. W. 10 Pravakar purchased from them 24 cents land for Rs. 1500 under the registered sale deed Ext. 7. On January 12, 1965 the deceased's brother Panchanan Bhol purchased from them 11% cents land for Rs. 200 under the registered sale deed Ext. 9; on April 28, 1965 there were two transactions of purchase from the same vendors (Hema Bhol and Shyamsundar), namely, that the deceased purchased from them A.2.27 cents land for Rs. 1,500 under the registered sale deed Ext. 5, and on the same date Kama Bhol, wife of the deceased's brother P. W. 9 Padmanav Bhol, purchased from them A.2.39 cents land for Rs. 2,000 under a registered sale deed Ext. 8. The accused Kamraj was harbouring grudge against the deceased and his family because they were purchasing from his step-mother and step-brother one property after another under successive sale deeds the last two having been only a few weeks before the murder. The accused Kamraj was objecting to these sales; yet the deceased and his family purchased them. Evidently this was the immediate cause of the accused Kamraj's enmity with the deceased and his family which Kamraj admitted before the learned Sessions Judge.

40. On one material point--range of firing of the fatal gunshots which killed the deceased--the questions arise: From what distance the gunshots--which killed the deceased--were fired? Is the evidence consistent with the prosecution case of the gunshots having been fired from the wall of Kamraj's house which is at a distance of 38 feet? The medical evidence of the doctor P. W. 8 who held the post-mortem

examination finding that there were as many as five gun-shot wounds on the deceased all over the body--left lateral side of the forehead, left side abdomen lateral, left shoulder joint, upper third of the lateral side of the left arm, middle third of the right arm--is indicative of the wide dispersion of the pellets purporting to fix the distance from which the gunshots were fired.

41. In this context the evidence of the Investigating Officer P. W. 12 furnishes useful materials to fix the distance of the fatal gunshot firing. He found two pieces of lead were lying on the outer verandah of the deceased close to the wall; one lead piece was strained with lime and the other with green colour, which is wood paint, as it appeared to him; the wooden frame of the Jaffrey put on the verandah of the deceased was white washed with lime; M. Os. III and IV were the two pieces of lead; the two pieces of wads M. Os. VIII and IX were lying on the step to the outer verandah of the deceased; M. Os. III and VIII and IX were dealt in the presence of witnesses under the seizure list Ext. 24. The Investigating Officer also found three pieces of lead M. Os. V, VI and VII lying on the outer of the house of P. W. 10 Pravakar and close to the wall on the verandah, a piece of wad M. O, X was lying on the step to the outer verandah of P. W. 10 Pravakar; M. Os. V, VI, VII and X were seized in the presence of witnesses under the seizure list Ext. 25. The Investigating Officer also found a small hole in the bottom part of the wooden frame of the Jaffrey put on the verandah of the deceased: cut and seized that part of the wooden frame which is M. O. XXII. Further he found two small holes on the outer side of the wall of the deceased that stands on the outer verandah; similarly he found two small holes on the wooden frame of the Jaffrey put on the verandah of P. W. 10 Pravakar standing on his outer verandah these small holes on wooden frames and on the walls indicate marks of violence by gunshots. The Investigating Officer cut and seized bottom parts of the wooden frame of the Jaffrey of P. W. 10 Pravakar containing the hole and these are M. Os. XX and XXI, he seized the cut pieces of wood M. Os. XI, XII and XIII in the presence of the witnesses under the seizure list Ext. 26.

42. The significance of all these seizures made by the Investigating Officer read with the medical evidence of five gun-shot wounds on different parts of the body is that it shows that fatal gun-shots were fired from such a distance as is consistent

with the width of the Rasta between the step of the deceased's house where the deceased was hit with the bullet and the road side wall of the house of accused Kamraj.

43. The question of distance of gun-shot firing is considered from the point of view of certain recognised medico-legal principles, namely these: When a firearm is discharged from a distance, there will be total absence of the characteristics of a 'near' discharge; ingraining of unburnt particles of powder is absent if fired from beyond ten feet; at a distance of twelve to fifteen feet, there is an absence of a main wound as all the pellets enter individually covering an area of about ten inches in diameter; at this distance the pattern formed by the entering shot will consist of small groups at a distance of thirty feet all the shots enter as individual pellets without any grouping and cover an area of about twenty inches in distance; these examples must of course be considered as a general guide in determining the distance at which the weapon was discharged; there are so many circumstances to be considered such as, length of barrel, choke or cylinder, black or smokeless powder, size of shots etc. (Cox's Medical Legal Court Companion, 4th edition p. 33).

44. Considering the evidence in the present case in the light of the medico-legal principles, it is abundantly clear--from the manner the pellets from the gun-shots dispersed widely all around--that the gun-shots were fired from a distance more than thirty feet, namely, thirty feet, which is the distance of the accused Kamraj's road-side wall from the step of the, deceased's house where the deceased was hit with bullets--pellets scattered or dispersed all around. The dispersal of the pellets speaks for itself about the distance.

45. In the ultimate analysis the question arises: Is the circumstantial evidence sufficiently strong to support the order of conviction under S. 302/34 in this case? The position in law as settled by the Supreme Court is in substance this: Where there is no eye-witness to the murder and the case against the accused depends entirely on circumstantial evidence, the standard of proof required to convict the accused on such evidence is that the circumstances relied upon must be fully established and the chain of evidence furnished by these circumstances should be

so far complete as not to leave any reasonable ground for conclusion consistent with innocence of the accused. It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case where the various links have been satisfactorily made out and the circumstances point to the accused as the probable assistant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which, if accepted though not proved, would afford a reasonable basis for conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.

46. As regards the nature of evidence of prior concert on a charge of murder under Section 302/34--based on circumstantial evidence as in the present case--as an act done by the five accused persons in furtherance of the common intention of them all, the Supreme Court laid down that in the case of Section 34 it is well established that a common intention presupposes prior concert; it requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another the act must have been done in furtherance of the common intention of them all; accordingly there must have been a prior meeting of minds; the plan need not be elaborate, nor is a long interval of time required but there must be pre-arrangement and premeditated concert; it is true, prior concert and arrangement can, and indeed often must, be determined from subsequent conduct as, for example, by a systematic plan of campaign unfolding itself during the course of the action which could only be referable to prior concert and pre-arrangement, or a running away together in a body or a meeting together subsequently; but the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case; but to say this is no more than to reproduce the ordinary rule about circumstantial evidence, for there is no special rule of evidence for this class of case; at bottom, it is a question of fact in every case and however similar the circumstances, facts, in one case cannot be used as a precedent to determine the conclusion on the facts in another; all that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference or the incriminating

facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis.

47. Judged by the standard laid down by the Supreme Court by which the circumstantial evidence is to be assessed, it is abundantly clear that the accused Kamraj Bhola, Kishore alias Iswar Bhola, Abhimanyu alias Baya Padhan and Adikanda Bhuyan participated in the commission of the murder of the deceased in the circumstances hereinbefore fully discussed; the accused Ganapati Bhola is however to be given benefit of doubt for reasons hereinafter discussed. The circumstances point to the irresistible conclusion that it was the other four accused persons who in concert planned and committed the murder. The evidence of common intention of them all in furtherance of which each of these four accused persons did their part and participated in the murder in the manner they did is abundantly strong as to lead to the inference that it was they who committed the murder. The incriminating facts--previous and subsequent conduct and absence of explanation or false explanation of their conduct and movements--are incompatible with the innocence of these four accused persons and incapable of explanation on any other reasonable hypothesis. The various links which connect these four accused persons with the crime have been satisfactorily made out and the circumstances point to these four accused persons as having participated in the crime in furtherance of the common intention of all these four accused persons, with reasonable definiteness and in proximity to the deceased as regards time and situation. Having regard to the strong circumstantial evidence, the irresistible conclusion is that it was these four accused persons Kamraj, Kishore, Abhimanyu and Adikanda who committed the murder.

48. As regards the accused Ganapati Bhola, the defence, as suggested in course of cross-examination of the Investigating Officer P. W. 12, was one of alibi in that the accused Ganapati was absent from the village from June 1, 1965 and reappeared on June 11, 1965, that is to say he was not present at the village of occurrence a few days prior to and for a few days after the date of the murder on June 5, 1965; the Investigating Officer said that he sent requisitions to the police stations of Rour-kela and Sambalpur to verify his alibi; the Investigating Officer received the reports of the police officers of these police stations and also the

statements of the witnesses recorded by them. Although there is no direct evidence of the alleged alibi there is however certain discrepancy and certain material omissions in the evidence of the prosecution witnesses so far as accused Ganapati Bhola was concerned. P. W. 7 Bauri Behera said that when he had gone to the house of the accused Adikanda at about sun-set time in the evening on the date of the murder, he (P. W. 7) found accused Ganapati along with the accused Adikanda, Abhimanyu and Iswar coming from the Ban of the accused Kamraj and that all these accused persons entered into the house of accused Adikanda by a side door. P. W. 7 further said in cross-examination that he had made statements to the same effect to the Investigating Officer but the evidence of the Investigating Officer P. W. 12 is that P. W. 7 Bauri Behera had not stated before him that shortly after the occurrence he found accused Ganapati coming to the house of accused Adikanda along with Adikanda, Abhimanyu and Iswar; that P. W. 7 completely omitted the name of accused Ganapati.

The doubt about the alleged complicity of accused Ganapati in the crime is further confirmed by the evidence of P. W. 1 Narsu Bhola who did not mention having seen the accused Ganapati Bhola in the house of accused Kamraj on the date of the murder at 4 P. M. when he (P.; W. 1 Nasu Bhola) went to report to the accused Kamraj about the litigation which he was looking after on behalf of the accused Kamraj. The evidence of P. W. 1 is that he found the accused Kishore, Abhimanyu and Adikanda sitting in the middle courtyard -oa the steps of the verandah; there was BO mention of accused Ganapati having been with the other accused persons. Although the evidence of P. W. 9 Padmanav Bhola is that at 4 P. M. he saw from the terrace of his building accused Ganapati Bhola and the other accused persons standing in the middle courtyard of the house of accused Kamraj, but at 6 P. M. after he heard the gunshots Padmanav P. W. 9 found only the accused Kishore and Abhimanyu running away from the front house of accused Kamraj across the middle courtyard and entering into the back side house of Kamraj; he did not mention having seen the accused Ganapati.

49. Thus the prosecution has not succeeded in proving, beyond doubt, the direct complicity of accused Ganapati Bhola in the murder. Accordingly the accused Ganapati Bhola must be given the benefit of doubt.

50. As regards the charge of criminal conspiracy under Section 120B, the evidence against the four accused persons Kamraj, Kishore, Abhimanyu and Adikanda as discussed above proves beyond doubt that there was an agreement among them to commit the murder and in fact the murder was committed. The prosecution, by satisfactory evidence, established the prior common design, motive, their bringing of the guns to the place of occurrence, prior meeting at the accused Kamraj's house followed by execution of their plan to commit murder, of subsequent absconding and running away together in the manner they did. Ultimately in view of the proximity of the time and place as discussed above, the various links in the chain of circumstances lead to the irresistible conclusion that the said four accused persons Kamraj, Kishore, Abhimanyu and Adikanda joined in the criminal conspiracy to commit the murder.

51. As regards the death sentence on the accused Kishore alias Iswar Bhola and the accused Abhimanyu alias Baya Padhan although the circumstantial evidence against them is sufficiently strong to lead to the irresistible conclusion that they participated in the crime in as much as immediately he heard two gun reports in quick succession they were found by P.W. 9 Padmanav Bhola from the terrace of his three-storeyed building running away from the road side house of accused Kamraj towards the Ban through the middle courtyard each with a gun in his hand, but there is no eye witness as to by whose gun-shot-one or the other or both . . the deceased was killed. In such circumstances the extreme penalty of law need not be imposed upon the accused Kishore alias Iswar Bhola and the accused Abhimanyu alias Baya Padhan and the ends of justice will be met if they are sentenced to imprisonment for life.

52. In the result, therefore, the death reference--so far as the accused Kishore alias Iswar Bhola and the accused Abhimanyu alias Baya Padhan are concerned--is discharged, and the sentence in the case of both the said accused persons is reduced to imprisonment for life. The order of conviction and sentence passed on the accused Kamraj Bhola and Adikanda Bhola is upheld. The accused Ganapati Bhola is given the benefit of doubt and his appeal is accordingly allowed; the order of conviction and sentence passed on him is set aside; he is directed to be set at liberty forthwith. Subject to the aforesaid modification on the question of sentence,

the criminal appeal of the remaining four accused persons is dismissed.

Ahmad, C.J.

53. I agree.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**