

N.S. Jain Vs. the State

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Court : Delhi

Decided On : Sep-29-1977

Reported in : ILR1978Delhi327; 1978RLR442

Judge : V.D. Misra and; M.S. Joshi, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34; [Evidence Act, 1872](#) - Sections 10

Appeal No. : Criminal Appeal No. 201 of 1975

Appellant : N.S. Jain

Respondent : The State

Advocate for Pet/Ap. : B.B. Lal,; D.R. Sethi,; Neelam Grover,;

Judgement :

V.D. Misra, J.

(1) This judgment will dispose of Criminal Appeals Nos. 201, 225, 238, 241, 250, 251, 252 and 283 of 1975 since these arise from the same facts.

(2) The salient facts of the case as disclosed by the record are that on December 4, 1973 Dr. N. S. Jain, a well-known Eye Specialist of Delhi, came back to his house No. D-29L defense Colony, New Delhi, at about 7-15 P.M. He asked his

wife Vidya Jain to get ready for a visit to his sister residing in C-489, defense Colony. They were to go in their fiat car No. Dlv 4847 which was parked near the gate of the adjoining house No. D-292. After a few minutes the couple came out of the house. While Dr. Jain med towards the right of the car to open' its door his wife proceeded towards its left. Before Dr. Jain could unlock the door he noticed that his wife was missing. He went to the left side of the car and saw a prostrate figure lying in the nearby storm water drain. Just then a man jumped out of the drain, flourished a pistol at Dr. Jain and then ran away along with another man towards the north. Vidya Jain was taken out of the drain with the help of Thakur Ram Singh (Public Witness 8), his wife Kiran Bai both guests of Jains and the servants of Dr. Jain. She was found to be bleeding profusely. She was removed to the porch of the house first ; then put in the car and driven to Dr. Sen's Nursing Home near Tilak Bridge. Dr. Jain himself drove the car while Kiran Bai held the injured.

(3) At about 7.45 P.M. Dr. S. K. Sen (Public Witness 51) saw Vidya Jain as she was taken out of the car and declared her dead. He rang up General Verinder Singh, brother-in-law of Dr. Jain, so that he could be of some help to the latter in the bereavement. He also directed his Receptionist to contact the police on the telephone. General Verinder Singh arrived at the Nursing Home and rang up the Lieutenant Governor, Inspector General and Deputy Inspector General of Police, Mr. Govind Narain, the then defense Secretary, and others. At 8.22 P.M. he informed the police control room about the murder of Vidya Jain. The information was relayed to Police Station defense Colony by the Control Room, but by mistake the house number was taken down as 'D-29' instead of 'D-291'. The police, therefore, failed to locate the place of the incident. At 9.20 P.M. defense Colony police received another telephonic message from the police control room about the murder of Vidya Jain. This time the house number was properly recorded as 'D-291'. The Station House Officer of defense Colony Police Station was on leave that day and Inspector Daijit Singh, Station House Officer of Hazrat Nizam-ud-Din Police Station, (Public Witness 80), was discharging the additional duty of looking after the defense Colony Police Station. He was apprised, therefore, of the commission of the murder. Inspector Daijit Singh came to the place of incident and, leaving Sub Inspector Deep Chand for the protection of the spot, proceeded

along with some of his subordinates to Dr. Sen's Nursing Home.

(4) Statement of Dr. Jain was recorded at 10.30 P.M. and sent to Police Station defense Colony for registration of a case under section 302, Indian Penal Code. The formal First Information Report has been exhibited as P-315. Dr. Jain's statement reads thus:

TODAY at about 7.15 P.M. I arrived at my residence in defense Cony from my Chandni Chowk Office. I came inside and went to wash room and asked my Wife to accompany me to visit my sister, Mrs. S. K. Jain, in C-489 defense Colony. The two of us came out of the gate and moved towards the car parked outside in front of the house No. D-292, defense Colony. I proceeded to open the door of the car with key on the right side while my wife went towards the left side. Even before I could insert the key to unlock my car No. Dlv 4847, I heard some sort of scuffle which gave me a feeling that some thing was wrong on the left side of my car. I went to the left side of my car from behind and saw nobody and wondered what had happened to my wife in that split second. Noticing some kind of a disturbance in the drain running along the wall of the houses, I peered and saw a prostrate figure and someone making some kind of movements. At once I began to shout frantically for help. At that time a man jumped out of the drain and I started questioning him and when he pointed at me some thing which appeared like a revolver in his hand. I kept shouting for help and realised it was my wife, Smt. Vidya Jain, lying there groaning. In the meantime, my guest Thakur Ram Singh and his wife Smt. Kiran Bai and servants Shri Kundan Siagh and Shri Ganga Singh came to the spot and lifted my wife who was still groaning. By this time I saw two men running away towards north. They appeared to me about 25 to 35 years of age about 5'-7' in, height. They had no beard, full hair which were dishevelled, wearing off-white dhotis and off-white shirts. I immediately put my wife in the car and rushed to Dr. Sen's Nursing Home for medical aid, little knowing the seriousness of her trouble. She was pronounced dead on arrival at the Nursing Home. The two persons described above have committed the murder of my wife, Smt. Vidya Jain. Legal action may be taken against them.

(5) Inspector Daijit Singh directed Sub Inspector Ram Mehar (PW77) to hold, an inquest. Some other policemen were detailed to guard the dead body and to take it to the police-surgeon for postmortem examination. From Dr. Sen's Nursing Home, Inspector Daijit Singh came back to the scene of occurrence and recorded the statements of a number of persons. He also took into possession car Dlv 4847 and blood stained clothes of Kiran Bai and Ram Singh. Detailed inspection of the spot was postponed to be done in better light in the morning. On December 5, 1973 Inspector Daijit Singh scanned the scene of occurrence closely and recovered one .303 live cartridge (A-16) as well as some golden beads and pearls worn by Vidya Jain from the storm water drain. At 11.30 A.M. that day Inspector Jagmal Singh, Station House Officer of Police Station defense Colony, (Public Witness IOO), who had resumed duty, took over investigation from Inspector Daijit Singh.

(6) Dr. Bharat Singh (Public Witness 54), Police Surgeon, performed the post-mortem examination on the body of Vidya Jain on December 5 at 11 A.M. He found the woollen shawl covering the body and sari, pullover, blouse, brassiere and petticoat worn by the deceased having multiple cut marks. He noted the following external injuries over the body:

1. I incised wound over the front of neck lower part of the middle, place obliquely. Size of the wound was $1/2' \times 2/10' \times 2/10'$. Wound was covered by blood.

2. I incised wound over the mid of left clavicle placed obliquely with tapering end on outer side. Size of the wound $1/2' \times 1/4' \times$ bone deep. Wound was covered by blood.

3. I incised wound over the front of left side chest 4' above the nipple horizontally placed. Size of the wound was $1' \times 1/4' \times 1/4'$.

4. I incised wound on the left arm on the upper part, obliquely placed. Size of the wound was $1' \times 1/4' \times 1/4'$.

5. I incised wound on the left arm 1' below injury No. 4, placed obliquely. Size of the wound was $1/4' \times 2/10' \times 2/10'$.

6. I incised wound over the left arm on outer side in the middle area placed horizontally. Size of the wound was $1\frac{1}{2} \times \frac{1}{4} \times \frac{1}{4}$ '.

7. I incised wound on the left wrist on medial side including part of front and back of the wrist. Size of the wound was. $2' \times 1' \times \frac{3}{4}'$.

8. I incised wound over the outer upper quadrant of left breast placed obliquely with tail-end on the medial side. Size of the wound was $1\frac{1}{2} \times \frac{1}{4} \times$ ' (Chest cavity deep).

9. I incised wound over the pit of left axilla in anterior axillary line, placed obliquely. Size $1\frac{1}{2} \times \frac{1}{2} \times$ '? (Chest cavity deep).

10. I incised wound over the lower part of left side chest on lateral side, placed obliquely. Size $1\frac{1}{4} \times \frac{1}{4} \times \frac{1}{4}'$.

11. I incised wound over the left lumbar area below injury No.

10. Size of the wound was $\frac{1}{4} \times \frac{1}{10} \times 110'$.

12. I incised wound over the front of abdomen on left side 1' above and lateral to umbilicus, placed obliquely. Size of the wound was $1\frac{1}{4} \times \frac{1}{4} \times$ abdominal cavity deep. Wound was covered by blood.

13. I incised wound on the back of right side of abdomen near the costal margin placed horizontally with tail-end on the medial side. Size of the wound was $2\frac{1}{2} \times 1\frac{1}{2}'$. Wound was covered by blood.

14. I incised wound on the back of neck placed horizontally with tail-end on the left side. Size of the wound was $1\frac{1}{4} \times \frac{1}{4} \times \frac{1}{4}'$.

INTERNAL Examination.

On opening the chest cavity it was seen that injury No. 8 had entered the chest cavity through third intercostal space, and had cut the lower lobe of left lung $\frac{1}{4}'$ deep. Total depth of injury No. 8 was about $4\frac{1}{4}'$. There was collection of blood clot along the track of the wound and there was also effusion of blood around the

wound over the lung. Injury No. 9 had entered the chest cavity and had cut the left lung on its upper lobe 1 1/2' deep. There was clotted blood around the track of the wound as well as in the lung tissue. Left lung was collapsed and pale. There was collection of about 3/4 litre fluid and clotted blood in the chest cavity on the left side. Right lung was pale. Heart was normal. Injury No. 12 had entered the abdominal cavity and had cut the small intestine at one place lumen deep. Total depth of the wound was 2 1/2'. There was collection of effused blood in the soft tissues around the track of the wound. Lower abdominal cavity contained about half a litre of blood which was fluid and clotted.

On cutting the left arm at the site of fracture there was irregular fracture of left arm bone in oblique manner. There was no effusion of blood in the soft tissue at the side of fracture or around it. This fracture appeared to be post-mortem in nature. Blood and viscera were preserved for Chemical analysis and were sealed in my presence. The skull hair and nail clippings were preserved and were handed over to police duly sealed. All injuries were ante-mortem except injury No. 15 which was postmortem in nature.'

In the opinion of the doctor, injuries Nos. 1 to 14 were caused by a sharp edged weapon, such as knife with single sharp edge while injury No. 15 had been caused by blunt force or by throwing the body after death.

(7) The investigating agency found that robbery was not the motive behind the murder, the crime had been pre-planned, the assassins were at least two in number, they did not harm Dr. Jain under whose very nose the murder was committed, there was no effort to pursue or organize a chase of the killers and the police was not promptly informed about the incident. Dr. Jain's clinic in Kucha Mahajani, Chandni Chowk, was searched on December 6, 1973. On December 7, 1973 Inspector Faqir Chand (PW98) of the Crime Branch (C.I.D.) took over the investigation. He interrogated Dr. Jain as well as Chandresh Sharma and searched Dr. Jain's clinic on Barakhamba Road the same day. On December 8, 1973 statements of Karan Singh and Phool Dass P.Ws were recorded. Inspector Risal Singh was sent to Charkhi Dadri in search of Rakesh Kaushik, but he could not be traced out. Dr. Jain was placed under arrest on the following day. The

police succeeded in apprehending Rakesh Kaushik on December 10, 1973 at 4 A.M. outside the unit lines in Delhi Cantonment. He was brought to Police Station Hauz Khas for interrogation and thereafter arrested formally. Search of his person yielded various documents including Exhibit P238 which reads thus : 'Vill. P.O. Sessan, Junhera, Tahsil Kama'. The two underlined words are written in Roman script and the rest in Devnagri. Rakesh was taken by the police to village Ghori and Palwal where Kalyan and Bhagirath respectively were arrested and brought to Delhi the same evening. They were advised to keep their faces muffled till a test identification parade was held. That very day Chandresh was apprehended. She made a disclosure statement (Exhibit Pi 76) leading to the recovery of certain photographs revealing illegitimate intimacy between herself and Dr. Jain. On December 11, 1973 Ujagar Singh and Kartar Singh were arrested at about 5.30 A.M. in their village Seshan (Rajasthan). The police recovered a. country made pistol of .303 bore (A-1) with one cartridge (A-8) in its chamber from the hand of Kartar Singh. Cartridges A-5 to A-7 of .303 bore and chadar (tehmat) (A-12) were also recovered from the person of this accused. On interrogation Ujagar Singh made a disclosure statement (Exhibit P37) with regard to the disposal of the knife. Kartar Singh and Ujagar Singh were told to keep their faces muffled and were brought to Delhi the same afternoon. At Delhi Ujagar Singh led the police to Lodhi Road and got knife (A-2) recovered from under bushes by the roadside referred to in his disclosure statement.

(8) Taxis Dly 552 and Dly 544 were seized and statements of Rattan Lal, Dharam Vir Malhotra and Om Parkash, driver of Dly 552, were recorded on December 11, 1973. Duty slip books related to the said taxis and certain other documents were also taken into possession. On the same day Ramji was arrested at about 9-30 P.M. from his jhuggi. He was interrogated and a memorandum of information received (Exhibit DI) prepared. He too was asked to keep his face muffled. All the articles suspected of having bloodstains on them were sent to the Central Forensic Science Laboratory, R. K. Puram. The report of the Laboratory disclosed, inter alia, that there was blood of 'B' group on the knife and chadar removed from the person of Kartar Singh (Exhibits A-2 and A-12) as well as on taxi Dly 552 and car Dly 4847. On December 28, 1973 Ramji made a confessional statement (Exhibit D-3) before the Sub-Divisional Magistrate, Punjabi Bagh. The following day he

submitted an application (Exhibit P2) for being made an approver. On January 3, 1974 the Chief Judicial Magistrate granted pardon to Ramji and recorded his statement (Exhibit P4).

(9) The investigation revealed that Chandresh had become a widow in 1960 when she was about 20 years old. In January 1964 she married one Captain Y. D. Sharma. On March 27, 1967 she filed a petition for judicial separation and an ex-parte decree was granted to her on August 22, 1967. By the early part of 1967 she and Dr. Jain were caught up in a passionate love affair. They proceeded to Kashmir for an adulterous honeymoon and stayed in a houseboat in Srinagar (Photographs Exhibits P93/1-4). On April 1, 1967 Dr. Jain employed Chandresh as his secretary at a salary of Rs. 300.00 per mensem. Mrs. Vidya Jain got a scent of their liaison and forced her husband to terminate Chandresh's services by the end of that very month. On May 2, 1967 Chandresh was employed by M/s. Kothari & Associates, Architects, Connaught Circus, where she worked till October 31, 1971. The termination of Chandresh's services was only an eye-wash meant to placate Vidya Jain. Otherwise the affair between Chandresh and Dr. Jain continued with unabated vigour. Through one cheque alone she got a bounty of Rs. 8,400.00 from him on November 25, 1968. In or about July 1972 she shifted her residence to Ambala. But money continued to flow to her from Dr. Jain regularly till May 1973. Soon after his return from a visit to various foreign countries, on August 1, 1973, Dr. Jain obtained a bank draft of Rs. 1,600.00 for her. The prosecution alleges that they have had too much of the irksome constraints imposed by an extra-legal sexual connection and decided, therefore, to convert it into a proper legal bond. That could not obviously be done without pushing Vidya Jain out of the way. With a decree of judicial separation already in her pocket and her husband meekly reconciled to the severance of the marital link Chandresh was in a position to secure a divorce and marry any other person she chose at her sweet will. Dr. Jain on the other hand was not so happily circumstanced. Not only his marriage was intact, he had a conspicuously high status in the capital's elite circles and asking for a divorce would have raised a scandal stinking right up to the lofty heavens. Death of the wife Vidya Jain would, the lovers thought, cut the knot without creating any social complications and planned therefore, to have her killed.

(10) Execution of the plan presented quite a tough problem. Now Chandresh had known Rakesh Kaushik, a young man of about 25 years. He was working as Education Havildar in 17 Vehicle Battalion, Delhi Cantonment. Rakesh and Chandresh used to move about together quite frequently. He would introduce her to strangers as his sister, relation, friend or Bhabi (brother's wife) according to the demand of the occasion. There could be no hesitation for Chandresh to approach Rakesh in such a situation for help. Rakesh was working under Naib Subedar Ram Phal (Public Witness 47). Ramphal belonged to Halalpur a village in Haryana and so did Kara' Singh (Public Witness 5), a bad character. Rakesh found out from Ram Phal that Karan Singh was living at Rajpur Road behind the office of the Municipal Committee. Sometime in or about September 1973 he (Rakesh) contacted Karan Singh and enquired if he would be willing to kill a doctor's wife. Karan Singh replied he would think over the matter. After a few days Rakesh visited him again. This time Chandresh accompanied him. Rakesh paid Rs. 1,200.00 to Karan, Singh presumably to induce better concentration of his mind on the proposal. He offered to pay him Rs. 20,000.00 for the job, Rs. 10,000.00 in advance and Rs. 10,000.00 after it was done. Rakesh and Chandresh promised to come on September 14, 1973 to pay the first Installment and they stood by their word. On this day, 14th, Chandresh took out Rs. 10,000.00 from a bag and paid the same to Karan Singh. Dr. Jain withdrew a sum of Rs. 10,000.00 in one hundred currency notes of the denomination of Rs. 100.00 each on September 14, 1973 from his account with the Indian Overseas Bank, defense Colony Branch. It is suggested that it was the same money which Chandresh passed on to Karan Singh. Karan Singh had, however, no intention to kill anyone. He just swallowed the amount and invested it in the purchase of a truck for himself. Rakesh's efforts to recover the amount from Karan Singh failed. The first attempt to have Vidya Jain done to death in pursuance of the conspiracy aforesaid thus flopped.

(11) Rakesh is said to have utilized the services of Lance Naik Jagdish Parshad Sharma (Public Witness 50) for contacting a Sivana at Deeg for a Ghat (WT)(proper or suitable time or period for a work or action, opportune moment vide A Dictionary of Urdu Classical Hindi and English by John T. Platts). They travelled in Dr. Jam's car Dlj 11 on September 29, 1973. It was driven by Daryao Singh, Dr. Jam's chauffeur. However, the Sivana had gone out of the village and was not

available for consultation. They returned disappointed. Rakesh obtained leave from November 5 to November 24, 1973 through application (Exhibit Pi 87). The purpose disclosed was 'wife expired' though the spouse of Rakesh was very much alive. This leave was got extended telegraphically for ten days (Exhibit Pi 84). The prosecution alleges that Rakesh had taken the leave for hiring assassins to kill Vidya Jain as conspired. Rakesh belongs to a village in Charkhi Dadri Police Station of Haryana. Ram Kisban (Public Witness 7) a young man of about 20 years, was working as a Mistri (motor mechanic) at Charkhi Dadri. On November 24, 1973 Rakesh brought Ram Kishan to Delhi on the pretext that his assistance was required for purchasing rings for the engine of his truck. Rakesh intended to use Ram Kishan, in fact, for Vidya Jain's murder. Rakesh had been hiring taxi Dly 544 owned by Dharam Vir Malhotra (Public Witness 3) for himself and Chandresh, and they had thus got acquainted with its driver, Ramji (Public Witness 1). In the course of their conversation over a cup of tea at York restaurant in the evening of November 26, 1973 Chandresh told Ramji that she had arranged for one man to kill the wife of Dr. Jain whom she wanted to marry, and that his taxi was needed for 3 or 4 days in that connection. She promised to give Ramji a car as a gift as well as permanent employment if her plan was crowned with success. Ramji agreed to provide the taxi as desired. Rakesh tried to induce Ram Kishan to kill Vidya Jain with a rich reward and threatened him with the direst possible consequence, death, in the event of his leaving that job undone. Intimidated adequately, Ram Kishan put up a show of co-operation for some time and went to the extent of buying a knife from Ghaziabad as per Rakesh's directions. He was with Chandresh and Rakesh on November 28, 1973 when they went to Bhagwan Das (Public Witness 31), an astrologer, in the taxi driven by Ramji, for showing two horoscopes to him one of herself and the other alleged to be of Dr. Jain. Chandresh asked for the astrologer's prediction whether her friendship with the man to whom the second horoscope pertained could fructify into a marriage. Bhagwan Dass had his own reservations, however, because the man of Chandresh's dreams was already married. Instead of providing the encouragement desired of him, he told Chandresh, therefore, to come again sometime. Rakesh and Ramji brought Ram Kishan within a striking distance on a number of occasions but he allowed the prey to stay unhurt. He told them finally

on December 1, 1973 that he would not do the job for all what they might do to him, and willy-nilly they let him off. In this way the second try of the conspirators to put an end to Vidya Jain's life also terminated in fiasco.

(12) Ramji then told Rakesh that he would suggest a man who could do the job. He drove Rakesh and Ram Kishan (he had not yet parted company with them) to the house of Kalyan Gupta at Bhogal and introduced Rakesh to Kalyan. Rakesh told Kalyan that he wanted a doctor's wife killed and requested him to arrange for the assassins. Kalyan Gupta replied that arrangement could not be made locally but his master, Bhagirath, a resident of Ghorī in Palwal Tahsil, could do the needful. Rakesh desired that they go to Ghorī. Ram Kishan was then dropped at Bhogal and Ramji, Kalyan and Rakesh left for and reached Ghorī at about 2.30 P.M. Bhagirath was not, however, there he had gone to another village two kilometres or so away. The taxi was accordingly driven to that village and Bhagirath located. After they had been introduced to each other by Kalyan, Rakesh told Bhagirath that they wanted to have a doctor's wife killed and asked him to suggest assassins who could do the job. Bhagirath agreed to help. He sat in the taxi and took Rakesh and his companions to village Seshan in the jurisdiction of Police Station Pahari, district Bharatpur (Rajasthan). Here Bhagirath introduced Rakesh to Ujagar Singh and Kartar Singh, and Rakesh enlightened them about the purpose of the visit. Ujagar demanded Rs. 25,000.00 as their remuneration for the job which Rakesh agreed readily to pay. All of them, i.e., Rakesh, Kalyan, Bhagirath, Ujagar and Kartar left Seshan in Ramji's taxi at about 8 P.M. and reached Bhogal (Delhi) at about 11.30 P.M. Bhagirath, Rakesh and Kalyan then left for the latter's house. Ujagar and Kartar stayed with Ramji and slept for the night in the taxi itself parked outside his jhuggi. On December 2, 1973 at about 8.30 A.M. all of them assembled at the house of Kalyan and drove there from to the defense Colony in Ramji's taxi. The vehicle was stopped at a distance from Dr. Tain's house and Rakesh took Ujagar, Kartar, Kalyan and Bhagirath to afford them a look at the said place. They returned at about lunch time for their meals. Ramji dropped Ujagar, Kartar, Bhagirath and Kalyan at Bhogal and took Rakesh to York restaurant where the latter wanted to collect money from Chandresh. Rakesh met Chandresh outside the York restaurant and took her inside the same. Rakesh came out alone at 3 P.M. and accompanied Ramji to

Bhogal. From Bhogal Ramji picked up Kalyan, Bhagirath, Ujagar and Kartar and again drove them to a place in 'C' Block of defense Colony. Ujagar and Kartar left the taxi and went over and sat on a wall on the Nallah near Dr. Jam's house. Kartar and Ujagar carried a pistol and a knife respectively concealed in the folds of their tehmats. They returned to the taxi after about two hours and Ramji brought them back to Bhogal. Bhagirath went away with Kalyan while Ujagar and Kartar spent the night in Ramji's taxi as on the previous day. On December 3, 1973 once again all of them drove to the defense Colony at about 9 A.M. Ujagar, Kartar, Bhagirath and Kalyan got down from the taxi, while Rakesh asked Ramji to take him to the market of the defense Colony. There Rakesh made a telephone call and they returned to the place where the others had been dropped. From there Ujagar, Kartar etc. too boarded the taxi and they reached Nizam-ud-Dis at about 11 A.M. After having their food there they went to Eros Cinema (Bhogal) and saw the noon show from 12 Noon to 3 P.M. Then they proceeded to Faridabad, purchased two bottles of liquor there and after consuming them at an eating place came back to the defense Colony at about 8.30 P.M. Ramji parked the taxi in a lane near Dr. Jain's residence. Ujagar, Kartar, Bhagirath, Kalyan and Rakesh got down and kept hanging around the said place. At about 9 P.M. they started back for Bhogal. Leaving the rest of them Ramji and Rakesh went to Malhotra's house at about 11 P.M. Malhotra questioned them why the taxi had not been brought back on 1st and 2nd and Rakesh replied that he had been too busy with his engagements for getting some contract. Rakesh cleared the hire charges and asked Malhotra to book the taxi for the following day as well. Malhotra told him that since the permit of the taxi was expiring on December 3, 1973 it could not be plied as such on December 4. On December 4, 1973 Malhotra sent Ramji with the taxi to a nearby workshop in Bhogal to have minor repairs done and its new registration number painted. The erstwhile taxi was converted into an ordinary car with number DLB 9680. After his assignment was fulfilled, Ramji drove the car to Malhotra's house in Lajpat Nagar and came back to his own place.

(13) At about 4.30 P. M. Rakesh came to Ramji's Jhuggi and asked him to accompany him since the job had to be done 'now'. They hired a taxi and went to New Vig restaurant in Chandni Chowk. There they met Chandresh, Bhagirath, Kalyan, Ujagar and Kartar. All these people were having coffee etc. when Dr. Jain

too arrived there. Dr. Jain talked to Ujagar so as to caution him to execute the job carefully and to assure him that he would get the amount he wanted. After Dr. Jain had left, Chandresh told Rakesh, Kartar, Ujagar etc. that she would be reaching Dr. Jain's house in the latter's car at about 6.30 P. M. and would get down outside the house. Chandresh informed them further that Dr. Jain would come out of his house with his wife and that would be the time for Ujagar and Kartar to kill her. She also told them to see to it that the doctor did not receive any knife injury. All of them then came out of the restaurant. Ramji. Bhagirath and Kalyan returned to Bhogal in a taxi at about 5.45 P. M. amji went to his jhuggi while Bhagirath and Kalyan went away together. At about 5 P. M. Rattan Lal (Public Witness 12), who carries on the business of providing transport to the tourists under the name and style of Yadav Transport Motor Service at Chanakyapuri, received a telephone call. The person at the other end of the line gave his name as Rakesh Sharma and asked a taxi being sent to the York restaurant for a trip to Charkhi Dadri. Rattan Lal told him that he would be sending taxi Dly 552 with Om Parkash as its driver. Rattan Lal prepared duty slip Exhibit P 39 and directed Om Parkash (Public Witness 2) to take the taxi to the York restaurant, Om Parkash's taxi had been parked at the York restaurant for about 15 minutes when another taxi came there and Rakesh, Ujagar and Kartar got down there from. Rakesh contracted Om Parkash and told him that his taxi had been hired by him for Charkhi Dadri. As they all sat down in the taxi, Rakesh directed Om Parkash to proceed to Bhogal wherefrom he wanted to pick up someone. On reaching Bhogal, Om Parkash was asked to stop the taxi near the taxi stand of Sahi Hospital at Mathura Road. Rakesh got down and returned after 10 minutes with Ramji. Rakesh then directed Om Parkash to drive to the defense Colony where he had some sort of business, Om Parkash drove all of them to the defense Colony and pulled up the taxi at the place indicated by Rakesh and that was a little distance beyond the house of Dr. Jain towards north. Ujagar and Kartar got down and walked towards Dr. Jain's house. They were armed with a knife and a pistol respectively. The time then was 6.45 P. M. or so. After about 10 minutes Chandresh came there. On seeing Ramji seated in the taxi she remarked 'Ramji Too Bhi'. Rakesh greeted her with the words 'Hallo Devi'. Chandresh said in English : 'The car is outside'. She then called Ramji out. Both of them left towards the house of Dr. Jain while Rakesh, still sitting

in the car, kept Om Parkash engaged in small talk.

(14) Ramji and Chandresh had gone about 40 or 50 paces in the direction of Dr. Jain's house when Dr. Jain stepped out of it: in the company of his wife, Vidya Jain. As soon as Vidya Jain came close to Dr. Jain's car parked in front of house No. D-292, Ujagar and Kartar pounced upon her. Kartar grabbed and held her from behind while Ujagar stabbed her with his knife repeatedly. She was felled in the storm water drain closeby. Ujagar and Kartar then rushed back to the taxi and occupied its rear seats. Rakesh asked Om Parkash to start and hurry up. He was directed to take them to Lodhi Road via Jangpura. On their way to Lodhi Road, Ujagar or Kartar asked Rakesh when the doctor would pay the money. Rakesh assured them that he would himself arrange to send it within a couple of days. When the taxi approached a triangular crossing near the Golf Links, Ujagar and Kartar expressed a desire to get down Rakesh directed Om Parkash to stop. Om Parkash obeyed and Ujagar and Kartar left the vehicle. Rakesh then asked Om Parkash to proceed to the Cantonment, Om Parkash enquired from Rakesh as to what had happened to his plan of going to Charkhi Dadri. Rakesh replied that he had cancelled that programme. As the office of Yadav Motor Transport Service fell on the way to the Cantonment, Om Parkash stopped the taxi there and asked Rakesh to settle up the matter of the hire charges in view of the cancellation of the trip. He told Rattan Lal that the trip to Dadri had not been made and Rattan Lal charged Rs. 40 for half day's use of the taxi from Rakesh. Rakesh left the place saying that he would make his own arrangement for travel to the Cantonment. In the meantime, Chandresh and Ramji, who had failed to catch Om Parkash's taxi, went in the direction of the Petrol Pump in the defense Colony. They met Bhagirath and Kalyan in the street. Chandresh asked them to disappear and informed them that the job had been done. Ramji and Chandresh walked together up to the bridge and then parted company.

(15) It is alleged by the prosecution that Rakesh did not report back to his unit on December 4, 1973 and was found absent at the evening roll call. He did not turn up even during the night and was seen only on the 5th at the morning parade at 6.30 A.M. On the 6th he again applied for casual leave for two days, i. e., 7th and 8th December (Exhibit P. 188) with permission to suffix Sunday the 9th of

December, 1973. The purpose stated was 'to settle the home problems'. His prayer was granted by the authorities concerned.

(16) The trial court charged Dr. N.S. Jain, Chandresh Sharma, Rakesh Kaushik, Bhagirath, Kalyan Gupta, Kartar Singh and Ujagar Singh under section 120B of the Indian Penal Code for having entered into a conspiracy along with Ramji, the approver, to commit the murder of Vidya Jain. It also charged all of them except, Ujagar Singh, under section 302/34 for having committed the murder of Vidya Jain, and Ujagar Singh was separately charged under section 302 for the last mentioned offence. Kartar and Ujagar were charged and tried separately under section 27 of the Arms Act in respect of pistol and cartridges and knife recovered from them respectively. The accused denied the allegations of the prosecution. However, the learned Sessions Judge found Kalyan Gupta and Bhagirath guilty only under the first count while the rest were found guilty of all the charges laid against them. All the accused were sentenced to imprisonment' for life. Kartar and Ujagar were also sentenced to rigorous imprisonment for two years and one year respectively under section 27 of the Arms Act. All the seven accused persons have filed appeals against their respective convictions and sentences. The State has, on the other hand, appealed to have the sentences awarded to all the accused enhanced to the extreme penalty of death. It may, however, be noticed that during arguments Mr. K. L. Arora, learned counsel for the State, did not press the appeal against Kalyan and Bhagirath.

(17) MR.A.N.MULLA, learned counsel for Chandresh, and Mr. B.B.Lal, learned counsel for Dr. Jain, do not deny the affairs between Dr. Jain and Chandresh; their escaped to Srinagar; Chandresh obtaining a decree of judicial separation from her husband and the flow of money by cheques and bank drafts from Dr. Jain to Chandresh as proved by the prosecution. But, says Mr. Lal, there was no earthly reason for Dr. Jain to develop a devastating desire to marry Chandresh after their liaison had brought him all the desired gratification over so many years. The contention thus is that Dr. Jain had no motive whatever for having Vidya Jain killed. Mr. Mulla urges with equal vehemence that the crime in question could be committed without Chandresh being joined as an equal partner in the conspiracy. It is submitted that Vidya Jain's resentment and opposition to the illegitimate

intimacy between Dr. Jain and Chandresh started as far back as April 1967, but Chandresh never did anything to harm Vidya Jain by way of retaliation or revenge. Nothing new having occurred to aggravate the hostility on Chandresh's part (if any) there could be no 'compelling motive' for her to get Vidya Jain slain.

(18) It is now well-settled that where direct evidence of commission of the crime is creditable motive recedes into the background and is not accorded much importance. However, in a case depending wholly on circumstantial evidence motive is one of the material factors calling for consideration. Not that an accused can be convicted merely on the proof of motive, but it certainly helps in the appreciation of the evidence bearing on the offence charged. Now, it may be possible to prove motive in one case while in another case no evidence thereof may be forthcoming. Its remaining shrouded in mystery would not, however, necessarily mean positive absence of motive. It is again beyond the pale of controversy that the prosecution need not make out adequacy of motive. How different persons behave in and react to diverse circumstances is incapable of prediction. What may appear to one as a very minor matter, to another may strike as grave enough for committing the most heinous crime. It would thus suffice for the prosecution to lead evidence suggesting a motive and leave the matter at that.

(19) In the instant case it cannot be gainsaid that there was a motive for both Dr. Jain and Chandresh to get rid of Vidya Jain. The affair between Dr. Jain and Chandresh was neither ephemeral nor shallow. It was quite abiding and deep. Vidya Jain complained to her next door neighbour, Mrs. Sheela Khanna (Public Witness 4), that Chandresh 'behaved on the dining table as if she was the mistress of the house'. Though Dr. Jain terminated Chandresh's services as his Secretary within a month, it was only to buy peace in the house. The affair continued and the infatuation prospered. He continued remitting moneys to Chandresh regularly and the amounts involved were always in multiples of hundred and much more than Rs. 300 the salary of which she had been deprived by her dismissal. It may be repeated that the one cheque he gave her on November 25, 1968 was for no less than Rs. 8,400 the sum which she would have earned through 28 months' continuous labour.

(20) The prosecution has produced evidence to show that Chandresh had decided to get married to Dr. Jain. In this connection Anand Mani (Public Witness 55) and Bhagwan Das (Public Witness 31) have been examined. Anand Mani is a Jyotishi residing at Muzaffamagar. He deposed to have prepared horoscopes (Exhibits P131 and P132) sometime in 1970 or 1971 at the instance of a man and a woman who had come together. Since Anand Mani was reluctant to tell the whole truth, he was allowed to be cross-examined by the Public Prosecutor. The witness then admitted that it was Chandresh Sharma who had asked him to prepare the horoscopes, but he denied that Dr. Jain had accompanied her. It is conceded by Mr. Mulla that horoscope (Exhibit P132) is of Chandresh. It is true that the other horoscope (Exhibit P131) relates to a male of Jain Vansh who was born in 'Samvat 1977 equivalent to Saka 1842, Baisakh Shakla Paksh Ek', but there is no positive material on record to hold that it refers to Dr. N. S. Jain.

(21) Bhagwan Das (Public Witness 31) is employed in Special Police Establishment. Astrology is his hobby. He learnt it from his father who was a Hindi and Sanskrit teacher and cultivated astrology for his personal pleasure. Bhagwan Das deposes that Chandresh accompanied by Rakesh, another man who was in the uniform of a driver, and one more person of short stature, came to his house. Chandresh told him that she was carrying on friendship with some one and wanted to know whether this friendship would fructify into a marriage. When Bhagwan Das asked the name of the man whom she wanted to be her spouse, she replied that the name began with 'N'. On further enquiry she replied it could mean 'Narayan, Nathu or Narender or anything of which the Rashi is Vrisiwchik'. She gave out the age of her lover as '50 or 52 years' and stated that he was already married. Since Bhagwan Das had adopted astrology as a hobby and not for the lure of riches, he declined to make any predictions which would ruin the matrimonial life of someone else. Chandresh insisted that he should see the horoscopes and on their study he would be convinced that the said person (the wife of the man concerned in question) deserved to be discarded. She promised to come again on the next Sunday (i. e. December 2, 1973) to deliver the horoscopes. She visited him as promised and delivered horoscopes (Exhibits P131 and P132). On December 16, 1973 she came to Bhagwan Das's house with a police party when Bhagwan Das handed over the said horoscopes which were duly taken into possession by the

police. It is contended that Bhagwan Das is no astrologer and the police trumped him up as such just to equip itself with an excuse for showing false recoveries of the two horoscopes from his house. Simply because he is a police employee, it does not mean that his testimony must be rejected. Bhagwan Das joined service in Punjab in 1963 and came over to the C.B.I. in 1968. He is a mere dispatcher in the office of the Special Police Establishment and would prima facie appear to have no connection, whatsoever with the police agency which investigated this case. It was put to him that he was serving the C.I.A. (1) in 1968 and so was Dsp Harpal Singh, one of the investigating officers. The insinuation was that Bhagwan Das was under some compulsion to oblige the Deputy Superintendent of Police. Bhagwan Das replied that he had never seen the face of Dsp Harpal Singh. It is not uncommon that some government servants do cultivate and adopt a hobby. Homoeopathy and astrology are such like hobbies. A hobby, as its very meaning suggests, is not one's main, business but is a favorite subject or occupation. It is usually indulged in for the sake of one's mental satisfaction and pleasure, and not for making money. Bhagwan Das tells us that he practises astrology on Sundays for four hours or so and 40 to 50 persons come to consult him. Such a large number of visitors would indicate that he does enjoy some reputation of proficiency as an astrologer. An additional reason for making him popular may be his rendering free service. It is significant to note that not a single question was put to him to test his claim that he knew astrology well enough to attract so many persons. Chandresh had told Bhagwan Das that one Mohan of Hauz Qazi (the locality in, which she resides) had told her about him (Bhagwan. Das).

(22) It is also contended that horoscope (Exhibit Pi 32) was not recovered from Bhagwan Das but was recovered by the police from Shakuntia Devi (Public Witness 21) to whom Chandresh had entrusted some of her articles when leaving for Ambala. Shakuntia Devi (Public Witness 21) deposes that Chandresh had left some papers with her before going to Ambala. Chandresh came to her house with the police on December 11, 1973 and asked for the documents which she had placed in her custody. Shakuntia produced those documents and these were taken into possession by the police. She goes on to say that when those papers were opened she discovered album (Exhibit P93) which contained photographs Exhibits P93/ 1-4 of Dr. Jain and Chandresh, as well as the framed photograph of

Dr. Jain Exhibit P94. She also deposes that all the articles were seized by the police vide memo Exhibit P95 which bears her signature. It was not even suggested to Shakuntia Devi that the police had taken into possession any horoscope or that a horoscope was one of the papers given by her to the police. In order to identify the articles seized by the police Shakuntia had signed all the photographs as well as the album. Had the police recovered horoscope Exhibit P132 from Shakunda Devi, her signature would have definitely appeared on this horoscope. We are satisfied that horoscope Exhibit P132 was not taken into possession, by the police from Shakuntia Devi. Now horoscope Exhibit P132 was prepared by Anand Mani (Public Witness 55) who had also prepared horoscope Exhibit P1. It is established by the evidence on the record that these were prepared at the request of Chandresh and delivered to her. Chandresh in her statement under section 313 of the Code of Criminal Procedure did not tell the court as to what had happened to those horoscopes. She, in fact, denied that horoscope Exhibit P132 belonged to her. We have no hesitation in holding that both the horoscopes were recovered by the police from Bhagwan Das to whom these were handed over by Chandresh. We are satisfied that Bhagwan Das is a truthful witness and the learned Sessions Judge was right in believing his testimony.

(23) It is true that Dr. Jain had gone on a world tour with his wife Vidya Jain. This tour lasted about two months and they returned on July 27, 1973. But this fact does not necessarily show that Dr. Jain loved Vidya Jain, or that Dr. Jain had been cured of his infatuation for Chandresh. No sooner did Dr. Jain get back from this tour than he secured a bank draft (Exhibit P164) for Rs. 1,600 in favor of Chandresh. It was obtained on August 1, 1973 from Indian Overseas Bank, defense Colony, New Delhi.

(24) Another motive on the part of Dr. Jain, as suggested by the prosecution, is that he suspected the fidelity of Vidya Jain. To prove this the prosecution has examined Mrs. Janak Burman (Public Witness 96). She forms part of the same strata of society to which Jains belong. She had known Jains for several years. She had even betrothed her daughter to their son Ajai in January, 1971. Mrs. Burman deposed that about three years ago she and her husband had gone

to Srinagar where Jains were already holidaying. One Mr.P.N.Gupta with his wife and children was staying with Jains. Burmans were of course putting up at a different place. Mrs. Burman noticed that Mr. Gupta and Vidya Jain were 'very good freinds'. After they had returned to Delhi, on one occasion, Burman,s decided to attend the marriage of Vidya Jain's sister's son who was living at Mathura. The barat was to go from Mathura to Jaipur where the bride was residing. Mrs. Burman noticed that Vidya Jain proposed to go to Mathura in the company of Mr. Gupta. Dr. Jain proceeded to Jaipur to participate in the ceremony from the bride's side. He was accompanied by his son, Mrs. Burman. and her daughter. These goings on left quite an adverse impression on the mind of Burmans and they broke off the betrothal. We find that Mrs. Burman was not finding it easy to come out with the truth in court. She was, thereforee, allowed to be cross-examined by the Public Prosecutor. During cross-examination she admitted all the material facts she had stated before the police. It is true that she did not in so many words talk about the unusual intimacy between Gupta and Vidya Jain. But it is not suprising. She belongs to a section of society which would not readily call a spade a spade. When she was questioned closely about the friendship between Gupta and Vidya Jain what she had to say is : 'To me it is one and the same thing whether Mrs. Jain was being more friendly to Mr. Gupta than her husband or Mr. Gupta being more friendly to Mrs. Jain than to her husband'. She conceded that the reasons for breaking off the engagement of her daughter was that 'our values were different from those of the Jain family' and that it would not be a happy marriage. In spite of the euphemistic phraseology used by Mrs. Burman it is obvious that though Burmans, like Jains, believed in moving freely in the society to which they belonged, Burmans noticed that the friendship between Gupta and Vidya Jain was such as could not be tolerated even, in that free society. They decided to cancel the engagement because of the unpalatable intimacy between Gupta and Vidya Jain. Cancelling an engagement (betrothal) is a serious matter indeed leading to so many eye-brows being raised and awkward questions being asked. Before cancelling the engagement Burmans had talked over the matter with Dr. Jain and that was sure to perturb him. Mrs. Burman conceded that Dr. Jain did complain that his wife would often spoil things for him. Mrs. Burman's evidence does show that Dr. Jain did not approve of the rather intimacy between Gupta and Vidya Jain.

(25) It is contended that the trial court was wrong in holding that there was a conspiracy between the appellants and Ramji, and using the acts, omissions and statements of one accused against the others. According to Mr. Kathuria, learned counsel for Bhagirath and Kalyan, section 10 of the Evidence Act could not in the circumstances come into play. The case before us, as has been seen, is concerned with a criminal conspiracy, conspiracy to murder Vidya Jain, wife of Dr. N. S. Jain. To understand what is criminal conspiracy we have to seek light from the definition of the term in section 120A of the Indian Penal Code, which provides:

WHEN two or more persons agree to do, or cause to be done,- (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy : Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanationn.-It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

(26) It is well-settled that to make out an offence of criminal conspiracy it does not suffice to establish that a number of persons had a common intention to commit an act opposed to or forbidden by the law, or an act not so opposed or forbidden but by some means contravening the law; it has further to be proved that they 'agreed' to commit the relevant act. As observed by the Supreme Court in *Mohd. Hussain Umar Kochra v. Dalip Singhji*, : 1970 CriLJ9 , 'the agreement is the gist of the offence'. According to Russel:

THE gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential.

(Russell on Crime Twelfth Edition, Vol. 1, page 202). In case where, however, the act agreed upon by the conspirators is not an offence it must further be established that one or more of the parties to the agreement did some act besides the agreement in pursuance to it. (See *Lannart v. Director of Enforcement*, : 1970 CriLJ707). The act giving rise to the alleged conspiracy here was killing of Vidya

Jain, undoubtedly an offence. The whole ambit of Section 120-A will not, therefore, be germane to the matter under our consideration. As made plain by the definition quoted already, so long as the design to commit an offence does not cross the demarcation line of intention simpliciter it does not assume the character of criminal conspiracy. Once the decisive step of engagement and association to perpetrate it, however, is taken the offence of criminal conspiracy is complete and it would invite punishment at the law even if the design does not achieve fulfillment. Conspiracy comes into being just the moment the agreement to commit the crucial act is reached and it does not cease to exist so long as the object for which the association was formed continues in the process of fulfillment as per the agreement [Vide Lannart v. Director of Enforcement (supra)].

(27) It may be noted further that according to the law the agreement amongst the persons entering into the conspiracy is not supposed to postulate that every detail of the conspiracy should be within the knowledge of each member entering into that agreement (R. K. Dalmia and others V. The Delhi Administration, : [1963]1SCR253) Nor is it required that all the members should be present at the time of the execution of each and every material step of the plot. It happens, not infrequently, that some of the members are intended to be and actually act, as bare intermediaries because otherwise secrecy, without which no conspiracy would succeed, must be jeopardised. The nature of the offence of criminal conspiracy is such that though not absolutely it is practically impossible to furnish direct evidence of the same. The confabulations for reaching an agreement as well as for making it bear fruit are seldom conducted by the conspirators on roof-tops. They may not communicate exclusively in whispers, but would be prompted by common sense to avoid overhearing not only by hostile but even disinterested persons. Direct evidence is regarded by the courts indeed as the most effective species of evidence for the proof of any fact and yet resort must be had in cases like those of conspiracy to circumstantial evidence which must, of course, necessarily be of such compelling nature as to carry unavailing conviction about the guilt of the persons concerned.

(28) In order to substantiate a charge of criminal conspiracy, as distinguished from the offence for commission whereof it is formed, it is unnecessary to prove any

overt acts, because for making out the first mentioned offence proof of agreement to commit the last mentioned offence is by itself sufficient. But it cannot be gainsaid that proof of such overt acts is extremely useful because proof of such acts would lead the court to infer that the said acts were connected with each other, they were not done in isolation, and the fact that the agreement was in reality made may more demonstrably be brought home. (See *Bacha Babu and others v. Emperor* : AIR1935 All162 , and *Regina v. Esdaile and others*, 175 ER 696 As observed in *Pulin Behary Das and others v. Emperor*, 13 Cr LJ 609 (6) ,

OVERTacts may properly be looked to as evidence of the existence of a concerted intention; indeed, the conspiracy is usually closely bound up with the overt acts, because in many cases, it is only by means of the overt acts that the existence of the conspiracy can be made out.

So far as the character, quantum and quality of proof to be adduced before the court in a case of conspiracy is concerned the statutory provision in section 10 of the Evidence Act, places this offence in a class by itself. It reads thus:

10. Where there is reasonable ground to believe that two or more persons have considered together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention,, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.

The ordinary rule of law is that a man suffers for his own acts and omissions. Section 10 introduces an exception to that rule. It makes a conspirator liable for the acts and statements of his coconspirators. This section comes into operation the moment prima-facie evidence, as against unimpeachable proof, is furnished. Once the court has a reasonable ground to believe that the persons concerned had conspired together to commit the relevant offence anything said, done or written, by one of the conspirators in reference to the common intention, after the said intention was entertained would be held relevant against the others, 'not only for the purpose of proving the existence of the conspiracy but also for providing

that the other person was a party to it'. (Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra Air 1965 Sc 682

(29) MR.FRANK Anthony, the learned counsel for Rakesh, contends that the charges, as framed against the appellants, show that in fact there were three separate conspiracies to murder Vidya Jain and as a necessary consequence acts and statements of a particular accused in relation to one conspiracy cannot be used against the accused alleged to be involved in another conspiracy. At this stage the charges framed by the trial court may be reproduced with advantage. These read as under:

1.Charge against Dr.N.S.Jain, Mrs.Chandresh Sharma, Rakesh Kaushik, Ujagar Singh, Kartar Singh, Bhagirathi and Kalyan Gupta. 'That all of you along with Ramji, who is an approver in this case, between the period August 1973 and December 4, 1973, at Delhi and other places agreed to commit murder of Smt. Vidya Jain,, wife of Dr. N. S. Jain, and that the murder of the aforesaid person was in fact committed in pursuance of the agreement, and thereby committed an offence punishable under section 120-B I.P.C. 'and within my cognizance'.

2.Charge against Ujagar. 'That you on December 4, 1973 at about 7.15 P.M. near house No. D-292, defense Colony, New Delhi, in pursuance of criminal conspiracy to commit the murder of Vidya Jain, wife of Dr. N. S. Jain, did commit murder by intentionally causing death of the said Smt. Vidya Jain, and thereby committed an offence punishable under section 302 I.P.C., and within the cognizance of this court.'

3.Charge against Dr. N. S. Jain, Mrs. Chandresh Sharma, Rakesh Kaushik, Kartar Singh, Bhagirath and Kalyan, Gupta. 'That you along with your co-accused, namely, Ujagar Singh on December 4, 1973, at about 7.15 P.M. near house No. D-292, defense Colony, New Delhi, did commit murder in furtherance of the common intention of you all and in pursuance of a criminal conspiracy for that end, by your companion Ujagar Singh intentionally causing the death of Vidya Jain, wife of Dr. N. S. Jain, in prosecution of the said common intention and thereby committed an offence punishable under section 302/34 I.P.C, and within my cognizance.'

The charges obviously disclose one conspiracy the object of which was to murder Vidya Jain. Before Rakesh and Chandresh went to hire Karan Singh P. W. as an assassin, the conspiracy had come into existence. This conspiracy cannot be said to have come to an end when Karan Singh refused to carry out the part assigned to him. A conspiracy can, be said to have ceased to exist only when either the object of the conspiracy has been carried out or it is frustrated or aborted. Neither was the result when Karan Singh refused to assassinate Vidya Jain. When Rakesh approached Ram Kishan and tried to enlist his services for killing Vidya Jain, it was not a new conspiracy. The conspiracy did not come to an end when Ram Kishan failed to do the job. By this time Ramji had joined the conspiracy. On the failure of Ram Kishan to kill Vidya Jain, new assassins-Ujagar and Kartar-were engaged and they successfully carried out their assignment. The established facts on the record are that all along there was one conspiracy in operation, to kill Vidya Jain, and it continued right till the tragic demise of that unfortunate woman. The charges framed against the appellants do not refer to three separate conspiracies nor did the trial involve three conspiracies lumped together as suggested by Mr. Frank Anthony.

(30) The question as to what constitutes one conspiracy and how it is distinguished from several conspiracies came up for decision before the Supreme Court in Mohd. Hussain Umar Kochra's case (supra). After referring to section 120A, Indian Penal Code, the court observed : 'In order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in, one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient. New techniques may be invented and new means may be devised for advancement of the common plan. A general conspiracy must be distinguished from a number of separate conspiracies having a similar general

purpose. Where different groups of persons co-operate towards their separate ends without any privity with each other, each combination constitutes a separate conspiracy. The common intention of the conspirators then is to work for the furtherance of the common design of his group only. The cases illustrate the distinction between a single general conspiracy and a number of unrelated conspiracies. In *S. K. Khetwani v. State of Maharashtra* : 1967 CriLJ414 *S. Swaminatham v. State of Madras* : 1957 CriLJ422 the court found a single general conspiracy while in *R. v. Griffiths*, 1965 All Er 448 the Court found a number of unrelated and separate conspiracies.' In *S. Swaminathan v. State of Madras* : 1957 CriLJ422 , it was contended by the appellant that several conspiracies, distinct from each other, had been jumbled up together and tried at one trial. Repelling the contention the court found:

THE charge, as framed, discloses one single conspiracy, although spread over several years. There was only one object of the conspiracy and that was to cheat members of the public. The fact that in the course of years others joined the conspiracy or that several incidents of cheating took place in pursuance of the conspiracy did not change the conspiracy and did not split up a single conspiracy in, to several conspiracies.'

In *Srichand K. Khetwani V. The State of Maharashtra* , : 1967 CriLJ414 , the conspiracy was a general conspiracy to keep on issuing licenses in the names of fictitious firms and to share the benefits arising out of those licenses when no real independent person was the licensee. licenses were issued in the names of eight different companies, It was held that this did not make out eight different conspiracies each with respect to the licenses issued to one particular fictitious company. Mr. Anthony refers to *R. v. Dawson*, (1960) 1 All E L R 558 in support of his contention. The facts of that case show that the indictment on which the two appellants were charged with other accused included fifteen counts. Fourteen of these charged various fraudulent offences on, dates in and between 1955 and 1957. The first count charged conspiracy to defraud between November 1, 1954 and December 31, 1957. It was held that count No. 1, the conspiracy count, was unnecessary, lengthened the case enormously and had in fact worked injustice. It was found that it was a charge of several conspiracies, not one conspiracy. On

these facts it was observed that 'if there are substantive charges which can be proved, it is in general undesirable to complicate matters and to lengthen matters by adding a charge of conspiracy. Secondly, it can work injustice because it means that evidence, which otherwise would be inadmissible on the substantive charges against certain people, becomes admissible. Thirdly, it adds to the length and complexity of the case so that the trial may easily be wellnigh unworkable and impose a quite intolerable strain both on the court and on the jury.' This case has no relevance to the case in hand which, as already discussed, consists of one conspiracy only.

(31) It has been contended on behalf of the appellants that Karan Singh, Ram Kishan, Om Parkash, Rattan Lal, Ram Phal, Phool Das, Dharam Vir Malhotra etc. are accomplices and as such their statements cannot be used to corroborate the testimony of the approver Ramji. Reliance is placed on *Amulya Ratan Mukherjee v. The State* 74 C. W. N 378 where it was held that evidence of an accomplice is tainted evidence and one tainted evidence cannot corroborate another tainted evidence. There can be no two opinions about the principle that the corroboration, proposed to be offered must be from an independent source. But let us first examine as to what is an accomplice. Earl Jowitt's Dictionary of English Law, (1959 Edition), describes 'accomplice' as one concerned with another or others in the commission of a crime. As per Cyclopedic Law Dictionary (Third Edition) 'accomplice' in criminal law means 'one who is in some way concerned in the commission of a crime, though not as a principal. The term in its fullness includes in its meaning all persons who have been concerned in, the commission of a crime, all participes criminis, whether they are considered in strict legal propriety as principals in the first or second degree, or merely as accessories before or after the fact'. Per Denman, J., as quoted in Stroud's Judicial Dictionary, Fourth Edition, Volume 1, 'an accomplice is one who takes part in a crime and is privy to the criminal intent of the thing done.' Vide *Davies v. Director of Public Prosecutions* 1954 AC 378 a person called as a witness for the prosecution is to be treated as an accomplice if he is participes criminis in respect of the actual crime charged (in felonies) or is guilty of procuring, aiding or abetting the same (in misdemeanours). Persons pertaining to two categories though not fulfilling the aforesaid conditions strictly were held to be accomplices for the purpose of the rule, i.e., the persons

who received goods from thieves where the latter are tried for larceny and those who have been accomplices in offences of identical character perpetrated by the accused on trial on previous occasions so that system and intent is proved and accident is negated. The Supreme Court in *R.K.Dalmia and others V. The Delhi Administration* : [1963]1SCR253 , after referring the *Davies'* case (supra), held that an accomplice is a person who participates in the commission of the actual crime charged against an accused, i.e., he has to be a *participes criminis* except that receivers of stolen properties are taken to be accomplices of the thieves from whom. they receive goods on trial for theft and accomplices in previous similar offences committed by the accused on trial when evidence of the accused having committed crimes of identical type on other occasions be admissible to prove the system and intent of the accused in committing the offence charged. In the light of these observations we will discuss at appropriate places the evidence of each witness to determine if he is an accomplice or not. The prosecution has produced Ram Phal (PW47), Phool Das (PW6) and Karan Singh (PW5) to prove that an attempt was made in the third quarter of 1973 to hire Karan Singh to kill Vidya Jain, but it flopped because Karan Singh had no intention to commit murder. Ram Phal is a Naib Subedar. He was posted to 17 Vehicle Battalion, Delhi Cantonment, in 1971. Rakesh appellant was working as Education Havildar in the same Battalion. Ram Phal deposes that sometime in September, 1973 Rakesh approached him for a short leave after lunch for meeting one Jaggi, a notorious bad character, in Central Jail, Tihar, for some important work. Ram Phal told him that he knew that Jaggi was a bad character and enquired from him about the nature of work. Instead of answering the query, Rakesh asked Ram Phal as to how he knew that Jaggi was a bad character. Ram Phal informed him that he came to know about Jaggi from Karan Singh who belonged to his (Ram Phal's) village and was a bad character like Jaggi. Rakesh became interested in finding out Karan Singh's whereabouts and Ram Phal told him that Karan Singh was living behind the Municipal Committee's office at Rajpur Road. Ram Phal again enquired from Rakesh about the nature of work for which he needed the assistance of a bad character. Rakesh replied that a *jhagra* in his family was giving a lot of trouble. Ram Phal advised him to seek the help of the Commander who would write to the authorities concerned to settle the *jhagra*. A few days after this talk Ram Phal

found Karan Singh present in the mess. On enquiry Karan Singh told him that he had come there in response to Ram Phal's call sent through a Havildar in uniform. Ram Phal informed him that he (Ram Phal) had not sent for him. Ram Phal, however, asked Karan Singh to wait there till he returned after taking his meals. When Ram Phal returned he saw Rakesh and Karan Singh talking to each other. Rakesh begged of Ram Phal to intercede on his behalf and request Karan Singh to do his work. Ram Phal told him that there was no such necessity since he (Rakesh) was already talking to Karan Singh. He, however, advised Karan Singh not to do anything involving risk to the latter and left the place. Ram Phal deposes further that after a few days Rakesh informed him that he had paid Rs. 1,200/- to Karan Singh for the job. After a few days more Rakesh complained to Ram Phal that Karan Singh was neither doing his job nor returning his money, and so Ram Phal should speak to Karan Singh. After some days Ram Phal accompanied Rakesh in a scooter rickshaw to Hauz Qazi where Rakesh introduced him to Chandresh. All of them went to a tea shop where Chandresh asked Ram Phal to speak to Karan Singh to do the work of Rakesh'. Ram Phal also deposes that after an interval of a few days Rakesh requested him to keep some money and pay the same to Karan Singh if he did the job, Ram Phal declined to do so since he did not want to get involved in the rigmarole. Some days thereafter Rakesh informed that he had paid Rs. 10,000/- to Karan Singh for the job. Subsequently Rakesh complained to him that Karan Singh was neither doing the job nor returning the money and beseeched Ram Phal to intervene. A couple of days later Ram Phal accompanied Rakesh to Connaught Circus. They went to a restaurant and met Chandresh. All of them took a taxi and went to Karan Singh's house at Rajpur Road but Karan Singh was not in the house. After waiting for some time they left the house in a taxi. On the way Chandresh was complaining to Rakesh that Karan Singh would not do the job and that she would, therefore, not get any comfort in life. The taxi was stopped near the Chowk fountain and they got down. Ram Phal took Rakesh aside and enquired as to what was this all about. Rakesh replied that a well-known eye surgeon wanted to marry Chandresh and that the doctor was fed up with his wife since she was ruining his house. Rakesh also told him that the doctor wanted to get rid of his wife. While they were talking, Chandresh came there and so Ram Phal boarded a bus and left. After about two days Rakesh

brought Karan Singh to the unit. Ram Phal asked Karan Singh to return the money taken from Rakesh and advised him not to do any such work. Karali Singh replied that he had spent some amount and would return the balance. Ram Phal goes on to depose that after about a month or so Rakesh met him again when he came back from leave. Ram Phal asked him as to how he had spent the leave. Rakesh replied that he had spent it all right and enquired if he had read the morning newspaper Ram Phal replied in the negative. Rakesh told him that the work had already been done and that it involved an expenditure of Rs. 40,000/-. The statement of Ram Phal is assailed on 'the ground that he is an accomplice. It is contended that in case Karan Singh had committed the murder, Ram Phal would have been in the same position as Kalyan and Bhagirath. It is thus submitted that without corroboration in material particulars Ram Phal should not be believed. We have already discussed what an accomplice is. There is no evidence on the record to show that Ram Phal knew that Rakesh was looking for a bad character to assassinate Vidya Jain. In fact, when Ram Phal. questioned Rakesh about his anxiety to meet Karan Singh, Rakesh put him off by saying that he wanted to settle some family dispute. For the first time Ram Phal came to know about Vidya Jain's murder when Rakesh asked if he had read the morning newspaper of December 5, 1973. It is true that Ram Phal mentioned the name of Karan Singh to Rakesh but that was in an entirely different context. There is no reason to impute Ram Phal with the knowledge that Karan Singh was being sought for the murder of Vidya Jain.

(32) Another ground on which Ram Phal's testimony is criticised is that the police got his statement recorded under section 164 of the Code of Criminal Procedure. We have not been shown any law under which the testimony of a witness whose statement has been got recorded under section 164 of the Code of Criminal Procedure should be rejected. It is common knowledge that whenever an investigating officer sees a likelihood of a witness going back on his statement, he gets the statement of the witness recorded under section 164 of the Code of Criminal Procedure. Neither any mala-fides can be attributed to the Mivestigating officer nor the statement of such a witness can be discarded on this ground alone. In the instant case, Ram Phal and Rakesh were working in the same Battalion. The police had a reasonable apprehension that Ram Phal might make an attempt

to help his fellow army men and go back on his police statement. There is no doubt that the effect of recording the statement of a witness under section 164 of the Code of Criminal Procedure, would be to pin him down to a particular version. For that reason it is necessary for us to approach Ram Phal's statement with caution (see Balak Ram and another v. State of U.P., : 1974 CriLJ1486). Ram Phal is a Junior Commissioned Officer of the army. He holds a responsible position. Rakesh had at one time approached a Minister of the Haryana government to secure a job for Ram Phal's nephew. It is true that efforts of Rakesh did not bear fruit. But that does not mean that Ram Phal nursed a grievance against Rakesh, The question of having any grouse in fact does not arise since there is nothing on record to show that Rakesh could have got the nephew employed. We also noticed that it was suggested to Ram Phal in cross-examination that Ram Phal and Rakesh had jointly purchased a military truck and the venture had resulted in embittering their relations. Ram Phal promptly denied the suggestion. If there was any truth in this allegation, evidence could be led to establish purchase of the truck. On the other hand, this suggestion shows that Ram Phal had such good relations with Rakesh that they would not hesitate to enter jointly in some business venture.

(33) There have been some contradictions in Ram Phal's police statement and his testimony in the court- We may note those we consider material. Ram Phal testified in court that he had stated to the police that Rakesh had told him that Dr. Jain was the doctor to the President, that the doctor was fed up with his wife and the doctor wanted to get rid of her but none of these facts finds a mention in his police statement (Exhibit D37). These are important omissions bearing on a motive being imputed to Dr. Jain. We will, therefore, exclude this part of his evidence from our consideration. We otherwise agree with the conclusion of the trial court that he has by and large given a true account of the events.

(34) Phool Dass (PW6) is employed as a chowkidar by the Delhi Municipal Corporation. He had been allotted quarter No. 4 at 16 Rajpur Road. Karan Singh P.W. was known to him for the last 2½ years. He deposes that Rakesh came to his quarter one day with Karan Singh and he paid a visit to his quarter again in the company of Chandresh 15 or 20 days thereafter when Karan Singh was also

there. About a month later Rakesh and Chandresh again came to his house and enquired about Karan Singh. He told them that Karan Singh was not there. Rakesh requested him to tell Karan Singh to see him. The two appellants came once more after about a month and asked him to convey to Karan Singh that either he should return their money or they would make him face his village Panchayat. When Phool Dass enquired from them what the matter was, they told him that they had paid Karan Singh money for getting someone murdered. After about 10/12 days Karan Singh met him. He gave him the message of Rakesh and Chandresh. Karan Singh told him that he had been paid for murdering one Dr. Jain's wife and that the amount had already been utilised for the purchase of a truck but he was not going to kill the woman. Phool Dass further deposed that Karan Singh again came to him after 5 or 7 days. Karan Singh was taking his bath when Rakesh too turned up and there was an altercation between the two. Rakesh was demanding repayment of the money and threatening that he would go to his village and summon the Panchayat. Karan Singh retorted that if the Panchayat was summoned what he would tell about the nature of the payment. Rakesh then went away saying that he would see to it. It has been canvassed by the defense that there is a serious discrepancy in the statement of Phool Dass and Karan Singh as to the time of the visit of Rakesh and Chandresh on the day the sum of Rs. 10,000/- is said to have been paid. According to Phool Dass, Rakesh and Chandresh had come to his quarter at about 11 or 12 in the day while Karan Singh's statement, on the contrary, is that Rakesh and Chandresh had met him at Phool Dass's residence at 8 or 9 P.M. and at the time of this visit Phool Dass too was present. There was a number of visits by Karan Singh and Rakesh to the quarter of Phool Dass and we are not surprised if some confusion has sprung up with regard to the timing of the visits. Otherwise there is no suggestion of any bad blood between Phool Dass on the one hand and Rakesh and Chandresh on the other so as to actuate the former to perjure himself. The payment according to Karan Singh was made not in the quarter of Phool Dass, it was done in a nearby Municipal Corporation room which was unoccupied at that time. Phool Dass had not been taken into confidence at that stage of the matter and he was expected, therefore, not to be a witness to the money changing hands. The testimony of Phool Dass has a ring of truth. He has been believed by the trial court and we see

no reason to distrust him. Karan Singh (PW5) deposes that he was staying with Phool Dass in Quarter No. 4 Civil Lines, Delhi, when Rakesh came to him. Rakesh told him that he was Ram Phal's colleague and that Ram Phal had sent him. When Karan Singh enquired from Rakesh the object of his visit he was told that a doctor's wife had to be killed. He replied that he would think over the matter. Rakesh and Chandresh came to him 10 or 12 days later at the same quarter. They paid him Rs. 1,200/- and promised to pay Rs. 20,000/- more, Rs. 10,000/- on the 14th and the balance of Rs. 10,000/- when the job was done. Rakesh and Chandresh turned up again, as promised, at 8 or 9 P.M. on the 14th. All the three sat together in a room of Delhi Municipal Corporation School which was unoccupied at that time. Chandresh brought out a sum of Rs. 10,000/- in currency notes of Rs. 100/- each from her bag and paid the same to him. They told him that they would let him know the woman who was meant to be killed and he would have to remain on the look out thereafter. The balance of Rs. 10,000/- was stipulated to be paid after the event. Karan Singh swears that he received the sum of Rs. 10,000/- without any intention of killing any one. Rakesh continued his contacts with the witness for sometime but then he (Karan Singh) left the place to avoid him. One day Phool Dass told him that Rakesh had been coming to the house frequently and insisting on the job being done or the money being returned. He told Phool Dass frankly that he wanted to grab the money and was not going to kill any one. After 7 or 8 days Rakesh found Karan Singh at the same quarter and demanded the money back. Rakesh threatened to call a Panchayat if the money was not returned- Karan Singh retorted as to what for he would summon the Panchayat. Karan Singh is, no doubt, a bad character. But it is such like persons who are sought for by those who want to get some one killed. Gentlemen do not hire themselves as assassins. Bad characters are prone to cheating. There is nothing surprising in Karan Singh swallowing the amount. He must have sized up Rakesh and Chandresh that they could not harm him if he double crossed them. He turned out to be right. Rakesh's threat to summon a Panchayat cut no ice. He knew that Rakesh dare not tell Panchas the purpose for which money was given.

(35) It has been contended on behalf of the appellants that Karan Singh is shown by the prosecution itself as guilty a conspirator as any one else and being an accomplice the court should not accept his evidence in the absence of strong

independent corroboration. We have seen that though Karan Singh had no scruples to deter him from accepting Rs. 12,200/- from Rakesh and Chandresh as a part of the consideration for the murder of Mrs. Vidya Jain yet he had no intention of committing any murder; he simply wanted to cheat the conspirators out of the amount they had brought to hire him for the assassination. A man does not become a member of the conspiracy so long as he is not in agreement with the other conspirators in respect of the fulfillment of its mission and that qualification Karan Singh would not appear to satisfy. He is shown by the evidence to be an unprincipled man indeed, but it would be difficult to term him as an accomplice. It must be conceded, however, at the same time that so far as the appreciation of his evidence is concerned it should not make any material difference whether he is labelled as an accomplice or a mere rogue. His testimony would not in any case, by itself, inspire confidence enough to condemn anybody on a charge of conspiracy. The learned counsel for the defense has argued that there is no proof about a sum of Rs. 10,000/- having been paid to Karan Singh because the police did not take the trouble of finding out the number of the truck acquired by him or the name of the person who parted with its possession in his favor. It is true the investigating officer did not make any effort to seek corroboration from any quarter when Karan Singh informed him that he had utilised the amount placed in his hands by Chandresh and Rakesh for the purchase of a truck, but it was perhaps because no further proof in view of the confession of Karan Singh as to his having defrauded the said persons of the amount in question was called for. Karan Singh himself disclosed at the trial on oath that Rs. 2,000/- or Rs. 2,500/- were spent by him for the liquidation of a debt which he had incurred for the purchase of some buffaloes and the balance was invested in purchasing a truck- It is pertinent that none of the accused persons questioned him to know wherefrom the said truck was acquired and for what price and it is one of the cardinal principles of the law of the evidence that if a particular statement of a witness is not challenged through cross-examination it must be taken as accepted to be correct. It has been brought to our notice that in his examination in court Karan Singh deposed that Rakesh and Chandresh had come together on the day the sum of Rs. 12,000/- was paid to him but there is no mention of this payment in his statement before the police (Exhibit D-12). On being confronted with the omission he affirmed that his

statement in court was correct and the learned trial Judge refused to disbelieve him because of the said omission alone. The real reward offered for the murder was Rs. 20,000/- and Rs. 1200/- seem to have been paid to Karan Singh as a sort of advance tip to induce him to give a more favorable consideration to the proposal as well as to win his confidence as to their being good pay masters. Due to the comparative paltriness of the amount Karan Singh may not have bothered to mention it to the police. There were some other minor infirmities placed before us for scrutiny but we find them to have been satisfactorily dealt with in paragraphs 87 to 91 of the trial court's judgment and there will be no point in referring to them here over again. Karan Singh deposed that he had been paid Rs. 10,000/- by way of advance out of the total amount of Rs. 20,000/- proposed as the consideration for his killing Dr. Jain's wife. This statement has been corroborated by Ram Phal and Phool Dass by saying that Rakesh and Chandresh had been making frantic efforts to get back the money paid by them to Karan Singh because he had failed to execute the job of murdering Dr. Jain's wife. It has thus been established beyond doubt that there was a conspiracy for the elimination of Mrs. Vidya Jain at work sometime in and about August/September 1973 and Rakesh and Chandresh were taking active steps towards the fulfillment of that objective. Karan Singh (PW5) deposed that the sum of Rs. 10,000/- referred to above was paid to him by Chandresh and according to the prosecution story she got this amount from Dr. N. S. Jain. The prosecution placed before the court a cheque Exhibit B-158 drawn by Dr. N. S. Jain on the defense Colony Branch of the Indian Overseas Bank and encased by himself. The payment received was in one hundred notes of the denomination of Rs. 100/- each. This payment was made on September 14, 1973.

(36) Chandresh is shown by the record to be a woman of slender means. She was engaged by Dr. Jain as a personal secretary at Rs. 300/- per month in April 1967 and when her services were terminated after she had held the said position for one month only she joined Kothari & Associates, a firm of Architects, at a salary of Rs. 425/- raised in due course to Rs. 555/-. She had been receiving largess from Dr. Jain for years on end and in view of the documentary evidence of cheques, drafts etc., the fact has not been denied by Dr. Jain's or her own counsel. She had an account with the State Bank of India at New Delhi and another with the Ambala Cantonment Branch of the Punjab National Bank. The first one of them was closed

in January 1973 and the other one in June 1973. She was out of job right from August 31, 1971 when her services with Kothari & Associates came to an end. She acquired a house at Delhi and was Realizing some rent thereforee every month but she has never paid income-tax and we may, thereforee, presume that the yield of her immovable property aforesaid was not of much consequence. It is patent she had no resources as could enable her to arrange payment of Rs. 10,000/- in one lump-sum to Karan Singh. As has been seen the motive for the murder of Mrs. Vidya Jain was provided by the infatuation which Chandresh and Dr. Jain had developed for each other. Though Rakesh was very much in the conspiracy and was playing a rather directorial role in the achievement of its object he was not supposed to spend any considerable amount from his own pocket to remove the hurdle separating the two lovers. When Dharam Vir Malhotra contacted him to realise the fare for the use of his taxi amounting to Rs. 145/-in all he could not manage to meet his claim and left the taxi, with Malhotra, Ramji and Chandresh sitting in it, near the Fire Brigade, to obtain the necessary funds from somewhere. The factum of the withdrawal of Rs. 10,000/- through cheque Exhibit P 158 and the disposal of the amount was put to Dr. Jain in the course of his examination under section 313 of the Code of Criminal Procedure and the reply which he gave was found by the trial Judge to be disingenuous and diversionary in nature. When Dr. Jain was confronted with the fact that his withdrawing Rs. 10,000/- through cheque Exhibit P 158 on September 14, 1973 and the other evidence placed on the record proved that the sum of Rs. 10,000 which Chandresh paid to Karan Singh was recieved by her from him (Dr. Jain) he gave a reply in the negative and said the amount was utilised towards the expense of furnishing his office by his wife. It was explained that soon after he returned from his world tour in the end of July 1973 office accommodation in the shape of a hall was handed over to him at Kanchanjunga, Barakhamba Road, by the builders and the same was required to be furnished and partitioned for consultation purposes. He himself was a very busy man professionally and his 'wife was looking after the arrangement and financial side in putting the premises in proper shape'. The expenses were heavy and it was his wife's job to make the arrangement and spend the money. In the months of September and October he issued bearer cheques of Rs. 5,000 on two occasions but subsequently his wife wanted more

money and he withdrew Rs. 10,000 from his bank and passed on to her. He referred to withdrawal of Rs. 15,000 more from his own bank a little while later and making over of this amount also to his wife. A further mention was made of the issue of a cheque for Rs. 13,225 to his wife during the same period for payment of income-tax. It was given by Dr. Jain's reply paraphrased above to understand that he had issued two bearer cheques of Rs. 5,000 on two occasions in the period from August to October for being utilised by his wife in connection with the Kanchanjunga flat, and the same was the case with Rs. 10,000. It is true that one cheque (Exhibit D 33) for Rs.5,000 signed by him during the aforesaid period favored one P. N. Gupta and it was cashed by one Daryao Singh. We know that Dr. Jain had a driver of this name but the recipient of the amount could not necessarily be that Daryao Singh and even if it was Dr. Jain's driver, he might have performed the chore on behalf of P.N.Gupta. If the amount was to be had by Dr. Jain himself there could be no point in his mentioning P. N. Gupta as the payee' and encashing the cheque through his own servant. Exhibit D-34 the cheque dated September 18, 1973 for Rs. 13,225 a 'Self or Bearer' cheque like Exhibit P 158 was encased by Mrs. Vidya Jain deceased herself and prima-facie in view of his claiming to be over-burdened with his professional work and his inability to cope for that reason with the job of furnishing the Kanchanjunga flat it was more probable for him to leave the collection of the amount of cheque Exhibit P 158 to Mrs. Vidya Jain who was supposed to spend the money rather than to go to the bank himself and waste his precious time. Dr. Jain of course collected himself Rs. 15,000 vide cheque Exhibit D 32 dated October 8, 1973. It is true that Karan Singh does not remember the month when Rs. 10,000 were paid to him though he is certain that the date was 14th. It is also true that that Karan Singh does not seem to have an accurate memory for time. But there was nothing extraordinary about his being sure about the date since on that day he got a very substantial amount for nothing. As we have already discussed, the only source of income of Chandresh was Dr. Jain. She could not have received this huge amount from any other person. But we hesitate to agree with the trial court that from the aforementioned circumstance conclusion is irresistible that Rs. 10,000 given by Chandresh to Karan Singh were the same which were withdrawn by Dr. Jain.

(37) The prosecution examined Lance Naik Jagdish Parshad Shanna (PW50) to show that an attempt was made by the conspirators in September, 1973 to enrol the help of mystical powers for achieving their nefarious design. Jagdish Parshad Sharma was working as a subordinate of Rakesh in September, 1973. He had told Rakesh that his 'cousin sala' had recovered from his malady after obtaining a 'ghat' from a Siyana. Rakesh told him that he wanted 'some ghat for his Bhabi. On September 29, 1973 Rakesh told Jagdish Parshad that leave had been arranged and that he should accompany Rakesh. A fiat car Dlj li was waiting outside the Line at about 11 or 12 Noon. Daryao Singh driver had brought this car. Rakesh enquired from the driver if the car had been sent by Dr. N. S. Jain. The driver replied in the affirmative. Rakesh and Jagdish Parkash left for village Nogaya. On the way the car had some trouble and so they reached the village very late at night. Next morning the said brother-in-law accompanied them to Deeg where the Siyana lived. At Deeg, Rakesh and the said Sala went to the Siyana. They, however, returned after some time and told Jagdish Parshad that they could not find the Siyana. Thereafter they left for Delhi. However, the car again suffered a breakdown near Faridabad. The car and the driver were left there, and Rakesh and Jagdish Parshad travelled by a bus to Delhi.

(38) Dr. Jain in his statement recorded under section 313 of title Code of Criminal Procedure does not deny that his car Dlj li was taken by Daryao Singh in the end of September 1973 and that it broke down near about Faridabad and had to be brought to Delhi for repairs. According to Dr. Jain, Daryao Singh had informed him that he had taken the car at the request of some relations of Chandresh and that two men and one woman had requested Daryao Singh to drop them near Faridabad. But, says Dr. Jain, Daryao Singh had taken the car without his permission.

(39) Jagdish Parshad's statement is assailed on the ground that the prosecution has not produced any evidence to show that Rakesh and Jagdish Parshad were on leave on September 29 and 30, 1973. Jagdish Parshad admits that he did not apply for leave but explains : 'I had not myself taken any leave for going with Rakesh Kaushik but since he was my superior and he had granted the leave I went with him.' Since Jagdish Parshad was subordinate to Rakesh he had no

reason not to trust Rakesh. Statement of Durga Parshad (PW 48) that Rakesh was never absent from the roll call in September and October, 1973, is referred to make out that Rakesh never left the unit as suggested by Jagdish Parshad. Durga Parshad categorically deposes that there was no register for roll call and it was an oral affair. Absence from roll call was not entered in the attendance register which was being maintained. Durga Parshad was depending on his memory when he made an omnibus statement that Rakesh was never absent from the roll call in September and October, 1973. The attendance register for September, 1973 was not before Durga Parshad when he made the statement. thereforee this part of Durga Parshad's statement cannot be of any help to Rakesh and cannot be used to discredit Jagdish Pershad. We find that Jagdish Parshad stands contradicted by his police statement about the driver telling Rakesh that the car had been sent by Dr. Jain, but the said statement does not refer to this fact. In our opinion this is a material omission since the fact tends to show the association of Dr. Jain with this trip. He will, thereforee, not take into account this part of Jagdish Parshad's statement. We otherwise do not see any cause to disbelieve this witness. He had no reason to depose falsely against his immediate superior who was facing a murder charge. Even Dr. Jain does not deny Daryao Singh taking the car away at the request of some relations of Chandresh and the car breaking down near Faridabad. Rakesh was posing as a relation of Chandresh. That also supports Jagdish Parshad. This evidence also reveals that Dr. Jain's car could, at any time, be had by Chandresh and Rakesh and it could be kept by them even for more than one day continuously.

(40) According to the prosecution, after the bid to have Vidya Jain assassinated through Karan Singh aborted Rakesh decided to try Ram Kishan (PW 7), a teenager, who was working as a mechanic with Kirloskar & Company of Charkhi Dadri at a meagre salary (Rs. 220 or Rs. 230 p.m.) and was known to him, sometime in the last week of November, 1973. Rakesh asked Ram Kishan to accompany him to Delhi for the purchase of rings for the engine of his Mercedes truck. Ram Kishan demanded Rs. 10 per day in addition to his diet expenses and bus fare. These terms were readily accepted by Rakesh. Ram Kishan secured the necessary leave and they reached Delhi the next day at 4 P. M. and proceeded to Hauz Qazi from the bus stand. There Rakesh gave him Rs. 5 for his tea etc. and

asked him to wait for him. After about half an hour Rakesh returned. He took Ram Kishan to Delhi Cantonment in a taxi and gave him a bed for the night in his room. The following morning Ram Kishan accompanied Rakesh to Hauz Qazi and was asked by Rakesh to wait for him. Rakesh returned after about an hour and paid Ram Kishan Rs. 40 telling him that he had no money for the purchase of the requisite spares and he would be going home to arrange for the funds. Ram Kishan was advised to spend the night in Rakesh's room and asked to meet him again in the morning at Hauz Qazi. Next day Ram Kishan reached Hauz Qazi by the earliest bus. Rakesh turned up at 2 P.M. and asked him to wait. After a short while Rakesh came back with Chandresh whom he introduced as his relation. Rakesh hired two cycle-rickshaws, one for himself and Chandresh, and the other for Ram Kishan. They proceeded to the 'New Vig restaurant' in Chandni Chowk where Ram Kishan was given a seat on the ground-floor whereas the other two went upstairs. After taking tea etc. Chandresh paid the bill and parted company. Rakesh and Ram Kishan left for the house of the former's relations in Company Bagh. Ram Kishan deposes that next morning they met Chandresh again at Hauz Qazi. Rakesh telephoned from a nearby tea shop and a taxi. Dly 544, arrived thereafter about half an hour. Ramji was driving and the owner of the car was sitting in it. Rakesh paid the fare for the taxi to its proprietor and all of them travelled from Hauz Qazi to Connaught Circus. After dropping the owner of the taxi in Connaught Circus, they went to the York restaurant. Rakesh and Chandresh took their seats on the first-floor while Ramji and Ram Kishan stayed on the ground-floor. Rakesh and Chandresh came down after about two hours. Chandresh then left by herself whereas Rakesh, Ramji and Ram Kishan went to Motia Khan. When they were back from Motia Khan, Rakesh told Ram Kishan that the purpose for bringing him to Delhi was not to buy the rings. He disclosed that Chandresh was a friend of a doctor and that she was to be enabled to marry him. To achieve that end, Ram Kishan was further informed, the Doctor's wife had to be killed and this job was to be done by him. In case he failed to do so he would not be able to reach back Dadri Rakesh warned him that he was a bad man and repeated the threat a number of times. At the same time Rakesh gave him the inducement that if the mission was fulfilled Ram Kishan would be given enough money. Ram Kishan pleaded time and again that he was a humble person and the

task was beyond him. But Rakesh persisted in his threats. Being a meek person he (Ram Kishan) was frightened. Rakesh gave him Rs. 40/-, brought him to the bus stand, and instructed him to buy a knife from Raka's shop in Ghaziabad. The location of the shop was duly explained to him. Ram Kishan purchased the knife, as instructed, for Rs. 8/- and spent the night .in Delhi Cantonment in Rakesh's room. Ram Kishan goes on to state that the next morning he came to Hauz Qazi as advised where Chandresh and Rakesh met him. They went to a shop and telephoned from there. Ramji with his taxi arrived after about an hour. They drove to York restaurant. This time Ramji, Rakesh and Chandresh were accommodated on the first-floor while Ram Kishan got a seat on the ground-floor. Ram Kishan came out first, Ramji half an hour after him and Chandresh and Rakesh last of all. Chandresh then went away. Rakesh told Ram Kishan that they would be showing him the Doctor's Kothi. He was taken to the Doctor's house, No. D-291, defense Colony, and given an opportunity to have a good look at it. The car was then parked at a long distance from the Kothi and he was reminded that if he did not do the job he himself would have to die. He had, on his part, no intention to kill any one. He went to the Kothi and whiled away about half an hour. Rakesh and Ramji came back and rebuked him for having stood there quietly while she (meaning ostensibly the Doctor's wife) had left. Ram Kishan testifies further that from defense Colony he was taken to Hauz Qazi. Rakesh got out of the car and brought Chandresh. They paid another visit to the York restaurant. From there they went to a Jyotshi who lived in a 'Chaubara' in R. K. Puram. Chaadresh had a talk with 'the astrologer and the latter asked him to come again on Sunday. They returned to Connaught Place where Chandresh parted company with them. They then went to a Kothi at Barakhamba Road where Rakesh showed Ram Kishan the Doctor's shop. On the walls of the clinic there were photographs showing the Doctor shaking hands with the Rashtrapati. Rakesh brought these photographs to Ram Kishan's notice and pointed out that the Doctor was a big man and that there was no reason for him to feel panicky. Ram Kishan again told Rakesh that the job was impossible for him to handle. After coming downstairs Rakesh told the Doctor's driver, Chowdhury, that the Doctor would be operating upon Ram Kishan's mother's eyes and that he (Ram Kishan) would be spending the night at the Doctor's Kothi where a bed should be provided to him. Rakesh and Ramji then

took him to a tea shop and warned him again that he would lose his life if he did not do their bidding. In the evening Rakesh left Ram Kishan with Chowdhury. Chowdhury suggested that he should sleep in the car, to that, however, he did not agree. He spent the night in Chowdhury's Kothri and had a sound sleep. Ram Kishan further deposes that he got up in the morning and decided to flee for his life. He travelled up to the Delite Cinema by a bus and then hired a scooter for the Bus Stand. However, Rakesh happened to see him when the scooter was passing through Hauz Qazi and shouted for him to stop. Rakesh dismissed the scooter, abused Ram Kishan and brought him to a small Kothri. Ram Kishan touched his feet and begged him to let him go. He spent the night, as dictated by Rakesh, at Ramji's house where he was scolded by the latter for his failings to accomplish the job. Ram Kishan held out a false assurance to finish the job. On the following morning Ramji gave him a slip of paper bearing the number of a telephone and instructed him to ring from Hauz Qazi in the name of Rakesh for a taxi being brought there. Ram Kishan rang up. But he received a reply from the other side that the taxi could not be sent. Then Rakesh set him and asked if the job had been done. He replied in the negative and stated that he was incapable of doing it. Rakesh took him to Kapasheda where they spent the night. The next morning they came again to Hauz Qazi and met Chandresh. There was the usual telephone call and the arrival of the taxi with Ramji at its wheel. They came to the York restaurant where he (Ram Kishan) took his tea at the ground-floor while the other three went to the first-floor. Ram Kishan finished his tea and came out. The others emerged after about two hours. Chandresh then left them. They drove to the defense Colony. Near the Doctor's Kothi they (Rakesh and Ramji) again asked Ram Kishan to go and finish the job. Ram Kishan now told them that he could not do it and if they so wanted they could kill him. The taxi was then driven to Bhogal and there Ramji and Rakesh brought Kalyan Gupta. They had some talk amongst themselves and let Ram Kishan off. When he was leaving Rakesh threatened him that if he leaked out anything to anybody he (Rakesh) would be there to deal with him. Ram Kishan took a bus for Dadri and threw the knife which he had been carrying into a Nallah near Jhajhar. Rakesh met him on the 7th of the same month and told him that his stars had doomed him to break his head against steel scrap, that the job had already been done and that if he opened his lips to anyone about

it he would not be left alive. He implored Rakesh to leave him alone urging that he had a small child to bring up and that he should not be involved in the matter unnecessarily. The police came to him on the 13th December at Dadri and brought him to Delhi. He was interrogated that very day and produced before a Magistrate on the 15th of the same month when his statement under section 164 of the Code of Criminal Procedure was recorded (Exhibit P29)

(41) We would presently discuss the statement of Ramji (PW 1) in detail. It is to be noted that according to the approver when he went to Hauz Qazi for the collection of his dues along with his employer, Dharam Vir Malhotra, on November 27, 1973, he found that Rakesh Kaushik was accompanied by Chandresh Sharma and a young boy whose name he subsequently came to know as Ram Kishan. After Malhotra had parted company at Connaught Circus they proceeded to the York restaurant and took tea there. He also speaks of his driving Rakesh Kaushik and Ram Kishan to Motia Khan. They returned to the York restaurant after two hours and there Rakesh told Ram Kishan to kill Dr. Jain's wife because a marriage between Chandresh and Dr. Jain had to be brought about. It is again in his deposition that at 8-30 A.M. on November 28, 1973 when he met Chandresh and Rakesh in Chowk Hauz Qazi, Ram Kishan was present with them. Leaving Chandresh behind, he drove Rakesh and Ram Kishan to the defense Colony where Rakesh told Ram Kishan to kill Dr. Jain's wife. Ram Kishan was then armed with a long knife. Ram Kishan kept hanging around the Kothi and on his return he (the approver) brought Rakesh and Ram Kishan to Hauz Qazi. His testimony mentions another visit to the York restaurant, their return there from to Hauz Qazi for dropping Chandresh there and his driving Rakesh and Ram Kishan to 18 Barakhamba Road where Dr. Jain's clinic is situated. It is also stated by him that Rakesh and Ram Kishan went upstairs; come to back after a short while; Rakesh told Dr. Jain's chauffeur that Ram Kishan's mother's eyes were to be operated upon and that as per instructions of the Doctor, Ram Kishan be given a bed for the night at the Kothi. According to this witness also Rakesh and Ram Kishan proceeded there from to Hauz Qazi where Chandresh Joined them and they went to R. K. Puram to meet an astrologer. After some time he drove these persons to Hauz Qazi for leaving Chandresh there. They then came to his Jhuggi in Jangpura. His taxi was taken to the defense Colony for the second time at about 9

P.M. He stopped near D-291 where Rakesh told Ram Kishan to put up with the driver and kill the Doctor's wife. His version is further in accord with the statement of Ram Kishan as to his having come to his (Ramji's) house the next evening (November 29), his having scolded him for not committing the murder, and as to his giving Ram Kishan a bed for the night on the latter's assuring him that he would do the job the next day. Ramji testifies as to his instructing Ram Kishan on November 30, 1973 to telephone Malhotra by posing as Rakesh Kaushik from Hauz Qazi, Malhotra receiving a telephone call purporting to be from Rakesh, and Malhotra not sending the taxi to Hauz Qazi because the voice of the person asking for the taxi did not resemble that of Rakesh Kaushik. Ramji further testifies that when he took the taxi to Hauz Qazi on December 1, 1973 in compliance with the directions of Malhotra he found Chandresh, Rakesh and Ram Kishan there. He drove them to Connaught Circus, dropped Chandresh there and then took Rakesh and Ram Kishan to the defense Colony. The taxi was stopped at some distance from D-291 and both Rakesh and he himself brought a lot of pressure to bear on Ram Kishan to go and stay in front of D-291 and kill Dr. Jain's wife when she came out. Ram Kishan did go as directed and they waited for him for some time but when Ram Kishan came back he (Ramji) told Rakesh that Ram Kishan was not up to the job and that he (Ramji) would suggest another man who could do it. He then drove them to the house of Kalyan Gupta at Bhogal.

(42) Dharam Vir Malhotra (PW 3) has deposed that when he went to Hauz Qazi to collect his dues from Rakesh Kaushik on November 29, 1973 at about 11 A.M. a boy described as 'Kishan', whose name was later on discovered to be Ram Kishan, was also with Rakesh. When he insisted on the payment of the amount Rakesh went into a Gali and returned with Chandresh. She remonstrated with the witness (Malhotra.) for not trusting his driver and insisting on immediate payment, but in view of his persistence they sat with him in the car and drove to Connaught Circus. The taxi was parked near the Fire Brigade. Rakesh then left the taxi stating that he would return with the money after getting it from Pandit Brothers or someone of such name, and till his return Ram Kishan, Chandresh, Ramji and he himself continued sitting in the taxi. Malhotra, who is a reliable witness, corroborates the presence of Ram Kishan with Rakesh, Chandresh at the relevant time. The appellants could produce evidence from the records of Kirloskar &

Company if they had any doubts about Ram Kishan's veracity that he had not been attending to his duties at Charkhi Dadri from November 27 to December 1, 1973, but not only they omitted to do it, the subject was not broached to Ram Kishan at the time of his cross-examination even. The trial court found that Ram Kishan was moving in the company of the aforesaid conspirators on the dates mentioned above and we see no reason to take a different view.

(43) It is contended by the appellants that Ram Kishan was by his own showing an active member of the conspiracy and so the version put forward by him should be discarded in toto. As has already been noted, Ram Kishan was duped by Rakesh to come to Delhi on the false pretext of his services being needed for the purchase of rings for a Mercedes truck. When the real design was revealed to Ram Kishan, he told Rakesh in unambiguous terms that he was just a milksop and the job thrust on him was simply beyond his might. There is nothing on record to show that Ram Kishan had any previously committed offences to his credit. Rakesh and Chandresh having already burnt their fingers in enlisting the services of a hardened criminal (Karan Singh), it might have been thought that a raw youth inexperienced in such like affairs had better be bluffed into accepting the assignment. We have noted already that Rakesh threatened Ram Kishan that if he (Ram Kishan) did not fulfill the mission he would not reach Charkhi Dadri alive, and this threat was repeated a number of times for the requisite impact. Ram Kishan knew that Rakesh belonged to the army which is trained for killing persons when necessary. Ram Kishan also came to know during his stay at Delhi that Rakesh and his friends were making all out efforts to kill a woman belonging to a very high stratum of society with the blessings of her husband who had the advantage of top-most contacts. He himself was a callow youth hailing from a small place in a backward region of the country trying to earn his keep as a small-time mechanic. The repeated threats must have instilled an adequate amount of terror in his mind that if he did not at least pretend that he would be carrying out Rakesh's command there was very little chance of his survival. He made, therefore, the motions of purchasing a knife from Ghaziabad and sticking out an hour or so close to Dr. Jain's Kothi to avoid the wrath of his tormentor. But the circumstances eloquently speak of his never falling in line, from the heart of his hearts, with the design of Rakesh and others to do away with Vidya Jain. The little

show he put up as a would-be-killer had no conviction behind it, it had its roots in irresistible coercion and it is absolutely undeserving of being accepted as proof of his joining Rakesh, Chandresh or Ramji in the conspiracy to do away with Vidya Jain.

(44) The learned Sessions Judge has remarked that Ram Kishan had opportunities galore to run away from Delhi but virtually paralysed by extreme fear as he was he could not possibly think of leaving Delhi without Rakesh's permission. There were no impregnable walls around Dadri as could ensure safety for him in the event of Rakesh deciding to carry out his threat because he had been, in the wake of a treacherous hope of his turning out to be as an effective instrument, placed in possession of a dangerous secret. According to the trial court, again, Ram Kishan did not inspire confidence and was unreliable. In its view his statement was chockful of discrepancies and improbabilities. It did not care much, however, to elaborate this rather sweeping observation. To bring the point home it said that it was difficult, if not impossible, to believe that Ram Kishan was threatened and coerced in joining Rakesh, Chandresh and Ramji in this conspiracy, that he was made to go to Ghaziabad for the purchase of a knife and that he kept staying at Delhi throughout this period for fear of Rakesh. Now so far as Ram Kishan's staying at Delhi at the instance of Rakesh and purchasing a knife from Ghaziabad are concerned, Ram Kishan's story appears to have been unreservedly accepted by the trial court because paragraph 18 of its judgment reads 'This much is, however, clear from the evidence aliunde discussed under sub-head (d) above that Rakesh Kaushik had tried to use Ram Kishan P.W. as an instrument for committing the murder of Vidya Jain between November 24, and December 1, 1973'. The one reason given for the disbelief springing from Ram Kishan's testimony is that 'if he really wanted to go back to Dadri earlier there were opportunities galore for him to do so. For example, he could have quite conveniently gone to Dadri instead of Ghaziabad on November 27, 1973 when he says that he was sent to Ghaziabad for the purchase of a knife'. The circumstance relied upon by the learned Sessions Judge was, in fact, put to Ram Kishan in his cross-examination and his reply was: 'It is true that I had many opportunities to escape to Dadri but I did not do it for I was afraid of my life'. When questioned by another defense counsel on the same point he said: 'I did not try to run away

because I knew that they would not let me to do so'. The learned trial Judge has himself said that Ram Kishan was a coward but added 'who somehow ventured into and joined this criminal conspiracy on some allurement and that after his failure to do the part assigned to him, he was sent back'. We have already referred to Ram Kishan's statement as to his having been engaged by Rakesh to help him in the purchase of rings for his truck at a daily allowance of Rs. 10 plus bus fare and diet expenses. It was testified by him that he had joined as an apprentice with Mistri Jeet Singh and worked with him for a year and a half. Thereafter he assisted his father who was blacksmith for sometime, and then he joined Kirloskar & Company. The cross-examination by Rakesh's counsel shows that Ram Kishan did have experience of handling truck repairs. There is no ground, therefore, not to believe him when he says that he came to Delhi with Rakesh on the latter representing that his assistance was needed for the purchase of rings. He was duly paid all the allowances promised to him so long as he stayed at Delhi by Rakesh and the illusion about the function he was supposed to discharge might have been sustained by Rakesh's statement that the rings were not being purchased straightaway because he was short of money and the same had to be brought from home. When Rakesh disclosed his cards in the parking lot of the York restaurant about the contemplated murder Ram Kishan told him that he was a humble person and incapable of executing any such job. The learned trial Judge fell into an error in conjecturing that Ram Kishan had joined the criminal conspiracy on some allurement. There is no evidence to bear out the insinuation. Ram Kishan has, no doubt, stated that Rakesh had offered to pay him 'enough' money if the job was done, but not even the foggiest idea of the quantum of money likely to be paid was conveyed to him. There is no material on record to suggest that Ram Kishan was taken in by this inducement proceeding from a person who had brought him to Delhi by playing a trick on his confidence and had been reminding him ad nauseam that the moment he refused to do the job he would be no more. It is just not possible to conclude, as observed by the learned Sessions Judge, that Ram Kishan had failed to do the part assigned to him because, as already discussed, there is no material to suggest that he ever undertook to play the said part. Mere acquisition of a knife to buy a little time is neither here nor there. There is total lack of evidence that he ever enquired from

Rakesh or any one else how to identify the woman whom he was supposed to put to death or that he made faintest effort to gain entrance to that part of Dr. Jain's house where she could be expected to be found. He admittedly spent one night in D-291 but that was in the driver's Kothri. No one has told us that there was any direct access from that Kothri to the room where Mrs. Jain used to sleep or that Ram Kishan ever set his foot down the bed, given to him by Chowdhury, to have even a peep at that place. Had it been anywhere in his mind to kill Mrs. Jain he would have been worrying his head how to get at the throat of the woman marked for liquidation. On the contrary, as he says, he went into sound sleep. We would not, therefore, agree with the learned Sessions Judge that he was a coward who failed to play the role assigned to him in the conspiracy. His only foible was that, because of his humble situation and weak temperament, he did not plainly tell Rakesh at the very outset that he would not have anything to do with the murder being engineered by the conspirators even if his refusal may spell his own death, and he took three or four days to muster enough courage to make this declaration. There may be some discrepancies between his statement and the depositions of some other witnesses here and there but none of them can be regarded so significant as to put any material discount on his credibility.

(45) Ram Kishan did not come to know of the murder immediately it was committed because he concedes he does not read any newspaper. There should be no surprise about it because he is a man who ekes out his living by serving as a petty mechanic since his academic career collapsed with his failure in eighth class examination. He was told by Rakesh on December 7, 1973 that the job had been done even without his help. It has been contended on behalf of the appellants that he should have informed the police about the nefarious designs of Rakesh, Chandresh etc. when he became aware of the same and his delay in passing on the information to the police before or after December 1, and in any case on December 7, should clothe him with the character of an accomplice and tell heavily on the worth of his evidence. But we believe, as stated by him, that he was mortally afraid of Rakesh on account of the threats extended by him and his dread must have been intensified by the revelation that the woman, the conspirators were after, had actually been finished. Omitting to rush to the police would not make Ram Kishan an accomplice, and though the circumstance would

tend to prompt the court to scrutinise his evidence closely, it could not deprive it, as suggested, of all its value.

(46) It has been urged before us that Ram Kishan should not be believed when he says that he had slept for two nights in Rakesh's quarter because there is a sentry posted at the entrance to the Cantonment and Ram Kishan could not have got into the guarded area without a pass. Ram Kishan has, however, explained that because he had gone with Rakesh and been seen in his company the sentries on duty did not object to his proceeding to the relevant quarter. But then we find that Durga Parshad (PW 48), who was sleeping in Rakesh's room during Rakesh's leave, contradicts him. We will, therefore, rely heavily on this part of Ram Kishan's evidence. Another argument advanced is that Ram Kishan had been sleeping in the same clothes in which he travelled from Dadri and a man attired in such dirty fashion must have attracted notice of and awakened suspicion in the minds of all the people present in the York restaurant. But we have to keep in mind that it was middle of winter when generally speaking there is no perspiration and little dust to spoil one's clothes and the York restaurant is by no means such an exclusive place where only the cream of the capital's gentry is allowed admittance. Ram Kishan's statement, as supported by that of Ramji and Dharam Vir Malhotra, does make out that there was a conspiracy to murder Dr. Jain's wife and that Rakesh Kaushik, Chandresh Sharma and Ramji were undoubtedly members of the same and they were taking active steps to accomplish its object.

(47) The learned defense counsel cited before us Vemireddy Satyanarayan Reddy and others v. State of Hyderabad : 1956 CriLJ777 wherein it was urged that if a man sees the perpetration of a crime and does not give information of it to any one else, he might well be regarded in law as an accomplice. We, however, find that while repelling this contention, it was ruled that there was no warrant for such an extreme proposition. Their Lordships quoted with approval the following observations of Russell on Crime, Tenth Edition, page 1846:

BUT a person may be present, and, if not aiding and abetting, be neither principal nor accessory; as, if A, happens to be present at a murder and takes no part in it, nor endeavors to prevent it, or to apprehend the murderer, this course of conduct

will not of itself render him either principal or accessory.

According to their Lordships the evidence of such a man should be scanned with much caution and the Court must be fully satisfied that he is a witness of truth, especially in a case where no other person was present at the time to see the murder. Ram Kishan in this case is not the only witness of the crime under consideration and we have discussed in detail the circumstances which justified the conduct taken exception to by the appellants. This authority does not, therefore, appear to help them in any manner.

(48) Ramji, the approver, is the star witness of the prosecution. His statement is assailed on the ground that having been granted pardon conditionally, he is out to involve the appellants to please the prosecution with brazen lies. The validity of pardon granted to Ramji is also challenged. The position of an accomplice in law is that he is a competent witness against an accused and a conviction can proceed on his uncorroborated testimony, (Section 133 of the Evidence Act). However, illustration (b) to Section 114 of the Evidence Act provides that the court may presume that an accomplice is unworthy of credit unless corroborated in material particulars. This presumption is based on a rule of commonsense. After all an accomplice is a person who, having taken part in the commission of a crime along with his erstwhile 'companions, agrees to denounce them' for a consideration. It is thus possible that he may make an effort to impute greater part of the crime to the accused and to also involve some innocent persons at the behest of the police. It is in view of these considerations that this rule of prudence has hardened into rule of law. Over a long period the courts have had occasions to consider the value of the evidence of an accomplice. The Privy Council considered the ambit of section 133 read with illustration (b) to section 144 of the Evidence Act in *Bhuboni Sahu v. The King* and held 'that whilst it is not illegal to act upon the uncorroborated evidence of an accomplice it is a rule of prudence so universally followed as to amount almost to a rule of law that it is unsafe to act upon the evidence of an accomplice unless it is corroborated in material respects so as to implicate the accused;..... An accomplice cannot corroborate himself; tainted evidence does not lose its taint by repetition'. The Supreme Court in *Rameshwar v. The State of Rajasthan* : 1952 CriLJ547 , explained what the rule about corroboration is and

what the expression 'hardened into rule of law' means. According to their Lordships: 'The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, and in jury cases, must find a place in the charge, before a conviction without corroboration can be sustained'. It was further observed that the nature and extent of the corroboration, when it is not considered safe to dispense with it, must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence charged. The quintessence of the law on the subject was so stated:

'FIRST, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction.

Secondly, independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime.

Thirdly, corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another.....

Fourthly, corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.'

In *Haroom Haji Abdulla v. State of Maharashtra* : [1968]2SCR641 the rule of corroboration was expounded in the following words:

THIS cautionary provision incorporates a rule of prudence because an accomplice, who betrays his associates, is not a fair witness and it is possible that he may, to

please the prosecution, weave false details into those which are true and his whole story appearing true, there may be no means at hand to sever the false from that which is true. It is for this reason that courts, before they act on accomplice evidence, insist on corroboration in material respect as to the offence itself and also implicating in some satisfactory way, however small, each accused named by the accomplice.

In *Sheshanna Bhumanna Yadav v. State of Maharashtra*, : 1970 CriLJ1158 , again it was ruled that:

THE nature of corroboration is that it is confirmatory evidence and it may consist of the evidence of second witness or of circumstance like the conduct of the person against whom it is required. Corroboration must connect or tend to connect the accused with the crime..... (Corroborative) evidence must confirm that part of the testimony which suggests that the crime was committed by the accused.

A double test of credibility of an approver was laid down by the Supreme Court in *Sarwan Singh Rattan Sings v. State of Punjab* : 1957 CriLJ1014 , in the following terms:

AN approver is undoubtedly a competent witness under the Evidence Act..... His evidence must show that he is a reliable witness and that is a test which is common to all witnesses. If this test is satisfied the second test which still remains to be applied is that the approver's evidence must receive sufficient corroboration. This test is special to the cases of weak or tainted evidence like that of the approver.

While discussing the nature of corroboration it was observed:

IT would not be right to expect that such independent corroboration should cover the whole of the prosecution story or even all the material particulars. If such a view is adopted it would render the evidence of the accomplice wholly superfluous. On the other hand, it would not be safe to act upon such evidence merely because it is corroborated in minor particulars or incidental details because, in such a case,

corroboration does not afford the necessary assurance that the main story disclosed by the approver can be reasonably and safely accepted as true.

The observations made by the Supreme Court in Sarwan Singh Rattan Singh's case (supra) were explained by the Court in Major E. G. Barsay v. State of Bombay, : 1961 CriLJ828 , thus:

THIS court could not have intended to lay down that the evidence of an approver and the corroborating pieces of evidence should be treated in two different compartments, that is to say, the courts shall have first to consider the evidence of the approver de hors the corroborated pieces of evidence and reject it if it comes to the conclusion that his evidence is unreliable; but if it comes to the conclusion that it is reliable then it will have to consider whether that evidence is corroborated by any other evidence. This court did not lay down any such proposition.... in most of the cases the said two aspects would be so interconnected that it would not be possible to give a separate treatment, for as often as not the reliability of an approver's evidence, though not exclusively, would mostly depend upon the corroborative support it derives from other unimpeachable pieces of evidence.

This view was reiterated by the Supreme Court in Saravanabhavan and Govindaswamy v. State of Madras : 1966 CriLJ949. In Tribhuvan Nath v. The State of Maharashtra Air 1973 Sc 450, adverting to the double test laid down in Sarwan Singh Rattan Singh's case (supra) their Lordships said:

IT does not mean that an accomplice's evidence cannot be relied upon unless it is totally and absolutely blemishless. In majority of cases such is not the case and in spite of some discrepancies and other such infirmities courts have often found it safe to act on the evidence of such witnesses. A case illustrating this proposition is to be found in Saravanabhavan v. State of Madras : 1966 CriLJ949 , where the evidence of the approver contained certain discrepancies and was also contradicted by the testimony of another witness and yet that evidence was held to pass the test of being credible and was accepted as it was corroborated by other evidence.

The foregoing exposition of the law was reaffirmed by the Supreme Court in a recent case *Dagdu and others etc. v. State of Maharashtra* : 1977 CriLJ1206.

(49) The manner in which Ramji was granted pardon has come up for severe criticism at the hands of the learned counsel for the appellants. It is contended that Ramji was not willing to make a confession and become an approver, and that the Investigating Officer Faqir Chand compelled him to do so by adopting extra-legal measures. Ramji was arrested at about 9.30 P.M. at his Jhuggi on December 11, 1973. He was taken to Police Station defense Colony and interrogated by Inspector Rama Kant. The information elicited from him was recorded in the case diary as 'Daryafat (Exhibit D1I). Ramji was produced on December 12 before the then Chief Judicial Magistrate who remanded him to judicial custody till December 20, 1973 since he was to be put up for identification. However, Ramji refused to take part in the test identification parade. Thereafter the Chief Judicial Magistrate granted police remand of Ramji till December 24, 1973. Inspector Faqir Chand interrogated him on December 21, 1973, but did not make a record of his statement since he was only repeating what he had said earlier. On December 22, 1973 Inspector Faqir Chand again interrogated him and recorded a formal statement. On December 23, 1973 Ramji was removed from Police Station defense Colony to Police Station Civil Lines. The reason for this shifting, as given by Inspector Faqir Chand, is that it was more convenient for him to have Ramji near his office. Ram was interrogated further on the 23rd. Since nothing new was disclosed by him the necessity for recording anything did not arise. Whereas Ramji was being produced before the Magistrate for remand along with his other co-accused previously, he was taken to the court along for police remand on December 24, 1973 because his co-accused had been sent to judicial lock-up. Mr. Satnam Singh, Judicial Magistrate First Class on duty, granted the police remand till December 26, 1973 only. The application for remand is Exhibit 5 3. Inspector Faqir Chand had given the reason for police remand as 'spectacles of the deceased have not been recovered as yet and the accused is to be interrogated further in order to ascertain the source of supply of knife, the weapon of murder, pistol and cartridges relating to this case'. These reasons were frivolous. The knife had already been recovered from Ujagar and the pistol from Kartar. The source of supply of these weapons could have been ascertained from them. It had also

become obvious by this time that Ramji could not have possibly anything to do with the spectacles of the deceased since he never came to the spot where Vidya Jain had been felled. After obtaining the remand Inspector Faqir Chand confined Ramji at Police Station Darya Ganj on December 24 and 25, 1973. The reasons best known to him, did not inform the Judicial Magistrate of C.I.D. (Crime) (C.I.D. crime do not have any lock-up of their own) used to mess at that police station and that Ramji was under his charge. This reason is as trivial as the reason for shifting him (Ramji) to Police Station Civil Lines. It is obvious that the only purpose to shuttle Ramji from one police station to another was to ensure that no relation or any other outsider gets an opportunity to meet him. On December 26, 1973 Ramji was produced before a Judicial Magistrate for judicial remand with application Exhibit D-54- signed by Inspector Faqir Chand requesting for judicial custody for 14 days, i.e., up to January 8, 1974. The Magistrate granted remand as prayed for. Instead of sending Ramji to judicial custody Inspector Faqir Chand produced Ramji before Additional District Magistrate (South) and made application Exhibit P355. In this application Inspector Faqir Chand states that Ramji 'wants to make his confessional statement in the court voluntarily. Hence, I while producing Ramji in the court pray that his confessional statement may be recorded under section 164 of the Criminal Procedure Code'. The Additional District Magistrate ordered that 'the proceedings may be conducted by S.D.M., Punjabi Bagh'. Ramji was, therefore, taken to the S.D.M. who remanded Ramji to Judicial custody till December 27, 1973 because the Magistrate found that Ramji was being produced before him in police custody. The S.D.M. also directed that Ramji be produced before him on December 28, 1973. The above-mentioned facts show that Inspector Faqir Chand, for reasons best known to him did not inform the Judicial Magistrate about Ramji's willingness to make a confession. The reason given to the trial court was that the Judicial Magistrate was working as a 'Duty Magistrate' for that day and 'was too busy'. But the Inspector had not informed the A.D.M. (South) that he had already obtained an order for judicial custody, nor did he apprise the S.D.M. about it. The result was that on the same day two orders for judicial custody of Ramji were made by different magistrates. The first order was by a Judicial Magistrate whereas the second one was by a Sub-Divisional Magistrate. The reason given by the Inspector is obviously baseless. Evidently he

was over-reaching the courts. He was trying to avoid a Judicial Magistrate for recording the confessional statement of Ramji. He succeeded because in those days Judicial Magistrates and Executive Magistrates had concurrent powers to record statements under section 164 of the Code of Criminal Procedure. We have no hesitation in concluding that the Inspector was trying to escape judicial scrutiny by giving preference to an Executive Magistrate. We must severely condemn this conduct of Inspector Faqir Chand. It is such like actions of police-officers which have kept provisions of section 162 of the Code of Criminal Procedure on the statute book up to now. Again, when Inspector Faqir Chand made an application Exhibit P299 before the Chief Judicial Magistrate on January 3, 1974 requesting for ant of a pardon under section 337 of the Code of Criminal Procedure to Ramji, he kept mum about the confessional statement of Ramji before the Sub-Divisional Magistrate and the circumstances in which it was made. Ramji admits that he was kept in solitary confinement even on December 27. It is not the contention of the appellants that because of the afore- said conduct of Inspector Faqir Chand the statement made by Ramji as an approver should be thrown out. It is, however, contended, and in our opinion rightly, that Ramji's evidence should be scrutinised more closely than that of an ordinary approver.

(50) It has been urged before us that the pardon granted to Ramji is not valid in law and so he continues to be an accused person like the appellants and his testimony as an approver cannot be banked upon by the prosecution to get the convictions recorded by the learned Sessions Judge affirmed by this Court. What is meant to be conveyed by the learned defense counsel is that section 337 of the Code of Criminal Procedure, 1898, contemplates tender of conditional pardon to only such a person as is 'supposed to have been directly or indirectly concerned in or privy to the .offence' and that Ramji does not appear to fulfill this qualification. The argument is, however, fallacious. The order to which exception is being taken (Exhibit P 301) was passed by Mr. K. B. Andlay, Chief Judicial Magistrate, on January 3, 1974 by which time Ramji had established his complicity in the crime in unequivocal terms (see statements Exhibits D 1 and D 3, dated December 11 and 28, 1973 respectively). The order reveals that Mr. Andlay had gone through the relevant papers. He thus must have perused the aforesaid statements. These statements leave no room for doubt that Ramji appeared to be very much privy to

the offence of conspiracy as well as murder to which the case pertained and the mantle of an approver could, therefore, with all justification, fall on him. The learned defense counsel's plea that there was no adequate reason for the grant of the pardon is again unreliable. The pardon referred to in section 337 is to be granted 'with a view to (Staining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence' and the learned Chief Judicial Magistrate came to the conclusion on perusal of all the relevant records and hearing the facts of the case, that the matter which involved conspiracy rested mainly on circumstantial evidence and because sufficient direct evidence was absent it was necessary in the interest of justice, that one of the accused may be made an approver. Ramji seemed to him to be a suitable person for the purpose and thus the order in question cannot be dubbed as recorded arbitrarily or without abundant reason.

(51) An objection has been raised to the jurisdiction of Mr. Andlay to pass the order Exhibit P 301 because, according to the learned defense counsel, such an order can be passed by a Magistrate of the First Class making the inquiry into or holding the trial of the offence or the District Magistrate and Mr. Andlay did not fall in either of these categories. This contention seems, however to have been raised in ignorance of the Union, Territories (Separation of Judicial and Executive Functions) Act, 1969, section 5 whereof provides that 'where under any law the functions exercisable by a Magistrate relate to matters which involve the appreciation or sifting of evidence or the formulation of any decision which exposes any person to any punishment, or penalty, or detention in custody pending investigation, inquiry or trial or would have the effect of sending him for trial before any Court, such functions shall, subject to the provisions of this Act and the Code of Criminal Procedure, 1898, as amended by this Act, be exercisable by a Judicial Magistrate'. The Chief Judicial Magistrate was consequently the officer who could perform, under the law as in force in Delhi on the material date, the functions of the District Magistrate and Mr. Andlay was competent to pass the order in question.

(52) The order already referred to was attacked also on the ground that Ramji never accepted pardon on any conditions and that deprived the aforesaid order of

all its validity. The fact, however, is that Ramji himself made an application Exhibit P 2 through jail for his being made an approver on December 29, 1973 after he had been in judicial custody for number of days. In his statement made before Mr. Andlay on January 3, 1974 (Exhibit P 3) he affirmed his willingness to make a full and true disclosure of all the facts relating to the case within his knowledge in the event of the grant of pardon. Mr. Andlay's order dated January 3, 1974 also speaks of tender of pardon to Ramji on condition of his making full and true disclosure of all the circumstances within his knowledge relating to the offences under section 302/120B, Indian Penal Code, and section 25 of the Indian Arms Act with which the case was concerned. The order categorically states that it had been read over and explained to Ramji who had accepted the tender of pardon on the aforesaid conditions. Mr. Kathuria, the learned counsel for Kalyan and Bhagirath, has invited our attention to the State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and another, : [1964]3SCR297 , but we fail to understand what use he can make of it. In that case it was contended by the State that 'if pardon is tendered to an accused person and eventually it is found that the pardon is illegal such person is pushed back into the rank of an accused person and being no more than an accomplice would be a competent witness'. But their Lordships did not make any pronouncement one way or the other on this proposition. It was, however, ruled that a pardon granted bona-fide is fully protected by the provisions of Section 529 of the Code of Criminal Procedure. This view was, affirmed in a subsequent decision in State of U.P. v. Kailash Nath Agarwal and others : 1973 CriLJ1196 .

(53) It was also brought to our notice by Mr. Kathuria that an order passed under Section 337 of the Code of Criminal Procedure is subject to revision. That, indeed, is true but vide Section 131 of the Limitation Act, 1963 a revision has to be filed by the aggrieved party within ninety days, and the order in question, it has been conceded, was not challenged by any one. It is futile to speak of a revision of Mr. Andlay's order at this stage. Moreover, as already discussed, we find it valid.

(54) We will now scrutinise, closely, the statement of Ramji in respect of the conspiracy as well as with regard to each individual appellant. Ramji, as a driver of Malhotra's taxi, came in contact with Rakesh about 21 months before the

occurrence. Dharam Vir Malhotra (PW 3) tells us that he had received a telephonic call for a taxi from Haryana Taxi Service, South Avenue, at about 8 P.M. in the beginning of October, 1973. He had taken Ramji with the taxi to Haryana Taxi Service where he met Rakesh. After settling the terms, Malhotra left Ramji with taxi Dly 544 at the disposal of Rakesh. Rakesh took Ramji to Charkhi Dadri, Bhiwani and Pilani, and released the taxi the following morning. Ramji states that before dismissing the taxi Rakesh obtained from him the telephone number of Malhotra. Next time Ramji met Rakesh on November 26, 1973. Malhotra deposes that he received a telephone call from Rakesh at about 8 P.M. on November 25, 1973. Rakesh wanted the taxi at 10 A.M. the following morning at Kashmere Gate. Ramji and Malhotra took the taxi to Kashmere Gate bus stand as desired on the 26th. They waited for Rakesh. However, Rakesh did not turn up and so they returned at about 11 A.M. Rakesh phoned Malhotra again the same evening. This time Rakesh asked for the taxi at Ajmere Gate Petrol Pump at 8.30 P-M- and Ramji drove it to that place alone. Ramji met Rakesh who was accompanied by Chandresh. They were driven to York restaurant. Ramji was also taken inside the restaurant by Rakesh and Chandresh. During conversation, Chandresh took Ramji into confidence and told him that she needed the taxi for 3 or 4 days. She also told Ramji that she had arranged for a man to kill Dr. Jain's wife and that if the plan succeeded she would be able to live with the doctor as his wife. Ramji was promised a car as a gift as well as permanent employment. Ramji goes on to depose that being a poor man he succumbed to the allurements and agreed to provide the taxi. When he drove Rakesh and Chandresh back to Hauz Qazi at about 9.30 P.M., Rakesh asked him to bring the taxi to Hauz Qazi the following morning at 11 A.M. On November 27, 1973 Ramji took the taxi again to Hauz Qazi as desired by Rakesh. This time Malhotra also accompanied Ramji to recover his dues from Rakesh. From Hauz Qazi, Rakesh, Chandresh, Ram Kishan, Ramji and Malhotra came to Connaught Circus where Malhotra was paid his dues and he got down the taxi. The rest of them went to York restaurant once more. We have already discussed Ramji's statement qua Ram Kishan and need not repeat it. Suffice it to say that Rakesh accompanied Ramji to Bhogal. While dismissing the taxi at Bhogal, Rakesh told Ramji that he was going to his village but he would need the taxi on the following day as well. Rakesh made a note on the duty slip

Exhibit Pi asking for the taxi at 8 A.M. On November 28, 1973 Ramji again drove the taxi to Hauz Qazi and met Chandresh, Rakesh and Ram Kishan. However, only Rakesh and Ram Kishan got into the taxi. They went to the defense Colony. Ramji describes in detail how Ram Kishan was asked to kill Vidya Jain and was taken to the defense Colony and 18 Barakbamba Road where Dr. Jain has his clinic and was ultimately left at Dr. Jain's house for the night. On this day Ramji drove Rakesh, Chandresh and Ram Kishan to Jyotshi Bhagwan Das P.W. Ramji also deposes that on November 29 he rebuked Ram Kishan for not having killed Vidya Jain and gave him the bed for that night. On November 30, he instructed Ram Kishan to ring up Malhotra for the taxi by impersonating Rakesh. But Malhotra did not send the taxi as he felt that the voice on the phone asking for the taxi did not sound like that of Rakesh. Ramji goes on to say that on December 1, 1973 Malhotra instructed him at about 9 A.M. to take the taxi to Hauz Qazi. Ramji came to Hauz Qazi and found Chandresh, Rakesh and Ram Kishan there. He drove them to Connaught Circus where Chandresh was dropped. Rakesh and Ram Kishan were taken to the defense Colony. Ramji stopped the taxi at some distance from the house of Dr. Jain. Ramji and Rakesh pressed Ram Kishan to go and stay in front of Dr. Jain's Kotfu, and kill doctor's wife when she came out. Ram Kishan went as directed but returned to the taxi after some time without doing the job. At this stage Ramji decided to play a vital role in the conspiracy. He states that finding Ram Kishan to be useless, he told Rakesh that he would suggest a man who would be able to complete the job. He then drove Rakesh and Ram Kishan to the house of Kalyan Gupta at Bhogal and introduced Rakesh to Kalyan Gupta. Rakesh told Kalyan that they were in need of assassins to kill a doctor's wife. Kalyan replied that the arrangement could not be made locally and that his master Bhagirath, who lived in village Ghor, could make the necessary arrangement. Rakesh suggested that they should go to his village. Ram Kishan was told off there and the rest of them left for Ghor at about 12 Noon and reached there at about 2.30 P.M. They came to know that Bhagirath had gone to his relatives in another village. Ramji, Rakesh and Kalyan proceeded to that village. Kalyan introduced Rakesh to Bhagirath, and Rakesh told him the purpose of the visit. Bhagirath took them to village Seshan in Rajasthan. There Bhagirath introduced Rakesh to Ujagar and Kartar. Rakesh agreed to pay Rs. 25,000 demanded by

Ujagar and Kartar for the kill. They left Seshan at about 8 P.M. and came back to Bhogal (Delhi) at 11.30 P.M. Bhagirath and Rakesh went to stay at the house of Kalyan for the night, whereas Ujagar and Kartar stayed with Ramji. Ramji took them to the dhaba (eating house) of Kartar Chand which was quite close to Ramji's jhuggi. Kartar Chand, however, was not in a position to serve at this 'hour'. So Ramji took them to Ashram where they had their meals. Ujagar and Kartar spent the night in the taxi which was parked near Ramji's jhuggi. On December 2, 1973 all of them assembled at Kalyan's house at about 8.30 A.M. Ramji drove them to the defense Colony. The taxi was parked away from the house of Dr. Jain. Rakesh took A Ujagar, Kartar, Kalyan and Bhagirath to show the doctor's Kothi. They returned at about lunch time and went to Kalyan's house at Bhogal for meals. Thereafter Ramji drove Rakesh to York restaurant to meet Chandresh. On the way Rakesh told Ramp that he would collect money from Chandresh and return. At about 2.15 P.M. Chandresh met them outside the restaurant. Rakesh and Chandresh went inside the restaurant. After about half an hour Rakesh came out alone and Ramji drove him to Bhogal. Once more Ramji drove Kalyan, Bhagirath, Ujagar, Kartar and Rakesh to the defense Colony. The taxi was parked near a garbage bin in 'C' Block. This time only Kartar and Ujagar alighted from the taxi. They went and sat on a wall of the Nallah opposite the doctor's house. They returned after about two hours. Ramji brought all of them back to Bhogal. Bhagirath went with Kalyan, whereas Ujagar and Kartar spent the night in the taxi as before while Rakesh put up with Ramji. Ramji states that on December 3, 1973 all of them assembled at about 9 A.M. Ramji drove them to the defense Colony. As usual, the taxi was stopped away from the doctor's house. Ujagar, Kartar, Bhagirath and Kalyan got down from the taxi and Rakesh asked Ramji to drive him to the market of the defense Colony. After Rakesh had made a telephonic call from the market, they returned to the spot where others had been dropped earlier. Ramji picked up and drove all his passengers to Nizam-u-Din arriving there at about 11 A.M. After taking their meals in a hotel, they saw a picture at Eros Cinema (at Jangpura) from 12 Noon to 3 P.M. Thereafter Ramji drove them to Haryana border near Faridabad for drinks. After consuming two bottles of liquor, all of them went back to the defense Colony at about 8.30 P.M. This time the taxi was pulled up in a street near the doctor's Kothi. Ujagar, Kartar, Bhagirath, Kalyan and

Rakesh got down the taxi, went towards the Kothi and kept hanging around for about half an hour. At about 9 P.M. Ramji drove them back to Bhogal. The taxi was dismissed at Bho. gal and Ramji took it to Malhotra's house at Lajpat Nagar. Ramji tells us that he used to disconnect the odo-meter so that it did not show all the distance covered by the taxi. He was not treating Rakesh like other customers obviously because he had been promised a car and permanent employment. On December 4, 1973 Malhotra's taxi could not be plied since its permit had expired on the 3rd. Ramji took the taxi to a nearby workshop for petty repairs and the repainting of its number as directed by Malhotra. After getting the aforesaid work done, he returned to his jhuggi. Rakesh came to him at about 4.30 P.M. and asked him to accompany him (Rakesh) since the job had to be done that day. They hired a taxi and went to New Vig restaurant at Chandni Chowk. Ramji found Chandresh, Bhagirath, Kalayan, Ujagar and Kartar present outside the restaurant. All of them went inside the restaurant. While they were taking coffee etc. Dr. Jain arrived there. He talked to Ujagar cautioning him to execute the job carefully and assuring him that he would get the amount he wanted and that the case would also be taken care of. After Dr. Jain had left, Chandresh told the other conspirators that she would also be reaching Dr. Jain's Kothi in the doctor's car at about 6.30 P.M. She informed them further that she would get down from the car outside the Kothi and that when the doctor would come out of his Kothi along with his wife, Ujagar and Kartar would kill her. She also cautioned Ujagar and Kartar to see that the doctor did not suffer any knife injury. From the restaurant Ramji along with Bhagirath and Kalyan left for Bhogal in a taxi. They reached Bhogal at about 5.45 P.M. Bhagirath and Kalyan went to Kalyan's house while Ramji returned to his jhuggi. Ramji swears that at about 6.15 P.M. Rakesh again came to him. He asked Ramji to accompany him to the defense Colony. Ramji noticed that Rakesh had come in taxi Dly 552. He also found Ujagar and Kartar waiting in the taxi with Om Parkash P. W. behind the wheel. Rakesh and Ramji also got into the taxi and the same was driven to the defense Colony. It was parked facing north, about 40 or 50 yards away from the house of Dr. Jain. Ujagar and Kartar got down the taxi. Ujagar was carrying a knife while Kartar was armed with a pistol. As usual, they were carrying their weapons concealed in their tehmats. They went towards the doctor's Kothi. Rakesh engaged Om Parkash in some conversation. Ramji, who

was looking behind through the rear glass of the taxi, noticed the arrival of the doctor's car which, after taking a 'U' turn, came to a stop facing south near the Kothi. Dr. Jain and Chandresh stepped out of the car. While Dr. Jain went inside the house, Chandresh came to the taxi, Chandresh talked to Rakesh in English and then asked Ramji to come out of the car. Ramji got down. Chandresh told him that since Dr. Jain would be coming out with his wife and that Ujagar and Kartar were going to kill Dr. Jain's wife, Ramji should see to it that the doctor did not receive any knife blow. Ramji proceeded in the direction of the Kothi. He had hardly gone 40 or 50 paces when he saw Dr. Jain walking out of the house with his wife. Dr. Jain was leading and his wife was following. Ujagar and Kartar pounced upon her and while Kartar caught hold of her, Ujagar inflicted 10 or 12 knife blows and felled her in the Nallah. Ujagar and Kartar then rushed to the car and boarded it. The car sped away. Ramji and Chandresh could not make to the car. They then went in the direction of the petrol pump where they met Bhagirath and Kalyan in the street. Chandresh advised them to disappear as the job had been done.

(55) After going through the evidence on record we are satisfied that Ramji is a reliable witness. He had known Bhagirath and Kalyan for more than a year before the incident. Sometimes in 1972 he drove Bhagirath and Kalyan to village Ghor where Bhagirath has a farm. He smuggled wheat to Delhi in the dicky of the taxi under instructions from Bhagirath. Malhotra discovered some grains of wheat in the dicky and suspected Ramji of smuggling wheat on account of Bhagirath. Malhotra made a grievance of the same to Bhagirath and dispensed with Ramji's services for some time. Bhagirath does not deny that he had hired the taxi earlier with Ramji as its driver. He also admits that Malhotra had made a grievance of wheat being smuggled in his taxi though he characterises this charge as false. Even Kalyan concedes hiring the taxi earlier. Kalyan has been living in Bhogal and Ramji's jhuggi is situated nearby across Malhotra Road and in front of the Sahi Hospital. They would thus have many occasions to meet each other. Whenever Bhagirath was in Delhi he would also stay in Bhogal. therefore, there is no doubt that Ramji had known Kalyan and Bhagirath intimately before the incident. Dharam Vir Malhotra (P.W.3) has also placed on record duty slip book Exhibit Pis to show that Kalyan Gupta had hired the taxi on November 18 and 20, 1972. Duty slips

Exhibits P22 to P27 prove that Bhagirath had hired the taxi in July and August, 1973. Malhotra explains the circumstances under which he had suspected Ramji of smuggling wheat and, therefore, had complained about the same to Bhagirath and suspended Ramji for some time.

(56) We have no doubt that Ramji had come to know Rakesh sometimes in October, 1973. Malhotra, in the usual course of his business, had taken the taxi along with Ramji to Haryana Taxi Service, South Avenue, where it was hired by Rakesh. We have no reason to doubt the testimony of Dharam Vir Malhotra who can be safely depended upon. It is not unusual that when a customer approaches a taxi stand for hiring a taxi and no taxi is available, the concerned stand would ring up and summon a vehicle from another stand. Rakesh was not in need of an ordinary local taxi. He wanted to go outside Delhi to Haryana. Since no taxi was available with Haryana Taxi Service, Malhotra was contacted and he offered his Dly taxi. Malhotra (P.W. 3) tells us the circumstances under which he along with Ramji met Rakesh Kaushik on October 9, 1973. Malhotra has a telephone at his residence. He received a call at about 8 P.M. from Haryana Taxi Service, South Avenue. Malhotra was told that two customers wanted to hire a taxi for going to Charkhi Dadri and since Haryana Taxi Service did not have any taxi available for the purpose, Malhotra might provide one. Malhotra and Ramji went in their taxi Dly 544 to Haryana Taxi Service. Malhotra wanted to settle the matter of hire personally. He met Rakesh who was accompanied by a lady. The fare for the trip was settled at Rs. 120 plus the cost of petrol. Malhotra left his taxi along with Ramji at the disposal of Rakesh. Ramji then drove Rakesh to Charkhi Dadri, Bhiwani etc., and returned to Delhi the following morning. Rakesh paid Rs. 120 to Ramji who in turn passed the same on to Malhotra. Malhotra deposes that on November 26, 1973 Rakesh rang him at about 8 P.M. and asked for the taxi to be sent at 10 A.M. to Kashmere Gate the next day. He corroborates Ramji that he accompanied Ramji to Kashmere Gate at 10 A.M. on November 26, 1973; waited for Rakesh till 11 A.M. and since Rakesh did not turn up, both of them came back. The same evening at about 7.30 or 8 he again received a call from Rakesh asking for the taxi at Ajmere Gate Petrol Pump. Malhotra testifies that he told Rakesh that he himself would be bringing the taxi for the sight-seeing. Rakesh, however, insisted that only Ramji be sent since he would feel more at ease with Ramji.

Malhotra agreed and sent the taxi. Ramji thereafter took the taxi to Ajmere Gate Petrol Pump where he met Rakesh and Chandresh. Malhotra confirms that the taxi returned at about 10 or 11 P.M. and Ramji told him about Rakesh asking for the taxi for the following morning at Hauz Qazi at about 11 A.M. Malhotra supports Ramji by affirming that on November 27, 1973 he accompanied Ramji in the taxi to Hauz Qazi to collect the dues from Rakesh. He met Rakesh, Ram Kishan and Chandresh there. In fact, Malhotra had an argument with Chandresh when he insisted on payment of his dues. Malhotra goes on to say that he along with Rakesh, Chandresh, Ram Kishan and Ramji came to Connaught Circus where Rakesh paid him the dues amounting to Rs. 145. Malhotra also testifies that when Ramji returned with the taxi he handed over slip Exhibit P1. This slip carries an endorsement (Q-2) in the hand of Rakesh asking for the taxi for the following day. It may be noticed at this stage that Rakesh does not deny that Q-2 was written by him. He, however, alleges in his statement recorded under section 313 of the Code of Criminal Procedure that the Investigating Officer Faqir Chand had, got his writing and signature on duty-slip books and he could not say 'what he got written from me that day'. Rakesh admittedly did not make any grievance about the investigating officer having forced him to write something on a duty-slip till Inspector Faqir Chand came in the witness-box. If he had been compelled to write Q-2 on Exhibit P1, we see no reason why he did not raise a hue and cry with regard thereto in the very beginning. He did not even suggest to Ramji that he (Rakesh) had not made that writing. The statement of Ramji that Rakesh had noted down something on this slip before he discharged the taxi was allowed to go unchallenged. Malhotra confirms having been contacted by Rakesh for the taxi for December 1, 1973 and sending Ramji with Dly 544. Malhotra testifies that thereafter the taxi did not come back to his residence on December 1 and 2. On December 3 he received a telephonic message that the taxi was in the town and it would be returned that very day. Malhotra swears that Ramji came to his residence with the taxi and Rakesh at about 11 P.M. and he questioned them for not bringing the taxi earlier. Rakesh explained the delay to Malhotra by saying that he was too busy in his engagements in connection with some sort of contract in which he was taking the help of a member of the Parliament.

(57) Malhotra has produced Duty Slip Books kept by him in the course of his transport business. So has Rattan Lal P.W. These are printed books stating the name of the taxi service. The particulars required to be filled in are printed on the slip. These are, about date, number of the car, driver's name, opening and closing odometer readings, name and address of the hirer, time of departure and arrival etc. There is no legal obligation on the taxi owners to keep such slip books, but we find from the evidence of Dharam Vir Malhotra, Rattan Lal and Om Parkash P.Ws. that a practice has developed among the owners of Dly taxis to keep such slip books and we can see why. These taxis do not carry any fare meters nor are they required to be painted black with yellow top like ordinary local taxis. It seems that in order to calculate the fare to the satisfaction of customers, it is considered necessary to keep a record of the opening and closing odometer readings. It is common knowledge that government servants and persons working in business establishments using taxis for their official work insist on receipts to show the distance travelled by them in order to claim the traveling allowance due to them. Such receipts may be needed by a businessman to show the expenses in connection with income-tax assessment, as well as by the owner of the taxi as a proof of his income for the same purpose. We, however, find that these duty slips are not filled in with meticulous care as one would expect from a businessman. Mr. Malhotra goes on to depose that many a time the slip is not prepared in order to avoid income-tax liability. We notice that these duty slips are prepared in, duplicate with the help of a carbon paper. Where a customer wants a receipt, the original is given to him while the carbon copy remains in the duty-slip book for the taxi owner's record. We have examined Duty-Slip Book Exhibit P10 produced by Dharam Vir Malhotra in respect of his taxi Dly 544. It starts from October 1, 1973. Some of the original duty-slips along with their carbon copies are still in the book. Apparently the original slip was not perhaps demanded by and, therefore, not handed over to the hirer. A perusal of the duty-slips shows that most of them have been, filled in rather carelessly, some of them are partly written in Hindi, some have signatures of the hirers while in others the space meant for such signatures is left blank. Exhibit P6 is carbon copy of the original duty-slip. It mentions the name of the hirer as 'Mr. Kaushik, 152 North Avenue, Telephone 386737'. The number of the taxi is given as Dly 544. The name of the driver, the time etc. are

not legible. The signature of the hirer also cannot be deciphered though it appears that the hirer did make one. While the reading of the commencing meter is shown, the reading of the closing meter is not given. On the other hand, there is some arithmetical exercise to show that 82 Kilometres were covered. Similar calculation in ink appears on the back of the preceding duty-slip. It may be noticed that such figure work appears on the backs of some other duty-slips too. Duty-slip Exhibit Pi is also a carbon copy. It shows that the taxi was hired to 'Mr. Kaushik' with Ramji as driver on November 27, 1973. It remained with the hirer from 11 A.M. to 8 P.M. and covered 77 Kilometres. It carries the signature of the hirer. It is this duty-slip which has an endorsement in ink asking for the taxi for the following day in the following words: 'I require tomorrow also at 0800 Hrs. (initials). As already stated, Rakesh admits that the endorsement is in his hand, though he pleads that he had made it under directions of the police. We may repeat that the writing was proved by Ramji who deposed that before dismissing the taxi Rakesh had made it to get the taxi for the following day also. In spite of very lengthy cross-examination by each of the appellants nothing was suggested to Ramji to dispute the truth of this statement. No reason has been advanced at the Bar as to why Ramji was not questioned on this aspect. It can, therefore, be safely presumed that the accused admitted the correctness of this part of his testimony. Moreover, we find that the use of figures and letters '08100 Hrs' is very significant. Suffixes 'A.M. or P.M.' are used to denote the particular hour of the day by lay-man. But the case with armed forces personnel is different. They use figures. Rakesh, who is an Education Instructor in the army, would mention the time in the afore-said style or a matter of habit. It was contended that apparently the endorsement was written on the carbon copy after the original had been removed whereas had it been genuine it should have been made by Rakesh on the original itself. We are afraid we do not see any force in this argument. The original is meant for the hirer. If written directions are to be given by a hirer, the same should be recorded on the carbon copy to be retained by the owner of the taxi and not on the original. It is true that Dharam Vir Malhotra was confronted with his police statement where it was recorded that one day Rakesh Sharma himself came and wrote on the duty-slip in his own hand that he needed the taxi next day as well. His Explanation was that he did not remember saying so and was confident on the contrary, that this entry

was not made in the duty-slip in his presence. May be when interrogated by the police, he could not make it clear that he had learnt the fact at second hand from Ramji. We have no doubt that the endorsement Q-2 on Exhibit Pi was made by Rakesh on November 27, 1973. Malhotra has produced four duty-slip books Exhibits P10, P13, P14, and P15. We find that the slips have been filled in none too overcarefully and some of the originals lie side by side with their carbon copies in all these books. Dharam Vir Malhotra swears to the fact that duty- slips Exhibits Pi 8 and Pi 9 in book Exhibit P13 were signed by Kalyan Gupta. These slips are dated November 18 and 20, 1972, Nobody bothered for the detachment and delivery of the originals and the same are still in the book. Ramji was the driver on both the occasions. Malhotra also deposes that in book Exhibit P14 duty-slips Exhibit P17, P18 and P19 relate- to Kalyan Gupta as hirer of the taxi. He further deposes that the date and name and address of hirer were written by him. These slips too bear the signatures of Kalyan Gupta. In book Exhibit P15 duty-slips Exhibits P20 to P27 relate to Bhagirath and the entries therein are in the handwriting of Malhotra. Exhibits P20 to P25 pertain to the period July 2 to 12, 1973, whereas Exhibit P27 is dated August 13, 1973. On all these occasions Ramji was the driver of the taxi. It is thus patent that Ramji and Malhotra were well-acquainted with Bhagirath and Kalyan. It is manifest from perusal of the duty-slip books aforesaid that it was not unusual for the taxi to remain with the hirer for days and nights. We also find that the words 'cash', 'paid', 'bill to be submitted', have been used in some of the cases. We also notice that where the taxi was hired for more than one day the blanks against commencing meter and closing meter have been filled with reference to the date on which the taxi was hired. It could not possibly be otherwise. The closing meter entry has to be made after the discharge of the taxi and it cannot be made anywhere else except in that duty-slip in which the commencing meter reading was noted. We also find some dutyslips only partly filled for one reason or another. It is to be noted that whenever the taxi had been hired to some government department all the entries in the duty-slip were filled in scrupulously. We have mentioned these facts just to appreciate the practice prevalent with Malhotra & Company with regard to the maintenance of the duty-slip books. Duty-slip Exhibit P7 relates to November 28, 1973. The hirer's name is mentioned 'Mr. Rakesh'. The driver is shown as Ramji. The time of hiring recorded is 8.00 A.M.

According to the entries made in respect of the commencing and the closing meter, the taxi covered 79 Kms. It was on this day that Ramji had driven Rakesh, Chandresh and Ram Kishan from Hauz Qazi to the defense Colony, Barakhamba Road and R. K. Puram. Chandresh, Rakesh etc. had gone to R. K. Puram that day to consult Bhagwan Das whose testimony has already been found to be reliable. Exhibit P7 appears thus to depict the true state of affairs. The duty-slip next to Exhibit P7 is dated November 30, 1973, the hirer mentioned is 'H.C. Taxi', driver is 'Dharam Vir' and, apart from that, entries only against 'commencing Meter' and 'Time of Departure for duty' have been filled in. Both the original and the carbon copy of the slip are there in the book.

(58) Malhotra tells us that he received a telephonic call from Rakesh asking for the taxi for December 1, 1973 and that he sent Ramji with the taxi Dly 544. Exhibit P8 is the carbon copy of the relevant duty slip. The only entries made by Malhotra in it are marked 'A' and 'b'. gives the 'total mileage'. Malhotra also tells us that the practice was to leave the duty-slip book with the driver whenever the taxi was taken on hire. Vide statement of Ramji he did not return the taxi to Malhotra till the night of December 3, 1973. In the intervening period he had gone to Ghori, Seshan and different places in Delhi. The total mileage done is shown as '89 Kms.' Unquestionably the distance actually covered from December 1 to 3 was much more. However, Ramji has explained that he used to disconnect the odometer. The taxi had been hired this time for a secret mission, i.e., to find out assassins who would kill Vidya Jain, and Ramji, having been admitted to the conspiracy, was in the know of this fact. There was nothing strange, therefore, in his disconnecting the odometer when proceeding to Ghori and thereafter to Seshan in order to avoid suspicion which the long miles traversed were likely to raise. That is the reason that the total mileage shown in Exhibit P8 is so small as 89 Kms. In view of these circumstances the argument advanced by Mr. S. C. Bhargava and Mr. Frank Anthony that coverage of 89 Kms. only shows that the taxi was taken neither to Ghori nor Seshan would appear to have no force.

(59) Another contention raised on behalf of the appellants is that Malhotra should have got worried if the taxi was not returned to him on the night of December 1 and he could not have waited quietly till the night of December 3. We have already

noted from the slip books that it was not unusual for the taxi being taken away for more than one day. The taxi was meant to be hired out and its longer detention by the hirer was sure to be welcome because it would make the bill for hire charges heavier. Why should, therefore, Malhotra have bothered if his taxi remained engaged for three days instead of one. Rakesh had kept the taxi overnight when he hired it for the first time. There was no cause as such for Malhotra to raise hell when the taxi was not returned on the nights of December 1 and 2.v

(60) It has been urged that the entries 'A' and 'B' made by Malhotra on Exhibit P8. must have been made on December 1, 1973, the date to which this slip relates. The only basis of this contention is that there is one slip to evidence hiring of the taxi for three days. and that slip bears the date December 1, 1973. We find no substance however in this contention for the reason already stated. The closing meter entry and the calculation of total mileage can be made only when the taxi is returned. Since the taxi hired on the 1st was brought back on the 3rd, the said entries could naturally be made on the slip which referred to the commencing meter, i.e., the one dated December 1. Both Ramji and Malhotra deposed that duty slips were written usually by Malhotra and occasionally by Ramji. Ramji further states that sometimes he would keep & note separately and deliver it to Malhotra so that he could make an entry on its basis. Ramji has studied up to 5th class and is literate enough to fill in duty-slips. He has been keeping a diary about his personal account. All the entries except marked 'A' & 'B' in Exhibit P8, as rightly concluded by the trial court, are in the hand of Ramji. On the reverse of Exhibit P8 there are some calculations in pencil. As already observed, such figure work is to be found on the back of many duty-slips.

(61) On the strength of duty-slips Exhibits D8 and D11, which follow immediately slip Exhibit P8, it is contended that the taxi must have come to Malhotra either by the evening of December 2 or the morning of December 3. The dates mentioned in these duty-slips are '3/11/73' and '4/11/73'. Evidently the month has been wrongly specified. Such mistakes are commonly made in the first days of a new month and we attach no importance to it. In Exhibit D8 someone has apparently corrected the month in pencil so as to read 12'. Time of arrival in the duty-slip has been given in pencil as 1 A.M.'. Duty-slip Exhibit D11 has been crossed after filling it up. In this

slip the name of the hirer is recorded as Rakesh with Ramji as the driver. Malhotra admits that all the entries except the one against 'time of departure for duty' in Exhibit D8 are in his hand. According to him the taxi was with Rakesh on the 3rd. The word 'paid' appears on this duty-slip. It may be noticed that the original duty slip along with its carbon copy is present in the duty-slip book. As we have already noticed, Ramji was in the habit of keeping a separate note and Malhotra would fill in the blanks in the relevant slip later on. thereforee, the entries made in Exhibit D8 relating to December 3, 1973 by Malhotra do not mean that the taxi had reached Malhotra either on the night of 2nd or the morning of December 3. On the other hand, the entry made for December 4, 1973 is consistent with Malhotra's statement that Rakesh was insisting for hire of the taxi for December 4. It seems that to begin with Malhotra prepared the duty-slip Exhibit DII for placing the taxi at Rakesh's disposal as desired by the latter but on Realizing later on that the taxi permit expired on December 3 he crossed the duty-slip. The existence of Exhibit DII shows that Rakesh must have gone and talked to Malhotra on the night of December 3, 1973 as deposed by Malhotra. We find that there is another duty-slip just after Exhibit DII relating to December 6, 1973. In this shp the car number stated is 'DLB 9680', driver's name 'Ramji' and commencing meter entry '4401 Kms.'. Instead of mentioning the name and address of the hirer it is written 'Delhi sight-seeing- cash.' We find that such like entries exist in a number of duty-slips in books Exhibits P13, P14 and PI5. Evidently Malhotra had used his erstwhile taxi Dly 544 (its registration number was changed to Dlb 9680) for hire without a permit but such like violations of the law are not uncommon among taxi owners who keep on using private cars as taxi on the sly. The importance of this slip lies in making Out that all the slips contained in book Exhibit P10 have been presented to the court as they were and were not forged to serve the ends of the prosecution as suggested on behalf of some of the appellants. It may be noticed that though Exhibits D8 and D11 were got proved by the defense from Malhotra, he was not questioned about the circumstances in which he prepared them. We, thereforee, agree with the trial court that the duty-slips in question are genuine and that the same corroborate Ramji as well as Malhotra. Moreover, as we will presently discuss, the recovery of the Hindi Monthly Magazine 'Filmi Duniya' (Exhibit P11) admittedly belonging to Rakesh, leaves no doubt that Malhotra's taxi was used by

Rakesh on December 3, 1973.

(62) The prosecution produced Bhajan Singh (PW10) to prove that Ramji, Rakesh, Bhagirath and Kalyan were seen in village Seshan on the night of December 1, 1973 with Ujagar and Kartar. He admitted after some prevarication that Ujagar and Kartar were inimical to him and the cause of enmity was murder of his relation Bakhtawar Singh by their Bhua's son Lal Singh. He also conceded that he apprehended danger from Kartar and Ujagar. He was contradicted by his police statement on various points. We find that the trial court was justified in not relying on his testimony as to his having seen Rakesh, Bhagirath etc. in the company of Ujagar and Kartar at Seshaa on the night of December 1, 1973.

(63) Association of Kalyan and Bhagirath with Rakesh and Chandresh during the fateful days is affirmed by Krishan Lal Nagpal (P.W.9). Nagpal was working as a waiter in the New Vig restaurant, Chandni Chowk, Delhi. The prosecution cited Nagpal and one Satish Chander, another waiter of the same restaurant, as witness. We are told that Satish Chander died in an accident before he could enter the box. Nagpal had been working in the restaurant for about five years. Nagpal deposes that he knew Rakesh and Chandresh accused since they used to come to the restaurant frequently and were wont to tip the waiters more generously than others. He had come to know their names as well. He swears that on December 2 and 3, 1973 Chandresh and Rakesh along with Bhagirath and Kalyan and one other person visited the restaurant. On December 2, 1973 they came at about 4 P.M. He tried to bring them to his own table but they sat at the table served by another bearer. On December 3, 1973 they came to the restaurant at about 9 P.M. This time they sat at the table served by him. They stayed for about half an hour to 45 minutes. We will presently discuss the evidence of this witness in connection with the visit of the appellants to the restaurant on December 4, 1973. His statement has been assailed on various grounds. The main thrust of the argument is that it is not possible for a bearer to remember either the name or the face of a particular customer for the reason hundreds x of customers visit a popular restaurant like the New Vig every day. Admittedly New Vig is not a very posh restaurant. It caters to all and sundry who care to visit it. Yet there is nothing extraordinary about the bearers being able to identify persons who frequent their

restaurant, more so if a customer is given to tipping more generously than other customers. It is also not uncommon for a bearer to remember a female customer who happens to be favored with good looks or is unusually smart. Her companion is also likely to receive particular notice. We are told by Mr. Lal that Chandresh is endowed with charming personality. There is no wonder therefore if Nagpal remembered the faces of Rakesh and Chandresh and came to know their names as well. When Nagpal was grilled about the identity of other customers who might have been visiting his restaurant from time to time, he said : 'I cannot tell the name or description of any customer who visited the restaurant on February 5, 1975. Let me explain why I cannot do it. This is because one can remember faces and names only in the context of an accident or important event which registered itself on one's mind'. This is a very convincing Explanationn indeed. He gives one more reason for knowing Chandresh. It is this. One day, when Nagpal was standing at the counter, Chandresh came to him and asked him whether the gentleman, who usually accompanied her, had arrived or not. Nagpal told her 'that he had not yet come. Thereupon, Chandresh went to the balcony and waited for him. Nagpal swears that he knew Chandresh nearly a month or a month and a half before December 2, 1973. We are quite impressed by his statement and the manner in which he faced the searching long cross-examination on behalf of the appellants. It is submitted that when Nagpal gave his statement at the trial, Dsp Ram Murti of Police Station Kotwali as well as the proprietor .of the New Vig restaurant were present in the court room, and the circumstance casts a grave doubt on voluntary and truthful character of his testimony. Whether the said persons were there to ensure that the witness speaks what he has been told or to see that nobody lures or threatens him to prevent him from speaking the truth is anyone's guess. However, Nagpal has explained that he had been sick prior to his examination and that the proprietor had enquired about his health when the latter met him in the Court. We find that this witness gave his evidence on February 11 and 13, 1975. On February 11, 1975 he complained of indisposition three times and finally the court discharged him for the day. The learned Sessions Judge has recorded that the witness did appear to be unwell. In these circumstances no importance can be attached to the presence of his employer. As regards the presence of Dsp Ram Murti the witness deposed that he did not know him- Many police-officers played a

part in the investigation of this case and someone or another of them might have been coming to the court during the trial to watch the proceedings, but how could have Ram Murti's presence in the court room mattered when Nagpal did not know who he was. Moreover, had Nagpal been in fact deposing under the pressure of police he would have supported it about the presence of Dr. Jain in the restaurant on the 4th. We are fully convince that his statement was entirely voluntary as well as truthful.

(64) It is canvassed on behalf of the appellants that Kalyan could not have visited the New Vig restaurant on December 2 and 3, as testified by Nagpal. This contention is based on the statement of Ramji who is silent about the visits to New Vig restaurant on these dates. Let us examine this part of Ramji's evidence. The relevant portion of Ramji's statement with regard to December 2, 1973 is to this effect. Rakesh came out of York restaurant at about 3 P.M. and Ramji drove him to Bhogal. There he picked up Kalyan, Bhagirath, Ujagar and Kartar, and took all of them to the defense Colony. He stopped the car near a garbage bin, and Kartar and Ujagar got out of it. Ujagar and Kartar went over to a wall o n the Nallah near Dr. Jain's house and kept sitting there for nearly two hours. Then they returned and he brought all of them back to Bhogal. It is contended that since Ramji's taxi was meant to be used as a get-away-taxi after the murder, Ramji and others could not have left the place till Ujagar and Kartar had returned. This argument is based on the assumption that Ujagar and Kartar were sitting near Dr. Jain's house with the object of killing his wife. There is nothing on record however to support this assumption. The indications on the other hand are that they were there for purposes of reconnoissance. Before lunch they had been taken to Dr. Jain's Kothi by Rakesh but their short stay at the site perhaps did not meet their satisfaction. They had joined the other conspirators in the plot to slay Vidya Jain for no high sounding ideals; their motive was purely mercenary. Men of this ilk would never risk their necks in a fit of bravado, making sure of a safe escape is their foremost concern. Ujagar and Kartar could not do without scanning thoroughly the site of the crime under contemplation before embarking on its commission. Iwas absolutely imperative to size up the situation in all its details. They must have studied the flow of traffic along the nearby road at different hours of the day, the lay of the land, the location of other houses in the neighborhood and the chance of

their residents rushing out to frustrate their job or to nab them redhanded. Two hours were not too much for such a deep scrutiny of the environment, and there could be no point in Rakesh, Bhagirath etc. sitting huddled up in the taxi during all this time. There is no wonder, therefore, that they decided to visit the New Vig restaurant to avoid boredom as well as a possible suspicion of a criminal design which their sticking to the spot would have involved. It is true that Ramji does not talk of their visit to the New Vig restaurant during this period, but that cannot be treated as a contradiction of Nagpal's statement. We agree with the trial court that in a long narrative one is likely to miss a detail which by itself is of no importance to the witness. An excursion to the New Vig to while away some idle moments could certainly be such a trivial detail from Ramji's stand point. We may recall Ramji's telling us that on December 3 he had taken his co-conspirators to the defense Colony at about 8.30 P.M. and stopped the taxi in a street near Dr. Jain's Kothi. This time not only Ujagar and Kartar but Bhagirath, Kalyan and Rakesh also got down from the taxi and kept hanging around for about half an hour. It may be that Ujagar and Kartar were out for a kill. We say so because Rakesh, who could identify Vidya Jain, was with them. There is nothing on the record to show that Ujagar and Kartar had been shown Vidya Jain before. It may be that this was the reason why Ramji waited till all of them returned. According to Ramji they came back at about 9. P.M. when he drove them to Bhogal. He does not talk of their visiting the New Vig restaurant. Now Nagpal tells us that on December 3, 1973 they visited the restaurant at about 9 P.M. and they stayed there for about half an hour to 45 minutes. The statements of Ramji and Nagpal show that they are giving an approximate idea of time and are in no way exact about it. They could not possibly have consulted their watches because the time of the visit was immaterial to them. There was thus nothing strange if Rakesh, Kalyan and Bhagirath decided to apprise Chandresh about the outcome of their visits to the defense Colony and visit New Vig restaurant before part' ing company. Malhotra deposed about Rakesh coming to his house with Ramji in the taxi. We have already discussed Malhotra's evidence and found it trustworthy. Of course he says that they came at 11 P.M. But again this is an approximate time. In our opinion statements of Nagpal, Ramji and Malhotra can co-exist. We, therefore, find nothing wrong in the trial court believing the statement of Nagpal about Bhagirath, Rakesh and Chandresh

being seen together in the New Vig restaurant on December 2 and 3.

(65) Kartar Chand (PW41) has been produced to corroborate Ramji about the presence of Ujagar and Kartar at Bhogal on the night of December 1. Kartar Chand lives in a Jhuggi near Sahi Hospital, Bhogal. He runs an eating shop (popularly called dhaba) in his Jhuggi. This is near the Jhuggi of Ramji. He deposes that about 9 or 10 days before Ramji's arrest, the latter had come to his shop at about 11 P.M. along with two other persons whom he identified as Ujagar and Kartar. Ramji had enquired from him if he could provide them meals. He showed his inability since food was no more. Kartar Chand tells us that his customers are mostly drawn from the class of truck drivers and the labourers working with trucks. He has employed three servants for preparing food. He uses a petromax lamp at night. Cooking is done on a Tandoor. His statement is assailed on the ground that there was no occasion for Ramji to go to this dhaba since he should have known that Kartar Chand does not serve food after 10.30 p.m. It is also suggested that Ramji and others could have taken their meals in village Seshan if they had in fact gone there and would not have waited for their food till 11 P.M. Kartar Chand's dhaba is practically next door to Ramji's Jhuggi. It was but natural for Ramji to have tried it first. After all, dhabas are not supposed to serve their customers by the clock. Moreover, as a frequent visitor and a neighbour, Ramji could have expected Kartar Chand's statement was recorded by Sub-Inspector Rama Kant were any eatables left over. Kartar Chand has stated that he could not accommodate Ramji because the food had finished. Ramji and others could not have taken their meals at Seshan either. They were on a secret and sinister mission and could ill afford to be observed by any local people which included enemies of Kartar and Ujagar like Bhajan Singh. In the circumstances no person of average intelligence would have tarried longer in the village than was absolutely necessary. Again, Rakesh, Bhagirath, Kalyan and Ramji had gone to Seshan without prior intimation. There are no refrigerators in such like out of the way villages and people cook only as much food as can be consumed straightaway. Nor are there any eating shops at such places ready with instant food. There was no question, therefore, of their filling their stomachs at Seshan before starting for Delhi.

(66) One more plea raised is that no weight should be given to Kartar Chand's identification of Ujagar and Kartar in Court. Now Kartar Chand's statement was recorded by Sub-Inspector Rama Kant (PW 95) on December 11, 1973. Ramji was arrested when he returned to his jhuggi the same day but as late as about 10 P.M. Since Ujagar and Kartar refused to take part in the test identification parade, Kartar Chand got no opportunity to identify them in the jail. We may at this stage say that we agree with the trial court that Ujagar and Kartar were justified in refusing to take part in the test identification parade and no adverse presumption can be drawn against them on that score. It is true that thereafter Kartar Chand had seen Ujagar and Kartar at the police lock-up on December 22 and had identified them as the persons who had accompanied Ramji on the night in question. This statement before the police, of course, cannot be used to corroborate Kartar Chand's testimony in court. We would not take exception to the practice of showing the accused to the witnesses in the lock-up by the police in such circumstances, in order to satisfy themselves that the investigations are proceeding on the right lines. As we will presently discuss the holding of test identification parades at the instance of the police is to enable the investigating officer to have this assurance. However, the fact remains that this witness correctly identified Ujagar and Kartar in Court. The learned trial Judge has relied on his evidence and we see no reason to take a different view of the matter. Krishan Lal Nagpal P.W., bearer of New Vig restaurant, also deposes about the presence of Ujagar and Kartar in the company of other co-accused at New Vig restaurant at about 5 P.M. on December 4. We will presently discuss in detail the testimony of this witness. sufficient to say at the moment that there is no reason to disbelieve him about the identity of Ujagar and Kartar. Still another witness, who corroborates Ramji about the presence of Ujagar and Kartar not only in Delhi but on the site of the crime at the crucial time, is Om Prakash P.W. 2 driver of taxi No. Dly 552. He had been sent to the York restaurant with the taxi by his employer Rattan Lal P.W. on the asking of Rakesh. It was there that Rakesh along with Ujagar and Kartar approached Om Prakash and asked him if he had been sent by Rattan Lal. Om Prakash is I without any doubt an independent and reliable witness. We will present revert to his testimony. Recovery of chit Exhibit P238 from Rakesh at the time of his arrest on December 10, 1973 also connects Ujagar

and Kartar with the conspiracy. The chit reads: 'Vill. P.O. Seshan, Junhera, Tahsil Kama'. The last four wards are written in Devnagri script whereas the first two words are in English. Rakesh does not deny that the chit is in his hand though he denies its recovery from him. According to Rakesh the police had made him write this chit. It was Narinder Singh (P.W. 9), Station House Officer of Police Station Hauz Khas, who recovered this chit from Rakesh. He had partly investigated the case. He went to Delhi Cantonment on December 9 for apprehending Rakesh, but could not find him there since he had gone on leave. He, therefore, waited for Rakesh in the Cantonment area. On December 10 at about 4 A.M. he apprehended Rakesh outside the Unit Line and took him to the police-station for interrogation. The person of Rakesh was searched and the chit Exhibit P238, along with various other articles, was recovered. At that time Chhotu Ram (PW24) and Sultan Singh (PW25) were present. Thereafter S.H.O. Narinder Singh and D.S.P. Harpal Singh went with Rakesh and other police personnel to Ghorī where Kalyan was arrested. The party then proceeded to Palwal and apprehended Bhagirath.

(67) Exception is taken to the statement of S.H.O. Narinder Singh on the ground that he did not deposit the chit Exhibit P238 at Police Station Hauz Khas. Narinder Singh explains that he had taken all the articles recovered from the personal search of Rakesh to the Investigating Officer Inspector Faqir Chand at Police Station defense Colony. There is no reason to reject the Explanation. Narinder Singh was not in charge of the investigation. He was only assisting the Investigating Officer as was the case with several other police officers. One of the jobs assigned to Narinder Singh was to trace out Rakesh which he successfully accomplished. Simply because Rakesh had been interrogated by Narinder Singh at Police Station Hauz Khas it does not follow that the chit Exhibit P238 should have been deposited at Police Station Hauz Khas. Moreover, Narinder Singh has specifically stated that only 'articles' and not 'documents', recovered in a case are deposited in the Malkhana. Obviously, therefore, there was no question of depositing this chit in the Malkhana of Police Station Hauz Khas. It may be noticed that it was never suggested to Narinder Singh that he got this chit written by Rakesh. Exhibit Pi 10, seizure memo, was prepared by Narinder Singh in respect of personal search of Rakesh. It shows that as many as 14 items were seized. The

chit in question is mentioned at Serial No. 7. It bears the signatures of Chhotu Ram and Sultan Singh witnesses of the recovery. Chhotu Ram appeared as P.W. 24. He was not, perhaps by oversight, questioned about the recovery of chit and the seizure memo Exhibit Pi 10. Sultan Singh appeared as P.W. 25 and corroborated Narinder Singh with respect to the recovery of chit Exhibit P238 and the preparation of memo Exhibit Pi 10. It is urged against his veracity that he is a stock witness of the police. There is nothing on the record however to show that he had ever appeared as a prosecution witness on a previous occasion. He admitted he had been visiting Police Station R. K. Puram on account of some incidents pertaining to his village but he had never gone to Police Station Hauz Khas. We are satisfied that the chit Exhibit P238 was recovered from Rakesh. This chit contains the name of the village from where Kartar and Ujagar hail. Mr. Bhargava, the learned counsel for Ujagar and Kartar, submits that since the chit does not contain the names of Ujagar and Kartar, it cannot be used against them. The chit shows that Rakesh was interested in that village somehow or other. Rakesh had, according to the deposition of Om Prakesh (PW2), assured Ujagar and Kartar that 'he would himself arrange to send the money at their house within a couple of days', and it was thus necessary for him to have the complete address of their village. It also corroborates Ramji as to Rakesh and others having gone to that village and brought Kartar and Ujagar to Delhi.

(68) Mr. Bhargava seriously contends that Ramji had never gone to village Seshan. This contention is based on the route described and the distance given by Ramji. Ramji deposes that he drove his taxi from Palwal on Mathura Road for about 20 or 25 Kms. and thereafter he took a canal embankment to reach village Seshan. He went nearly 5 or 6 miles along this embankment before entering the village. The terrain from the embankment to the village was described as uneven and kacha. The distance from the embankment to the village from the point where the barrier is situated was given as one mile. Ramji also stated that before reaching Hodal he left Mathura Road and crossed the border into Rajasthan. It is to be noted that Mr. Bhargava has made an application for the appointment of a commissioner to find out if before reaching Hodal any road branches of Mathura Road and leads to village Seshan. The State has filed a reply. It is supported by an affidavit of D.S.P. Harpal Singh. A rough sketch showing the route taken by the

Deputy Superintendent of Police while coming back from village Seshan is annexed to his affidavit. Mr. Bhargava does not dispute that Now this sketch practically tallies with the route described by Ramji. The only difference is that the road leading to the village branches off Mathura Road after crossing Hodal and not before reaching Hodal. Mr. Bhargava also showed us some road maps. We noticed that there is a bypass for Hodal and one need not enter this town for proceeding ahead on Mathura Road. Ramji explains that he did not know the route to village Seshan and was just following the directions being given to him. It may also be remembered that he was driving after sunset and the odometer had been disconnected. In these conditions if Ramji makes a mistake about the point where he turned off Mathura Road near Hodal, we cannot hold that he never went to village Seshan in fact. It is common knowledge that highways in India are not lighted at night and the road lights are to be found only in the Municipal limits of a town. We cannot lose sight again of the fact that Ramji was describing the route on which he had been guided by others after about 14 months all spent under custody. Much has been made of the distances given by Ramji between Delhi and Seshan but it is not difficult to appreciate that having disconnected the odometer and driven the car at night according to other person's instructions Ramji was in no position to ascertain the distance covered by him with any amount of exactitude.

(69) Malhotra testifies that on the morning of December 4 he found magazine Exhibit Pi 1 lying in his taxi Dly 544. It was December 1973 issue of 'Filmi Duniya' published in Hindi. 'Rakesh Roshan' is written at various places in Roman script on its title cover. Malhotra concluded that it must have been left by Rakesh in the taxi. Being a film magazine he gave it to his children for browsing. After the police had interrogated him and seized the taxi on December 11, Malhotra realised the importance of his find. He took it to Police Station defense Colony on the morning of December 12 and handed it over to R. K. Vashisht, Sub-Inspector (Crime), vide seizure memo Exhibit Pi 2. The recovery of this magazine as alleged by the prosecution is denied by Rakesh and it is contended that it was recovered by the police when it searched Ms belongings lying in his unit at Delhi Cantonment. There is no dispute that the magazine belongs to him and the writing 'Rakesh Roshan' appearing at various places on its front page is in his own hand. We find that during cross-examination of Malhotra by Rakesh's counsel it was suggested that

he (Malhotra) had not recovered the magazine from his taxi, and it was, in fact, shown to him for the first time by the police on December 12. In his statement under section 313, Criminal Procedure Code. Rakesh pleaded that 'the police took this magazine from my room on December 14'. If this statement was true. Malhotra could not have been shown this magazine on December 12 the way it was put to him in his cross-examination. It may be noticed that Rakesh was present when on December 14 the police searched his things at Delhi Canton- ment. It was Inspector Narinder Singh (PW69) who took Rakesh to Delhi Cantonment on that day and conducted the search. Naib Subedar Durga Parshad (PW48) was also there. All the articles taken into possession by the police are mentioned in the seizure memo Exhibit P189 which is signed by Durga Parshad. This memo shows that magazine Exhibit Pi I was not one of the articles seized by the Inspector. Inspector Narinder Singh promptly refuted the suggestion made to him in his cross-examination that he had taken into possession this magazine and had not deliberately shown it in the seizure memo Exhibit Pi 89. Now, had this' magazine been actually recovered by Inspector Narinder Singh on December 14 from Rakesh's effects, Rakesh could not have slept over the matter. He would have raised hullabaloo at the earliest stage of the proceedings about the recovery having been falsely shown as made on December 12 from Malhotra. It is not denied that long before the trial started the accused were given copies of all 'the documents sought to be proved by the prosecution. It must have been apparent to the defense that it was Malhotra who was going to depose about the recovery of the magazine from his taxi. In any case, when Malhotra was being cross-examined it would not possibly have been put to him that the magazine was shown to him. by the police on December 12 if it had in reality been recovered on the 14th. We have no hesitation in agreeing with the trial court that magazine Exhibit Pi I was found lying by Malhotra in taxi Dly 544 on December 4 and handed over to the police on December 12. The recovery of the magazine from the taxi proves that Rakesh had used the taxi on December 3. Ramji thus stands corroborated in another material particular.

(70) We will now deal with the events of December 4. It may be recapitulated that taxi Dly 544 was not available on that day as its permit had expired on December 3. Ramji had been deputed by Malhotra to take the taxi to a workshop nearby for

minor repairs including the change of its registration number to DLB 9680. Rakesh picked up Ramji from his Jhuggi at about 4.30 P.M. and took him to the New Vig restaurant in a hired taxi. They reached the restaurant at about 5 P.M. Kartar, Chandresh., Kalyan, Bhagirath and Ujagar were present outside the restaurant. All of them went in. While they were taking tea, coffee, etc., Dr. Jain walked in, talked to Ujagar and left. Chandresh told them that she would be reaching in Dr. Jain's car at about 6.30 P.M. and that Dr. Jain would bring out his wife when she should be killed. It was Satish Chander, bearer, who served them in the restaurant. Satish Chander, as already stated, died before he could appear in the court. Krishan Lal Nagpal (PW9) was the other bearer who was assisting Satish Chander. Nagpal's statement has been partly discussed earlier. Nagpal deposes that at that time Rakesh, Chandresh, Bhagirath, Kalyan, Ujagar and Kartar along with another person were sitting at the table. At this stage it so happened that Ramji was not present in the court on the two days when Nagpal gave his statement, but there can be no doubt that the reference must have been to Ramji. Nagpal knew Dr. Jain. He, however, deposes thus : 'I have no idea if he (Dr. Jain) came there. It is possible he might have come there'. In other words, as far as Nagpal is concerned he does not swear that he saw Dr. Jain in the restaurant during the period other appellants were being served.

(71) It is contended on behalf of the appellants that the normal rendezvous of the appellants was York restaurant and so there was no occasion or necessity for them to meet in New Vig restaurant. It is true that Ramji's statement shows that on November 26, 27 and 28, 1973 Rakesh and Chandresh went to York' restaurant. Again on December 2, 1973 at about 2.30 P.M. Ramji took Rakesh to York restaurant where Rakesh met Chandresh. But would these visits prove York restaurant as the normal rendezvous? On November 26, 1973 Ramji met Chandresh for the first time, and was taken to the restaurant for tea. It was on that occasion that Ramji was asked to join in the conspiracy and was promised a car and permanent employment. For aught we know Rakesh and Chandresh went to York restaurant to impress on Ramji that they were affluent enough to honour their commitments. On November 27 Ram Kishan was taken to York restaurant. Now Ram Kishan was a person, as already discussed, whom Rakesh had brought from Charkhi Dadri. On November 28, 1973 Rakesh and Chandresh were moving about

with Ramji and Ram Kishan. On this day Rakesh, Ramji and .Ram Kishan had visited Dr. Jain's Kothi in the forenoon. In the afternoon they had gone to Dr. Jain's clinic at Barakhamba Road from York restaurant. On December 2, as already discussed, Rakesh had an appointment with Chandresh at York restaurant at about 2.30 P.M. for receiving money. Rakesh went there from Bhogal whereas Chandresh came from Hauz Qazi. York restaurant admittedly is situated between Bhogal and Hauz Qazi. It could, therefore, be that York restaurant was visited on the aforesaid days in the peculiar circumstances currently obtaining and not that it was the usual meeting place of Rakesh and Chandresh. On the other hand, there is nothing unusual in Rakesh and Chandresh visiting New Vig restaurant in Chandi Chowk which, as already stated, receives customers from all walks of life. People like Bhagirath, who describes himself as a farmer, could easily be taken to New Vig restaurant. Moreover, by December 2, the conspiracy had reached a final stage. Persons with notorious past had been hired as assassins. It was, therefore, necessary that they be taken to a place where their presence may not arouse any suspicion. Chandni Chowk is frequented even by unhewn and unpolished country folk. Ujagar and Kartar, who were wearing tehmat and looked like rustics, were sure to appear to be a natural part of the rest of the crowd and nobody would have been surprised to see them there. In these circumstances we find no force in the argument that December 4 meeting of the conspirators at the New Vig restaurant was all a cooked up affair.

(72) We shall now deal with another contention of the appellants. It is argued that since Nagpal must have come to know of the assassination: of Vidya Jain he would have informed the police in case the appellants had assembled on December 4 evening in the New Vig restaurant. We cannot forget that Nagpal is only a bearer. Even if he suspected that the persons who had come to the restaurant that evening might have had a hand in the assassination, he could not possibly have the guts to contact the police. It is very rarely indeed that a citizen in this country goes to the police to disclose his suspicions about some particular persons' involvement in a serious crime. After all Nagpal's suspicion could have turned out to be baseless. He cannot be blamed, therefore, for not rushing to the police immediately after he learnt about the murder of Vidya Jain. We, therefore, find that Nagpal's statement corroborates Ramji to the extent that Ramji, Rakesh,

Chandresh, Bhagirath, Kalyan, Ujagar and Kartar were present in the New Vig restaurant on the evening of December 4, 1973.

(73) It is urged that there was no necessity to associate Ramji on December 4 because of his taxi not being available and a crude attempt has been made by the prosecution to make him a witness to the killing. It is submitted, moreover, that if Rakesh wanted Ramji to be present at the time of murder, then he would not have allowed Ramji to go back to his jhuggi from the restaurant so as to necessitate another visit to his place at 6.15 P.M. In this connection reference is made to Exhibit DI, Ramji's statement to the police on December 11, 1973 in which there is no reference to his being a witness to the actual murder. We would deal with Exhibit DI first. It is a statement made to the police by Ramji soon after his arrest in answer to the questions addressed to him. The trial court observes : 'If we read Exhibit DI as a whole, it will be seen that its outlines and broad features tally with the deposition in court'. In our opinion the learned Sessions Judge fell into an error in reading Exhibit DI as a whole. It is a statement recorded by the police under section 161, Criminal Procedure Code, and cannot be used as legal evidence to seek corroboration of a statement made in court. Under section 162 of the Code of Criminal Procedure only those parts of Exhibit DI, by which Ramji was sought to be contradicted, could be taken into consideration. When Ramji was confronted with exhibit DI he admitted that he did not tell the police about the accused meeting at New Vig restaurant, nor did he inform it about his having seen the killing. There are some other omissions and even contradictions also in this statement. We may make it clear that there is no contradiction with regard to his presence at the scene of murder. The question raised is whether Ramji should be disbelieved in respect of those facts which he did not tell the police in Exhibit DI about which he contradicted himself? Mr. Lal cites *Sarwan Singh Rattan Singh v. State of Punjab*, : 1957 CriLJ1014, in support of the contention. We have carefully perused this authority and we do not find that it lays down any such proposition as is propounded before us. In that case the approver, in his first statement to the police, had clearly stated that accused did not join in murdering the deceased. The court found that in almost every material particular about the part played by 'H' in the commission of the offence, the story disclosed by the approver at the trial was inconsistent with his first statement before the police. After taking note of other

discrepancies, the court came to the conclusion that the approver had no regard for truth. In these circumstances the court observed : 'If this was a case where the statement made by the approver on subsequent occasions merely added details which were not included in the first statement, it may perhaps have been a different matter. It is true that omissions have not always the same significance as contradictions; but in the present case it is patent that two sets of statements are wholly inconsistent and irreconcilable and that obviously leads to a very serious infirmity in the character of the , witness'. The statement of Ramji is not of that nature. It is not that according to Exhibit DI Ramji was not present near the scene of occurrence at the time of murder, or that he had ruled out the possibility of his witnessing the killing. During his cross-examination with regard to Exhibit DI, Ramji had this to 'say :. 'I was interrogated for about two hours. They asked me to tell what I knew. Whatever occurred to me at that time was told by me and the rest I did not tell. I had not deliberated at that time as to what to tell and what not to tell. I would say that I did not suppress such and that whatever happened in my presence was disclosed by me'. When confronted with Exhibit DI in respect of omission about the promise of car made by Chandresh in York restaurant on November 26 and of meeting her at Hauz Qazi on 27th, Ramji's Explanationn was that the police did not record those facts. He also explained that he concealed from the police the conversation he had with Rakesh outside York restaurant on November 27 since he had been given a temptation. When further grilled about Exhibit DI Ramji stated 'As I have already told you, I am not sure as to what I disclosed that night and what not. All I know is that I was suppressing something that night'. Again he says 'I had been making all sorts of statement, wrong or right, that evening'. Now on December li, 1973 Ramji was arrested at about 9-30 P.M. after he bad come back from a cinema show. He was taken to the police-station and interrogated. At that stage Ramji was an ordinary accused person and would not have liked to involve himself and his fellow conspirators too deeply. He states the truth when he says that he had not deliberated at that time as to what to tell and what' not to tell. He frankly admits that he did not tell the whole truth and was suppressing some facts. This is the natural tendency of a person who is being accused of an offence, more so when the offence is as serious as murder. When Ramji saw the possibility of his becoming an approver he gave full details of the

crime. Nothing material in Exhibit DI has been pointed out to us which would be destructive of the statement made by Ramji in court. The Supreme Court in *Madan Mohan Lal v. State of Punjab* : 1970 CriLJ898 observed that when the accomplice gave his police statement he did not know that he would be granted pardon and possibly for that reason did not come out with all the facts known to him, and that he did so while making his statement before the magistrate as he knew by then that he would be tendered pardon on condition that he would disclose all the facts known to him. It was also observed that the omission in the police statement by itself would not necessarily render approver's evidence Unreliable, and that the credibility of the approver's evidence has to be considered by taking the evidence as a whole and in the light of the facts and circumstances of the case. We would, therefore, reject the contention of the appellants.

(74) Turning to the question of Rakesh taking Ramji to New Vig restaurant and thereafter to the scene of occurrence we do not see why he could not have acted the way he did. We may repeat that Rakesh's leave, which had been obtained on a false pretext of his wife's death and later on got extended telegraphically, was expiring and he was to join duty by the evening of December 4. He had no option but to act immediately and effectively for the final execution of the plan. Rakesh and Chandresh had taken Ramji into full confidence and he had been rendering all possible assistance right from the time Ram Kishan was sought to be used as a murderer- It was Ramji who came to his rescue when Rakesh's efforts to attain the object of the conspiracy had reached a dead end by introducing Kalyan and this lead had brought about hiring of two genuine cut-throats. It would have been foolish on the part of Rakesh to deprive himself of the moral support, if nothing else, of such a trusted lieutenant. Moreover, exclusion of Ramji at the crucial stage of the execution of the plot was sure to instil a suspicion in Ramji's mind that his nonassociation was intended to deprive him of the promised fruit of his labour, i.e., a free car and permanent employment. Again he knew too much to be expendable. His estrangement was quite likely to provoke betrayal resulting in a noose around every conspirator's neck. It was a coincidence that Malhotra's taxi driven by Ramji was not available on the 4th and Ramji had been assigned some odd job by his employer. If the conspirators were to get together for final settlement of the details of their plan of action, which was not unnatural, New Vig restaurant

was the best place. After they had met and given, the ultimate touches to their strategy, their dispersal from outside the restaurant was a cautious step so as to allay any suspicion which might have arisen in the mind of anyone. It was again quite circumspect for Rakesh to order a taxi from a distant place and to require it outside York restaurant at Connaught Circus which is a very crowded area. The ostensible purpose of hiring the taxi for Charkhi Dadri would not let any suspicion arise in the mind of the taxi driver (Om Parkash P.W.) on seeing two rustics accompanying Rakesh. In these circumstances if Ramji was picked up by Rakesh and asked to give company at the scene of occurrence it was just in the fitness of things. We would, therefore, reject the contention of the appellants that Ramji is telling lies when he talks about the meetings 'in the New Vig restaurant and the details of the occurrence.

(75) One of the reasons why Ramji may have gone home from the New Vig restaurant seems to be that perhaps the decision to take him to the scene of incident was taken later on, and by Rakesh only. That is what is suggested by the remark 'Ramji Too Bhi' which Chandresh made on seeing him in the taxi. Evidently she was not expecting Ramji to be there. But having found Ramji present, she called him out of the taxi and deputed him to doubly ensure that Dr. Jain was not injured in the course of the attack on Vidya Jain.

(76) Another ground on which the statement of Ramji about his visiting New Vig restaurant is subjected 'to criticism is that whereas in Exhibit DI Ramji talks about delivering the car back to Malhotra at 5 P.M. that day, he swears in court that he did it at about 1 P.M. We have already noticed that Ramji was not giving full and correct details in Exhibit DI and was suppressing and distorting some facts. We would not, therefore, attach much importance to this contradiction.

(77) Mr. Lal contends that Ram Singh (PW8) should be believed when he says that Chandresh did not travel in Dr. Jain's car. Now, Ram Singh with his wife and his nephew were guests of Dr. Jain and were putting up with him in those days. When Dr. Jain and his wife had gone to America they had stayed with Ram Singh's mother-in-law. Ram Singh has studied up to 5th class though he has married an American girl. When he came to the court he brought his lawyer also

with him. Ram Singh deposes that on December 4, 1973 at about 2 or 3 P.M. he with his wife and nephew went in Dr. Jain's car from defense Colony to Dr. Jain's clinic in Chandni Chowk. In all seven persons including Dr. Jain and his driver travelled in the car- When they reached the clinic Dr. Jain advised Ram Singh to go about sight-seeing with his wife and nephew. They returned to the clinic at about 6 P.M. and left for defense Colony- According to Ram Singh only five persons travelled in the car. These were Ram Singh, his wife, his nephew, Dr. Jain and the driver. The Public Prosecutor was permitted to cross-examine him. Ram Singh straightaway denied making any statement to the police or having been interrogated by it. When his police statement Exhibit P30 was read out he had this to say : 'I did make a statement to the police but not that I met my wife in the Mandir etc. I did not make any statement and I did not sign any statement'. When it was specifically suggested in cross-examination that Chandresh Sharma had travelled in the car and that 'the doctor drove away with her after dropping you across the defense Colony Bridge '. He did not deny the suggestion. He replied thus: 'I had not seen Chandresh Sharma here at all. If she went with the doctor to Kacharia or Bombay or Ujjain or for that matter any other place I did not see her'. Ram Singh went even to the extent of denying his signature on the memo Exhibit P31. This memo was prepared when his shirt and vest, both bloodstained, were taken into possession. Ram Singh, of course, admitted that these clothes were in fact taken into possession by the police- He denied stating to the police that the doctor did not even touch his wife after she was taken out of the Nallah and removed to the hospital. We have no doubt that Ram Singh was out to suppress the truth- in order to help Dr- Jain he went even to the extent of denying making any statement to the police. He would not even admit his signature on seizure memo Exhibit P31- He must have been feeling so much ill at ease to appear in court that he found it necessary to bring his lawyer. We do not find any force in the contention of Mr. Lal that Exhibit P30 was fabricated. It may be noticed that Station House Officer Daljit Singh, who had investigated the case from the night of December 4 to 11.30 A.M. the following day, had recorded statements of various persons including the statement of Ram Singh. Till that time there was no suspicion against Dr. Jain. It was a routine examination of the witnesses. A bare reading of Ram Singh's statement made in court shows that Exhibit P30 was

recorded at the dictation of Ram Singh. However, Exhibit P30 can only be used to contradict the witness and not as substantive evidence. The one thing which we can safely conclude from Ram Singh's court statement is that he was in his room when Kundan Singh came there and told him that the doctor was calling for help. Thereafter, he with his wife, his nephew, Kundan Singh and Ganga Singh came downstairs. He noticed that the doctor was standing in front of Kothi No. D-292 near his car, and on his (Doctor's) asking they pulled out Vidya Jain from the storm water drain where she was lying. They carried her inside the Kothi and put her down in the porch. Vidya Jain was found quiet. They laid Vidya Jain in the car. Ram Singh's wife sat in the car holding Vidya Jain and Dr. Jain himself drove the car away. Nobody else accompanied Dr. Jain in the car. Ram Singh's statement is no evidence of Chandresh traveling in Dr. Jain's car. At the same time Ram Singh's statement cannot be an evidence of Chandresh not traveling in on the said car as contended by Mr. Lal. Ram Singh responded to Dr. Jain's call for help not by carrying Vidya Jain's inert body from the drain into the car alone but also by tailoring his testimony to suit the doctor's interest.

(78) It has been urged by Mr. Lal that the prosecution was highly unfair to the court and did in fact, substantial damage to its own cause by not examining certain witnesses whose evidence was essential for unfolding its story. The witnesses in question are Kiran Bai, Daryao Singh, Kundan Singh and Ganga Singh. As we have already seen the story with which this case is concerned is a long long one. It started somewhere in the last week of September, 1973 when Rakesh, in the company of Jagdish Parshad Sharma (PW 50), went to Nogaya, Deeg etc. etc. in Dr. Jain's fiat car, driven by Dr. Jain's driver Daryao Singh in search of a Ghat (proper or suitable time or period for a work or action, opportune moment, opportunity etc. vide A Dictionary Urdu, Classical and English by John T. Platts). The story did not culminate till all the culprits had been placed under arrest and reports of various experts on material objects seized in the course of the investigation had been received by the police in the later part of December, 1973. The witnesses referred to by the defense could speak (if at all) only about just one link in a chain of spectacular length and again that link cannot be conceded to be of any crucial importance. As a matter of fact, the prosecution did examine the necessary witnesses so as to place before the court the relevant narrative in its

entirety and it would be wholly unjust to blame it of suppression of material evidence. The appellants have relied upon *Habeeb Mohammed v. State of Hyderabad* : [1954]1SCR475. There can be no quarrel with the principle that witnesses essential to the unfolding of the narrative on which the prosecution is based, must be called by the prosecution whether in the result the effect of their testimony is for or against the case for the prosecution. While deciding *Habeeb Mohammed's* case (*supra*) the Supreme Court agreed with the principle laid down by the Privy Council in *Stephen Seneviratne v. The King* Air 1936 Pc 289 . 'The Privy Council observed that they could not, 'speaking generally, approve of an idea that a prosecution must call witnesses irrespective of considerations of number and of reliability, or that a prosecution ought to discharge the functions both of prosecution and defense. If it does so confusion is very apt to result, and never is it more likely to result than if the prosecution calls witnesses and then proceeds almost automatically to discredit them by cross-examination'. That the prosecution did not default in its duty in the present case is quite evident. Now we have with us the statement of Ramji who claims to have been there at the time of the commission of the murder and saw it being perpetrated with his own eyes. There is then Om Parkash who was at the wheel of taxi Dly 552 which brought the murderers within a few paces of the house of Dr. N. S. Jain and was utilized to rush them away from the site of the murder immediately after it had been committed. Shrimati Madhuli, Dr. Jain's maid-servant, who removed Vidya Jain's chappals from the site, was also mentioned in the prosecution's calendar of witnesses but died unfortunately before she could be brought to the witness-stand. One other person, who was literally at an arm's length when Vidya Jain received the fatal stabs at the hands of Ujagar assisted by Kartar, was Dr. Jain himself and whatever version of the occurrence he chose to offer was tendered in evidence and duly proved (Exhibit P 315). Ramji himself having slipped away after the departure of Om Parkash's taxi the prosecution was left with Dr. Jain's own word as to what happened subsequent to Vidya Jain's being found lying in the nearby drain, and he said that the persons who immediately appeared at the scene were Ram Singh (his guest), Kiran Bai (the said guest's wife) and Kundan Singh and Ganga Singh both on Dr. Jain's pay roll). Though Ram Singh, Kiran Bai, Kundan Singh and Ganga Singh are stated to have helped in lifting Vidya Jain out

of the drain, only the clothes of Ram Singh and Kiran Bai received Moodstains. This circumstance would lead to the inference that in all probability the names of the other two persons were introduced by the accused in the knowledge that they would stand by him even in this exigency- Ram Singh was beholden to Dr. Jain because the latter had operated on his eyes some time earlier, and was being treated, on the day of the murder, along with his wife and his sister's son and a favored guest and yet the prosecution took the risk of calling him as its own witness. As could well be expected he turned hostile. He found the pull of his gratitude to Dr. Jain stronger than the claims of his oath to speak the truth. Had Kiran Bai been brought to the witness-box she could not be expected to have behaved differently. In these circumstances the prosecution was certainly under no compulsion to call Dr. Jain's paid henchmen as its own witnesses. The obligation of calling witnesses essential to the unfolding of the narrative on which its case was based, was fulfilled by the prosecution to the whole extent justice and fairplay could demand, and it will verge on absurdity to say that it was duty bound to ensure confusion by assigning to Kundan Singh, Ganga Singh etc. the accused's partisans 'in thick and thin, the role of its own witnesses.

(79) One word more in the context of Kundan Singh's evidence. In the site plan Exhibit P 246 prepared by Davinder Singh it has been shown that Kundan Singh disclosed that the two assailants were seen running towards the north.' (Of course, it is not admissible in evidence. Reference is being made to it since Mr. Lal contended that it should be used for deciding the importance of Kundan Singh for unfolding the prosecution case). Dr. Jain's own case too is that the two culprits had escaped towards the north (vide the First Information Report Exhibit P 315). Ramji has deposed that Ujagar and Kartar ran to the waiting taxi after they had completed their mission. Om Parkash has said that when he stopped the taxi near the Nallah in the defense Colony, Ujagar and Kartar got down and went in the rear direction of the taxi. Chandresh then came and after having been greeted by Rakesh took Ramji along with her towards the rear of the car. Rakesh kept him busy in talk for 10 or 15 minutes and then Ujagar and Kartar returned to the taxi hurriedly. With all this evidence on the file what remained to be unfolded by Kundan Singh in the matter of escape of the culprits?

(80) Om Parkash, driver of taxi Dly 552 in which Ramji, Rakesh, .Ujagar and Kartar came to the scene of assassination, has, been examined as P.W. 2. He is employed by Rattan Lal (PW12) of Yadav Motor Transport Service. Rattan Lal runs a taxi stand at Chanakyapuri, Sardar Patel Marg. On December 4, 1973 at about 5 P.M. he received a telephone call. The caller gave out his name as Rakesh Sharma and asked for a taxi to be sent at York restaurant for going to Charkhi Dadri. Rattan Lal told the person calling that he would send his driver Om Parkash with taxi Dly 552. Rattan Lal prepared duty-slip Exhibit P39 and dispatched his taxi at about 5.15 P.M. Om Parkash deposes that he drove to the York restaurant and parked the taxi. After about 10 or 15 minutes he noticed Rakesh, Ujagar and Kartar arriving in another taxi. Rakesh came to Om Parkash and informed the latter that it was he who had summoned the taxi. All of them sat in Om Parkash's taxi. Rakesh directed Om Parkash to drive to Bhogal. At Bhogal he was asked to stop the taxi near the Taxi Stand Sahi Hospital, Mathura Road. Rakesh got out of the taxi and after about ten minutes came back accompanied by Ramji. Both got into the taxi. Rakesh then instructed Om Parkash to drive to the defense Colony on the pretext that the (Rakesh) had some business there. In the defense Colony Om Parkash was directed to turn to Divya Marg, and aftergoing a short distance along the Nallah Rakesh asked him to stop. Om Parkash brought the taxi to a halt, facing north. The time now was about 6.30 or 6.45 P.M. Ujagar and Kartar got down and went towards the rear of the taxi. After about ten minutes Chandresh approached the taxi from its back. On seeing Ramji she remarked 'Ramji Too Bhi. Rakesh greeted Chandresh with 'Hallo Devi'. Chandresh told Rakesh in English 'The car is outside'. She called out Ramji and both of them went behind the car in the direction from which Chandresh had come. Rakesh kept sitting in the car and talking to Om Parkash. After 10 or 15 minutes Ujagar and Kartar returned hurriedly to the taxi and sat in the rear seat. Rakesh asked Om Parkash to hurry up. Om Parkash started the car. Rakesh directed him to go to Lodhi Road via Jangpura and under the bridge. On the way Ujagar and Kartar asked Rakesh when they would be paid since the job had been done. Rakesh told them that he would arrange to send the money to their house within a couple of days. When the taxi readied near the triangular road crossing near Golf Links, Ujagar or Kartar expressed an intention to get down. Rakesh asked Om Parkash to

stop the taxi and Ujagar and Kartar left the taxi. Rakesh now directed Om Parkash to proceed to Cantonment. Om Parkash enquired whether he would not be going to Charkhi Dadri. Rakesh replied that the programme had been cancelled. Since the taxi stand of Yadav Motor Transport Service was on way to the Cantonment, Om Parkash stepped the taxi when he reached the office to talk to bids employer about the change in Rakesh's programme. Rattan Lal asked Rakesh to pay Rs. 40 as charges for half the day. Rakesh made the payment and left the ple saying that he would make his own arrangement of conveyance for going to Cantonment. The police took into possession taxi Dly 552 on December 11, 1973. Duty slip book Exhibit D5 containing duty slip Exhibit P 39 was also taken into possession. On December 14, 1973 the police sent the taxi to Central Forensic Science Laboratory, R. K. Puram. Report of the Laboratory shows that bloodstains were found on the rear seat of the taxi.

(81) It is contended that Om Parkash is an accomplice and so he should not be believed. We have already discussed as to who can, be termed an accomplice. An accomplice is a person who participates in a crime. (R. K. Dalmia and others v. The Delhi Administration, : [1963]1SCR253). There is not a scintilla of evidence to suggest that there was any meeting of minds between Om Parkash and the appellants or Ramji as would constitute a conspiracy to commit the murder of Vidya Jain. The circumstances sought to be highlighted to brand him as an accomplice are in perfect consonance with his absolute innocence. It has been contended that since he brought the murderers and their associates to the site of the crime in his taxi he must presumably have been informed for what purpose the journey to the defense Colony was being undertaken. We have not, however, been referred to any evidence on the record which would show that Om Parkash was taken into confidence by the conspirators. It was not: even I suggested to Om Parkash during his gruelling cross-examination that any such information as aforesaid was afforded to him expressly or indirectly by Rakesh or anyone else. We have seen the circumstances under which Om Parkash took the taxi to York restaurant and brought it to defense Colony. Rattan Lal had prepared duty-slip (Exhibit P 39) before directing Om Parkash to take the taxi. We have examined the duty-slip and have no reason to suspect its genuineness. The duty-slip book contains similar duty-slips up to December 7. Exhibit P 39 mentions the name

'Rakesh Sharma' as the hirer and the place where it was wanted as 'Opposite York restaurant'. It is not the case of the defense that Om Parkash knew before hand that Dr. Jain was residing along with his wife in house No. D-291 defense Colony. It was not even suggested to Om Parkash in his cross-examination. Rakesh, who had engaged the taxi, directed the witness at what point to stop the car and Om Parkash just complied with his wish. According to Om Parkash's evidence, Rakesh took the taxi from the York restaurant to Bhogal and picked up Ramji from his jhuggi- Om Parkash questioned him (Ramji) as to how he was there and before Ramji could utter a word Rakesh replied that he was his friend. Had Om Parkash known the purpose for which his vehicle was being utilised he would not have questioned Ramji the way he did.

(82) It is submitted that when Ujagar and Kartar got down from the taxi and proceeded towards its rear, i.e towards the house of Dr. Jain, Om Parkash kept the engine running. It is thus contended that this conduct speaks volumes about Om Parkash knowing that no time was to be wasted after the murderers had accomplished the job assigned to them and that they would have to be whisked away from the spot in red hot haste. As is evidence, however, from the statement of Rattan Lal (PW12) and the duty-slip (Exhibit P 39) that so far as Om Parkash's information went the destination of his passengers was Charkhi Dadri and he must have expected that Ujagar and Kartar should be coming back in a matter of moments. It has been stated by him that after the arrival of Chandresh, Ramji too left the taxi in her company and he put off the ignition. The engine was thus on for about five minutes and when Ujagar and Kartar did not turn up within that time, rather another passenger, Ramji, left the taxi, Om Parkash must have concluded that perhaps the journey would not be resumed so very soon and it would be no use wasting precious petrol.

(83) It has been urged that the very fact of Ujagar and Kartar returning in a hurry should have put an innocent driver on the alert. But if the two aforesaid appellants did not adopt a leisurely pace for coming back to the waiting taxi, that was no circumstance to arouse Om Parkash's suspicion because the whole distance between Delhi and Charkhi Dadri, for which the taxi had been hired, remained to be covered and the passengers, who had left the vehicle presumably for some

momentary job, were expected to avoid all possible further waste of time. In the same context has to be construed Rakesh's command to Om Parkash to start the taxi and hurry up. It was also contended that his rushing away from the scene of occurrence without waiting for Ramji, whom he called ustad ji, shows that Om Parkash was an accomplice. We see no reason to come to such a conclusion. It is true that Om Parkash addressed Ramji as ustad ji. But that was due to the fact that Ramji (aged about 37 years) was much older to Om Parkash (aged about 20/21 years). Had Om Parkash been in conspiracy, he would have made sure to take away his senior colleague, Ramji. The other passengers, total strangers to Om Parkash, could not get preference over ustad ji. Moreover, as we have already seen the trip had started from the York restaurant at the instance of Rakesh and only Rakesh, Kartar and Ujagar had boarded the taxi. So when Rakesh asked Om Parkash to start the taxi and hurry up he must surely have assumed that Ramji had got in only for a brief lift and was not supposed to proceed with Rakesh and his two companions to the ultimate destination, Charkhi Dadri. Om Parkash was not questioned to ascertain the reason why he did not wait for the return of Ramji and naturally there was no opportunity for his offering an Explanationn in this behalf.

(84) It is in the statement of Om Parkash that when they were on their way from the defense Colony to Lodhi Road via Jangpura under the instructions of Rakesh, either Ujagar or Kartar addressed Rakesh Kaushik that since the job had been done the money should be paid and Rakesh replied that he would himself arrange to send the money at their house within a couple of days. From this conversation an argument has been developed by the learned defense counsel that Om Parkash must have learnt at least at that stage that a murder or some very serious crime of the same calibre had been committed and he should have contacted the police in that regard without any loss of time. But the words ascribed to the two parties to the dialogue could smack of no wrong, much less a heinous crime. The job required to be rewarded for might have been of a most innocuous type and in consequence Om Parkash must have remained as ignorant about the dastardly activities of his passengers as ever.

(85) One fact stated by Ramji and picked up by the appellants for use against Om Parkash is that when Ujagar and Kartar got out of the car they were armed with a knife and a pistol respectively, and from this statement we have been asked to assume that Om Parkash must Have seen the weapons with the two passengers leaving the taxi and smelled rat. But Ujagar and Kartar were keeping their weapons safely hidden in the folds of their tehmat. Ramji spoke of his seeing them because he had been together with the murderers long before they got into Om Parkash's taxi and known the place of the concealment of the arms. It is inconceivable that Ujagar and Kartar, setting out on a murderous mission, were flourishing their weapons to prevent a spectacle to all and sundry. Ramji has stated that Ujagar and Kartar had wrapped mufflers round their faces when they went out of the car and it has been contended that the circumstance must have made it plain io Om Parkash that they were out to commit some gruesome crime. But we cannot fail to appreciate the fact that the occurrence pertained to December 4, a mid-winter day, and the use of mufflers in the way Ramji has disclosed would suggest prima facie that they wanted to escape the rigour of the prevalent cold.

(86) As was held in Amulya Rattan Mukherjee's case (supra) cited by the learned defense counsel themselves, , is a person who has concurred in the commission of an offence, i.e., a guilty associate in a crime. To be charged with aiding or abetting the commission of the crime conscious participation of the person concerned at the relevant time must be established. So long as he has no knowledge of the facts which constitute the offence he cannot be indicated as an abettor. A person does not become an accomplice just because he happens to be present at the time of the commission of a crime and even witnesses it so long as he himself does not render any aid in its commission and afford some support or encouragement to the criminal although he does not move his little finger to prevent or deter the criminal. (See Russell on Crime, Twelfth Edition, Volume I, page 146 and Vemireddy Satyanarayan Reddy and others v. State -of Hyderabad, : 1956 CriLJ777).

(87) We do not agree with the trial court when it concludes : 'It may, however, be legitimately contended that what Om Parkash claims to have seen and heard that

evening at defense Colony and later on the way to Lodhi Road he must have suspected that all these persons were engaged in some secret and unlawful activities'. As already discussed, there was no reason for Om Parkash to suspect anything. Taxi drivers know that many a time their passengers will ask them to stop and wait for sometime and thereafter rush back to the taxi directing the driver to speed away.

(88) Some contradictions in Om Parkash's evidence have also been pointed out to us and it is submitted that he is not a reliable witness. We find, however, that the said contradictions are very minor in nature and do not detract from the value of his testimony. One inconsistency which Mr. Bhargava wants to capitalize is that in the court the complexion of Ujagar and Kartar was described as 'dark' while it was given as 'Sanwala' in the police statement. The witness explained in the court that he did not recognise any distinction between the two. Deep 'Sanwala' may appear, unless one enjoys real expertise in defining different colours, shades, tints and hues, as dark, and light dark may look as Sanwala. It should be impossible to prescribe an acid test for differentiating the two objectively. The plea raised by Shri Bhargava would seem, therefore, to be meaningless. It is true that Om Parkash could not tell whether it was Ujagar or Kartar who had requested Rakesh to stop the car at the triangular corner near Golf Links. But the witness must have been concentrating at the relevant moment on the road and the traffic passing along it, and could not possibly see whose lips had moved for the said request. As such, there is no discrepancy to be exploited by the defense. We find that Om Parkash's testimony is cogent, consistent and convincing, Om Parkash corroborates Ramji about Ramji being picked up from Bhogal at about 6.15 P.M. and driven to defense Colony; the taxi stopping towards the right side of the Nallah; Ujagar and Kartar getting down and going towards the house of Dr. Jain; Chandresh coming to the taxi from the direction of Dr. Jain's house and going back towards the house in the company of Ramji; Ujagar and Kartar rushing back to the taxi and the taxi leaving immediately with Rakesh, Ujagar and Kartar.

(89) Pw 12 Rattan Lal's statement is assailed on the ground that since his taxi was used as a get-away-taxi he was afraid of being involved in a murder case and so was amenable to the pressure of the police. It is submitted for that reason that his

evidence should carry no weight. We are afraid we do not agree. There is no material on the file to suggest that Rattan Lal knew that his taxi was going to be used by any criminals. It is true that where a car belonging to a person has been found to have been used in the commission of a crime the owner would have to give a good Explanationn of his bona-fides to satisfy the police. In the instant case the taxi was booked for travel to Charkhi Dadri at the instance of Rakesh Kaushik who could not have looked anything other than a gentleman and Rattan Lal could not be blamed if the hirers turned out to be murderers. Another objection raised against Rattan Lal is that since he did not show Rs. 40, said to have been received from Rakesh, in the cash register, the fact of this receipt should not be accepted. Rattan Lal has explained that their partnership business 'Yadav Motor Transport Service' is not assessed to income-tax and as such no regular accounts are being maintained. He has testified further that be is himself assessed to income-tax as an individual and shows his share of the income from the partnership business on estimate basis. There is no reason to disbelieve his Explanationn.

(90) It is contended by the appellants that since Rattan Lal admits signing his statement recorded by the police at the taxi stand and also the statement which was written at the police-station, his evidence in court could not be voluntary. Mr. Arora replies that Rattan Lal had signed the memos in respect of the seizure of his taxi and the duty-slip book by the police and, thereforee, it was under a confusion that he spoke of signing his police statement. Mr. Arora further submits that no question was asked by the defense counsel from the police-officer who had recorded his statement to find out whether, in fact. Rattan Lal had signed the same. We are not impressed by this plea. Once the witness stated that he had signed the police statement, the defense was not called upon to ask any question on this aspect from the investigating officer. However, the evidence of this witness cannot be thrown out simply on the ground that he signed the police statement. The only result of signing the police statement by a witness is that his testimony in court would invite a close scrutiny before being accepted. There is nothing in Rattan Lal's evidence to betray his interest in deposing falsely against any of the accused. He. had sent the taxi in response to a telephone call received by him. He prepared the duty-slip (Exhibit P 39) in due course of his business which corroborates his statement that it was Rakesh who had hired the taxi.

(91) Rattan Lal's taxi Dly 552 was seized by the police on 1 December 11. It was sent to Central Forensic Science Laboratory R. K. Puram for tracing out bloodstains, if any. The seizure memo reveals that the police did not notice any stains of blood in the taxi. However report Exhibit P350 of the Junior Scientific Officer-cum- Assistant Chemical Examiner refers to 'one faint green coloured Ambassador Taxi bearing No. Dly 552, stained with two faint brown stains on the left side lower region of back seat rest, one speck of dark brown stain on the ceiling near the light above the back seat and seven small specks of dark brown/faint brown stains on the top ceiling left side above the left front door'. The report Exhibit P351 of the Serologist makes out that these bloodstains were of human origin and were of blood group 'B'. According to the Serologist the blood of the deceased was also of group 'B'. It is contended by the learned counsel for the appellants that since the taxi was being cleared every day the bloodstains, if any, received on December 4 could not have lasted till December 11. and so the police must have fabricated this evidence. But there is data to hold that the back seat rest, ceiling or other part of the taxi on which the said blood was detected, had not been washed after December 4 till it was taken into possession by the police. It is common knowledge that stains of blood are not removed by cleaning with a simple duster. After the blood dries up, it can be removed only by the use of water or other suitable liquid and good rubbing. Moreover, if the police had fabricated the evidence, it would not have failed to mention in the seizure memo the presence of suspicious looking stains in the taxi. We, therefore, agree with the trial court that there is no doubt as to this taxi having been used as a get-away-vehicle by the assassins and their associates. This fact also corroborates Om Parkash driver as well as Ramji.

(92) Before discussing evidence regarding the participation of individual appellants in the crime we may repeat that we are conscious of an approver's statement needing corroboration not only with regard to the conspiracy but also with regard to the identity of each conspirator. While dealing with the question of the nature of corroboration the Supreme Court in *Sheshanna Bhumanna Yadav v. State of Maharashtra*, : 1970 CriLJ1158 observed:

It may consist of the evidence of second witness or of circumstances like the conduct of the person against whom it is required. Corroboration must connect or tend to connect the accused with the crime.

The conduct of each conspirator before the occurrence, at the time of the occurrence and after the occurrence can be used not only against the conspirator but also against his co-conspirators.

(93) As already found, Ujagar and Kartar joined the conspiracy on December 1, 1973 when they were contacted by Rakesh and Bhagirath. They came to Delhi the same night and remained in Delhi till the perpetration of the murder, Om Parkash P.W. and Ramji approver depose that taxi Dly 552 driven by Om Parkash was stopped about 40 or 50 yards from the house of Dr. Jain. Ujagar and Kartar got down the taxi and went in the direction of Dr. Jain's house. Ujagar was carrying a knife whereas Kartar was armed with a pistol. They had hidden their respective weapons in the folds of their tahmats. Ramji saw Kartar and Ujagar pouncing upon Vidya Jain as she came close to the car. While Kartar held her, Ujagar gave knife blows. Mr. S. C. Bhargava, the learned counsel for Ujagar and Kartar, seriously argues that the murder could not be the handiwork of these appellants because they are hardened criminals expert in the use of their weapons and they would not have wasted so many knife blows for killing a hapless woman. He also contends that the police of Rajasthan and U.P. were inimical to the appellants and they had, from time to time, arrested them in a number of criminal cases of robbery and dacoity. Since they did not succeed in their designs of securing their convictions they got them falsely implicated in the present case. We know that the character of the accused cannot be proved by the prosecution. In fact, it does not even talk about it. It is the aforesaid appellants themselves who have proved that they are professional criminals in order to bolster the defense taken by them. Mr. Bhargava's contention, which is indeed a very bold one, is based on the previous history of these appellants. Simply because these appellants were skilled in slaughtering human beings, as submitted before us by Mr. Bhargava, is no ground to hold that they could not have given so many knife blows to take Vidya Jain's life. They had been hired to kill her and they had to make sure of her death before they could claim payment. Those being winter days, Vidya Jain was wearing a

brassiere, a blouse, a sweater and had a shawl, and all these clothes must have come in the way of the penetration of the knife. Moreover, the deceased must have put up some resistance during the attack because naturally enough nobody wants to die. The fact that there were a number of injuries on her arms goes to prove that she did not submit herself for a sacrifice and tried to ward off blows on vital parts of her body. As long as there was even the slightest resistance, the assassins knew that she was not yet dead. They would not leave her till fully convinced that she did not have one in a million chance of survival. Moreover, we find that during the trial this was not the defense set up by these appellants. The relevant part of the cross-examination of Inspector Faqir Chand (P.W. 98) reads : 'I deny the suggestion that I implicated two assailants including Kartar because I found that there were 13 or 14 injuries on the person of the deceased'. It shows that the plank of the appellants at that stage was that they had been implicated because of the callous and brutal manner in which Vidya Jain had been slain. Mr. Bhargava no doubt suggested to Inspector Faqir Chand in his cross-examination that the names of Kartar and Ujagar were suggested to him by Mathura Police and Bharatpur Police and that he had implicated them at their instance. But the suggestion was stoutly refuted. However, the appellants went on to prove Exhibits D56, D57 and D58 in order to convince the court that Ujagar and Kartar were previous convicts and history-sheeters. Kartar had been convicted for dacoity under sections 395/397, Indian Penal Code, and cases under sections 399/402, 394 etc. were still pending against him (Exhibit D58). Ujagar had been convicted under section 307/333/34 and section 456, Indian Penal Code. These documents support Mr. Bhargava's contention that Kartar and Ujagar were no novices and they knew how to wield their weapons effectively. But just such like persons were needed by their co-conspirators for the assassination of Vidya Jain. It is pointed out by Mr. Bhargava that the description of the assault given by Ramji is belied by the injuries suffered by Vidya Jain; whereas Ramji talks about 11 or 12 injuries being inflicted, the deceased was found to bear 14 stab wounds. It is further submitted that according to Ramji, Kartar held Vidya Jain from behind by putting his hand on her face and mouth while Ujagar gave the knife blows as a result of which she fell in the drain with Kartar, and so the deceased could not have received two stab blows at the back of the neck. During cross-examination Ramji

states : 'Kartar Singh was holding the deceased while Ujagar was inflicting knife blows to her. Kartar held her in his arms from behind. He was holding her from her face and mouth. The deceased had fallen in the course of the occurrence. Kartar Singh had also fallen with her. I did not see. anyone inflicting knife blows to the deceased after she had fallen'. It must be remembered that Ramji was witnessing the assault from a distance. Vidya Jain was surrounded by Kartar and Ujagar. While Kartar was holding her from the back, Ujagar was giving the knife blows from the front. The deceased was bound to make an effort to wrench herself free and put up resistance as long as she possible could. In these circumstances it will be highly improbable, rather practically impossible, for a person witnessing the assault from a distance at that time of the night to say exactly how many blows were given and whether or not any blow was given to her after she had fallen down in the drain. It is true that the deceased was found to have one incised wound on the back of the neck (injury No. 14) and another on the back of right side of abdomen (injury No. 13) but in our opinion these injuries do not B discredit Ramji. It will bear repetition that the deceased could not have been standing still like a statue to receive the blows, and the twists end turns of her body to save herself might have resulted in the two blows landing on the back of neck and abdomen respectively. We need not speculate about the positions of the body in which the relevant injuries could or could not have been received. Dr. Bharat Singh, who performed the post-mortem examination, was not asked a single quetion on this issue. On the other hand, the fact that except injuries Nos. 13 and 14 all the other injuries were found on the left front side of the deceased, shows that she had been strongly held and the person inflicting the knife blows was avoiding the right front side because of the hand of the person holding the deceased by the mouth. The absence of possible abrasions shows that when the deceased fell in, to the storm water drain she was till being held. It may be noticed that this drain is about 3' deep and 2112 wide as is evident from the inspection note of the learned Sessions Judge. We have already discussed the evidence of Om Parkash P.W. It lends very substantial corroboration to Ramji's version. On) Parkash not only brought Ujagar and Kartar near Dr. Jain's Kothi but also drove them away along with Rakesh. On the way either Ujagar or Kartar asked about the money since the job had been done. They left the taxi of Om Parkash alt the place

where Golf Links Road meets Lodhi Road. As already stated, the taxi was found to have bloodstains by the Central Forensic Science Laboratory which shows that assassins did travel in the taxi soon after the murder.

(94) After Rakesh had been arrested on, the morning of the 10th and interrogated, the police decided to arrest Kalyan, Bhagirath, Ujagar and Kartar. D.S.P. Harpal Singh (PW79) was instructed by the Superintendent of Police and the Inspector General of Police to conduct raids in Haryana and Rajasthan for their arrests. A strong raiding party was organized. Six inspectors and 15 jawans from the Delhi Armed Police along with others were included. Rakesh was also joined. After arresting Kalyan from the fields near village Ghorri and Bhagirath from Palwal, Rakesh was sent back to Delhi with Inspector Narinder Singh. The rest of the raiding party left for and reached Kama at about 11 P.M. The Station House Officer of Police Station Kama was not present at the police station. D-S-P. Harpal Singh then went to Police Station Pahari, perused the history sheets of Kartar and Ujagar, and discovered that they had been involved in robbery and Arms Act cases of Madhya Pradesh, Uttar Pradesh, Haryana and Rajasthan. He brought two constables from that police station to Police Station Kama. Harpal Singh then went to Deeg and met the Deputy Superintendent of Police of the area who was requested to join the raiding party. It was planned to go to village Seshan early in the morning. At about 4.45 A.M. the police party arrived at that village. The vehicle was stopped about 2 Kms. from the village. One of the constables (Milap Singh) of Police Station Pahari was sent to the village to bring two local residents there from. The constable brought Bhajan Singh and Lachhman Singh. As it was suspected that there may be an encounter between the police and Ujagar and Kartar, necessary arrangements to meet the situation were made. The raiding party was divided into two groups-one for the house of Ujagar Singh and the other for the house of Kartar Singh. Bhagirath was kept by Harpal Singh in his party so that he (Bhagirath) could, if necessary, talk to and decoy Ujagar Singh. Both the houses were stormed simultaneously. As Harpal Singh's party entered the courtyard of Ujagar, a dog barked. The party rushed into the chhappar where Ujagar Singh, who was holding a rifle, was overpowered. During the scuffle Ujagar Singh succeeded in giving a butt blow to Constable Hari Singh. Simultaneously Kartar Singh was overpowered by Sub-Inspector Surjit Singh and Constable

Gurbux Singh. Kartar Singh was holding a loaded country made pistol. Ujagar Singh's chhappar was searched and 18 rifle cartridges were recovered. A sword was also found lying in the chhappar. The said articles were duly taken into possession under formal recovery memos. D.S.P. Harpal Singh recovered country made pistol Exhibit A-1 from Kartar Singh vide memo Exhibit P32. One .303 cartridge Exhibit A-8 was removed from the pistol and seized. Person of Kartar was searched and from his side pocket three more cartridges A-5 to A-7 were recovered and taken into possession vide memo Exhibit P34. D.S.P. Harpal Singh interrogated Ujagar Singh. Ujagar made a disclosure statement Exhibit P37 offering to get a knife recovered from the bushes on Lodhi Road. Clothes of Kartar Singh and Ujagar Singh were also taken into possession vide memos Exhibits P35 and P36. They were warned to keep their faces covered since they would be required to be identified by witnesses in a test identification parade. The police party left for Delhi along with Ujagar, Kartar, Kalyan and Bhagirath. It reached police station Kalkaji at 3.30 P.M. While Kartar, Kalyan and Bhagirath were left in the police station, Ujagar was handcuffed and was taken by Harpal Singh to Police Station Hauz Khas. Mehar Chand and Balwant Singh P. Ws. were joined from Yusuf Sarai market. The party first went to Dr. Jain's Kothi as desired by Ujagar and from there Ujagar led the police party to Lodhi Road. At the junction of Lodhi Road and Golf Links Road Ujagar got the Police van stopped. He got down and went into the bushes and from there brought out the knife Exhibit A-2 in a folded condition. A sketch of the knife was made and it was duly taken into possession vide recovery memo Exhibit P50 and was converted into a sealed parcel. The party returned to Police Station Hauz Khas where the knife and other articles recovered from these appellants were deposited. Kartar Singh, Kalyan and Bhagirath were summoned from Police Station Kalkaji and locked up at Police Station Hauz Khas.

(95) Mr. Bhargava submits that nothing was recovered from Ujagar and Kartar at Village Seshan. In fact, according to Mr. Bhargava, they were not even arrested in the village but they were summoned to Police Station Pahari where they were put under arrest and a drama of their arrest was enacted in the village. We are not inclined to agree with him. According to Mr. Bhargava's own submission both the appellants are notorious and dangerous criminals. There was no necessity to

stage a farce in the village if the appellants had already been arrested. Harpal Singh explains that he did not know that it was Police Station Pahari in whose jurisdiction the village Seshan was situated, and so he made the mistake of going to Police Station Kama. In consultation with the local Police Officers Harpal Singh decided to raid the houses of the appellants early in the morning so as to take them by surprise. He had used a constable of the local police to summon two residents of the village to find out if these appellants were in the village. If the constable brought with him Bhajan Singh and Lachhman Singh, Harpal Singh could not be blamed for it. It is true, as already discussed, that Bhajan Singh is inimical to Ujagar and Kartar and it is not safe to rely on his statement implicitly. However, there is no reason why D.S.P. Harpal Singh should not be trusted. He is a responsible police officer who was specially detailed to affect the arrest of the appellants. He admits that his normal duty is not to conduct raids and he had been particularly deputed for appellants' arrest because the present was an exceptional case.

(96) Another ground on which credibility of D.S.P. Harpal Singh has been challenged is that he deposited the knife, pistol etc. with Police Station Hauz Khas and not with the relevant Police Station, defense Colony, because an entry in the Malkhana register of Police Station defense Colony could not be interpolated to show the deposit of these articles on an earlier date. Harpal Singh explains why he acted in this manner:

USUALLY the case property is deposited in the Malkhana of the police station to which the case relates. However, if the recovery is made by an officer of a police station other than the one to which the case relates that officer may deposit the property in the Malkhana of his own police station or any other police station convenient to him. I deny the suggestion that the case property was deposited by me in P.S. Hauz Khas and entered in a fresh register and that I did so because there was no scope for doing such a thing at P.S. defense Colony.

D.S.P. Harpal Singh was S.D.P.O. of Police Station Hauz Khas. There was nothing abnormal, therefore, in his taking the persons arrested by him and the property recovered from them to the said Police Station. He had made the

necessary entry (Exhibit D50/1) at 6.40 P.M. in his own hand in the daily diary of this police station. Though he has not mentioned that the knife was got recovered by Ujagar but he has mentioned the fact of the knife, pistol cartridges etc. having been recovered and deposited.

(97) Mr. Bhargava attacks the disclosure statement Exhibit P37 on the score that only Bhajan Singh and Lachhman Singh. appellants' enemies, were made witnesses to it and not any police officer of Rajasthan Police. According to Mr. Bhargava, officers of the Rajasthan Police were not willing to become witnesses to this disclosure statement because it was a made up affair. Strangely enough, Mr. Bhargava contends at the same time that Rajasthan Police was instrumental in getting the appellants involved in the present case falsely. The hollowness of his stand is manifest from this self-contradiction. In case officers of the Rajasthan Police could go to the length of implicating innocent persons in a murder case, they would not have hesitated to attest a spurious disclosure statement. However, as already stated, Bhajan Singh and Lachhman Singh were not known to Harpal Singh nor was he aware of the fact that they were inimical to the appellants. They appeared to him to be and were accepted by him as independent public witnesses. He would thus not have felt the necessity of having any police official of Rajasthan as an additional witness. It may be noted that it was never suggested to Harpal Singh in his cross-examination that he knew the antecedents of Bhajan Singh and Lachhman Singh P.Ws. or that officers of Rajasthan Police refused to be witnesses to the disclosure statement or recovery memos referred to above.

(98) We will now revert to the statement of Dewan Singh (DW2), produced by the appellants. He admits that both the appellants belong to his brotherhood. He states that on December 10, 1973 at about 12.30 P.M. he was on his way from the village to Bharatpur when he met three police constables, including Milap Singh of Police Station Pahari, and saw the present appellants with them. On enquiry he (Dewan Singh) was told that they were going to Police Station Pahari. Assuming that to be so, it does not follow that they were not arrested on the morning of December 11 as deposed by D.S.P. Harpal Singh and Inspector Rao Jagmal Singh (P.W.I 00). It is pertinent that no suggestion was made to D.S.P. Harpal Singh and Inspector Jagmal Singh that the appellants had been summoned to Police Station

Pahari on 10th night and brought to village Seshan next morning to spin the yarn of a fake arrest there. The recovery of knife Exhibit A-2 is corroborated by Inspector Rao Jagmal Singh as well as Balwant Singh and Mehar Chand P. Ws. Mehar Chand (PW 14) is a Chakki (grinding mill) owner. Balwant Singh (PW 17) deals in building material. Both of them are residents of Yusuf Sarai. They support the prosecution version about the recovery of knife Exhibit A-2 at the instance of Ujagar Singh. Mehar Chand is a social worker. He admits attending meetings at the police station as a social worker once or twice a year. He also concedes that in case of need the people of the locality take him to the police station. He deposes that it was he who called Balwant Singh P. W.' He states that the bushes, from where the knife was recovered, were growing wild and were 2 or 3 feet high. Balwant Singh is a member of Beopar Mandal of Yusuf Sarai. He swears that he has never been to the police station. Both Mehar Chand. and Balwant Singh depose that they have never appeared as witnesses for the police. We see no reason to disbelieve them. They are respectable persons and were under no compulsion to oblige the police by perjuring themselves in a murder case.

(99) Kartar Singh appellant produced Dr. Har Narain Sharma (DW. 1) to prove that he (Kartar Singh) had been treated by the witness on December 3, 1973. Dr. Har Narain Sharma was Medical Officer in charge Primary Health Centre, Jurhera. He deposed that Kartar Singh accused is known to him and that he came to him as an out-door patient on December 3 for treatment of constipation. In this connection he referred to an entry in the out-door patient register brought by him. He admits 'that' he had not noted the parentage of Kartar Singh in the register, that another Kartar Singh: a patient of constipation, visited the dispensary on December 11, 1973 ; and still another Kartar Singh came to him on 'the last mentioned date for the treatment of bronchitis. It is undisputed that the parentage or the name of the village of patients is not mentioned in the register. Exhibit D 74, copy of a chargesheet, speaks of one Kartar Singh son of Sardar Singh, Rai Sikh, resident of Seshan. Kartar Singh is a common name and there may be any number of Kartar Singhs in village Seshan. The out-door patients' register produced by Dr. Har Narain Sharma does not corroborate him at all. The doctor, posted at the same place where the appellant resides, could not displease him because of the terror his past misdeeds would inspire. Moreover, Kartar Singh in his statement under section

313, Criminal Procedure Code, states that he was confined to bed in the hospital at Jurhera on December 3, 1973. Evidently Dr. Sharma's evidence destroys this plea because it tends to establish that Kartar Singh was an out-door patient as against an indoor one. The learned Sessions Judge was correct in rejecting the testimony of this witness.

(100) The prosecution has produced Dr. Arun Sagar (PW73) to prove the injuries found on the person of Ujagar and Kartar. The doctor examined these appellants on December 12, 1973. He found abrasions over and near about the right knee of Ujagar and some abrasions on the right upper arm and left shoulder of Kartar Singh. The injuries appeared to be eight days old. The doctor admits that the same could be more than eight days old. Since we cannot form a definite opinion that the injuries were sustained on the date of the occurrence, the circumstance may not be used against the appellants. The prosecution has also relied on the blood of group 'B' being found on the tehmats of Kartar. Since the blood group of the deceased was also 'B', it is suggested that the appellant had the deceased's blood on his tehmats. We cannot forget that Kartar was found to have bruises round about his elbow and shoulder. The prosecution has not ruled out the possibility of Kartar himself having 'B' group blood, which indeed, we are told, is very common. In our view blood found on the tehmats after about 7 days of the occurrence cannot be accorded much significance.

(101) In our opinion the learned Sessions Judge was justified in refusing to draw an adverse inference against Ujagar and Kartar for their refusal to participate in the test identification parade. Both these appellants were with the police from the morning of December 11, when they were arrested at village Seshan, till the evening of the following day. Inspector C. N. Ludhani, Pw 97, obtained their judicial remand on December 12 but did not send them to judicial lock-up though other appellants were dispatched at 4 P.M. Ujagar and Kartar were taken to the Police Hospital for medico-legal examination. However, the doctor 'was not available there and they were brought to the defense Colony Police Station. They were kept there for a few hours and brought back to the police hospital at 8 P.M. and ultimately admitted to judicial lock-up at about 11 P.M. There was no reason for not getting these appellants medically examined before they were produced for

judicial remand. The police should have specifically requested the Magistrate to allow it to take them to the doctor for medico-legal examination if that was its plan. In any view of the matter, the police had no business to take these appellants back and to keep them for nearly seven hours. There was thus enough opportunity for the police to show them to the witnesses before sending them to judicial custody to await a test identification parade. Their appearance at such a farcical parade would have served no purpose.

(102) We will presently discuss the conduct of the other coconspirators which, as already stated, can be used against these appellants (Kartar and Ujagar). We have no hesitation in holding that Ujagar and Kartar were the hired assassins; they had been brought from village Seshan to Delhi on the night of December 1, 1973; they had reconnoitred the area on December 2 and 3; and on December 4 while Kartar held Vidya Jain as she came out of her house, Ujagar stabbed her fatally. The learned Sessions Judge was correct in convicting Kartar Singh under section 120B(1) and section 302 read with section 34 of the Indian Penal Code and Ujagar under section 120B(1) and section 302 of the Indian Penal Code. They were also justly convicted and sentenced under section 27 of the Arms Act.

(103) It is contended on behalf of Rakesh and Chandresh appellants that since the witnesses did not know them earlier they should have been asked to identify these appellants in a test identification parade. The failure of the investigating agency to do so is alleged to be fatal. Section 9 of the Evidence Act makes test identification parades relevant 'to establish the identity of any thing or person whose identity is relevant'. No doubt the identification of an accused in a test identification parade is a useful piece of evidence. However, it is not substantive evidence and it can be used only to corroborate the witness when he correctly identifies an accused in the court. It is the evidence given by a witness in court which is substantive evidence. It cannot, therefore, be held that failure to hold an identification parade is fatal to the prosecution and because of it the evidence given in court should be thrown out. A similar question came up for consideration before the Supreme Court in *Kanta Prashad v. Delhi Administration* Air 1938 Sc 350, and the court observed : 'It would no doubt have been prudent to hold a test identification parade with respect to witnesses who did not know the accused before the occurrence, but failure to

hold such a parade would not make inadmissible the evidence of identification in court. The weight to be attached to such identification would be a matter for the Courts.....'. In *Jadunath Singh and another v. The State of U.P.*, : 1971 CriLJ305 , the Supreme Court affirmed the following observations made in *Parkas' Chand Sogani v. State of Rajasthan*, Criminal Appeal No. 92 of 1956(32), decided on January 15, 1957 :

WE do not think that there is any justification for the contention that the absence of the identification parade or a mistake made as to his name, would be necessarily fatal to the prosecution case in the circumstances.

In *Sampat Tatyada Shinde v. State of Maharashtra*, : 1974 CriLJ674 , the Court held that the test identification is not the only type of evidence that can be tendered to confirm the evidence of a witness regarding identification of the accused, in court, as the perpetrator of the crime, and that the identity of the culprit can be fixed by circumstantial evidence also. During the investigation of a case the police may come across witnesses who had never seen the offender before the incident. Investigating agency would thus like to know at the earliest whether the person arrested by it is the actual offender or not. For this purpose the arrested person is mixed up with a number of other persons of somewhat similar size and appearance and the witness is asked to identify the offender. This system is fair to the accused as well as to the investigating officer. After all the investigating agency wants to assure itself whether the investigation is proceeding on the right lines. It is with this end in view that immediately after arrest an accused is directed to muffle his face and sent to judicial lock-up to await the test identification parade. But an accused is not bound to take part in the parade, He may refuse to do so. However, the investigating officer may still want to assure himself that he has arrested the real offender. The practice which has developed is that the investigating officer calls the witnesses to the police station where the offender is locked up and enquiries from them if the person arrested by him is the actual offender. It is true that at this stage the offender is not mixed up with others and is not asked to take part in a test identification parade. But that is not necessary because such identification is not to be used as a corroborative piece of evidence. The Supreme Court in *Hasib v. The State of Bihar*, : 1972 CriLJ233 , while

discussing the necessity and importance of the test identification parade observed:

NOW, identification parades are ordinarily held at the instance of the investigating officer for the purpose of enabling the witnesses to identify either the properties which are the subject-matter of alleged offence or the persons who are alleged to have been concerned in the offence. Such test or parades belong to the investigation stage and they serve to provide the investigating authority with material to assure themselves if the investigation is proceeding on right lines.

(104) The things were so managed by the conspirators that after the murder the police did not suspect Dr. Jain or Chandresh. It accepted the bona-fides of Dr. Jain when he lodged the First Information Report and registered a case of murder on its basis. Finding that the motive for murder was not robbery, the police began spreading its net wide to get hold of some lead. It was on December 7, 1973 that Inspector Faqir Chand of the Crime Branch took over the investigation. He started interrogating Dr. Jain and Chandresh the same day and kept it on till December 10, 1973. In the meantime, Phool Singh and Karan Singh P.Ws. were called to the police station on December 8, 1973 and interrogated and their statements were reduced to writing. On December 9, 1973 Ram Phal's statement was recorded by Inspector Narinder Singh under directions of Inspector Faqir Chand. Dr. Jain was arrested on December 9 and Chandresh on December 10. Admittedly Karan Singh and Phool Singh had come to the Police station defense Colony when Chandresh was present there for interrogation. Both of them admit seeing Chandresh at the police station. Though Inspector Faqir Chand was trying to locate Rakesh for interrogation since December 7, 1973, he could not be traced and arrested prior to December 10. After his interrogation Rakesh was taken to village Ghorī from where Kalyan was rounded up and then Bhagirath was apprehended from Palwal. Thereafter, Rakesh was brought back to the police station. up to this time the police had not felt the necessity of directing Chandresh and Rakesh to keep their faces muffled and to warn them that a test identification parade will be held to establish their identities for the reason it had not yet found any witness who should be called upon to identify these accused, Om Parkash P. W. was contacted on the afternoon of December 11. So was the case with Krishan Lal Nagpal. In these circumstances no mala-fide can be attributed to the investigating officer. It is

asserted by Mr. Lal that after recording the statement of Ram Singh P.W. the investigating agency should have realised the necessity of putting up Chandresh for identification by his witness. It is true that in his police statement Ram Singh does talk about a young woman in the car when Dr. Jain brought them back from Chandni Chowk to defense Colony. However, at that stage there was no suspicion that the said young woman was in any way connected with the murder. Thereafter Chandresh had been called many a time to the police station before she was finally arrested. In this situation the holding of a test identification parade could have been no better than a farce.

(105) As is evident from the evidence already discussed, Rakesh Kaushik had been playing a leading role in accomplishing the object of the conspiracy. He took 20 days' leave from Advance Annual Leave- (Exhibit P181) on November 5, 1973 on the pretext of his wife having expired. Admittedly his wife is hale and hearty. He got the leave extended for ten days by a telegram. First he tried to use Karan Singh for killing Vidya Jain but failed. Then he coaxed and coerced Ram Kishan to execute the job but in vain. As his leave was about to expire and the situation looked like getting out of hand, he succeeded in hiring Ujagar and Kartar and brought them from their village Seshan to Delhi on the night of December 1, 1973. He also took Ujagar and Kartar to defense Colony to enable them to survey the location. We have already held that the recovery of Hindi Magazine 'Filmi Duniya' (Exhibit P 11) by Dharam Vir Malhotra P.W. from his taxi Dly 544 leaves no doubt that Rakesh was using the taxi on December 3. We have also found that Rakesh had been frequenting New Vig restaurant in Chandni- Chowk and visited that restaurant on December 2, 3 and 4 in the company of the other co-conspirators. December 4 was the last day of his extended leave. He was due to report to his unit by the evening of this day. The conspirators had finalized the plan in their meeting in New Vig restaurant at about 5 P.M. to perpetrate the murder that very evening. Rakesh had telephoned Rattan Lal to send his taxi Dly 552 to York restaurant that evening for the ostensible purpose of -visiting Charkhi Dadri. Om Parkash P.W. brought this taxi to the York restaurant. He noticed Rakesh along with Ujagar and Kartar coming in another taxi. Om Parkash drove his taxi to Bhogal as guided by Rakesh. Rakesh picked up Ramji and took the car to the defense Colony. At defense Colony Om Parkash was asked to stop the taxi near the house

of Dr. Jain. While Ujagar and Kartar got down, and later on Ramji too, Rakesh kept Om Parkash busy in conversation. After some time Ujagar and Kartar came back occupied seats in the rear of the taxi and Rakesh asked Om Parkash to hurry up. On the way Rakesh promised Ujagar and Kartar that he would arrange to send the money to their house within a couple of days. The recovery of chit Exhibit P238 giving the name of village 'Seshan' and its location shows his interest in that village. We have already discussed the evidence establishing these facts in detail and need not refer to it over again. In order to prove that Rakesh did not report back to his unit on the night of December 4, the prosecution has examined Naib Subedar Durga Parshad (PW48) and Naib Vir Bahadur (PW49). Durga Parshad was acting as a Company Havildar-Major and was posted to the Vehicle Battalion No. 17, Delhi Cantonment during those days. When Rakesh proceeded on 20 days' leave, it was Durga Parshad who came to occupy his room in the unit. Durga Parshad used to take roll call of the unit at 7.00 P.M. daily. Rakesh was found absent on December 4 at the evening roll call. Naik Vir Bahadur was the Platoon Havildar who, according to the practice, 'Okays the presence of each one in his unit at 10 P.M.'. Vir Bahadur found Rakesh missing at that hour. Durga Parshad reported Rakesh's absence to the Battalion Havildar. According to Rakesh (see his statement under section 313, Criminal Procedure Code), he came to Delhi at 1.30 P.M. on December 4 and straightaway went to his office. But there is no material on the record to support his pleas. Durga Parshad categorically states that he slept in Rakesh's room during the night between December 4 and 5, and Rakesh remained absent throughout the night. Durga Parshad left the room at about 6 A.M. on December 5 for P.T. Even at that time he did not find Rakesh in the room. He whistled the parade at 6.15 A.M. and found Rakesh present for the first time in the parade at 6.30 A.M. that morning. It is true that no record of attendance has been produced to show that Rakesh was not present at the evening roll call but Durga Parshad tells us that no register is maintained for that purpose and that the absence of a Jawan is reported verbally. Now, the maximum punishment which can be awarded to an absentee is imprisonment while the minimum is a verbal admonition. Unless the absence is communicated to the Officer Commanding^fiobody records a report about the absence. When Durga Parshad was questioned as to why he did not report Rakesh's absence in writing, he had

this to say : 'I did not report in writing about the absence of Rakesh Kaushik on December 4, 1973 evening because he was present in the morning parade on December 5..... There are no written orders about it, but this much accommodation is shewn by us to a Jawan that if he turns up at the morning P.T. report)f absence in writing is not made'. It is a very reasonable Explanationn indeed. Absence of a Jawan being a serious matter, this much latitude was bound to be given to the absentee by his colleagues particularly when no duty was to be performed by him during the night. This evidence leaves no doubt that Rakesh was absent on the night intervening December 4 and 5, 1973 from his unit. We may record that Mr. Frank Anthony the learned counsel for Rakesh, did not even refer to the defense witnesses produced by Rakesh to prove his alibi and to show that Rakesh was not in Delhi up to December 4.

(106) Rakesh does not deny that his wife had not expired when he asked for leave on November 5. He blames for the misrepresentation the telegram he had received about the expiry of his wife. His plea is he did not mislead the authorities intentionally. If that was so, why -did he not come back an,d get his leave cancelled? Why did he get it extended by ten more days instead? According to Rakesh, his wife was sick and her treatment was still continuing. No evidence has been adduced however to support this contention. The defense witnesses. Har Nath an,d Prabhu Ram, who are illiterate arid have no idea about the months according to Gregorian calendar, have rightly been disbelieved by the trial court. As already stated Mr. Frank Anthony did not even refer to them in the course of his arguments before us. Moreover, the question still remains as to why he did not inform his officers that the information received by him was false, that his wife continued to be sick and he needed further leave for her treatment. He did not do any such thing even after his rejoining the duties on, the morning of December 5. Rakesh remained in his unit for two days, i.e., December 5 and 6, and again proceeded on leave from 7th to 9th vide Exhibit Pi 82. This time the purpose for the leave was given as 'to settle the home problems Urgent'. How the 'home problems' had acquired urgently within two days of his return specially after he had been on leave for 30 days already, is anyone's guess. Rakesh in his statement explains that he 'needed this leave to collect some money from the members of the family for the celebration of the death anniversary of my grandfather'. The lie is

patent because the date of the anniversary must have been, known much earlier and 30 days' leave afforded more than the requisite time for the arrangement of the funds. Mr. Frank Anthony makes a serious grievance of the appellant being) not permitted to summon the defense witnesses. The order sheet of the trial court shows that on April 21, 1975 all the accused were called upon, to enter on their defense and adduce such evidence as they might have in support thereof. An application was made on behalf of Ujagar and Kartar for summoning defense witnesses. Dr. Jain, Chandresh and Bhagirath informed the court that they did not wish to produce any evidence in defense. Though the learned counsel for Rakesh did not make any statement, he preferred an application for requisitioning various documents from the military authorities. It was also requested that 'Major R. S. Khanna and Shri Durga Parshad and such other or further P.Ws. as the learned court may deem fit and proper in the circumstances of the case be recalled for further cross-examination'. On the same day another application for summoning 12 witnesses along with the documents mentioned against their names respectively was filed on behalf of Rakesh. It may be noticed that all the documents mentioned in the first application are mentioned in the second application too. The court passed a detailed order on April 22, 1975. All the documents asked for by this appellant were duly summoned. Some of the witnesses were also directed to be produced. The casual way in which this application is made is apparent from the fact that in respect of the witness at Serial No. 11 only name of the person was given and no further particulars like parentage, place of residence or; the office, so very necessary for the service of the process, were stated. Similarly no details were mentioned in respect of documents sought to be called from the Superintendent, Central Jail, Tihar. Except witnesses mentioned at Serial Nos. 6,7,8,11 and 12, the other witnesses were described by their official designations and were required to produce the documents specified. Since all the documents had been requisitioned and were actually produced the appellants cannot have any grievance on that score.

(107) Now what happened was that the military authorities deputed Major R. S. Khanna to produce all the documents asked for by the appellant and he brought the same to the court. The order dated April 30, 1975 passed by the learned Sessions Judge reveals that though Major R. S. Khanna had brought some

documents, he had not brought some record which was needed by the defense. He was, therefore, directed to come with the entire record on the following day. This order further reveals that the learned counsel for Rakesh moved an application alleging that Major Khanna had been seen in the company of the police-inspectors and 'the defense would, therefore, pray that Lance Naik R. K. Hooda be summoned with the records'. The application was placed on record as it did not call for any order. In, our opinion the learned Sessions Judge was right in not passing any order. The appellant was interested in the production of records by the military authorities and it was immaterial as to who produced them. On May 1, 1975 the statement of Major Khanna about the records brought by him was recorded without oath since he was not to be examined as a Witness. The counsel for Rakesh made a statement to the effect that Major Khanna may be allowed to be cross-examined since he was a prosecution witness. The order sheet of May 1, 1975 goes to show that the trial Judge asked the defense if they wished any of the records brought by Major Khanna to be placed on the record. Then 'Shri P. P. Malhotra made a statement in, which he did not indicate whether he wanted any of these records to be placed on the file or not. He, however, prayed that he may be allowed to cross-examine the witness. This could not possibly be allowed because Major Khanna has not been examined as a witness. This court had issued process 'only for the production ' of documents and not for Major Khanna to appear as a witness'. However, Major Khanna was asked to come the following day and 'to bring some more documents. Major Khanna duly brought those documents on the next day. A grievance was made by the learned counsel for the appellant that 'since Major R. S. Khanna was a prosecution witness and the records have been brought by him, I do not wish to produce him as a defense witness with reference to these records. However, as already submitted, in an application under section 311, Criminal Procedure Code, the witness may either be examined as a court witness or allowed to be cross-examined with reference to the records brought by him today and yesterday for the purpose of eliciting the truth'. The court thereupon ordered that since the witness was summoned only to produce the records and not for being examined as a witness, he might take back the records since the defense was not interested in placing any of the records on the file. It appears that the defense was only interested in further cross-examination of Major Khanna

which was rightly disallowed.

(108) To sum up, we are satisfied about the complicity of Rakesh with the conspiracy from the very start right up to the accomplishment of its object. His conviction under 'section 120B(1) and section 302 read with section 34 of the Indian, Penal Code is, therefore, upheld.

(109) Chandresh Sharma does not deny that she had a passionate affair with Dr. Jain over a number of years. The prosecution has produced evidence to show that she was getting regular payments from Dr. Jain. As late as August 1, 1973 a bank draft for Rs. 1,600 was sent to her though it was received back by Dr. Jain due to her account at Ambala having been closed. We have already found that she had got her horoscope Exhibit P-132 cast by Anand Mani (PW55), and another horoscope Exhibit P-131 for a person belonging to Jain Vaush. She was anxious to marry Dr. Jain as soon as possible because she had crossed the peak of her youth already and the time was running against her mercilessly. She had 'one to astrologer Bhagwan Das P.W. to find out if she would succeed in marrying Dr. Jain. She had accompanied Rakesh to Karan Singh P.W., a notorious shady character, and paid a sizeable amount to him for getting Vidya Jain liquidated. She had persuaded Ramji to join the conspiracy with a luscious bait. On December 4 she, along with other co-conspirators, was present in the New Vig restaurant to give last touches to the murder-plot. She had promised others to be present at the scene to lend all her moral support to the dastardly design in the process of execution. The presence of Chandresh at the scene of occurrence is deposed to by Ramji and Om Parkash P.Ws. As already discussed, her presence there was in conformity with the plan finalised in the New Vig restaurant. Her presence in, the New Vig restaurant and again at the site of the crime was just in the fitness of things because the conspiracy was designed to serve her ends primarily. We have already discussed in detail the evidence of Om Parkash and found him a reliable witness. Chandresh was anxious about two things-liquidation of Vidya Jain and safety of Dr. Jain. Both these objectives were equally important for her. Any false move by Dr. Jain during and immediately after assassination of Vidya Jain could give rise to a suspicion in the minds of the assassins about their personal safety and in such a situation the assassins would not have hesitated to finish off Dr. Jain

too, if necessary. When Chaudresh approached the taxi of Om Parkash she spoke in English. This was to ensure evidently that Om Parkash, a driver and presumably not conversant with English, should stay in the dark about what was going on. Little did she realise that these days young taxi drivers are likely to have a working knowledge of English. The result was that whereas Ramji did not understand as to what had been said in English, Om Parkash could follow it. Since Om Parkash had no inkling of what was happening, he paid no attention to the words 'The car is outside'. After all this was a statement with reference to the context. As already discussed, she felt surprised on seeing Ramji there and remarked 'Ramji Too Bhi'. However, since Ramji was already a member of the conspiracy, she decided to utilize him for making doubly sure that Dr. Jain did not suffer any injury in the course of the attack on Vidya Jain. We are satisfied that she was rightly convicted.

(110) The trial court has acquitted Kalyan of the offence under section 302 read with section 34, Indian Penal Code, but has convicted him for conspiracy to murder Vidya Jain. It is contended on behalf of this appellant that there is no evidence to show if he joined the conspiracy at all. There is no doubt that Ramji and Kalyan were known to each other. We have already discussed the evidence showing that Kalyan had hired taxi Dly 544 on a number of occasions. Moreover, both Ramji and Kalyan live in Bhogal. It has again been found that Ramji was well acquainted with Bhagirath who had at one time smuggled wheat in taxi Dly 544 as a result of which Dharam Vir Malhotra had suspended Ramji for some time. We may now extract the relevant portion of Ramji's evidence qua this appellant. He has this to say:

I then told Rakesh that Ram Kishan was not up to the job and that I would suggest a man who could do it. I then drove them to the house of Kalyan Gupta at Bhogal. I identify Kalyan Gupta now present in court. I introduced Rakesh to Kalyan Gupta. Rakesh told Kalyan Gupta that a doctor's wife had to be killed and that he should arrange for the assassins. Kalyan replied that the arrangement could not be made locally and that his master, namely, Bhagirath, who lives in village Ghor, Tahsil Palwal, District Gurgaon, could make the necessary arrangement. Rakesh suggested that we go to village Ghor. Kalyan Gupta introduced Rakesh to Bhagirath. Rakesh told Bhagirath that they wanted to have the wife of a doctor

killed.....

We find that there is nothing on the record to corroborate Raniji about Kalyan joining the conspiracy. Mr. K. L. Arora, the learned counsel for the State, has failed to point out any such evidence. Moreover, Ramji himself knew Bhagirath who was living in village Ghorf. Ramji and Bhagirath had earlier joined in committing minor infringements of law by smuggling wheat into Delhi. Ramji also admits that at one time he had gone to village Seshan with Bhagirath. However, there is nothing on the file to find that Kalyan Gupta had, at any time, taken any liberties with the law. In these circumstances it is doubtful if Kalyan would be requested to arrange for the assassins. Assuming that Kalyan was asked to make arrangement for the murderers, Ramji's statement, quoted above, does not show that Kalyan had agreed to provide the assassins. On the other hand, Kalyan showed his inability to do so and told Rakesh that his master, namely, Bhagirath, could do it. There was evidently no necessity for Kalyan to say this to Rakesh since Kalyan knew that Ramji himself was quite intimate with Bhagirath. After the party reached the village at Nuh Road it contacted Bhagirath. Kalyan's role there was only to introduce Rakesh to Bhagirath. Since Ramji knew Bhagirath, Ramji was the proper person to introduce Rakesh to him and introduction by Kalyan would seem to be Superfluous. We have no doubt that Ramji picked up Kalyan from Bhogal and proceeded to village Ghorf for Bhagirath. But this must have been done in order to use Kalyan to trace out Bhagirath in case he was not found in the village. In fact, it did happen that Bhagirath was not at his abode and had to be traced out somewhere else. Kalyan must have been helpful for this purpose. But to conclude from this much alone that he became a member of the conspiracy will be going too far. Of course, Kalyan accompanied the party also to village Seshan from where Ujagar and Kartar were picked up and brought to Delhi. This was probably because he could have no better conveyance for returning to Delhi than the car which had taken him to Ghorf. We have also no doubt that Kalyan went with Bhagirath to the New Vig restaurant, Dr. Jain's house and other places on different occasions as alleged by the prosecution but he seems to have acted as such as an inert satellite of Bhagirath and did nothing besides hovering around him. The prosecution does not assign any active part to Kalyan in the long course of the conspiracy and the gravamen of the charge against him is just what he said in

Bhogal when Ramji approached him for the first time, i.e., he was no good in the matter of contacting any assassins but Bhagirath could help. As already stated, we do not find that Kalyan ever joined the conspiracy for murdering Vidya Jain. He is, therefore, entitled to the benefit of doubt in respect of this charge also.

(111) We have already held that Bhagirath was well-known to Ramji as well as Dharam Vir Malhotra since he had been hiring taxi Dly 544. He had at one time been smuggling wheat into Delhi in the taxi driven by Ramji. Bhagirath was approached in his village by Ramji and Rakesh for hiring assassins for the murder of Vidya Jain. He had taken them to village Seshan and introduced Ujagar and Kartar to Rakesh as the competent persons for the job. Ramji stands corroborated about Bhagirath by Krishan Lal Nagpal P. W. who had seen Bhagirath in the company of Rakesh, Chandresh and Kalyan on December 2 and 3, 1973, in the New Vig restaurant and on December 4, 1973 in the company of Ujagar and Kartar also. The learned Sessions Judge has acquitted him of the charge under section 302 read with section 34, Indian Penal Code, but convicted him under section 120B(1), Indian Penal Code. In our opinion Bhagirath was rightly convicted for being a member of the conspiracy to kill Vidya Jain.

(112) As already stated, Dr. Jain and Chandresh do not deny their illicit intimacy. It had started sometimes in March, 1967. Vidya Jain had taken a serious exception to it and had forced Dr. Jain to dismiss Chandresh who had been employed as his secretary. It is true that this had happened in May, 1967 but it is anyone's guess as to how much Vidya Jain knew of Chandresh and Dr. Jain continuing their affair. In December, 1971 Mrs. Janak Burman (PW96) had broken the engagement of her daughter with the son of Jains. This was because of the conduct of Vidya Jain. Dr. Jain had felt offended. It is true that Dr. Jain had taken his wife Vidya Jain on a world tour on May 15, 1973 and returned on July 27, 1973 but it does not necessarily follow that Dr. Jain was enamoured of his wife as suggested by Mr. Lal. We have seen that soon after coming back from the world tour, Dr. Jain obtained a bank draft (Exhibit Pi 64) of Rs. 1,600 for Chandresh on August 1, 1973. It shows that Dr. Jain's liaison continued with undiminished vigour. Remitting moneys to Chandresh by cheques and bank drafts proves positively that Dr. Jain was no more attempting to hide this adulterous intimacy. Dr. Jain's fiat car Dlj li

was used by Rakesh on September 27, 1973 to go far a ghat from a savana. We have in the earlier part of this judgment discussed the circumstances under which Rakesh hired taxi Dly 552 with Om Parkash at the wheel and got it stopped about 50 yards away towards north from the house of Dr. Jain. Ujagar and Kartar got down from this taxi and took their positions near the gate of Dr. Jain's Kothi. This was at about 6.45 P.M. After about 10 minutes Chandresh came there from the direction of Dr. Jain's house. Ramji states that he had seen Dr. Jain coming in the car, taking a 'U' turn near his house and parking the car facing towards the south. Ramji further deposes that he saw Dr. Jain and Chandresh coming out of the car, and while Dr. Jain went inside the house Chandresh walked to the taxi.

(113) Mr. Lal submits that Ramji should not be believed about Chandresh arriving at the scene in Dr. Jain's car. It is contended that if Ramji had seen Dr. Jain arriving in his car he could not have missed seeing Ram Singh P. W. and his wife Kiran Bai entering the house irrespective of the fact whether they came with Dr. Jain or walked in thereafter since they were present in the house immediately after the incident and helped in taking out Vidya Jain from the drain. We have already discussed Ram Singh's statement. He was produced by the prosecution to prove that Chandresh along with Ram Singh, his wife Kiran Bai, his nephew Man Singh, Dr. Jain and his driver came in Dr. Jain's car from Chandni Chowk and that Dr. Jain dropped all of them except Chandresh near about Petrol Pump in the defense Colony. But Ram Singh did not support the prosecution case. However, the prosecution accepts that Ram Singh and Kiran Bai were present in the house at the time of the incident. This means that in case they were dropped on the way they reached the house after Dr. Jain's arrival and before the incident. In this state of affairs Ramji would certainly have noticed Ram Singh and Kiran Bai entering the house if the only entry to this house was from the front gate and there was no door at the back of the house. A plan of the locality has been placed before us by the learned counsel for the appellant. We find that there is a service lane at the back of all the houses of the locality. We can take judicial notice of the fact that all the houses have doors opening on this lane. Now, Ramji could not have seen Ram Singh and Kiran Bai entering the house if they used the door at the back of the house. We have already rejected Ram Singh's evidence. We do not agree with Mr. Lal that since Ramji does not talk about Ram Singh and Kiran Bai entering the

house, he should not be believed about Chandresh getting down from Dr. Jain's car. Assuming that Ramji did not see Chandresh alighting from Dr. Jain's car, what we find is that she was present at the scene according to the plan finalized at New Vig restaurant. She was seen approaching Om Parkash's taxi from the side of Dr. Jain's house by Ramji immediately after the arrival of Dr. Jain's car. Om Parkash P.W.. as already discussed, states : 'a women. . .came from behind the car. Both Ramji and that woman went behind the car in the direction from which she had come". It shows that she had come from the direction of Dr. Jain's house. The inference is irresistible that she must have come in Dr. Jain's car.

(114) Let us examine the conduct of Dr. Jain before, during and after the incident. We find that the car was parked at an unusual place. No reason has been given to us for not parking it in front of his own house especially when within 15 minutes or so Dr. Jain, on his own showing, was to drive away. In winter, normally, one would take the car inside the house and park it in or near the porch when the lady of the house is to be taken out. Now, the site plan shows that the gates of the Kothis of Dr. Jain and his neighbour, Khanna. adjoin each other. The car was parked immediately beyond the gate of Khannas. Sheela Khanna (PW4) tells us that Dr. Jain used to park his car usually in front of his own house. Her house has a glass plate fixed at the gate to indicate the number of the house. An electric light is installed behind it. Mrs. Khanna, however, deposes that ever since they had shifted from the ground-floor to the first-floor of the house, this light was never switched on, and. in those days the ground-floor was lying vacant. Her statement has gone unchallenged. Thus the car had not only been parked at an unusual place but this place was comparatively dark since the light of the number plate was off. It may be recalled that the storm water drain, which is about 5' wide and 21' deep, runs next to the boundary wall of the houses. So this drain, would be between the car and the boundary wall of Khannas' house. There is not an iota of evidence to show that Dr. Jain had any previous engagement to visit his sister, nor Dr. Jain explains the occasion or the necessity of his visiting his sister at that time. We have no doubt that the assassins, who were lying in ambush, knew that Dr. Jain was soon going to come out with his wife. It is for that reason that no sooner Vidya Jain stepped outside the gate than she was grabbed, held, stabbed and felled. There is total absence of evidence to the effect that Ujagar and Kartar had

been shown Vidya Jain before the incident. As it is, Kiran Bai wife of Ram Singh was also living in that house. There was a maid-servant too by the name of Madhuli. Likelihood of some other lady coming out of this house. after a social call etc., was always there. The way Rakesh and his associates were pressed for action showed they were not to wait for long. The confidence exhibited by them could be inspired only by prior information that Dr. Jain was soon going to come out of his house with his wife. This knowledge could be imparted to the coconspirators by Dr. Jain himself and none else. He could also convey it through Chandresh. We have already noticed that at the New Vig restaurant Chandresh had told the assassins that Dr. Jain would bring out his wife and at that time she should be killed.

(115) What did Dr. Jain do during the incident? Ramji tells us that Dr. Jain was leading to his parked car and Vidya Jain was following him. He also tells us that Dr. Jain was on the right side of the car while Vidya Jain was on the left. Dr. Jain describes this incident thus:

'I proceeded to open the door of the car with key on the right side while my wife went towards the left side. Even before I could insert the key to unlock my car No-Dlb 4847. I heard some 'sort of scuffle which gave me a feeling that something was wrong on the left side of my car. I went to the left side of my car from behind and saw nobody and wondered what had happened to my wife in that split second.' (See Fir Exhibit P317).

Dr. Jain is 5'-9' tall (Exhibit D56), whereas Vidya Jain was 5-5 (passport Exhibit D64). We know that the height of a fiat car is 4'-11". Dr. Jain would thus, while standing on the right side of the car, be in a position to see clearly his wife and anyone else present there. It has been noted that as many as 14 knife blows were inflicted on Vidya Jain. It is true that she was being held but she was sure to offer resistance. Receiving those injuries and then falling in the storm water drain was bound to take not a split second but several minutes. We, therefore, refuse to believe that Dr. Jain did not see the killing and hold without hesitation that he witnessed the full incident. How would a husband happy with his wife (as suggested by Mr. Lal) normally react when he finds her being held and stabbed by

some criminals? The least expected of him would be to raise a hue and cry. Here we find that Dr. Jain had sealed his lips. When Vidya Jain was being hacked he did not know that any of the assailants was carrying a firearm and he had no reason to stand still and mute. This could not be the conduct of an innocent husband. No sincere human being will be a silent spectator to the butchering of one's life companion. The assassins (Ujagar and Kartar) did not harm Dr. Jain at all. They knew that Dr. Jain had clearly seen them holding and hacking his wife. How could they be sure that he would not raise hell to alert the inmates of his house and even the residents of the whole locality and also not ring up the police? This could only be if they were armed with Dr. Jain's own guarantee that he would do no such thing. And this could happen only if Dr. Jain was in the thick of the conspiracy. Dr. Jain did not certainly shout during the killing otherwise Ramji would have heard him. There was a likelihood of Om Parkash also hearing him because he was hardly 50 yards away from the scene and in the stillness of the night sound travels a greater distance. Ramji and Om Parkash do not talk of hearing any shouts. During their cross-examination the defense did not dare question them to obtain support of Dr. Jain's plea. Dr. Jain does talk about his shouting in the First Information Report- That is what he says:

'NOTICING some kind of a disturbance in the drain running along the wall of the house, I peered and saw a prostrate figure and some one making some kind of movements. At once I began to shout frantically for help- At that time a man jumped out of the drain and I started questioning him and when he pointed at me something which appeared like a revolver in his hand. I kept shouting for help and realized it was my wife, Smt. Vidya Jain, lying there groaning.'

It would imply that Dr. Jain started shouting before one of the assassins came out of the drain. In other words, when he started shouting he did not suspect that his wife was being subjected to any foul play. This shouting 'frantically for help' was thus just for taking her out of the drain. Even after 'a man jumped out of the drain'- and we now know that he was Kartar carrying a pistol-he 'kept shouting for help'. This shouting was, as is apparent from this statement, for taking Vidya Jain out of the drain. Why did he not shout about Vidya Jain having been attacked and for catching the culprits at least after he had seen a fire-arm? Even in his statement

recorded under section 313, Criminal Procedure Code, he does not say that he shouted about his wife having been stabbed and for bounding out the culprits. Had he shouted, we have no doubt the assassins would have immediately silenced him by using their weapons. The fact of the matter is that he never opened his lips. Otherwise, as we have just now discussed, Ramji was quite close to the crime scene and Om Parkash too was within earshot- Assuming that Dr. Jain did shout for help at one stage, then this must be after the assassins had made good their escape. Again there are shouts and shouts. We know that Dr. Jain's shouts were not heard by Ram Singh or his wife Kiran Bai or his nephew Man Singh. It is only Kundan Singh who is said to have informed Ram Singh and others about them. Kundan Singh is Dr. Jain's servant and the cry for help may be a figment of his loyal imagination. We do not know again whether Dr. Jain shouted from the site of the murder or from inside his Kothi near the servants' quarters. The plan reveals that the distance between the servants quarters of Dr. Jain's house and the outer gate is 12.70 meters. It also shows that the servants quarters are at the back of the building whereas the living rooms start about two meters from the outside gate. We do not know in which room Ram Singh was at that time, but he was definitely much nearer to the said gate than the servants. The so called shouting of Dr. Jain was therefore at such a pitch and from such a place that it could only be heard by Kundan Singh. There is no indication in evidence that anyone other than Kundan Singh, including the servants of the neighbours, heard this shouting.

(116) Dr. Jain gave near about exhaustive description of the assailants in the first information report. According to him they appeared to be about 25 to 35 years of age and of about 5'-7" in height; they were wearing off white dhotis and off-white shirts; and their hair were dishevelled. We know that Ujjagar and Kartar were wearing tehmats. Ujjagar gives his age as 58 years in his statement recorded under section 313, Criminal Procedure Code, and Kartar as 60 though Dr. Arun Sagar (PW73), who had medically examined them has noted their ages as 45 and 55 years (Exhibits P244 and P245 respectively). Obviously Dr. Jain made it a point to give wrong ages of the assailants. If he had not seen them clearly he need not have referred to their ages. But pinpointing their ages only means that he had a good look at them. As a doctor, he would be in a comparatively sound position to judge their ages. He could not have committed such a big blunder in judging their years. Such

vital discrepancy as we notice could result only because he was out to put the police on a wrong scent. Ram Singh P.W. tells us that he, Kundan Singh and Ganga Singh lifted Vidya Jain from out of the storm water drain and took her the porch. Bloodstains have been found in the drain and on passage leading from the gate to the porch of the house. The do of Ram Singh had become smeared with blood. It shows Vidya Jain must have been bleeding profusely. However, the r amazing thing is that Dr. Jain did not even touch Vidya Jain. did not admittedly enter the drain, which is hardly 2i' deep, to out her condition. He did not give even a cursory look to her wounds It is true that Ram Singh does say : 'The fact is that the doctor in fact, saw the wound removing the sari from that portion', but is belied by his police statement Exhibit P30. The record would bear out and even Dr. Jam's statement under section 313, Criminal Procedure Code, does not claim that his hands or clothes had received any stains of blood. This attitude of a husband, who is a doctor, was neither in consonance with his calling nor becoming of a human being who happened to be the husband of the unfortunate woman. We know that Dr. Jain is an eye-surgeon but he had passed his M.B.B.S. examination and, again, while answering question No. 25, he claimed the experience of 25 years as a doctor so as to be immediately able 'to discern the difference between dead and alive as well as the urgency for the need for medico surgical services'. Dr. Jain seemed to be singularly afraid of having the blood of his wife on his hands.

(117) We may at this stage notice the controversy about the fracture of the left arm of Vidya Jain being post-mortem or ante-mortem. Dr. Bharat Singh, who conducted the post-mortem examination, deposed that this fracture appeared to be post-mortem in nature. During cross-examination he agreed with Taylor that it was not easy to say whether a fracture had been produced before or after death, and that a fracture produced shortly before or after death would present similar characteristics. In reply to another question Dr. Bharat Singh stated : 'There is more possibility of effusion of blood in cases of ante-mortem fracture. But there may not be effusion of blood even in ante-mortem fracture if much bleeding had taken place prior to the fracture'. But nothing turns on the question whether this fracture was post-mortem or ante-mortem. However, we may make it plain that we do not agree with the reasoning given by the learned Sessions Judge for concluding that the possibility of the dead body sustaining the fracture after the

inquest report had already been prepared could not be ruled out. This conclusion is based purely on surmises and conjectures since there is not an iota of evidence to show that it could have happened. The persons, who had handled the dead body and guarded it till the post-mortem examination, have not been even suggested this possibility. Probabilities are that Vidya Jain was dead the time she was removed from the drain. The fracture, as already discussed, could have been suffered before or after death. Even if she was alive at the time it was sustained she might have expired before she was lifted out of drain. There is nothing to show, except Dr. Jain's own word, that she was alive in the porch. His answer to question No. 25 was : 'She did not die instantaneously. She was groaning. Her pulse was feeble'. Dr. Jain is belied by Ram Singh who categorically states 'Bahu Ji was quiet at that time'. However, as already indicated, the question whether she lay dead in the porch or was still alive does not have any material bearing on the case. The prosecution strongly contends that the conduct of Dr. Jain in taking Vidya Jain to Dr. Sen's Nursing Home instead of a nearby institution like Mool Chand Charitable Hospital or Safdarjung Hospital, clamours of Dr. Jain's guilt. We know that in Delhi immediate expert medical aid in a hospital cannot be had unless a person is a V.I. P. or has an effective pull with the doctors. A frequent common complaint here is that many of the injured persons taken to the local hospitals die because of lack of prompt expert medical care. We would, therefore, not hold this fact against Dr. Jain.

(118) Though Dr. Jain would have us believe that he did shout he does not tell us why he did not immediately ring up the police. Even if he was greatly upset as a result of the incident he could have told the servants to telephone the flying squad or the police-station concerned. At least when he left the house with his injured wife for Dr. Sen's Nursing Home, he could have asked Ram Singh, who stayed behind, to inform the police of the occurrence. Every person, who owns a telephone or has average intelligence, knows that police can be contacted by dialling 100'. It is true that one would be too worried for the life of the injured person to waste time in other matters, but in this case we find that Dr. Jain was in no such hurry. According to Ram Singh P.W's statement, he had sent his driver Kundan Singh to bring a doctor and he must have been waiting for him for some time. The telephone was evidently not used in order to afford adequate time for the

assassins to escape. All the facts discussed above are consistent with one and the only hypothesis of the guilt of Dr. Jain. We would, therefore, uphold his convictions under sections 120B(1) and 302/34, Indian Penal Code.

(119) The result is that the appeal of Kalyan is accepted and he is acquitted. He is directed to be released forthwith if not wanted in any other case. The appeals of the other appellants are dismissed.

(120) Now we deal with the State appeal for the enhancement, of the sentences awarded to Dr. Jain, Chandresh, Rakesh, Ujagar and Kartar. While dealing with the question of sentence the trial court, after noticing the change brought in law by section 354(3) of the Code of Criminal Procedure and noting that the imprisonment for life is the normal sentence, observed thus:

There are, in my opinion, no special reasons for awarding the death sentence to any of the accused in this case. On the other hand, this is a fit case in which the lesser punishment would meet the ends of justice. It is true that N. S. Jain, Chandresh Sharma, Rakesh Kaushik, Ujagar and Kartar have committed this murder in a cool and calculated manner in furtherance of their common intention. It is indeed difficult to find a single mitigating circumstance in their favor. It is, therefore, not possible to single out any one of them for leniency. This means that whatever punishment may be considered appropriate in the circumstances of this case has to be inflicted uniformly to all of them. If the extreme penalty is to be awarded, one cannot ignore the fact that it will have to be awarded to, as many as, five of them. This is one of the circumstances which inclines me towards the lesser penalty. This thinking is in line with the recent changes in law and the trend of decisions rendered by the superior courts.

We find these observations to be self-contradictory. On the one hand the learned Sessions Judge opines that there are no special reasons for awarding the death sentence to any of the accused and on the other hand he finds that the murder was committed in a cool and calculated manner by N. S. Jain, Chandresh Sharma, Rakesh Kaushik, Ujagar and Kartar and that it was difficult to find even a single mitigating circumstance in their favor. There was no occasion to look for mitigating circumstances if imprisonment for life, which is the minimum sentence, was to be

awarded. It is obvious that though the trial court, in the circumstances of this case, wanted to award the death sentence, it persuaded itself not to do so because, in its view, it could not be awarded to some of the accused but had to be awarded to all of them. We are in no doubt that the question whether the extreme penalty of death should be imposed or not is to be decided on the facts of the particular case and it does not depend on the number of persons murdered and the number of the accused who may have to be subjected to it. If the circumstances of a case so warrant more than one person may have to be hanged for the murder of a single human being. The Supreme Court has had occasions to deal with this question in a number of matters. V/e may note some of them. In *Ediga Anamma v. State of Andhra Pradesh*, : 1974 CriLJ683. Krishna Iyer, J. speaking for the court observed :

LET us crystallise the positive indicators against death sentence under Indian Law currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary 'features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under Section 302 read with section 149, or again the accused has acted suddenly under another's instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the horrendous features of the crime and hapless, helpless state of the victim, and the like, steel the heart of the law for a sterner sentence.

In *Balwant Singh v. State of Punjab*, : 1976 CriLJ291 , the court ruled :

IT is unnecessary nor is it possible to make a catalogue of the special reasons which may justify the passing of the death sentence in a case. But we may indicate just a few, such as. the crime has been committed by a professional or a hardened criminal, or it has been committed in a very brutal manner or on a helpless child or a woman or the like.

In *State of Andhra Pradesh v. Intha Ramana Reddy and another*, : AIR 1977 SC708 , the two accused, who were Naxaliti cs, killed a person in pursuance of their ideology. The trial court found it a case of 'planned, deliberate and cold-blooded murder' and sentenced the accused to death. On appeal the High Court commuted the death sentence to imprisonment for life on the ground that the accused acting out of genuine and passionate motive according to their conscience did not merit extreme punishment. On appeal by the State the Supreme Court held that 'the only ground which the High Court considered sufficient to commute the sentence of death to imprisonment for life is not a valid ground in law', and remanded the case for fresh decision. We find that the case of Ujagar and Kartar is clearly distinguishable from that of the other accused. As already discussed, Ujagar and Kartar, on their own showing, are professional hardened criminals. They are mercenaries. They agreed to assassinate an innocent woman for the lure of money. They came all the way from village Seshan in Rajasthan to Delhi to kill an utter stranger. Ujagar armed himself with a knife, whereas Kartar carried a untry made pistol which could fire a .303 calibre bullet. For two days they reconnoitred the area in the defense Colony to determine how to kill the lady without interference from any quarter and to escape to the safety of their far flung village. After cold deliberation and perfect pre-planning, they pounced upon their hapless, helpless and unsuspecting victim as she stepped out of her house to visit a relation. Whereas Kartar grabbed and silenced her, Ujagar inflicted as many as 14 knife blows, all aimed at the vital parts of her body. They left her only after they had made sure that she had not a shadow of chance to survive. It is indeed a glaring instance of cold-blooded, pre-planned and brutal murder. Mr. Bhargava, the learned counsel for these appellants, was at a loss to advance even a single plea for not invoking the extreme penalty provided by the law for such 'a. ruthless assassination. There was a faint attempt at submitting that distinction should be drawn between Kartar and Ujagar since it was Ujagar who

had settled the 'fees' for the crime and it was he who had inflicted the fatal blows, while Kartar had only held the victim. This is a distinction without a difference. The circumstances demonstrate that the murder could not be committed by one of them alone. In order to ensure that Vidya Jain should die positively without involving the slightest risk of apprehension for the assassins it was necessary to pin her down and render her incapable of shouting or shrieking for succour. This end could be achieved only if someone held her steady for well aimed blows as well as sealed her mouth to stifle her cries. Kartar rendered that indispensable service and enacted a part no less potent than that of the man who wielded the knife. Kartar had equipped himself, moreover, with a .303 bore pistol and adequate ammunition had furnished a guarantee to Ujagar that nobody would impede his execution of the murderous design or endanger their easy access to the get-away-car. He did not use his weapon since no necessity arose therefore.- In our opinion the extreme penalty of law is equally deserved by Ujagar and Kartar.

(121) There is no gainsaying the fact that Dr. Jain, Chandresh and Rakesh were present at the time of incident. It is also true that they were active members of the conspiracy. But, still their part in the crime would seem to stand at a lower plane. They wished Vidya Jain dead and plotted her murder but all what they did would have accomplished nothing if Ujagar and Kartar had not undertaken to fulfill their wish and kill her.

(122) We would, therefore, partly accept the State appeal (No. 283 of 1975) and enhance the sentence of Ujagar and Kartar from life imprisonment to death. They shall be hanged by the neck till they are dead.