

State Vs. Ramesh Chand and ors.

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Court : Delhi

Decided On : Aug-06-1973

Reported in : ILR1974Delhi129; 1973RLR88

Judge : V.S. Deshpande and; S. Rangarajan, JJ.

Acts : [Evidence Act, 1872](#) - Sections 154; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 164; [Indian Penal Code \(IPC\), 1860](#) - Sections 34

Appeal No. : Murder Reference Appeal No. 1 of 1973 and Criminal Appeal Nos. 105, 106 and 134 of 1973

Appellant : State

Respondent : Ramesh Chand and ors.

Advocate for Pet/Ap. : I.D. Ahluwalia,; Anoop Singh,; Ramesh,;

Judgement :

S. Rangarajan, J.

(1) The Additional Sessions Judge, Delhi (Shri D. C. Aggarwal) has convicted Ramesh Chand under section 302 Indian Penal Code . and imposed capital punishment on him; the other two accused Ami Chand and Yogbir Singh alias Bholu (hereinafter called Bholu) have been convicted under section 302/34 I.P.C. and each of them sentenced to undergo imprisonment for life.

(2) The prosecution case is that at about 7.15 P.M. on 23-6-1972 the deceased (Ram Chander) was driving a scooter (No. Dhr 3894) along Gali Pathshala (in Manakpura) when all the above three accused stopped him near the shop of Mangey Ram Halwai (not examined). Ramesh Chand wanted that the scooter driver should take all the three of them to Karol Bagh in his scooter, but Ram Chander refused to do so. Ramesh Chand threatened saying that he would give Ram Chander a taste of how he would not take them to Karol Bagh and whipped out a knife while the other two accused pulled him out of the scooter. Ram Chander resisted; in the course of the struggle his clothes were torn. Ami Chand also took out a knife. It is stated that both Ami Chand and Ramesh Chand assaulted Ram Chander with their respective knives and inflicted injuries below the chest on the right side, under the armpit on the left side and on the left thigh. Ram Chander raised an alarm 'Bachao Bachao' (save me) and ascended the stairs leading to the house of Budhan (P.W.18). Ramesh Chand closely followed him up the stairs with knife in hand. Budhan entreated them to go away. Within a short time Ram Chander came down stairs followed by Ramesh. All the three accused again surrounded the deceased. Ram Chander attempted to start the scooter in an endeavor to escape. Ramesh again ran after Ram Chander inspired by his stumbling down once. After the scooter was intercepted Ram Chander left the scooter there and fled the place. Ramesh Chand pushed the scooter back up to the platform on which Prem Wati (P.W.2) used to sit challenging as to who could take away the scooter and claiming that the scooter was his. At this moment a Police party reached there. A.S.I, Om Prakash (P.W.20), who was with that party, chased and caught hold of Ami Chand with the knife (Ex.P.1). The other Police officials gave chase to the other two accused who made good their escape.

(3) The First Information Report of Basant Kumar (P.W.1) was recorded by Dina Nath, S.I. (P.W.27), who was in charge of Police Post Shidipura then. He happened to be present at the Mandir Road, Sabzi Market, Manakpura when he received information that a scooter driver had been stabbed. He reached the scene at once with his companions. P.W.27 himself saw Ramesh Chand and Ami Chand holding open knives one in each hand.

(4) The information concerning the occurrence had also been conveyed independently to the Police Control Room by some persons; it was relayed to the Police Post Shidipura, but no officer being available there a copy of the report was handed over to S.I. Vijay Kumar. Sher Ram (P.W. 5), who was on duty at the Flying Squad Van No. 10, received telephonic message when he was near Azad Market at 7.38 p.m. He lifted Ram Chander and took him to the Willingdon Hospital where he was declared dead.

(5) On receipt of information that Bholu was in his house S.H.O. Surinder Nath (P.W.28) accompanied by S.I. Dina Nath (P.W.27) found him sitting under a Chhaja on the roof of the second storey. His clothes contained stains of blood. He was wearing a white shirt (Ex.P.13) and bluish pant (Ex.P.14). They were also seized. At about 3.55 a.m. on receipt of information that Ramesh Chand was in Jaipuria Haveli he was arrested on the roof on the second storey. His shirt (Ex.P.15) and pant (Ex.P.16) were seized. They are said to contain blood stains.

(6) Since there were injuries on the person of Ramesh Chand he was sent for medical examination. Dr. H. R. Dewan (P.W.9) found during examination of Ramesh Chand, on 24-6-1972, that there were bruises on outer part of his right thigh, one on the middle front of his left thigh, on his left outer arm, left upper chest and on his forearm in addition to swellings in various places. The estimated duration of the injuries as given by Public Witness 9 suggested that they might have been received at about the time of the occurrence (the report issued by P.W.9 is Ex. Public Witness 9/A). Both the accused (Ramesh Chand and Bholu) were confined in the lock-up from about 4.20 a.m. and the precaution of hanging of a pardah to the door of the lock-up was also adopted so that they may not be seen by others who may later try to identify them. But both the accused refused to participate in the identification parade which the concerned Judicial Magistrate had arranged to take place on the 5th July, 1972. Nonetheless, two or three days later, Public Witness 7 was asked to appear in court; outside the court-room he was asked by a Police official whether he could identify the assailants (he was the only occurrence witness who did not belong to the area and had not known the accused previously); Public Witness 7 identified all of them. The accused having refused to be identified at the parade which was arranged, no significance can be

attached to the Police, as a further step in the investigation, finding out whether this witness could identify the accused. We do not see much force in the argument, in these circumstances, that the Police should not have asked the witness to identify the accused during the investigation but must have only rest content with the-witness being asked to identify them when he was examined before court.

(7) The occurrence is said to have been witnessed not only by Basant Kumar (P.W.1) but also by Smt. Prem Wati (P.W.2) and Madan Lal (P.W.7). The inquest was held on 24-6-1972 by Public Witness 27 during the course of which he examined the brother of the deceased who was not an eye witness. The inquest report (Ex. Public Witness 1/E) makes reference, however, to the F.I.R. (No. 353) having been registered on the basis of a statement made by Basant Kumar. Dr. Bharat Singh (P.W.3) conducted the post-mortem examination. The following injuries were noticed:

1. One incised stab wound over the left side of chest, 4' below the arm pit, placed vertically, size 8/10' X 4/10' covered by blood. Margins were regular and angles were tapering. 2. One incised wound over the front of left thigh, 4' above the knee joint, placed obliquely with its upper end, medially upward, size 3/10' X 2/10' X 4/10', covered by blood. 3. One incised wound over the lateral side of left thigh, 5' above the knee joint, placed vertically, size 1' X 2/10' X 3/10', covered by blood. 4. One incised wound over the skull on the left side occipital area with a avulsion of skin flap on the right side, size 3/4' X 1/4' X 1/4'. covered by blood. 5. One superficial abrasion on the lateral border of left clavicle, size 2/10' in diameter. 6. One stab wound over the right side of lumber area, 5' above the posterior aliac spine, place obliquely, size 1' X 2/10' X ?. 7. One stab wound over the right side lower part of chest, 5' above injury No. 6 placed vertically, Size 1/4' X 1/6' X ?.

(8) On further exploration, of injury No. 1, it was seen that injury No. 1 was going medially upward and had entered the chest cavity through the space between 4th and 5th ribs, 3' lateral to stern coastal joint. The wound has entered the left lung in the upper low on intero medial portion with a cut on the lung of a size of 3/4' on passing the right side through and through the lung with a track in the lung 2' deep

and then cutting the pericardium and heart on the left ventricle 1-1/2' above the apex, size of the cut on the heart was 1/2' X 1/4' cavity deep. Right lung was normal. Hole of chest cavity was full of blood, fluid and clotted. Total depth of injury No. 1 was 2-1/2'. On exploration of injury No. 6, the injury was going upward and anteriorly and entering in the abdominal cavity and cutting the liver on its posterior aspect. The cut on the liver was 1-1/2' X 1/2' X 1'. The total depth of injury was 3-1/2'. Abdominal cavity was full of blood. Injury No. 7 was only muscle deep.

(9) Injuries 1 and 6 were individually and together sufficient to cause death in the ordinary course of nature. The left lung had a cut 2' deep; the cut on the heart was on the left ventricle. It was elicited in cross examination from Public Witness 3 that the injured could have survived from 5 to 10 minutes after receiving those injuries.

(10) All the accused completely denied their participation or knowledge of the occurrence; all of them denied that they were even arrested as alleged.

(11) We have been taken through the evidence; the evidence of the three eye witnesses (P. Ws. 1, 2 and 7) was read more than once and several detailed comments were made. Before entering into the details of the evidence, however, it may be necessary to refer to a few broad features.

(12) There was no previous enmity at all between the deceased and any of the accused, nor has any been alleged between P. Ws. 1, 2 and 7 on the one hand and the accused on the other. The unfortunate episode erupted suddenly; the refusal by the deceased to take all the three accused in his scooter could normally not be expected to lead to this tragic end. All the three accused were residents of that locality. The house of Ami Chand was only at a short distance away from the scene of the occurrence.

(13) Even according to the prosecution case there does not appear to have been any preconcerted plan to kill the deceased even to start with. It was nothing more than all or some of the accused (to the details of which we shall advert presently) forcing the deceased to take all three of them in his scooter to Karol Bagh. Even the pulling of the deceased out of the scooter and the scuffle that took place prior

to the actual stabbing does not appear to disclose, until then, any common intention to murder the deceased.

(14) Yet another feature of the prosecution case is that Ami Chand, among the three accused, had at least been arrested soon after the occurrence. The Police party which included P. Ws. 20 and 27 came to know about the stabbing incident when the Police party was only at a distance of about 150 yards from the place of the occurrence; they were then actually at the corner of the Sabzi market and Gali Nalewali, which in turn leads to the Gali Pathshalawali where the occurrence took place. It is for this reason that the Police party was not only able to see the accused with weapons in the hands of all of them, but were also in a position to give chase and apprehend Ami Chand with blood stained knife (Ex. P.1). Even the other two accused had been arrested, as noticed already, the same night; they had been brought to the Police Station and put inside the lock-up by 4.20 a.m.

(15) Another Police party consisting of Public Witness 5 and others received a wireless message at 7.20 p.m. and reached the spot only at about 7.28 p.m. By the time Public Witness 5 arrived the injured alone was lying there but the accused were not there. Public Witness 5 did not see Public Witness s 20 and 27 before taking away the injured to the hospital. Despite the approximate statement concerning the time when the Police Party arrived at the scene of occurrence having been given at 7.50 p.m. or 7.45 p.m. by Public Witness s 1 and 2, there does not appear to be any difficulty in holding that by the time Public Witness 5 reached the scene of occurrence at 7.28 p.m. the incident was over. Despite some variations as to the precise place where Ami Chand is said to have been caught it does not admit of doubt that he was caught by Public Witness 20 quite close to the spot after he was given chase.

(16) We have paid sufficient regard to the fact that blood stains were not detected on the clothing of Ami Chand and that even though the knife recovered from Ami Chand was dripping with blood, the sketch (Ex. P. 1B) which was prepared by placing the knife over the paper is not seen to contain blood stains. But regarding this aspect no questions have been addressed in cross-examination to the witness who are parties to Ex. P. 1b and without questions being specifically addressed in

this regard it is not possible to speculate upon the reasons why Ex. P. 1b does not contain any blood stains. No inference will be drawn from this feature unless one actually knows the manner in which the sketch was drawn and the precautions taken to see that the paper on which the sketch was drawn did not become stained with the blood on the knife. P. W. 7 alone referred to the knife being held up in the air and shaken. This was a natural method of letting it dry up. It does not appear to us that this Explanationn could be dismissed out of hand, as the learned Additional Sessions Judge perhaps did. But we do not have to say more about this since without fuller questioning concerning the probable reasons for the sketch of the knife not containing blood stains one cannot merely speculate about it.

(17) In this connection reference was also made to the fact that even the sketch (Ex. P. 1) drawn does not tally with the sketch of the knife drawn in the Chemical Examiner's report (Ex. P. A. printed on page 143 of the paper book), but we attach no significance to it because while Ex. P. 1B was the sketch drawn by actually placing the knife on paper the sketch Ex. P. A. has been only drawn freely; the measurements given in Ex. P. A. are accurate while those given in Ex. P. 1B are not. Even in the rough sketch (Ex. P. A.) the knife (Ex. P. 1) is perfectly recognisable.

(18) The only question is whether the same knife which was recovered from Ami Chand was sent to the Chemical Examiner; this cannot be doubted since it was sent by a messenger as can be seen from the reference to the same in Ex. P. A. itself and the affidavit of the messenger who took the said knife (Ex. P. W. 14/A, printed on page 169). There can be thus no serious challenge of the fact that the blood stained knife examined by the Chemical Examiner was the knife which was recovered from Ami Chand and that according to the analysis report (Ex. P. C. printed at pages 145-46) there were numerous blood stains which were of the same group (B) as that of deceased. When Ami Chand himself was arrested with blood stained weapon in his hand after being given chase soon after the occurrence the fact that his clothes did not contain blood stains could not be of much significance.

(19) The whole incident took place suddenly the Police had also arrived at the scene soon thereafter but before the accused had left the scene. There was hardly any time for concoction. Public Witness 2 was herself vending cigarettes etc. near the scene of occurrence. Her presence there could not be doubted merely because her son happens to be serving as a Sub Inspector of Police somewhere else in Delhi. P. W. 1 has his business in Sabzi Mandi; he witnessed the occurrence when he was going home from his place of business. He was also a natural witness to the occurrence. P. W. 7 alone, among the three eye witnesses, did not belong to the locality. He had gone to that area for seeing a film. He could not get a ticket for the 6 p.m. to 9 P.M. show having reached there only at about 6.30 or 6.45 P.M. His impression was that the film (Pakeeza) had commenced. When he said he could not get a ticket it only means, in the absence of further questioning, that the tickets which he could afford to buy (Rs. 1.60) had been sold out. He is a tailor; he cannot be expected to buy a more costly one. He stayed there for a short time seeing the posters outside the cinema house. When he started thereafter towards Karol Bagh he stopped at a shop at the corner of Gali Pathshala-wali for taking coca cola and when he had finished he saw a scooter driver being dragged out in the Gali; this is how he had witnessed the occurrence.

(20) It is against the above background that the entire evidence of the three eye witnesses and of the Police officials and others who spoke about Ami Chand having been chased and caught with the blood stained knife soonafter the occurrence has to be appreciated.

(21) The presence of P. W.1 is further assured by the fact that the statement (translation of which is Ex. P. W. 1/C) was recorded by P. W. 27 soonafter the occurrence. It is, however, contended that in col. 5 of the F.I.R. (Ex. P. W. 21/A printed at page 3). which was drawn up by another Police Officer Bahadur Singh, the name of Ami Chand alone has been given (column 5 is intended to contain the name and address of the criminal). On the basis of this statement, it is urged that the posecution only thought of Ami Chand on the night of the occurrence and that the statement from P. W. 1 implicating the other two accused also may have been obtained much later. The usual suggestion was also made that there was sufficient time to concoct having regard to the fact that the present F.I.R., bears No. 353, of

the Police Station, Original Road Karol Bagh; this suggestion is based upon the previous F.I.R. (No. 352) having been recorded at 10.55 P.M. and the later F.I.R. (No. 354) being recorded at 4.10 A.M. Apart from this bare possibility nothing has been brought out in the cross-examination of the Police Officers to throw doubt upon the fact that the present F.I.R. was itself registered at 8.30 p.m. as stated. It is obvious that in making a summary of the contents of the F.I.R. only an incomplete and careless summary had been made in column 5 of the F.I.R. mentioning the name Ami Chand alone. The suggestion has no force at all since the other two accused also had been arrested the same night at about 2 a.m. and had even been locked up at about 4.20 a.m. There is even less force in the reliance placed upon the statement of P. W.I that it took about an hour and a quarter to record his statement. It is not such a long statement; it could not have taken more than 20 minutes, which is said to be the time taken for recording the F.I.R. from the commencement till the end, as per the time, 8.30 to 8.50 p.m., noted therein. It has also been contended that P. W. 1 had been treated as hostile by the learned Additional Sessions Judge and therefore his testimony could not be relied upon by the prosecution. As we find from the record made by the learned Additional Sessions Judge in the course of the examination of P. W. I that the learned Additional Public Prosecutor had drawn the attention of the Court to a previous contradictory statement of the witness on one particular aspect, recorded both under section 164 Criminal Procedure Code . (Ex. P. W. 1/C) and by the commuting Magistrate and had made a request for allowing cross-examination of the witness. The learned Additional Sessions Judge ordered as follows:

'THE witness is declared hostile to this extent and allowed to put question in cross-examination by the learned A.P.P.'.

Thereafter when questioned by the learned A.P.P., Public Witness 1 admitted his previous statement that on the refusal of the scooter driver Ami Chand had whipped out a knife. The point for consideration is whether the witness had been treated hostile and his evidence cannot be relied upon by the prosecution for this reason. The expression 'hostile' has not been employed in the Indian [Evidence Act, 1872](#). Section 154 thereof is the only material provision and reads as follows:

'THE Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party'.

(22) Merely discrediting a witness on one point does not amount to discrediting the witness in toto. A Full Bench of the Calcutta High Court had occasion to discuss this question in *Profulla Kumar Sarkar v. Emperor* : AIR1931 Cal401 . Rankin, C. J. observed that there was no rule of law that if a jury thought that a witness had been discredited on one point, they might not give credit to him on another. The previous decision of a Division Bench of the Calcutta High Court in *Panchanan Gogai v. Emperor* : AIR1930 Cal276 holding to the contrary, is no longer good law. The Full Bench decision has been adopted by the Calcutta B High Court in the later cases (vide *Ramesh Chandra Das v. Messrs. National Tobacco Co. of India Ltd.* : AIR1940 Cal536 and by the Madhya Pradesh High Court in *re Kalusingh Motisingh* : AIR 1964 MP30 . A Division Bench of the Madras High Court observed in *Ammathayarammal v. The Official Assignee I.L.R. Mad 7* that it, is not necessary under section 154 of the Indian Evidence Act that before a party calling a witness can cross-examination him the witness should first be declared hostile by the party calling him. The Court has unfettered discretion to allow a counsel to put questions in cross-examination to his own witness though the Court would not exercise its discretion unless, during the examination-in-chief, something happens which makes it necessary for the facts to be got from that witness by cross-examination. But before doing so the leave of the Court should be asked for and obtained; permission may also be given suo motu for the said purpose. In the above-said case even without getting permission of the Court questions in the nature of cross-examination were asked on behalf of the party calling the witness. The Division Bench held that since it appeared that permission to adopt such a course would have been granted by the Court if permission had been asked for, no interference was called for. It was further explained that it is not obligatory on the Court to discard in toto the testimony of such a witness and it is up to the Court to accept some portion and discard the rest.

(23) Despite the learned Additional Sessions Judge not having fully applied his mind to section 154 of the Indian Evidence Act or the cases decided there under it is clear that he was not treating the witnesses hostile in the ordinary or complete

sense of the term but chose to describe such permission as one to declare the witness 'hostile' only to a limited extent ('to this extent'). We are free to say that we have not, in our experience, come across any instance of a permission to declare hostile being granted in such terms; whatever this may be the effect of the Court's order does not appear to be in doubt; the Court was not allowing the witness to be declared as hostile for all purposes. It is also important to remember that no request had been made by the Prosecutor, as the record made by the learned Additional Sessions Judge shows, to treat the witness as hostile. A request to allow cross-examination of a witness on one particular alone, as happened in this case, does not tantamount to a request to treat the witness as 'hostile'.

(24) Barring what we have to say-later-about the prosecution case against Bholu we find that the version given by Public Witness s 1, 2 and 7 concerning the occurrence is substantially acceptable. Public Witness I himself had witnessed the entire occurrence from the time Ramesh Chand stabbed the scooter driver opposite the shop of Mangey Ram Halwai. No inference can be drawn from the non-examination of Mangey Ram in the absence of any evidence, or even suggestion that he was present at the shop. It is also common knowledge that when an incident of this kind happens on a thoroughfare not many persons come forward to give testimony, especially when they feel that people who had acted in such a highhanded manner have also a reputation for behaving highhandedly. It is seen that Ami Chand had been released from the jail only a few months before the occurrence after undergoing rigorous imprisonment for life.

(25) No suggestion of any interestedness or enmity has even been made to Public Witness 1 or to Public Witness s 2 and 7. We are unable to find anything on record to indicate their being interested either in favor of the prosecution or against all or any of the accused. It has been admitted by Public Witness I that he had been served tea in the court room during the lunch-hour by a cousin of the deceased: it is also true that the deceased was a Sindhi and that Public Witness 1 is also a Sindhi. But these are too slender reasons for not acting upon his testimony.

(26) It was also faintly urged on behalf of the appellants that both P.Ws 1 and 2 were examined under section 164 Criminal Procedure Code . and for that reason

their testimony became suspicious and should be discarded. The effect of examination under section 164 Criminal Procedure Code . on the credibility of a witness was discussed by the Supreme Court in Ram Charan v. The State of U.P. : 1968 CriLJ1473 Sikri, J. (as he then was), speaking for the Supreme Court, disapproved the view taken in Emperor v. Manu Chik : AIR1938 Pat290 that the mere examination of a witness under section 164 Cr. P.C. raises a suspicion that the statement made by the witness was not voluntary. On the other hand Sikri, J. approved the observations made in Parmanand Ganga Prasad v. Emperor also followed by Suba Rao, C. J. in re Gopiseti Chinna Venkata Subbaiah, : AIR 1955 AP161 to the effect that such examination only leads to an inference that at one time the prosecution thought that the witness might change his mind; if the witness, however, stuck to his statement throughout, the mere fact of his statement having been recorded previously under section 164 Criminal Procedure Code . will not be sufficient to discard it. It has been further pointed out that the Court will receive the statement with caution and that if the other circumstances on record lent support to the truth of such evidence it can be acted upon.

(27) Several of the discrepancies between the versions given by P. Ws. 1, 2 and 7 and the omissions and contradictions in respect of what each of them stated earlier to their examination at the trial have been discussed at length by the learned Additional Sessions Judge. The learned counsel for each of the three appellants also took a considerable amount of time before us over these aspects. But we have been unable to find any valid reason for not accepting the testimony, in the main, of all or any of them. The occurrence was not only sudden but also quick moving. Public Witness 1 was a passerby; Public Witness 7 witnessed the occurrence from the place where he was drinking coca cola; Public Witness 2 was vending cigarettes etc. sitting near the shop of Mangey Ram Halwai. Public Witness 2 being a resident of that locality she knew all the three accused. The number of the house of Public Witness 2 is 10379; those of Ami Chand, Ramesh and Bholu being 10285, 10434 and 10244, respectively all in Manakpura. Public Witness 1 is also a resident of the same locality, the number of his house being 10390. There was yet another witness to the occurrence, namely, Vijay Singh who also belonged to the same locality (his house number being 10364) but he unfortunately died prior to the commencement of the hearing. There was obviously

no search by the Police for witnesses; they were readily available and examined the same night. Among the occurrence witnesses, P. Ws. 1 and 7 were there when the Police came; Public Witness 2 had gone back to her house after the occurrence and was examined by the Police at 9.30 p.m. Their presence at the scene of occurrence at the time of incident could hardly be doubted. P.W. 1, in addition, had also given the first information report concerning the occurrence. Public Witness 7 is the only person who did not belong, to the locality, but his presence at the scene of occurrence at that time could not be doubted in view of his having attested not only the sketch and the seizure of the blood-stained knife from Ami Chand, but he had also attested the memo prepared for the search of Ami Chand shortly after his arrest.

(28) The street was a narrow one. Having regard to an incident of this kind it may not be realistic to expect every one of the occurrence witnesses to see everything that happened including what blow was given by whom and to whom and at what place. There is also nothing unnatural in a person only being able to recollect a few parts of the incident later, some times later rather than earlier even as one may forget a few details with the passage of time. It is in this common light that we have carefully scrutinised the evidence of these three eye witnesses. We have carefully borne in mind the various points-details-that were made out in the unduly laboured cross-examination of these witnesses; they have been very painstakingly referred to by the learned Additional Sessions Judge in the course of his judgment. His judgment has, if anything, been only unduly burdened with these details. It seems to us that it is far more important to pay attention to the broad features of the case and the circumstances which help fix the presence then not only of all the accused but also of the witnesses concerned at the scene of occurrence. The suggestion of the accused that in spite of none of them being present there and none of them being arrested that night the prosecution had still foisted a false case on them merely, because they happened to be bad characters, whom the Police wanted to remove from the area has nothing to commend it. Not only Public Witnesses 20 and 27 (along with the party) reached the scene when the occurrence was in progress (on seeing whom the accused ran away), but P.W. 5 with a van also arrived there soon after. Ami Chand had been caught and the other two accused fled the place. The injured was picked up in the van and taken to the

hospital. The registration of the F.I.R. (No. 353) under section 307 Indian Penal Code . is also in consonance with what happened because at that time it was not even known that Ramesh Chand had died. He was declared dead only after he was taken to the hospital. It is worth recalling that the F.I.R. was recorded between 8.30 p.m. and 8.50 p.m.

(29) An argument was advanced that the prosecution version concerning the deceased climbing up the stairs of Budhan, coming down, starting the scooter and proceeding five or seven paces and then running a further distance where he fell down could not be accepted by reason of the medical evidence disclosing, on exploration during post mortem of injury No. 1, that a portion of the lung was cut to the extent of 3/4' and that the pericardium and the left ventricle were also cut. On this aspect no questions have been addressed to. the doctor (P.W. 3) who conducted the post-mortem examination. Nonetheless another doctor (P.W. 9) who was examined for the purpose of proving injuries on Ramesh Chand was not even asked to read the injuries in the post-mortem certificate; he was merely asked: 'if an injury cuts the lung through and through and also cuts the cavity of the heart for how long the patient can remain conscious?' He replied: 'although I have not examined this case, but the patient can remain conscious only for a couple of minutes'. He was further asked: 'If after the receipt of such injuries, he bleeds internally, then how long can the injured survive?' He replied: 'only for a few minutes, say for 5 minutes. There is no possibility that an injured with such injuries will be able to start a three wheeler scooter or climb the stairs and come down. Question does not arise that a person with such injuries can run for 20 to 30 paces'. The learned Additional Sessions Judge has discussed these aspects in paragraphs 49 and 50 of the judgment.,

(30) The learned Additional Sessions Judge himself made a local inspection and observed as follows :

'inspected the spot and at my speed of brisk walking, it took me only one minute to cover the distance from the Mandir in the Gali where allegedly the scooter was left by the deceased scooter driver up to the shop of Moti Lal Sham Sunder (of which the proprietor is Public Witness 17 Nawal Kishore)'.

According to Public Witness 17 the deceased lay down on the Patri (foot-path) outside his shop. The learned Additional Sessions Judge also observed :

'THE Mandir is also a few paces away from the place where the stabbing took place. True that the interval within which the injured ascended the stairs of Budhan and came down is variously stated by the Public Witness s as being 2 or 3 or, 5 minutes, but from the evidence, it comes forth that he must have come down immediately and just then after driving the scooter a few paces escaped from there. As the distance from the place where he left the scooter up to the shop of Moti Lal Sham Sunder is only one minute's brisk walking' etc.

(31) The learned Additional Sessions Judge also referred to two instances from Modi's Medical Jurisprudence (reference by him is to the 1961 edition). When Mr. Stevens, the Collector of Comila, was shot with a revolver, the bullet had gone through the heart and went into the right lung. He was able to run to the office up through the dining room into the pantry and shut the folding doors before he fell dead on the floor. Another instance that has been referred to is that of a person who lived for four days after sustaining a 1/4' wide wound in the left ventricle and also lifted heavy weights on the day following the receipt of the wound. In the latest (Eighteenth) edition of Modi's Medical Jurisprudence and Toxicology some more instances have been added. But it is sufficient to note the following summing up at page 270 :

'THESE wounds (heart wounds) are usually fatal from shock and haemorrhage except in a few cases, where the individual has been able to walk some distance, and has performed some other volitional acts after receiving the injury'.

(32) Taylor refers to numerous instances of penetrating wounds of the heart vide Principles and Practice of Medical Jurisprudence (Twelfth Edition Vol. I, pages 247 to 250). At page 248 it is stated as follows:

'FROM a series of cases collected by Ollivier and Sanson it appears that out of 29 instances of penetrating wounds of the heart only two proved fatal within 48 hours. In the others death took place at the varied periods of from 4 to 28 days after the infliction of the wound'.

At page 203 Taylor states the following concerning wounds of the heart:

'PENETRATINGwounds of the heart are dangerous but often not rapidly disabling-far less fatal. The size and direction of wounds entering the heart is all important in relation to the period of survival, the arrangement of the left ventricular muscle being particularly likely to limit blood loss. When the auricles are extensively torn or penetrated, death is likely to be immediate, but persons who have sustained wounds of a lesser calibre have frequently lived sufficiently long to exercise powers of volition and locomotion'.

(33) Reference has also been made to one Watson who met with a man, who had been stabbed in the right ventricle, running 18 yards after having received the wound, then falling down but not rising again and dying in 6 hours. Dissection revealed a punctured wound extending into the right ventricle in an obliquely transverse direction, dividing in its course the coronary artery. The pericardium was nearly filled with blood, and about 5 pints were effused on the left side of the chest. It is stated as follows on page 204 :

'ITmust not, thereforee, be supposed when a person is found dead with a wound of the heart, attended with abundant haemorrhage, either the flow of blood took place in an instant or that the person died immediately and was utterly incapable of exercising any voluntary power. Only one condition will justify a supposition of this kind, that the cavities of the heart are laid widely open'.

It is needless to multiply instances. Wounds of the lungs have been discussed on pages 246 and 247. Taylor states:

'THEmost immediate cause of danger from lung injury is internal haemorrhage, which is usually profuse in proportion to the size of the wound . . . Death in injuries to the lungs may ensue quickly as a result of haemothorax or inhalation of blood into the bronchial tree'.

(34) In the absence of any questioning of the doctor who conducted the post-mortem examination there seems to be no basis laid for the. argument on behalf of the accused that the deceased would not have been able either to move about or

start the scooter after receiving the said injuries. Public Witness 9 seems to have been questioned only generally in the manner stated above and his answers have also, of necessity, been general. He had not even been taken through the injuries as described in the post-mortem certificate; nor was his attention invited to the medical literature on the subject. We do not thus have any material on the basis of which the direct evidence given by Public Witness s. 1, 2 and 7 can be rejected as improbable or unacceptable.

(35) We would now refer to only a few of the so-called discrepancies and developments, merely by way of sample, to show how such contentions do not in any manner throw serious doubts on the prosecution case. In the course of his evidence Public Witness I has himself not attributed any stab injury to Ami Chand. He has stated nothing more than that Ami Chand had a knife and that he also surrounded the deceased, along with the other accused. More specifically, Public Witness 1 stated that Ami Chand took out a knife and that Ramesh Chand took that knife from Ami Chand to stab the deceased in various places. This could only show that P. W. 1 was not able to witness the stab or stabs given by Ami Chand, a fact spoken to by Public Witness s. 2 and 7. It would not go to show, for this reason alone, that Ami Chand did not stab the deceased. Concerning the statement made by Public Witness 1 that Ramesh Chand took away the knife from Ami Chand it will be seen that P.Ws. 2 and 7 have not said so; Public Witness I would have it that even after Ramesh snatched away the knife from Ami Chand he took out another knife from his pocket. Nonetheless even according to Public Witness 1 Ami Chand and Ramesh Chand each of them were having a knife. Public Witness 1 was not sure whether Ramesh Chand could have taken a knife from his own person : he was, however, sure he had seen two knives and not merely one knife ; one of which was with Ramesh Chand and the other with Ami Chand. He also added that he had not seen any knife in the hands of Bholu during the scuffle. Public Witness 1 was also questioned about his omission to tell the Police about Ramesh taking the knife from Ami Chand. All these seem to have no further significance except the difficulty Public Witness I had in witnessing or even describing the incident fully, every part of it ; he could only speak to what he himself was able to see clearly--even some details might have been registered somewhat hazily on his mind. The larger question is whether Public Witness 1 was

at the scene of occurrence, witnessed the occurrence and gives a true account of it. Ami Chand having been caught immediately a comment was made that blood stains were not seen on the clothes recovered from him. Public Witness 2 also thought that there were blood stains on the clothes of all the accused not at all an unlikely impression to be formed when an incident of this nature takes place. But there is also nothing strange in blood, not splashing on Ami Chand at least this is not such an improbability as well be sufficient to falsify the statements of Public Witness 1 and of Public Witness s. 2 and 7 who are supported by the overwhelming circumstances referred to above.

(36) In the light of what Public Witness 27 stated (vide printed at page 84) that no fingerprint was visible ('to us') on the knife and this aspect not having been pursued further there is no merit in the argument that Ex.P.1 should have been tested to find out whether it contained the fingerprints of Ami Chand.

(37) Having seen that the prosecution case, as spoken to by Public Witness s. 1, 2 and 7, does not seem to suffer from any improbability, there seems to be no reason for disbelieving these witnesses. What remains, therefore, is to examine what offence has been made out, on the basis of their testimony, against all or any of the three accused. It is clear that all the three accused did not, at least to start with, entertain any common intention to commit murder of the deceased. It was an unfortunate demand made on a scooter driver, who was not even known to the accused previously to take all the three of them to Karol Bagh and his declining to do so that led to this tragedy. The leading role, in this regard, was played by Ramesh Chand for it was he who said that he would give the deceased a taste of how he would not take them to Karol Bagh. Even at this stage there is nothing to show that anything very serious was intended. Later the scooter driver was pulled out of the scooter. There is some discrepancy whether all the three accused pulled the deceased out of the scooter or it was only two of them and who those were. Public Witness 1 stated in chief-examination it was Ramesh Chand and Ami Chand who so pulled him out; but during cross-examination by the learned Public Prosecutor he said that Bholu and Ami Chand dragged the deceased from inside the scooter. According to Public Witness 2 all the three had dragged him out though she had omitted to refer to this aspect either when she was examined

under section 164 Criminal Procedure Code . or before the committing Magistrate. According to Public Witness 7 Bholu and Ramesh Chand dragged the deceased out of the scooter. It is needless to be detained by these discrepancies because they are not such as to affect the entire credibility; not ill of them could have witnessed completely or even accurately this sudden and fast-moving incident. Dragging the deceased out of the scooter was only a prelude; such dragging by itself would not in the context lead to an inference that all the three, or even two, of them had, at this stage, any common intention to kill the deceased; there is nothing to suggest that the deceased was pulled out for being killed.

(38) Bose, J. spoke for the Supreme Court in *Pandurang v. State of Hyderabad* : 1955 CriLJ572 and explained the applicability and scope of section 34 Indian Penal Code . It is well established that a common intention pre-supposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another the act must have been done in furtherance of the common intention of them all. Accordingly there must have been a prior meeting of minds. Several persons acting simultaneously with the same intention do not necessarily share a common intention. The plan need not be elaborate; a long interval of time is not required. Nonetheless, however hastily formed and crudely conceived, there must be a pre-arranged plan; it is not enough to have the same intention independently of each other. The inference of common intention should never be reached unless it is a necessary inference deduced from the circumstances of the case. A similar view was expressed recently by Ray, J. (as he then was) in *Parichhat v. The State of Madhya Pradesh* : 1972 CriLJ322 .

(39) According to Public Witness 1 it was Ami Chand who first whipped out a knife after a struggle between the deceased and two of the accused; this knife was snatched from the hand of Ami Chand by Ramesh Chand who stabbed on the left side of the chest, back and on thighs of the deceased. In cross examination by the learned Public Prosecutor he said that after Ramesh Chand had snatched the knife from Ami Chand, the latter took another knife from his pocket and in this way each one of them had a knife; both of them made four or five assaults with their knives on the deceased. Public Witness 1. does not specify the place where Ami Chand caused any injury on the deceased Public Witness 2 attributed to Ami

Chand the injuries on the deceased below the chest towards the 'back side' (probably corresponding to injury No. 6 in the postmortem certificate, Ex. Public Witness 4/A, printed at pp. 159-60) and on the thigh; she attributed to Ramesh Chand the injuries on the left side of the chest (corresponding to injury No. 1 in the said certificate), back of the head and on the head. According to the doctor who conducted the post-mortem examination injuries 1 and 6 singly or in combination are sufficient in the ordinary course of nature to cause death. Public Witness 7 merely stated that Ramesh Chand and Ami Chand whipped out knives, one each, and gave five or six stabs to the deceased. It is thus clear that Ramesh Chand had inflicted, among others, the fatal injury No. 1; it was a clear case of wounding with intent. It was feebly urged that Ramesh Chand had been charged under section 302/34 Indian Penal Code . and that the injuries had been put conjointly not only to him but also to the other accused including Ami Chand. But that is no reason why Ramesh Chand could not be convicted under section 302 Indian Penal Code . simplicities when it is clear that he had intentionally inflicted fatal injury No. 1. His conviction under section 302 Indian Penal Code . by the learned Additional Sessions Judge could not be assailed, since in a situation where persons may share a common intention to kill one of them can be committed under section 302 Indian Penal Code . without invoking section 34 Indian Penal Code ., when it is seen that the person had inflicted a fatal injury on the deceased. It will be instructive to notice that the House of Lords had recently to say, over-ruling the view taken by the Court of Appeal, in *Director of Public Prosecutions v. Merriman* (1972) 3 All. E.R.42. It will be sufficient for our purpose to set out what appears in the head-note: Per Lord Reid, Lord Diplock and Lord Salmon :

'WHENEVER two or more defendants are charged in the same count of an indictment with any offence which men can help one another to commit it is sufficient to support a conviction against any and each of them to prove either that he himself did a physical act which is an essential ingredient of the offence charged or that he helped another defendant to do such an act, and that in doing the act or in helping the other defendant to do it, he himself had the necessary criminal intent'.

(40) Concerning Ami Chand, however, the common intention on his part as well as of Ramesh Chand to kill the deceased seems clear from the way in which both of them attacked the deceased with knives. It was not a case of each of them having merely the same intention of killing him; an inference that they shared such intention to kill the deceased, when they attacked him with knives in the manner set out above, seems irresistible. According to the evidence of Public Witness 2 before the Court of Sessions it was Ami Chand who gave the injury on the back; if this was injury No. 6 it was one of the two fatal injuries; but even if there should be any doubt about this for any reason including his not mentioning the details of who stabbed whom earlier his conviction under section 302/34 Indian Penal Code ., as the learned Additional Sessions Judge has done, would be appropriate.

(41) The case against Bholu seems to stand on a totally different footing. None of the witnesses have stated that Bholu caused any injury to the deceased; in fact there is no mention of his having a knife at all. Even assuming that Bholu was one of those who pulled out the deceased from the scooter it could not be a circumstance from which it could be inferred that he had a common intention to kill the deceased; much less could he be said to have entertained an intention, even separately, to kill the deceased. The scuffle, according to the statement of Public Witness 7, between the deceased and the accused (atleast two of them) took place for about '10, 15 or 26 minutes'; P.W.1 had not even seen a knife in the hands of Ami Chand during the period there was scuffle; according to Public Witness 1 it was Ami Chand who first whipped out the knife that was snatched by Ramesh. Such struggle, for an appreciably long period of time, without any of the accused drawing out a knife, is some indication that at least during the course of that struggle (even assuming that Bholu participated in that struggle) no intention had then developed on the part of any to kill the deceased.

(42) After the stabbing the deceased ran up the stairs of Budhan's house; he finally came down on being entreated by Budhan to go away. Bholu, according to the evidence of every one of the witnesses, was one of those who merely stood down and did not join Ramesh when he chased the deceased upstairs. According to Public Witness 1 even when the deceased tried to escape (after coming down from the stairs, by trying to start the scooter and driving for five or seven paces

when Ramesh ran after the deceased but stumbled and fell on the ground) Ami Chand and Ramesh alone surrounded the deceased and Bholu only stood near them. Public Witness 7, however, stated that at this juncture Ami Chand and Bholu 'tried to surround' the deceased. We can understand both of them 'surrounding' the deceased; we are unable to assess precisely what is meant by the expression 'tried to surround'. Public Witness 2, on the other hand, stated that all the three accused surrounded the deceased. But on this particular point she had been making some varying statements as to whether Bholu was merely 'standing' (vide her answers printed pages 33 and 34). In these circumstances we hold that the prosecution has failed to make out beyond reasonable doubt that Bholu had at all an intention to kill the deceased and, much more, that he shared it in common with the other two accused. Bholu himself had not caused any injury to the deceased. We set aside his conviction and sentence, under section 302/34 Indian Penal Code ., and direct him to be set at liberty, imless he is liable to be detained for any other valid cause.

(43) We confirm the conviction and the sentence, which is the minimum that can be imposed, so far as Ami Chand is concerned. While we confirm the conviction of Ramesh Chand under section 302 Indian Penal Code . we do not think that the ends of justice require the imposition of the extreme penalty of death. The occurrence was not premeditated. It was a silly quarrel-Ramesh Chand asking the deceased to carry all the three of them to Karol Bagh in deceased's scooter. This was unfortunately persisted in to an excessive degree; this is also what Ami Chand did. We do not also consider it proper to make any distinction between both of them in the matter of sentence. We accordingly reduce the sentence imposed on Ramesh Chand from sentence of death to that of imprisonment for life. Criminal Appeal (No. 106/73) filed by Bholu is allowed; Cr. Appeal (No. 134/73) filed by Ami Chand is dismissed and the Cr. Appeal (No. 105/73) filed by Ramesh Chand is also dismissed. Murder Reference I of 1973 is answered accordingly.