

Bhola Nath Vs. the State

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Court : Delhi

Decided On : Jan-28-1976

Reported in : 1976CriLJ1409

Judge : S. Rangarajan and; R.N. Aggarwal, JJ.

Appellant : Bhola Nath

Respondent : The State

Judgement :

S. Rangarajan, J.

1. The judgment in this appeal, in which Bhola Nath is the appellant, will also dispose of Criminal Appeal No. 102 of 1974, in which Gopi Kishan is the appellant. Both the appellants have been convicted under Section 302, I.P.C. read with Section 34, I.P.C. each of them has been sentenced to imprisonment for life by the learned Additional Sessions Judge (Shri M. K. Chawla) by his judgment dated 19-3-1974.

2. The case of the prosecution is that, on- the morning of 13-5-1973 there was a quarrel at the public water tap between Bhola Nath (aged 20 years) and Mohd. Sayeed deceased (aged 25 years). Some persons including Abdul Hamid (P.W. 4) separated them. But Bihola Nath threatened to kill Mohd. Sayeed before he went away.

3. At about 5 p. m. that very evening when, he was going to his house Abdul Hamid (P.W. 4) saw Gopi Kishan (appellant in Cr. A. 102/74) and Raj Kumar (accused who has been acquitted) catching hold of the deceased. Raj Kumar had a chain in his hand and Gopi Kishan was abusing the deceased Bhola Nath, who was having an open knife in his hand stabbed the deceased and all the three accused ran away. The occurrence is said to have been witnessed by Mohd. Hamid (P.W. 4), Mom Uddin (P.W. 5) and Jamal Mohd. (P.W. 6). The deceased had fallen down in the Patli Galli at Chowk Bara Dari (where he was stabbed). The deceased placed a handkerchief on his wound and went towards Jagdish's dairy but fell down. Not only blood stains but also the said handkerchief were removed from the scene of occurrence.

4. The deceased was taken in a cycle rickshaw to the Irwin Hospital by Mohd. Sultan (P.W. 8), uncle of the deceased. Mohd. Sayeed (P.W. 9). son of P.W. 4, rushed to the Police Station and made a statement as per Ex. P.W. 1/A at 5.05 p. m. that 'a serious quarrel was going on in Bara Dari'; no detail of the incident or names of persons involved therein were mentioned. Rajpal Singh (P.W. 1) the duty officer at the Police Station Hauz Qazi, which is only one furlong away from the scene of occurrence, recorded the statement of P.W. 9 (Exhibit P.W. 1/A). Soon thereafter, at 5.25 p. m. a telephonic call was received by him from a Constable at Irwin Hospital about the deceased having been admitted in injured condition.

5. P.W. 8 had accompanied the deceased to the hospital. The deceased was admitted at 5.20 p. m. in the hospital. His general condition was poor. There was a stab on the left side of his chest 1.5 c. m. long obliquely placed; he was bleeding profusely and there was peripheral circulatory failure. The injured was gasping; his pulse was feeble. He was sent immediately for resuscitation but life ebbed out at 5.40 p.m. On receipt of another telephonic message from the hospital at 6.30 p.m. P.W. 1 converted the offence previously registered under Section 307/34, I.P.C. into Section 302/34, I.P.C.

6. Immediately after recording Ex. P.W. 1/A S. I. Rajpal Singh (P.W. 1) had sent ASI Ranbir Singh to the spot for inquiry, who completed recording the statement of

Abdul Hamid (P.W. 4) by 5.35 p. m.; the same (marked as P.W. 1/D) was received at the Police Station by P.W. 1 at 5.45 p. m., who recorded a formal F. I. R. on that basis.

7. According to the post-mortem report (Ex. P.W. 13/A) the following injuries were noticed:

(1) Incised wound superficial partial skin deep 1X03 c. m. in the back and upper part of rt. forearm oblique in direction.

(2) Abrasion as if caused by a sharp object 0.8 X 0.3 c. m. in the inner and middle part of rt. forearm.

(3) Small, transverse, linear abrasions, 4.0 c. m. and 3.5 c. m. one over other, 2.5 c. m. apart, situated at the rt. side part of chest just inside and below rt. nipple.

(4) Incised punctured wound, 2X0.6 c. m. oblique, in the left outer surface of chest, midaxillary line over 6th inter costal space X chest cavity deep, directed upwards slightly and medially in chest cavity. The upper outer angle is acute, while inner lower angle is rounded.

Death was due to haemorrhage and shock consequent on stab injury to lung and heart (injury No. 4), which was sufficient in the ordinary course of nature to cause death.

8. The accused is said to have made a disclosure statement (as per Exhibit P.W. 10/A) to the Police Inspector Bhim Singh (P.W. 16) that he had kept the knife near Chhaju Colony Shahdara adjacent to a coconut tree in the field in the bushes and that he would get the same recovered after pointing it out. This statement is said to have been made in the presence of Shuja Uddin (P.W. 10) and Mohd. Asfeen (P.W. 11) which was seized under a memo (Ex. P.W. 1/C). The said knife was not even sent for serological examination because it was not said to contain blood stains. It was not shown to the doctor who conducted the post-mortem or even to any other doctor who was examined. The learned Additional Sessions Judge rightly did not attach any weight to the recovery of the said knife in the view that it did not contain blood stains. Without any blood stains on it there is no guarantee

that the same was used in this case. It is needless, therefore, to be detained by the said recovery even though Mr. Frank Anthony, learned Counsel for Bhola Nath, went the length of contending that a knife had been 'falsely planted' by the Police in this case.

9. The appellants in both the appeals completely denied the participation in the crime.

10. The learned Additional Sessions Judge has acquitted Raj Kumar; P.Ws. 5 and 6 omitted to identify him altogether; even P.W. 4 did not identify him firmly.

11. Despite some lapses both in the investigation and in the manner in which the trial was conducted (to which reference will be made later) it seems to us that there is no reason to disbelieve the statement of P.W. 4 that it was Bhola Nath who stabbed the deceased especially when he had made a statement to that effect (Ex. P.W. 1/D) which had been recorded within about half an hour of the occurrence and had been received at the P. S. by P.W. 1 at about 5.45 p.m. Ranbir Singh who had been deputed by P.W. 1 to enquire had reached the scene within a few minutes, the Police Station being only a furlong from the scene of occurrence and P.W. 9 having rushed to the Police -Station immediately after the fatal quarrel began that evening.

12. Mr. Frank Anthony made a valiant effort to show that the ruqa (Exhibit P.W. 1/D) from P.W. 4 was not recorded as mentioned and that it did not reach the Police Station at 4.45 p. m. but that the same was concocted the next day. There seems to be really no basis for this contention. The suggestion to P.W. 1 himself was that the formal F. I. R. was recorded at 8 p. m., not 5.45 p. m, According to Punjab Police Rule 24.5 the F. I. R. shall be filled in the printed Form 24.5 with pages Serially numbered with three carbon copies (each of the four pages of the register bearing the same Serial number); one of them is to be sent to the Head Magistrate. Since such a report is to be sent in a case of murder the occasion for sending it arose only after 6 30 p. m. when the fact of death was reported from the Irwin Hospital to the Police Station. The copy which was sent to the Magistrate is not being exhibited by the prosecution in cases arising within the Union Territory of Delhi unless some doubts are thrown on this. The experience of one of us (R. N.

Aggarwal, J.) as District & Sessions Judge, Delhi, confirms this practice. In other words only when there is a challenge on the ground that the report to the Magistrate was not sent at the time it bears it is exhibited. There was no such specific challenge in this case except to suggest that the formal F. I. R. was recorded only at 8 p. m. There could be none of that kind having regard to the very suggestion to P.W. 1 that the formal F. I. R. was recorded at 8 p. m.; in the very nature of things there could not be a further suggestion made that there was any appreciable delay in sending copy of the F. I. R. to the Magistrate. The formal F. I. R. under Section 302, I.P.C. not being possible before 6.30 p. m. when alone intimation of death was received from the hospital.

13. We will, however, take this occasion to point out that instead of even putting onus on the accused of such challenge the prosecution may itself exhibit a copy of the F. I. R. sent to the Magistrate in all murder cases. This would not only not throw any additional burden on the accused but it would be in consonance with fairness to the accused; if any benefit should accrue in the accused's favor on the basis of any delay the same should be given to the accused unless delay is properly explained. One of us (S. Ranga-rajan, J.) is aware of such a practice being followed in the State of Tamil Nadu. Mr. Frank Anthony also drew our attention to the printed papers in *State of Punjab v. Dalip Singh Murder Reference 137 : Criminal Appeal No. 102 of 1974* where we find in a case of murder reported on 18th September 1972, copy of the F. I. R. sent to the Magistrate also had been filed. Mr. Anthony explains that whatever the older practice was in Punjab (which may have been adopted in Delhi also) Punjab itself is now adopting this course at the moment. This course would also have the advantage of focussing attention of the prosecution on any delay, if any, and also furnish the reason, if any, for such delay. We have had occasion to notice in quite a few murder cases that the conduct of such cases had been much too mechanical.

14. Whatever this may be we are satisfied that in this case there was no and could not be any scope for thinking that there was delay in the sending copy of the F. I. R. to the Magistrate especially having regard to the suggestion made to P.W. 1 that the formal F. I. R. was recorded at 8 p. m. Nothing was probably gained by the accused making the suggestion that the F. I. R. was formally recorded at 8 P. m.;

nothing much could really follow from such delay. We see no reason whatever to distrust the fact that the ruqa was given by P.W. 4 without delay and that it had been recorded at 5.35 p. m. and that it had reached the Police Station at 5.45 p. m.

15. Yet another aspect relating to the conduct of the case was rightly criticised by Mr. Anthony who sought to take advantage of the manner in which not only Abdul Hamid (P.W. 4) but the other two-three eye witnesses (P.Ws. 5 and 6) were treated as hostile by the prosecution and their statements were transferred to the record under Section 288, Criminal P. C. But before discussing what led to their being declared as hostile it is necessary to refer to the latest judgment of the Supreme Court in *Sat Pal v. Delhi Administration* CrI. Appeal No. 137 of 1971 decided on 30-9-1975 : reported in : 1976 CriLJ295 where Sarkaria, J., speaking for himself and P. N. Bhagwati, J. has discussed legal position in this regard. The previous decision of *Jagir Singh v. State (Delhi Administration)* : 1975 CriLJ1009 , to which also P. N. Bhagwati, J. was a party, was clarified by Sarkaria, J. The following observations sum up the true position:

From the above conspectus, it emerges clear that even in a criminal prosecution when a witness is cross-examined and contradicted with the leave of the Court, by the party calling him, his evidence cannot, as a matter of law, be treated as washed off the record altogether. It is for the Judge of fact to consider in each case whether as a result of such cross-examination and contradiction, the witness stands thoroughly discredited or can still be believed in regard to a part of his testimony. If the Judge finds that in the process, the credit of the witness has not been completely shaken, he may, after reading and considering the evidence of the witness, as a whole, with due caution and care, accept, in the light of the other evidence on the record, that part of his testimony which he finds to be creditworthy and act upon it. If in a given case, the whole of the testimony of the witness is impugned, and in the process the witness stands squarely and totally discredited, the Judge should, as a matter of prudence, discard his evidence in toto.

It was in the context of such a case, where as a result of the cross-examination by the Public Prosecutor the prosecution witness concerned stood discredited

altogether, that this Court in *Jagir Singh v. State (Delhi Administration)* with the aforesaid rule of caution, which is not to be treated as a rule of law in mind, said that the evidence of such a witness is to be rejected en bloc.

In the light of the above principles, it will be seen that, in law, a part of the evidence of the Panch witnesses who were thoroughly cross-examined and contradicted with their inconsistent police statements by the Public Prosecutor, could be used or availed of by the prosecution to support its case. But as a matter of prudence, on the facts of the case, it would be hazardous to allow the prosecution to do so. These witnesses contradicted substantially their previous statements and as a result of the cross-examination, their credit was substantially, if not wholly, shaken. It was therefore not proper for the Court below to pick out a sentence or two from their evidence and use the same to support the evidence of the trap witnesses.

16. We are even unable to appreciate why the learned Additional Public Prosecutor was persuaded to request the Court to permit him to cross-examine Abdul Hamid (P.W. 4); nor can we understand why the learned Additional Sessions Judge did not follow the procedure, which has been so often explained by the Supreme Court, in the matter of transferring the statement of the witness made before the committing Magistrate under Section 288, Criminal P. C.

17. Regarding the former P.W. 4 had only stated in chief-examination that he did not know whether Raj Kumar was present in Court or not; he had pointed towards Gopi and said 'he is perhaps that Gopi'. The further reply made by the witness to the question put by the learned Additional Public Prosecutor to him in cross-examination was substantially in accord with the statement which he had made in the committing Court (Exhibit P.W. 4/G). We shall revert to this aspect later on when we discuss the details of the testimony of not only P.W. 4 but other eye witnesses also. It is sufficient to note that in view of the observations of Sarkaria, J. in *Sat Pal v. Delhi Administration* : 1976 CriLJ295 (supra) there is no legal impediment whatever in the matter of acting upon the testimony of this witness before the trial Court; the only question is whether there are guarantees in the shape of the needed corroboration in respect of the evidence he has given before

the trial Court. Regarding the latter the position was clearly explained by Hidayatullah, J. (as he then was), speaking for the Supreme Court in *Periyasami v. State of Madras* : 1967 CriLJ975 . In that case there was no order specifying the transfer of the earlier deposition in the record of the Sessions Court under Section 288, Criminal P. C. The following observations were made:

It may be stated that it is highly desirable that the Court should, before the transfer of the earlier statement to the record of the Sessions case under Section 288, indicate in brief order why the earlier deposition was being transferred to the record of the trial. This will make it quite clear to the accused that the earlier statement is likely to be used as substantive evidence against him. If the matter had rested with the use of the earlier statement without this notice to the accused, we would have found it difficult to rely upon the earlier deposition. We find, however, that Periyasamy was questioned with reference to the statement of Pappayee made before the committing Magistrate which, the Judge informed him, was marked under Sec, 288 of the Code of Criminal Procedure, and he was asked what he had to say about it. thereforee, although the technical requirement of the section, namely, that an order should be passed to indicate that the statement is transferred so as to be read as substantive evidence, not complied with, there does not appear to be any substantial departure from the requirements of the law. There is also no likelihood of any prejudice to Periyasamy since he was informed, while he was being examined that the statement was being used under Section 288, Criminal Procedure Code, and was invited to say what he wished to say in defense.

18. We only find in this case a note made by the learned Judge in the deposition of P.W. 4 as follows:

At this stage APP requests that the statement of this witness recorded in the committing Court on 29-9-1973 may be admitted in evidence on record of this case under Section 288, Criminal P. C. Request is allowed.

19. We do not even find that the accused was questioned about the said statement nor was he put on notice of the fact that the said statement could be taken into account against him under Section 288, Criminal P. C. The transfer of

the evidence under Section 288, Criminal P. C. is not a matter of course, to be made without any application of mind. The trial Court should apply its mind to the nature of the deviation made by the witness and whether he was satisfied that the said statement should be transferred to the record. This consequence cannot automatically ensue on the mere request made by the Prosecutor to cross-examine the witness. The attention of the witness should be drawn to such portions in the statement which are contrary to the evidence given by the witness before it and then after giving him an opportunity of thug explaining those statements it must make up its mind as to whether to transfer the record under Section 288, Criminal P. C. or not.

We are sorry to note that the learned Additional Sessions Judge does not seem to have got the legal requirements in mind or even, as it appears to us, applied his mind seriously to this question, as he should have done. Despite the above shortcomings, it seems to us, that there is no reason to distrust the evidence which P.W. 4 gave in the trial Court. His previous statements made in the committing Court as well as in the ruqa (Ex. P.W. 1/D) which he gave to ASI Ranbir Singh could be called in aid to corroborate his statement made in the trial Court. So far as the latter proposition is concerned it is settled law that even though the F. I. R. is not substantive piece of evidence it can be used to corroborate the statement of the maker under Section 157 of the Evidence Act (Vide Nisar Ali v. State of Uttar Pradesh : 1957 CriLJ550).

20. Since we do not have any credible reason for doubting that P.W. 4 had given the ruqa (Ex. P.W. 1/D) within about half an hour of the occurrence in which he had mentioned the name of Bhola Nath as the person who had stabbed the deceased we have a significant guarantee in the shape of his having implicated Bhola Nath without any delay. The occurrence took place in summer (in the month of May) at about 5 P. M. when tile sun must have been very bright; there was no difficulty in the matter of identifying Bhola Nath whom he had known earlier. It is no doubt true that this unfortunate murder was a sequel to the very silly quarrel at the water tap that morning between Bhola Nath and the deceased, but absence of motive or even the sufficiency of motive would not be of much significance when there is direct testimony concerning the occurrence. The seat of the injury being

over the sixth inter-coastal space it might have given the impression to P.W. 4 that the deceased was being stabbed on the abdomen. It was no doubt the only blow which P.W. 4 had seen being given by Bhola Nath.

21. Mr. Frank Anthony commented that since in the wound certificate one injury alone was noticed the oral evidence was tailored accordingly, but this comment does not seem justified because the only other injury, caused by a sharp edged instrument, was on the inner and middle part of the right fore-arm (.8X.3 c. m.) which could have been easily sustained in the act of the deceased warding off the blow, though nobody actually says so in this case. We have referred to this circumstance only to indicate that there need not have been yet another blow, dealt with separately, on the deceased in addition to one on the sixth inter-coastal space.

The cross-examination of P.W. 4, whose evidence was read to us several times over by Mr. Anthony and criticised by him at length, does not seem to indicate that he had deliberately made any false statement. The only suggestion to him was that he was deposing against the accused because of his relationship with the deceased. He was, no doubt, the uncle of the deceased but for this reason alone he cannot be disbelieved. He lives in Bara Dari itself in house No. 2733; Bhola Nath lives in house No. 2759. Abdul Hamid was certainly not a chance witness. The further attack on his testimony that he was not present at the time has nothing to command it because he had himself given the ruqa which was completed by 5.35 p. m. The fact that his son (P.W. 9) had taken the deceased to the hospital is borne out by the fact that the medico legal certificate mentions the fact of P.W. 9 having taken the deceased to the hospital.

22. Having regard to the importance to be attached to the ruqa given by P.W. 4 Mr. Frank Anthony contended that the ruqa could not be regarded as the F. I. R. owing to P.W. 9 having gone to the Police Station earlier and made a statement as per Ex. P.W. 1/A which must be treated as the First Information Report. But Ex. P.W. 1/A does not mention any other fact except that a serious quarrel was going on at Bara Dari. There is no warrant, therefore, for treating Ex. P.W. 1/A as F. I. R., and for that reason, holding Ex. P.W. 1/D to be hit by Section 162, Criminal P.

C.

23. As a fact it was contended by Mr. Frank Anthony, that whereas P.W. 9 stated that he had seen the deceased lying injured a large number of persons had collected and that he then rushed to the Police Station since he apprehended danger, P.W. 4 had stated that he had sent P.W. 9 to lodge a report at the Police Station 'at the time a quarrel had started'. But what P.W. 4 had meant was explained by him further: it was incorrect to suggest that P.W. 9 had left for the Police Station to lodge a report at the end of the quarrel.

P. W. 9 stated that he had not talked to his father before he went to the Police Station, so that P.W. 4, was present at the spot; P.W. 4 also swore that he did not tell P.W. 9 the names of the assailants as to what report was to be lodged. P.W. 4 had also stated that within about 20 minutes after the injured was taken to the hospital one person returned and told them that he had died. He knew about this fact when his ruqa (Exhibit P.W. 1/D) was recorded. The police proceedings consequent upon Exhibit P.W. 1/D disclosed only an offence under Section 307/34, I.P.C. but it is only natural that until an official intimation was received concerning death of the victim the section could not be altered by any investigating officer; the official intimation regarding death was not received earlier than 6.30 p. m.

24. Mr. Frank Anthony relied upon the decision of the Supreme Court in *tori Singh v. State of Uttar Pradesh* : [1962]3SCR580 for the position that any fact recorded in the site plan by the Investigating Officer on the basis of statements made to him by the witnesses could be hit by Section 162, Criminal P. C. for this reason the plan in this case (Ex. P.W. 7/A) could not be looked into for the purpose of showing where P.W. 4 was standing at the time he witnessed the incident, which took place in the Gali Patli. But even reading the statement of P.W. 4, as it is there is hardly any support for the view presented by Mr. Frank Anthony that P.W. 4 was only present near the water tap, which is within about 8 feet of the turning from the lane. It being admitted that one standing near the tap could not witness anything happening in the lane any statement attributed to P.W. 4 concerning his going to the tap when the incident happened cannot be read as meaning that he was near

the tap itself when he witnessed the entire occurrence, he asserted that he did so. It was not suggested to him that he was staying only near the tap and for that reason he could not have witnessed what happened in the lane because of his being near the tap.

25. Mr. Frank Anthony also severely commented upon the following observations of the learned Additional Sessions Judge in paragraph 23 of the judgment:

The presence of P.W. 4 Abdul Hamid at the place of occurrence is but natural. He resides in the same locality and on Sunday at about the time of occurrence he had gone to the public tap for taking water. His evidence finds full corroboration from the evidence of P.W. 5 Moin Uddin, the post-mortem report of the doctor and the recovery of the knife from Bhola accused.

26. It is fair to state that though the learned Additional Sessions Judge had believed the evidence pertaining to the disclosure by Bhola Nath and recovery of the knife this would not avail the prosecution in the absence of human blood stains on the knife. The post-mortem report would only show that he had been stabbed in the sixth inter-coastal space, which ended fatally, with a sharp edged weapon. Ex. P-2 had not been proved to be the knife in this case but it could admit of no doubt that the deceased came by the said injury as a result of a sharp edged weapon being used against him. The injury was ante mortem, not postmortem. To this extent there has been some support for the testimony of P.W. 4 concerning the deceased having come by the said injury.

27. Regarding the observations of the learned Additional Sessions Judge concerning 'full corroboration' by the evidence of Moin Uddin P.W. 5 it has to be noticed that even he, like P.W. 4, failed to identify Raj Kumar at the trial and this was the reason for declaring him hostile to the prosecution; he had not been, however, examined in the committing Court. Jamal Mohd. (P.W. 6), the third alleged eye-witness, went the length of saying that he did not see any of the persons quarrelling at about 5 P. M. on that day.

28. In these circumstances the only question is whether one can safely act on the testimony of Abdul Hamid that Bhola Nath gave that fatal blow to the deceased.

For the reasons discussed above we do not find any sufficient reason to discredit his testimony; we are fortified in this view by Abdul Hamid having given the ruqa to the Police so soon after the occurrence. The fact that signature was taken to the statement of facts in the inquest report is not such as to lead to the inference that an effort had been made to tie him to such a statement and that he was not free to state the truth later on; in his case he had also given the signed ruqa concerning the facts of the occurrence. This report was signed by the witnesses at the hospital according to the evidence of Inspector Bhim Singh (P.W. 16) and it was not signed by Abdul Hamid at his residence. Advantage was sought to be taken of the admission of Abdul Hamid that he did not go to the hospital on the following day and that his signatures were got on certain papers by the Police at his residence the following day; it was not clarified what papers were thus signed; no specific question was put to him concerning (his signing the inquest report. We do not feel impelled to take a different view of the case merely because it was solicited on behalf of the appellant Bhola Nath in the cross-examination of Moin Uddin (P.W. 5), obviously in answer to a suggestion in that leading form, as follows:

It is correct that Abdul Hamid P.W. arrived at the spot after Sultan had left along with the injured in the rickshaw (after P.W. 5 was treated as hostile).

29. We, therefore, hold that it was appellant Bhola Nath who gave the fatal blow to the deceased as alleged, that it was given intentionally and aimed at such a vital part as the chest with a sharp edged instrument, that the same was sufficient in the ordinary course of nature to cause death and that the offence thus committed by him is punishable under Section 302, I. P. C The minimum sentence under the law has been imposed on him. We convict (him under Section 302, I.P.C. and sentence him to rigorous imprisonment for life; criminal appeal No. 197 of 1974 is dismissed.

30. So far as Gopi Kishan, appellant in criminal appeal No. 102 of 1974. is concerned we do not find that the evidence or proved circumstances are sufficient to warrant his conviction under Section 302/34, I.P.C. The statement in the ruqa given by Abdul Hamid (P.W. 4) was that Gopi and Rai had caught hold of the deceased and Gopi said to Bhola 'Dekhta Kaya Hai, saaley Ko jaan se maar do'.

Before the committing Court Abdul Hamid only said he heard those words; he did not identify Gopi as the person who uttered them. At the trial he pointed to Gopi and said 'he is perhaps that Gopi'. Having regard to the petty nature of the quarrel in the morning no inference could be drawn that there was any prior concert to murder the deceased; nor could it be said that any common intention on the part of Bhola Nath and Gopi Kishan to murder the deceased was found at the scene of murder. The learned trial Judge has not even discussed how Gopi Kishan shared any common intention with Bhola Nath to murder the deceased Mohd. Sayeed. The learned Counsel for the State could not urge any ground sufficient to warrant the conviction of Gopi. The conviction and sentence imposed on Gopi Kishan (appellant in Cr. Appeal No. 102 of 1974) are set aside; his appeal is allowed and he is directed to be set at liberty forthwith unless he is liable to be detained for some other cause.

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