

**Pardeep Kumar Vs. State**

**Pardeep Kumar Vs. State**

**SooperKanoon Citation :** [sooperkanoon.com/899392](http://sooperkanoon.com/899392)

**Court :** Jammu and Kashmir

**Decided On :** Mar-04-2003

**Reported in :** 2003CriLJ4200,2003(2)JKJ279

**Judge :** V.K. Jhanji and; S.K. Gupta, JJ.

**Acts :** Ranbir Penal Code (IPC), Svt. 1989 - Section 34; ;Evidence Act, Svt.1977 - Sections 3 and 8

**Appeal No. :** Criminal Ist Appeal No. 13/1991 and Confirmation Reference No. 14/1991

**Appellant :** Pardeep Kumar

**Respondent :** State

**Advocate for Def. :** Seema Shekher, Government Adv.

**Advocate for Pet/Ap. :** Shameema Ali Mir and; B.B. Bakshi, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

S.K. Gupta, J.

1. We have heard Mrs. Shameema Ali Mir, learned counsel for the accused-appellant, as well as Mrs. Seema Shekher, learned Government Advocate for the respondent-State, in extenso.

2. A bizarre tale of guresome murder in which Bhagat Ram, a Cement Dealer, having a shop in Bazar at Ghagwal on National Highway, was eliminated by the appellants in order to wreak vengeance against Parkash Chand son of the deceased, who protested against the act of misdemeanour of the appellants after consuming liquor, which was taken as front by the appellants and they threatened to kill him.

3. Recapitulation of brief facts for the disposal of this appeal is necessary. The appellants are real brothers. They are Physical Training Instructors and posted in different Government schools. Pardeep Kumar, appellant, happened to be a tenant in the house of Ram Krishan, brother of the deceased, where both the other accused being brothers were frequent visitors. Whenever appellants were together they used to indulge in obscene acts after consuming liquor and showering abuses and causing annoyance to others. It was about 4/5 days prior to the occurrence. Parkash Chand, son of the deceased, objected to the obscene acts of the appellants and asked them to abstain from committing such act.

4. This enraged and irritated the accused, who held out a threat to kill Parkash Chand. On 28th March, 1990, Parkash Chand, while proceeding towards Samba on a scooter, in the morning reached Jatwal, the appellants came on a scooter and surrounded him. Parkash Chand, however, was lucky enough to have escaped without injuries, when people from locality intervened and the accused managed to flee away from the spot. The accused-appellants proceeded towards Ghagwal on the scooter. On reaching Ghagwal, appellants parked

their scooter in front of the shop of PW Chander Mohan, next-door neighbour to the shop of the deceased, running a Sweet-shop. The appellants proceeded straight to the shop of the deceased, Bhagat Ram, father of Parkash Chand and struck the deceased in order to take revenge for their insult by his son on whom the accused had also made a similar attempt, a little before, at Jatwal, but was foiled by the people from the locality. Appellant Rajesh Kumar, held the deceased and pressed him down by neck paving way for other two brothers, Pardeep Kumar and Ashok Kumar, for inflicting injuries on the back of the deceased with a knife in their possession, which proved fatal. The deceased, however, could not withstand the injuries and lost breath in the Matador while on way to hospital at Hiranagar. First Information Report was lodged by PW Chander Mohan, next-door neighbour of the deceased and an eye-witness of the occurrence, soon after. The- accused-appellants, after committing the crime, absconded from the place of occurrence. The appellants-accused also remained absent from their respective schools where they were posted at the relevant time. A case under Sections 302/34 RPC stood registered against the appellants-accused and investigation ensued. Accused, Rajesh Kumar, was arrested on 11.4.1990 and whereas other two accused, Ashok Kumar and Pardeep Kumar, were arrested on 14th April, 1990.

5. On the conclusion of the investigation, all the three accused appellants were sent up to stand their trial for the alleged offence under Sections 302/34 RPC and Section 4/25 Arms Act, and the Trial Court found the appellants guilty under Sections 302/34RPC and sentenced them accordingly.

6. Mrs. Mir, learned counsel appearing for the appellants, has assailed the legality and propriety of the order impugned on variety of grounds. According to Mrs. Mir, prosecution case suffers from serious legal infirmity and factual frailty. There has been a delay in the dispatch of the FIR to the local Magistrate and it has been signed by its author with different pen, which renders the prosecution case highly doubtful and suspicious. Further submission of appellants' counsel is that, the evidence provided by the witnesses is highly discrepant and contradictory in material particulars and does not inspire confidence in the Court. That the ocular evidence is in conflict with the medical testimony and other alleged incriminating circumstances and, thus, cannot be made the basis of the conviction of the accused. The appellants' counsel further submitted that the prosecution witnesses are interested and their evidence is tainted and smacks of partisanship and, therefore, insufficient to prove the guilt of the accused unless corroborated by independent evidence. Their evidence is untruthful and untrustworthy. That the Trial Court has not appreciated the evidence in its proper perspective. Mrs. Seema, Shekher, Government Advocate, on the other hand, argued that the evidence relied upon by the prosecution is consistent only with the hypothesis that accused alone had killed the deceased Bhagat Ram.

7. It may be pointed out at the first flush that the prosecution case hinges on the ocular testimony of the eye-witnesses, who stated to have seen the occurrence being present on spot at the relevant time. Further support to their evidence is found in the medical testimony and other incriminating circumstances appeared against the accused relating to the seizure of scooter and knife left behind by the accused while fleeing away from the place of occurrence, discovery of another knife on the accused's disclosure statement, the accused remaining absent from duty and absconding from the place of occurrence after committing the crime.

8. In a criminal case, it is incumbent upon the prosecution to establish the guilt of the accused by sufficient, satisfactory and reliable evidence, beyond any pale of doubt. Where the prosecution proves its case by direct evidence, the witnesses must be of sterling character and their evidence above board, consistent and positive. Direct evidence always occupies' a top position. Where the witnesses give a cogent and consistent version about the manner in which the accused committed the crime, and nothing was elicited in their penchant cross-examination to discredit their evidence, such evidence will inspire confidence in the mind of the Court. The omissions or mis-descriptions of trivial and inconsequential nature would not tell upon the prosecution case or statements of the eye-witnesses when the FIR was recorded most promptly at the instance of the eye-witness, who is stated to have seen the occurrence with naked eyes being present on the shop adjoining to the shop of the deceased where the alleged occurrence took place. When the offence committed by the accused is established by unimpeachable corroborative evidence viz. the report lodged with the police and the medical evidence, there was no need to go in search of elusive independent witnesses. The Apex Court in

Shrishail Nageshi Para v. State of Maharashtra, AIR 1985 SC 866, held that ordinarily the evidence of a truthful eye-witness is sufficient without anything more, to warrant a conviction and cannot, for instance, be made to depend for its acceptance on the truthfulness of other items of evidence such as recovery of weapons etc., at the instance of the accused by the police.

9. To appreciate the contention of the learned counsel for the parties, we proceed to deal with the matter and examine the case. The First Information Report, in this case, was lodged by PW Chander Mohan running a Halwai shop adjoining to the shop of Bhagat Ram deceased, a Cement Dealer, at Bus Stand, Ghagwal. The complainant was making 'Barfi' outside his shop at about 10.00 a.m. on 28th March, 1990 when he saw Pardeep Kumar, Ashok Kumar and Rajesh Kumar arrived on a scooter bearing No. PHA-864 and parked it in front of his shop. The accused entered the shop of the deceased and attacked on him. Pardeep Kumar accused raised 'Lalkara' that Parkash Chand has escaped, but the deceased should be finished, The complainant, on hearing the 'Lalkara', went inside the shop of the deceased and saw that accused Rajesh Kumar held the accused from the neck and pressed him down and the accused Pardeep Kumar and Ashok Kumar, armed with knives, gave one blow each on the back of the deceased. The complainant raised an alarm, which attracted Bholu Ram, Chajju Ram and Shanti Sarup on the spot and on seeing whom, the accused when tried to flee away, the complainant targeted a stone to hit Pardeep Kumar and PW Shanti Sarup a lathi blow. But the accused, however, managed to run away and left the scooter on spot. People who assembled on spot also followed the accused, but the latter managed to escape. It is also in the FIR that the complainant with the assistance of Ghansham and Rakesh removed the injured in a Matador to Hiranagar, but he lost his breath on the way to hospital. When doctor declared the injured dead on reaching the hospital, the complainant proceeded to lodge a report with the Police Station. It is also mentioned in the report that the complainant was told by Parkash Chand that accused Pardeep Kumar and Ashok Kumar had threatened to liquidate him. The First Information Report came to be recorded at 10.30 a.m. on 28.3.1990, which reached the Judicial Magistrate on 29th March, 1990, the next day.

10. Mrs. Mir, learned counsel appearing for the appellants, has assailed the genuineness of the FIR on the grounds that it has been signed by the witness with a different pen, its delayed dispatch to the local Magistrate and contradiction appearing in the statement of its author and what is in the FIR. It is pertinent to point out that the FIR lodged by Chander Mohan contains the details as to how the accused arrived at Bus Stand, Ghagwal, the manner in which they committed the crime, the names of the accused, the weapons used, the place of infliction of the injuries, the names of the eye-witnesses and how they managed to escape from the place of incident after leaving their scooter and a weapon of offence on spot and how the injured was taken to the hospital. This FIR has been proved by its author in his evidence on oath. The complainant has given all the details as to how the accused had committed the offence and the manner he intervened, which itself is a proof of his presence on spot at the time of occurrence, being the neighbour of the deceased. Nothing inherent improbable has been elicited from his searching cross-examination to cast a speck of doubt on his veracity. There is nothing contradictory or inconsistent found in the FIR lodged by the complainant and his statement subsequently recorded in the Court. The complainant further categorically stated that PW Chajju Ram came from his shop adjoining to the shop of the deceased and Shanti Sarup also walked towards the place of incident and witnessed the occurrence. This fact has not been challenged by the accused, which otherwise also stood proved from the site plan EXPW-17. The defence made such suggestions to the complainant in order to discredit his testimony, which related to the manner he had witnessed the occurrence. All these suggestions stood satisfactorily replied by the witness as to who he intervened, in a natural manner. The use of different pen to sign the FIR, therefore, is not such an omission as to discredit his statement, particularly when the complainant has corroborated the FIR in all material particulars and the evidence tendered by him regarding the manner in which the occurrence took place giving complete identity of the accused, the names of the witnesses and what happened thereafter till the death of the deceased, remained unassailed. When the contents of the FIR have been fully affirmed in the testimony of its author, the use of a different pen to sign FIR is rendered inconsequential particularly when the evidence of the complainant has been found truthful, trustworthy and credible, and corroborated in the testimony of other

eye-witnesses, namely, Chajju Ram and Shanti Sarup.

11. It is significant to point out that the genuineness of the inquest report EXPW-5/2 prepared by PW Puran Singh, ASI, on 28th March, 1990 could not be challenged. The report contains all the details of occurrence, the names of the accused, the witnesses whose names also figured in the FIR EXPW-1. This itself proves the genuineness of the FIR EXPW-1 having been lodged on 28.3.1990 by PW Chander Mohan. All these facts contained in the Seizure Memos EXPW 4 to EXPW 4/7 and even EXPW-5 and EXPW-5/1 prepared by PW Puran Singh much prior to the arrival of the Investigating Officer at the place of occurrence in which the name of Chander Mohan and the number of the FIR is mentioned, remained unchallenged and further militate against the pleas taken by the appellants in their arguments.

12. It is meaningful to point out that the FIR is not a chronicle of the exhaustive details of the occurrence, nor is it a catalogue of everything including minor particulars of an event which took place. Picking out an insignificant discrepancy regarding the use of different pen by the complainant in signing the FIR for jettisoning and otherwise sturdy account of its author and the witnesses is not a commendable approach in the evaluation of evidence, when skeletal facts revealed in the FIR found consistent with the detailed narration of the eye-witnesses in the evidence, and the circumstance in signing of the FIR by its author with different pen is inconsequential and not a ground to reject the prosecution case, has been held by the Supreme Court in *State of U.P. v. Harban Sahai* (1998) 6 SCC 50.

13. According to Mrs. Mir, appellants counsel, there was delay of 24 hours in forwarding the FIR to the Magistrate and during this intervening period, there was sufficient time for fabricating the FIR and, thus, demolishes the prosecution case in its entirety. This delay, however, has been explained in the case by the Investigating Officer, who immediately proceeded to apprehend the accused after recording the FIR. The accused absconded after the commission of the crime. The Investigating Officer, however, returned late in the evening, which, in fact, resulted in the delay to dispatch the FIR to the Magistrate. There is also an evidence of ASI Puran Singh, that after getting post-mortem examination of the deceased and examining the blood sample, he reached the place of occurrence, seized the scooter and recorded the statement of PW Chajju Ram, an eye-witness of the occurrence. This was done by him before the arrival of the Investigating officer at 4.00 p.m., on spot. This statement of ASI Puran Singh remained unchallenged and since the statement of PW Chajju Ram, fully corroborates the version recorded in the FIR EXPW-1, the question of fabrication of the FIR, as alleged by the defence, does not arise. Apart from that, the delay in dispatch of the FIR to the Magistrate has been satisfactorily explained by the Investigating Officer when stated that immediately after recording the FIR, he rushed in search of the accused, who had escaped from the place of occurrence after committing the crime. It is also in the evidence of Investigating Officer that he visited the Schools where the accused were posed and could only reach the place of occurrence after 4.00 p.m. This statement having remained unchallenged, the delay stands properly and sufficiently explained. In these circumstances, therefore, we are fully satisfied that the prosecution has given very cogent and reasonable explanation for delay in dispatch of the FIR. Therefore, allegations of FIR being fabricated found misconceived.

14. The matter relating to delay in dispatch of the FIR came up for consideration in *Shiv Ram v. State of U.P.*, (1998) 1 SCC 149 and it was held that the, delay in sending copy of the FIR to Magistrate would not demolish the other positive and credible evidence on record. This only shows carelessness on the part of the Investigating agency. The delay of 24 hours in forwarding the FIR to Magistrate, on facts, therefore, did not vitiate the prosecution case *Jinnat Mia v. State of Assam*, (1998) 9 SCC 319, may be noticed. When the FIR is found to have been actually recorded without delay and the investigation started on the basis of that FIR and there is no other infirmity brought to our notice, then, however, improper or objectionable the delay in dispatch of FIR to the Magistrate concerned, it cannot justify the conclusion that the investigation was tainted and prosecution evidence insupportable. The contention raised by Mrs. Mir, therefore, is devoid of any substance to merit acceptance.

15. It was next contended by Mrs. Mir, appellants' counsel, that the prosecution evidence is not only unworthy of credence, but also manifestly and inextricably mixed up with falsehood and, thus, accused are entitled to be acquitted. She further pointed out that there are number of infirmities appearing in the evidence, of the eye-witnesses and such evidence could not be formed the basis of conviction. There are three eye-witnesses of the occurrence, namely, Chander Mohan, Chajju Ram and Shanti Sarup, who have been examined by the prosecution in support of its case. PW Chander Mohan is the informant. FIR was recorded on the report lodged by PW Chander Mohan. According to him, three accused, namely, Pardeep Kumar, Ashok Kumar and Rajesh Kumar, came on a scooter No. PHA-864 on 28.3.1990 in the morning and parked it in front of his shop. He further stated that the accused went inside the shop of the deceased Bhagat Ram, a Cement Dealer, and attacked on him. He also stated that the accused Pardeep Kumar and Ashok Kumar, armed with knives, inflicted one blow each on the back of the deceased when accused Rajesh Kumar held him by his neck and pressed it down to facilitate the commission of the crime.

The witness further stated to have caught Rajesh Kumar by his waist, but left it when threatened by Pardeep Kumar with a knife. The witness further stated that the accused tried to escape on a scooter, when people, who had collected on spot by that time, tried to apprehend, but in vain. According to PW Chander Mohan, he was preparing 'Barfi' at the time of occurrence. He, however, refuted when suggested by the defence that he could not witness the occurrence as his shop is adjacent to the shop of the deceased, they could not see each other. He, however, clarified that the fire-place was located outside his shop and from that place he was face to face with the accused. The deceased was reading the newspaper sitting on the bench of his shop. The witness emphatically stated that when accused entered the shop of the deceased after raising 'Lalkara', he also followed them in the shop and saw the occurrence. The entire occurrence was over within two minutes. He has also stated about the presence of other eyewitnesses, namely, Chajju Ram and Shanti Sarup. That Chajju Ram has a shop near the shop of the deceased and was present on spot, while Shanti Sarup came walking from the opposite direction towards the place of occurrence. Similarly, PW Chajju Ram whose shop is adjoining to the shop of the deceased is another eye-witness of the occurrence. So is also affirmed by the site plan prepared by the Investigating Officer. The site plan clearly unfolds the location of the shops of PWs Chander Mohan and Chajju Ram on either side of the shop of the deceased. According to PW Chajju Ram, as soon as he heard somebody is saying that Parkash Chand has escaped, let Bhagat Ram do not, he came out of his shop and saw the accused inflicting injuries to the deceased in the latter's shop. Pardeep Kumar and Ashok Kumar accused gave one blow each with knives in their possession to the deceased while Rajesh Kumar accused held the deceased by neck and pressed him down. When the accused tried to escape after committing the crime, PW Chander Mohan held accused Rajesh Kumar by his waist, but released him when threatened by accused Pardeep Kumar with a knife. The narration of the occurrence given by this witness manifestly appears to be natural, straightforward and categorical. This witness also fully corroborated what is contained in the FIR with regard to the manner in which the entire occurrence took place. He also corroborated the FIR with regard to the transport used by the accused, the mode by which the accused reached the place of occurrence and how they entered the shop of the deceased and raised a 'Lalkara' before inflicting injuries and he had emphatically described the nature of injuries, the place of injuries and the use of weapons by the accused after the deceased was held by Rajesh Kumar, co-accused accompanying them. The evidence provided by this witness remained unchallenged with regard to the manner, mode, tone and, tenor described in the FIR with regard to the commission of the crime. This witness also affirmed that Chander Mohan flung a stone to hit the accused while the latter was trying to escape. He, however, expressed ignorance about the lathi aimed and thrown by Shanti Sarup towards the accused because by that time, he had entered the shop. This witness is also a natural witness of the occurrence having a shop adjoining to the shop of the deceased, where normally he remains present at the place of his work.

He further affirmed the presence of PW Shanti Sarup at the place of occurrence, while returning after rectifying the fault in electric supply line, in reply to the suggestion made by the defence. PW Shanti Sarup is another eye-witness of the occurrence and an employee of the Electric Department. He was posted a Lineman in Ghagwal. The witness stated to have gone to the Government Girls School to set right the electric fault.

While returning from the School, he noticed the accused parked their scooter in front of the shop of the deceased and went inside the shop. It is also in his evidence that accused assailed the deceased sitting in his shop. Pardeep Kumar accused was first to inflict a blow with a knife to the deceased followed by another blow with a knife by Ashok Kumar accused, when Rajesh Kumar accused held him by neck and pressed him down. When PW Chander Mohan caught hold of accused Rajesh Kumar from his waist, he was threatened by Pardeep Kumar accused with a knife and had to release him. The defence, however, could not elicit anything from extreme lined cross-examination so as to render it unworthy of credence. The witness further explained in his evidence that after rectifying the fault, he was proceeding to the shop of the deceased where he used to keep his lathi normally carried for rectifying electricity fault. He, however, emphatically denied all these suggestions and also explained his failure to chase the accused because he is lame. He also stated to have told the names of the accused to the people, who assembled on spot after the accused took to their heels. It is also in his evidence that the deceased was attacked and killed by the accused when sitting on a bench and reading a newspaper, which is also the prosecution case. All the eye-witnesses examined by the prosecution, however, corroborated every fact mentioned in the First Information Report leading to the murderous assault on the deceased by the accused and thereafter escaped from the place of occurrence, unanimously and with oneness. All the three witnesses are the residents of village Ghagwal. PWs Chander Mohan and Chajju Ram are the shopkeepers and their shops located on either side of the shop of the deceased. Their presence on spot is natural and must have seen the accused entering the shop of the deceased with formidable weapons and attacked and killed him, and Chander Mohan intervened and caught hold of Rajesh Kumar, but released when threatened by accused Pardeep Kumar with a knife. Simplicity of the statement of the eyewitnesses is indicative of their naturalness and truthfulness. Often the polished statement tendered by the eye-witnesses is the product of coloured version. In the instant case, the simplicity of the testimony of PWs Chander Mohan, Chajju Ram and Shanti Sarup reflects the naturalness and truthfulness of the maker.

16. Undoubtedly, different people behave and react differently in different situation. Human behaviour varies from man to man. Human behaviour depends upon the facts and circumstances of each case. How a man would behave in a particular situation can never be predicted. Even honest and truthful witnesses may differ in some details unconcerned with the main incident because power of observation, retention and reproduction differs with individuals. Their evidence cannot be branded as untrustworthy merely on this count when fully supported by medical testimony and other incriminating circumstances. In the given circumstances, the presence of the eye-witnesses at the place of occurrence was quite natural and had seen the entire incident right from the beginning till the escape of the accused after inflicting injuries to the deceased which proved fatal. The eyewitnesses, account of occurrence has been corroborated with material particulars by what is mentioned by the PW Chander Mohan, the author of the First Information Report, with regard to the mode of transport used by the accused in arriving on spot, the manner they entered the shop of the deceased and inflicted injuries and also by the proved recoveries and the seizure memos. The weapons of offence EXP-I and EXP-2 used by the accused were also identified by PW Chander Mohan in the Court to be same which the accused were possessing on the day of occurrence with which one blow each was inflicted by the accused to the deceased.

17. The eye-witnesses are the independent witnesses of the occurrence, neither interested in the deceased nor bore any animosity with the accused. Their evidence is natural, straight-forward and convincing, and we have no reason to disbelieve their testimony. Assuming but not admitting that the eye-witnesses were not deposing some facts truthfully, as strenuously urged by Mrs. Mir, appellants' counsel, but that itself is no ground for rejecting the whole body of their testimony. When grain in the evidence of the eyewitnesses can be sifted from the chaff in the light of the other evidence and the surrounding circumstances and the probabilities of the case, their evidence cannot be whittled down and discarded. The prosecution edifice is built on the direct evidence of the eye-witnesses and it makes so strong a mesh that the innocence of the accused is wholly excluded and on every reasonable hypothesis the guilt of the accused is the only inference.

18. The place of occurrence taking place near the shops of PWs Chander Mohan and Chajju Ram has not been

challenged. It is also not challenged that the shops of these witnesses are on the either side of the shop of the deceased. There is fair probability of their presence on the scene of occurrence. The names of the eye-witnesses are also mentioned in the FIR given by PW Chander Mohan without losing any time after the deceased was declared dead in the hospital at Hiranagar. Their evidence is, thus, found reliable, credible and above board. There is nothing on record as to indicate any enmity or motive on the part of the eye-witnesses to speak against the accused. These witnesses being natural and independent witnesses, their evidence is rendered credible, acceptable and believable. Mere fact that Chajju Ram and Chander Mohan have their shops on either side of the shop of the deceased, their evidence cannot be said to be tainted and witnesses partisan. The statements of the eye-witnesses were so natural and convincing that despite grilling cross-examination, the defence failed to shake their credibility.

19. It was further argued by Mrs. Mir that non-disclosure of the names of the assailants of the deceased by PWs Chander Mohan and Chajju Ram to the persons, who had collected on spot after the escape of the accused makes their statements highly suspicious and doubtful. This has, however, been explained by PW Chander Mohan in his evidence that no one, approached him to know the names of the assailants, as he was busy in removing the deceased to the hospital. This explanation having not been challenged any more and is, manifestly believable, reasonably sufficient and satisfactory. It is pertinent to point out that after the conclusion of the prosecution evidence when the statements of the accused under Section 342 Cr.P.C. were recorded, application for recalling of PWs Chajju Ram and Chander Mohan was made and the original affidavits purported to have been sworn by the aforesaid witnesses were filed by, DW Amar Nath, father of the accused. Both these witnesses were re-called and re-examined. PW Chajju Ram was recalled and was first to be re-examined. The witness has emphatically denied to have sworn the affidavit Mark-D and handed over to the father of the accused as he remained admitted in SMGS Hospital from 21.11.1990 to 28.11.1990. The witness further asserted that he can only sign, but cannot write and stood by his earlier statement made in the Court on 21.8.1990. He also produced a medical certificate Mark-D/3 issued by the Medical Record Officer in support of his denial to have sworn such affidavit. The contention raised by the defence, therefore, stands falsified by this medical certificate that the witness is the author of the affidavit Mark-D. In the like manner, PW Chander Mohan denied to have executed any such affidavit marked D/1 attributed to him by the defence. The true and natural statements made by both the eye-witnesses, therefore, stand certified from their unambiguous denial of executing and swearing in the affidavits produced by the defence with an application for their re-calling and re-examination. Both these witnesses stood by what they had stated about the occurrence in their statements made on 21.8.1990. They certainly had exposed the defence of creating a false evidence. The version put across by the defence with regard to the possession of the two affidavits is that, on 20.11.1990, Om Parkash and Radha Krishan, DWs visited Mandir Narsingh Ji Maharaj Ghagwal and met PW Chajju Ram who also introduced them to PWs Chander Mohan and Bholu Ram sitting in the premises of the temple. When Om Parkash enquired about his hoarse throat from PW Chajju Ram and the latter replied how he, Bholu Ram and Chander Mohan have suffered by making false statement in the case they were, however, advised by someone to give in writing to Amar Nath, father of the accused, when they did not desire to appear in the Court on being suggested by DW Om Parkash.

To appreciate as to how far this defence is probable to render the witnesses incredible, PW Chajju Ram in his evidence emphatically denied to have narrated before Bholu Ram that his throat is hoarse because of having made a false statement in the case. He, however, unerringly stated that whatever occurrence was witnessed by him had been narrated. Whatever statement made earlier is correct. The witnesses also denied to have known Radha Krishan son of Tulsi, Sat Pal, Kailash Kumar, Charan Dass and Manohar Lal, residents of Patil. He also denied to have stated in presence of these witnesses to have made a false statement in the Court. Though PW Om Parkash was important witness to this incident, but his name does not figure in the names put to PW Chajju Ram, Similarly, there is uncontroverted statement of PW Chajju Ram that he had a throat trouble even on the day when he was examined on 21.8.1990. According to DW Om Parkash, the other person who accompanied him was DW Radha Krishan. Whereas statement of DW Radha Krishan is to the effect that PW Chajju Ram on being asked by DW Om Parkash for his bad throat, Chajju Ram explained that he had

suffered after having made a false statement in the case. It is also in his evidence that PW Chajju Ram told them that even though the other two witnesses, Chander Mohan and Bholu Ram, have already suffered as the former having been involved in a false criminal case and the latter lost his wife. He, however, was categorical in submitting that Chajju Ram did not disclose about the particulars of the case.

Though PW Chander Mohan is alleged to have admitted of having made false statement in presence of DWs Om Parkash, Radha Krishan, Sat Paul, Kailash Kumar, Charan Dass and Manohar Lal of Patil, but the defence could examine only three witnesses, Om Parkash, Radha Krishan and Sat Paul. But to our utter surprise, DW Sat Paul has neither been named by Om Parkash nor by Radha Krishan. This further falsifies their statements with regard to what happened in the premises of Narsingh Ji Maharaj Temple when Om Parkash asked PW Chajju Ram the reason for his bad throat. Whereas DW Sat Paul stated that he was present in the Temple when PW Chajju Ram narrated how he and other witnesses suffered. He further stated that someone advised them to either give in writing to the accused or appear in the Court, to which Chander Mohan and Chajju Ram agreed to give in writing to the accused in the Court on 28.11.1990, the date fixed in the Court. It is also in his evidence that Chander Mohan and Chajju Ram handed over the documents to the father of the accused. This witness evidently had lied their redemption and proved by the fact that on 28.11.1990 original affidavits were not produced in the Court as they were, according to DW Amar Nath, lying at his home, as is gatherable from the interim order dated 28.11.1990 on the Court file. This clearly shows that the very foundation of the defence raised is without edifice being based on falsehood and concoction.

In view of the specific and categorical denial by the witnesses to have sworn such affidavits, the defence has utterly failed to trace these affidavits of Chander Mohan and Chajju Ram. The basis of the affidavits attributed to Chander Mohan and Chajju Ram are that the witnesses are alleged to have expressed their desire to atone for their sins, but this having been denied by the witnesses on oath, is manifestly a product of manipulation and falsehood and thus cannot, by any stretch of reasoning, discredit the witnesses., The Apex Court in case Ramchandra v. Champabai, AIR 1965 SC 354, while dealing with the proposition held as under :

'In order to Judge the creditability of witnesses, the Court is not confined only to the way in which the witnesses have deposed or to the demeanour of witnesses but it is open to it to look into the surrounding circumstances as well as the probabilities.'

20. The defence has, therefore, miserably failed to probalilise this meeting in the Narsingh Ji Maharaj Temple as basis of the affidavits because of the falsehood and manipulation of the witnesses examined by it. Analytical appreciation of evidence provided by these witnesses when taken in context with the contention raised by the appellants in defence, leads to irresistible conclusion that their evidence regarding presence at the place of crime, the identity of the appellants and the mode and manner in which the crime was committed, the escape of the accused from the scene of occurrence after committing the crime, remained unshaken in material particulars. We are, therefore, clearly of the view that testimony of Chander Mohan and Chajju Ram, PWs, is quite natural and trustworthy. We have no reasons to take a view contrary to the view taken by the Trial Court in this respect.

21. Post-mortem findings recorded in the post-mortem report was proved in the testimony of Dr. R.C. Sharma. The post-mortem findings are reproduced as under:

'There were two punctured wound on post aspect of left side of thorax 1-1/2' x 1', 1-1/4' x 1/4' both deep to the lungs where lungs have been perforated with massive bleeding with clots filing the thoracic cavity. Both chambers of heart were empty.'

22. Our opinion about the cause of death was as under:

'Death was due to massive hemorrhage due to rupture of left lung by stab wounds by sharp edged weapon with six hours, Post-mortem report was in my hand writing and bears my signature. He also identified the signatures of Dr.R.K. Gupta and Dr. Kiran who signed in his presence. It was marked as EXPW-7.'

23. According to Dr. Sharma, a knife was produced before him by SHO, Police Station, Hiranagar on 29.3.1990 for obtaining an opinion to the effect that if it could cause such injuries. Another knife was also produced before him 30.4.1990 for a similar opinion. On examining both these knives, Dr. Sharma opined that both the injuries found on the deceased and recorded in the post-mortem report could be possible by these knives. This opinion is marked as EXPW-7/1 and EXPW-7/2. When cross-examined, Dr. Sharma further stated that both the punctured wounds were possible by either of the weapon. The medical opinion given by Dr. Sharma further corroborates the FIR and the evidence tendered by the eye-witnesses and established the fact that the injuries could be caused by the use of both the knives. It is also proved from the medical evidence that two injuries were found on the deceased during post-mortem examination as disclosed in the FIR. He has also given the nature of injuries in stating that the lungs have been punctured and death caused due to rupture of the lungs by sharp-edged weapon. The ocular testimony of the eye-witnesses further stand corroborated in medical testimony. The nature of the injuries, the place of their infliction, the weapons used mentioned in the FIR and supported by the eye-witnesses in their evidence on oath is in accord with the opinion given by Dr. R.C. Sharma in proof of the findings in the post-mortem report.

24. According to prosecution, scooter No. PHA-864 allegedly used in the commission of the crime stood in the ownership of Ashok Kumar accused. PW Parshotam Dass examined by the prosecution had proved the sale of the scooter to Ashok Kumar. All the papers regarding ownership and RC were handed over to the accused. The sale was struck at Rs. 8,300 and receipt to this effect was also executed. Ashok Kumar was also identified by the witness when asked by the defence in the Court. It has been conclusively proved in the evidence of the eye-witnesses that the accused after committing the crime when tried to escape from the place of occurrence left the scooter parked. In the absence of counter version/suggestion to Parsham Dass, it has been proved that Parshotam Dass sold the scooter to the accused, which was used by all the three accused, firstly in intercepting PW Parkash Chand, but having failed to succeed in inflicting injury, proceeded towards Ghagwal Bazar and killed the deceased Bhagat Ram. It has also been proved by consistent prosecution evidence that the scooter was burnt by the school students, who after coming to know the crime, reached the spot. The seizure of the burnt scooter further stands proved in the testimony of Raj Kumar and Radha Krishan. These witnesses further affirmed the seizure of the knife, which was lying closed to the scooter. The presence of accused at the place of occurrence further stands established by these witnesses.

25. Both the burnt scooter and the burnt knife seized by PW Puran Singh, ASI, vide seizure Memos EXPW-4/1 and EXPW-4/2 respectively. Both the seizure memos were attested by PWs Rakesh Kumar and Ghansham Kumar, it is proved in their evidence that burnt knife was lying nearby the burnt scooter. Recovery of the burnt scooter and the knife lying closed to the scooter is another incriminating circumstance against the accused, since the injury found on the deceased could be caused by the seized knife as is found in the statement of Dr. R.C. Sharma. It has been argued vehemently by Mrs. Mir, appellants' counsel, that the recovery of this knife recovered from nearby the scooter could not be traced to the offence as the same was not sent to the Chemical Examiner for analysis and report. It may be pointed out that when there is direct evidence adduced by the prosecution to prove the guilt of the accused and such evidence is the recovery of weapon of offence and the scooter used for the commission of crime, provides and lends a further corroboration to its case. As regard the recovery of EXP-2, the disclosure statement was made by accused Pardeep Kumar while in police custody, in presence of PWs Raj Kumar and Radha Krishan that the knife has been concealed in the bushes near the shop of Swarn Singh. The disclosure statement EXPW6 stood proved by both the witnesses, Raj Kumar and Radha Krishan, being its attesting witnesses. The accused brought out, knife EXP-2 from the bushes in presence of these witnesses when taken there by the police party. Both these witnesses unanimously stated that accused Pardeep Kumar was interrogated by the police only with regard to the weapon of offence when disclosure statement was made by him. It was assailed by the appellants' counsel that the recovery effected from a place accessible to all and could not be attributed to the accused.

It is not disputed that recovery has been made from the thorny bushes at the instance of accused Pardeep Kumar from such a place, even if close to the vicinity, cannot be considered to be accessible as nobody would

like to go to thorny bushes or come in contact with the thorny bushes. The place of discovery about 14 to 15 feet away from the shop of Swarn Singh and is covered by wild growth and thorny bushes. That apart, when the disclosure and discovery have been proved by cogent evidence and also remained unchallenged, evidence of the witnesses cannot be brushed aside merely on the ground that one of the attesting witnesses is distantly related to the deceased. Even the Investigating Officer affirmed in his evidence that the disclosure statement of accused was recorded in presence of Raj Kumar and Radha Krishan. When the statement of Investigating Officer regarding the disclosure statement made by Pardeep Kumar accused, which alleged to the discovery of EXP-2, has not been challenged in respect of interrogation or discovery, it is of no consequence that the witnesses of disclosure were not from Hiranagar. Normally, the witnesses of disclosure are also the witnesses of discovery. In the instant case, discovery and disclosure of EXP-2 were made in presence of these witnesses, Raj Kumar and Radha Krishan, who happened to be the residents of the locality, which itself would render their evidence relating to disclosure and discovery credible and trustworthy. It is further contended by the appellants' counsel that non-examination of the weapon of offence by the Chemical Examiner further leaves a serious dent in the prosecution case. It is proved from evidence on record that knife EXP-1 was recovered lying close to the scooter and in half-burnt condition and whereas knife EXP-2 was discovered near about 20 days after the occurrence. The blood stains in both the cases must have disappeared and no fruitful purpose would have served by sending it to the Examiner.

Apart from that, when the weapons of offence used by the accused, their evidence that particular weapons were used and corroborated by the medical evidence followed by recovery of such weapons will itself provide sufficient proof of the weapons having been used and the same recovered. When the discovered weapons have been identified by the witnesses and tally with the description given by them and stand the opinion of the doctor that the injuries found on the deceased and mentioned in the post-mortem report could possibly be caused with the discovered weapons, it provides farther corroboration to the ocular testimony. It has, thus, been proved by copious evidence that the discovery of knife EXP-2 was in pursuance of the disclosure statement made by Pardeep Kumar accused and further probalised its use by him in the commission of the offence. According to the prosecution, the accused had absconded from the place of occurrence after committing the crime and remained absent from their duty. The manner in which the accused escaped after committing the crime has been clearly recorded in the First Information Report given by Chander Mohan immediately after the occurrence. So is also affirmed in the testimony of other two eye-witnesses, namely, Chajju Ram and Shanti Sarup, PWs. It is further borne out from the statements of Police Inspector, Pran Nath, and ASI, Puran Singh, that the accused escaped from the place of occurrence after committing the crime and could not succeed in their attempt to make their arrests. It is also in their evidence that the accused were found absent from the place of their postings after the commission of the crime. It is, thus, clear that the accused absconded to avoid their arrests by the police. The accused were employed as Physical Education Teachers, posted in different Schools. This fact has not been disputed by the accused in their statements under Section 342, Cr.P.C.. It is in the evidence of Sudershan Kumari, Headmistress, Government Girls High School, Sanora that Pardeep Kumar was deputed for examination duty w.e.f. on 28.3.1990, but had not reported back, which is also the evidence borne out from the certificate EXPW-16 issued by her in this behalf. So is gatherable from the certificate EXPW-10 proved by Headmaster, Jagdish Singh, Government High School, Sherpur that Ashok Kumar had not reported on duty since 28.3.1990. Similarly, certificate EXPW-15 in the evidence of PW Rajinder Singh, Headmaster of the School, proves absence of accused Rajesh Kumar from the School where he is posted since 28.3.1990. Accused Pardeep Kumar and Ashok Kumar were arrested from Delhi on 14.4.1990, whereas Rajesh Kumar could be arrested on 11.4.1990.

If after a crime, a person named in the FIR as a participant absconds, his conduct shows that he is indeed concerned in the crime. The act of absconding is a relevant piece of evidence to be considered alongwith other evidence. Normally, the Courts are disinclined to attach much importance to the act of absconding, treating it as a very small item in the evidence for sustaining conviction. But it can scarcely be held as a determining link in completing the chain of circumstantial evidence, which must admit of no other hypothesis than that of the guilt of the accused. The fact of absconding though may not by itself an evidence of guilt, but

may lend weight to the other evidence establishing the guilt of the accused. The prosecution case, therefore, is further reinforced by the evidence showing that the appellants were absconding for 17 days and 14 days respectively. There was no explanation whatsoever as to why the appellants, who were to be on duty to perform being Government servants, absconded, which itself is a circumstance while considering the guilt of the accused in using the same against them under Section 8 of the Evidence Act.

26. PW Pran Nath Sharma, Inspector Police, conducted the investigation of the case. According to the Investigating Officer, PW Chander Mohan came to the police and lodged a complaint EXPW-1. The report was entered in the daily diary Register and a case was registered. He directed ASI, Puran Singh, to get the post-mortem examination of the deceased and himself went out in search of the accused, who had absconded after the commission of the offence from the place of occurrence. Despite frantic efforts, he could not trace out and arrest the accused and ultimately reached the place of occurrence around 4.00 p.m. It is also in the evidence of the Investigating Officer that accused Rajesh Kumar was arrested on 11.4.1990 and about the other two accused, information was received on 13.4.1990 that they were hiding in Delhi. Both Pardeep Kumar and Ashok Kumar were arrested on the next date, i.e., 14.4.1990. The Investigating Officer further stated that the accused were searched in village Sherpur and their respective Schools where they were posted. It was, however, suggested to the Investigating Officer by the defence in cross-examination that the accused had appeared in the Police Station a day after the occurrence, i.e., 29.3.1990, but stood emphatically denied. This suggestion is, however, even contrary to the defence evidence that all the accused were taken in custody on the morning of 28th March, 1990, as deposed by Rattan Chand and Raj Kumar, DWs, besides the father of the accused. The Investigating Officer also denied when suggested by the defence that the Munshi of the Police Station had recorded the report in which PW Chander Mohan is not an eye-witness, and pointed out that the statements of PW Chander Mohan and the Investigating Officer are conflicting as the former stated to have narrated the occurrence to the Investigating Officer and it was written by the Munshi, who was also present. The FIR, however, has been written by Pran Nath, Investigating Officer, though its counterpart by the Munshi. The witness was never asked by the defence as to who has written the other parts of the FIR and in the absence of which it cannot be said that the other parts of the FIR could be different from EXPW-1.

The suggestion put-forth by the defence that the accused were arrested on the very next day of the occurrence also appears to be a bald assertion and cannot be accepted particularly when it is not supported, by the witnesses examined by the accused in defence. It clearly exhibits that the accused indulged in falsehood, concoction and manipulation. The evidence provided by Investigating Officer fully stands affirmed in the testimony of PW Puran Singh, ASI. We are, therefore, clearly of the view that the evidence of the Investigating Officer is in accord with the sequence of events that led to the occurrence and is wholly reliable and trustworthy. Converse would be quite unnatural. Counsel for the appellants also contended that when all the accused were picked up by the police between 8.00 a.m. to 9.00 a.m. on 28.3.1990, they cannot be stated to be involved in the murder of Bhagat Ram deceased. To support this contention, the appellants examined Rattan Chand, Raj Kumar Dhani Ram and Chuni Lal, DWs. According to DW Rattan Chand, he had gone to the house of Pardeep Kumar for hiring shuttering material. He further stated that while he was loading the shutterings, Police Constable arrived and carried the accused Pardeep Kumar with him. This witness, however, neither informed the father of the accused about the arrest of his son nor disclosed to anybody even after coming to know about the murder in the evening and the police had come in search of the accused in the village. He also expressed his ignorance about the place of occurrence and the particulars of the deceased. Similarly, Raj Kumar, DW, is another witness examined in proof of this plea. This witness is residing at a distance of six kilometers from the house of the accused. The witness stated to have gone for getting the agricultural implement and when came about 8.30 a.m., two Police Constables asked him about the house of Master Amar Nath. He pointed out the house from where the Police Constables carried Pardeep Kumar. This witness also stated about Rattan Chand collecting shutterings there at that time, but nowhere is found is the mention of presence of Raj Kumar in the statement of DW Rattan Chand. This witness also did not inform anybody about it.

Looking to the conduct of the witnesses and the quality of evidence provided by these witnesses contradicting each other and their silence of having not informed anybody including the father of the accused about the arrest by the Police and further when came to know in the evening about the murder of the deceased and the Police searching for the accused in the village, renders their evidence highly doubtful and, thus, cannot be believed and relied upon, being also found inconsistent interse. The conduct of both these witnesses is so unnatural that it would not be safe to rely on their testimony when they did not disclose about the fact of arrest of accused Pardeep Kumar at the early opportunity to any one including the father of the accused. The evidence provided by DW Dhani Ram is to the effect that he was proceeding to village Sherpur, about 8 to 9 kilometres from his village, on Tonga for the sale of potatoes and gave lift to Ashok Kumar accused on 15th Chet. He reached Sherpur between 9.30 to 10.00 a.m. when Ashok Kumar accused was arrested by the Police already waiting there. It is also in the evidence of this witness that to reach Sherpur, he had to pass through Plasakho, Chatwal and Hiranagar, but did not make any offer to sell of his potatoes to any one on the way because he wanted to fetch more money. This witness did not offer potatoes for sale to any one in the way to ascertain the price. He also did not enquire as to the cause and reason of the arrest of the accused by the Police. He also did not inform about the arrest of the accused by the Police to any one and not even the family members of the accused.

All these circumstances when taken together appeared to be abnormal conduct of the witness and, thus, created a serious doubt about the credibility and reliability of his testimony. For the same reasons, the evidence provided by DW Chuni Lal about the arrest of Rajesh Kumar is neither plausible nor reliable when stated that while travelling in a Matador found accused Rajesh Kumar taken by Police Constable at Chatwal and did not enquire and try to know the reason of his arrest nor informed his father. He is the one witness, who as per his statement, did not know the reason for the arrest and prosecution of the accused nor did he ever enquire about it from his father. It is strange how the defence insisted to rely upon such evasive and contradictory evidence of the witnesses to make sure that the accused were arrested prior to the commission of offence, particularly when their presence at the place of occurrence at the time of murder is not denied in their cross-examination. The defence has, therefore, miserably failed to probabalise its plea of alibi in the evidence of its witnesses. The onus to establish alibi is on the accused and if is not discharged by trustworthy evidence, as in the instant case, the Appellate Court will not interfere, as has been held in Chandrika Prasad Singh and Ors. v. State of Bihar, AIR 1972 SC 109. Appellants false plea of alibi and denial of their arrests on the respective dates also further provide incriminating circumstances giving rise to an inference of guilt. As against this, there is overwhelming evidence about the escape of the accused from the scene of the occurrence and their arrests on 11.4.1990 and 14.4.1990. The accused have been named in the FIR and their absence from the place of their postings without leave leads only to the hypothesis that they were evading arrests after the commission of the crime.

27. Another limb of argument advanced by Mrs. Mir Was that Bholu Ram, though stated to be an eye-witness of occurrence, has not been examined by the prosecution, which further renders the prosecution case redolent with doubts and suspicious. This contention also, in our view, is devoid of any legal force. All the witnesses, who have seen the occurrence, need not be called by the prosecution to adduce evidence. Vargeese Thomas v. State of Kerala, AIR 1977 SC 701, may be noticed.

28. Regarding the appreciation of evidence and judging credibility by the witness, the Apex Court in State of Utter Pradesh v. K. Anthony, AIR 1985 SC 48 held as under:

'While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, draw backs and infirmities pointed out in the evidence as a whole, and evaluate them to find out whether it is against the general tenor of the evidence given by the witness, and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters, not touching the core of the case, hyper-technical approach by taking sentence-torn out of context here or there-from the evidence,

attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the Appellate Court which had not this benefit will have to attach due weight to the appreciation of evidence by the Trial Court, and unless the reasons are weighty and formidable it would not be proper to reject the evidence on the ground of variations or infirmities in the matter of trivial details.'

29. It, therefore, follows that the discrepancies, which do not go to the root of the matter and shake the basic version witnesses, therefore, cannot be annexed with undue importance. More so when all the important 'probabilities-factor' echoes in favour of the version in narration of the witnesses. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differs with individuals and, therefore, does not make any dent in the prosecution case, which otherwise has been proved and established by direct testimony of eye-witnesses in accord with medical testimony and other incriminating circumstances beyond hilt. Further, the Supreme Court in *Bachhitar Singh and Anr. v. State of Punjab*, 2002 AIR SCW 4061, while dealing with the proposition as to how to Judge the veracity of a witness, observed as under:

'There are no hard and fast rules to test the veracity of the witnesses. One way of testing the veracity of the witness is the simplicity of the statement. Simplicity of the statement is indicative of the naturalness and truthfulness. Often the polished statement tendered by the witnesses is the product of coloured version.'

30. It is further submitted by the appellants' counsel that the prosecution in a given case has not been able to prove sufficient motive by which the accused were actuated to commit the offence of murder and, thus, adversely reflect on the reliability and credibility of the eye-witnesses. It is clearly exacted from the statement of PW Parkash Chand, the son of the deceased, that about 4/5 days prior to the occurrence, all the three accused after consuming liquor in the tenanted premises were committing obscene acts and were abusing each other to the annoyance of others. It is also in the evidence of this witness that when he asked the accused to refrain from their committing the acts of mis-demeanour, the accused held out a threat to kill him. He further stated to have narrated about this threat by the accused to the Chander Mohan, PW. This fact also stood affirmed in the testimony of PW Chander Mohan. That apart, proof of motive or previous in-will is not necessary to sustain a conviction when Court is satisfied that accused being assailants of victim. When the positive evidence against the accused is clear, cogent and reliable, motive is of no significance, as in the instant case. When the facts are clear, it is immaterial that no motive has been proved. It cannot be said that since no motive is established, the chain is broken and the prosecution must fail.

31. Assuming that the prosecution evidence is not sufficient or cogent enough for a motive to be spelled out by it, it would not reflect on the credibility of the witnesses, proved to be reliable eye-witnesses and their testimony intrinsically genuine. The non-disclosure of motive, in our opinion, cannot weigh against the testimony of the eye-witnesses. Where the prosecution case depends on the evidence of the eye-witnesses, if motive is not established, their evidence is not rendered untrustworthy. There is no substance, in our view, in the plea bolstered up by the appellants' counsel.

32. It was next contended by the appellants' counsel that in order to invoke Section 34 against the accused, prior concert or a pre-arranged plan has to be established, which has not been done in this case by the prosecution for want of sufficient and satisfactory evidence. In this context, it is profitable to point out that though common intention has to be inferred from their act and conduct and other relevant circumstances. It is not necessary that any overt act must have been done by any particular accused. It is enough, if the criminal act has been done by one of the accused in furtherance of the common intention.' It is not necessary to adduce direct evidence of the common intention. The common intention may be inferred from the surrounding circumstances and the conduct of the parties, as is held in *Rishideo Pande v. State of Uttar Pradesh*, AIR 1955 SC 331. It is not denied that all the three accused are real brothers. It is in the evidence of Parkash Chand that on the morning of March 28, 1990, he was going to Samba on his scooter and when

reached Jatwal, all the three accused appeared on their scooter and surrounded him. He, however, was lucky to have escaped with the intervention of people of the locality. The accused, thereafter proceeded towards Ghagwal on their scooter. According to Om Parkash, PW, the accused had threatened to kill him when protested about their mis-demeanour after consuming liquor a few days before occurrence. The eye-witnesses, namely, Chander Mohan, Chajju Rain and Shanti Sarup, in their evidence have consistently stated that the accused came on their scooter at Ghagwal Bazar and parked it in front of the shop of Chander Mohan and entered into the shop of the deceased, raised a 'Lalkara' and started assaulting him. It is further proved from the evidence of these eye-witnesses that accused Rajesh Kumar caught hold of the deceased Bhagat Ram from his neck and pressed him down to facilitate injuries by Pardeep Kumar and Ashok Kumar, who gave one blow each with the knives in their possession. That the accused were bitterly inimical and, in order to wreck vengeance, caused the murder of Bhagat Ram in furtherance of their common intention to kill him. The eye-witnesses have given a clear, consistent and positive version about the mode they arrived at the place of occurrence, the manner in which they had committed the crime. Nothing was exacted from their cross-examination to disbelieve their testimony. Their evidence is sufficient and satisfactory to prove that the act of murder of Bhagat Ram was committed by the accused in furtherance of their common intention. Therefore, accused Rajesh Kumar, as argued by the appellants' counsel, cannot be said to have not actively participated in the commission of the offence. It has, therefore, been conclusively proved by clinching and unimpeachable evidence that the accused Rajesh Kumar is liable for the crime in the same manner alongwith others as if the act were done by any one alone. In view of the circumstances mentioned above, in our opinion, the accused Rajesh Kumar has rightly been held guilty under Section 302 read with Section 34 RPC. The contention raised by appellants' counsel, therefore, is without, any merit and, thus, cannot be accepted.

33. Having carefully considered the submissions made by the learned counsel for the parties, the light of the evidence placed on record, we have no hesitation in confirming the order of conviction and sentence passed against the appellants. The evidence given by the eye-witnesses regarding the occurrence and the manner of assault is cogent, consistent and has impressed us as trustworthy. Their evidence has remained unshaken in the cross-examination and nothing has been pointed out, which may, in manner, discredit their testimony. The evidence of these eye-witnesses coupled with the recovery of knives and the medical evidence given by Dr. Sharma, unmistakably connect the appellant with the crime, i.e. assault on the deceased, which resulted in his death on the ill-starred day.

34. We are, therefore, of the considered opinion that the Trial Court has weighed the evidence produced by the prosecution fairly, decided the character of the witnesses correctly and reached result rightly. We are also of the opinion that the Trial Court has rightly rejected the evidence produced by the defence because the witnesses do not inspire confidence. We do not find any good reason and jurisdiction to differ with the finding of the Trial Court and confirm the finding returned of the sentence awarded. In the result, this appeal, therefore, is dismissed and sentence awarded by the Trial Court is confirmed. Accused Pardeep Kumar shall be taken into custody and lodged in Central Jail, Jammu to undergo the sentence awarded. Both the appeal as well as Confirmation reference made by the Trial Court are disposed of accordingly.