

# SUPREME COURT OF INDIA

Deepak Verma

Vs.

State of H.P.

CrI.A.No.2423 of 2009

(R.M. Lodha and Jagdish Singh Khehar,JJ.,)

11.10.2011

## JUDGMENT

### **Jagdish Singh Khehar,J.,**

1. These appeals have been preferred by Dheeraj Verma (original accused no.1) and Deepak Verma (original accused no.2) so as to assail the order of conviction and sentence dated 30.12.2005 rendered in Sessions Trial no.55 of 2003 by the Sessions Judge, Chamba, as also, the decision rendered by the Himachal Pradesh High Court in Criminal Appeal No.27 of 2006, whereby, the conviction and sentence awarded by the Sessions Judge, Chamba, on 30.12.2005, came to be upheld on 2.9.2009.

2. The prosecution, in order to bring home the case against the appellants- accused examined as many as 27 witnesses. The prosecution story, as is emerged from the statements of the witnesses, produced by the prosecution, reveals that Kamini Verma alias Doli resided with her father Arun Kumar PW2 in Mohalla Sultanpur, Chamba, in the State of Himachal Pradesh. Kamini Verma was married to Anmol Verma alias Munna on 6.2.2003. Thereafter, she had been residing along with her husband at Mukerian in the State of Punjab. On 28.7.2003, Kamini Verma came to her father's house in Chamba from Pathankot. She had arrived at 05:30 hrs. She had been escorted to her father's house by Rakesh Verma (her paternal uncle, i.e., younger brother of her father Arun Kumar, PW2), and his wife Veera.

3. About a year before the marriage of Kamini Verma with Anmol Verma, Deepak Verma, appellant-accused no.2 had approached Arun Kumar PW2 (father of Kamini Verma) with a marriage proposal for Kamini Verma, with his younger brother Dheeraj Verma appellant-accused no.1. Kamini Verma's father, Arun Kumar did not accept the proposal. Thereafter, Kamini Verma was married to Anmol Verma on 6.2.2003. Earlier, Dheeraj Verma and Deepak Verma, were tenants in the house of Arun Kumar (PW2, father of Kamini Verma). The two accused were originally residents of Gurdaspur in the State of Punjab. The father of the accused, namely, Shyam Lal, a goldsmith, had moved to Chamba in the State of Himachal Pradesh, and had started to reside in the house of Arun Kumar PW2. Shyam Lal has reportedly now gone back to the State of Punjab. The affinity between the family of Arun

Kumar (PW2, father of Kamini Verma) and Shyam Lal (father of appellants-accused Dheeraj Verma and Deepak Verma) was also based on the fact, that Deepak Verma, appellant-accused no.2, had been giving home tuitions to Kamini Verma and her brother Deepak Kumar (PW1).

4. Kamini Verma reached Chamba from Pathankot on 28.7.2003 at about 05:30 hrs. Dheeraj Verma, appellant-accused no.1 and Deepak Verma, appellant-accused no.2 came to the house of Arun Kumar (PW2, father of Kamini Verma) at Mohalla Sultanpur, Chamba at about 10:30 hrs. They had come on a scooter. Dheeraj Verma, appellant-accused no.1, had in his possession, a double barrel gun. According to the case of the prosecution, after taking breakfast, Kamini Verma went to the kitchen to clean utensils. Having cleaned the utensils she came out into the courtyard. As she stepped into the courtyard, Dheeraj Verma, appellant-accused no.1 fired one shot at her from his double barrel gun. This shot hit her in the abdomen. Dheeraj Verma, appellant-accused no.1, then fired another shot at Kamini Verma. The second shot hit her on the left shoulder. Sumitri Devi (PW4, grandmother of Kamini Verma) who had also come into the courtyard, tried to catch the two accused who were making good their escape. Dheeraj Verma, appellant-accused no.1 hit Sumitri Devi PW4 in her abdomen, chest and on her right wrist, with the butt of his double barrel gun. Later, when she was medically examined (on 3.8.2003), she was found to have suffered multiple bruises, but the nature of injuries was found to be simple. Even though, Sumitri Devi PW4 had picked up a stone and had thrown it at the appellant-accused no.1, but she had missed her mark.

5. According to the prosecution story, after two shots had been fired by Dheeraj Verma, appellant-accused no.1, Deepak Verma, appellant-accused no.2 handed over two cartridges to Dheeraj Verma, appellant-accused no.1. The appellant-accused no.1 then reloaded his gun and shot at Rakesh Kumar (maternal uncle of Kamini Verma) who had by then come into the courtyard, and was trying to lift Kamini Verma. The shot fired at Rakesh Kumar (maternal uncle of Kamini Verma) hit him on the left side of the lower abdomen. The two accused then fled away. At the time of occurrence, Sonia (PW3, wife of Rakesh Kumar, maternal uncle of Kamini Verma) on hearing the first shot had also rushed to the courtyard. She tried to assist her husband Rakesh Kumar and her niece Kamini Verma.

6. Both Kamini Verma and Rakesh Kumar were taken to the Zonal Hospital, Chamba immediately after the occurrence. Rakesh Kumar was declared dead at the said Hospital at 12:30 hours on the date of the occurrence itself (i.e., on 28.7.2003). He was stated to have died due to a gun shot injury causing rupture of major vessels and visceral organs leading to hemorrhagic shock and death.

7. The police post, Sultanpur was informed of the occurrence telephonically, leading to the recording of Daily Diary No.4 at 10:30 a.m. on 28.7.2003. ASI Jog Raj PW26 along with other police personnel, on receipt of aforesaid information, proceeded to Zonal Hospital, Chamba. ASI Jog Raj moved an application to the Senior Medical Officer, Zonal Hospital, Chamba for seeking medical opinion whether Kamini Verma alias Doli was fit to make a statement. In the first instance Dr. D.P. Dogra PW11 gave a report at 12:20 hrs. (on

28.7.2003) to the effect that Kamini Verma was not fit to make her statement. The said opinion was tendered as her pulse rate and blood pressure, at that time, were not recordable, and also because, she had no control over her speech. Subsequently, at 13:00 hrs. on 28.7.2003 itself, Dr. D.P. Dogra PW11 declared her medically fit. It was thereafter, that the statement of Kamini Verma came to be recorded by ASI Jog Raj in the presence of Dr. D.P. Dogra. The statement recorded was then read out to Kamini Verma, whereupon, in token of its correctness, she affixed her right thumb impression on the same. Both Dr. D.P. Dogra PW11 and ASI Jog Raj PW26 recorded their endorsements on the statement of Kamini Verma. The statement of Kamini Verma was the basis of registering FIR No.182 of 2003 at Police Station Sadar, Chamba on 28.7.2003. Kamini Verma repeated the same version of the incident to her father Arun Kumar PW2 on her way to Amritsar (from Chamba).

8. Kamini Verma, who was originally taken to Zonal Hospital, Chamba, was referred to Zonal Hospital, Dharamshala. However, on her discharge from Zonal Hospital, Chamba, she was taken for treatment to Ram Saran Dass, Kishori Lal Charitable Hospital, Amritsar (Kakkar Hospital, Amritsar) in the State of Punjab. Kamini Verma died at Kakkar Hospital, Amritsar on 1.8.2003 at 04:00 hrs. In the post-mortem report of Kamini Verma (Exh.PW13/C) it was opined, that she had died due to gun short injuries leading to injuries to her abdominal viscera and disseminated intravascular bleeding leading to shock and death.

9. The pellets, recovered from the wounds of Kamini Verma and from the dead body of Rakesh Kumar at Zonal Hospital, Chamba, were handed over to the police. Inspector Khub Ram PW27, went to the place of occurrence for inquest. From the spot, i.e., courtyard of the house of Arun Kumar (PW2, father of Kamini Verma) he collected blood samples from the floor, two plastic caps, 35 pellets lying on the floor, besides 3 pellets embedded in a door of the house. Two empty cartridges were also recovered from outside the gate of house of Arun Kumar PW2.

10. On the date of occurrence itself, i.e., on 28.7.2003, the scooter, on which the appellant-accused nos.1 and 2 had made good their escape was stopped at Bhatulun Morh at a police "nakka" while they were proceeding towards Khajjiar from Chamba. Dheeraj Verma and Deepak Verma, appellant-accused nos.1 and 2 were identified. A double barrel gun, which was in their possession, was found with one live cartridge and one spent cartridge. The gun, the live as well as spent cartridges, and the scooter on which they were apprehended, bearing registration no.PB-58-A-0285 were taken into possession by the police. Both the accused were also taken into custody. On the personal search of both the accused, four live cartridges were recovered from the pocket of Dheeraj Verma, appellant-accused no.1. Based on a disclosure statement made on 31.7.2003 by Dheeraj Verma appellant-accused no.1, 13 more live cartridges beside four empty cartridges were recovered from a cupboard in his bedroom. The licence of the double barrel gun was also recovered from their residence.

11. The double barrel gun recovered from the appellant-accused nos.1 and 2 was sent to the Forensic Science Laboratory, Bharari, Shimla, Himachal Pradesh. In his report, the Assistant Director opined; firstly, that the double barrel gun recovered from the accused was capable of firing; secondly, that empty cartridges recovered from the place of occurrence may have

been fired from the recovered gun; and thirdly, that the pellets recovered may have been fired from the empty cartridges recovered from the spot.

12. On the completion of investigation, the prosecution presented a challan in the court of Chief Judicial Magistrate, against both the accused, under sections 302 and 323 read with section 34 of the Indian Penal Code, besides section 27 of the Indian Arms Act. The Chief Judicial Magistrate committed the case for trial to the Court of Sessions on 22.10.2003. On 12.1.2004 the Sessions Judge, Chamba, framed the charges, as were proposed by the prosecution. In order to bring home the charges, the prosecution examined as many as 27 witnesses. The cumulative effect of the statement of witnesses examined by the prosecution has been narrated in the foregoing paragraphs. After recording the prosecution evidence, the statements of Dheeraj Verma, appellant-accused no.1 and Deepak Verma, appellant-accused no.2 were recorded under Section 313 of the Criminal Procedure Code. The accused, besides denying the correctness (or knowledge) of the factual position, with which they were confronted, alleged that a false case has been registered against them due to business rivalry. It is pertinent to mention, that the father of the deceased Kamini Verma, i.e., Arun Kumar PW2, as also, the father of the appellant-accused Dheeraj Verma and Deepak Verma, namely, Shyam Lal, were admittedly goldsmiths, and were engaged in the said business.

13. Sessions Trial No.55 of 2003 came to be disposed of on 30.12.2005 whereby the Sessions Judge, Chamba convicted the accused Dheeraj Verma and Deepak Verma for offences punishable under section 302 and 323 read with section 34 of the Indian Penal Code, as also, under section 27 of the Arms Act. On the date of their conviction, i.e., on 30.12.2005 itself, after affording an opportunity of hearing, the appellants-accused nos.1 and 2 were sentenced under Section 302 read with Section 34 of the Indian Penal Code, to imprisonment for life and to pay fine of Rs.25,000/- each (in default of payment of fine, they were to undergo further simple imprisonment for two years). The appellants-accused nos.1 and 2 Dheeraj Verma and Deepak Verma were also sentenced under Section 323 read with Section 34 of the Indian Penal Code, to undergo simple imprisonment for a period of six months and to pay a fine of Rs.1000/- each (in case of default of payment of fine, they were to undergo further simple imprisonment for one month). The appellants-accused Dheeraj Verma and Deepak Verma were sentenced to undergo two years rigorous imprisonment, for the offence punishable under Section 27 of the Arms Act. The Sessions Judge, Chamba also ordered, that all the substantive punishments were to run concurrently.

14. Dissatisfied with the order rendered in Sessions Trial No.55 of 2003 by the Sessions Judge, Chamba on 30.12.2005, the appellants-accused nos.1 and 2 Dheeraj Verma and Deepak Verma preferred Criminal Appeal No.27 of 2006 before the High Court of Himachal Pradesh. Criminal Appeal No.27 of 2006 was, however, dismissed by the High Court on 2.9.2009, on merits, as well as, on the quantum of sentence imposed on the appellants-accused.

15. Dissatisfied with the order dated 30.12.2005 passed by the Sessions Judge, Chamba in Sessions Trial No.55 of 2003, as well as, the order dated 2.9.2009 passed by the High Court of Himachal Pradesh in Criminal Appeal No.27 of 2006, the appellants-accused nos.1 and

2 Dheeraj Verma and Deepak Verma have approached this Court by filing the instant appeals.

16. The first and foremost contention advanced at the hands of the learned counsel for the appellants was, that the case set up by the prosecution was false and fabricated. It was submitted, that the facts brought forth by the prosecution clearly lead to the inference, that there was no involvement whatsoever of the two accused Dheeraj Verma and Deepak Varma. In so far as the instant aspect of the matter is concerned, it was the contention of the learned counsel for the appellants that the statements of Deepak Kumar PW1, Arun Kumar PW2, Sonia PW3 and Sumitri Devi PW4 reveal, that the two accused were well-known to the members of the family of the deceased Kamini Verma. In this behalf it was sought to be asserted, that according to the prosecution version, the two accused Dheeraj Verma and Deepak Verma had come to reside in the house of Arun Kumar PW2 along with their father Shyam Lal, as tenants. According to the learned counsel, it is also the case of the prosecution, that Deepak Verma, appellant-accused no.2 had been giving home tuitions to the deceased Kamini Verma and her brother Deepak Kumar PW1. In spite of being in an effective position to identify both the accused on account of their long past relationship, it was submitted, that the names of the two accused Dheeraj Verma and Deepak Verma came to be disclosed, for the first time at 13:00 hrs., through the statement of the deceased Kamini Verma, which was recorded by the ASI Jog Raj PW26. Stated in other words, it is the contention of the learned counsel for the appellants, that even though the two accused were well-known to the entire family of the deceased Kamini Verma, yet all the family members of the deceased Kamini Verma remained tight-lipped till the eventual disclosure of the names of the two accused by Kamini Verma herself, at the Zonal Hospital, Chamba. It is, therefore, the contention of the learned counsel for the appellant, that the statements of all the eye-witnesses (Deepak Kumar PW1, Sonia PW3 and Sumitri Devi PW4) who were close family members of the deceased Kamini Verma and Rakesh Kumar, and had known the two accused for a long time, should not be relied upon. It is sought to be suggested, that all these close relations of the deceased Kamini Verma must be deemed to have been tutored, to make false statements against the appellants Dheeraj Verma and Deepak Verma at the instance of the investigating officers. It is submitted that the crime in question came to be committed at 10:30 hrs., on 28.7.2003, and yet none of the aforesaid eye-witnesses disclosed the names of the offenders. It is sought to be suggested, that the names would have been disclosed only if they had actually witnessed the occurrence. It is therefore, submitted that none of the aforesaid eye witnesses actually witnessed the occurrence. It is, accordingly, the submission of the learned counsel for the appellant, that the prosecution version deserves to be rejected outright, and the appellants-accused Dheeraj Verma and Deepak Verma deserve to be acquitted.

17. We have given our thoughtful consideration to the first and the foremost contention advanced at the hands of the learned counsel for the appellants, as has been noticed in the foregoing paragraph. The facts, as they unfold from the prosecution story reveal, that the occurrence took place at 10:30 hrs. on 28.7.2003. Both Kamini Verma and Rakesh Kumar were taken to the Zonal Hospital, Chamba immediately after the occurrence. Rakesh Kumar was declared dead at 12:30 hrs. on the date of occurrence, i.e., on 28.7.2003 itself. The

condition of Kamini Verma was critical at that juncture. This is evident from the fact that Dr. D.P. Dogra PW11 gave a report at 12:20 hrs., (on 28.7.2003) to the effect, that Kamini Verma was not fit to record her statement. The attending doctor had recorded, that her pulse rate and blood pressure were not recordable. In the peculiar facts, as have been noticed hereinabove, it is evident that the first endeavour of all close family members would have been, to have the two injured Kamini Verma and Rakesh Kumar treated at the Zonal Hospital, Chamba. None of the close family members could have been expected to proceed to the police station to lodge a report when both the injured were critical. Full attention for the welfare of the two close family members would have been the expected behaviour of all family members. The action to be taken against the assailants, would have been a matter of secondary concern. The contention of their not having made any statements at that juncture to the police, cannot therefore, be considered unnatural. Kamini Verma was declared medically fit at 13:00 hrs., on 28.7.2003 by Dr. D.P. Dogra PW11. She specifically identified the two accused Dheeraj Verma and Deepak Verma as the perpetrators of the occurrence. There is no reason whatsoever to doubt the dying declaration made by Kamini Verma. Besides, the dying declaration of Kamini Verma, the prosecution endeavoured to establish the guilt of the accused, by producing three eye-witnesses. Deepak Kumar PW1, (aged 14 years at the time of occurrence), who was in the courtyard itself at the time of occurrence was the younger brother of the deceased Kamini Verma. In his deposition, he reiterated the factual position recorded by Kamini Verma in her dying declaration. The grand-mother of the deceased, namely, Sumitri Devi PW4, aged 61 years, is a stamped witness. At the time of occurrence she was hit by Dheeraj Verma, appellant-accused no.1, in her abdomen, chest and on her right wrist with the butt of his double barrel gun. She also identified the accused in her statement. On medical examination she was found to have suffered multiple bruises, which could have been caused by the butt of a double barrel gun. Additionally, Sonia PW3 is also an eye-witness whose statement was recorded. She was the wife of the deceased Rakesh Kumar. She had come into the courtyard on hearing the first shot fired at Kamini Verma. The dying declaration of Kamini Verma was supplemented by Sonia PW3 as well. The aforesaid three witnesses, a young boy, the wife of the deceased and an old grandmother are natural witness, whose presence at the place of occurrence, does not cast any shadow of doubt. The prosecution was able to establish the motive of the appellants-accused in having committed the crime. In so far as the instant aspect of the matter is concerned, the alleged motive of declining the marriage proposal of the appellant-accused no.1, at the hands of his elder brother, appellant-accused no.2 Deepak Verma was reiterated by Deepak Kumar PW1, Arun Kumar PW2, Sonia PW3 as also Sumitri Devi PW4, as well as, by Kamini Verma in her statement recorded by ASI Jog Raj PW26. It is only on account of the rejection of the aforesaid marriage proposal that Dheeraj Verma and Deepak Verma, the appellants-accused nos.1 and 2, as an act of retaliation and vengeance, jointly committed the offence in question. It is also necessary to notice, that no reason whatsoever emerges from the evidence produced before the Trial Court why the family of the deceased Kamini Verma and/or Rakesh Kumar would falsely implicate the accused-appellants nos.1 and 2. The cumulative effect of all the factors mentioned above, clearly negate the suggestions/ submissions advanced by the learned counsel for the appellants as a part of his first contention. It is, therefore, apparent that there is no merit in the first contention advanced at the hands of the counsel for the appellants.

18. The second contention advanced at the hands of the learned counsel for the appellants was limited to the appellant-accused no.2 Deepak Verma. In so far as the second submission is concerned, it was sought to be asserted that no role whatsoever has been attributed to appellant-accused no.2 Deepak Verma. It was pointed out, that as per the prosecution witnesses, the double barrel gun which came to be fired at Kamini Verma and Rakesh Kumar, had remained in possession of Dheeraj Verma, appellant-accused no.1 throughout the occurrence. All the shots were fired by Dheeraj Verma, appellant-accused no.1. It was pointed out, that as per the prosecution story, it was Dheeraj Verma, appellant-accused no.1 alone, who had allegedly fired shots, in the first instance at Kamini Verma, and thereafter, at Rakesh Kumar. It was submitted, that none of the shots was fired by Deepak Verma appellant-accused no.2. It is submitted, that even if the prosecution story is examined dispassionately, it would emerge that Deepak Verma, accused-appellant no.2 was a mere bystander, and had no role whatsoever in the commission of the crime in question. In order to buttress the aforesaid contention, learned counsel for the appellants, in the first instance, placed reliance on *State of Uttar Pradesh vs. Sahrunnisa & Anr<sup>1</sup>*. wherefrom he placed emphatic reliance on the following observations:

"18. There can be no dispute that these two respondents were present and indeed their mere presence by itself cannot be of criminal nature in the sense that by their mere presence a common intention cannot be attributed to them. Indeed, they have not done anything. No overt act is attributed to them though it was tried to be claimed by one of the witnesses that when the police party reached there they were standing on one leg. This also appears to be a tall claim without any basis and the High Court has rightly not believed this story which was tried to be introduced."

Additionally, reliance was placed on *Aizaz & Others vs. State of Uttar Pradesh<sup>2</sup>* In so far as the instant judgment is concerned, our attention was invited to the following observations:

"11. ...It is a well-recognised canon of criminal jurisprudence that the courts cannot distinguish between co-conspirators, nor can they inquire, even if it were possible, as to the part taken by each in the crime. Where parties go with a common purpose to execute a common object, each and every person becomes responsible for the act of each and every other in execution and furtherance of their common purpose; as the purpose is common, so must be the responsibility. All are guilty of the principal offence, not of abetment only. In a combination of this kind a mortal stroke, though given by one of the parties, is deemed in the eye of the law to have been given by every individual present and abetting. But a party not cognizant of the intention of his companion to commit murder is not liable, though he has joined his companion to do an unlawful act. The leading feature of this section is the element of participation in action. The essence of liability under this section is the existence of a common intention animating the offenders and the participation in a criminal act in furtherance of the common intention. The essence is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. (See *Ramaswami Ayyangar vs. State of T.N<sup>3</sup>*. The participation need not in all cases be by

physical presence. In offences involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case. Before a man can be held liable for acts done by another, under the provisions of this section, it must be established that: (i) there was common intention in the sense of a prearranged plan between the two, and (ii) the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this section cannot apply.

12. 'Common intention' implies prearranged plan and acting in concert pursuant to the prearranged plan. Under this section a preconcert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of offence showing a prearranged plan and prior concert. (See *Krishna Govind Patil v. State of Maharashtra*<sup>4</sup> - . In *Amrik Singh v. State of Punjab*<sup>5</sup> it has been held that common intention presupposes prior concert. Care must be taken not to confuse same or similar intention with common intention; the partition which divides their bonds is often very thin, nevertheless the distinction is real and substantial, and if overlooked will result in miscarriage of justice. To constitute common intention, it is necessary that intention of each one of them be known to the rest of them and shared by them. Undoubtedly, it is a difficult thing to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In *Maqsoodan v. State of U.P.* [(1983) 1 SCC 218] it was observed that the prosecution must lead evidence from which the common intention of the accused can be safely gathered. In most cases it has to be inferred from the act, conduct or other relevant circumstances of the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit an offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view the facts involved. Whether an act is in furtherance of the common intention is an incident of fact and not of law. In *Bhaba Nanda Sarma v. State of Assam* [(1977) 4 SCC 396] it was observed that the prosecution must prove facts to justify an inference that all participants of the acts had shared a common intention to commit the criminal act which was finally committed by one or more of the participants. Mere presence of a person at the time of commission of an offence by the confederates is not, in itself sufficient to bring his case within the purview of Section 34, unless community of designs is proved against him (See *Malkhan Singh v. State of U.P.*<sup>6</sup> In the Oxford English Dictionary, the word 'furtherance' is defined as 'action of helping forward'. Adopting this definition, Rusell says that: 'it indicates some kind of aid or assistance producing an effect in future' and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken, for the purpose of 'effecting that felony'.

(Russel on Crime, 12th Edn., Vol.I, pp. 487 and 488). In *Shankarlal Kacharabhai v. State of Gujarat*<sup>7</sup> this Court has interpreted the word 'furtherance' as 'advancement or promotion.' Based on the observations recorded in the judgments relied upon it was submitted, that the appellant-accused no.2 Deepak Verma had no role in the crime, except that he was present at the place of occurrence. It is therefore submitted, that his mere presence along with Dheeraj Verma accused-appellant no.1, cannot be a valid basis for his conviction.

19. It is not possible for us to accept the contention advanced at the hands of the learned counsel for the appellant to the effect, that the appellant-accused no.2 Deepak Verma was not an active participant in the crime in question. The evidence produced by the prosecution clearly establishes that the two accused- appellants nos.1 and 2 Dheeraj Verma and Deepak Verma had come to the house of Arun Kumar PW2 to commit the crime in question on a scooter. It is also apparent that at one juncture only two cartridges can be loaded in a double barrel gun. With the cartridges loaded in the gun, the appellant-accused no.1 Dheeraj Verma had fired the first two shots at Kamini Verma. Thereafter, there were no live cartridges in the gun. Sumitri Devi, while appearing as PW4, pointed out, that after the appellant-accused no.1 Dheeraj Verma had fired two shots at Kamini Verma, the appellant-accused no.2 Deepak Verma provided two live cartridges to the appellant-accused no.1 Dheeraj Verma. Dheeraj Verma then reloaded his double barrel gun with the two live cartridges furnished by appellant- accused no.2 Deepak Verma, and fired one further shot at the deceased Rakesh Kumar. After the commission of the crime, Dheeraj Verma and Deepak Verma, jointly made good their escape on a scooter bearing registration no. PB-58-A- 0285. When the two accused were apprehended at Bataluan Morh at a police "naka" the appellant-accused no.2 Deepak Verma was driving the scooter, whereas, appellant-accused no.1 Dheeraj Verma was pillion riding with him. It, accordingly emerges, that after having committed the crime, the appellant- accused no.2 Deepak Verma, also helped his brother appellant-accused no.1 Dheeraj Verma to make good his escape from the place of occurrence. It is, therefore, not possible for us to conclude that appellant-accused no.2 Deepak Verma was merely a by-stander, who was incidentally present at the place of occurrence. In our considered view both Dheeraj Verma and Deepak Verma jointly planned and committed the crime. The judgments relied upon by the learned counsel for appellants are inapplicable to the facts and circumstances of this case. Various eye-witnesses had identified the two accused who had committed the offence. The dying declaration of Kamini Verma and the statements of her relations, who had appeared as prosecution witness, duly establishes the commission of the crime, as well as, the common motive for the two accused to had joined hands in committing the crime. The handing over of two live cartridges by the appellant-accused no.2 Deepak Verma to his brother Dheeraj Verma, after he had fired two shots from the double barrel gun with which the crime in question was committed, completely demolishes the contention advanced at the hands of the learned counsel for the appellants, in so far as the participation of the appellant-accused no.2 Deepak Verma in the crime is concerned. For the reasons recorded herein above, we find no merit even in the second contention advanced at the hands of the counsel for the appellants.

20. The third contention advanced at the hands of the learned counsel for the appellants was, that there was no motive whatsoever for the appellant-accused no.2 Deepak Verma to have

committed the offence in question. It is the submission of the learned counsel for the appellants, that insult on account of non acceptance of the marriage proposal already referred to above, may have been felt by appellant-accused no.1 Dheeraj Verma. There was no question of the appellant-accused no.2 Deepak Verma to have felt any insult, or to have any motive to commit the offence in question. On account of lack of motive to commit the crime on the part of appellant-accused no.2 Deepak Verma, learned counsel emphatically submits, that the appellant-accused no.2 Deepak Verma deserves acquittal. In order to supplement his instant contention, learned counsel placed reliance on a judgment rendered by this Court in *State of Uttar Pradesh v. Rajvir*<sup>8</sup>, wherein the State had approached this Court against the acquittal of the respondent. The High Court, while hearing the appeal against the respondent had re-appreciated the evidence by re-evaluating the statement of witnesses. While two of the accused were found to be guilty of murder, and accordingly, the sentence passed by the Trial Court against them was upheld; the High Court was doubtful of the participation of the respondent in the murder of the deceased, according to learned counsel, solely on the ground that there was no motive for the respondent to commit the murder of the deceased. Adopting a cautious approach, the High Court had acquitted the respondent by giving him the benefit of doubt. This Court found merit in the determination of the High Court, and accordingly, upheld the decision of the High Court by recording the following observations:

"8. We have carefully considered the submissions made by the learned counsel for the parties. It is the case of the prosecution that the other two accused, namely, Chander and Chhotey had motive against the deceased and the respondent had no motive whatsoever against the deceased; all the three accused were friendly among them. It is true that PWs 1 to 3 have supported the prosecution case that all the three accused went to the house of the deceased on the date of the incident and the respondent called the deceased to attend a patient immediately. PWs 1 to 3 also stated that all the three accused assaulted the deceased but the evidence of PWs 1 to 3 is specific and consistent as to the assault by the accused Chander on the deceased with a knife. As to the assault by the respondent, the statements of the witnesses are general and vague. No specific overt act is attributed to the respondent. It may also be mentioned here that there was no recovery of knife from the respondent. There was recovery of bloodstained clothes from the accused Chander. It is possible that on the accused Chander and Chhotey asking the respondent to accompany them to the house of the deceased to show a patient or the respondent himself might have taken a patient also for examination by the doctor. Mere presence of the respondent on the spot when the incident took place was not sufficient to hold that the respondent had shared the common intention to kill the deceased; particularly so when the respondent had no motive whatsoever. PW1, the brother of the deceased himself has stated that the respondent had no ill-will or motive against the deceased. It is under these circumstances, the motive aspect assumed importance. There is no dispute as to the legal position that in the absence of motive; or the alleged motive having not been established; an accused cannot be convicted if the prosecution is (sic not) successful in establishing the crime said to have been committed by an accused by other evidence. At any rate, a doubt definitely arose in the case in hand as to what was the reason or motive for the respondent to commit the murder of the deceased. *In State of*

*U.P. v. Hari Prasad*<sup>9</sup> this Court dealing with the aspect of motive has stated thus: (SCC pp. 674-75, para 2):

"This is not to say that even if the witnesses are truthful, the prosecution must fail for the reason that the motive of the crime is difficult to find. For the matter of fact, it is never incumbent on the prosecution to prove the motive for the crime. And often times, a motive is indicated to heighten the probability that the offence was committed by the person who was impelled by the motive. But, if the crime is alleged to have been committed for a particular motive, it is relevant to inquire whether the pattern of the crime fits in with the alleged motive."

The present case is not the one where the prosecution has successfully proved the guilt of the respondent beyond reasonable doubt by other evidence on record to say motive aspect was immaterial."

Based on the aforesaid factual and legal position, it is submitted, that the appellant-accused no. 2 Deepak Verma deserved acquittal.

21. We have examined the third submission canvassed at the hands of the learned counsel for the appellants, based on the plea of motive. While dealing with the second contention, advanced at the hands of the learned counsel for the appellants, we have already concluded hereinabove, that there was sufficient motive even for the appellant-accused no.2 Deepak Verma to commit the crime in question, in conjunction with his younger brother Dheeraj Verma, appellant- accused no.1. Be that as it may, it would be relevant to indicate, keeping in mind the observations recorded by this Court as have been brought to our notice by the learned counsel for the appellants (which we have extracted hereinabove), that proof of motive is not a sine qua non before a person can be held guilty of the commission of a crime. Motive being a matter of the mind, is more often than not, difficult to establish through evidence. In our view, the instant contention advanced by the learned counsel for the appellant is misconceived in the facts and circumstances of the case. In the present case, there is extensive oral evidence in the nature of the statements of three eye-witnesses out of which one is a stamped witness, that appellant-accused no.2 Deepak Verma was an active participant in the crime in question. There is also the dying declaration of Kamini Verma implicating both the accused. In the case relied upon by the learned counsel for the appellant, the oral evidence produced by the prosecution to implicate the respondent with the commission of the crime, was not clear. Accordingly, in the absence of the prosecution having been able to establish even the motive, the High Court (as well as, this Court) granted the respondent the benefit of doubt. That is not so, in so far as the present controversy is concerned. The oral evidence against the appellant-accused no.2 Deepak Verma is clear and unambiguous. Besides, motive of appellant-accused no.2 Deepak Verma is also fully established. We are therefore satisfied, that the judgment relied upon by the learned counsel for the appellant has no relevance to the present case. We, therefore, find no merit even in the third contention advanced at the hands of the learned counsel for the appellants.

22. The last contention advanced at the hands of the learned counsel for the appellant was, that the dying declaration of Kamini Verma which became the basis of registering the First Information Report itself, was forged and fabricated. Learned counsel for the appellants, vehemently contended that the very foundation of the prosecution story itself being shrouded in suspicious circumstances, must lead to the inevitable conclusion, that the appellants-accused have been falsely implicated in the crime in question. In so far as the instant aspect of the matter is concerned, it was the vehement contention of the learned counsel for the appellants, that Kamini Verma was declared medically unfit to make a statement by Dr. D.P. Dogra PW11 at 12:20 hrs., on 28.7.2003. Pointing out to Exhibit PW11/B, it was the submission of the learned counsel for the appellants, that the medical report, showing that Kamini Verma was not fit to make a statement, had been made on the ground that her pulse rate and blood pressure were not recordable. According to the learned counsel, within just 40 minutes, the same Dr. D.P. Dogra PW11 gave a report at 13:00 hrs., that Kamini Verma was fit to record her statement. Learned counsel for the appellants, also invited the court's attention to Exhibit PW11/C, PW23/A and PW26/A so as to point out a number of discrepancies. It was submitted, that there are a number of cuttings/overwritings, of the time at which the endorsements on dying declaration of Kamini Verma were recorded. It is submitted, that the time has been altered from 12:20 p.m. to 1:00 p.m. This, according to the learned counsel was done, to match with the time given by Dr. D.P. Dogra PW11. Pointing to the endorsement of Dr. D.P. Dogra, it was submitted that Dr. D.P. Dogra had endorsed the dying declaration at 13:00 hrs. It was pointed out, that the time of the endorsement made by ASI Jog Raj PW26 (under the dying declaration of Kamini Verma) was recorded at 1:30 p.m., which was subsequently altered to 1:00 p.m. to match with the time recorded in the endorsement made by Dr. D.P. Dogra PW11. Additionally, it was the contention of the learned counsel for the appellants, that the language of the dying declaration itself shows, that the same was not a voluntary statement made by Kamini Verma, but actually the handiwork of ASI Jog Raj PW26, who had recorded the aforesaid statement. In this regard learned counsel for the appellants pointed out, that various words and observations were used in the dying declaration, which are in use of police personnel (and/or advocates), but not in the use of common persons. It is, therefore, sought to be submitted that the dying declaration of Kamini Verma, allegedly recorded at 13:00 hrs., on 28.7.2003 at Zonal Hospital, Chamba not being her own voluntary statement, was liable to be discarded from the prosecution version. In case the same is ignored, the entire prosecution story, according to the learned counsel for the appellants, would crumble like a house of cards.

23. We have considered the last submission advanced at the hands of the learned counsel for the appellants. There can be no doubt that there are certain discrepancies in the time recorded in the dying declaration. Additionally, there can also be no doubt that certain words which are not in common use have found place in the dying declaration made by Kamini Verma. Despite the aforesaid, we find no merit in the submission advanced at the hands of the learned counsel for the appellant. It is not possible for us to accept, that Kamini Verma was not fit to make her statement when she actually recorded the same in the presence of ASI Jog Raj PW26 and Dr.D.P. Dogra PW11. The very medical report, relied upon by the learned counsel for the appellants, which depicted that the pulse rate and blood pressure of Kamini Verma was not recordable, also reveals, that on having been given treatment her blood

pressure improved to 140/70 and her pulse rate improved to 120 per minute. This aspect of the medical report is not subject matter of challenge. The fact that the incident occurred on 28.7.2003 and Kamini Verma eventually died on 1.8.2003, i.e., 4 days after the recording of the dying declaration also shows that she could certainly have been fit to make her dying declaration on 28.7.2003. Her fitness was actually recorded on the dying declaration by Dr. D.P. Dogra PW11. A number of prosecution witnesses reveal that she was conscious and was able to speak. Kamini Verma after having recorded her statement before ASI Jog Raj PW26, also repeated the same version of the incident (as she had narrated while recording her dying declaration) to her father Arun Kumar PW2, when she was being shifted from Chamba to Amritsar for medical treatment. Moreover, Dr. D.P. Dogra PW11 appeared as a prosecution witness, and affirmed the veracity of her being in a fit condition to make the statement. There is no reason whatsoever to doubt the statement of Dr. D.P. Dogra PW11. The question of doubting the dying declaration made by Kamini Verma could have arisen if there had been other cogent evidence to establish any material discrepancy therein. As already noticed hereinabove, three eye witnesses, namely, Deepak Kumar PW1, Sonia PW3 and Sumitri Devi PW4 have supported the version of the factual position depicted in the statement of Kamini Verma. It is, therefore, not possible for us to accept, that the statement of Kamini Verma was either false or fabricated, or that, the statement was manipulated at the hands of the prosecution to establish the guilt of the appellants-accused nos.1 and 2 Dheeraj Verma and Deepak Verma, or that she was not medically fit to make a statement. The discrepancies in recording time, as well as, the overwriting pointed out are too trivial to brush aside the overwhelming oral evidence produced by the prosecution, details whereof have been repeatedly referred to by us, while dealing with the various submissions advanced at the hands of the learned counsel for the appellants. We, therefore, find no merit even in the last contention advanced at the hands of the counsel for the appellants.

24. In view of the above we hereby affirm the order passed by the Trial Court dated 30.12.2005 (in Sessions Trial No.55 of 2003) and also, the order passed by the High Court dated 2.9.2009 (in Criminal Appeal No.27 of 2006). Both the appeals preferred by appellants-accused nos.1 and 2, Dheeraj Verma and Deepak Verma are, accordingly, dismissed.

Judgment Referred.

<sup>1</sup>(2009) 15 SCC 0452

<sup>2</sup>(2008) 12 SCC 0198

<sup>3</sup>(1976) 3 SCC 0779

<sup>4</sup>AIR 1963 SC 1413

<sup>5</sup>(1972) 4 SCC (N) 0042

<sup>6</sup>(1975) 3 SCC 0311

<sup>7</sup>AIR 1965 SC 0260

<sup>8</sup>(2007) 15 SCC 0545

<sup>9</sup>(1974) 3 SCC 0673