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that if Bazar Sheikhan had not been the recognized haunt of prostitutes in 1938 the rents of shops there would have been substantially different from what they were. In fact nobody can possibly say what the rents would have been. In the circumstances I am of the opinion that the words "in similar circumstances" must be strictly related to the conditions which obtained prior to the 1st of January, 1939 in the locality in question, and it is quite beyond the scope of the powers of the Rent Controller to try to imagine what rent would have been in 1938 if the conditions prevalent ten years later had been in existence at that time. A

It does, however, seem to me that the appellate authority might well have accepted the figure of Rs. 30 per mensem on which the Rent Controller based his calculation in the first instance, since the figure of Rs. 25 appears to be based simply on the statement of one witness the size of whose shop was not revealed. I therefore accept the revision petition to the extent of holding that the basic rent of the shop in suit is Rs. 30 per mensem and that the fair rent with the addition of 50 per cent permitted by section 4(5) (ii) (a) will be Rs. 45 per mensem. The parties will bear their own costs.

APPELLATE CRIMINAL

Before Bhandari, C.J., on difference between Falshaw and Kapur, JJ.

CHHOTAY ALIAS SUKHDEV AND OTHERS,—Convict-
Appellants
versus

THE STATE,—Respondent
Criminal Appeal No. 8-D/56.

*Criminal trial—Dying declaration—Value of—Interest-
ed witness—Testimony of—Whether should be believed.*

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Held, that although the approach of death produces a state of mind in which every motive to falsehood is silenced and although a dying declaration stands on the same footing as the testimony of a witness concerned in a case except as to leading questions, it is necessary that the deceased's

capacity of recollection and his actual recollection must have been sufficiently unimpaired to be trustworthy.

Held, that ordinarily there is more reason for distrusting biased testimony than for believing it; but the danger of accepting the testimony of an interested witness exists to a limited extent only, for the test of cross-examination is a sufficient safeguard against a wrong decision. It is extremely difficult to lie minutely and circumstantially without being found out. The mere fact that a witness is interested in the matter in controversy is not enough to justify a Court in disbelieving or failing to believe his testimony. A witness cannot be said to have perjured himself or to have testified falsely merely because of an interest in the case, where his testimony has not been contradicted by reliable evidence, is not opposed to general human experience, is not inherently improbable and is not put in question by the other circumstances of the case. If such testimony is evasive, equivocal, confused or otherwise uncertain, it may be disregarded.

Appeal from the order of Shri S. B. Kapoor, I.C.S., Sessions Judge, Delhi, dated the 16th May, 1956, convicting the appellants.

J. G. SETHI and Y. P. GANDHI, for Appellants.

HAR PARSAD, Assistant Advocate-General, for Respondent.

JUDGMENT.

FALSHAW, J.—This is an appeal by Sukhadev Raj Falshaw, J. known as Chhotey, Kundan Lal and Shori Lal who have been convicted under section 302 read with 34 Indian Penal Code, by the Sessions Judge at Delhi, Chhotey being sentenced to death and the other two to imprisonment for life. The case of Chhotey is also before us for confirmation of the death sentence.

The prosecution story is that at about 8.15 a.m. on the 3rd of December, 1955, Narain Das deceased had gone with Amar Nath P. W. 1, who was related to him by marriage and was living in the same house, to the premises of the so-called Punjab Exchange

Chhotey *alias* which apparently consists of a very large room on the first floor of a building in Katra Barian where business is carried on in contracts of various kinds through brokers authorised by the Exchange. The story is that when Amar Nath and Narain Das were still going up through steps leading to the first floor they were followed up by the three accused of whom Chhotey demanded money from Narain Das and abused him when he refused. The other two accused are alleged to have exhorted Chhotey to kill Narain Das on which he pulled out and opened a clasp-knife which he had in his pocket and struck Narain Das on the back with it. Narain Das is said to have run to a dispensary forming part of the premises of the Exchange followed by Chhotey who gave him repeated blows.

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In addition to Amar Nath, the incident is said to have been witnessed by Kundan Lal P. W. 5, Bhola Nath P. W. 6, Kalyan Singh P. W. 8 and Sat Pal P. W. 9 who is said to have been employed as a clerk in the Exchange. All of these witnesses claimed to have been present in the Exchange on business and according to their story they were discouraged from intervening to save Narain Das by threats from the other two accused, who finally ran away. Chhotey also ran down into the street where A. S. I. Hem Raj of the C. I. D., P. W. 7 happened to be passing on his bicycle. On seeing Chhotey with bloodstains on his clothes and with a bloodstained knife in his hand, Hem Raj at once stopped and got off his bicycle which he threw on one side and he succeeded in capturing Chhotey and relieving him of the knife with the assistance of Nand Kishore P. W. 17 who lives in a building opposite the premises of the Exchange and who had come down to telephone on a shop, and also other witnesses who came up later. A. S. I. Hem Raj then took Chhotey to the Lahori Gate Police Post and handed him over to the custody of Sub-Inspector

Sardar Singh P. W. 23 who recorded the first information report at the dictation of Bhola Nath P. W. who is a nephew of Narain Das. This first report was recorded at 8.50 a.m. and a case was registered at Police Station Kotwali on the basis of this report at 9.30 a.m. In the meantime Narain Das was brought down the steps from the dispensary and collapsed in the street, and Amar Nath and Khairati Ram set off to take him to the Irwin Hospital in a tonga. They stopped at the Hauz Qazi Police Station where a Police motor vehicle was obtained and F. C. Brahm Datt P. W. 10 went with them to the hospital where he recorded a brief statement made by Narain Das in the presence of Dr. P. C. Ahluwalia P. W. 2. This statement reads—

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“I was going for a shave after taking tea at home. Chhotey stabbed me with a knife on account of previous enmity. Kundan and Shori were also with him. Having stabbed me with the knife they ran away. I was attacked near the Punjab Chamber Exchange. At that time Amar Nath and Bhola Nath were present.”

Narain Dass died later that day as the result of his injuries, which included incised wounds, some only superficial, on the right and left sides of the chest, the left arm, left hand, the right side of the back and the right thigh, there also being two small abrasions on his left shin. None of the injuries would appear to have been individually fatal, but the doctor who carried out the post mortem examination was of the opinion that he died of shock and haemorrhage from the cumulative effect of the injuries which were sufficient to cause death in the ordinary course. Chhotey accused was also examined at 4 p.m. on the day of the occurrence about six hours after it had taken place. He had a small abrasion on the left knee, two small abrasions on the left little and ring

Chhotey *alias* fingers which the Police officer had noted as cuts
Sukhdev when he prepared the injury statement after Chhotey's
and others arrest, and one incised wound 1"×1¼"×1¼" on the
v. back of the left arm just below the elbow joint.
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The only motive attributed to Chhotey for attacking Narain Das appears to be his resentment at the refusal of Narain Das to accede to his demand for money, none of the prosecution witnesses apparently being aware of any reason why Chhotey should demand any money from the deceased. The suggestion, however, appears to be that he was acting at the instance of the other two accused who are said to be members of the party of, or related to, one Sham Das and other persons from whose possession unlicensed wireless transmitting sets had been recovered through informations supplied by Narain Das. The situation in this respect which seems to emerge from the evidence is that members of two rival gangs were using unlawful wireless transmitters for the purpose of transmitting prices to places outside Delhi, and that these transmitters had been discovered by the Police and seized as a result of information given by members of the rival gangs, and apparently both Narain Das deceased and some of the prosecution witnesses were also being prosecuted on this account as well as members of the party to which Kundan Lal and Shori Lal accused are alleged to have belonged.

The accused all denied their guilt. Kundan Lal and Shori Lal accused denied that they were present at the time of the occurrence and alleged that they had been falsely implicated on account of previous enmity including a case under section 307, Indian Penal Code, brought against Narain Das deceased and Kundan Lal P. W. for attacking an employee of Kundan Lal accused. Chhotey, who admitted having been

caught by A. S. I. Hem Raj with the knife still in his hand and bloodstains on his clothes, set up a case of self-defence. His story was as follows. Between 8 and 8.30 a.m. on the day in question he was taking tea at a shop near the Punjab Exchange when Narain Das came there. Chhotey had been employed by Narain Das for two months but had only received Rs. 10 out of Rs. 80 which were due to him as his wages and he therefore asked Narain Das to pay him some of the arrears. Narain Das replied rudely and when Chhotey repeated his request Narain Das abused him in foul language and called him an ungrateful wretch, and then pulled out a knife with which he aimed a blow at Chhotey striking him on his left elbow, and when he aimed another blow Chhotey tried to seize the knife and there was a struggle in which they fell down with Narain Das, who was more stoutly built than Chhotey, on top. Narain Das tried to strangle Chhotey who then gave him blows with the knife, which he had succeeded in wresting from Narain Das's grasp, in self-defence. After he had been rescued A. S. I. Hem Raj came there and took him away with the knife. When he was asked to explain why, if the incident had taken place in the street, there were bloodstains found on the first floor in the dispensary, he stated that Narain Das had been taken up to the dispensary after the occurrence for his injuries to be dressed while he himself was taken to the Police Station. He alleged that a false version of the occurrence had been given by the alleged eye-witnesses because they were all members of the same party as Narain Das, if not actually related to him, and they were all involved in the business of the illegal transmitters.

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In defence six witnesses were examined, of whom three were medical practitioners who gave evidence of having treated Kundan Lal for various ailments,

Chhotey *alias* though not apparently at the time of the present occurrence. One witness Hari Singh D. W. 6 produced certain letters which, he alleged, had been written by Sukhdev and others *v.* Kalyan Singh P. W., the bearing of which on the case is not apparent. The two most important witnesses are Girdhara Singh D. W. 4 and Jagat Singh D. W. 5. The State Falshaw, J. Girdhara Singh claims that he had a shop on the same floor as the premises of the Punjab Exchange and stated that when he came from his home at about 8.15 a.m. he found Narain Das attempting to throttle Chhotey who was giving him blows from underneath with a knife and after they had been separated and Chhotey taken away by a Police Officer, Narain Das was taken up to the dispensary for his injuries to be dressed. Jagat Singh D. W. 5 claims to be a *chowki-dar* employed by the Punjab Exchange and to have been on duty on the day of the occurrence from 4 a.m. until mid-day. He stated that no stabbing took place on the first floor landing or at the dispensary near which he was on duty, but that Narain Das was brought upstairs bleeding from some injuries.

The learned Sessions Judge has rejected the defence version and accepted the statements of the alleged eye-witnesses produced by the prosecution in their entirety and has therefore convicted all the accused under section 302 read with 34, Indian Penal Code. It is, however, contended on behalf of the appellants that the evidence of the prosecution witnesses cannot be relied on and that the defence version, if not positively proved, is at any rate more probable in the circumstances than the prosecution version.

There certainly seems to be no doubt that the contention of the learned counsel for the appellants is correct that all the prosecution witnesses are either related to Narain Das or are his partisans. Even the so-called clerk in the Exchange Sat Pal P.W. 9 who was

cited as an independent witness was admitted to have been formerly employed by Narain Das and to be involved with him in a case relating to illegal transmitter. There also appears to be considerable force in the contention of the learned counsel that the explanation of the presence of so many relations or partisans of the deceased on the premises of the Exchange as early as 8.15 a.m. on the day in question is far from satisfactory. None of the witnesses is an authorised broker of the Exchange but their story generally is that they had gone there at that time to see the closing prices of the previous day, or in case of Sat Pal that he had gone to work. It is, however, admitted that business in the Exchange does not commence until 10 a.m. and although Amar Nath P. W. stated that he had actually gone with Narain Das on business, this was not the story told by Narain Das himself in his brief and evidently genuine dying declaration, in which he simply said that he had gone to that neighbourhood to visit a barber after taking tea at his house. Incidentally he only mentioned the presence of Amar Nath and Bhola Nath out of the witnesses and did not say that Amar Nath had accompanied him. Much stress has also been laid on his statement that the incident took place near the Punjab Exchange, which certainly supports the version of Chhotey that the affair took place outside the building in the street and not actually in the premises of the Exchange.

The first question on which the prosecution case is strongly attacked is whether Kundan Lal and Shori Lal accused were present at all, or whether, if they were present, they played any significant part in the occurrence which could attract the provisions of section 34, Indian Penal Code, towards them. Their presence is undoubtedly mentioned by Narain Das in his dying

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Chhotey *alias* declaration recorded at the hospital by the Constable, but no part was attributed to them beyond that they were with Chhotey when the latter stabbed him. The most significant part of the evidence on this point is that neither of these accused appears to have been seen at the spot by either A.S.I. Hem Raj or Nand Kishore P. W. 17 who was the first to reach the spot and help the A.S.I. in the capture of Chhotey. In view of the fact that the prosecution witnesses are undoubtedly inter-connected and members of a party, at loggerheads with the party to which Kundan Lal and Shori Lal accused are said to belong, it would not in my opinion be safe to accept the evidence regarding the presence of these two accused, but even on the assumption that they were present when the fight started, it would certainly be safe to hold, on the strength of this evidence, that they played no part in it and quite evidently they must have run away at an early stage when the trouble developed between Narain Das and Chhotey.

As regards the case of Chhotey, who is undoubtedly responsible for inflicting injuries which caused the death of Narain Das, it is by no means easy to arrive at the truth. Certainly no marks were found in the neighbourhood of his neck suggesting that any attempt had been made to strangle him, but on the other hand the struggle cannot have lasted very long and it might be possible for any red marks on his neck to disappear in six hours before he was examined by the doctor. The main difficulty facing the prosecution is that the evidence of the witnesses does not account for the presence of bloodstains which were found on the left side of Chhotey's shirt which was torn and on the left side of his undervest. According to the witnesses

there was no struggle and Chhotey simply continued showering blows on Narain Das with the knife without the latter ever coming to grips with him. Even allowing for the fact that Chhotey had received a cut on the back of his left arm near the elbow it certainly would appear to be more likely that the bloodstains on his shirt and vest came from the injuries of Narain Das in the course of a struggle, and it also appears to me to be more likely from the seat of the injuries that the out on the back of the elbow found on Chhotey was caused by the knife while it was in the hand of Narain Das when Chhotey raised his arm to protect himself than that it was inflicted while the knife was in Chhotey's hand. In any case, as I have said, the witnesses generally have denied that there was any struggle in which such an injury might have been received by Chhotey from his own knife.

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The presence of bloodstains in the dispensary on the first floor and possibly on the staircase as well as in the road outside is equally consistent with both stories, and in view of the fact that it was not put to any of the prosecution witnesses by the defence counsel that Narain Das had been taken upstairs to the dispensary for the purpose of getting his injuries dressed, I should have had no hesitation in altogether rejecting the defence version that the whole occurrence took place in the street but for the fact that in his own statement Narain Das had said that the attack took place near, and not inside the premises of the Exchange.

One other matter on which I do not find the prosecution case satisfactory is the explanation for the alleged attack by Chhotey on the deceased. The witnesses have simply said that when Chhotey demanded money from Narain Das and was refused he pulled out the knife and attacked him. On the other hand the story of Chhotey on this point appears to make

Chhotey *alias* sense since he said that he had been employed by Sukhdev and others v. The State Falshaw, J. Narain Das who owed him some arrears of wages. This is at any rate partly supported by an admission of Bhola Nath, the uncle of Narain Das, who had stated before the Police that Chhotey used to work for Narain Das and had been discharged by him. He now said that he could neither remember whether this was true or whether he had made such a statement but he evidently did make that statement and it must be true.

My final conclusion from the conflicting evidence and circumstances is that it is at least equally probable that the story of Chhotey is substantially true, and in this state of equilibrium I do not regard the witnesses produced by the prosecution as so reliable that their version ought to be accepted in preference to that of Chhotey. The question arises what offence, if any, is established against Chhotey on the assumption that his version is substantially true that he was attacked in the first place by Narain Das with the knife when the latter resented his demand of payment of arrears of wages, and that in the struggle after he had wrested the knife from Narain Das he inflicted fatal injuries on him with it. In deciding this point the admitted facts must be borne in mind that Chhotey is apparently a slightly built young man of about 20 whereas Narain Das was a much more heavily built man of 40 or 45. It can be argued that the case falls under section 304 Part I, Indian Penal Code, on the ground that Chhotey inflicted fatal injuries on Narain Das in the course of a sudden fight following on a sudden quarrel, but it can also be argued with equal force that the accused was the victim of the aggression of Narain Das and that in stabbing him with Narain Das's own knife in the course of a struggle with a more heavily built man who was trying to strangle him Chhotey did not exceed the right of self-defence. The case falls on the border line and on the

whole I am of the opinion that Chhotey should be given the benefit of the doubt and exonerated. I would accordingly accept the appeal and acquit all the three appellants. The sentence of death passed on Chhotey is therefore not confirmed.

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KAPUR, J.—I regret I am unable to agree with my learned brother as to the case of Sukhdev Raj *alias* Chhotey. There is no doubt that the witnesses who have appeared in the case have a very unsavoury reputation. They are also related or are persons connected with Narain Das deceased, but this applies only to the eye-witnesses. There is other evidence which can neither be considered to be interested nor of persons who have any connection with Narain Das.

The occurrence is dated the 3rd of December, 1955. The case of the prosecution was that at about 8 or 8-15 a.m. Narain Das deceased and Amar Nath P. W. 1—their wives are cousins—went to a building called the Punjab Exchange near Fatehpuri, Delhi. As they were going upstairs three persons Sukhdev Raj *alias* Chhotey, Kundan Lal and Shorey followed them and Chhotey asked Narain Das to give him some money which the latter refused in rather rude language. This was followed by mutual exchange of abuse and at the instigation of Kundan Lal and Shorey, Chhotey whipped out a knife and started assaulting Narain Das. Narain Das retreated into the dispensary but Chhotey still continued to give him injuries. This was witnessed by several persons who have appeared as witnesses.

In support of the prosecution story the first witness is Amar Nath P. W. 1. He, as I have said, is related to the wife of the deceased. He was cross-examined at great length and he stated that Chhotey was not given any injury in his presence, nor did he notice

Chhotey *alias* any injury on his forearm or hand. When asked as to why no effort was made to rescue Narain Das he said that they were afraid of the knife in the hand of Chhotey.

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The next witness of this occurrence is P. W. 5 Kundan Lal. As far as his reputation goes it is as unsavoury as of the previous witness. According to him Kundan Lal accused is the maternal uncle of Sham Das against whom information was given by Narain Das deceased and four or five wireless transmitters were recovered from his (Sham Dass) possession. He has supported the prosecution story in regard to the going of the deceased to the Punjab Exchange. In cross-examination he stated that a case for the possession of an illegal transmitter, was pending against Chaman, Narain Das and others. He also made the following statement:—

“Narain Das was a stout man of the Lala type. He was of heavier build than Chhotey accused. Narain Das was trying to catch the knife of Chhotey and was throwing about his hands.”

Another witness of the prosecution is Bhola Nath P. W. 6. He is the man who made the first information report. He has supported the prosecution story in regard to the occurrence having taken place inside the building known as Punjab Exchange. In his cross-examination he was asked if he stated to the police that Chhotey was hurt “by his own hand while he was recklessly giving knife blows to Narain Dass” and he stated that he did make that statement to the police. He also stated that Narain Das did not have any knife and that Chhotey must have been injured with his own knife. According to his police statement, Chhotey used to work for Narain Das previous to the occurrence and was discharged by him, i.e.,

Narain Das. It is in the cross-examination of this witness that the defence which had later on been set up was put forward for the first time and this was on the second day of the trial. As a matter of fact, in regard to the differences between the sizes of Narain Das and Chhotey the question was put for the first time to P. W. 5 Kundan Lal who was also examined on the same day, i.e., the 26th of April, 1956. Bhola Nath P. W. 6 was asked in cross-examination in regard to the knife of Narain Das and what is now the defence of the accused. This witness denied that the knife, Exhibit P. 1., was of Narain Das or that it ever was in the hands of Narain Das. He stated at page 48, lines 1 to 5, of the paper book as follows:—

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“It is wrong to suggest that Narain Das was the first to give a knife blow to Chhotey. In fact Narain Das was quite unarmed. It is not correct that Narain Das gave any abuses to Chhotey. It is not correct that Narain Das caught hold of Chhotey by the throat or threw him on the bench.”

P. W. 8 Kalyan Singh who is also related to the deceased was examined on the 27th April. In his cross-examination he stated —

“Narain Das was quite unarmed. I cannot say if Chhotey had a knife injury in his elbow, or had cuts on his hand. Narain Das was of heavy build. It is false to suggest that he caught hold of Chhotey by the throat or dashed his head against a bench or that Chhotey’s eyes protruded out.”

The next witness is Sat Pal P. W. 9. He has supported the story of the prosecution, and the defence brought out in cross-examination that when Chhotey was arrested by P. W. 7 Hem Raj, he asked these witnesses as to what had happened and the witnesses

Chhotey *alias* repeated to him how the trouble had arisen. The defence version was put to him but he also denied it in his statement at page 53, lines 4 to 10 of the paper book—

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“The knife, Exhibit P. 1, does not belong to Narain Das. I was not seeing any knife with Narain Das, and I cannot say if he always kept a knife with his person. Narain Das was some what heavier built than Chhotey. His age was about 35 or 36. I did not see Narain Das catching Chhotey accused by the neck or smashing his head against a bench”.

All these witnesses, as I have said, have an un-savoury reputation. They all seem to belong to a gang of persons who are employed in illegal activities and according to their statements the party of Shorey and Kundan Lal appellants also was engaged in similar kind of illegal activities. There is some evidence which it is important to refer to at this stage. The first witness is P. W. 7 Hem Raj who is an Assistant Sub-Inspector in the C. I. D. He saw a man carrying an open knife in his hand and running from the side of the Punjab Exchange towards Hauz Qazi. The knife was bloodstained as were the clothes of the man. Although the witness had a bicycle with him, he threw the bicycle and caught hold of the man who was carrying the knife and that man was Chhotey who tried to get himself released from his grip. In this he was helped by Nand Kishore P. W. 17. According to this witness (Hem Raj) when he had caught hold of the accused Chhotey, Kundan Lal Bhatia P. W. 5, Sat Pal P. W. 9 and Bhola Nath P. W. 6 also arrived at the scene and it was with their help that Chhotey was taken to the police station where he was handed over to Sub-Inspector Sardar Singh. He is an independent witness who

has no connection either with one party or the other, and according to him these witnesses appeared at the scene as soon as Chhotey was arrested which fixes the presence of these witnesses at the place. The other witness in this connection is Nand Kishore P. W. 17 who states that he went to the Punjab Exchange and found Chhotey accused coming down the stairs with an open knife in his hand and that a man, who was subsequently found to be the Assistant Sub-Inspector of C. I. D., tried to catch hold of him and Chhotey grappled with him, and this witness assisted the Assistant Sub-Inspector to overpower Chhotey and the knife was snatched from his hand. In cross-examination he stated—

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“It is correct that at the same time some men came down from the stairs of the Punjab Exchange. As the accused was struggling, I tried to prevent him from escaping by holding him from the arm or the back.”

Chhotey was taken to the police post where he was handed over to Sub-Inspector Sardar Singh P. W. 23 who has stated—

“While I was still in Police Post, Lahori Gate on the morning of 3rd December, 1955, I prepared correctly the injury statement of Chhotey accused (Exhibit P. W.) and I sent him for medical examination.”

Later on the same day the accused Chhotey was examined by a doctor. The injury statement, Exhibit P. W., shows that there were three injuries on the person of Chhotey; one was on the outer side of the left arm, the second, two cut marks on the inner side of the left arm and on the finger joint and the third, one mark of injury on the calf under the ankle of left foot. The accused was examined by Dr. Kuldip

Chhotey *alias* Sagar P. W. 3 and he found an incised injury on the back of the left forearm, two abrasions each $1\frac{1}{4}$ inch deep on the little and ring fingers left side at the base and an abrasion $1\frac{1}{4}$ inch on the inner side of the left knee.

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Besides this, blood was found on the shirt and on the vest worn by the accused. The defence of the accused was that he was having his tea at the shop of Lachi in front of the Punjab Exchange. Narain Das came from the side of his house and he (the accused) greeted him. The accused asked him to give him "his arrears of pay for about eight or ten days". According to the accused he had worked with the deceased for about two months and was only paid Rs. 10 as advance and Rs. 70 were still due. Narain Das told him to run away and not bother him early in the morning and the accused again requested for the arrears to be paid, which resulted in exchange of abuse and Narain Das took out a knife and gave a blow with it which struck the accused on his left arm. He aimed another blow but the accused caught hold of the blade of the knife with his right hand, the fingers of which got cut and then the accused snatched the knife from Narain Das and gave him blow which injured his arm. As the deceased was a much stronger man he picked up the accused and felled him on the ground and pressed his neck with both hands. Continuing the accused said—

"As my eyes began to protrude out, I struck him with the knife from below."

He also said that Narain Das was taken up to the dispensary in the Punjab Exchange building. Explaining the stains of human blood on the knife he said—

"It got stained as Narain Das injured me with it."

and in regard to his clothes he said—

“These clothes got bloodstained and torn when Narain Das attacked me and wounded me with the knife, Exhibit P. 1.”

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The injuries on the body of the deceased were on the chest and other parts of the body. The story told by the prosecution seems to fit in with these injuries while the defence put forward does not seem to do so.

The accused was examined soon after he was arrested by the Sub-Inspector. He found no injuries on his neck which would be indicative of an attempt to strangle him and which must have been with some force as the accused says that his eyes began to protrude. Blood was found by the police on the first floor of the Punjab Exchange building. The prosecution witnesses have denied that Narain Das was taken to the first floor from the street and, in my opinion, there is no reliable evidence to show that he was so taken.

The real question then resolves itself into this, which of the two versions should be accepted. The learned Sessions Judge who tried the case and saw the witnesses, has accepted the testimony of the prosecution witnesses and rejected the case put up by the defence. There is no injury on the right hand of Chhotey and there is no injury on the head of Chhotey, nor on his neck, so that the story that Chhotey tried to catch hold of the blade of the knife or that he was being throttled or that his head was struck against a bench is not proved. It is true that Narain Das did make a dying declaration in which the words used are “near the Punjab Exchange” and not “not on the first floor of the Punjab Exchange.” That would be really an immaterial point because the attack should have taken place on the road just as much as on the

Chhotey *alias* first floor and I cannot see any reason why the prosecution should have deliberately chosen the first floor of the building. In my opinion, the case for the prosecution is proved as far as Chhotey is concerned and the defence as put forward is contradicted by circumstances. No right of private defence arose in this case. I would, therefore, dismiss the appeal of Chhotey.

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In regard to the other two accused Kundan Lal and Shorey, the evidence is that they instigated Chhotey. It is always dangerous to rely upon this kind of evidence and I would, therefore, allow their appeal, set aside their convictions and acquit them. The sentence of death passed on Chhotey is confirmed.

Falshaw and
Kapur, JJ.

D. FALSHAW AND J. L. KAPUR, JJ.—We are agreed that the appeals of Shorey and Kundan Lal should be accepted and they be acquitted but we have disagreed in the case of Sukhdev Raj *alias* Chhotey, and the appeal in his case will, therefore, have to be referred to a third Judge.

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BHANDARI, C.J.—Three persons were found guilty of the murder of Narain Das; Sukhdev Raj *alias* Chhotey was sentenced to death and his companions Kundan Lal *alias* Ustad and Shorey were sentenced to imprisonment for life. The appeal preferred by the convicts came up for consideration before a Division Bench of this Court consisting of Falshaw, J., and Kapur, J. Both the learned Judges were unanimous in holding that the prosecution had failed to bring the charge home to Kundan Lal and Shorey and that the latter were entitled to acquittal. They were unable, however, to agree as to the order that should be passed in regard to Chhotey. Falshaw, J., was of the opinion that Chhotey should be acquitted but

Kapur, J., expressed the view that he should be convicted. In view of the difference of opinion which has arisen between these two learned Judges, the matter has been referred to me under the provisions of section 378 of the Code of Criminal Procedure.

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The allegation against the accused was that at about 8 a.m., on the 3rd December, 1955, they committed the murder of Narain Das by a knife and thereby committed an offence punishable under section 302| 34 of the Penal Code.

At about 8-15 a.m., on the 3rd December, 1955, Narain Das deceased and Amar Nath, P.W. 1, entered the building of the Punjab Exchange which is situate in Katra Baryan, Fatehpuri, Delhi. While they were still going up the steps leading to the first floor they were followed up by the three accused, namely, Chhotey, Kundan Lal and Shorey. Chhotey demanded some money from the deceased but the latter asked him to earn for himself, whereupon Chhotey reiterated his demand and Kundan Lal and Shorey exhorted him to kill the deceased. Chhotey pulled out a clasp-knife from his pocket, opened it and plunged it into the back of the deceased. The deceased ran into the dispensary adjoining the landing but Chhotey pursued him and stabbed him repeatedly in the chest and other parts of the body. This occurrence was witnessed by a number of persons including Amar Nath, Bhola Nath, Kundan Lal, Kalayan Singh and Sat Pal. Kundan Lal P.W. stepped forward to rescue the deceased but Kundan and Shorey accused who were standing at the door of the dispensary barred his way and threatened to kill anyone who dared intervene. In the meantime Chhotey came out of the dispensary with his clothes stained with blood and flourishing his knife in his hand challenged anybody to stop him if he dared. He went

Chhotey *alias* down the steps taking the knife with him followed by
 Sukhdev Kundan Lal and Shorey accused. P.W. Kundan Lal
 and others asked Amar Nath to look after the deceased, while he
 v. and Bhola Nath rushed down the steps in pursuit of
 The State the assassin. Chhotey endeavoured to make good his
 Bhandari, C. J. escape and ran into the direction of Hauz Qazi but
 fortunately for the ends of justice P.W. 7, Hem Raj,
 an Assistant Sub-Inspector of the C.I.D., who happened
 to be passing near Fatehpuri on his cycle, saw
 Chhotey with his bloodstained knife and clothes. He
 threw aside his cycle, ran after Chhotey and snatched
 the knife from his hand with the help of Nand
 Kishore, P.W. Chhotey was apprehended and taken
 to Lahori Gate Police Post by Assistant Sub-Inspector,
 Hem Raj, and P.Ws. Kundan Lal, Sat Pal and Bhola
 Nath. Sub-Inspector Sardar Singh took into possession
 the bloodstained knife and clothes of Chhotey and
 recorded the statement of P.W. 6, Bhola Nath, which
 forms the basis of the first information report. This
 was at about 8.35 a.m. within a few minutes of the
 commission of the crime.

In the meantime the deceased who was mortally
 wounded came down the steps with the support of
 Amar Nath, P.W. 1. He was bleeding profusely from
 his injuries and owing to the loss of blood he collapsed
 near the tramway lines just below the Punjab
 Exchange. P.Ws. Khairati Ram and Amar Nath put
 him in a passing tonga with the object of taking him
 to the Irwin Hospital, but his condition gave cause for
 alarm and they accordingly stopped the tonga at the
 Hauz Qazi Police Station in order to arrange for a
 quicker transport. The clothes of the deceased were
 drenched with blood and his condition was most precarious.
 Assistant Sub-Inspector Sita Ram asked
 him what had happened. The deceased replied that
 Chhotey had stabbed him repeatedly at the instigation
 of Kundan Lal and Shorey accused. The Assistant

Sub-Inspector lent a police vehicle in which the deceased was promptly taken to the Irwin Hospital.

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Immediately on arrival at the hospital at 9.10 a.m. the deceased was taken to the Casualty Department where he was attended to by Dr. P. C. Ahluwallia. His pulse was feeble, he was restless and his life was passing quickly to a close. His condition gave cause of anxiety and the Medical Officer accordingly asked Foot Constable, Puran Singh, who happened to be on duty at the hospital, to record the dying declaration of the deceased. His declaration was recorded at 9.12 a.m. and he expired at 9.18 a.m. while he was being taken to the Surgical Ward. Sub-Inspector Sardar Singh arrived at the hospital at 10.50 a.m., recorded the statements of Khairati Ram, Amar Nath, Kalyan Singh and the other witnesses and returned to the scene of the outrage and removed some blood from the first floor of the Punjab Exchange. He endeavoured to look for Kundan and Shorey accused but was unable to trace them in any of the likely places. They surrendered in Court on the 5th December, 1955. As a result of the investigation which followed all the three culprits were prosecuted and convicted under section 302 of the Penal Code.

At the post-mortem examination, the Medical Officer found that the deceased had been murdered with the utmost brutality, for he had been stabbed mercilessly in the chest, in the left arm, on the left hand, on the right of the back and on the right thigh. There were as many as eight incised wounds in all and two abrasions. Death was obviously due to shock and haemorrhage from multiple injuries caused by a sharp-edged weapon.

Chhotey appellant who was also examined was found to have three injuries on his person. The first was an incised wound $1'' \times \frac{1}{4}'' \times \frac{1}{4}''$ on the back of

Chhotey *alias* the left forearm two inches below the elbow joint ;
 Sukhdev the second, two abrasions $\frac{1}{4}$ " deep on the little and ring
 and others fingers of the left hand ; and the third abrasion $\frac{1}{4}$ " on
 v. the inner side of the left knee. All the injuries were
 The State of a simple nature, the first injury being caused with
 Bhandari, C. J. a sharp-edged weapon and the remaining two in-
 juries with blunt weapons. The Medical Officer was
 of the opinion that the first injury could be caused if
 this man was attacking somebody else with a knife
 and happened to slip. The other injuries could be
 caused while he was endeavouring to shake himself
 free from A.S.I., Hem Raj and the other captors.

The accused disclaimed responsibility for the
 crime and denied the correctness of the circumstances
 appearing against them in evidence. Chhotey stated
 that about 8 or 8.30 a.m. on the day of occurrence he
 was taking tea at the shop of Lachhi opposite the
 Punjab Exchange, when Narain Dass deceased hap-
 pened to appear on the scene. A sum of Rs. 70 was
 due to him from his former employer Narain Das on
 account of arrears of pay. Chhotey asked for this
 amount but the deceased asked him to run away and
 not to bother him at that hour of the morning.
 Chhotey again begged for his arrears of pay as his
 father was ill in Amritsar, but the deceased asked
 him to run away and abused him in vulgar language.
 Chhotey abused him in return. The deceased there-
 upon pulled out a knife and hit him on the left elbow.
 He aimed another blow on Chhotey with the knife
 but the latter drew back and avoided the blow. The
 deceased aimed yet another blow on Chhotey but the
 latter caught hold of the blade with his right hand
 and received injuries on his fingers. Chhotey snatched
 the knife from the deceased and delivered a blow on
 the arm of the deceased.

The deceased who was much stronger than
 Chhotey picked up the latter, felled him to the ground

throttled his neck with both hands and caused the eyes of Chhotey to protrude. Thereupon Chhotey who was in imminent danger of losing his own life struck the deceased with the knife from below in exercise of his right of private defence. Luckily the neighbouring shopkeepers collected at the spot and rescued Chhotey. Assistant Sub-Inspector Hem Raj arrived at the spot and recovered the knife from him. Kundan and Shorey accused pleaded *alibi*. Six witnesses were produced in defence.

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The prosecution allege that the deceased was attacked as he had given information to the police that Sham Das and his associates were in unlawful possession of radio transmitters for the purpose of broadcasting the rates of various commodities. It appears that a party headed by one Sham Das had set up a number of wireless transmitters in different parts of Delhi with the object of communicating news to various Mandis. On the 26th February, 1955, the deceased gave information to Sub-Inspector Balmokand in consequence of which a certain house was raided and a working transmitter was recovered (P.W. 13, Balmokand and Exhibit P.W. 13(A)). One Tilak Raj was taken into custody but Sham Das who was inside the room eluded capture and managed to make good his escape. Again in consequence of information supplied by the deceased, Sub-Inspector, Balmokand raided the Punjab Exchange building in May, 1955, and was able to recover a working transmitter. One Chaman Lal was arrested but Sham Das escaped on seeing a policeman in uniform. In June, 1955, the deceased and P.W. Khairati Ram submitted two separate applications to the Senior Superintendent of Police in which they stated that they had been helping the police in the detection of crime, that four different places were raided as a result of the information given by them, that four working transmitters were

Chhotey *alias* recovered and that four culprits were taken into
 Sukhdev custody by the police. They stated further that the
 and others persons against whom the reports were made were
 v. openly threatening them with dire consequences and
 The State were openly threatening to exterminate them or to
 Bhandari, C. J. implicate them in serious cases. The deceased and his
 companion accordingly asked for the intervention of
 the police and requested that severe action be taken
 against the *badmashes*. It is contended that Sham
 Das hired Chhotey to assassinate the deceased with
 the help of his relations Kundan and Shorey accused,
 that Chhotey was never in the employ of the deceased
 and that his demand for a sum of money from the de-
 ceased was only an excuse for provoking a fight and
 killing the deceased. The fact that Chhotey is a pauper
 and the fact that some of the most eminent counsel
 have been engaged to defend him appears to an extent
 to bear out the suggestion that Chhotey killed the de-
 ceased not because the latter owed some money to him
 but because he was hired to assassinate the deceased.

It is common ground that the deceased met his end
 at the hand of Chhotey appellant. The only ques-
 tion which requires determination therefore is whe-
 ther the murder was premeditated or whether Chhotey
 caused these injuries to the deceased in exercise of his
 right of private defence. The question gives rise to
 the further question whether the occurrence took place
 on the first floor of the Punjab Exchange as alleged
 by the prosecution or whether it took place in the
 street opposite the shop of Lachhi Halwai as alleged
 by the accused.

Mr. Sethi, who appears for the appellant, con-
 tends that there are at least three reasons for holding
 that the version given by his client is correct, namely
 (1) the dying declaration of the deceased, (2) the
 statements of defence witnesses, and (3) the proba-
 bilities of the case.

The dying declaration as recorded by Foot Constable Puran Singh was in the following terms :—

“After taking tea I was going to get myself shaved. We had old enmity. Chhotey stabbed me from the back. Kundan Lal and Shorey were also accompanying Chhotey. After stabbing they ran away. He stabbed me near the Punjab Exchange. At the spot Bholanath and Amar Nath were also present.”

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This declaration, it is contended, makes it quite clear (1) that the deceased was going out for a shave and was probably on the look-out for a hair dressing saloon in the bazar rather than a barber in the Punjab Exchange, and (2) that Chhotey stabbed him near the Punjab Exchange and not in the Punjab Exchange. These two statements, it is contended, strongly support the version of Chhotey that the murder took place near the shop of Lachhi near Gali Kallalan as alleged by the appellant and not on the first floor of the Punjab Exchange as alleged by the prosecution.

In dealing with this aspect of the matter Falshaw, J., observed as follows:—

“The presence of bloodstains in the dispensary on the first floor and possibly on the staircase as well as in the road outside is equally consistent with both stories and in view of the fact that it was not put to any of the prosecution witnesses by the defence counsel that Narain Das had been taken upstairs to the dispensary for the purpose of getting his injuries dressed, I should have had no hesitation in altogether rejecting the defence version that the whole occurrence took place in the street but for

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the fact that in his own statement Narain Das had said that the attack took place near, and not inside, the premises of the Exchange."

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It is true that according to the dying declaration the deceased was attacked in the street near the Punjab Exchange but it must be recognised that this statement cannot be taken at its face value. The deceased had been stabbed mercilessly in the chest and the other parts of his body. When he was taken to Police Station Hauz Qazi, Assistant Sub-Inspector Sita Ram found that his clothes were drenched with blood and that his condition was most precarious. Indeed his condition was so serious that he considered it necessary to put him in a police pick-up and to rush him to the Irwin Hospital before it was too late (P.W. 20/A). When he reached the Casualty Department at 9 a.m. his pulse was very feeble, he was very restless and was on the verge of collapse. His condition was so serious that Dr. Ahluwalia considered it necessary to ask a Foot Constable to record his dying declaration. His statement was recorded at 9.12 a.m. Although the approach of death produces a state of mind in which every motive to falsehood is silenced and although a dying declaration stands on the same footing as the testimony of a witness concerned in a case except as to leading questions it is necessary that the deceased's capacity of recollection and his actual recollection must have been sufficiently unimpaired to be trustworthy. In the present case it seems to me that the faculties of the deceased were so much impaired by the injuries which he had received that he was incapable of remembering with distinctness, or stating with accuracy, the facts and circumstances of the incident which resulted in his death. The fact, therefore, that he stated in his dying declaration that the attack took

place near, not inside the Exchange, cannot, in my opinion, turn the scales in favour of the appellant when there is overwhelming evidence to show that the attack took place on the first floor of the Punjab Exchange.

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Mr. Sethi has endeavoured to bolster up the statement of Chhotey in regard to the scene of the tragedy by the testimony of two witnesses produced in defence, namely, D.Ws. 4 and 5. D.W. 4, Girdhara Singh who is said to own a shop on the first floor of the Punjab Exchange deposes that on the day of the occurrence he was coming from his house at about 8.15 a.m. when he saw the deceased on the top of Chhotey in front of Gali Kallalan. The deceased was throttling Chhotey whose eyes were protruding while Chhotey was delivering blows from underneath with a knife. The witness and two or three others intervened and separated the parties. A police officer asked Chhotey to hand over the knife and the deceased who was bleeding profusely was taken up into the dispensary of the Punjab Exchange in order to have his injuries dressed. The witness went upstairs to the shop and learnt that as there was no doctor in the dispensary the deceased had been removed from there. The evidence of this witness does not appear to be worthy of credence. He did not make any statement to the police though he admitted that he remained at his shop in the Punjab Exchange and though the police arrived there at 11 a.m. He is unable to give the names of the persons who saw the occurrence. He was unable to name the employees of Lachhi in front of whose shop the occurrence is alleged to have taken place. He knew Bho'la Nath, Sat Pal, Kundan Lal and Nand Kishore, P.Ws., but stated that none of them was present at the scene of the occurrence and thereby contradicted overwhelming evidence to the contrary. Had the occurrence taken place in the street below the Punjab Exchange, the deceased could not

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Chhotey *alias* have been taken to the dispensary on the first floor
 Sukhdev firstly because the dispensary does not open till 10 a.m.,
 and others secondly, because it was dangerous to take the deceased
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 nature of injuries received by the deceased made it
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 large and well equipped hospital. First-aid was of
 little or no use in a case of this kind. D.W. 5, Jagat
 Singh who claims to be a Chaukidar in the Punjab
 Exchange and to have been on duty from 5 a.m. till
 midday testifies to the fact that no stabbing took place
 on the first floor although he saw the deceased being
 brought up the stairs bleeding from some injuries.
 As the dispensary was closed at the time, the deceased
 was taken back immediately. This witness states
 that he did not see the police till noon, although Sub-
 Inspector Sardar Singh states that he arrived at
 10 a.m. and although the Head Constable and certain
 constables were admittedly present at the spot. I
 am not impressed with the statements of these wit-
 nesses and have no hesitation in endorsing the view
 of the learned Sessions Judge that they are not telling
 the truth.

Mr. Sethi contends that the story narrated by the
 prosecution is not consistent with the probabilities of
 the case. It is common ground that the coat, the
 shirt and the underwear of Chhotey were stained with
 blood, but these clothes could be stained with blood
 only if the deceased was lying on the top of Chhotey
 and only if Chhotey was inflicting injuries on the de-
 ceased from underneath. I regret I am unable to
 concur in this contention. The appellant had de-
 livered a number of blows on the person of the
 deceased and it is not improbable that when the de-
 ceased was trying unsuccessfully to defend himself,
 the blood spurted out of the wounds of the deceased
 and stained the clothes of Chhotey.

On the other hand there is abundant material on the file to justify the conclusion that the deceased was attacked on the landing and in the vestibule adjoining the dispensary on the first floor of the Punjab Exchange. At least five witnesses have supported the story, namely, Amar Nath, P.W.1, a broker of the Punjab Exchange, Kundan Lal, P.W. 5, a speculator, Bhola Nath, P.W. 6, and Kalyan Singh, P.W. 8, brokers and one Sat Pal, P.W. 9, who calls himself a clerk of the Punjab Exchange. Amar Nath witnessed the occurrence with his own eyes because he had actually accompanied the deceased from his house to the Punjab Exchange. Kundan Lal and Bhola Nath saw the occurrence from close quarters while they were about to leave the office of the Punjab Exchange. Kalyan Singh and Sat Pal saw the occurrence when they were ascending the steps of the Punjab Exchange.

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Mr. Sethi, who appears for Chhotey, contends that all these witnesses are interested in supporting the story put forward by the prosecution as they are friends or relations of the deceased, that they belong to a gang of persons engaged in unlawful activities, that the explanation given by them of their presence in the premises of the Exchange at 8.15 a.m. is not satisfactory, that their integrity is doubtful as they have been prosecuted for being in unlawful possession of wireless transmitters and consequently that they are capable of telling deliberate falsehood even under the solemn sanction of an oath. It is true that with the possible exception of Sat Pal, practically all these witnesses are friends or partisans of the deceased. Amar Nath's wife is a cousin of the widow of the deceased; Kundan Lal was a friend of the deceased and stood surety for him in a case for the possession of an illegal transmitter, Bhola Nath is nephew of the deceased and Kalyan Singh's mother's sister

Chhotey *alias* was married to deceased. Even Sat Pal who works
Sukhdev as a clerk for various brokers in the Punjab Exchange
and others and is regarded as an independent witness is said to
v. be connected with the deceased for he worked with
The State the latter for about a month or so in the year 1955,
Bhandari, C. J. before he was involved in a transmitter case. I am
prepared to admit that ordinarily there is more reason
for distrusting biased testimony than for believing
it; but the danger of accepting the testimony of an
interested witness exists to a limited extent only, for
the test of cross-examination is a sufficient safeguard
against a wrong decision. It is extremely difficult to
lie minutely and circumstantially without being
found out. The mere fact that a witness is interested
in the matter in controversy is not enough to justify
a Court in disbelieving or failing to believe his testi-
mony. A witness cannot be said to have perjured
himself or to have testified falsely merely because of
an interest in the case, where his testimony has not
been contradicted by reliable evidence, is not opposed
to general human experience, is not inherently im-
probable and is not put in question by the other cir-
cumstances of the case. If such testimony is evasive,
equivocal, confused or otherwise uncertain, it may be
disregarded. The persons who are alleged to have
witnessed the occurrence in the present case have
personal knowledge of the facts to which they testify.
They are dealers, brokers or speculators of the Punjab
Exchange and were present in the premises of the said
Exchange at the time of the alleged occurrence as they
had gone there to find out the closing prices of the
previous night. They state that the occurrence took
place at about 8 or 8.15 a.m., and that they witnessed
it with their own eyes. Their presence at the spot
cannot be doubted. Assistant Sub-Inspector, Hem
Raj who apprehended Chhotey appellant with a blood-
stained knife states that Kundan Lal, Bhola Nath
and Sat Pal, P.Ws., helped him in removing Chhotey

to the Police Post Lahori Gate and his statement in this behalf is fully borne out by the testimony of P.W. Nand Kishore, admittedly an independent witness. Sub-Inspector, Sardar Singh deposes that they appeared before him between 8.30 and 8.40 a.m. Their names were mentioned in the first information report which was recorded at the Police Post without loss of time. Amar Nath and Khairati Ram, who had accompanied the injured man in order to have his wounds attended to at the hospital, stopped for a while at the Hauz Qazi Police Station. Assistant Sub-Inspector, Sita Ram talked to them in the Police Station and mentioned their presence in the *roznamcha* diary which was recorded by him at 8.50 a.m. The names of Amar Nath and Bhola Nath are mentioned in the dying declaration which was recorded at the Irwin Hospital at 9.12 a.m. The overwhelming evidence which has been produced in this case leaves no doubt in my mind that Amar Nath, Kundan Lal, Bhola Nath, Kalyan Singh and Sat Pal witnessed the occurrence in the Punjab Exchange and that Khairati Ram and Amar Nath helped the deceased into a tonga after he had collapsed near the tramway lines. With the exception of Khairati Ram, all these witnesses live at considerable distance from the scene of the tragedy and they could not have reached the Lahori Gate Police Post within a few minutes of the commission of the crime unless they were actually present at the spot at the time of the alleged occurrence. P.W. Nand Kishore has stated on oath that he saw Chhotey coming down the stairs of the Punjab Exchange with an open knife in his hand—a statement which leads one irresistibly to the conclusion that the occurrence took place on the first floor of the Punjab Exchange. This conclusion is strongly supported by the fact that the contrary version, namely that the deceased was taken upstairs to the dispensary with the object of having his wounds dressed, was not put to any of the prosecution wit-

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witnesses. The entire prosecution story in all its numerous details was laid bare at the earliest possible opportunity and the prosecution witnesses had no difficulty in carrying the repeated thrusts of the powerful weapon in the legal armoury—the sword of cross-examination. I have no hesitation in holding that although the prosecution witnesses are partisans of the deceased they have told nothing but the truth in the present case.

It is true that the deceased and the other members of his party were at daggers drawn with Sham Das, Kundan Ustad and Hari Singh, but they had no reason to falsely implicate Chhotey. The fact that they ascribed the major part to Chhotey and ascribed a minor part to Kundan and Shorey appears to me to invest the story narrated by them with the stamp of truth. The story to the effect that the deceased was attacked by Chhotey near the dispensary of the Punjab Exchange is borne out by the fact that a considerable quantity of blood was found in the landing and the dispensary where the deceased is alleged to have been attacked. The witnesses could have had no object in shifting the scene of the occurrence from the street to the dispensary in the Punjab Exchange if the occurrence had in fact taken place in the street below the Punjab Exchange. The dying declarations made by the deceased in the presence of Assistant Sub-Inspector Sita Ram at the Hauz Qazi Police Station and in the presence of the Medical Officer at the Irwin Hospital afford very strong corroboration of the evidence of the eye-witnesses as to the participation of the appellant. It may be that the declaration which was recorded at the hospital contains the names only of Amar Nath and Bhola Nath, but as pointed out elsewhere in the judgment this declaration has lost much of its value in view of the circumstances in which it was made.

Again, it is contended that the story narrated by the prosecution witnesses that Chhotey made an un-

provoked attack on the deceased cannot bear a moment's scrutiny. It is common ground that both the appellant and the deceased received injuries of varying severity, that all these injuries were caused with one knife, and that this knife was recovered from the possession of Chhotey appellant. If Assistant Sub-Inspector Hem Raj snatched the knife from the hands of Chhotey and if Chhotey received some injuries on his person which were caused by this knife, then it is argued, the knife must have belonged to or been in the possession of the deceased at some stage of this unfortunate incident. If the deceased had this knife to start with and inflicted an injury on the left arm of the appellant with this weapon, it is contended, the appellant had a right to defend himself and to cause injuries on the person of the deceased in exercise of his right of self defence.

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This argument appears to be more ingenious than convincing. The statement of Chhotey to the effect that the deceased was armed with a knife and that he inflicted an injury on the left elbow of the appellant has only to be read to be rejected. The prosecution witnesses emphatically denied the suggestion that the deceased was armed with a knife or that he inflicted any injury on the person of the appellant. On the other hand they stated that Chhotey pulled out knife from his pocket and attacked the deceased and that the deceased, who was empty-handed, was endeavouring to catch the knife of Chhotey. It is admitted that the deceased was about 35 to 40 years of age, that he was 5 feet 6 inches in height and that he was a much more heavily built man than Chhotey. If the deceased possessed undoubted physical advantages over the appellant and if in addition he was armed with a knife it is more than probable that he would have caused a large number of injuries on the person of the appellant. But the boot is on the other foot. The deceased had a very large number of injuries on his person,

Chhotey *alias* the appellant had only three minor injuries. The number and nature of the injuries on the person of the deceased strongly support the testimony of the eye-witnesses that the appellant murdered the deceased with a large knife while the deceased himself was

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empty-handed and was unable to defend himself. The appellant states that he tried to snatch the knife from the hands of the deceased and that in doing so his fingers were cut. The Medical Officer found no incised wounds on the hands of Chhotey. The appellant states that the deceased picked him up, felled him to the ground and throttled his neck with both hands and that his eyes very nearly came out of the sockets. The Medical Officer found no injuries on the neck of the appellant. It is true that an incised wound was found on the left elbow of the appellant and that two abrasions were found on his left hand but these injuries may well have been caused by the deceased in exercise of his right of self defence. It is equally probable that the incised wound was caused while the appellant was attacking the deceased with the knife and happened to slip. The other two injuries on his person could be caused when he endeavoured to shake himself free from the grip of Assistant Sub-Inspector, Hem Raj who had caught him with a blood-stained knife.

Mr. Sethi has invited my attention to certain authorities such as *Woolmington v. Director of Public Prosecutions*, (1) and *Mancini v. Director of Public Prosecutions* (2), and contends that as the appellant in the present case has given a version of his own and as the explanation given by him is reasonable, I should give the appellant the benefit of the doubt and order his acquittal. I regret I am unable to concur in this view. I am of the opinion that the prosecution has brought the guilt home to the appellant beyond

(1) 1935 A.C. 462.

(2) Cr. App. Rep. 65.

reasonable doubt. The prosecution story is corroborated by the motive which actuated the appellant to kill the deceased, by the testimony of a large number of witnesses whose evidence was not shaken in spite of a severe and a searching cross-examination, and by the circumstances in which the crime was committed. The evidence which the prosecution have led in the present case is clear and full, not extraordinary or incredible in the light of general experience, not contradicted either directly or indirectly by reliable witnesses and is so plain and complete that disbelief therein cannot arise by rational processes applied to evidence. The defence story on the other hand is not worthy of belief. The appellant was compelled to make a fair story for himself as his life and liberty were at stake and produced two witnesses in defence whose evidence cannot possibly be accepted. I have no doubt in my mind in regard to the guilt of the appellant.

For these reasons I would uphold the conviction of the appellant and confirm the sentence of death. Ordered accordingly.

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